

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-03254-BNB

JOLEY B. BROWN,

Applicant,

v.

EXECUTIVE DIRECTOR OF COLORADO DEPARTMENT OF CORRECTIONS,

Respondent.

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ORDER TO FILE PRELIMINARY RESPONSE

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Applicant, Joley B. Brown, is currently in the custody of the Colorado Department of Corrections and is incarcerated at the Denver Reception and Diagnostic Center. Mr. Brown has filed *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. He has paid the \$5.00 filing fee.

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 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. Respondent is 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 state court and/or administrative remedies. See *Montez v. McKinna*, 208 F.3d 862, 866 (10th Cir. 2000); *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010). If Respondent does not intend to raise the 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 all relevant portions of the state court or administrative record, including but not limited to copies of all documents demonstrating whether Applicant has exhausted state court and/or administrative remedies.

Applicant may reply to the Preliminary Response and provide any information that might be relevant to the exhaustion of state court and/or administrative remedies. Accordingly, it is

ORDERED that **within twenty-one (21) 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 (21) 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 the affirmative defense of exhaustion of state court and/or administrative remedies, Respondent must notify the Court of that decision in the Preliminary Response.

Dated: December 2, 2013

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge