

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01129-BNB

OSIEL RODRIGUEZ,

Applicant,

v.

R. WILEY,

Respondent.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

JUL 24 2009

GREGORY C. LANGHAM  
CLERK

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SECOND ORDER TO FILE PRELIMINARY RESPONSE

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As part of the preliminary consideration of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 submitted to the Court on April 25, 2009, the Court determined that a limited Preliminary Response is appropriate pursuant to *Keck v. Hartley*, 550 F. Supp. 2d 1272 (D. Colo. 2008). On July 2, 2009, the Court entered an order directing Respondent to file a Preliminary Response within twenty days. Respondent has failed to respond as directed. The Court again will order Respondent to file a Preliminary Response and to explain the failure to respond to the Court's July 2, 2009, Order.

Respondent is directed pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts to file a Preliminary Response limited to addressing the affirmative defenses of timeliness under 28 U.S.C. § 2244(d) and/or exhaustion of state court remedies. If Respondent does not intend to raise either of these affirmative defenses, Respondent must notify the Court of that decision in the Preliminary Response. Respondent may not file a dispositive motion as a Preliminary

Response, or an Answer, or otherwise address the merits of the claims in response to this Order.

In support of the Preliminary Response, Respondent should attach as exhibits all relevant portions of the state court record, including but not limited to copies of all documents demonstrating whether this action is filed in a timely manner and/or whether Applicant has exhausted state court remedies.

Applicant may reply to the Preliminary Response and provide any information that might be relevant to the one-year limitation period under 28 U.S.C. § 2244(d) and/or the exhaustion of state court remedies. Applicant also should include information relevant to equitable tolling, specifically as to whether he has pursued his claims diligently and whether some extraordinary circumstance prevented him from filing a timely 28 U.S.C. § 2241 action in this Court. Accordingly, it is

ORDERED that **within twenty days from the date of this Order** Respondent shall file a Preliminary Response that complies with this Order. It is

FURTHER ORDERED that **within twenty days of the filing of the Preliminary Response** Applicant may file a Reply, if he desires. It is

FURTHER ORDERED that if Respondent does not intend to raise either of the affirmative defenses of timeliness or exhaustion of state court remedies, Respondent must notify the Court of that decision in the Preliminary Response.

DATED at Denver, Colorado, this 24<sup>th</sup> day of July, 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-01129-BNB

Osiel Rodriguez  
Reg. No. 21136-018  
ADX – Florence  
PO Box 8500  
Florence, CO 81226

R. Wiley  
c/o Christopher B. Synsvoll  
Attorney Advisor  
Legal Department  
ADX - Florence

**DELIVERED ELECTRONICALLY**

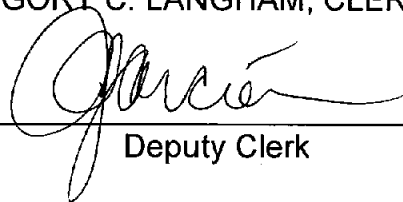
United States Attorney General - **CERTIFIED**  
Room 5111, Main Justice Bldg.  
10<sup>th</sup> and Constitution, N.W.  
Washington, D.C. 20530

United States Attorney  
District of Colorado  
**DELIVERED ELECTRONICALLY**

I hereby certify that I have mailed a copy of the ORDER to the above-named individuals, and the following forms to Chris Synsvoll for service of process on R. Wiley; The United States Attorney General; and to the United States Attorney's Office: AMENDED APPLICATION FOR WRIT OF HABEAS CORPUS FILED 5/15/09 on 7/24/09.

GREGORY C. LANGHAM, CLERK

By: \_\_\_\_\_



Deputy Clerk