

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01129-BNB

OSIEL RODRIGUEZ,

Petitioner,

v.

R. WILEY,

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUL -2 2009

GREGORY C. LANGHAM
CLERK

ORDER TO FILE PRELIMINARY RESPONSE

Petitioner Osiel Rodriguez is in the custody of the United States Bureau of Prisons (BOP) at ADX Florence. Mr. Rodriguez initiated this action by filing a *pro se* Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 by a Person in Federal Custody. Although Mr. Rodriguez failed to submit his claims on a Court-approved form used to file § 2241 actions in this Court, the form he has used provides the information necessary to process his claims. The Court, therefore, will proceed with an initial review of the Application.

As part of the preliminary consideration of the 28 U.S.C. § 2241 Petition in this case, the Court has determined that a limited Preliminary Response is appropriate. Respondent is directed pursuant to *Redmon v. Wiley*, 550 F. Supp. 2d 1275 (D. Colo. 2008), and 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 defense of exhaustion of administrative remedies. If Respondent does not intend to raise this affirmative defense, 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 copies of any administrative grievances Mr. Rodriguez has filed raising the issues asserted in the Application, as well as any responses to those grievances. Mr. Rodriguez may reply to the Preliminary Response and provide any information that might be relevant to his efforts to exhaust administrative remedies. 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 Mr. Rodriguez may file a Reply, if he desires. It is

FURTHER ORDERED that if Respondent does not intend to raise the affirmative defense of exhaustion of administrative remedies, Respondent must notify the Court of that decision in the Preliminary Response.

DATED at Denver, Colorado, this 30th 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-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.
10th 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 7/2/09.

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk