

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-02233-BNB

PAUL LUNA VASQUEZ,

Applicant,

v.

BRIGHAM SLOAN, Warden for B.C.C.F.,

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT - 7 2010

GREGORY C. LANGHAM
CLERK

ORDER TO FILE PRELIMINARY RESPONSE

Applicant, Paul Luna Vasquez, is a prisoner in the custody of the Colorado Department of Corrections, who currently is incarcerated at the Bent County Correctional Facility in Las Animas, Colorado. Mr. Vasquez, acting *pro se*, initiated his action by filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. On September 22, 2010, the Court instructed Mr. Vasquez to file an Amended Application, which he did on October 5, 2010.

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. To the extent Claims One through Three, as listed on Pages Ten through Fourteen¹ of the Amended Application, state a claim, Respondent is directed pursuant to Rule 4 of the Rules

¹ The Court refers to page numbering as identified by the Court's Electronic Court Filing system.

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.

Applicant 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. Applicant 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. It is

FURTHER ORDERED that Mr. Vasquez's Motion to Object (Doc. No. 4) is denied as moot. Mr. Vasquez has filed an Amended Application.

DATED October 7, 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
Las Animas, CO 81054-9573

Brigham Sloan, Warden - **CERTIFIED***
Bent County Correctional Facility
11560 Road FF.75
Las Animas, CO 81054-9573

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 Brigham Sloan; and to John Suthers; AMENDED APPLICATION FOR WRIT OF HABEAS CORPUS FILED 10/5/10 on 10/7/10.

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk