

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-01703-BNB

DAMIAN M. KIRBY,

Applicant,

v.

HARLEY LAPPIN, Director F.B.O.P., Washington D.C., and  
WARDEN GARCIA, Warden, F.C.I. Englewood,

Respondents.

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ORDER TO FILE PRELIMINARY RESPONSE

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As part of the preliminary consideration of the amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (ECF No. 6) filed on July 11, 2012, in this case and pursuant to *Redmon v. Wiley*, 550 F. Supp. 2d 1275 (D. Colo. 2008), the Court has determined that a limited Preliminary Response is appropriate. Respondents are directed pursuant to 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 Respondents do not intend to raise this affirmative defense, Respondents must notify the Court of that decision in the Preliminary Response. Respondents 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, Respondents should attach as exhibits copies of any administrative grievances Applicant has filed raising the issues asserted in

the Application, as well as any responses to those grievances. Applicant 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 (21) days from the date of this Order** Respondents shall file a Preliminary Response that complies with this Order. It is

FURTHER ORDERED that **within twenty-one (21) days of the filing of the Preliminary Response** Applicant may file a Reply, if he desires. It is

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

DATED July 16, 2012, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge