

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00429-BNB

ERNEST BRIM, aka  
BERNARD HORNE,

Applicant,

v.

ARISTEDES W. ZAVARAS, Colorado "DOC" Executive Director, and  
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondent.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

SEP 16 2009

GREGORY C. LANGHAM  
CLERK

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ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER

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Applicant, Ernest Brim, also known as Bernard Horne, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Limon, Colorado, correctional facility. He filed *pro se* a habeas corpus application pursuant to 28 U.S.C. § 2254. He paid the \$5.00 filing fee. On February 27, 2009, he filed a motion for a temporary restraining order.

The Court will construe the motion for a temporary restraining order liberally because Mr. Brim is not represented by an attorney. *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 an advocate for a *pro se* litigant. *See Hall*, 935 F.2d at 1110. For the reasons stated below, the motion for a temporary restraining order will be denied.


In the motion for a temporary restraining order, Mr. Brim contends that he cannot complete his habeas corpus application without the return of certain confiscated legal materials and without the state court record. On May 15, 2009, Mr. Brim filed his habeas corpus application. Therefore, he clearly was able to complete his habeas corpus application and file it with the Court. If the Court requires the state court record, the Court will enter an order directing Respondents to supply the state court record.

A party seeking a temporary restraining order must demonstrate clearly, with specific factual allegations, that immediate and irreparable injury will result unless a temporary restraining order is issued. **See** Fed. R. Civ. P. 65(b). Mr. Brim fails to allege specific facts that demonstrate he is facing immediate and irreparable injury. Therefore, the liberally construed motion for a temporary restraining order will be denied. Accordingly, it is

ORDERED that the February 27, 2009, motion for a temporary restraining order that Applicant, Ernest Brim, filed **pro se** is DENIED.

DATED at Denver, Colorado, this 16 day of Sept., 2009.

BY THE COURT:

  
ZITA L. WEINSHIENK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 09-cv-00429-BNB

Ernest Brim  
aka Bernard Horne  
Prisoner No. 49613  
Limon Correctional Facility  
49030 State Hwy. 71  
Limon, CO 80826

John J. Fuerst  
Senior Assistant Attorney General  
**DELIVERED ELECTRONICALLY**

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 9/16/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk