

**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

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**OPINION**

Delbert Smith v. State of California

PER CURIAM.

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UNITED STATES DISTRICT COURT

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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

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