

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02924-GPG

ABEL R. ARAGON,

Applicant,

v.

B. SHAFFER,  
M. COOPER, and  
E. BRUNNER,

Respondents.

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ORDER TO FILE SECOND AMENDED APPLICATION

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Applicant, Abel R. Aragon, is in the custody of the Colorado Department of Corrections. He was detained at the Denver County Jail at the time of filing. Mr. Aragon is now incarcerated at the Colorado State Penitentiary. Applicant initiated this action by filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. He has paid the \$5.00 filing fee.

On January 20, 2015, Magistrate Judge Gordon P. Gallagher reviewed the § 2241 Application and determined that it was deficient because Mr. Aragon's request for monetary damages in conjunction with his temporary detention for a parole violation was not cognizable in habeas corpus. See *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973); *McIntosh v. U.S. Parole Comm'n*, 115 F.3d 809, 812 (10th Cir. 1997) ("A habeas corpus proceeding attacks the fact or duration of a prisoner's confinement and seeks the remedy of immediate release or a shortened period of confinement. In contrast, a civil rights action attacks the conditions of the prisoner's confinement and

requests monetary compensation for such conditions.” (quotation and alteration omitted)). In addition, the Application did not name a proper respondent. Magistrate Judge Gallagher reminded Mr. Aragon that the only proper respondent to a habeas corpus action is a petitioner’s current custodian. See 28 U.S.C. §2243 (stating that the writ “shall be directed to the person having custody of the person detained”); *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Magistrate Judge Gallagher instructed Mr. Aragon to file an amended § 2241 application, on the court-approved form, challenging the execution of his sentence and naming the proper respondent, within thirty (30) days of the January 20 Order. Mr. Aragon filed an Amended Application (ECF No. 19) on February 26, 2015 that partially complies with the January 20 Order. Although Mr. Aragon properly challenges the execution of his sentence in the Amended Application, and requests appropriate habeas corpus relief, he fails, once again, to name a proper respondent. The Court will allow Applicant one final opportunity to name a proper respondent— i.e., the warden of his current facility. Accordingly, it is

ORDERED that Applicant, Abel R. Aragon, shall file a Second Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241, on the court-approved form, that names the proper respondent, within thirty (30) days of this Order.

It is

FURTHER ORDERED that Mr. Aragon shall obtain the court-approved form for filing an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 at [www.cod.uscourts.gov](http://www.cod.uscourts.gov) and shall use that form in filing a Second Amended Application.

It is

FURTHER ORDERED that, if Mr. Aragon fails to file a Second Amended

Application within the time allowed, the Court may dismiss this action without further notice for the reasons discussed above.

DATED February 10, 2015, at Denver, Colorado.

BY THE COURT:

s/ Gordon P. Gallagher

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United States Magistrate Judge