

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02427-GPG

DOUGLAS A. GLASER,

Applicant,

v.

TRAVIS TRANI, and  
CYNTHIA A. COFFMAN, Attorney General of the State of Colorado,

Respondents.

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ORDER TO FILE SECOND SUPPLEMENT TO PRE-ANSWER RESPONSE

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As part of the preliminary consideration of the amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (ECF No. 6) filed in this action December 23, 2015, the Court ordered Respondents to file a Pre-Answer Response limited to addressing the affirmative defenses of timeliness under 28 U.S.C. § 2244(d) and/or exhaustion of state court remedies. On March 16, 2016, Respondents filed a Pre-Answer Response (ECF No. 16) and on March 21, 2016, Respondents filed a Supplement to Pre-Answer Response (ECF No. 17). On March 30, 2016, Applicant filed Applicant's Pre-Answer Reply (ECF No. 18).

One argument raised by Respondents is that Applicant has failed to exhaust state remedies because his petition for writ of certiorari to the Colorado Supreme Court on direct appeal remains pending. Respondents do not address, however, Applicant's argument that the exhaustion argument should be excused because of inordinate delay in resolving his direct appeal. See *Harris v. Champion*, 15 F.3d 1538, 1555-56 (10<sup>th</sup> Cir.

1994) (establishing a presumption that exhaustion should be excused when delay in adjudicating a direct criminal appeal exceeds two years). Therefore, Respondents will be directed to file a second supplement to the Pre-Answer Response that addresses whether the exhaustion argument should be excused on the basis of inordinate delay. Accordingly, it is

ORDERED that **within twenty-one (21) days from the date of this Order** Respondents shall file a second supplement to the Pre-Answer Response that complies with this Order. It is

FURTHER ORDERED that **within twenty-one (21) days of the filing of any second supplement to the Pre-Answer Response** Applicant may file a Reply to the second supplement, if he desires.

DATED March 31, 2016, at Denver, Colorado.

BY THE COURT:

s/ Gordon P. Gallagher  
United States Magistrate Judge