

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02841-GPG

LUKE AMMON, of Preacher Clan, Sui Generis

Applicant,

v.

ERIC J. HOLDER JR., and  
D. BERKEBILE,

Respondents.

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ORDER OF DISMISSAL

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Applicant Luke Ammon Preacher, acting *pro se*, originally filed an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 in the United States District Court for the District of Idaho on July 17, 2014. The District of Idaho reviewed the application, determined that the action more properly is filed in this Court, and entered an order transferring the action to this Court on October 14, 2014. Magistrate Judge Gordon P. Gallagher entered an order on October 17, 2014, that determined the filing is deficient and directed Applicant to resubmit his Application on a proper Court-approved form and to clearly write his claims and other requested information on the form. Applicant also was directed to submit an Application to Proceed in District Court Without Prepaying Fees or Costs, or in the alternative to pay the \$5 filing fee.

The envelope containing the October 17 Order to Cure was returned to the Court on November 3, 2014, and was marked that it was forwarded to a prison location in Atlanta, Georgia, and then apparently marked by the Atlanta facility as "Return to

Sender Attempted-Not Known Unable to Forward.” Subsequently, Applicant submitted a Notice of Change of Address on November 10, 2014, to this Court. The Court ordered the October 17, 2014 Order resent to Applicant at the new address in Butler, North Carolina. Applicant then paid the \$5 filing fee but did not submit clearly written claims on a Court-Approved form. On December 29, 2014, the Court entered a Minute Order that provided Applicant with a second opportunity to submit clearly written claims on a Court-approved form within twenty-one days. Applicant now has failed to comply with the October 17 Order within the time allowed.

The Court also notes that on September 22, 2014, Applicant filed a Petition for Writ of Mandamus pursuant to 28 U.S.C. § 1361 in the United States District Court for the Eastern District of North Carolina-Western Division. See *Preacher v. Holder, Jr.*, No. 14-hc-02202-FL (E.D. N.C. filed Sept. 22, 2014). The North Carolina case has been construed as a habeas action, raises the same three claims that Applicant has raised in the instant action, and is pending.

Nonetheless, because Applicant has failed to clearly write his claims on a Court-approved form pursuant to the Court’s October 17, 2014 Order, within the time allowed, the Court will dismiss the action without prejudice.

Finally, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Plaintiff files a notice of appeal he also must pay the full \$505 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24.

Accordingly, it is

ORDERED that the Application is denied and the action is dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to cure the noted deficiency. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied.

DATED at Denver, Colorado, this 30<sup>th</sup> day of January,  
2015.

BY THE COURT:

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