

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Delbert Smith v. State of California

No. 1:25-cv-01492-SKO (HC) (E.D. Cal. Dec. 17, 2025) · No. 1:25-cv-01492-SKO (HC) · Decided December 17, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends dismissing Delbert Smith’s 28 U.S.C. § 2254 habeas petition because he named the State of California rather than a proper custodial respondent. The court had granted Smith an opportunity to amend, but he failed to do so, and the clerk was directed to assign a district judge.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sheila K. Oberto
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	December 17, 2025
DOCKET	1:25-cv-01492-SKO (HC)
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner filed a 28 U.S.C. § 2254 habeas petition naming the State of California as respondent. After the court granted leave to amend to name a proper respondent, petitioner failed to amend or otherwise respond. The magistrate judge issued findings and a recommendation that the petition be dismissed, subject to review by an assigned district judge.
STANDARD OF REVIEW	A habeas petitioner's failure to name a proper respondent is reviewed under the requirements of Rule 2(a) of the Rules Governing § 2254 Cases; failure to correct the defect warrants dismissal for lack of jurisdiction.
PRECEDENTIAL VALUE	Unknown; findings and recommendation of a federal magistrate judge, not a final district court judgment.

TOPICS

- federal habeas corpus
- post-conviction relief
- pleadings
- subject matter jurisdiction
- civil procedure

PRACTICE AREAS

federal habeas corpus

post-conviction relief

civil procedure

QUESTIONS PRESENTED

1. Whether a state prisoner seeking relief under 28 U.S.C. § 2254 must name the state officer having custody of the prisoner as respondent.
2. Whether the petition should be dismissed for lack of jurisdiction when the petitioner names the State of California as respondent and fails to amend after being given an opportunity to cure the defect.

HOLDINGS

1. A petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state officer having custody of the petitioner as the respondent, ordinarily the warden of the facility where the petitioner is incarcerated or, in appropriate circumstances, the chief officer of the state penal institution.
2. A habeas petition naming an improper respondent is subject to dismissal for lack of jurisdiction when the petitioner fails to cure the defect after being given an opportunity to amend.

KEY QUOTATIONS

“A petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state officer having custody of him as the respondent to the petition.” (1)

“Petitioner’s failure to name a proper respondent requires dismissal of his habeas petition for lack of jurisdiction.” (2)

FACTUAL BACKGROUND

Smith, a state prisoner proceeding pro se, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. He named the State of California rather than the state officer having custody of him as respondent. After being advised of the defect and given an opportunity to amend, Smith failed to amend the petition or respond to the court's order.

PROCEDURAL HISTORY

Delbert Smith filed the habeas petition on November 4, 2025. The court determined that he had not named a proper respondent and granted him thirty days to amend. Smith did not comply or respond, so the magistrate judge recommended dismissal and directed the clerk to assign a district judge.

DISPOSITION

other

CASES CITED

- Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir.)

- *Brittingham v. United States*, 982 F.2d 378, 379
- *Stanley*, 21 F.3d at 360
- *Olson v. California Adult Auth.*, 423 F.2d 1326, 1326
- *Billiteri v. United States Bd. Of Parole*, 541 F.2d 938, 948 (2nd Cir.)
- *West v. Louisiana*, 478 F.2d 1026, 1029 (5th Cir.), vacated in part on other grounds, 510 F.2d 363 (5th Cir. 1975) (en banc)
- *Ashley v. State of Washington*, 394 F.2d 125 (9th Cir.)
- *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir.)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 DELBERT SMITH, Case No. 1:25-cv-01492-SKO (HC) 12 Petitioner,
ORDER DIRECTING CLERK OF COURT TO ASSIGN DISTRICT JUDGE 13 v. FINDINGS
AND RECOMMENDATION TO 14 STATE OF CALIFORNIA, DISMISS PETITION FOR
FAILURE TO NAME A PROPER RESPONDENT 15 Respondent. [10-DAY DEADLINE] 16 17
Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus 18
pursuant to 28 U.S.C. § 2254.

He filed the instant petition on November 4, 2025. (Doc. 1.) 19 Upon review of the petition, the
Court found that Petitioner had failed to name a proper 20 respondent. Petitioner was granted
leave to amend the respondent in order to avoid dismissal of 21 the action. (Doc. 4.) Petitioner was
granted thirty (30) days to comply. Over thirty (30) days 22 have passed, and Petitioner has failed
to comply or respond to the Court's order in any manner.

23 Accordingly, the Court will recommend the petition be DISMISSED. 24 DISCUSSION 25 A
petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state 26 officer
having custody of him as the respondent to the petition. Rule 2 (a) of the Rules 27 Governing §
2254 Cases; *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996); *Stanley* 1 custody of an
incarcerated petitioner is the warden of the prison in which the petitioner is 2 incarcerated because
the warden has "day-to-day control over" the petitioner.

Brittingham v. 3 United States, 982 F.2d 378, 379 (9th Cir. 1992); see also *Stanley*, 21 F.3d at 360.
However, 4 the chief officer in charge of state penal institutions is also appropriate. *Ortiz*, 81 F.3d
at 894; 5 *Stanley*, 21 F.3d at 360. Where a petitioner is on probation or parole, the proper
respondent is 6 his probation or parole officer and the official in charge of the parole or probation
agency or 7 state correctional agency.

Id. 8 In this case, Petitioner named the State of California as the respondent. Petitioner was 9
advised that the State of California was not a proper respondent. Petitioner's failure to name a 10

proper respondent requires dismissal of his habeas petition for lack of jurisdiction. Stanley, 21 11 F.3d at 360; Olson v. California Adult Auth., 423 F.2d 1326, 1326 (9th Cir.

1970); see also 12 Billiteri v. United States Bd. Of Parole, 541 F.2d 938, 948 (2nd Cir. 1976). The Court provided 13 Petitioner with the opportunity to cure this defect by amending the petition to name a proper 14 respondent, such as the warden of his facility. See West v. Louisiana, 478 F.2d 1026, 1029 (5th 15 Cir. 1973), vacated in part on other grounds, 510 F.2d 363 (5th Cir.

1975) (en banc) (allowing 16 petitioner to amend petition to name proper respondent); Ashley v. State of Washington, 394 17 F.2d 125 (9th Cir. 1968) (same). Petitioner failed to do so. 18 ORDER 19 The Clerk of Court is directed to assign a District Judge to the case. 20 RECOMMENDATION 21 For the foregoing reasons, the Court HEREBY RECOMMENDS that this action be 22 DISMISSED for Petitioner's failure to name a proper respondent.

23 This Findings and Recommendation is submitted to the United States District Court 24 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 25 304 of the Local Rules of Practice for the United States District Court, Eastern District of 26 California. Within ten (10) days after being served with a copy of this Findings and 27 Recommendation, a party may file written objections with the Court and serve a copy on all 1 Recommendation” and shall not exceed fifteen (15) pages, except by leave of court with good 2 cause shown.

The Court will not consider exhibits attached to the Objections. To the extent a 3 party wishes to refer to any exhibit(s), the party should reference the exhibit in the record by its 4 CM/ECF document and page number, when possible, or otherwise reference the exhibit with 5 specificity. Any pages filed in excess of the fifteen (15) page limitation may be disregarded by 6 the District Judge when reviewing these Findings and Recommendations pursuant to 28 U.S.C. 7 § 636 (b)(1) (C).

The parties are advised that failure to file objections within the specified time 8 may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th 9 Cir. 2014). This recommendation is not an order that is immediately appealable to the Ninth 10 Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of 11 Appellate Procedure, should not be filed until entry of the District Court's judgment.

12 IT IS SO ORDERED. 13 14 Dated: December 17, 2025 /s/ Sheila K. Oberto. UNITED STATES MAGISTRATE JUDGE 15 16 17 18 19 20 21 22 23 24 25 26 27