

**APPLICATION DENIED
SO ORDERED** *Vernon S. Broderick*

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VERNON S. BRODERICK
U.S.D.J. 09/29/2022

Consistent with my February 11, 2020 Order, (Doc. 255), Plaintiff originally filed the documents on the docket and, as stated in his letter, possesses copies of the documents that were eventually filed under seal. Therefore, Plaintiff has permission to use any copies of the documents in his possession solely in connection with the National Action Network investigation.

April 9th, 2021

**United States District Court
Southern District of New York**

MOUSSA DIARRA,
Plaintiff,

V.

CITY OF NEW YORK,
Defendant.

) Civil No. 1:16-civ-07075(VSB)
) (OTW)(closed)

) **LETTER MOTION:**

) **REQUEST TO SHARE**
) **COPIES OF SEALED**
) **DOCUMENTS, WITH**
) **NATIONAL ACTION**
) **NETWORK FIELD**
) **DIRECTOR DEREK**
) **PERKINS, IN PERSON.**

) **(Unopposed)**
)

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2 **Background:**

3 On March 26th, 2021, the field coordinator Derek Perkins sent me
4
5 an email requesting to see copies of the sealed photos of the victim in
6 the matter 1-16-cv- 07075 (VSB). *See*, Exhibit - A: email request. The
7
8 case, 1-16-cv-07075 (VSB)(OTW), its decision, subsequent appeals and
9 the way it was handled is now subject of an investigation by the Second
10
11 Circuit judicial committee, as well as being subject to a pending Second
12 Notice of Claim, alleging 1-16-cv-07075 (VSB)(OTW) was determined by
13
14 favouritism and corruption. *See*, Exhibit - B – Notice of claim.

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16
17 National Action Network is a well established organization which
18 deals with Civil rights advocacy. Headed by the Rev. Al Sharpton, NAN
19
20 is accredited and accepted by most objective people as a *bonafide* civil
21
22 rights organization in the country, with a historic record of successfully
23
24 advocating for people’s constitutional rights¹. Contemporaneous with
25
26 this motion is a request to submit a letter motion which exceeds three
27
28 pages.

¹ See, Abner Louimar, Mamadou Diallo, Sean Bell and Eleanor Bumpers matters.

Need:

The need to see evidence before advocating on a matter, for any civil rights organization, is a relevant and legitimate step for any reputable civil rights organization, here NAN². *See*, argument *infra*.

This letter motion having reached out to New York Law department on April 1st, 2021 to see if it was opposed is unopposed. This motion is *not* to unseal but to share with Derek Perkins, the National Action Network field director a copy of photos which were central to Mr. Diarra’s false arrest for “circumcision of genitalia.”

Argument:

(1) Mr. Diarra has a right to evidence held in Chambers under Equal Protection Law:

Pursuant to the Fourteenth Amendment’s Equal Protection clause, stating that:

...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

² NAN doe snot have a second

1 Mr. Diarra has a right to obtain and adduce evidence in
2 proceedings to which he is a party as an extension of his right to equal
3 protection. Here, NAN wishes to advocate for Mr. Diarra, this is a valid
4 public and advocacy reason. Any evidence that has a tendency to
5 properly help in asserting his equal protection should be released for
6 this purposes only. See generally, *Jencks v. United States*, 353 U.S. 657
7 (1957); *Giglio v. United States*, 405 U.S. 150 (1972); and *Brady v.*
8 *Maryland*, 373 U.S. 83 (1963).
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13 Here, Mr. Diarra is requesting to share copies of the photos with a
14 reputable Civil Rights Organization (NAN) before NAN engages in
15 public advocacy on his behalf. Mr. Diarra has a right to this exculpatory
16 evidence for purposes and the nature of this advocacy. *Id.*
17
18

19 The photos of the victim are exculpatory and show that Mr.
20 Diarra, arrested for “cutting clitoris” was falsely arrested as that never
21 happened per photos. As such they fall within the broader holding of
22 Brady; that a person has a right to exculpatory evidence held by others.
23
24

25 **(2) Mr. Diarra Has a Substantive right (right to liberty)**
26
27 **in These Proceedings Under Substantive Law:**
28

1 Furthermore, pursuant to *United States v. Carolene Products*
2 *Company*, 304 U.S. 144 (1938) (see footnote 4); stating the limits and
3 process for substantive due process. The **taking** of the right³ to present
4 evidence, should comply with *Carolene*. The legal reasons for refusal of
5 evidence from a branch of government, here Chambers, to give evidence
6 pertinent for Mr. Diarra’s advocacy should be clearly stated as to the
7 necessity of that denial, given that these photos are relevant to a
8 rebuttal of a false arrest for “genital mutilation” in the public space by
9 NAN.
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14 Relevancy of sealed photos⁴:

15 Photos of Mrs. Diarra were previously sealed by this office. *See*,
16 sealing order - Exhibit C: sealing order.
17

18 The photos are relevant under FRE 401 because they show that no
19 rape kit was ever made at the time of the actual arrest / incident – no
20 photos of Mrs. Diarra were taken before the arrest - instead photos
21

22
23 ³ Mr. Diarra’s right to present evidence in his false arrest to NAN.

24 ⁴ The affirmation of the District Court’s order by the Second Circuit is not
25 binding precedent and has little or no jurisprudential value, depending on
26 the District judge’s interpretation – rendering the District Court’s order in
27 the first Diarra matter non-binding precedent. By its nature, this order is
28 subject to a weaker standard of reversal should the summary order come under
review by a different panel of the Second Circuit or a different District
judge.

1 showing, Mrs. Diarra's healthy genitalia were then taken four-five
2 months later. However, Mr. Diarra was arrested for genital cutting.
3
4 This fact is necessary for the advocacy work of Al Sharpton's Action
5 Network, who deal in facts not innuendo.
6

7 If this request is ignored, Mr. Diarra will be proceeding,
8 accordingly, with a writ of mandamus. However, should this motion be
9 granted, then defendant counsel will organise a meeting with Mr. Derek
10 Perkins to show him a copy of photos, in person or via zoom. All copies
11 will remain with defendant counsel as per sealing order and no codes
12 will be duplicated for NAN.
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16
17 DATED: LIVINGSTON, NEW JERSEY
18 April 9th, 2021
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20

21 Respectfully Submitted,

22 /s/ Kissinger N. Sibanda
23 KISSINGER N. SIBANDA, ESQ.,
24 Attorney for the Plaintiff
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To: **BY ECF**

Honorable Vernon S. Broderick
United States District Court
Southern District of New York
40 Foley Square,
Room 415 New York, NY 10007

VIA ECF

Cooperation Counsel - James Johnson
New York Law Department
Valerie E. Smith Esq (Assigned)
Attorney for Defendant
100 Church St.
New York, NY 10007

CC: COLLEN McMAHON

United States District Court
Southern District of New York
40 Foley Square,
Room 415 New York, NY 10007

Chief judge SDNY.

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CERTIFICATE OF SERVICE:

This is to certify that on April 9th, 2021, the defendant served opposing counsel, via ECF, a copy of this letter motion, which is unopposed per their response dated April 2nd, 2021.

Cordially,

/s/Kissinger N. Sibanda
Kissinger N. Sibanda
Attorney for defendant