

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00344-BNB

LEROY E. VALDEZ,

Applicant,

v.

SUSAN JONES (Warden), and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

JUN 30 2009

GREGORY C. LANGHAM  
CLERK

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ORDER TO SUPPLEMENT PRE-ANSWER RESPONSE

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Applicant, Leroy E. Valdez, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Colorado State Penitentiary in Cañon City, Colorado. He filed *pro se* an Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. He paid the \$5.00 filing fee in a habeas corpus action.

As part of the preliminary consideration of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 in this case, the Court determined that a limited pre-answer response was appropriate. Therefore, on March 17, 2009, Respondents were directed, pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts (Section 2254 Rules), and *Denson v. Abbott*, 554 F. Supp. 2d 1206 (D. Colo. 2008), to file a pre-answer response limited to addressing the affirmative defenses of timeliness under 28 U.S.C. § 2244(d) and/or exhaustion of state court remedies under 28 U.S.C. § 2254(b)(1)(A). On April 27, 2009, after being granted

an extension of time, Respondents submitted their pre-answer response. On May 7, 2009, Applicant submitted a reply to the pre-answer response.

The Court has reviewed Respondents' pre-answer response filed on April 27, 2009, and has determined that a supplement to the pre-answer response is required. Respondents have failed to submit the appellate briefs for any state court proceeding other than Applicant's direct appeal. As a result, the Court is unable to determine definitively whether Applicant has exhausted his asserted claims.

Therefore, the Court has determined that a supplement to the pre-answer response is appropriate. Respondents will be directed to file a supplement to the pre-answer response as discussed in this order. Accordingly, it is

ORDERED that **within twenty days from the date of this order** Respondents shall file a supplement to the pre-answer response that complies with this order.

DATED at Denver, Colorado, this 30<sup>th</sup> day of June, 2009.

BY THE COURT:

*s/Craig B. Shaffer*  
Craig B. Shaffer  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 09-cv-00344-BNB

Leroy Valdez  
Prisoner No. 54900  
Colorado State Penitentiary  
PO Box 777  
Cañon City, CO 81215- 0777

Christopher Y. Bosch  
Assistant Attorney General  
**DELIVERED ELECTRONICALLY**

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 6/30/09

GREGORY C. LANGHAM, CLERK

By 

Deputy Clerk