

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00068-GPG

EVELIN ADELA PERUCH-VICENTE,

Applicant,

v.

JOHN LONGSHORE, U.S. DHS-ICE,
UNKNOWN ICE OR BI INCORP. "JAILER,"

Respondents.

ORDER TO FILE PRELIMINARY RESPONSE

Applicant, Evelyn Adela Peruch-Vicente, alleges that she is in the custody of federal immigration authorities or a contracting agency. She has filed *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. (ECF No. 1). Applicant has paid the \$5.00 filing fee.

As part of the preliminary consideration of the Amended 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 administrative remedies under *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010), as well as any jurisdictional issues. 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 administrative record, including but not limited to copies of all documents demonstrating whether Applicant has exhausted administrative remedies.

Applicant may reply to the Preliminary Response and provide any information that might be relevant to the exhaustion of 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 she desires. It is

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

Dated: January 14, 2015

BY THE COURT:

s/ Gordon P. Gallagher
United States Magistrate Judge