

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01514-BNB

SAMUEL P. SUTTON,

Applicant,

v.

BLAKE R. DAVIS, Warden,

Respondent.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

NOV 20 2009

GREGORY C. LANGHAM  
CLERK

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ORDER OF DISMISSAL

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Applicant Samuel P. Sutton is in the custody of the United States Bureau of Prisons and currently is incarcerated at the United States Penitentiary in Florence, Colorado. Mr. Sutton initiated this action by filing a *pro se* Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. In the Application, Mr. Sutton asserts that his First, Eighth, and Fourteenth Amendment rights have been violated because he has been placed in administrative detention due to threats against his life, and not for disciplinary reasons, and as a result of the placement he is being denied the same privileges he enjoyed while in general population.

In an order entered on August 25, 2009, Magistrate Judge Boyd N. Boland found that Mr. Sutton is asserting civil rights claims rather than habeas corpus claims. Relying on *Richards v. Bellmon*, 941 F.2d 1015, 1018 (10<sup>th</sup> Cir. 1991), Magistrate Judge Boland construed the action as filed pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), and instructed Mr.

Sutton to submit his claims on a Court-approved form used in filing prisoner complaints. Mr. Sutton also was instructed to submit to the Court a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 form that is used when a prisoner seeks to proceed pursuant to 28 U.S.C. § 1915 in a civil rights action.

On September 24, 2009, Mr. Sutton filed an Objection to the August 25, 2009, Order. This Court reviewed the August 25, 2009, Order, in keeping with 28 U.S.C. § 636(b)(1)(A), and entered an order on October 22, 2009, finding that Magistrate Judge Boland's determinations in the August 25, 2009, Order were neither clearly erroneous nor contrary to law. The Court instructed Mr. Sutton to comply with the August 25, 2009, Order, within thirty days of the October 22, 2009, Order, or the action would be dismissed without further notice.

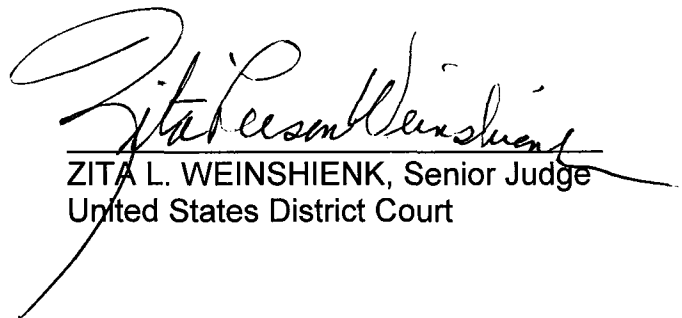
Plaintiff now has failed to communicate with the Court, and as a result he has failed to comply with the August 25 2009, Order within the time allowed.

Accordingly, it is

ORDERED that the action is dismissed without prejudice for failure to prosecute and for failure to comply with the August 25, 2009, Order within the time allowed.

DATED at Denver, Colorado, this 20 day of November, 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-01514-BNB

Samuel P. Sutton  
Reg No. 13714-041  
US Penitentiary  
P.O. Box 7000  
Florence, CO 81226-7000

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 11/20/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk