

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-03018-BNB

ABEL SAENZ-JURADO,

Applicant,

v.

JOHN W. SUTHERS, The Attorney General of the State of Colorado,

Respondent.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

FEB 04 2010

GREGORY C. LANGHAM  
CLERK

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ORDER TO FILE PRELIMINARY RESPONSE

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Applicant, Abel Saenz-Jurado, is a prisoner in the custody of the United States Bureau of Prisons and currently is incarcerated at the Beaumont Low Federal Correctional Institution in Beaumont, Texas. Mr. Saenz-Jurado, acting *pro se*, initiated this action by filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 challenging a state detainer entered against him by the Adams County Sheriff's Office regarding a pending Colorado state sentence.

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. Saenz-Jurado 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. Saenz-Jurado 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.

The Court also notes that Mr. Saenz-Jurado names People of the State of Colorado as a Respondent. Because the law is well-established that the only proper respondent to a habeas corpus action is the habeas applicant's custodian, *see* 28 U.S.C. § 2242; Rules 2(a) and 1(b), Rules Governing Section 2254 Cases in the United States District Courts; and *Harris v. Champion*, 51 F.3d 901, 906 (10th Cir. 1995), the caption of this Order does not list People of the State of Colorado and only lists John Suthers as a respondent in the capacity of representing counsel for the State of Colorado. 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 February 4, 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-03018-BNB

Abel Saenz-Jurado  
Reg No. 29129-013  
FCC Beaumont Low  
P.O. Box 26020  
Beaumont, TX 77720

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 John Suthers: APPLICATION FOR WRIT OF HABEAS CORPUS FILED 2/1/10 on 24110.

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk