

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

JAN 06 2010

GREGORY C. LANGHAM
CLERK

ORDER TO SUPPLEMENT PRELIMINARY RESPONSE

Applicant, Gerald Small, is a prisoner in the custody of the United States Bureau of Prisons (BOP) and is currently incarcerated at the Federal Prison Camp in Florence, Colorado. Mr. Small initiated this action by filing, through counsel, an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241.

In an order filed October 28, 2009, the Court directed Respondent to file a Preliminary Response limited to addressing the affirmative defense of exhaustion of administrative remedies if Respondent intends to raise that affirmative defense in this action. Because Respondent failed to file a Preliminary Response as directed, the Court entered a second order directing Respondent to file a Preliminary Response on December 1, 2009. On December 9, 2009, Respondent filed a Preliminary Response. Mr. Small has not filed a Reply.

The Court has reviewed Respondent's Preliminary Response and has determined that a supplement is required. Although Respondent cites to Attachment 2 and Attachment 3 in support of its argument that Applicant has not exhausted his

administrative remedies, Respondent has failed to file these attachments with the Court. **See** Prelim. Resp. at Ex. A (“A true and accurate copy of the SENTRY Administrative Remedy Generalized Retrieval for Applicant Small is provided as Attachment 2 A true and correct copy of this remedy is provided as Attachment 3.”). Without documentation to support Respondent’s position, the Court is unable to determine definitively whether Applicant has exhausted his administrative remedies.

Therefore, Respondent will be directed to file a supplement to the Preliminary Response and to provide the requested documentation as discussed in this order. Accordingly, it is

ORDERED that **on or before January 12, 2010** Respondent shall file a supplement to the Preliminary Response that complies with this order.

DATED January 6, 2010, 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

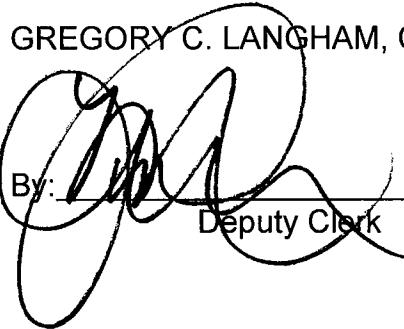
Civil Action No. 09-cv-02504-BNB

Robert McAllister
Attorney at Law
DELIVERED ELECTRONICALLY

William Pharo
Assistant United States Attorney
DELIVERED ELECTRONICALLY

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 1/6/10

GREGORY C. LANGHAM, CLERK

By:  _____
Deputy Clerk