

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09cv-02854-BNB

VIRGIL F. RICE,

Applicant,

v.

JAMES ALDERDEN, Larimer County Sheriff,

Respondent.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

MAR 10 2010

GREGORY C. LANGHAM  
CLERK

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ORDER TO FILE PRELIMINARY RESPONSE

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Applicant, Virgil F. Rice, currently is detained at the Larimer County Detention Center in Fort Collins, Colorado. Pursuant to the Court's order entered on February 3, 2010, Mr. Rice, acting *pro se*, has filed an Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 challenging a denial of bond and extradition.

As part of the preliminary consideration of the Application in this case and pursuant to *Keck v. Hartley*, 550 F. Supp. 2d 1272 (D. Colo. 2008), the Court has determined that a limited Preliminary Response is appropriate. 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 defenses of timeliness under 28 U.S.C. § 2244(d) and/or exhaustion of state court remedies. If Respondent does not intend to raise either of these affirmative defenses, 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 all relevant portions of the state court record, including but not limited to copies of all documents demonstrating whether this action is filed in a timely manner and/or whether Applicant has exhausted state court remedies.

Mr. Rice may reply to the Preliminary Response and provide any information that might be relevant to the one-year limitation period under 28 U.S.C. § 2244(d) and/or the exhaustion of state court remedies. Mr. Rice also should include information relevant to equitable tolling, specifically as to whether he has pursued his claims diligently and whether some extraordinary circumstance prevented him from filing a timely 28 U.S.C. § 2241 action in this Court. 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** Applicant may file a Reply, if he desires. It is

**FURTHER ORDERED** that if Respondent does not intend to raise either of the affirmative defenses of timeliness or exhaustion of state court remedies, Respondent must notify the Court of that decision in the Preliminary Response.

DATED March 10, 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-02854-BNB

Virgil F. Rice  
Prisoner No. 0812864  
Larimer County Detention Center  
2405 Midpoint Dr.  
Fort Collins, CO 80525

James Alderden, Larimer County Sheriff - **CERTIFIED**  
2505 Midpoint Dr.  
Fort Collins, CO 80525

John Suthers, Attorney General  
Office of the Attorney General  
**DELIVERED ELECTRONICALLY**

Paul Sanzo, Asst. Attorney General  
Office of the Attorney General  
**DELIVERED ELECTRONICALLY**  
**COURTESY COPY**

I hereby certify that I have mailed a copy of the ORDER to the above-named individuals, and the following forms to James Alderden and to John Suthers: AMENDED APPLICATION FOR WRIT OF HABEAS CORPUS FILED 3/4/10 on 3/10/10.

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk