

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00135-GPG

(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

MARCUS F. CORDOVA,

Petitioner,

v.

COLORADO DEPARTMENT OF CORRECTIONS,

Respondent.

ORDER DIRECTING PETITIONER TO CURE DEFICIENCIES

Petitioner, Marcus F. Cordova, is detained in the Denver County Jail. He initiated this action on January 20, 2015, by filing a Motion to Hear Habeas Corpus Motion and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action. In the Habeas Corpus Motion, Mr. Cordova challenges the revocation of his parole and his reincarceration.

“The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody.” See *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). “Petitions under § 2241 are used to attack the execution of a sentence. See *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996). By contrast,

It appears that Mr. Cordova is attempting to challenge the execution of his state court sentence. As such, his claims must be asserted in a habeas corpus application

pursuant to § 2241. See *Montez v. McKinna*, 208 F.3d 862, 865 (10th Cir. 2000); see also *United States v. Furman*, 112 F.3d 435, 438 (10th Cir.1997) (noting that issues concerning “parole procedure[] go to the execution of sentence and, thus, should be brought against defendant's custodian under 28 U.S.C. § 2241”).

As part of the Court’s review pursuant to D.C.COLO.LCivR 8.1(b), the Court has determined that the submitted documents are deficient as described in this order. Plaintiff will be directed to cure the following if he wishes to pursue his claims. Any papers that Plaintiff files in response to this order must include the civil action number on this order.

28 U.S.C. § 1915 Motion and Affidavit:

- (1) ___ is not submitted
- (2) ___ is missing affidavit
- (3) ___ is missing certified copy of prisoner's trust fund statement for the 6-month period immediately preceding this filing (necessary if filing a habeas corpus application)
- (4) ___ is missing certificate showing current balance in prison account
- (5) ___ is missing required financial information
- (6) ___ is missing an original signature by the prisoner
- (7) ___ is not on proper form (must use the Court’s form for habeas applications)
- (8) ___ names in caption do not match names in caption of complaint, petition or habeas application
- (9) ___ other:

Complaint, Petition or Application:

- (10) ___ is not submitted
- (11) xx is not on proper form (must use the court-approved form for filing a habeas corpus application under 28 U.S.C. § 2241)
- (12) ___ is missing an original signature by the prisoner
- (13) ___ is missing page nos. ___
- (14) ___ uses et al. instead of listing all parties in caption
- (15) ___ names in caption do not match names in text
- (16) ___ addresses must be provided for all defendants/respondents in “Section A. Parties” of complaint, petition or habeas application

(17) xx other: Applicant must name his custodian as the Respondent.

Accordingly, it is

ORDERED that Mr. Cordova cure the deficiencies designated above **within thirty (30) days from the date of this order**. Any papers that Mr. Cordova files in response to this order must include the civil action number on this order. It is

FURTHER ORDERED that Mr. Cordova shall obtain the court-approved form for filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (with the assistance of his case manager or the facility's legal assistant), along with the applicable instructions, at www.cod.uscourts.gov, and use the form in curing the designated deficiencies. It is

FURTHER ORDERED that, if Mr. Cordova fails to cure the designated deficiencies **within thirty (30) days from the date of this order**, this action will be dismissed without further notice. The dismissal shall be without prejudice.

DATED: January 22, 2015, at Denver, Colorado.

BY THE COURT:

s/ Gordon P. Gallagher
United States Magistrate Judge