

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

RAHEEM DELANO FULTON,

Petitioner-Plaintiff,

v.

ALEJANDRO MAYORKAS,
in his official capacity as Secretary,
U.S. Department of Homeland
Security;

PATRICK LECHLEITNER,
in his official capacity as Acting
Director of U.S. Immigration and
Customs Enforcement

THOMAS BROPHY,
in his official capacity as Acting
Field Office Director, Buffalo Field
Office, Enforcement and Removal
Operations, U.S. Immigration and
Customs Enforcement, U.S.
Department of Homeland Security;
and

MICHAEL BALL,
in his official capacity as Warden,
Buffalo Federal Detention Facility.

Respondents-Defendants.

Civil Action No.:

**Petition for Writ of Habeas Corpus and
Complaint for Injunctive Relief**

Oral Argument Requested

INTRODUCTION

1. This case is about Raheem Delano Fulton (“Petitioner” or “Mr. Fulton”), a 39-year old man who suffers from End Stage Renal Disease (“ESRD”) and is currently detained by Immigration and Customs Enforcement (“ICE”) at the Buffalo Federal Detention Facility (“BFDF”) in Batavia, New York. Upon information and belief, Mr. Fulton is scheduled for removal from the United States to Jamaica on January 30, 2025. Yet, in implementing Mr. Fulton’s removal to Jamaica, Respondents-Defendants have failed to provide any future continuity of medical care for Mr. Fulton, who requires dialysis treatment three times a week in order to survive. Therefore, if Mr. Fulton is removed to Jamaica on January 30, 2025, his life-sustaining dialysis treatment will abruptly end.
2. ESRD is a permanent medical condition where the kidneys can no longer function on their own. The devastating results should Mr. Fulton not receive continuous dialysis treatment are supported by the expert medical opinion of Dr. Sahar Amin. *See* Exh. 1, Letter from Dr. Sahar Amin dated January 2, 2025 (“Dr. Amin Letter”). For example, in March 2024, Mr. Fulton missed one dialysis appointment when he was transferred by ICE from Florida to New York. *Id.* After missing one appointment and going without dialysis for almost five days, Mr. Fulton’s health rapidly declined, and he was taken to the Emergency Department at the Erie County Medical Center (“ECMC”). *Id.* He suffered from a fluid overload and high potassium and needed to be “dialyzed urgently due to severe life-threatening hyperkalemia of 7 mmol/lit and pulmonary edema.” *Id.*
3. Through this petition and complaint, Mr. Fulton does not seek to challenge the order of removal that was entered against him or ICE’s authority to remove him. Instead, his claims assert that the effectuation of the removal order—by which Respondents-Defendants have failed to

provide any continuity in Mr. Fulton’s dialysis treatment—is in violation of the Performance Based National Detention Standards (“PBNDS”), the Administrative Procedure Act (“APA”) and the Due Process Clause of the Fifth Amendment to the United States Constitution.

4. To remedy this alleged violation, Mr. Fulton respectfully requests this Court to order the Respondent-Defendants to cease all active efforts to remove Petitioner-Plaintiff unless the government can demonstrate that he has a dialysis appointments scheduled for three times a week after his removal on January 30, 2025 for—at a minimum—the 30 days required by ICE’s own standards. Mr. Fulton currently receives dialysis on Tuesdays, Thursdays, and Saturdays. Upon information and belief, ICE has no dialysis scheduled for Mr. Fulton in Jamaica on Saturday, February 1, 2025, or any date thereafter.

PARTIES

5. Mr. Fulton is a native and citizen of Jamaica. He is currently detained by ICE at BDFD under the agency’s 8 U.S.C. § 1231 detention authority. He is 39-years-old and has been on dialysis due to ESRD for the past 21 years. He has lived in the United States since 2003 and is the father to three United States Citizen (“USC”) children.
6. Respondent-Defendant Alejandro Mayorkas is the Secretary of DHS. He is sued in his official capacity only. Secretary Mayorkas is charged with the operations of DHS, including removal actions taken by DHS’s sub-agency, ICE.
7. Respondent-Defendant Patrick Lechleitner is sued in his official capacity as Acting Director of ICE.
8. Respondent-Defendant Thomas Brophy is the Acting Field Office Director for the Buffalo Field Office of ICE Enforcement and Removal Operations. He is sued in his official capacity only. Acting Field Office Director Brophy is charged with exercising authority over the

removal operations carried out by ICE in the Buffalo geographic region, which includes the BFDF, and for determinations on whether and where Petitioner-Plaintiff is to be detained prior to removal.

9. Respondent-Defendant Michael Ball is sued in his official capacity as Warden of the BFDF, the ICE facility at which Petitioner is currently detained.

JURISDICTION AND VENUE

10. This Court has jurisdiction under the U.S. Constitution. U.S. Const. art. I § 9, cl. 2 (“The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require.”).
11. The Court also has jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (the All Writs Act); 28 U.S.C. § 2241 (habeas corpus); and 5 U.S.C. § 701 (the Administrative Procedure Act).
12. This Court has additional remedial authority under 28 U.S.C. §§ 2201-02 (the Declaratory Judgment Act), to grant injunctive and declaratory relief.
13. Venue is proper in the U.S. District Court for the Western District of New York because Respondents-Defendants are officers of United States agencies, Mr. Fulton currently resides within this District, and there is no real property involved in this action. *See* 28 U.S.C. § 1391(e)(1).

RELEVANT FACTS AND PROCEDURAL HISTORY

14. Mr. Fulton was born on June 1, 1985, in St. Ann, Jamaica. As a child, he often traveled to the United States with his family for vacations. He started living in the United States in July 2003 after entering on a B2 visa and has remained here ever since.

15. In July 2003, Mr. Fulton was diagnosed with kidney disease and underwent kidney removal surgery. *See* Exh. 1, Dr. Amin Letter. Since then, he requires dialysis treatment three times a week to survive. *Id.*
16. Mr. Fulton is a father to three daughters: Treselle Patrice Fulton, age seventeen (17), Naheema Carmen Fulton, age fourteen (14), and Lilliana Tsungani, age ten (10). All three children are USCs.
17. On February 6, 2021, Mr. Fulton was arrested on an attempted burglary charge. Mr. Fulton was convicted of attempted burglary in the second degree in the Supreme Court of the State of New York, Queens County on September 29, 2022. On October 14, 2022, he was sentenced to three years in prison and ultimately served thirty (30) months at Elmira Correctional Facility.
18. On May 23, 2023, DHS served Mr. Fulton with a Notice to Appear (“NTA”) that charged him as removable based on his criminal conviction.
19. At the conclusion of the sentence related to his criminal conviction, ICE detained Mr. Fulton at BFDf on August 25, 2023, where he has remained since.
20. In removal proceedings, Mr. Fulton applied for relief from removal, but his application was denied by the Immigration Judge and the Board of Immigration Appeals (“BIA”) affirmed the Immigration Judge’s decision on May 2, 2024. Therefore, Mr. Fulton has had a final order of removal since May 2, 2024.

Mr. Fulton Suffers from Life-threatening End Stage Renal Disease.

21. For the last 21 years, Mr. Fulton has suffered from ESRD, a permanent medical condition where the kidneys can no longer function on their own. *See* Exh. 1, Dr. Amin Letter. Mr. Fulton requires dialysis three times a week in order to survive. *Id.* Without regular dialysis treatment, he will experience electrolyte imbalances that may lead to shortness of breath due to fluid

accumulation in the lungs, fatal arrhythmias, or heart blocks. *Id.* Mr. Fulton also suffers from many complications related to his kidney disease including severe renal osteodystrophy,¹ intermittent episodes of gross hematuria,² and cystic renal disease.³ *Id.*

22. Mr. Fulton has received consistent, regular dialysis at the ECMC since August 2023 and has been under the care of his current provider, Dr. Sahar Amin, since May 2024. *Id.* He currently receives dialysis three times a week on Tuesdays, Thursdays, and Saturdays for four hours each session. *Id.* Mr. Fulton also receives regular doxercalciferol injections during his sessions to strengthen his bone health and takes Cinacalcet and calcium acetate medication regularly with his meals. *Id.*

23. Mr. Fulton was recently diagnosed with a pulmonary embolism (blood clots in his lungs). *Id.* Mr. Fulton is now taking blood thinner medication and has received additional treatment and reviews to address his growing medical issues. *Id.*

24. Dr. Amin recommends that Mr. Fulton “continues his treatment at ECMC strictly as [they] have optimized his care very diligently.” *Id.* Without regular care, Mr. Fulton “stands a great risk of rapid deterioration.” *Id.*

¹ Renal osteodystrophy is a condition that can weaken the bones, causing bone pain and fractures. *Renal Osteodystrophy*, Cleveland Clinic, <https://my.clevelandclinic.org/health/diseases/24006-renal-osteodystrophy> (last visited Jan. 18, 2025).

² Gross hematuria refers to when the blood is visible in urine. *Hematuria*, Nat’l Inst. of Diabetes and Digestive and Kidney Diseases, <https://www.niddk.nih.gov/health-information/urologic-diseases/hematuria-blood-urine> (last visited Jan. 18, 2025).

³ Acquired cystic renal disease “happens when a person's kidneys develop fluid-filled sacs, called cysts, over time.” *Acquired Cystic Kidney Disease*, Nat’l Inst. of Diabetes and Digestive and Kidney Diseases, <https://www.niddk.nih.gov/health-information/kidney-disease/acquired-cystic-kidney-disease#:~:text=Clinical%20Trials-,What%20is%20acquired%20cystic%20kidney%20disease%3F,kidneys%20to%20develop%20multiple%20cyst> (last visited Jan. 18, 2025).

The Medical Care Required to Sustain Mr. Fulton’s Life is Inaccessible in Jamaica.

25. Mr. Fulton faces a severe threat to his health if he were to be removed to his country of birth, Jamaica. Chronic kidney disease is “a significant cause of morbidity and mortality” in Jamaica and is the fourth leading cause of death in the country.”⁴
26. The Jamaican medical system is inadequate to meet Mr. Fulton’s needs as health care facilities in Jamaica “face multiple challenges such as a lack of personnel, inadequate infrastructure, and outdated information systems, which have led to reduced quality of care, especially for those with chronic conditions.”⁵
27. Most dialysis care in Jamaica is only available through the private sector. Less than one-fifth of Jamaicans (19%) have health insurance, meaning that the majority of patients with kidney disease must pay out-of-pocket in order to access dialysis treatment. Jamaica has “one of the highest proportion[s] of out-of-pocket costs for hemodialysis in the region (ranging from 51% to 75%).” An average dialysis session in Jamaica costs \$90–\$117 US dollars while the median household income is only \$443.71 US dollars,⁶ making it extremely expensive and almost impossible for individuals like Mr. Fulton to access dialysis three times a week.
28. Access to both trained medical providers and dialysis machines is also extremely limited in Jamaica. As of 2023, there were only 16 nephrologists on the island serving a population of 2.9 million people.⁷ The meager number of dialysis machines currently available similarly

⁴ Lori-Ann Fisher & Racquel Lowe-Jones, *Global Dialysis Perspective: Jamaica*, 4 *Kidney360*, 1623-27 (2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10695636/>.

⁵ *Strengthening Health Systems & Services in Jamaica*, Pan-American Health Organization <https://www.paho.org/en/stories/strengthening-health-systems-services-jamaica> (last visited Jan. 18, 2025).

⁶ *Id.*

⁷ Jamaica has 5.5 nephrologists per million people, compared to the United States which has 28 per million people. The median number of nephrologists per million people is 18.1. Fisher & Lowe-Jones, *Global Dialysis Perspective: Jamaica*.

“remain[s] inadequate” for the growing rates of ESRD among the Jamaican population.⁸

Among countries in North America and the Caribbean, Jamaica had “the lowest prevalence of long-term dialysis ... in addition to dialysis and transplant centers.”⁹

29. Jamaica’s National Health Fund which subsidizes the cost of medication for Jamaicans living with a chronic illness does not cover medication for ESRD, making newer medications and testing even more inaccessible. Additionally, “many drugs used in the management of bone mineral disease in [ESRD] are not locally available (such as cinacalcet) or expensive (non–calcium-based phosphate binders or intravenous paricalcitol).”¹⁰

Mr. Fulton’s Removal is Scheduled for January 30, 2025, and the Government Has Not Scheduled Any Dialysis Appointments for Mr. Fulton.

30. Respondents-Defendants initially planned to deport Mr. Fulton to Jamaica on July 25, 2024.

However, two days before his departure, ICE informed Mr. Fulton that he could not be deported due to, upon information and belief, an issue with the Jamaican consulate and the fact that they could not schedule dialysis treatment during and after his deportation.

31. On January 16, 2025, Mr. Fulton learned that he was scheduled to deportation to Jamaica on January 30, 2025. However, there continues to be—as was the case in July 2024—no plan for continued medical care in Jamaica.

⁸ Holly Kramer et al., *The burden of chronic kidney disease and its major risk factors in Jamaica*, 94 *Kidney Int’l*, 840-42 (2018), [https://www.kidney-international.org/article/S0085-2538\(18\)30602-1/fulltext#:~:text=While%20at%20least%2018%20operating,the%20pace%20of%20ESRD%20growth.](https://www.kidney-international.org/article/S0085-2538(18)30602-1/fulltext#:~:text=While%20at%20least%2018%20operating,the%20pace%20of%20ESRD%20growth.)

⁹ Aminu K Bello et al., *International Society of Nephrology Global Kidney Health Atlas: structures, organization, and services for the management of kidney failure in North America and the Caribbean*, 11 *Kidney Int’l Supp.*, E66-76 (2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8084729/>.

¹⁰ Fisher & Lowe-Jones, *Global Dialysis Perspective: Jamaica*.

32. Mr. Fulton currently receives dialysis on Tuesdays, Thursdays, and Saturdays. Upon information and belief, ICE has no dialysis scheduled for Mr. Fulton in Jamaica on Saturday, February 1, 2025.

STATUTORY AND LEGAL FRAMEWORK

ICE's Performance-Based National Detention Standards

33. The Performance-Based National Detention Standards 2011 (“PBNDS”) outline the rules and regulations that guide ICE actions as they relate to immigration detention and removal enforcement.¹¹

34. Section 2.1(I) of the PBNDS, which outlines the admission and release procedures, provides that “[t]he time, point and manner of release from a facility shall be consistent with the safety considerations and shall take into account special vulnerabilities.” It further notes that “[p]rior to release, the detainee shall be notified of the upcoming release and provided an opportunity to make a free phone call to facilitate release arrangements.”

35. Section 4.3(V)(Z) of the PBNDS, which concerns medical care and continuity of care, supplies that the ICE facility “must ensure that a plan is developed that provides for continuity of care in the event of a change in detention placement or status. . . . Upon removal or release from ICE custody, the detainee shall receive up to a 30 day supply of medication . . . and a detailed medical care summary[.]” Facility administrators are further required to “ensure that a continuity of treatment care plan is developed and a written copy provided to the detainee prior to removal.” Section 4.3(II)(8), meanwhile, notes that individuals who “require[] close, chronic or convalescent medical supervision shall be treated in accordance with a written treatment

¹¹ Available at: <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

plan conforming to accepted medical practices for the condition in question, approved by a licensed physician[.]”

36. Section 4.3(BB)(4)(c)(2) of the PBNDS, which addresses medical care during the transfer and release of detainees, indicates that “[u]pon removal or release from ICE custody, the detainee shall be provided medication, referrals to community-based providers as medically appropriate, and a detained medical care summary. This summary should include instructions that the detainee can understand and health history that would be meaningful to future medical providers.” It should further, as a minimum, include information such as the noncitizen’s “current mental, dental, and physical health status, including all significant health issues, and highlighting any potential unstable issues or conditions which require urgent follow-up;” “current medications, with instructions for dose, frequency, etc.[;]” “any pending medical or mental health evaluations, tests, procedures, or treatments for a serious medical condition scheduled for the detainee at the sending facility[.]”

CAUSES OF ACTION

COUNT ONE:

Respondents-Defendants Process and Manner of Removal of Petitioner-Plaintiff Violates the Administrative Procedures Act’s Prohibition Against Arbitrary Agency Action and Runs Afoul of the Accardi Doctrine.

37. Petitioner-Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.
38. The APA provides that a court “shall . . . hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). When the government has promulgated “[r]egulations with the force and effect of law,” those regulations “supplement the bare bones” of federal statutes, such that the

agencies are bound to follow their own “existing valid regulations.” *United States ex rel. Accardi Shaughnessy*, 347 U.S. 260, 266, 268 (1954); *see also Montilla v. I.N.S.*, 926 F.2d 162, 166-167 (2d Cir. 1991).

39. Pursuant to the *Accardi* doctrine, Respondents-Defendants are bound to apply and uphold the rules and regulations contained in the PBNDS. They are further restricted from taking any actions that are arbitrary, capricious, an abuse of discretion, or not in accordance with law.
40. Respondents-Defendants’ failure to abide by the PBNDS—particularly the standards indicating they must provide adequate medical clearance and medical planning in advance of removal—constitutes impermissible agency action.
41. Section 4.3(V)(Z) of the PBNDS, which concerns medical care and continuity of care, supplies that the ICE facility “must ensure that a plan is developed that provides for continuity of care in the event of a change in detention placement or status. . . . Upon removal or release from ICE custody, the detainee ***shall receive up to a 30 day supply of medication*** . . . and a detailed medical care summary[.]”
42. Dialysis is a life-sustaining medication that is required for Petitioner-Plaintiff. Petitioner-Plaintiff currently receives dialysis on Tuesdays, Thursdays, and Saturdays. Upon information and belief, ICE has no dialysis scheduled for Mr. Fulton in Jamaica on Saturday, February 1, 2025, or any day thereafter.
43. This constitutes arbitrary and capricious actions as, in the present circumstances, Respondents-Defendants place Petitioner- Plaintiff at a heightened risk of death.
44. As a result of this ongoing violation, Petitioner-Plaintiff suffers prejudice, actual and substantial hardship, and irreparable injury.
45. Petitioner-Plaintiff has no adequate remedy at law.

COUNT TWO:

Removing Petitioner-Plaintiff Runs Afoul of the State Created Danger Doctrine, Violating Petitioner-Plaintiff's Fifth Amendment Right to Substantive Due Process.

46. Petitioner-Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.
47. Substantive due process precludes a state actor from affirmatively acting to create or enhance a danger that will ultimately harm an individual. *See Butera v. D.C.*, 235 F.3d 637, 649–51 (D.C. Cir. 2001) (citing cases). The State “owes a duty of protection when its agents create or increase the danger to an individual.” *Id.*; *see also Paine v. Cason*, 678 F.3d 500, 510 (7th Cir. 2012) (due process was violated where police officers left detainee in a more dangerous neighborhood, away from public transportation and without a cell phone); *Wang v. Reno*, 81 F.3d 808, 817 (9th Cir. 1996) (noncitizen could not be removed to China where U.S. government convinced him to testify about topic that would lead Chinese government to torture and possibly execute him). Due process is implicated when the state actor’s conduct in such a case is ““so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.”” *Butera*, 235 F.3d at 651 (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998)).
48. Respondents-Defendants’ actions in effectuating Petitioner-Plaintiff’s removal without scheduled dialysis treatment on February 1, 2025, or any day thereafter is egregious and shocks the conscience.

COUNT THREE:

Imminent Removal Without Medical Clearance Violates Petitioner-Plaintiff's Fifth Amendment Right to Procedural Due Process.

49. Petitioner-Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

50. The Fifth Amendment of the United States Constitution guarantees that noncitizens receive adequate procedural protections in the course of any executions of the government's detention and removal authorities. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Such protections are flexible and guided by considerations for the "private interest that will be affected[.]" "the risk of an erroneous deprivation of such interest through the procedures used[.]" and "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

51. Respondents-Defendants' actions toward effectuating Petitioner-Plaintiff's removal without ensuring that he has scheduled dialysis treatment on February 1, 2025, or any day thereafter creates a substantial risk of an erroneous deprivation of Petitioner-Plaintiff's core interest in life and liberty.

52. As a result of this ongoing violation, Petitioner-Plaintiff suffers prejudice, actual and substantial hardship, and irreparable injury.

53. Petitioner-Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court to grant the following relief:

1. Assume jurisdiction over this matter;
2. Declare that Respondents-Defendants' actions in removing Petitioner-Plaintiff to Jamaica on January 30, 2025, without ensuring that he has scheduled dialysis treatment on February

- 1, 2025, or any day thereafter for—at a minimum 30 days—violates the APA and the Due Process Clause of the Fifth Amendment of the U.S. Constitution;
3. Enjoin Respondents-Defendants from removing Petitioner-Plaintiff from the United States without ensuring that he has scheduled dialysis treatment on February 1, 2025, and for, at a minimum, 30 days thereafter;
 4. Enjoin Respondents-Defendants from transferring Petitioner-Plaintiff outside the Western District of New York and the United States during the pendency of this action;
 5. Award Petitioner-Plaintiff his costs and reasonable attorneys' fees, pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412; and
 6. Grant any other and further relief that this Court deems just and proper.

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Respectfully Submitted,

DATED: January 19, 2025
Washington, DC

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**Application for admission forthcoming*

EXHIBITS

1. Letter from Dr. Sahar Amin dated January 2, 2025

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

DATED: January 19, 2025
Washington, DC

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