

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-01549-GPG

EUGENE CARL HATHAWAY,

Applicant,

v.

EDWARD F. REILLY, JR., Chairman of the United States Parole Commission et al.,
J. OLIVER, Warden, A.D.X. Facility,

Respondents.

ORDER TO FILE PRELIMINARY RESPONSE

Applicant, Eugene Carl Hathaway, is in the custody of the Federal Bureau of Prisons, currently incarcerated at the Florence ADMAX facility in Florence, Colorado. Mr. Hathaway has filed *pro se* an Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 challenging the procedures used during his parole revocation hearing. (ECF No. 8). He has paid the filing fee in full. (ECF No. 15).

As part of the preliminary consideration of the Application 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. Respondents are 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 with respect to the execution of his sentence. If Respondents do not intend to raise this affirmative defense, Respondents must notify the Court of that decision in the Preliminary Response. Respondents 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, Respondents 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. Accordingly, it is

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

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

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

Dated October 14, 2015, at Denver, Colorado.

BY THE COURT:

s/ Gordon P. Gallagher
United States Magistrate Judge