

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 09-cv-01574-BNB

OSIEL RODRIGUEZ,

Applicant,

v.

R. WILEY,

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUL 07 2009

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING APPLICANT TO CURE DEFICIENCIES

Applicant, Osiel Rodriguez, a federal prisoner currently housed in the State of Colorado, originally filed a 28 U.S.C. § 2241 action in the United States District Court for the Eastern District of California (Eastern District of California). The Eastern District of California determined that venue in the instant action properly lies in the United States District Court for the District of Colorado and entered an order on July 2, 2009, transferring the action to this Court.

As part of this Court's review pursuant to D.C.COLO.LCivR 8.2, this Court has determined that the submitted documents are deficient as described in this Order. Mr. Rodriguez will be directed to cure the following if he wishes to pursue his claims. Any papers that Mr. Rodriguez files in response to this Order must include the civil action number on this Order.

The Court has reviewed the Application and finds that Mr. Rodriguez is asserting civil rights claims rather than habeas corpus claims. Mr. Rodriguez complains that

prison staff continues to withdraw funds from his inmate account contrary to the required procedure set forth in 28 U.S.C. § 1915(b)(2). "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." **See Preiser v. Rodriguez**, 411 U.S. 475, 484 (1973). Generally, a federal prisoner's challenge to his conditions of confinement is cognizable under **Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics**, 403 U.S. 388 (1971). **See, e.g., Richards v. Bellmon**, 941 F.2d 1015, 1018 (10th Cir. 1991).

Mr. Rodriguez will be directed to complete the proper, Court-approved form used for filing a Prisoner Complaint and submit the completed form to the Court if he wishes to pursue his claims. Mr. Rodriguez must allege, simply and concisely, the specific claims for relief he is asserting and against whom those claims are asserted.

Mr. Rodriguez also will be required to submit to the Court a completed Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 form and a certified copy of his inmate trust fund account statement for the six months prior to the filing of the instant action, if he desires to proceed *in forma pauperis*. Otherwise, he will be required to pay the \$350.00 filing fee prior to proceeding in the action. The \$5.00 Mr. Rodriguez submitted to the Eastern District of California, when he initiated the § 2241 action in that court, will be applied against the \$350.00 filing fee assessed in the instant action.

28 U.S.C. § 1915 Motion and Affidavit:

- (1) is not submitted
- (2) is missing affidavit
- (3) is missing certified copy of prisoner's trust fund statement for the 6-month period immediately preceding this filing
- (4) is missing required financial information
- (5) is missing an original signature by the prisoner
- (6) is not on proper form (must use the Court's current form)
- (7) Names in caption do not match names in caption of complaint, petition or habeas application
- (8) An original and a copy have not been received by the Court.
Only an original has been received.
- (9) Other _____

Complaint, Petition or Application:

- (10) is not submitted
- (11) is not on proper form (must use this Court's current form)
- (12) is missing an original signature by the prisoner
- (13) is missing page nos. _____
- (14) Uses et al. instead of listing all parties in caption
- (15) An original and a copy have not been received by the court. Only an original has been received.
- (16) Sufficient copies to serve each defendant/respondent have not been received by the court.
- (17) Names in caption do not match names in text
- (18) Other _____

Accordingly, it is

ORDERED that Mr. Rodriguez cure the deficiencies designated above **within thirty days from the date of this Order**. Any papers which Mr. Rodriguez files in response to this Order must include the civil action number on this Order. It is

FURTHER ORDERED that the Clerk of the Court mail to Mr. Rodriguez, together with a copy of this Order, two copies of the following forms: Prisoner Complaint and Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C.

§ 1915. It is

FURTHER ORDERED that if Mr. Rodriguez fails to cure the designated deficiencies **within thirty days from the date of this Order** the action will be dismissed without further notice.

DATED July 7, 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-01574-BNB

Osiel Rodriguez
Reg No. 21136-018
US Penitentiary ADX
P.O. Box 8500
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER** and **two copies of the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. §1915 and Prisoner Complaint forms** to the above-named individuals on 7/7/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk