UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 25-CV-23201 GAYLES

LUIS ALONSO ESPINOSA-SORTO,

Petitioner,

vs.

JUAN AGUDELO, Interim Field Office Director, U.S. Dept. Of Homeland Security Immigration and Customs Enforcement and Removal Operations Miami Field Office; TODD M LYONS, Acting Director U.S. DHS ICE; KRISTI NOEM, Secretary DHS; PAMELA J. BONDI, U.S. Attorney General; and U.S. CITIZENSHIP AND IMMIGRATION SERVICES,

Defendants.
_____/

RESPONDENT'S RESPONSE TO
PETITIONER'S RENEWED EMERGENCY MOTION

Respondents,[1] by and through the undersigned Assistant U.S. Attorney, hereby file their response to Petitioner's renewed Emergency Motion for Evidentiary Hearing and Production of Evidence [ECF 16]. Plaintiff previously filed a nearly-

[1] The named Respondents are JUAN AGUDELO, in his official capacity as Interim Field Office Director, U.S. Dept. Of Homeland Security Immigration and Customs Enforcement and Removal Operations Miami Field Office, et. al., ("Respondents"). A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 2243. In cases involving present physical confinement, "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at the Krome Service Processing Center, an ICE detention facility in Miami, Florida. His immediate custodian is Charles Parra, Assistant Field Office Director. The proper Respondent is Mr. Parra in his official capacity.

identical motion in sum and substance on August 18, 2025 [ECF 13], which this Court summarily denied [ECF 14].

Little has changed since Respondents last supplemented the record on August 13, 2025. [ECF 12] Therein, Respondents advised the Court that on July 28, 2025, ICE Enforcement and Removal Operations ("ERO") requested that USCIS expedite adjudication of Petitioner's pending U visa application. USCIS advised that under 8 C.F.R § 214.14(c)(1)(ii), a pending U visa does not affect ICE's authority to execute a removal order, as the regulations provide that the U visa process is available to individuals outside the United States. On July 31, 2025, ICE ERO advised Petitioner that it had denied Petitioner's Form I-246, Application for Stay of Deportation or Removal. On August 5, 2025, ICE ERO requested that USCIS remove Petitioner from USCIS's U visa waiting list because of his association with the transnational criminal organization MS-13. In response, USCIS requested additional documentation from ICE ERO. *See* ECF 12, p. 5.

Petitioner remains detained at Krome Service Processing Center in Miami, FL. *See* Jurdi Declaration, Exhibit 1. ERO will not remove Petitioner from the United States while a judicial stay of removal is in place. *Id.* On September 9, 2025, ICE ERO requested that USCIS revoke Petitioner's deferred action status. *Id.* On September 15, 2025, USCIS issued a Notice of Intent to Deny ("NOID") [ECF 16-1]. Therein, and in compliance with 8 C.F.R. § 103.2(b)(16)(i), USCIS advised Petitioner of the derogatory information it intends to consider when making its determination on whether to revoke Petitioner's deferred action status. *Id.*, p. 6. USCIS will not make its final decision for thirty-three days from issuance of the NOID, and during this time Petitioner may submit evidence to overcome the noted reasons for denial. *Id.* If USCIS does not receive a response on or before October 18, 2025, a final decision will be made based on the evidence currently in the record. *Id.*

As with all visa petitions, the burden of proof to establish eligibility rests with Petitioner, who must demonstrate eligibility for the benefit sought by a preponderance of the evidence. *See* 8 U.S.C. § 1361 (stating that in an application for a visa, the petitioner bears the burden of proof to establish eligibility); *Matter of*

Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010) ("Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.").

USCIS maintains authority to remove petitioners from the U visa waiting list. *See* 8 C.F.R. § 214.14(d)(2). Under C.F.R. § 214.14(d)(3), "a petitioner may be removed from the waiting list, and the deferred action or parole may be terminated at the discretion of USCIS." USCIS has followed that process here: it has issued a NOID, provided Petitioner an opportunity to respond, and identified a date by which it will make its determination. On the face of the USCIS NOIDs, no final action has been taken, and deferred action has not been terminated. There is no legal basis for this Court to intercede or monitor an ongoing agency adjudication.

Petitioner further claims that USCIS has not provided him with access to the documents it relied upon to issue the NOID. *See* ECF 16, p. 2. Petitioner argues that he therefore cannot "meaningfully respond" to the NOID, and demands an "emergency evidentiary hearing, immediate production of evidence, and expedited grant of the habeas petition." *Id.* This assertion is belied by the facts as set forth in Petitioner's own motion, wherein he acknowledges that the agency did in fact disclose the result of their investigation; namely, that on February 1, 2018, he was convicted in the United States Southern District of Florida for the offense of Illegal Reentry pursuant to 8 U.S.C. § 1326; that on October 19, 2018, he was again charged with Illegal Reentry pursuant to 8 U.S.C. § 1326; that on May 5, 2023, he was charged with Transport of Alien Who Is Unlawfully Present in the United States pursuant 8 U.S.C. § 1324(a)(1)(A)(ii); and he is a member of Mara Salvatrucha ("MS-13"). *Id.* This afforded Petitioner the opportunity to respond to the investigation's finding. He may do so at any time before October 18, 2025.

To the extent that Petitioner claims that he is prejudiced because he has not been provided with the original evidence underlying the derogatory information on which USCIS intends to rely, this argument is unavailing. "The regulations only require that a petitioner be advised of the derogatory information that will be used

to deny the petition and be given the opportunity to respond." *Diaz v. USCIS*, 499 Fed. Appx. 853, 856 (11th Cir. 2012) (citing 8 C.F.R. § 103.2(b)(16)(i)). The regulation "does not require USCIS to provide, in painstaking detail, the evidence of fraud it finds." *Ogbolumani v. Napolitano*, 557 F.3d 729, 735 (7th Cir. 2009) ("The second regulation [8 C.F.R. § 103.2(b)(16)(i)] that the Ogbolumanis claim was ignored requires USCIS to give them an opportunity to rebut the derogatory information it uncovered. This argument misses the mark, and by a lot."). The Eleventh Circuit agrees. *See Diaz*, 499 Fed. Appx. at 856 (USCIS complied with § 103.2(b)(16)(i) by issuing a NOID "that indicated that [the] petition would be denied based on the discrepancies at the interview, and specifically gave [the petitioner] the opportunity to provide rebuttal evidence and to explain the discrepancies"); *Brinklys v. Sec'y, Dep't Homeland Sec.*, 702 F. App'x 856, 861 (11th Cir. 2017) (per curiam) (finding that USCIS complied with § 103.2(b)(16)(i) and (ii) by issuing notices that listed and summarized the derogatory information and provided plaintiffs with the opportunity to respond).

More recently, the Seventh Circuit clarified that the regulation does not require USCIS to provide a petitioner with a full copy of the underlying evidence in cases such as these. *See Fliger v. Nielsen*, 743 F. App'x 684, 689 (7th Cir. 2018) ("We have repeatedly urged the agency to provide the actual statement on which it relied, but *we have acknowledged in the past that a summary can suffice*.") (emphasis added). As the Fifth Circuit explained:

> The plain language of § 103.2(b)(16)(i) requires that USCIS "advise[ ]" the petitioners whose claims are about to be denied of the "derogatory information" that forms the basis for the denial. As many of our sister circuits have recognized, it does not require USCIS to provide documentary evidence of the information, but only sufficient information to allow the petitioners to rebut the allegations.

Mangwiro v. Johnson, 554 F. App'x 255, 261-62 (5th Cir. 2014) (unpublished). In this respect, numerous circuits have concluded that a NOID complies with this obligation by "summariz[ing] the contents" of its evidence. *Ghaly V. INS.*, 48 F.3d 1426, 1434 (7th Cir. 1995); *see also, e.g., Hassan v. Chertoff*, 593 F.3d 785, 789 (9th Cir. 2010);

Zizi v. Field Office Dir., 753 F. App'x 116, 117 (3d Cir. 2019) (unpublished) (holding that a summary may satisfy subsection 103.2(b)(16)(i)); *Parcha v. Cuccinelli*, No. 4:20-cv-015-SDJ 2020 WL 607103 (E.D. Tex. Feb. 7, 2020) ("It is well-settled that the exception only requires the USCIS to summarize the derogatory information sufficient to provide notice of the basis for its [adverse determination] and allow rebuttal.").

Petitioner relies on USCIS's perceived failure to follow the USCIS Policy Manual to buttress his claims. ECF 16, pp. 2, 6, 9, and 10. This is a red herring. The USCIS Policy Manual does not create a cause of action or any right to relief. *See Diaz v. USCIS*, 499 F. App'x 853, 855 (11th Cir. 2012) (explaining that field manuals and internal administrative guidance documents do not have the force or effect of law and do not confer substantive federal rights).

Upon receipt of the NOID, the petitioner then has an "opportunity to rebut the information and present information in his/her own behalf before the decision is rendered." 8 C.F.R. § 103.2 (b)(16)(i). Precisely this occurred here; USCIS issued a thorough NOID notice on September 15, 2025, and Petitioner still has ample opportunity to rebut the information contained therein. USCIS will then make a determination based upon the totality of the evidence following Petitioner's response.

Finally, Petitioner's instant emergency motion, which essentially is a challenge to his ongoing immigration proceedings, falls well outside the bounds of the two causes action brought in his underlying petition. *See* ECF 1 (asserting due process claim and APA claim). First, Petitioner cannot use the Great Writ to attack the NOID. As the Supreme Court has held, relief other than "simple release" is not available in a habeas action. *See Department of Homeland Security v. Thuraissigiam*, 140 S. Ct. 1959, 1970-71 (2020) ("Claims so far outside the core of habeas may not be pursued through habeas.").

Nor is relief available under the Administrative Procedure Act ("APA"). Instead, 5 U.S.C. § 706 only accords two forms of relief. Section 706(1) of the APA allows a court to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). But this relief is subject to an important limitation: the

APA "empowers a court only to compel an agency 'to perform a ministerial or non-discretionary act,' or 'to take action upon a matter, *without directing how it shall act.*'" *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004) (emphasis added) (internal quotation omitted). Review of final agency action is permitted under 5 U.S.C. § 706(2). Under this provision, courts review agency decisions to determine, in light of the certified administrative record, whether the decision is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2).

Petitioner does not seek either form of relief available under the APA. The agency has not yet taken any final action on its NOID that the Court could review. Petitioner demands that this Court intercede on his behalf in an ongoing adjudication. However, the APA does not provide for the Court to monitor ongoing agency adjudication. Any complaints Plaintiff has regarding the process provided by the agency may be reviewed only after the agency issues a final agency decision.

Moreover, the Immigration and Nationality Act renders USCIS's decision-making regarding deferred action unreviewable. *See* 8 U.S.C. § 1252(g)(stating "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter"). The Supreme Court has held "Section 1252(g) seems clearly designed to give some measure of protection to 'no deferred action' decisions[]." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 485 (1999) (finding a constitutional challenge to a removal decision lacked jurisdiction). Thus, if USCIS had terminated Petitioner's deferred action, the Court would lack jurisdiction to review that discretionary decision.

CONCLUSION

For the foregoing reasons set forth above, the Court should deny Petitioner's Emergency Motion for Evidentiary Hearing.

Respectfully submitted,

JASON A. READING QUIÑONES
UNITED STATES ATTORNEY

By: *John S. Leinicke*
JOHN S. LEINICKE
ASSISTANT UNITED STATES ATTORNEY
Fla. Bar No. 64927
United States Attorney's Office
Southern District of Florida
99 N.E. 4th Street, 3rd Floor
Miami, Florida 33132
Tel: (305) 961-9212
E-mail: john.leinicke@usdoj.gov
Counsel for Respondents