

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00199-BNB

JOSE VEGA,

Applicant,

v.

BLAKE R. DAVIS,

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

AUG 24 2010

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

Applicant, Jose Vega, inmate number 45189-053, was a prisoner in the custody of the Federal Bureau of Prisons at the United States Penitentiary, Administrative Maximum, at Florence, Colorado, when he initiated this action by filing *pro se* an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 complaining about the conditions of his confinement. In an order filed on January 29, 2010, Magistrate Judge Boyd N. Boland directed the clerk of the Court to commence a civil action and directed Mr. Vega to cure certain deficiencies if he wished to pursue his claims in this action. More specifically, Magistrate Judge Boland ordered Mr. Vega to file a properly supported motion seeking leave to proceed *in forma pauperis* and to file a Prisoner Complaint because his claims challenging the conditions of his confinement may not be raised in a habeas corpus action. On February 9, March 18, and April 29, Magistrate Judge Boland entered minute orders granting Mr. Vega's requests for extensions of time to cure the deficiencies designated in the court's January 29 order. On May 6,

2010, the copy of Magistrate Judge Boland's April 29 minute order mailed to Mr. Vega was returned to the Court undelivered. The word "Deceased" is handwritten on the returned envelope. The inmate locator tool on the Federal Bureau of Prisons' website also indicates that Jose Vega, inmate number 45189-053, is deceased.

On May 18, 2010, Magistrate Judge Boland entered an order directing that a motion for substitution of the proper party be filed in this action within ninety days if any party or Mr. Vega's successor or representative wished to file such a motion. Magistrate Judge Boland stated in the May 18 order that this action would be dismissed without further notice if no motion for substitution was filed within the time allowed. The clerk of the Court was directed to mail a copy of the May 18 order to the named Respondent as well as the successor or representative of Mr. Vega at Mr. Vega's last known address. On May 24, 2010, the copy of Magistrate Judge Boland's May 18 order that was mailed to the successor or representative of Mr. Vega was returned to the Court undelivered.

Pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure, the action must be dismissed if no motion for substitution is made within ninety days after service of a statement noting the death of a party. No motion for substitution of party has been filed within the time allowed. Therefore, the action will be dismissed. Accordingly, it is

ORDERED that the habeas corpus application is denied and the action is dismissed without prejudice pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure.

DATED at Denver, Colorado, this 24th day of August, 2010.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge, for
ZITA LEESON WEINSHIENK, Senior Judge
United States District Court

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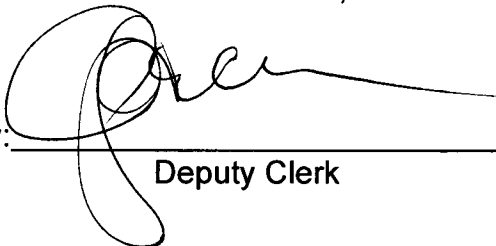
CERTIFICATE OF MAILING

Civil Action No.10-cv-00199-BNB

The Successor or Representative of Jose Vega
Reg. No. 45189-053
ADX - Florence
PO Box 8500
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the
above-named individuals on 8/24/10

GREGORY C. LANGHAM, CLERK

By: 
Deputy Clerk