

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-01836-GPG

DIMPSEY MARCUS MARTINEZ,

Applicant,

v.

U.S. MARSHAL JOHN KAMMERZELL,

Respondent.

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ORDER TO FILE PRELIMINARY RESPONSE

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Applicant Dimpsey Marcus Martinez currently is detained at the Denver Downtown Detention Center in Denver, Colorado. Applicant initiated this action by filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and paying the \$5 filing fee. Applicant is challenging a detainer that he alleges was entered against him by the U.S. Marshal sometime prior to May 30, 2015; and he contends that there is no pending federal criminal case that would substantiate a detainer and his current detainment.

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. 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 the affirmative defense of exhaustion of available remedies, if applicable, with respect to the detainer. If Respondent does not intend to raise this affirmative defense, he 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 the available remedies.

Applicant may reply to the Preliminary Response and provide any information that might be relevant to the exhaustion of remedies. Accordingly, it is

ORDERED that **within twenty-one 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 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 remedies, he must notify the Court of that decision in the Preliminary Response.

Dated: August 26, 2015

BY THE COURT:

s/Gordon P. Gallagher  
United States Magistrate Judge