

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADOCivil Action No. 06-CV-00931

(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

GARY ANTHONY COLE, SR.,

Plaintiff,

v.

R. WILEY, Warden-C.E.O.,

Defendant.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLO.

MAY 18 2006

GREGORY C. LANGHAM  
CLERK

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**ORDER DIRECTING CLERK TO COMMENCE CIVIL ACTION AND  
DIRECTING PLAINTIFF TO CURE DEFICIENCY**

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Gary Anthony Cole, Sr., a federal prisoner, has submitted an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. The Court has determined that the Application is deficient as described in this Order. Notwithstanding the deficiencies, the Clerk of the Court will be directed to commence a civil action.

Mr. Cole raises conditions of confinement claims in the Application. The claims raised more appropriately are dealt with in a *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), action, and should be submitted on a Prisoner Complaint form. Therefore, the following listed deficiencies must be cured if a Complaint is to proceed for Mr. Cole. Any papers which are filed in response to this Order must include the civil action number on the Order.

Plaintiff also has submitted a money order for \$5.00 to the Court. Because the action is being construed as a *Bivens* Complaint, partial payment of a filing fee is premature at this time. The Clerk of the Court will be directed to return the \$5.00 to Mr. Cole.

**28 U.S.C. § 1915 Motion and Affidavit:**

- (1)  is not submitted
- (2)  is missing affidavit
- (3)  is missing certified copy of Mr. Cole's trust fund statement for the 6-month period immediately preceding this filing
- (4)  is missing required financial information
- (5)  is missing an original signature
- (6)  is not on proper form (must use the court's current form)
- (7)  names in caption do not match names in caption of complaint, petition or habeas application
- (8)  An original and a copy have not been received by the court.  
Only an original has been received.
- (9)  other \_\_\_\_\_

**Complaint, Petition or Application:**

- (10)  is not submitted
- (11)  is not on proper form (must use the court's current form)
- (12)  is missing an original signature
- (13)  is missing page nos. \_\_\_\_\_
- (14)  uses et al. instead of listing all parties in caption
- (15)  An original and a copy have not been received by the court. Only an original has been received.
- (16)  Sufficient copies to serve each defendant/respondent have not been received by the court.
- (17)  names in caption do not match names in text
- (18)  other \_\_\_\_\_

Accordingly, it is

ORDERED that the Clerk of the Court commence a civil action in this matter. It is

FURTHER ORDERED that the instant action is construed as a *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), as opposed to a 28 U.S.C. § 2241 action. It is

FURTHER ORDERED that Mr. Cole cure the deficiencies designated above **within thirty (30) days from the date of this Order**. Any papers which Mr. Cole files in response to the Order must include the civil action number on the Order. It is

FURTHER ORDERED that the Clerk of the Court mail to Mr. Cole, together with a copy of this Order, two copies of the following forms: Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915; Prisoner Complaint. It is

FURTHER ORDERED that, if Mr. Cole fails to cure the designated deficiencies **within thirty (30) days from the date of this Order**, the Complaint and action will be dismissed without further notice. The dismissal shall be without prejudice. It is

FURTHER ORDERED that the Clerk of the Court is directed to return to Plaintiff the \$5.00 that he submitted to the Court on May 16, 2006.

DATED at Denver, Colorado, this 16<sup>th</sup> day of May, 2006.

BY THE COURT:

Boyd n Boland  
BOYD N. BOLAND  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. **06 - CV - 00931-B NB**

Gary Anthony Cole  
Reg. No. 22707-077  
ADX - Florence  
PO Box 8500  
Florence, CO 81226

I hereby certify that I have mailed a copy of the ORDER and two copies of Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. §1915, a Prisoner Complaint and the return of the \$5.00 money order submitted to the Court on May 16, 2006 to the above-named individuals on 5-18-06.

GREGORY C. LANGHAM, CLERK

By:   
Deputy Clerk