

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02504-BNB

GERALD SMALL,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

DEC 01 2009

GREGORY C. LANGHAM
CLERK

SECOND ORDER TO FILE PRELIMINARY RESPONSE

As part of the preliminary consideration of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 filed on October 26, 2009, in this action and pursuant to *Redmon v. Wiley*, 550 F. Supp. 2d 1275 (D. Colo. 2008), the Court has determined that a limited Preliminary Response is appropriate. Therefore, on October 28, 2009, the Court entered an order directing Respondent to file a Preliminary Response within twenty days. Respondent has failed to file a Preliminary Response as directed. Therefore, the Court again will order Respondent to file a Preliminary Response **and to explain the failure to respond to the Court's prior order.**

Respondent is directed pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts to file a Preliminary Response limited to addressing the affirmative defense of exhaustion of administrative remedies. If Respondent does not intend to raise this affirmative defense, Respondent must notify the Court of that decision in the Preliminary Response. Respondent may not file a

dispositive motion as a Preliminary Response, or an Answer, or otherwise address the merits of the claims in response to this Order.

In support of the Preliminary Response, Respondent should attach as exhibits copies of any administrative grievances Applicant has filed raising the issues asserted in the Application, as well as any responses to those grievances. Applicant may reply to the Preliminary Response and provide any information that might be relevant to his efforts to exhaust administrative remedies. Accordingly, it is

ORDERED that **within twenty (20) days from the date of this Order** Respondent shall file a Preliminary Response that complies with this Order. It is

FURTHER ORDERED that **within twenty (20) days of the filing of the Preliminary Response** Applicant may file a Reply, if he desires. It is

FURTHER ORDERED that if Respondent does not intend to raise the affirmative defense of exhaustion of administrative remedies, Respondent must notify the Court of that decision in the Preliminary Response.

DATED December 1, 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-02504-BNB

Robert T. McAllister
Attorney at Law

DELIVERED ELECTRONICALLY

United States Attorney General - **CERTIFIED**
Room 5111, Main Justice Bldg.
10th and Constitution, N.W.
Washington, D.C. 20530

United States Attorney
District of Colorado

DELIVERED ELECTRONICALLY

I hereby certify that I have mailed a copy of the ORDER to the above-named individuals, and the following forms to The United States Attorney General; and to the United States Attorney's Office: APPLICATION FOR WRIT OF HABEAS CORPUS FILED 10/26/09 on 12/1/09.

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk