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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Hassanatou Diallo, Baby Diallo and Newborn Diallo

Petitioners,

v.

William P. JOYCE, in his official capacity as New York Field Office Director for U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; Caleb VITELLO, in his official capacity as the Acting Director for U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; Rodney S. SCOTT, in his official capacity as Commissioner of CUSTOMS AND BORDER PROTECTION; Kristi NOEM, in her official capacity as Secretary of the U.S. DEPARTMENT OF HOMELAND SECURITY; UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; UNITED STATES CUSTOMS AND BORDER PROTECTION,

Respondents.

Case No. 1:25-cv-5960

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS & COMPLAINT

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS & COMPLAINT

INTRODUCTION

1. Petitioners are Hassanatou Diallo and her two children: Newborn Diallo, who was born just a few days ago, and Baby Diallo, a one-year old child.
2. Ms. Diallo and Baby Diallo have been in the custody of Respondents for about a week. They were initially detained in Texas for civil immigration violations and then were subsequently transferred to New York for purposes of effectuating their removal via JFK Airport.
3. While at the airport, Ms. Diallo went into labor and she was transferred to Jamaica Hospital where she, Baby Diallo, and days-old U.S. Citizen Newborn Diallo remain detained by Respondents.
4. The entire period of Ms. Diallo's detention violates of § 504 of the Rehabilitation Act and the Department of Homeland Security's own policy regarding pregnant and nursing mothers given that during this entire period, she was either in an advanced stage of her pregnancy, in active labor, or immediately postpartum.
5. On information and belief, the Department of Homeland Security intends to deport Ms. Diallo, Baby Diallo and Newborn Diallo as soon as Jamaica Hospital deemed Ms. Diallo medically able to leave the hospital.
6. The undersigned has not been able to speak to Petitioners, despite multiple requests.
7. Undersigned counsel learned of these events after being contacted by an individual at New York's child protective agency, the Administration for Children's Services ("ACS") given that the undersigned works at a nonprofit agency that is regularly assigned to represent children in court proceedings. Jamaica Hospital staff had contacted ACS to

inquire about respite foster care for one-year-old Baby Diallo while Ms. Diallo was giving birth to Newborn Diallo.

8. Respondents actions here and continued detention of Petitions would violate the *Accardi* doctrine, the Fifth Amendment of the U.S. Constitution, and the Rehabilitation Act. Petitioners seek an order from this Court that they be immediately released from custody, or, in the alternative, that they not be removed from the United States this judicial district pending disposition of their petition for writ of habeas corpus.

JURISDICTION

9. The Court has subject matter jurisdiction pursuant to: 28 U.S.C. § 1331; 28 U.S.C. § 2241; Article I, § 9, cl. 2 (the Suspension Clause); Article III; the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.*; the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*; the Rehabilitation Act, 29 U.S.C. § 794; and the 5th Amendment of the U.S. Constitution.

10. An actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201, and this Court has authority to grant declaratory and injunctive relief. *Id.* §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651, and the Rehabilitation Act, 29 U.S.C. § 794.

VENUE

11. Venue properly lies within the Eastern District of New York under 28 U.S.C. § 1391, because this is a civil action in which Respondents are agencies of the United States, because on information and belief, a substantial part of the events or omissions giving rise to this action occurred in the District and Petitioners are currently being detained by the Department of Homeland Security in Jamaica Hospital, which is located in Queens, New

York, within this District.

PARTIES AND FACTS ALLEGED

12. Petitioner 1, Hassanatou Diallo, is a Guinean national and a postpartum and nursing mother. She is being held by the Department of Homeland Security in Jamaica Hospital, in Jamaica, New York, where she gave birth on [redacted] to her newborn baby.
13. Petitioner 2, Baby Diallo, is the [redacted] child of Petitioner 1. They are being held in the custody of the Department of Homeland Security in Jamaica Hospital, in Jamaica, New York. Their nationality is unknown and their appearance is pseudonymous because the Department of Homeland Security refused to speak to counsel, or to allow counsel to speak to Ms. Diallo prior to the filing of this petition.
14. Petitioner 3, Newborn Diallo, is a United States citizen who is approximately two days old, having been born to Ms. Diallo on [redacted] They are being held in the custody of the Department of Homeland Security in Jamaica Hospital, in Jamaica, New York. Their appearance is pseudonymous because the Department of Homeland Security refused to speak to counsel, or to allow counsel to speak to Ms. Diallo prior to the filing of this petition.
15. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"), and is sued in her official capacity. The Secretary of Homeland Security is charged with the administration and enforcement of immigration laws. 8 U.S.C. § 1103(a).
16. Respondent Immigration and Customs Enforcement ("ICE") is the agency responsible for the detention of noncitizens, and the transfer or removal of Petitioners outside of this judicial district. Respondent Customs and Border Protection ("CBP") is the agency responsible for the enforcement of immigration laws, including the detention and

deportation of Petitioners at US borders and ports of entry.

17. Respondent William P. Joyce is the Acting Director of the New York Field Office of the Immigration and Customs Enforcement, Department of Homeland Security, and is sued in their official capacity. Respondent Caleb Vitello, ICE Field Office Director is responsible for the detention of noncitizens in the New York district and for any transfer or removal of Petitioners outside of this judicial district. Rodney S. Scott, Commissioner of Customs and Border Protection is responsible for the detention of noncitizens at US borders and ports of entry. Both Mr. Vitello and Mr. Scott are sued in their official capacity.

FACTS

18. On information and belief, Petitioner Hassanatou Diallo ("Ms. Diallo"), a Guinean national and her [redacted] child, Petitioner Baby Diallo, have been detained by the Department of Homeland Security for approximately the last week. During this time, Petitioner was in an advanced stage of her pregnancy.
19. On information and belief, on October 22, 2025, Ms. Diallo appeared before an Immigration Judge at Varick Street, New York.
20. On information and belief, the Department of Homeland Security transported Ms. Diallo and Baby Diallo to JFK airport on October 22, 2025, apparently intending to deport them to Guinea.
21. On information and belief, before this could take place, Ms. Diallo went into labor. The Department of Homeland Security transported Ms. Diallo and Baby Diallo to Jamaica Hospital Medical Center, in Queens, New York, where at some time thereafter, Ms. Diallo gave birth to Newborn Diallo.

22. Undersigned counsel learned of these events after being contacted by an individual at New York's child protective agency, the Administration for Children's Services ("ACS"). Jamaica Hospital staff contacted the Administration for Children's Services to inquire about respite foster care for Baby Diallo while Ms. Diallo was giving birth.
23. On information and belief, the Department of Homeland Security subsequently expressed their intention to deport Ms. Diallo, Baby Diallo and Newborn Diallo as soon as Jamaica Hospital deemed Ms. Diallo medically able to leave the hospital.
24. Undersigned counsel made numerous efforts to communicate with Ms. Diallo, including by travelling to Jamaica Hospital in person, and was told that the Department of Homeland Security supervisor overseeing the case had refused to speak to counsel, or to allow counsel to speak to Ms. Diallo.
25. On informationa and belief, Petitioners face imminent transfer outside of this judicial district and face removal from the United States.

CLAIMS FOR RELIEF

26. The Department of Homeland Security's decision to detain a pregnant mother and her year-old child for a week and then place them on a deportation flight–the latter stymied only by Ms. Diallo's inconveniently going into labor while at JFK Airport–and their continuing intention to deport Ms. Diallo, Baby Diallo and days-old Newborn Diallo forthwith violates the Rehabilitation Act, the Fifth Amendment, and the Department of Homeland Security's own policy regarding pregnant and nursing mothers. The factual allegations listed above are incorporated into each of the causes of actions listed below.

FIRST CAUSE OF ACTION

Violation of Section 504 of the 1973 Rehabilitation Act: Discrimination Against Pregnant and

Nursing Mothers in ICE Custody

27. Petitioners incorporate the allegations in the paragraphs above as though fully set forth here.

28. Under § 504 of the Rehabilitation Act, federal public entities must act affirmatively to accommodate qualified individuals with disabilities, in order to ensure that they have meaningful access to the programs, services, and benefits to which they are legally entitled. 8 U.S.C. § 794(a). To establish a violation of § 504, a plaintiff-petitioner must first establish that they are a "qualified individual with a disability", meaning that they suffer from a physical or mental impairment and that the impairment "substantially limited" a major life activity. Second, they must demonstrate that the defendants-respondents are subject to the Rehabilitation Act. Third, they must show that they were denied the opportunity to participate or benefit from respondents' services, programs, or activities, or were otherwise discriminated against by respondents, by reason of their disability.

29. This Court should therefore find that the Respondents' decision to detain Ms. Diallo and then put her on a plane when she was in an advanced stage of pregnancy, violated Section 504 of the Rehabilitation Act, 8 U.S.C. § 794, and 6 C.F.R. § 15.30 (a) and (b)(1). This Court should also find that Respondents intent to deport Ms. Diallo and days-old Newborn Diallo upon discharge from the Hospital violates the same. Accordingly, this Court should require Respondents-Defendants to make a reasonable accommodation by ordering them to release Ms. Diallo and to enjoin them from deporting her, her one year old child and her newborn US citizen baby. This accommodation should extend at least until Ms. Diallo is no longer nursing Newborn Diallo.

SECOND CAUSE OF ACTION

Respondents Flout Their Own Policy, In Contravention of United States ex rel. Accardi v. Shaughnessy

30. Petitioners incorporate the allegations in the paragraphs above as though fully set forth here.

31. ICE's own policies instruct that ICE should not detain pregnant, postpartum, or nursing individuals except under very limited circumstances. Their July 2021 directive provides that "[g]enerally, ICE should not detain, arrest, or take into custody for an administrative violation of the immigration laws known to be pregnant, postpartum, or nursing unless release is prohibited by law or exceptional circumstances exist," and that "ICE officers and agents should carefully weigh the decision to issue a detainer, arrest, or take into custody for an administrative violation of the immigration laws an individual who is known to be pregnant, postpartum, or nursing." *See* Exhibit A, ICE Directive 11032.4, July 1, 2021, *Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals*.

32. Here, ICE has violated its own policies–Petitioner Ms. Diallo was a nursing pregnant mother when she was detained by ICE for one week, and having just given birth within the last two days, is now a postpartum mother and continues to be a nursing mother. Despite that, the Department of Homeland Security is keeping Ms. Diallo and her babies in their custody, without access to counsel. Further, they have represented that they intend to place Ms. Diallo and her two babies back on a deportation flight as soon as the hospital determines that Ms. Diallo can be medically discharged.

33. As such this Court should find that Respondents-Defendants actions are invalid, as they

are in contravention of its own procedural safeguards and hence the *Accardi* doctrine.

THIRD CAUSE OF ACTION

Violation of the Right to Procedural Due Process

34. Petitioners incorporate the allegations in the paragraphs above as though fully set forth here.

35. The Fifth Amendment to the United States Constitution provides that no person shall be deprived of liberty without due process of law. That protection extends to all persons within the United States, regardless of citizenship or immigration status. *Yamataya v. Fisher* (The Japanese Immigrant Case), 189 U.S. 86, 100–01 (1903); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

36. Due process requires that individuals in government custody be afforded a meaningful opportunity to be heard, which includes the ability to communicate with counsel. By preventing counsel from meeting or speaking with Ms. Diallo, despite repeated requests, Respondents have denied her that fundamental safeguard and obstructed her ability to seek judicial relief.

37. The Supreme Court has long held that deportation and exclusion proceedings, though civil in nature, must be conducted with scrupulous fairness. *Bridges v. Wixon*, 326 U.S. 135, 154 (1945); *Wong Yang Sung v. McGrath*, 339 U.S. 33, 50 (1950); *Landon v. Plasencia*, 459 U.S. 21, 32–34 (1982). Those decisions confirm that due process under the Fifth Amendment encompasses the right to consult with counsel when liberty and the right to remain in the United States are at stake. Respondents' continued refusal to permit attorney access while Ms. Diallo remains in custody and faces imminent removal constitutes an unlawful deprivation of due process.

38. Petitioners' detention and imminent removal without access to counsel and without the opportunity to challenge their detention and removal, both of which as stated above are in contravention of Respondent's policies, violate the Fifth Amendment right to procedural due process.

FOURTH CAUSE OF ACTION

Petitioners' Detention and Imminent Removal Violate their Right to Substantive Due Process

39. Petitioners incorporate the allegations in the paragraphs above as though fully set forth here.

40. Respondents actions here to detain a woman in advanced stages of her pregnancy and her one-year-old child, transfer them from Texas to New York, transport to JFK International Airport with the intent of removing them only to be stymied by Petitioner Diallo actually going into labor, keeping Petitioner Diallo in custody at the hospital where she cannot even access legal counsel, and planning to remove Petitioner Diallo, Newborn Diallo, and Baby Diallo upon their discharge from Jamaica Hospital shocks the conscience.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

1) Assume jurisdiction over this matter;
2) Declare that Petitioners are detained in violation of law;
3) Order the immediate release of Petitioners or, in the alternative, enjoin Respondents from transferring Petitioners outside of this judicial district, during the pendency of removal proceedings;
4) Enjoin Respondents from removing Petitioners from the United States without the procedures for removal identified in the Immigration and Nationality Act;

5) Award costs and reasonable attorney fees incurred under this action under 28 U.S.C. § 2412, et. seq. (Equal Access to Justice Act); and

6) Grant any further relief that this Court may deem fit and proper.

Dated: 10/23/2025

Respectfully Submitted,

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I submit this verification on behalf of Petitioner because I am one of her attorneys. My legal team and I have attempted to communicate with Ms. Diallo but have been prevented from doing so by Respondents. I have discussed with witnesses the facts and events described in the instant verified petition and complaint. On the basis of those discussions, on information and belief, I hereby verify that the factual statements made in the attached verified petition for writ of habeas corpus and complaint are true and correct to the best of my knowledge.

Dated: October 23, 2025
Jamaica, New York

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