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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ASTON R. MCLEARY, A13221811,

Petitioner,

-v-

10-CV-6068P

ORDER

MARTIN D. HERRON, Director of Buffalo
Federal Detention Facility;
MICHAEL T. PHILIPS, ICE Field Office
Director and ERIC H. HOLDER, JR.,
Attorney General of the United States;

Respondents.

Petitioner Aston R. McLeary, who is currently detained in the Buffalo Federal Detention Facility pursuant to an Immigration and Customs Enforcement detainer, and alleges that he has not been granted an individualized detention hearing as required by law, having been detained since August 21, 2008, seeks relief pursuant to 28 U.S.C. § 2241 as more fully set forth in the petition. Petitioner also seeks permission to proceed *in forma pauperis*. Petitioner seeks appointment of counsel.

IT HEREBY IS ORDERED as follows:

1. Petitioner's request to proceed as a poor person is granted.
2. Petitioner's request for appointment of counsel is denied without prejudice as premature.
3. Within **45 days** of the service of this order, respondent

shall file and serve an **answer** to the application with the Clerk of Court which shall respond to the allegations of the application and shall state, as to every ground raised by the petitioner, whether the petitioner has exhausted administrative remedies. **If any ground is alleged not to have been exhausted, respondent shall identify such ground and expressly state whether it waives the petitioner's requirement to exhaust.**

Alternatively, in the appropriate case, respondent may file a motion to dismiss the application, accompanied by pertinent exhibits which demonstrate that an answer to the application is unnecessary, by no later than **45 days** from service of this order.

Respondent also shall file and serve by the above date a **memorandum of law** with the Clerk of Court addressing each of the issues raised in the petition and including citations of relevant supporting authority. Respondent is directed to accompany all citations to sections of the Immigration and Naturalization Act with reference to the appropriate sections of 8 U.S.C.

Petitioner shall have **25 days** upon receipt of the answer to file a written response to the answer and memorandum of law (or motion to dismiss).

4. The Clerk of Court shall serve a copy of the petition, together with a copy of this order, by certified mail, upon the following:

- Facilities Director, Buffalo Federal Detention Center,

4250 Federal Drive, Batavia, New York 14020;

- Buffalo Field Office Director, Detention & Removal Office, Immigration and Customs Enforcement Department of Homeland Security, 130 Delaware Avenue, Buffalo, NY 14202;

- Office of General Counsel, Department of Homeland Security, Washington, D.C. 20528;

- Acting Director, Bureau of Immigration and Custom Enforcement, 425 I Street, NW Washington, DC 20536;

- Attorney General of the United States, Main Justice Building, 10th and Constitution Avenues N.W., Washington, DC 20530;

- United States Attorney for the Western District of New York, 138 Delaware Avenue, Buffalo, New York 14202;

- James W. Grable, District Counsel for the Department of Homeland Security, 130 Delaware Avenue, Room 203, Buffalo, New York 14202.

THE PETITIONER MUST FORWARD A COPY OF ALL FUTURE PAPERS AND CORRESPONDENCE TO THE ATTORNEY APPEARING FOR THE RESPONDENT.

SO ORDERED.

S/ MICHAEL A. TELESKA

MICHAEL A. TELESKA
United States District Judge

Dated: February 18, 2010
Rochester, New York