

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-00881-BNB

JESUS JOHN HERNANDEZ

Applicant,

v.

JOE STARMAN, Director, Independence House South, and
UNITED STATES PAROLE COMMISSION,

Respondents.

ORDER OVERRULING OBJECTION

This matter is before the Court on Applicant's *pro se* Objection to Order to File Preliminary Response and Non-Consent to Magistrate (ECF No. 9), filed April 20, 2012.

The Court must construe Mr. Hernandez's filings liberally because he is a *pro se* litigant. **See *Haines v. Kerner***, 404 U.S. 519, 520-21 (1972); ***Hall v. Bellmon***, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not act as a *pro se* litigant's advocate. **See *Hall***, 935 F.2d at 1110. The Court will construe the Objection to Order to File Preliminary Response liberally as an objection filed pursuant to 28 U.S.C. § 636(b)(1)(A). For the reasons stated below, the objection will be overruled.

Pursuant to § 636(b)(1)(A), a judge may reconsider any pretrial matter designated to a magistrate judge to hear and determine where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

Applicant objects to Magistrate Judge Boyd N. Boland's order of April 5, 2012, directing the Respondents to file a Preliminary Response to the Application within twenty-one days on the basis that 28 U.S.C. § 2243 requires a Respondent to respond

to an order to show cause within three days. The legal authority for the order to file preliminary response is set forth in *Keck v. Hartley*, 550 F.Supp.2d 1272, 1274 (D. Colo. 2008), and applies to both state and federal prisoners. As such, Magistrate Judge Boland's Order of April 5 is neither clearly erroneous nor contrary to law. Therefore, Mr. Hernandez's liberally construed objection will be overruled. Accordingly, it is

ORDERED that Applicant's Objection to Order to File Preliminary Response and Non-Consent to Magistrate (ECF No. 9), filed April 20, 2012, is construed liberally as an objection filed pursuant to 28 U.S.C. § 636(b)(1)(A), and the objection is overruled.

DATED at Denver, Colorado, this 1st day of May, 2012.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK
Senior Judge, United States District Court