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NOV 28 2007	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
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1 MANUEL BALBUENA RIVERA, A91-878-213  
 2 ELYDC, 1705 EAST HANNA RD  
 3 ELOY, ARIZONA 85231

4 UNITED STATES DISTRICT COURT  
 5 DISTRICT OF ARIZONA.

MANUEL BALBUENA RIVERA	)	
	)	CASE NO: 2:07-cv-898 - PHX - SRAB
PETITIONER,	)	
	)	PETITIONER'S MOTION TO COMPEL RESPONDET
	)	TO SERVE PETITIONER ITS RESPONSE TO THE
v.	)	COURT'S SUMMONS AND MOTION TO HOLD THE
	)	PETITION IN ABEYANCE PENDING ACTION ON
PHILLIP CRAWFORD, et al.,	)	PETITIONER'S MOTION TO COMPEL.

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 14  
 15 Petitioner Manuel Balbuena Rivera respectfully moves this  
 16 court to compel the respondent to serve the petitioner a copy of its  
 17 answer to the court's summons which was filed with the court in  
 18 this matter. Specifically, respondent requested and was granted an  
 19 extension of time by the court on August 31, 2007, to answer the  
 20 summons in this matter. See Exhibit A, detainee legal mail log for  
 21 the petitioner. Sometime thereafter, the respondent filed its answer  
 22 with the court, but the record shows as evidenced by the petitioner's  
 23 legal mail log that the respondent failed to serve a copy of its  
 24 answer upon the petitioner pursuant to FED. R. CIV. P. 5(a).

25 On November 21, 2007, the petitioner received a copy of the  
 26 Magistrate judge's report and recommendation and a notice to file  
 27 his response within ten (10) days.

28 Petitioner argues that he is unable to appropriately and

1 comprehensively respond to the Magistrate's report and recommendation.  
2 without first reviewing the respondent's answer and allowed an  
3 opportunity to reply to the respondent's answer which it malfeasance-  
4 cely failed to serve upon the petitioner.

5 The record on the petitioner's Institutional legal mail log  
6 reveals that nothing has been received from the United States  
7 Attorney's Office for the District of Arizona. id. Exhibit A.

8 Respondent's malfeasance tactics has prevented the petitioner  
9 from appropriately and timely filing a reply to the respondent's  
10 answer which the Magistrate considered as part of the report and  
11 recommendation. In light of this circumstances, rendering a decision  
12 without first allowing the petitioner an opportunity to receive and  
13 reply to the respondent's answer, will amount to a violation of the  
14 petitioner's right to due process under the Fifth Amendment. One of  
15 the components of the Fifth Amendment is that individuals are  
16 entitled to full and fair hearing of their claims and a reasonable  
17 opportunity to review evidence against them and to present evidence  
18 in their behalf. See *Kaoru Yamataya v. Fisher, (a.k.a. Japanese*  
19 *Immigrant case)*, 189 U.S. 86, 101, 47 L.Ed. 721, 23 S.Ct. 611 (1903)  
20 (stating that no person, even an alien, "shall be deprived of his  
21 liberty without opportunity, at sometime, to be heard ... in respect  
22 of the matters upon which that liberty depends").

23 This court should first allow the petitioner an opportunity to  
24 receive and reply to the respondent's answer before issuing a  
25 recommendation or reaching a decision in this matter. Additionally,  
26 petitioner asks that the court hold the petition in abeyance pending  
27 action on petitioner's "Motion To Compel...".  
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1 Respectfully Submitted,

Dated: 11-26-07

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5 Manuel Balbuena R  
6 MANUEL BALBUENA RIVERA.  
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CERTIFICATE OF SERVICE

I, Manuel Balbuena Rivera, hereby certify that a true and correct copy of the attached motion titled "Motion to Compel Respondent to Serve Petitioner Its Response to The Court's Summons..." was served upon the interested party addressed below by placing a copy in a sealed postage paid envelope and deposited in the outgoing U.S. mail box located at the Bravo building at 1705 East Hanna Road, Eloy, Arizona 85231.

ON: 11-26-07

BY: Manuel Balbuena R  
MANUEL BALBUENA RIVERA.

DANIEL K. KNAUSS (U.S. Attorney)  
United States Attorneys' Office  
District of Arizona  
Two Renaissance Square  
40 North Central Avenue, Suite 1200  
Phoenix, Arizona 85004-4408

Inmate: BALBUENA RIVERA, MANUEL  
 Booking #: 668904 Permanent ID: 616013

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EXHIBIT "A"

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