

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-03344-BNB

RAUL PERMUY CALDERON,

Plaintiff,

v.

DEBRA ALLEN, Parole Hearing Officer,
TOM WALTERS, Parole Hearing Officer,
REBECCA OAKES, Parole Hearing Officer,
MICHAEL E. ANDERSON, Parole Hearing Officer,
MICHAEL PASKO, Parole Officer,
BECKY LUCERO, Chairman of the Colorado Board of Parole,
NOBLE, Lt., Case Manager [sic],
ANTHONY P. YOUNG, Chair of the Colorado Board of Parole, and
TOM CLEMENTS,

Defendants.

ORDER DIRECTING PLAINTIFF TO SUBMIT NON-PRISONER § 1915 MOTION
AND TO FILE SECOND AMENDED COMPLAINT

Plaintiff, Raul Permuy Calderon, initiated this action on December 26, 2012, by filing, *pro se*, a Prisoner Complaint pursuant to 28 U.S.C. § 1343 and 42 U.S.C. § 1983. At that time, Mr. Calderon indicated to the Court that he was a Department of Corrections prisoner, incarcerated at the Arkansas Valley Correctional Facility. Plaintiff filed an amended complaint on January 2, 2013, challenging the revocation of his parole on five separate occasions. For relief, he requested “the immediate termination of the remainder of his parole” and an award of damages. (ECF No. 5, at 5). Mr. Calderon has also filed two Prisoner’s Motions and Affidavits for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF Nos. 3 and 6).

On January 14, 2013, the Court issued Mr. Calderon an Order directing him to show cause why his Complaint should not be dismissed without prejudice because the claims challenging his detention must be asserted in a habeas corpus action and the request for damages is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994) and *Crow v. Penry*, 102 F.3d 1086, 1087 (10th Cir. 1996). (ECF No. 7).

On February 13, 2013, counsel entered its appearance for Mr. Calderon and filed a Response to Order to Show Cause. In the Response, Plaintiff concedes that *Heck* bars the majority of his claims asserted in the amended complaint, except the claim that his due process rights were violated in relation to the January 17, 2012 parole revocation hearing. Plaintiff successfully challenged the revocation of his parole in state district court and was ordered released on parole in a December 17, 2012 Order. See Doc. No. 10-1. Plaintiff now requests leave to file a second amended complaint to remove all claims barred by *Heck*.

Plaintiff has further advised the Court that he has been released on parole and is no longer incarcerated. As such, Plaintiff must submit a non-prisoner Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 or pay the \$350.00 filing fee. Accordingly, it is

ORDERED that the Order to Show Cause (ECF No. 7) is **discharged**. It is

FURTHER ORDERED that Plaintiff shall submit to the Court within thirty (30) days of the date of this Order a non-prisoner Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. Plaintiff may obtain the court-approved form, along with the applicable instructions, at www.cod.uscourts.gov. It is

FURTHER ORDERED that the Motion to Amend Complaint (ECF No. 11) is

granted. Plaintiff shall file a second amended complaint within thirty (30) days of the date of this Order.

DATED March 20, 2013, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge