

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED

UNITED STATES DISTRICT COURT
DENVER, COLORADO

Civil Action No. 10cv-03153-BNB

JAN 10 2011

RANDALL TODD ROYER,

GREGORY C. LANGHAM
CLERK

Applicant,

v.

BLAKE DAVIS,

Respondent.

ORDER TO FILE PRELIMINARY RESPONSE

Applicant, Randall Todd Royer, is in the custody of the United States Bureau of Prisons (BOP) at ADX in Florence, Colorado. Mr. Royer, acting *pro se*, initiated this action by filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241.

As part of the preliminary consideration of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 in this case, the Court has determined that a limited Preliminary Response is appropriate. Respondent is directed pursuant to *Redmon v. Wiley*, 550 F. Supp. 2d 1275 (D. Colo. 2008), and 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 defense of exhaustion of administrative remedies. If Respondent does not intend to raise this affirmative defense, 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 copies of any administrative grievances Mr. Royer has filed raising the issues asserted in the Application, as well as any responses to those grievances. Mr. Royer may reply to the Preliminary Response and provide any information that might be relevant to his efforts to exhaust administrative remedies. 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 Mr. Royer may file a Reply, if he desires. It is

FURTHER ORDERED that if Respondent does not intend to raise the affirmative defense of exhaustion of administrative remedies, Respondent must notify the Court of that decision in the Preliminary Response.

DATED January 10, 2011, 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-03153-BNB

Randall T. Royer
Reg No. 46812-083
US Penitentiary ADX
P.O. Box 8500
Florence, CO 81226

Blake Davis, Warden - **CERTIFIED**
US Penitentiary Florence
5880 Hwy 67 South
Florence, CO 81226

United States Attorney General - **CERTIFIED**
Room 5111, Main Justice Bldg.
10th and Constitution, N.W.
Washington, D.C. 20530

United States Attorney
District of Colorado
DELIVERED ELECTRONICALLY

I hereby certify that I have mailed a copy of the ORDER to the above-named individuals, and the following forms to Mr. Blake Davis, Warden; to The United States Attorney General; and to the United States Attorney's Office: APPLICATION FOR WRIT OF HABEAS CORPUS FILED 12/28/10 on January 10, 2011.

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk