

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

SEP 15 2009

Civil Action No. 09CV02203 *BnB* GREGORY C. LANGHAM  
CLERK  
(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

NICHOLAS VALDEZ, "Real Party in Interest,"

Applicant,

v.

RICHARD SMELSER, Warden,

Respondent.

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**ORDER DIRECTING CLERK TO COMMENCE CIVIL ACTION AND  
INSTRUCTING APPLICANT TO CURE DEFICIENCY**

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Applicant Nicholas Valdez has submitted a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action, and an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. The Court has determined that Applicant's claims more properly are asserted on a Court-approved form used in filing 28 U.S.C. § 2254 applications. Notwithstanding the deficiency, the Clerk of the Court will be directed to commence a civil action. Applicant will be directed to cure the following if he wishes to pursue his claims. Any papers which the Applicant files in response to this Order must include the civil action number on the Order.

**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
- (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 the Clerk of the Court commence a civil action in this matter. It is

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

FURTHER ORDERED that the Clerk of the Court mail to Applicant, together with a copy of this Order, two copies of the following form: Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. It is

FURTHER ORDERED that if Applicant fails to cure the designated deficiency **within thirty days from the date of this Order** the Application and the action will be dismissed without further notice. The dismissal shall be without prejudice.

DATED at Denver, Colorado, this 14<sup>th</sup> day of September, 2006.

BY THE COURT:

  
\_\_\_\_\_  
BOYD N. BOLAND  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No.

**09CV02203**

Nicholas Valdez

Prisoner No. 128140

Crowley County Corr. Facility

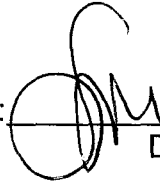
6564 State Hwy. 96

Olney Springs, CO 81062-8700

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. § 2254** to the above-named individuals on 9/15/09

GREGORY C. LANGHAM, CLERK

By:



Deputy Clerk