

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Magistrate Judge Kathleen M. Tafoya**

Civil Action No. 07-cv-01856-MSK-KMT

RICHARD J. LYNN,

Petitioner,

v.

R. WILEY,

Respondent.

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**ORDER**

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This matter is before the court on “Respondent’s Motion to Stay Discovery” (#45, filed August 4, 2008, and Petitioner’s “Motion for Leave of Court for Discovery and the Production of Documents” (#48, filed August 11, 2008).

Petitioner seeks to conduct discovery in the form of requests for production of documents. Respondent seeks a stay of discovery pending resolution of the dispositive motion in this case. The court notes that there is no pending dispositive motion. The only pending matter left for resolution is a recommendation and ruling on the pending Petition for Writ of Habeas Corpus. Nevertheless, because no “trial” occurs in a habeas action, discovery is limited. “The procedures set out in the habeas corpus statutes take precedence over the Federal Rules of

Civil Procedure during the pendency of habeas corpus proceedings.” *Burton v. Johnson*, 975 F.2d 690, 694 (10th Cir. 1992) (citing *Browder v. Dir., Dep’t of Corr.*, 434 U.S. 257, 267-68 (1978)). The Federal Rules of Civil Procedure are not normally applicable, although 28 U.S.C. § 2246 authorizes interrogatories and depositions in limited circumstances. That is, pursuant to 28 U.S.C. § 2246, “[o]n application for a writ of habeas corpus, evidence may be taken orally or by deposition, or, in the discretion of the judge, by affidavit. If affidavits are admitted any party shall have the right to propound written interrogatories to the affiants, or to file answering affidavits.” A district court, when presented with a § 2241 petition that establishes a *prima facie* case for relief, “may use or authorize the use of suitable discovery procedures, including interrogatories, reasonably fashioned to elicit facts necessary to help the court to dispose of the matter.” *Harris v. Nelson*, 394 U.S. 286 (290) (1969) (internal quotations omitted); *see also Hernandez v. Garrison*, 916 F.2d 291, 293 (5th Cir. 1990) (rules of pretrial discovery are not applicable to the habeas corpus proceedings unless necessary to help the court dispose of the matter as law and justice require).

However, Applicant has not argued and the court does not find that Applicant’s § 2241 habeas petition establishes a *prima facie* case for relief, nor that discovery is necessary to help the court dispose of the matter. Accordingly, it is

ORDERED that “Respondent’s Motion to Stay Discovery” (#45) is GRANTED, and  
Petitioner’s “Motion for Leave of Court for Discovery and the Production of Documents” (#48)  
is DENIED.

Dated this 9th day of January, 2009.

**BY THE COURT:**

A handwritten signature in black ink, appearing to read "Kathleen M. Tafoya", written in a cursive style.

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Kathleen M. Tafoya  
United States Magistrate Judge