

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

HAYAM EL GAMAL, et al.,

Petitioners,

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security;

TODD LYONS, in his official capacity as
Acting Director of Immigration and Customs
Enforcement; and

SYLVESTER ORTEGA, in his official
capacity as ICE San Antonio Field Office
Director; and

JOSE RODRIGUEZ, JR., in his official
capacity as Administrator of Dilley
Immigration Processing Center,

Respondents.

Case No. 5:25-cv-00664-OLG

**FIRST AMENDED PETITION FOR
WRIT OF HABEAS CORPUS AND
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Petitioners Hayam El Gamal (“Ms. El Gamal”) and her children submit this Petition for a Writ of Habeas Corpus because they have been detained by Immigration and Customs Enforcement (“ICE”) in an unlawful act of collective punishment for the actions of Ms. El Gamal’s husband, Mohamed Soliman (“Mr. Soliman”). On June 1, 2025, Mr. Soliman was arrested and charged for his actions in connection with an attack on a peaceful demonstration in Boulder, Colorado. Petitioners were detained days later on June 3, 2025.

2. Respondents' detention of Ms. El Gamal and her children offends fundamental rule-of-law principles that lie at the core of a democratic justice system. Collective punishment and punishment by association were features of the Dark Ages, and in modern times, only criminal regimes like Nazi Germany have enacted official policies based on family punishment.¹

3. The detention of Ms. El Gamal and her children violates the Equal Protection Component of the Fifth Amendment, as well as the Fifth Amendment Due Process Clause. The U.S. Supreme Court has made abundantly clear that "[o]ur law punishes people for what they do, not who they are. Dispensing punishment on the basis of an immutable characteristic flatly contravenes this guiding principle." *Buck v. Davis*, 137 S. Ct. 759, 778 (2017). This "guiding principle" was present from the early days of the American Republic. Professor Michael Grossberg has explained that "[b]eginning in Virginia in the 1780s, state after state rewrote its laws to express the new conviction that children should not be punished for the sins of their parents[.]"²

PARTIES

4. Petitioners are Ms. El Gamal and her five children, ages 18, 16, 9 and two 4-year-olds. They are detained at Dilley Immigration Processing Center in Dilley, Texas.

5. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security ("DHS"). She is a custodian of Ms. El Gamal and her children and has the authority to order their release. She is sued in her official capacity.

¹ "One of the more elusive forms of terror utilized by the Nazi regime against its own citizens was that of family liability punishment. Family liability punishment – or Sippenhaft – involved the families of racially acceptable individuals, considered to have acted against the state, being punished for the crime of their relative." ROBERT LOEFFEL, *FAMILY PUNISHMENT IN NAZI GERMANY: SIPPENHAFT, TERROR AND MYTH 1* (Palgrave MacMillan 2012).

² Michael Grossberg, *Children and the Law* in *Encyclopedia of Children and Childhood in History and Society* (Paula S. Fass, ed., 2004), <http://www.faqs.org/childhood/Ke-Me/Law-Children-and-the.html>.

6. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (“ICE”), which is a part of DHS. He is a custodian of Ms. El Gamal and her children and has the authority to order their release. He is sued in his official capacity.

7. Respondent Sylvester Ortega is Field Office Director for ICE at San Antonio, Texas. He is a custodian of Ms. El Gamal and her children and has the authority to order their release. He is sued in his official capacity.

8. Respondent Jose Rodriguez Jr. is Administrator of the Dilley Immigration Processing Center. He is the immediate custodian of Ms. El Gamal and her children and has the authority to order their release. He is sued in his official capacity.

STATEMENT OF FACTS

9. Upon information and belief, following the arrest of Mr. Soliman, law enforcement arranged for Ms. El Gamal and her children to stay in a Colorado Springs hotel on the nights of June 1 and 2, 2025, while law enforcement searched their home. On June 3, 2025, agents from DHS’ Homeland Security Investigations office (“HSI”) informed Ms. El Gamal that they would be relocating her and her family to another hotel because the one at which they were staying was unsafe. Believing the officers to be trying to help, Ms. El Gamal and her family went with them. Outside the hotel, they were met by ten to twenty plain-clothes law enforcement officers, with their badges obscured, believed to be ICE officers from the Denver Field Office. During an exchange with an officer in which Ms. El Gamal tried to get more information about what was happening, the officer told her, “You have to pay for the consequences of what you did.”

10. The officers placed Ms. El Gamal and her children in two separate government vans and did not take them to another hotel, but took them to an ICE facility in Florence, Colorado, where they were finally informed that they were in ICE custody. Soon after their arrival, the

children were forced to watch ICE facility personnel use physical force against another detainee while fingerprinting him. The four-year-old children cried, believing that they would be harmed when their turn for fingerprinting came.

11. On the evening of June 3, 2025, Ms. El Gamal and her children were flown to San Antonio, Texas. After arriving in San Antonio, they were driven to the Dilley Immigration Processing Center (“Dilley”) and taken into custody there.

12. The family’s experience at Dilley has been traumatic, especially for Ms. El Gamal’s two four-year-old children. Ms. El Gamal has struggled to sleep and had issues preserving her modesty in observance of her faith. In an interaction with Dilley personnel about this issue, the staff member stated, “You have to pay the consequences, you don’t realize where you are.”

13. The White House has publicly stated its intention to remove Ms. El Gamal and her children from the United States by expedited removal. On June 3, 2025, at 2:12 Mountain Time, the official Twitter/X account for the White House posted an update: “JUST IN: The wife and five children of illegal alien Mohamed Soliman—the suspect in the antisemitic firebombing of Jewish Americans—have been captured and are now in ICE custody for expedited removal. THEY COULD BE DEPORTED AS EARLY AS TONIGHT.”³ Then, at 2:42 P.M. Mountain Time, the official Twitter/X account for the White House posted an update with the text: “Six One-Way Tickets for Mohamed’s Wife and Five Kids. Final Boarding Call Coming Soon.”⁴ The text featured an image which indicated that the family “Could Be Deported by Tonight.”⁵ On the afternoon of June 4, 2025, Respondent Noem stated: “There is NO room in the United States for the rest of the

³ @WhiteHouse, Twitter (June 3, 2025, 2:12 p.m.), <https://x.com/WhiteHouse/status/1929994561398681868>

⁴ @WhiteHouse, Twitter (June 3, 2025, 2:42 p.m.), <https://x.com/WhiteHouse/status/1930002225860133080?t=ryvUEn5J2xTnSisLHpmgLw&s=09>

⁵ *Id.*

world's terrorist sympathizers. Anyone who thinks they can come to America and advocate for antisemitic violence and terrorism – think again. You are not welcome here. We will find you, deport you, and prosecute you to the fullest extent of the law.”⁶

14. Ms. El Gamal and her five children – E.S., A.S., H.S., O.S., and H.S. – entered the United States with B-1 visitor visas in 2022, have resided continuously in the United States for more than two years, and are therefore not subject to expedited removal. 8 U.S.C. § 1225(b)(1)(A)(iii)(II). Nevertheless, neither the White House, nor Respondents Noem or Lyons, nor counsel for Respondents has disavowed the statements and the Government's intentions remain unclear.

15. Petitioners have been detained for roughly three weeks. Ms. El Gamal's youngest children in particular, both aged four, are struggling with life in a detention facility.

JURISDICTION AND VENUE

16. Jurisdiction is conferred on this Court by 8 U.S.C. § 1252(e)(2)(B), 28 U.S.C. §§ 1331, 1361, 2201-02, 2241, 2243, and the Habeas Corpus Suspension Clause of the U.S. Constitution (U.S. Const. art. I, § 9, cl. 2).

17. Venue properly lies within the U.S. District Court for the Western District of Texas because a substantial part of the events or omissions giving rise to this action occurred in this District. 28 U.S.C. § 1391(b)(2).

⁶ “CBP, ICE, and USCIS to Ramp Up Crackdown on Visa Overstays Following Boulder Terrorist Attack,” USCIS Newsroom, (June 4, 2025), <https://www.uscis.gov/newsroom/news-releases/cbp-ice-and-uscis-to-ramp-up-crackdown-on-visa-overstays-following-boulder-terrorist-attack>.

18. Other than the instant case which was transferred from the District for Colorado, no complaint or petition for habeas corpus has been previously filed in any court to review Ms. El Gamal and her children's case. Their removability is not the subject of this petition.

CAUSES OF ACTION

Count I: Fifth Amendment Substantive Due Process

19. Petitioners reallege and incorporate by reference each and every allegation contained above.

20. Civil detention must, by definition, be non-punitive. At a minimum, due process requires that detention be "reasonabl[y] relat[ed]" to a valid governmental purpose. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Foucha v. Louisiana*, 504 U.S. 71, 79 (1992). The Fifth Amendment's Due Process clause mandates a deprivation of liberty be premised on a finding of "personal guilt." *Scales v. United States*, 367 U.S. 203, 224 (1961).

21. In the immigration context, detention is permissible to prevent flight and danger to the community, and for no other purpose. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

22. Respondents openly state that Ms. El Gamal and her children were detained for punishment for the actions of Mr. Soliman. Such detention bears no relation to a legitimate government purpose and is certainly not predicated on a risk of flight or danger. As such, their continued detention violates the Fifth Amendment.

Count II: Fifth Amendment Equal Protection

23. Petitioners reallege and incorporate by reference each and every allegation contained above.

24. Kin punishment is a particularly odious form of discrimination, contravening the most basic fundamental principles of individual responsibility by punishing people simply for the

happenstance of their birth. “Our law punishes people for what they do, not who they are. Dispensing punishment on the basis of an immutable characteristic flatly contravenes this guiding principle.” *Buck v. Davis*, 137 S. Ct. 759, 778 (2017).

25. “[L]egislation directing the onus of a parent’s misconduct against his children does not comport with fundamental conceptions of justice.” *Plyler v. Doe*, 457 U.S. 202, 220 (1982) (holding that state statute denying children of undocumented parents access to public school violates Equal Protection Clause). “[I]mposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing.” *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972) (holding that state workers’ compensation statute denying equal recover rights to illegitimate children violates Equal Protection Clause).

26. Ms. El Gamal and her children are in detention for no other reason than their relationship to Mr. Soliman. Their continued detention violates the equal protection component of the Fifth Amendment.

Count III: Fifth Amendment Procedural Due Process

27. Petitioners reallege and incorporate by reference each and every allegation contained above.

28. To the extent Ms. El Gamal and her children are or may be subjected to expedited removal, their Fifth Amendment due process rights are violated.

29. Ms. El Gamal and her children are not statutorily subject to expedited removal and cannot be removed from the United States without being placed into removal proceedings pursuant to 8 U.S.C. §1229a.

Count IV: Administrative Procedures Act (“APA”)

30. Petitioners reallege and incorporate by reference each and every allegation contained above.

31. To the extent Ms. El Gamal and her children are subjected to expedited removal, Respondents’ conduct is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law or constitutional right, in violation of §§ 555(b) and 706 of the APA. Ms. El Gamal and her children are not subject to the expedited removal statute because they have resided in the United States continuously for more than two years after having been lawfully admitted as visitors following inspection by an immigration officer.

PRAYER FOR RELIEF

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

- (1) Enter a stay of removal prohibiting Respondents from deporting Ms. El Gamal and her children;
- (2) Enter a stay prohibiting Respondents from transferring Ms. El Gamal and her children outside of the Western District of Texas pending further Order of the Court;
- (3) Issue a Writ of Habeas Corpus requiring Respondents to release Ms. El Gamal and her children forthwith;
- (4) Enter a judgement declaring that Respondents’ detention of Ms. El Gamal and her children was and is unauthorized by statute and contrary to law;
- (5) Award Petitioners reasonable costs and attorneys’ fees; and
- (6) Grant any other and further relief that this Court may need fit and proper.

Dated: June 25, 2025

Respectfully submitted,

/s/ Rebecca Webber

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of June, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following: Michael Velchik, 950 Pennsylvania Avenue NW Washington, DC 20530, michael.velchik@usdoj.gov; Lacy L. McAndrew, US Attorney's Office, 601 NW Loop 410 Suite 600, San Antonio, TX 78216, lacy.mcandrew@usdoj.gov.

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