

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Case No. 07-cv-02419-REB-BNB

ERNEST J. MEDINA,

Applicant,

v.

STEVEN HARTLEY, Warden, Limon Corr. Facility, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

**OVERRULING OBJECTIONS TO AND ADOPTING
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

The matters before me are (1) the **Recommendation of United States Magistrate** [#28], filed March 26, 2010; and (2) plaintiff's **Written Objection and Request for Limited Remand To Exhaust State Court Remedies** [#31], filed April 22, 2010. I overrule the objection, adopt the recommendation, deny petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, and dismiss this case.

As required by 28 U.S.C. § 636(b), I have reviewed *de novo* all portions of the recommendation to which objections have been filed, and have considered carefully the recommendation, objection, and applicable caselaw. Moreover, because petitioner is proceeding *pro se*, I have construed his pleadings more liberally and held them to a less stringent standard than formal pleadings drafted by lawyers. **See *Erickson v. Pardus***, 551 U.S. 89, 94, 127 S. Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007); ***Andrews v. Heaton***, 483 F.3d 1070, 1076 (10th Cir. 2007); ***Hall v. Belmon***, 935 F.2d 1106, 1110 (10th Cir.

1991) (citing *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652 (1972)). The recommendation is detailed and well-reasoned. Contrastingly, petitioner's objections are without merit.¹

Therefore, I find and conclude that the arguments advanced, authorities cited, and findings of fact, conclusions of law, and recommendation proposed by the magistrate judge should be approved and adopted.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of a United States Magistrate Judge** [#28], filed March 26, 2010, is **APPROVED AND ADOPTED** as an order of this court;

2. That the objections states in plaintiff's **Written Objection and Request for Limited Remand To Exhaust State Court Remedies** [#31], filed April 22, 2010, is **OVERRULED**;

3. That petitioner's **Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody** [#4], filed December 7, 2007, is **DENIED**;

4. That the claim asserted in petitioner's **Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody** [#4], filed December 7, 2007, is **DISMISSED WITH PREJUDICE**;

5. That judgment **SHALL ENTER** on behalf of respondents, Steven Hartley, Warden, Limon Correctional Facility, and The Attorney General of the State of

¹ Moreover, I cannot grant plaintiff's request to remand this case to allow him to exhaust state court remedies as to a claim of ineffective assistance of counsel because his petition contains no such claim. Rather, his sole claim before this court is for violation of his Sixth Amendment confrontation rights in connection with the admission of certain hearsay testimony at the trial, which claim the magistrate judge properly found to be procedurally barred.

Colorado, and against petitioner, Ernest J. Medina, on all claims for relief and causes of action asserted in petitioner's **Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody** [#4], filed December 7, 2007; and

6. That pursuant to 28 U.S.C. § 2253(c)(2) and Rule 11(a) of the Rules Governing Section 2254 Proceedings in the United States District Courts, a certificate of appealability is **DENIED**.

Dated May 7, 2010, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge