

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01190-BNB

JOHN J. POWERS,

Plaintiff,

v.

PETE HAUTZINGER, District Attorney, and
ATTORNEY GENERAL OF COLORADO,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUN 09 2009

GREGORY C. LANGHAM
CLERK

ORDER CONSTRUING ACTION AS A 28 U.S.C. § 2241 ACTION
AND DIRECTING MR. POWERS TO FILE CLAIMS
ON A § 2241 COURT-APPROVED FORM

John J. Powers currently is detained at the Mesa County Detention Facility in Grand Junction, Colorado. Mr. Powers initiated the instant action by submitting to the Court a *pro se* Prisoner Complaint. The Court must construe the Prisoner Complaint liberally because Mr. Powers is a *pro se* litigant. *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 act as a *pro se* litigant's advocate. *See Hall*, 935 F.2d at 1110. For the reasons stated below, Mr. Powers will be ordered to file his claims on a Court-approved form used in filing 28 U.S.C. § 2241 actions.

The Court has reviewed the Prisoner Complaint. Mr. Powers is challenging a pending violation of parole complaint entered against him. He seeks declaratory and injunctive relief, including the discontinuance of applying Colo. Rev. Stat. §§ 16-22-103 and -108 to his parole, which require that he update his registration as a sex offender

five times each year. The pending parole violation addresses Mr. Powers' failure to update his registration as required. Mr. Powers is attacking the execution of his sentence. A challenge of the execution of a sentence is the purpose of a 28 U.S.C. § 2241 action. **See *Montez v. McKinna***, 208 F.3d 862, 865 (10th Cir. 2000). Therefore, the sole federal remedy available to Mr. Powers is a writ of habeas corpus pursuant to § 2241, after he has exhausted state court remedies. **See *Preiser v. Rodriguez***, 411 U.S. 475, 504 (1973). Accordingly, it is

ORDERED that **within thirty days from the date of this Order** Mr. Powers file an action pursuant to 28 U.S.C. § 2241. It is

FURTHER ORDERED that the Clerk of the Court mail to Mr. Powers, together with a copy of this Order, two copies of the Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 form for him to use in submitting the pleading. It is

FURTHER ORDERED that if Mr. Powers fails within the time allowed to file an amended pleading that complies with this order, to the Court's satisfaction, the action will be dismissed without further notice.

DATED June 9, 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-01190-BNB

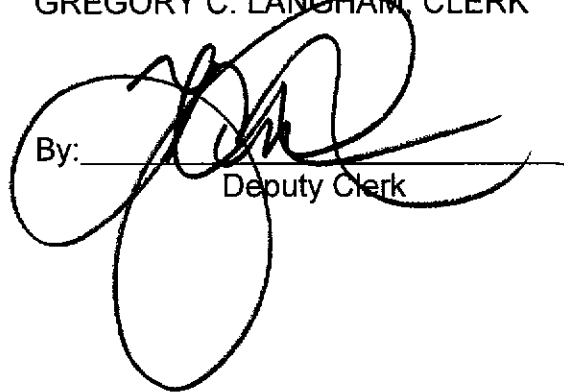
John J. Powers
Prisoner No. 221421
Mesa County Detention Facility
P.O. Box 20,000-5017
Grand Junction, CO 81502

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. § 2241** to the above-named individuals on 6/9/09

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.