

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01038-BNB

C. ELIJAH HAKEEM MUHAMMAD, a.k.a. CHRISTOPHER MITCHELL,

Petitioner,

v.

R. WILEY, FLX/ADMAX, Warden,

Respondent.

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

JUN 26 2009

GREGORY C. LANGHAM  
CLERK

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ORDER DISMISSING CASE

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Petitioner C. Elijah Hakeem Muhammad, a.k.a. Christopher Mitchell, is a federal prisoner in the custody of the United States Bureau of Prisons, who currently is incarcerated at ADX in Florence, Colorado. Mr. Muhammad initiated this action by filing an Application for a Writ of Mandamus Pursuant to 28 U.S.C. § 1361. On May 15, 2009, Magistrate Judge Boyd N. Boland entered an order construing the action as more properly filed pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), and directing Mr. Muhammad to file his claims on a Court-approved form used in filing prisoner complaints and to show cause why he should not be denied leave to proceed *in forma pauperis*, because he is precluded from proceeding *in forma pauperis* under 28 U.S.C. § 1915(g).

On June 19, 2009, Mr. Muhammad filed a "Notice of Voluntary Dismissal Pursuant to Rule 41(a)(1), Fed. R. Civ. P." The Court must construe the Notice liberally because Mr. Muhammad is a *pro se* litigant. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10<sup>th</sup> Cir. 1991).

Rule 41(a)(1)(A) provides that “the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment . . . .” No answer has been filed by Defendant R. Wiley in this action. Further, a voluntary dismissal under Rule 41(a)(1)(A) is effective immediately upon the filing of a written notice of dismissal, and no subsequent court order is necessary. **See** J. Moore, Moore’s Federal Practice ¶ 41.02(2) (2<sup>d</sup> ed. 1995); **Hyde Constr. Co. v. Koehring Co.**, 388 F.2<sup>d</sup> 501, 507 (10<sup>th</sup> Cir. 1968). The file, therefore, will be closed as of June 19, 2009, the date the Notice was filed with the Court. **See Hyde Constr. Co.**, 388 F.2<sup>d</sup> at 507. Accordingly, it is

ORDERED that the Notice of Voluntary Dismissal filed pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) is effective as of June 19, 2009, the date Mr. Muhammad filed the Notice in this action. It is

FURTHER ORDERED that the dismissal is without prejudice.

DATED at Denver, Colorado, this 25 day of June, 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-01038-BNB

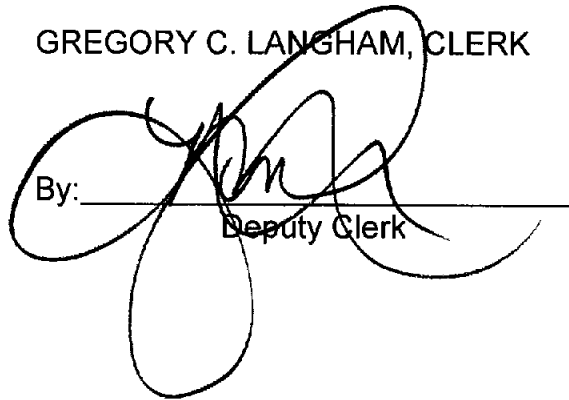
C. Elijah Hakeem Muhammad  
aka Christopher Hijrah Mitchell  
Reg. No. 02791-088  
ADX - Florence  
PO Box 8500  
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 10/26/09.

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.