

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02798-BNB

PHILIP F. DOMENICO,

Applicant,

v.

J. M. WILNER, Warden FCI - Florence, Colorado,

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JAN 26 2010

GREGORY C. LANGHAM
CLERK

ORDER TO FILE PRELIMINARY RESPONSE

Applicant, Philip F. Domenico, is a prisoner in the custody of the United States Bureau of Prisons (BOP) who currently is incarcerated at the Federal Correctional Institution in Florence, Colorado. Mr. Domenico initiated this action by filing *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241.

As part of the preliminary consideration of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 in this case, the Court has determined that a limited Preliminary Response is appropriate. Respondent is directed pursuant to *Redmon v. Wiley*, 550 F. Supp. 2d 1275 (D. Colo. 2008), and 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. Rule 1(b) of the Section 2254 Rules applies the rules to 28 U.S.C. § 2241 habeas corpus actions.

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 Mr. Domenico has filed raising the issues asserted in the Application, as well as any responses to those grievances. Mr. Domenico 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-one 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-one days of the filing of the Preliminary Response Mr. Domenico 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 January 26, 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-02798-BNB

Philip F. Domenico
Reg No. 09430-06
FCI - Florence
P.O. Box 6000
Florence, CO 81226

J.M. Wilner, Warden,
c/o Christopher B. Synsvoll
Attorney Advisor

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 Chris Synsvoll for service of process on J.M. Wilner; The United States Attorney General; and to the United States Attorney's Office: APPLICATION FOR WRIT OF HABEAS CORPUS FILED 12/17/09 on 4/26/10.

GREGORY C. LANGHAM, CLERK

By: _____

Deputy Clerk