

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-02233-BNB

PAUL LUNA VASQUEZ,

Applicant,

v.

ARISTEDES W. ZAVARAS, Executive Director of the Colorado Department of  
Corrections,  
DAVID L. MICHAUD, Chairman of the Colorado Board of Parole,  
GLORIA BARELA, Casemanager for Unit-7M, and  
MICHELLE ARAGON, Casemanager for Unit-5G,

Respondents.

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

SEP 22 2010

GREGORY C. LANGHAM  
CLERK

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ORDER DIRECTING APPLICANT TO FILE AMENDED APPLICATION

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Applicant, Paul Luna Vasquez, is in the custody of the Colorado Department of Corrections and currently is incarcerated at Bent County Correctional Facility in Las Animas, Colorado. Mr. Vasquez, acting *pro se*, filed an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. As relief, he seeks release from prison on his mandatory release date, which he asserts should be about October 19, 2010.

The Court must construe the Application liberally because Mr. Vasquez is a *pro se* litigant. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10<sup>th</sup> Cir. 1991). However, the Court should not act as a *pro se* litigant's advocate. *See Hall*, 935 F.2d at 1110. For the reasons stated below, Mr. Vasquez will be ordered to file an Amended Application.

The Court has reviewed the Application and finds that it is deficient. Mr. Vasquez fails to assert claims that comply with Rule 8 of the Federal Rules of Civil Procedure. The Federal Rules of Civil Procedure apply to applications for habeas corpus relief. **See** Fed. R. Civ. P. 81(a)(4); **Browder v. Director, Dep't of Corrections**, 434 U.S. 257, 269 (1978); **Ewing v. Rodgers**, 826 F.2d 967, 969-70 (10<sup>th</sup> Cir. 1987). Pursuant to Fed. R. Civ. P. 8(a), a pleading "shall contain (1) a short and plain statement of the for the court's jurisdiction, . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for the relief sought." Fed. R. Civ. P. 8(d)(1) provides that "[e]ach allegation must be simple, concise, and direct." Taken together, Rules 8(a) and (d)(1) underscore the emphasis placed on clarity and brevity by the federal pleading rules. Prolix, vague, or unintelligible pleadings violate the requirements of Rule 8. Mr. Vasquez's Application is prolix and confusing. It is not clear from a review of Section "B. Nature of the Case" and Section "C. Claims" of the Application form what Mr. Vasquez is challenging. Although Mr. Vasquez has failed to comply with Fed. R. Civ. P. 8, he will be given an opportunity to file an Amended Application.

The Court also notes that Mr. Vasquez fails to name as respondent the custodian of the facility where he currently is incarcerated.<sup>1</sup> The law is well-established that the only proper respondent to a habeas corpus action is the applicant's custodian. **See** 28 U.S.C. § 2243; Rule 2(a), Rules Governing Section 2254 Cases in the United

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<sup>1</sup> The Court has instructed Mr. Vasquez previously about naming the proper custodian in a § 2241 action. **See Vasquez v. Zavaras**, No. 09-cv-00522-ZLW at Doc. No. 2 (D. Colo. June 24, 2009).

States District Courts; and *Harris v. Champion*, 51 F.3d 901, 906 (10th Cir. 1995).

Rule 1(b) of the Section 2254 Rules applies the rules to 28 U.S.C. § 2241 habeas corpus applications. Accordingly, it is

ORDERED that Mr. Vasquez file, **within thirty days from the date of this Order**, an Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 that complies with this Order. It is

FURTHER ORDERED that the Clerk of the Court mail to Mr. Vasquez, together with a copy of this Order, two copies of the Court-approved form for filing an Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. It is

FURTHER ORDERED that if Mr. Vasquez fails within the time allowed to file an Amended Application, as directed, the action will be dismissed without further notice.

DATED September 22, 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. 10-cv-02233-BNB

Paul Luna Vasquez  
Prisoner No. 75320  
Bent County Correctional Facility  
11560 Road FF.75 - Unit 8P-112  
Las Animas, CO 81054-9573

I hereby certify that I have mailed a copy of the **ORDER** and **two copies of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241** to the above-named individuals on 9/22/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk