

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-01198-GPG

BOB ALLEN CUSTARD,

Applicant,

v.

JOHN OLIVER, Warden, ADX Florence Colorado Supermax,

Respondent.

ORDER TO FILE PRELIMINARY RESPONSE

Applicant, Bob Allen Custard, is in the custody of the Federal Bureau of Prisons at the ADX facility in Florence, Colorado. Mr. Custard has filed *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 challenging a prison disciplinary conviction that resulted in the revocation of good time credits. (ECF No. 1). He has paid the \$5.00 filing fee. (ECF No. 7).

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 procedural issues, such as the affirmative defense of failure to exhaust of administrative remedies. 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 his 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 he desires. It is

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

Dated August 4, 2015, at Denver, Colorado.

BY THE COURT:

s/ Gordon P. Gallagher
United States Magistrate Judge