

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 DISMISS IN PART AND TO DRAW CASE

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).

On October 14, 2015, Magistrate Judge Gordon P. Gallagher entered an order (ECF No. 16) directing Respondents to file a preliminary response limited to addressing the affirmative defense of exhaustion of administrative remedies if Respondents intended to raise that defense in this action. On November 4, 2015, Respondents filed a preliminary response (ECF No. 22). In the Preliminary Response, Respondent Reilly, Chairman of the United States Parole Commission ("USPC"), notified the Court that he does not intend to raise the affirmative defense of exhaustion of administrative remedies. Respondent Oliver, Warden of BOP's United States Penitentiary-

Administrative Maximum, argued that he was not a proper party to this application because all of Applicant's claims appear to be directed at the USPC. However, Respondent Oliver asserted that if he was considered a proper party, he intended to raise the affirmative defense of exhaustion of administrative remedies.

On November 17, 2015, Applicant filed a Motion to Terminate Respondent Oliver from this action. (ECF No. 23). Therefore, Respondent Oliver will be dismissed from this action.

As to the remaining Respondent, after review pursuant to D.C.COLO.LCivR 8.1(b), the court has determined that this case does not appear to be appropriate for summary dismissal and that the case should be drawn to a judge pursuant to D.C.COLO.LCivR 8.1(c). Accordingly, it is

ORDERED that Respondent Oliver is dismissed as a party to this action. It is FURTHER ORDERED that this case shall be drawn to a presiding judge and when applicable to a magistrate judge. See D.C.COLO.LCivR 40.1(a).

DATED at Denver, Colorado, this 1st day of December, 2015.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court