

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ALEXANDER GALLEGOS,

Petitioner,

vs.

No. CIV 17-1172 JB\GJF

R.C. SMITH, Warden, Lea County
Correctional Facility, and NEW MEXICO
DEPARTMENT OF CORRECTIONS,
Central Office,

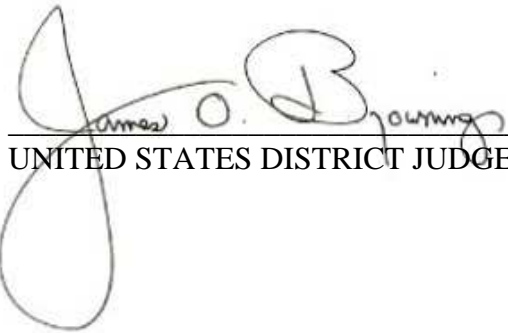
Respondents.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on: (i) Petitioner Alexander Gallegos' Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, filed November 28, 2017 (Doc. 1) ("Habeas Petition"), pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts; and (ii) Application to Proceed in District Court Without Prepaying Fees or Costs, filed December 26, 2017 (Doc. 5). Gallegos has paid the five-dollar filing fee, see Filing Fee: \$5.00, receipt number ALB038872, entered January 2, 2018 (Doc. 6), and, therefore, the Court will deny as moot his Application to Proceed in District Court Without Prepaying Fees or Costs. Gallegos' Habeas Petition names R.C. Smith, the Warden of Lea County Correctional Facility, and the New Mexico Department of Corrections as Respondents. See Habeas Petition at 1. It is well established, however, that, if a petitioner "is currently in custody under a state-court judgment," then the only proper respondent is "the state officer who has custody." Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts. Smith is the state officer who currently has custody of Gallegos and, therefore, the Court will dismiss Respondent New Mexico Department of Corrections as a party to the case.

The Court has examined Gallegos' Habeas Petition and determined that it is not subject to summary dismissal. Accordingly, the Court directs Smith to file an answer, motion, or other response.

IT IS ORDERED that: (i) the Petitioner's Application to Proceed in District Court Without Prepaying Fees or Costs, filed December 26, 2017 (Doc. 5), is denied as moot; (ii) Respondent New Mexico Department of Correction is dismissed as a party to this action; (iii) the Clerk of the Court is directed to forward copies of this Memorandum Opinion and Order and the Petitioner's Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, filed November 28, 2017 (Doc. 1) to Respondent Smith and to the New Mexico Attorney General; (iv) Smith shall answer Petitioner's Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 within thirty days from this Memorandum Opinion and Order's entry date. Smith's answer shall advise, but is not limited to, whether Gallegos has exhausted his state court remedies as to the issues raised in the federal petition. Smith shall attach to his answer copies of any pleading pertinent to the issue of exhaustion which Gallegos filed in the sentencing court, the state district court, the state court of appeals and the state supreme court, together with copies of all memoranda filed by both parties in support of or in response to those pleadings. Smith shall also attach to the answer copies of all state court findings and conclusions, docketing statements, and opinions issued in Gallegos' state court post-conviction or appellate proceedings. In the event Smith denies that Gallegos has exhausted his state court remedies, Smith shall identify the state procedures currently available to Gallegos given the nature of Gallegos' claims and their procedural history.


UNITED STATES DISTRICT JUDGE

Parties:

Alexander Gallegos
Lea County Correctional Facility
Hobbs, New Mexico

Petitioner pro se

R. C. Smith
Lea County Correctional Facility
Hobbs, New Mexico

Respondent