

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.

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**RESPONDENT'S RESPONSE IN OPPOSITION TO  
PETITIONER'S MOTION FOR LEAVE TO ADD PARTY DEFENDANT**

Respondents,<sup>1</sup> by and through the undersigned Assistant U.S. Attorney, hereby file their response to Petitioner's Motion for Leave to Add Party Defendant and Amend Complaint to Show Addition of New Defendant [ECF 22]. Therein, Petitioner seeks to add two new parties to his instant petition for habeas corpus

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<sup>1</sup> 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.



pursuant to Fed. R. Civ. P. 15(a)(2) and 21: United States Citizenship and Immigration Services (“USCIS”) and Connie Nolan, the USCIS Vermont Service Center (“VSC”) Acting Associate Director. *Id.*, p. 1. The Court should deny the motion.

In cases involving present physical confinement, “the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.” *Padilla* 542 U.S. at 439. The simple and consistently applied rule in these cases is that “[w]henver a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement.” *Id.* at 447.

This is a habeas case, and proposed respondents USCIS and Nolan have no role in the Petitioner’s detention. USCIS and Nolan are therefore not proper respondents in this matter.

The Proposed Amended Petition references Petitioner’s pending I-918 petition before USCIS. *See* ECF 22-1, p. 15, ¶ 58. The Proposed Amended Petition purports to assert an Administrative Procedure Act (“APA”) action against USCIS and Nolan, based on the following:

If USCIS denies Petitioner/Plaintiff’s I-918 Petition, he will lose eligibility for deferred action, which currently protects him from removal. Yet Petitioner/Plaintiff has not been provided with the derogatory information that USCIS relies upon for the issuance of their NOID.

*Id.* ¶ 67. Here, Petitioner does not allege a final agency action. Under the APA, a reviewing federal court shall set aside an agency action if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). “When review is sought under a general review provision of the APA, like section 706(2)(A), the ‘agency action’ in question must be ‘final agency action.’” *Am. Anti-Vivisection Soc’y v. U.S. Dep’t of Agric.*, 946 F.3d 615, 620 (D.C. Cir. 2020) (citations, alterations, and quotation marks omitted); 5 U.S.C. § 704. An agency action is final when it: (1) “mark[s] the consummation of the agency’s decision[-]making process,” and (2) is one by which “rights or obligations have been determined, or from which



legal consequences will flow.” *See Bennett v. Spear*, 520 U.S. 154, 178, (1997) (internal quotation marks and citations omitted).

An APA claim does not accrue “until the plaintiff is injured by final agency action.” *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. 799, 813 (2024). A plaintiff must have “a complete and present cause of action,” which arises only after injury—not merely after an agency completes its decision-making. *Id.* at 809, 817. Therefore, adding the proposed respondents is premature. Should the adjudication of Petitioner’s pending I-918 petition result in adverse final agency action, only then can Petitioner sue USCIS through an APA case. Here, habeas is not the proper context for those claims to proceed.

### CONCLUSION

For the foregoing reasons set forth above, the Court should deny Petitioner’s Motion.

Respectfully submitted,

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