

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 15-cv-01534-GPG

**ELRADER BROWNING, JR.,**

Applicant,

v.

**JOHN OLIVER,**

Respondent.

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**ORDER TO FILE PRELIMINARY/PRE-ANSWER RESPONSE**

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Applicant, Elrader Browning, Jr., an inmate currently incarcerated at the Florence Federal Correctional Institution, has submitted to the court an Application for a Writ of Habeas Corpus under 28 U.S.C. § 2241 concerning his federal sentence (ECF No. 1).

As part of the preliminary consideration of the Application in this case, the Court has determined that a limited Response is appropriate. Because it is not clear whether the action is truly a 28 U.S.C. § 2241 action, which is a challenge to the execution of a sentence, or a challenge to the validity of Applicant's conviction and sentence, which is properly filed pursuant to 28 U.S.C. § 2255, the Court will direct the Respondents to brief this issue.

Respondents also are directed pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts to address the affirmative defenses of timeliness under 28 U.S.C. § 2244(d), exhaustion of remedies that apply either to § 2255 actions or to § 2241 actions, procedural default and successive petitions. If Respondents do not intend to raise any of these affirmative defenses, Respondents must notify the Court of that decision in the Response.

In support of the Response, Respondent should attach as exhibits all relevant portions of the court records, including but not limited to copies of all documents demonstrating whether this action is filed in a timely manner and/or whether Applicant has exhausted available court remedies.

Applicant may reply to the Response and provide any information that might be relevant to the classification of this action and the one-year limitation period under 28 U.S.C. § 2244(d), exhaustion of court remedies or whether the application is successive. Applicant also should include information relevant to equitable tolling, specifically as to whether he has pursued his claims diligently and whether some extraordinary circumstance prevented him from filing a timely habeas action in this Court as is necessary in response to Respondents' briefing regarding the classification of this action. Accordingly, it is

**ORDERED** that **within twenty-one days from the date of this Order** Respondent shall file a Pre-Answer or Preliminary Response that complies with this Order. It is

**FURTHER ORDERED** that **within twenty-one days of the filing of the Response** Applicant may file a Reply, if he desires. It is

**FURTHER ORDERED** that if Respondent does not intend to raise any of the affirmative defenses, Respondent must notify the Court of that decision in the Response.

Dated: September 14, 2015

BY THE COURT:

s/Gordon P. Gallagher  
United States Magistrate Judge