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★ **FEB 27 2020** ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LONG ISLAND OFFICE

CV-20 1083

Case No.

JOSEPH ANTHONY RAI A on behalf of himself
and his son A.R., a minor,

Petitioner/Plaintiff,

-against-

MICHAEL POMPEO, in his official capacity as
Secretary of State; and
U.S. DEPARTMENT OF STATE,

Respondents/Defendants.

**PETITION FOR
MANDAMUS AND
COMPLAINT FOR
DECLARATORY RELIEF**

AZRACK, J.

SHIELDS, M.J.

Petitioner/Plaintiff Joseph Anthony Raia on behalf of himself and his son A.R., a minor (“Petitioner” or “Dr. Raia”), by and through its attorneys, Harris Beach PLLC, as and for its Petition for Mandamus and Complaint for Injunctive and Declaratory Relief, sets forth as follows:

PRELIMINARY STATEMENT

1. More than a year ago, Dr. Raia’s estranged wife, Cinzia Petraz, abducted his son, A.R., and fled the United States with him to Italy while Dr. Raia was at work.
2. A.R. is a United States citizen, was born in the State of New York, and has resided in the State of New York his entire life prior to his abduction.
3. Ms. Petraz is not just interfering with Dr. Raia’s relationship with his son -- she is actively endangering A.R.’s life. A.R. has a congenital heart condition and requires constant, uninterrupted care by his physicians in New York. At only seventeen days old, A.R. underwent heart surgery. Since birth, A.R. has been under the close care of his physicians in New York, who have been carefully monitoring his heart condition and the medications he needs to survive.

The lead physician treating A.R.'s heart condition has re-affirmed the urgent need that he promptly be returned to the care of his physicians in the United States, as he will require another surgical procedure in the near future.

4. As described below, the Court that has granted sole custody of A.R. to Dr. Raia as well as the Court-appointed attorney for A.R. have also confirmed the emergency nature of this matter and that A.R. must promptly be returned to the United States and the care of his physicians.

5. Mark A. Green, Esq., is the court-appointed attorney for A.R. Attorney Green, on behalf of his client, A.R., joins in the relief requested in this Petition and Complaint.¹

6. In Italy, A.R. does not have access to the medical care he urgently needs. A.R.'s life is literally at risk each day until he is returned to the United States and the care of his doctors.

7. After months of legal proceedings in New York State Court, on December 5, 2019, Dr. Raia obtained sole legal custody of A.R.

8. Recognizing the “*emergency pending with regard to the status of the child’s health*” and adding “I think we need to have him returned”, the State Court that granted Dr. Raia sole custody of A.R. also authorized Dr. Raia to obtain a passport for A.R. without Ms. Petraz’s consent and instructed that the passport be issued without requiring the physical presence of the child.

9. Dr. Raia’s legal victory was short lived. In the nearly three months since that order was entered, Respondent U.S. Department of State has refused to issue a passport for A.R. notwithstanding the State Court Order and the peril A.R. currently faces in Italy without access to necessary medical care. In these circumstances, the issuance of a passport for A.R. is

¹ Attorney Green’s Declaration is attached as Exhibit “A”.

mandatory. To require otherwise would condemn a 10-year-old U.S. citizen to likely death as he will not survive without his medications and additional surgery.

10. A.R.'s situation has become even more dire as the spread of the Coronavirus pandemic invades Italy and surrounds the location where it is believed he is residing. Any exposure to the Coronavirus will almost certainly be fatal to A.R. with his current heart condition. Additionally, the panic, unrest, quarantines, lockdowns, and reduced good and services places A.R. in increased danger as the largest European outbreak of the Coronavirus is in the precise city where A.R. is believed to be located.

PARTIES

11. Petitioner/Plaintiff Joseph Anthony Raia is a United States citizen and resident of Nassau County, New York. He is the father and sole legal custodian and guardian of A.R. He applied for the issuance of a U.S. Passport on behalf of A.R. and was denied. His estranged wife and the mother of A.R., Cinzia Petraz, unlawfully abducted A.R. and brought him to Italy.

12. Petitioner/Plaintiff A.R. is a United States citizen and, until recently, a resident of Nassau County, New York. He is the son of Dr. Raia. He suffers from a congenital heart condition and is currently believed to be located in Italy after being unlawfully abducted by his mother, Cinzia Petraz, who no longer has any legal custody of him.

13. A.R.'s Court-appointed attorney, Mark A. Green, Esq., on behalf of A.R., joins in the relief requested in this Petition and Complaint.

14. Respondent/Defendant Michael Pompeo is the Secretary of State. Respondent Pompeo is responsible for issuing passports to U.S. citizens upon being provided the information required pursuant to U.S. Department of State regulations. He is sued in his official capacity.

15. Respondent/Defendant U.S. Department of State is a federal cabinet agency

responsible for the issuance of passports to U.S. citizens upon being provided the information required pursuant to U.S. Department of State regulations. The Department of State is a Department of the Executive Branch of the United States Government, and is an agency within the meaning of 5 U.S.C. § 552(f).

JURISDICTION AND VENUE

16. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1361. Jurisdiction is further conferred by 5 U.S.C. § 702.

17. The Court has additional remedial authority under the Declaratory Judgment Act, 29 U.S.C. § 2201 *et seq.*

18. Venue is proper within the Eastern District of New York pursuant to 28 U.S.C. § 1391(e)(1)(C) because Plaintiff Dr. Raia resides in this district and Defendants are officers and employees of the United States sued in their official capacities.

STATEMENT OF FACTS

A.R.'s Serious Medical Conditions

19. A.R. was born on May 22, 2009 in the State of New York and at all times has been a citizen of the United States of America. He is the son of Dr. Raia and Cinzia Petraz.

20. A.R. was born with a congenital heart condition. At only seventeen days old, he underwent heart surgery. Since birth, A.R. has been under the close care of his physicians in New York, who have been carefully monitoring his heart condition and the medications he needs to survive.

21. A.R.'s New York physicians have indicated that he will require another open-heart surgery in the near future. In a recent letter dated February 5, 2020, A.R.'s lead physician at Cohen Children Medical Center stated that "surgery is inevitable and will be needed in the

near future” and that “[t]he need to keep scheduled appointments . . . is imperative for [A.R.’s] continued cardiac care.”²

Cinzia Petraz’s Abduction of A.R.

22. On January 4, 2019, without any notice to or consent by Dr. Raia, Cinzia Petraz, fled to Italy with A.R..

23. Despite repeated promises to return A.R. to the United States, Ms. Petraz has not done so.

24. Since A.R.’s abduction and upon recognizing that Ms. Petraz would not keep her promises to return to A.R. to the United States, Dr. Raia has been desperately attempting to secure his son’s safe return to the United States and the care of his physicians.

25. Prior to his abduction, A.R. resided in New York his entire life.

The New York State Court Custody Proceeding

26. Dr. Raia filed a custody proceeding in the Supreme Court, County of Nassau, State of New York.

27. The State Court in the custody proceeding appointed Mark A. Green, Esq., as the attorney for the child, A.R.

28. After Ms. Petraz was provided full notice and due process in the manner ordered by the State Court, an evidentiary hearing on December 5, 2019, was held on Dr. Raia’s application for sole legal custody of A.R.³

29. Upon hearing testimony from Dr. Raia, Mr. Green, the attorney for A.R., joined in Dr. Raia’s application that he should be granted sole legal custody of A.R.

² A redacted copy of the letter is attached as **Exhibit “B”**.

³ A redacted transcript of the evidentiary hearing is attached as **Exhibit “C”**.

30. Attorney Green, joined in the application that Dr. Raia be awarded full custody and explained that the testimony elicited contains everything he would have covered. *See* Ex. C (Transcript, page 17, lines 13-18).

31. Based on Dr. Raia's testimony and Mr. Green's support for Dr. Raia's application, the State Court granted Dr. Raia sole legal custody of A.R. The State Court also recognized the emergency situation A.R. was facing without access to his required medical care in New York, noting at the hearing that there is an "emergency pending with regard to the status of the child's health" and "I think we need to have him returned." *See* Ex. C (Transcript, page 19, lines 14-22).

32. Upon making those findings, the State Court ordered that Dr. Raia "shall have final residential physical custody of [A.R.]," "shall retrieve the child from Italy and return him to [New York]," and "shall be issued a passport for the child even though the child is not present here in the United States without the mother's consent". *See* Transcript, page 18, line 18 – page 19, line 8. The State Court memorialized those rulings in a written Order, which was entered on December 5, 2019.⁴

Dr. Raia's Attempts to Obtain a Passport for A.R.

33. In October 2019, Dr. Raia submitted an application for a U.S. Passport for A.R. to at the New York Passport Agency in New York, New York.

34. On October 28, 2019, the U.S. Department of State denied Dr. Raia's application by letter, indicating to him, among other things, that Dr. Raia needed to present a final custody order to demonstrate that Ms. Petraz's consent to the application was not required and that Dr. Raia needed to appear with A.R. to make the application.

⁴ The State Court's Order is attached as **Exhibit "D"**.

35. Following the State Court's December 5, 2019 Order, Dr. Raia promptly made another attempt to have a passport issued for A.R.

36. On or about December 10, 2019, Dr. Raia submitted a second passport application for A.R., together with the State Court's December 5, 2019 Order, at the Office of the Town Clerk in Hempstead, New York. At the time Dr. Raia submitted the application, he spoke at length with the Passport Supervisor and explained that it was impossible for me to appear with A.R. in making the application because A.R. had been abducted by his mother in January 2019 and secreted away to Ital.

37. In early January 2020, the U.S. Department of State again denied Dr. Raia's application. This time the basis for the denial was that the A.R. was not physically present at the time the application was submitted, despite knowing that A.R.'s presence was impossible since A.R. was abducted and, to the best of my knowledge, is currently residing in or near Milan, Italy.

38. Since the U.S. Department of State refused to issue a passport for A.R., Dr. Raia engaged the undersigned counsel to attempt to obtain a passport for A.R., in order to facilitate his safe return to the United States and the physicians that have been treating his heart condition his entire life.

39. On February 6, 2020, Dr. Raia, through counsel, personally served a copy of the State Court Order upon the Respondent U.S. Department of State, the agency responsible for the issuance of passports. Included with that service was a letter explaining the urgency of the situation, the letter from A.R.'s lead physician (Ex. B), and the transcript from the December 5, 2019 evidentiary hearing (Ex. C).⁵

40. Respondent U.S. Department of State did not respond in any manner to the February 6, 2020 letter.

⁵ The February 6, 2020 letter and affidavit of service are attached as **Exhibit "E"**.

41. Repeated attempts were made on behalf of Dr. Raia to the U.S. Department of State Office of the Legal Advisor to speak with an official responsible for issuing a passport for A.R. in compliance with the State Court Order were made to the U.S. Department of State were unavailing.

42. Since no response had been received, on February 14, 2020, Dr. Raia, through counsel, personally served a second letter upon the Respondent U.S. Department of State. That letter again stressed the emergency situation A.R. was facing and the importance that a passport be immediately issued.⁶

43. The Respondent U.S. Department of State still did not respond. The only contact at Respondent U.S. Department of State who has indicated any knowledge of the matter is an intake paralegal. To this day - nearly three weeks after the documents the undersigned firm served on the U.S. Department of State on February 6, 2020 – that paralegal has not or will not provide the identity or contact information of any official assigned to handle the matter. To this day, despite the undersigned firm's repeated requests, the undersigned have not been contacted by or communicated with any person at the U.S. Department of State who is able to address this matter.

44. In desperation and in an effort to secure any response from the U.S. Department of State to Dr. Raia's repeated attempts, on February 19, 2020, my firm served a proposed Order to Show Cause that Dr. Raia intended to file in State Court to enforce the State Court Order, with the supporting motion papers.⁷

45. On February 21, 2020, an attorney from the Office of Immigration Litigation of the U.S. Department of Justice -- not an official from the U.S. Department of State -- contacted

⁶ The February 14, 2020 letter and affidavit of service are attached as **Exhibit "F"**.

⁷ The February 19, 2020 letter and affidavit of service for the proposed motion papers are attached as **Exhibit "G"**.

Dr. Raia's attorneys by telephone. The Department of Justice attorney indicated that it would resist any attempt by Dr. Raia to enforce the State Court Order and suggested that Dr. Raia should go to Milan, Italy, to attempt to apply for a passport for A.R. and merely provided a general telephone number and e-mail address for the Consulate in Italy. He did not provide any contact information for an official at the U.S. Department of State responsible for the matter.

46. On February 24, 2020, another Department of Justice attorney spoke with Dr. Raia's counsel. While stating that the U.S. Department of State is responsible for issuing passports, that attorney would not provide the identity of official from the U.S. Department of State capable of addressing this matter. During that call, the Department of Justice attorney inquired as to why Dr. Raia's counsel was speaking with the Department of Justice (inferring that Dr. Raia's counsel was speaking with the wrong agency). Dr. Raia's counsel responded that the Department of Justice, Office of Immigration Litigation, is the only agency that has provided any response to my firm's repeated attempts to have a passport issued for Dr. Raia's son.

47. To this day, months after Dr. Raia attempted to have a passport issued for his son, and nearly three weeks after my firm served the custody order upon the U.S. Department of State and explained the emergency, Dr. Raia has received absolutely no substantive contact from the U.S. Department of State, nor has he been provided with the identity or contact information of any official responsible for handling his request.

The Current Emergency

48. While Respondent U.S. Department of State has refused to issue a passport for A.R. or even speak with Dr. Raia's attorneys concerning the issuance of a passport for A.R., A.R.'s situation has grown more dire.

49. It has now been over a year since A.R. has been physically present in the United

States with access to his physicians. A.R. does not have access to adequate medical care for his serious heart condition in Italy. Thus, A.R.'s life is literally at risk each day he remains away from New York.

50. In the past week, the situation in Italy worsened still for A.R.

51. Outside of Asia, Italy has become the focal point of the largest European outbreak of the Coronavirus pandemic with over 215 reported cases as of February 24, 2020 and the location where A.R. is believed to be living -- Milan -- is the region in Italy with the most reported cases of the deadly virus. News reports indicate the panic and unrest in the precise city where A.R. is believed to be located.⁸

52. The virus poses a substantially greater risk to A.R. -- with his heart condition, it is probable that infection with the virus would be fatal.⁹

53. Meanwhile, the epitome of callous bureaucracy, Respondent U.S. Department of State refuses to even discuss issuing a passport for A.R. to Dr. Raia or provide any assistance to help facilitate the return of a kidnapped United States citizen and child, who is ill and in grave danger.

**The U.S. Department of State's Regulatory Requirements
For Issuing a Passport for A.R. Are Satisfied**

54. Under the governing regulations, the Respondent U.S. Department of State issues passports to U.S. citizen minors as a matter of course upon applications made by their legal guardians. *See* 22 C.F.R. § 51.28.

55. Although in a standard case the consent of both parents is required for the

⁸ *Coronavirus cases soar in Italy as authorities scramble to find patient zero*, CNN, at <https://www.cnn.com/2020/02/23/europe/italy-novel-coronavirus-spike-intl/index.html> (last visited on February 24, 2020).

⁹ *The Cardiac Implications of Novel Coronavirus*, DIAGNOSTIC AND INTERVENTIONAL CARDIOLOGY (February 20, 2020), at <https://www.dicardiology.com/article/cardiac-implications-novel-coronavirus>.

issuance of a passport, an express exception to that rule clearly applies here. The State Court Order provides “[d]ocumentary evidence that [Dr. Raia] . . . has sole custody of [A.R.]” 22 C.F.R. § 51.28(a)(3)(ii)(E). In fact, the operative regulation specifically lists “[a]n order of a court of competent jurisdiction granting sole legal custody to the applying parent . . . containing no travel restrictions inconsistent with issuance of the passport; or, specifically authorizing the applying parent to obtain a passport for the minor regardless of custodial arrangements.” *Id.*

56. Further, there is no basis for requiring the in person appearance of A.R. at the time of the passport application. Not only did the State Court specifically authorize Dr. Raia to obtain a passport for A.R. without his presence being required (*see* Ex. D), this case presents the paradigm situation where the physical presence of the minor must be excused, as he has been kidnapped and secreted by his mother who has no legal rights or custody over A.R. *See* 22 C.F.R. § 51.28(a)(1). If the Respondent U.S. Department of State refuses to excuse A.R.’s physical presence before issuing a passport to him, given the emergency circumstances he faces, there is a significant likelihood that A.R. will die overseas, rendering his application moot.

57. Excusing the appearance of A.R. is mandatory in this case. It is the only way to give effect to the State Court Order regarding custody and facilitate A.R.’s safe return to the United States since Ms. Petraz has abducted the child, removed him from the country, secreted his whereabouts, and, upon information and belief, is holding him at the epicenter of the largest European outbreak of a pandemic.

58. There is simply no more time for Dr. Raia to attempt to navigate futilely the endless and impenetrable bureaucracy of the Respondent U.S. Department of State. A.R.’s life depends on Dr. Raia taking action now.

FIRST CAUSE OF ACTION
(Mandamus)

59. Plaintiffs/Petitioners repeat and reallege the allegations contained in the proceeding paragraphs as if fully set forth herein.

60. A.R. is eligible for the issuance of a U.S. passport and Dr. Raia has satisfied all requirements for the issuance thereof.

61. Respondents/Defendants have a clear and non-discretionary duty to adjudicate applications for U.S. passports.

62. Dr. Raia has satisfied all of the requirements for the issuance of a U.S. passport for A.R. as set forth in 22 C.F.R. § 51.28(a), and none of the legal bases for denying his application apply. Therefore, Respondents/Defendants have a clear and non-discretionary duty to issue a U.S. passport to Dr. Raia for A.R. There is also no legal bar to doing so.

63. Specifically, since the State Court Order establishes that Dr. Raia has sole legal custody of A.R., Ms. Petraz's consent is not required for the issuance of the passport.

64. A.R.'s physical presence also must be excused in these circumstances, as the State Court concluded and ordered, since requiring such presence is impossible due to the illegal actions of Ms. Petraz's and would put A.R.'s life in significant peril.

65. No alternative remedy exists to compel action by Respondents/Defendants in the emergency circumstances faced by A.R.

SECOND CAUSE OF ACTION
(Declaratory Judgment)

66. Plaintiffs/Petitioners repeat and reallege the allegations contained in the proceeding paragraphs as if fully set forth herein.

67. A.R. is eligible for the issuance of a U.S. passport and Dr. Raia has satisfied all

requirements for the issuance thereof.

68. Respondents/Defendants have a clear and non-discretionary duty to adjudicate applications for U.S. passports.

69. Dr. Raia has satisfied all of the requirements for the issuance of a U.S. passport for A.R. as set forth in 22 C.F.R. § 51.28(a), and none of the legal bases for denying his application apply. Therefore, Respondents/Defendants have a clear and non-discretionary duty to issue a U.S. passport to Dr. Raia for A.R. There is also no legal bar to doing so.

70. Specifically, since the State Court Order establishes that Dr. Raia has sole legal custody of A.R., Ms. Petraz's consent is not required for the issuance of the passport.

71. A.R.'s physical presence also must be excused in these circumstances as the State Court concluded and ordered since requiring such presence is impossible due to the illegal actions of Ms. Petraz's and would put A.R.'s life in significant peril.

72. In this emergency situation, refusing to issue a U.S. passport to Dr. Raia for A.R. violates federal regulations and is arbitrary and capricious.

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WHEREFORE, Petitioners/Plaintiffs Joseph Anthony Raia on behalf of himself and his son A.R., a minor, respectfully requests that the Court:

A. Compel Respondents/Defendants and those acting under them to perform their duties and issue a U.S. passport to Dr. Raia for A.R. without further delay;

B. Enter a declaratory judgment that Respondents'/Defendants' refusal to issue a U.S. passport to Dr. Raia for A.R. violates federal regulations and is arbitrary and capricious; and

C. Grant such other and further relief for Petitioners/Plaintiffs as may be just and proper.

Dated: February 26, 2020
Uniondale, New York

HARRIS BEACH PLLC

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