

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,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

FEB 24 2009

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING APPLICANT TO FILE AMENDED APPLICATION

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. Mr. Valdez initiated this action by filing *pro se* an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the validity of his conviction in Jefferson County District Court case number 98CR3147. He has paid the \$5.00 filing fee for a habeas corpus action.

The Court must construe the habeas corpus application liberally because Mr. Valdez is representing himself. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be the *pro se* litigant's advocate. *See Hall*, 935 F.2d at 1110. For the reasons stated below, Mr. Valdez will be directed to file an amended application.

Rule 10.1 of the Local Rules of Practice for this Court requires that all papers filed in cases in this Court be double-spaced and legible. *See D.C.COLO.LCivR 10.1E.*

and G. The application Mr. Valdez has filed is difficult to read because the discussion of each claim is single-spaced and written in all capital letters. Therefore, the amended application Mr. Valdez will be directed to file, if handwritten, shall be double-spaced and written legibly, in capital and lower-case letters.

The amended application also should comply with Rule 8 of the Federal Rules of Civil Procedure. The Federal Rules of Civil Procedure apply to applications for habeas corpus relief. **See** Fed. R. Civ. P. 81(a)(2); **Browder v. Director, Dep't of Corrections**, 434 U.S. 257, 269 (1978); **Ewing v. Rodgers**, 826 F.2d 967, 969-70 (10th Cir. 1987). Pursuant to Fed. R. Civ. P. 8(a), a pleading shall "contain (1) a short and plain statement of the grounds for the court's jurisdiction, . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for the relief sought" The philosophy of Rule 8(a) is reinforced by Rule 8(d)(1) which provides that "[e]ach allegation must be simple, concise, and direct." Taken together, Rules 8(a) and (d)(1) underscore the emphasis placed on clarity and brevity by the federal pleading rules. Prolix, vague, or unintelligible pleadings violate the requirements of Rule 8.

Pro se status does not relieve Mr. Valdez of the burden of alleging sufficient facts on which a recognized legal claim can be based. **See Fogle v. Pierson**, 435 F.3d 1252, 1263 n.7 (10th Cir. 2006). Conclusory allegations without supporting factual averments are insufficient to state a claim. **Hall**, 935 F.2d at 1110. Mr. Valdez will be directed below to file an amended application that meets the requirements of D.C.COLO.LCivR 10.1 and Fed. R. Civ. P. 8. Accordingly, it is

ORDERED that Applicant, Leroy E. Valdez, file **within thirty (30) days from the date of this order** an amended application that complies with the requirements of Rule 10.1 of the Local Rules of Practice for this Court and with Rule 8 of the Federal Rules of Civil Procedure for the reasons discussed in this order. It is

FURTHER ORDERED that Mr. Valdez's amended application shall be titled, "Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254," and shall be filed with the Clerk of the Court for the United States District Court for the District of Colorado at the Alfred A. Arraj U.S. Courthouse, 901 Nineteenth Street, Room A-105, Denver, Colorado 80294-3589. It is

FURTHER ORDERED that the clerk of the Court mail to Mr. Valdez, together with a copy of this order, two copies of the following form to be used in filing the amended application: Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. It is

FURTHER ORDERED that if Mr. Valdez fails within the time allowed to file a amended application as directed, the application will be denied and the action dismissed without further notice.

DATED February 24, 2009, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
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

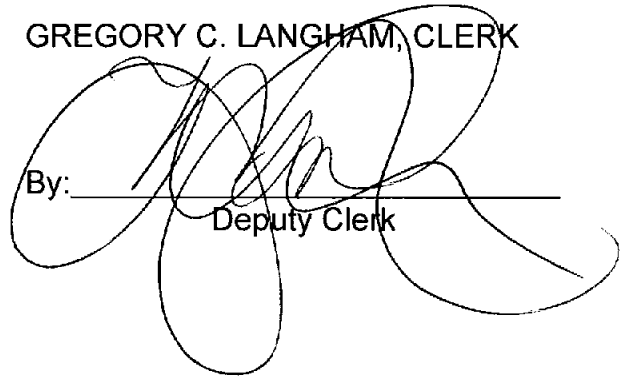
Leroy Valdez
Prisoner No. 54900
Colorado State Penitentiary
PO Box 777
Cañon City, CO 81215- 0777

I hereby certify that I have mailed a copy of the **ORDER** and **two copies of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254** form to the above-named individuals on 2/24/09

GREGORY C. LANGHAM, CLERK

By: _____

Deputy Clerk

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and loops around the line. Below the line, the text "Deputy Clerk" is printed.