

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02203-MSK-MEH

NICHOLAS VALDEZ,

Petitioner,

v.

RICHARD SMELSER, and  
JOHN W. SUTHERS, Attorney General of the State of Colorado,

Respondents.

---

**MINUTE ORDER**

---

**Entered by Michael E. Hegarty, United States Magistrate Judge, on February 17, 2011.**

Petitioner's "Motion for Disposition by Oral Examinations Pursuant to Fed. R. Civ. Procedure 30" [filed February 15, 2011; docket #52] is **denied**. The Court construes Plaintiff's motion as a request for discovery. Because no "trial" occurs in a habeas action, discovery is limited. "The procedures set out in the habeas corpus statutes take precedence over the Federal Rules of Civil Procedure during the pendency of habeas corpus proceedings." *Burton v. Johnson*, 975 F.2d 690, 694 (10th Cir. 1992) (citing *Browder v. Dir., Dep't of Corr.*, 434 U.S. 257, 267-68 (1978)). According to Rule 6 of the procedural rules governing Section 2254, a judge may, for good cause, authorize discovery in a habeas proceeding. Applicant does not suggest, nor does the Court perceive, any good cause to permit discovery at this stage of the proceeding.