

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-00583-GPG

LEROY DAMASIO FRESQUEZ,

Applicant,

v.

JOHN HICKENLOOPER,
CYNTHIA H. COFFMAN,
MELISSA ROBERTS, and
JAMES ROBINSON,

Respondents.

ORDER TO FILE PRELIMINARY RESPONSE

Applicant currently is detained at the Van-Cise Simmonet Justice Center in Denver, Colorado. Applicant has filed *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 challenging the delay in his parole hold. The Court granted Applicant leave to proceed pursuant to 28 U.S.C. § 1915.

As part of the preliminary consideration of the Application in this case, the Court has determined that a limited Response is appropriate. Respondent is 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) and/or exhaustion of state court remedies that apply to § 2241 actions. If Respondent does not intend to raise either of these affirmative defenses, Respondent must notify the Court of that decision in the 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 Response, Respondent should attach as exhibits all relevant portions of the state court record, 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 state court remedies.

Applicant may reply to the Response and provide any information that might be relevant to the one-year limitation period under 28 U.S.C. § 2244(d) and/or the exhaustion of state court remedies. 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. Accordingly, it is

ORDERED that the only properly named Respondent for the purpose of service at this time is Cynthia H. Coffman, The Attorney General of the State of Colorado. It is

FURTHER ORDERED that **within twenty-one days from the date of this Order** Respondent Coffman shall file a 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 Coffman does not intend to raise either of the affirmative defenses of timeliness or exhaustion of state court remedies, Respondent must notify the Court of that decision in the Response.

Dated: March 23, 2016

BY THE COURT:

s/Gordon P. Gallagher
United States Magistrate Judge