IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

USAMA JAMIL HAMAMA,
ATHEER FAWOZI ALI,
ALI AL-DILAMI,
HABIL NISSAN,
JIHAN ASKER,
MOAYAD JALAL BARASH,
SAMI ISMAEL AL-ISSAWI, on behalf of themselves and all those similarly situated,

Petitioners,

v.

REBECCA ADDUCCI, Director of the Detroit District of Immigration and Customs Enforcement,

Respondent.

Case No. 2:17-cv-11910-MAG-DRG

Hon. Mark A. Goldsmith
Mag. David R. Grand

Class Action

PETITIONERS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR A STAY OF REMOVAL

Local Rule 7.1(a)(1) requires petitioners to ascertain whether this motion is opposed. Petitioners' counsel Margo Schlanger spoke personally with Jennifer L. Newby, Assistant United States Attorney, Eastern District of Michigan, respondent's counsel, explaining the nature of the relief sought and seeking concurrence. Ms. Newby denied concurrence.

Petitioners are Iraqi nationals who came to the United States many years ago. Many, perhaps most, are Chaldean Christian. They have been subject to final orders of removal for years, but the government permitted them to reside in the community under orders of supervision. Recent political negotiation by the Trump administration led to Iraq's agreement to accept their repatriation, and so they were arrested in the past week. They now face imminent removal to Iraq. Indeed, the government's counsel has informed petitioner's counsel that removal will not take place today or tomorrow, but was unwilling to offer any other assurances—so that means that removal could be as early as **Saturday, June 17**. If removed to Iraq, under current conditions, petitioners face a grave danger of persecution, torture, and death.

1. Pursuant to Fed. R. Civ. P. 65, petitioners seek a Temporary Restraining Order and/or stay of removal that bars their removal until an appropriate process has determined whether, in light of current conditions and circumstances, they are entitled to mandatory protection from removal.

2. Petitioners also request the Court schedule oral argument for the afternoon of Friday, June 16, 2017.

WHEREFORE, for the reasons set forth in the accompanying brief, petitioners respectfully request this Court to grant the Temporary Restraining Order/stay of removal, and set the case for further briefing.

Respectfully submitted,

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PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR A STAY OF REMOVAL

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STATEMENT OF ISSUES PRESENTED

1. Whether the Court should issue an emergency order to preserve the status quo and prevent the imminent removal of petitioners to Iraq, where they face grave danger of persecution and torture.

Petitioners' Answer: Yes.

2. Whether petitioners are likely to prevail on their claims that their immediate removal would be unlawful under the Due Process Clause and immigration law because they have not had a meaningful opportunity to be heard on the issue of current country conditions.

Petitioners' Answer: Yes.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Petitioners are entitled to a temporary restraining order to preserve the status quo

Ne. Ohio Coal. for Homeless & Serv. Employees Int'l Union, Local 1199 v. Blackwell, 467 F.3d 999, 1009 (6th Cir. 2006)

Procter & Gamble Co. v. Bankers Trust Co., 78 F.3d 219, 226 (6th Cir. 1996)

Removal is unlawful where country conditions create a risk of persecution or torture

8 U.S.C. § 1229a(c)(7)

8 U.S.C. § 1231(b)(3)

8 C.F.R. §§ 208.16, .17, .18

Motions to reopen are allowed in light of changed country conditions

8 C.F.R. § 1003.2(c)(3)(ii)

Conditions in Iraq are dangerous for Christians

Yousif v. Lynch, 796 F.3d 622, 632 (6th Cir. 2015)

Petitioners submit this brief in support of their Motion for a Temporary Restraining Order and/or stay of removal.

INTRODUCTION

Petitioners are Iraqi nationals—many, perhaps most, Chaldean Christian—who have resided in the United States for many years. They have been subject to final orders of removal for years, but the government permitted them to reside in the community under orders of supervision. Recent political negotiation by the Trump administration led to Iraq's agreement to accept their repatriation, and so the government began arresting them this past week. They now face imminent removal to Iraq. Indeed, while the U.S. Attorney's Office has informed petitioners counsel that deportation will not take place today or tomorrow, the government has been unwilling to rule out deportation as early as **Saturday, June 17**. If removed to Iraq under current conditions, petitioners face a significant risk of persecution and torture. Yet the government has failed to provide them an opportunity to demonstrate their entitlement to protection from removal in light of the changed circumstances since their removal orders issued. The government's haste in seeking to remove them without affording them that opportunity deprives them of due process and violates U.S. law, which prohibits the removal of individuals to countries where they would face a likelihood of persecution or torture.

BACKGROUND

For many years, even when U.S. Immigration and Customs Enforcement (ICE) has obtained final orders of removal against Iraqi nationals, ICE has not actually carried out removals. Instead, ICE has had a policy and practice of releasing Iraqi nationals with final removal orders under orders of supervision. Russel Abrutyn Declaration (Ex. A). This approach had at least two rationales. First, Iraq generally declined to issue travel documents allowing repatriation. Second, in at least some instances, ICE acknowledged that humanitarian considerations weighed against removal, given the danger posed by removal to Iraq.

That danger has increased dramatically in recent years. Nonetheless, in the past several weeks, ICE abruptly abandoned its nonremoval policy. When the Trump administration redrafted its travel-ban Executive Order 13780, it entered into negotiations with Iraq to remove Iraq from the list of countries whose nationals are subject to the travel ban. In exchange for being omitted from the list of designated countries in the revised Executive Order, promulgated March 6, 2017, Iraq agreed to accept a large number of deportees from the United States.[1]

[1] See, e.g., Mica Rosenberg, *U.S. Targets Iraqis for Deportation in Wake of Travel Ban Deal*, REUTERS (June 12, 2017), https://www.reuters.com/article/us-usa-immigration-iraq-idUSKBN19326Z.

On or about Sunday, June 11, 2017, ICE began arresting Iraqi nationals in Michigan who had previously been released on orders of supervision. The change in practice came as a shock to a community where Iraqis with final orders have lived at large, sometimes for decades, with few restrictions apart from regular reporting requirements. Individuals who have been law-abiding and fully compliant with their conditions of supervision suddenly found themselves arrested and transferred hours away to the Northeast Ohio Correction Center, in Youngstown, Ohio.[2] During the course of a few days, more than 100 Iraqi nationals from Michigan were arrested and detained, for the purpose of effectuating their removal back to Iraq. Nora Youkhana Declaration (Ex. B). Others from other states were also swept up.

Many, perhaps most, of the Iraqis now held are Chaldean Christians, members of ethnic/religious minorities in Iraq whose persecution by the Iraqi authorities has been well documented. Others are Muslim; they too face grave danger. ICE has defended its decision to remove Iraqi nationals by trying to paint them as serious criminals.[3] In fact, as the Complaint demonstrates, many of those

[2] See *Dozens of Iraqi Nationals Swept Up in Immigration raids in Michigan, Tennessee*, WASH. POST (June 12, 2017), https://www.washingtonpost.com/national/dozens-of-iraqi-nationals-swept-up-in-immigration-raids-in-michigan-tennessee/2017/06/12/58e0524a-4f97-11e7-be25-3a519335381c_story.html.

[3] See, e.g., *Dozens of Iraqi Nationals Swept Up in Immigration raids in Michigan, Tennessee*, WASH. POST (June 12, 2017),

who have been detained and are facing imminent removal were convicted of relatively minor crimes. And many of their crimes took place years ago, followed by years and even decades of law-abiding behavior. For example, petitioner Jihan Asker, who is 41, pleaded under advisement to misdemeanor fraud in 2003. After she paid a fine of $150 and served six-months' probation, a judgment of acquittal/dismissal was entered. She has no other criminal record. Albert Valk Declaration (Ex. D). And petitioner Atheer Ali, who is 40, was convicted of breaking and entering two decades ago, and misdemeanor marijuana possession more recently. Ameer Salman Declaration (Ex. C). Petitioner Habil Nissan, who is 36, pleaded to misdemeanor destruction of property and two misdemeanor assault charges, over 10 years ago; the case was dismissed after twelve months of probation. Silvana Nissan Declaration (Ex. E). Sami Ismael Al-Issawi served less than a year of incarceration for an assault two decades ago, and has not had any other criminal involvement.

In any event, even for petitioners with more serious criminal histories, the changed country conditions in Iraq counsel against haste in removing petitioners. Notably, the Board of Immigration Appeals emphasized those changed country conditions just a few days ago when it granted two motions to reopen filed by

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https://www.washingtonpost.com/national/dozens-of-iraqi-nationals-swept-up-in-immigration-raids-in-michigan-tennessee/2017/06/12/58e0524a-4f97-11e7-be25-3a519335381c_story.html.

Chaldean Christians—including one by an Iraqi whose criminal conviction made him statutorily ineligible for withholding of removal under 8 U.S.C. § 1231(b)(3). The Board reasoned that the changed country conditions nonetheless justified reopening the case because, "[d]espite the respondent's criminal history, he would be eligible for the limited relief of deferral of removal under the Convention Against Torture. 8 C.F.R. § 1208.17." Decision of the Board of Immigration Appeals (Jun. 9, 2017) (Ex J).

The too-hasty march towards deportation threatens the petitioners' lives, and violates U.S. law. Due process requires that the petitioners receive an opportunity to have their claims to protection considered in light of current conditions, not the conditions that existed at the time their removal order was first issued. And substantive U.S. law forbids their removal into probable persecution and torture. A Temporary Restraining Order or stay of removal is imperative to preserve the status quo and give petitioners an opportunity to present their claims.

LEGAL STANDARD

Motions for temporary restraining orders are governed by a four-factor test (the same test as for preliminary injunctions): Courts consider whether petitioners have shown: (1) a likelihood of success on the merits, (2) that they are likely to suffer irreparable harm in the absence of such relief, (3) that the balance of equities tips in their favor, and (4) that an injunction is in the public interest. *Winter v. Nat.*

Res. Def. Council, 555 U.S. 7, 20 (2008); see also *Ne. Ohio Coal. for Homeless & Serv. Employees Int'l Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1009 (6th Cir. 2006) ("'These factors are not prerequisites that must be met, but are interrelated considerations that must be balanced together.' *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991). For example, the probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury the movants will suffer absent the stay. See id.").

ARGUMENT

I. PETITIONERS ARE LIKELY TO SUCCEED ON THEIR CLAIMS THAT THEIR IMMEDIATE REMOVAL WOULD BE UNLAWFUL

A. U.S. law forbids removal in the face of probable persecution and torture.

U.S. law forbids removal of foreign nationals into circumstances that pose a probability of persecution or torture by government authorities or with the acquiescence of a government actor. Many of the petitioners face such a probability, and all therefore need a chance to demonstrate their qualifications for individualized relief from removal.

The petitioners' individual situations vary. Some have been here since childhood (see, e.g., William Swor Declaration (Ex. G)); others arrived as adults. Many petitioners have available to them a variety of individual claims that depend on their immigration and family circumstances. E.g., Albert Valk Declaration (Ex.

D). More generally applicable, the U.S. law provides three separate potential bases for immigration relief for the petitioners. The first is asylum. Foreign nationals in the United States may qualify for asylum if they can establish that they have "a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion" 8 U.S.C. § 1101(a)(42) (definition of refugee); 8 U.S.C. § 1158(b)(1)(A) (asylum eligibility). The Sixth Circuit has emphasized, however, that

> [a]sylum is discretionary relief, see 8 U.S.C. § 1158(b)(1)(A), meaning that it can be denied to an applicant—even if he likely will be persecuted if returned to his home country—for any number of reasons unrelated to the merits of his application, including if the application is filed too late, see 8 U.S.C. § 1158(a)(2)(B), if the applicant has committed certain crimes, see 8 U.S.C. § 1158(b)(2), or if the IJ determines that other 'egregious adverse factors' counsel against awarding asylum to an otherwise-eligible refugee, *Kouljinski*, 505 F.3d at 542 (citation omitted).

Yousif v. Lynch, 796 F.3d 622, 632 (6th Cir. 2015).

The other two sources of relief related to dangerous home-country conditions are, however, mandatory. The second, 8 U.S.C. § 1231(b)(3), "Restriction on Removal to a country where alien's life or freedom would be threatened," prohibits removing noncitizens to a country where their life or freedom would be threatened on the grounds of race, religion, nationality, membership in a particular social group or political opinion. It contains exceptions for individuals who assisted in persecution, pose a danger to national security, have committed a serious nonpolitical crime outside the United States, or have been

convicted of a "particularly serious crime that renders them a danger to the community." Apart from these exceptions, any individual who can demonstrate that it is more likely than not that he or she will be persecuted on one of the five protected grounds is statutorily entitled to protection. As the Sixth Circuit has explained, "[b]ecause § 1231(b)(3) implements the 'non-refoulement obligation' reflected in Article 33 of the Refugee Convention, the viability of a withholding claim ordinarily depends upon its merits rather than upon procedural prerequisites or the government's good graces." *Yousif*, 796 F.3d at 632.

The third relevant constraint on removal tracks the Convention Against Torture's prohibition on removal of noncitizens to countries where they would face torture. See U.N. Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, ¶ 1, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85. Under the CAT, an individual may not be removed if "it is more likely than not that [the individual] would be tortured if removed to the proposed country of removal." 8 C.F.R. § 208.16(c)(2). Torture, it is important to note, may be "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." 8 C.F.R. § 208.18(a)(1). Government acquiescence does not require actual knowledge or willful acceptance of torture; awareness and willful blindness will suffice. *Zheng v. Ashcroft*, 332 F.3d 1186, 1194–95 (9th Cir. 2003); *Amir v.*

Gonzales, 467 F.3d 921, 927 (6th Cir. 2006) ("We join the Ninth and Second Circuits in holding that *In Re S-V* directly conflicts with Congress's clear intent to include 'willful blindness' in the definition of 'acquiescence.'"). *See Nerghes v. Mukasey*, 274 F. App'x 417, 423 (6th Cir. 2008) ("'Willful blindness' is 'deliberate avoidance of knowledge.' Black's Law Dictionary (8th ed. 2004)."). The regulations implementing CAT provide for both withholding of removal and deferral of removal. Whereas withholding of removal is subject to the same exceptions as apply to § 1231(b)(3), deferral of removal contains no exceptions even for people with "particularly serious crimes." 8 C.F.R. § 1208.17. See also Eman Jajonie-Daman Declaration (Ex. F).

The legal prohibitions on removal are mandatory for anyone who satisfies the eligibility criteria set forth in the statute and regulations just cited. In addition, where country conditions change after an individual has been ordered removed, the immigration statute specifically allows motions to reopen a removal order in order to renew claims for protection in light of new facts. See 8 U.S.C. § 1229a(c)(7)(C)(ii); 8 C.F.R. § 1003.2(c)(3)(ii) (exempting from the deadlines and limitations on motions to reopen, those motions that are based on fear-based claims resulting from changed country conditions). Just this week, the Board of Immigration Appeals relied on changed conditions in Iraq to grant at least two motions to reopen filed by Iraqi Christians. Exhibit J.

B. Due Process

The Due Process clause guarantees fair procedures prior to deprivations of liberty or property—including removal. *See Reno v. Flores*, 507 U.S. 292, 306 (1993) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings."). And due process, of course, requires an opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). Petitioners have each had a past opportunity to be heard on their removal. But the government's recent actions, and evident plan to speedily remove the petitioners, are obviating petitioners' opportunity to be heard at a meaningful time—now—about current conditions. Removing the petitioners without giving them this opportunity violates the Fifth Amendment's Due Process Clause.

Petitioners' prior hearings did not afford them the process that is due, because Iraqi country conditions have substantially worsened—particularly since 2014. Declaration of Mark Lattimer (Ex. I). The extraordinary danger petitioners face now therefore presents a new set of facts that entitle them to a fair process for resolution. The change in circumstances has been acknowledged by both the immigration judges and immigration prosecutors. Immigration judges in Detroit, who hear many applications for asylum and withholding of removal filed by Iraqi Christians, frequently denied those applications in the past, but have in the most

recent several years granted them nearly universally when applicants meet other statutory eligibility requirements. Likewise, in recent Immigration Court cases, the Detroit Office of Chief Counsel has conceded that Iraqi Chaldeans have a greater than 50% chance of being persecuted in Iraq. Russell Abrutyn Declaration (Ex. A).

In this context, due process requires that petitioners get a chance to demonstrate that substantive immigration law forbids their current removal. But the government's actions, moving detainees far away from their communities, disrupting existing counsel relationships, and sprinting towards removal, are thwarting the orderly and fair operation of the immigration process. Even for those petitioners who have long-time immigration counsel, the transfer to Ohio has made it far more difficult for lawyers to consult with their clients and file appropriate petitions. They now must drive to Youngstown to meet. Community organizations have succeeded in recruiting dozens of volunteer attorneys to represent other petitioners—but those lawyers are from the Metro Detroit area and many have not yet, in the day or two since they agreed to take on the representation, been able to consult with their clients, detained over 200 miles away. Nora Youkhana Declaration (Ex. B); Eman Jajonie-Daman Declaration (Ex. F). Phone calls to detainees are cumbersome and difficult to schedule at best, and often unavailable. Eman Jajonie-Daman Declaration (Ex. F); Cynthia Barash Declaration (Ex. H). Attorneys need time to visit clients, interview them, gather documents, and draft

pleadings. This is not always straightforward. For example, some of the required documents—such as Immigration Judge or Board of Immigration Appeals decisions—may be decades old and take several weeks to obtain. Nora Youkhana Declaration (Ex. B); Russell Abrutyn Declaration (Ex. A). Accordingly, in the couple of days since their arrest, many or most petitioners and their immigration counsel (where such counsel have been retained) have not had sufficient time to file motions to reopen. Nora Youkhana Declaration (Ex. B).

Even when time is not of the essence, both ICE's due process obligations and its policy abridge the government's discretion to transfer detainees, if transfer interferes with detainees' access to counsel. *See Louis v. Meissner*, 530 F. Supp. 924, 927 (S.D. Fla. 1981) (finding the INS had thwarted detainees' statutory and regulatory rights to representation in their removal proceedings by transferring them to remote areas lacking in counsel and interpreters); *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549 (9th Cir. 1990) (holding the district court did not abuse its discretion by enjoining INS from transferring detainees irrespective of established attorney-client relationships); ICE Policy 11022.1, Detainee Transfers (Jan. 4, 2012), https://www.ice.gov/doclib/detention-reform/pdf/hd-detainee-transfers.pdf. In this case, detention of petitioners far from their home states is compounding the due process violation, making it unlawfully uncertain that

petitioners will receive a meaningful opportunity to be heard, prior to their removal, on the issue of current country conditions.

What due process requires is that petitioners get a meaningful chance to demonstrate that substantive immigration law forbids their current removal. This could happen in one of two ways. This Court could itself hear the petitioners' claims under the INA/CAT. Alternatively, petitioners could be ensured time to confer with individual immigration counsel and then file a motion to reopen. Either way, this Temporary Restraining Order or stay of removal is essential to "preserve the status quo so that a reasoned resolution of a dispute may be had," *Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 226 (6th Cir. 1996). Resolving the issues—whether in this Court or by way of motions to reopen—will require substantial time—certainly more than the one day left before Friday, June 16, the date some petitioners have been informed is intended for their removal.

C. This court has jurisdiction to ensure that petitioners are not removed in violation of the Convention Against Torture, Due Process, and the Immigration Act.

In this TRO motion, petitioners seek some process where they may seek to demonstrate that their removal would violate due process and federal law, including most importantly the Convention Against Torture. This case thus presents questions under the Constitution and federal statutes raised by individuals detained in federal custody. Accordingly, the Court has, inter alia, habeas

jurisdiction. *See* 28 U.S.C. § 2241 (federal habeas statute). However, because the government often asserts that jurisdiction is lacking in immigration cases, petitioners briefly set forth responses to arguments that the government has made (unsuccessfully) in other cases.

1. The government often asserts that district courts lack jurisdiction to review a noncitizen's removal and that removal orders may be reviewed only in the courts of appeals by petition for review. That is generally true. *See* 8 U.S.C. §§ 1252(a)(1) and (5), and § 1252(b)(9).[4] But that general rule has no application here.

The general rule is based on two premises. First, the legality of a removal *must* be reviewable in *some* court to avoid a constitutional Suspension Clause violation. *INS v. St Cyr*, 533 U.S. 289, 300-01 (2001) (reaffirming that "some judicial intervention in deportation cases is unquestionably required" by the Suspension Clause) (citation and internal quotation marks omitted. Second, review in the court of appeals by petition for review will *generally* be feasible, thereby providing a federal forum and avoiding the Suspension Clause problem that would otherwise exist if no federal forum were available.

Recognizing these twin premises, the courts have made clear that the district courts *do* have review over removals where it would not have been possible to

[4] A petition for review is filed from an administrative removal order issued by the Board of Immigration Appeals.

assert the claims by petition for review in the court of appeals or where petitioners are not directly challenging their removal orders. That is precisely the situation here. Petitioners do not challenge their prior removal orders and, critically, are asserting claims that could *not* have been raised in the courts of appeals by petition for review when petitioners received their initial removal orders. Rather, as explained above, petitioners contend that their removal would *now* be unlawful in light of events that have occurred *after* they received their removal orders (in some cases years ago). Specifically, they contend that the government is seeking to remove them without any process or opportunity to show that they would be persecuted or tortured or removed given the *current* situation in Iraq.

Thus petitioners' claims could not possibly have been raised in a petition for review in the circuit court and may therefore be reviewed in the district court; indeed, the claims must be reviewable in this court to avoid the Suspension Clause violation triggered by the absence of *any* forum in which to assert their claims. See, e.g., *Jama v. INS*, 329 F.3d 630, 632-33 (8th Cir.), *aff'd sub nom Jama v. ICE*, 543 U.S. 336 (2006) (claims based on events that occurred after removal order; finding habeas jurisdiction to review challenge to agency's failure to adhere to mandatory *post*-order statutory requirements); *Kellici v. Gonzalez*, 472 F.3d 416, 419–20 (6th Cir. 2006) (habeas available to challenge the government's failure to provide notice of a petitioner's arrest *after* a removal order became final, also

stating that habeas is available where the court does not need to directly address "the final order"); *Liu v. INS*, 293 F.3d 36 (2d Cir. 2002) (habeas jurisdiction to review claim of ineffective assistance of counsel claim that arose *after* order of removal became final and after a petition for review could be filed).

2. In addition, even if this Court were to believe it lacked jurisdiction to review whether petitioners' removal would violate the Constitution and federal law, there is no question this Court may stay petitioners' removal to permit them time to raise their claims before the agency through motions to reopen. The government may assert (as it often does) that the Court lacks even that limited power in light of 8 U.S.C. § 1252(g), which bars "jurisdiction over a decision to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." But § 1252(g) has no bearing on this case.

As the Supreme Court has explained, § 1252(g) is an exceedingly narrow jurisdictional bar and is designed to deal with one particular situation: preventing the courts from reviewing an exercise of *discretion*. *Reno v. AADC*, 525 U.S. 471, 485 (1999) ("Section 1252(g) seems clearly designed to give some measure of protection to "no deferred action" decisions and similar discretionary determinations"). In particular, the government in some cases will exercise their

discretion and defer removal, often for humanitarian reasons. If the government decides at a later time to execute the removal order in the exercise of discretion, § 1252(g) generally will bar courts from reviewing that exercise of discretion. Thus, in line with the Supreme Court's decision in *AADC*, the Sixth Circuit has stressed that § 1252(g) should be interpreted "narrowly" as directed "against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." *Mustata v. U.S. Dep't of Justice*, 179 F.3d 1017, 1021 (6th Cir. 1999) (quoting *AADC*, 525 U.S. at 485 n.9). *See also Order, Colotl v. Kelly*, No. 1:17-CV-1670-MHC (N.D. Ga. June 12, 2017) at 23 (interpreting 1252(g) narrowly), https://www.clearinghouse.net/chDocs/public/IM-GA-0010-0003.pdf.

Here, however, petitioners are not challenging the government's exercise of discretion. Rather, petitioners contend, among other things, that their removal would violate a *mandatory* duty on the government not to send someone back to probable torture, a duty imposed by the Convention Against Torture. The government simply has no discretion to ignore that duty and remove petitioners without giving them an opportunity to demonstrate that their lives will be in grave danger if they are sent back to Iraq. Accordingly, § 1252(g) has no application here. *See Jama*, 329 F.3d at 632 (1252(g) does not bar review of the Attorney General's non-discretionary "legal conclusions"); *Madu v. Attorney General*, 470 F.3d 1362, 1368 (11th Cir. 2006) (explaining that § 1252(g) "does not proscribe

substantive review of the underlying legal bases for those discretionary decisions and actions").

3. Finally, insofar as the Court has any doubts about its jurisdiction in this case, the Court should grant the TRO and order fuller briefing on jurisdiction, as there is no question that a federal court always has jurisdiction to determine its own jurisdiction. See, e.g. *Mustata*, 179 F.3d at 1019 (6th Cir. 1999) (district court has jurisdiction to issue stay in habeas proceeding); *Hamdi ex rel. Hamdi v. Napolitano*, 620 F.3d 615, 622 (6th Cir. 2010) (citing *Mustata* approvingly for principle that stay is available remedy on federal habeas review); *Kumar v. Gonzales*, No. 107-CV-003, 2007 WL 708628, at *1 (W.D. Mich. Mar. 5, 2007) (temporary stay of removal on the day petitioner was scheduled to be deported in order to decide whether it had jurisdiction over petitioner's habeas petition); *Okoro v. Clausen*, No. 07-13756, 2008 WL 253041, at *1 (E.D. Mich. Jan. 30, 2008).

In sum, the Court has jurisdiction to (1) review whether petitioners' removal is consistent with due process, CAT and other federal statutes, because the basis for these claims arose *after* the initial removal orders were issued, making it impossible for petitioners to have filed petitions for review in the circuit on these claims; (2) prevent the government from removing petitioners to Iraq until such time as they can file motions to reopen before the agency to assert their new claims; and (3) preserve the status quo while it determines whether it has

jurisdiction based on fuller briefing (should the Court have any doubts about its jurisdiction in this case).

II. PETITIONERS WILL SUFFER IRREPARABLE HARM ABSENT EMERGENCY RELIEF

A. Harm to the petitioners is highly likely, grievous, and irreparable.

The harm from petitioners' removal is evident: While different petitioners have different avenues for immigration relief, depending on their immigration and criminal histories, they all face significant risk of persecution and torture if they are removed to Iraq. In a case in which there was "no dispute that [the petitioner] is a Chaldean Christian," the Sixth Circuit recently commented that "his status as a Christian alone entitles him to withholding of removal, given that there is 'a clear probability' that he would be subject to future persecution if returned to contemporary Iraq." *Yousif v. Lynch*, 796 F.3d 622, 628 (6th Cir. 2015). The same acknowledgement applies to the large number of petitioners who are Christian or members of other Iraqi religious or ethnic minorities.

A summary of Iraqi country conditions highlights the magnitude of the danger. In a travel warning updated June 14, 2017, the State Department explained that Iraq is "very dangerous" and that the terrorist group ISIS (Islamic State in Iraq

and Syria) is very active.[5] ISIS is effectively the government in large portions of Iraq—it took control of Iraq's second largest city, Mosul, in June 2014. ISIS has murdered or forced the religious conversion or flight of thousands of Christians.[6] The United States Commission on International Religious Freedom, an independent federal government commission, concluded in its 2016 annual report:

> Iraq's religious freedom climate continued to deteriorate in 2015, especially in areas under the control of the Islamic State of Iraq and the Levant (ISIL). ISIL targets anyone who does not espouse its extremist Islamist ideology, but minority religious and ethnic communities, including the Christian, Yazidi, Shi'a, Turkmen, and Shabak communities, are especially vulnerable. In 2015, USCIRF concluded that ISIL was committing genocide against these groups, and crimes against humanity against these and other groups.[7]

In July 2016, a consortium of human rights organizations published a report, supported by the European Union and tellingly titled "No Way Home: Iraq's Minorities on the Verge of Disappearance," which concluded that murder and other atrocities have left few members of religious minorities unharmed in Iraq.[8]

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[5] Iraq Travel Warning (last updated June 14, 2007), U.S. Department of State, https://travel.state.gov/content/passports/en/alertswarnings/iraq-travel-warning.html.

[6] See Declaration of Mark Lattimer (Ex. I); Moni Basu, *In Biblical Lands of Iraq, Christianity in Peril after ISIS*, CNN (Nov. 21, 2016), http://www.cnn.com/2016/11/20/middleeast/iraq-christianity-peril/index.html.

[7] United States Commission on International Religious Freedom, *2016 Annual Report* (Apr. 2016), http://www.uscirf.gov/sites/default/files/USCIRF%202016%20Annual%20Report.pdf.

[8] http://minorityrights.org/publications/no-way-home-iraqs-minorities-on-the-verge-of-disappearance/. See also Knights of Columbus and In Defense of Christians, *Genocide against Christians in the Middle East* (Mar. 9, 2016),

Indeed, the word often used to describe the prospects of Iraqi Christians and other religious and ethnic minorities is "extinction." Mark Lattimer Declaration (Ex. I). There can be no more serious harm.

For non-Christians, too, conditions in Iraq are dire. Muslims face grave danger based on their denomination (Shi'a[9] or Sunni[10]), their degree of religiosity, and other protected characteristics.[11] In fact, the U.N. High Commissioner for Refugees has recently concluded that it is terribly unsafe for any Iraqi nationals "who originate from areas of Iraq that are affected by military action, remain fragile and insecure after having been retaken from ISIS, or remain under control of ISIS"—that is, much of the country—to be forcibly returned to any part of Iraq. The UNHCR explains that "Such persons, including persons whose claims for

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http://www.stopthechristiangenocide.org/scg/en/resources/Genocide-report.pdf; Mark Lattimer Declaration (Ex. {}).

[9] See Ranj Alaaldin, *The Isis campaign against Iraq's Shia Muslims is not politics. It's genocide*, THE GUARDIAN (Jan. 5, 2017), https://www.theguardian.com/commentisfree/2017/jan/05/isis-iraq-shia-muslims-jihadis-atrocities; United Nations Office of the High Commissioner for Human Rights, *Report on the Protection of Civilians in Armed Conflict in Iraq* (July 6-Sept. 10, 2014), http://www.ohchr.org/Documents/Countries/IQ/UNAMI_OHCHR_POC_Report_FINAL_6July_10September2014.pdf.

[10] Liz Sly, *ISIS: A Catastrophe for Sunni*s, WASH. POST (Nov. 23, 2016), http://www.washingtonpost.com/sf/world/2016/11/23/isis-a-catastrophe-for-sunnis/?utm_term=.eb666f04461e

[11] *Report on the Protection of Civilians in Iraq*, *supra* note 7.

international protection have been rejected [i.e. rejected asylum seekers], should not be returned either to their home areas, or to other parts of the country."[12]

In short, harm to the petitioners is highly likely, grievous, and irreparable.

B. Classwide emergency relief is necessary.

ICE arrested over 100 Detroit area Iraqi nationals in June 11 and sent nearly all to Youngstown Ohio. Communication with immigration detainees is limited; for example, they cannot easily or reliably receive phone calls. Nora Youkhana Declaration (Ex. B). So in the days since, it has been difficult to get firm detailed information on each and every one of those detainees. Immigration law is complex, and each has a different immigration and criminal history. Variation in those histories will mean there is variation in what precise *immigration* relief is appropriate. But each and every one of them faces grave danger in Iraq, and each and every one is entitled to a meaningful chance to raise those claims and have them heard. And for each one, imminent removal to Iraq would eliminate that opportunity. Accordingly, classwide emergency relief is appropriate and necessary.

III. THE BALANCE OF HARMS AND PUBLIC INTEREST WEIGH HEAVILY IN FAVOR OF EMERGENCY RELIEF.

The balance of harms and public interest weigh strongly in favor of granting emergency relief. See Winter, 555 U.S. at 24. In contrast to the irreparable

[12] UNHCR, *Position on Returns to Iraq* (Nov. 14, 2016), ¶¶ 47-48, http://www.refworld.org/docid/58299e694.html.

injury—persecution, torture, potentially death—facing petitioners, little harm will accrue to the government from a brief pause while petitioners pursue available avenues of relief. The balance of equities is substantially more favorable to petitioners even than in the typical stay application for an ordinary immigration case: if petitioners are removed, they will not only be unable to make out the factual record they need and unable to consult with their attorneys, they face grievous and irreparable bodily harm.

Finally, the public interest also strongly favors a stay, because the public benefits from a fair immigration system, which means an immigration system that does not send people to their potential death without giving them a chance to explain the danger they face and why it entitles them to immigration relief.

This is precisely the situation in which a TRO is warranted: when "the balance of equities so heavily favors the moving party that justice requires the court to intervene to secure the positions until the merits of the action are ultimately determined, then there is cause to preserve the status quo." *Reid v. Hood*, No. 1:10 CV2842, 2011 WL 251437, at *2 (N.D. Ohio Jan. 26, 2011) (citing *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981)). Keeping Petitioners in the United States so that they can pursue their immigration remedies does just that. See *Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 226

(6th Cir. 1996) ("[T]he purpose of a TRO under Rule 65 is to preserve the status quo so that a reasoned resolution of a dispute may be had.").

CONCLUSION

The Court should grant the motion for a Temporary Restraining Order and/or a stay of removal.

Dated: June 15, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2017, I electronically filed the foregoing papers with the Clerk of the Court using the ECF system which will send notification of such filing to Jennifer L. Newby, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants:

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

USAMA JAMIL HAMAMA,
ATHEER FAWOZI ALI,
ALI AL-DILAMI,
HABIL NISSAN,
JIHAN ASKER,
MOAYAD JALAL BARASH,
SAMI ISMAEL AL-ISSAWI, on behalf of themselves and all those similarly situated,

Petitioners,

v.

REBECCA ADDUCCI, Director of the Detroit District of Immigration and Customs Enforcement,

Respondent.

Case No. 2:17-cv-11910-MAG-DRG

Hon. Mark A. Goldsmith
Mag. David R. Grand

Class Action

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Exhibit D: Declaration of Albert Valk

Exhibit E: Declaration of Silvana Nissan

Exhibit F: Declaration of Eman Jajonie-Dama

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Exhibit H: Declaration of Cynthia Barash

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Exhibit L: *Kumar v. Gonzales*, No. 1:07-CV-003, 2007 WL 708628 (W.D. Mich. Mar. 5, 2007)

Exhibit M: *Okoro v. Clausen*, No. 07-13756, 2008 WL 253041 (E.D. Mich. Jan. 30, 2008)

Exhibit N: *Reid v. Hood*, No. 1:10-CV-2842, 2011 WL 251437 (N.D. Ohio Jan. 26, 2011)

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

USAMA JAMIL HAMAMA,
ATHEER FAWOZI ALI,
ALI AL-DILAMI,
HABIL NISSAN,
JIHAN ASKER,
MOAYAD JALAL BARASH,
SAMI ISMAEL AL-ISSAWI, on behalf of themselves and all those similarly situated,

Petitioners,

v.

REBECCA ADDUCCI, Director of the Detroit District of Immigration and Customs Enforcement,

Respondent.

Case No. 2:17-cv-11910-MAG-DRG

Hon. Mark A. Goldsmith
Mag. David R. Grand

Class Action

DECLARATION OF PETITIONER RUSSELL ABRUTYN IN SUPPORT OF PETITIONERS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR A STAY OF REMOVAL

DECLARATION OF RUSSELL ABRUTYN

STATE OF MICHIGAN)

) ss

COUNTY OF OAKLAND)

I, Russell Abrutyn, declare under penalty of perjury as follows:

1. I have been licensed to practice law in Michigan since 2002 and Washington State since 1999. I am also licensed to practice before the Second, Sixth, and Ninth Circuit Courts of Appeals, the Eastern and Western Districts of Michigan, and the Eastern and Western Districts of Washington. I graduated from the University of Michigan Law School in 1999.

2. My practice is focused exclusively on immigration law. I am a member of the American Immigration Lawyers Association (AILA) and the Secretary of the Michigan chapter. I also serve on the Detroit Immigration Court Liaison Committee. Since my involvement with AILA, I have received the President's Commendation, Sam Williamson Mentor of the Year, and Jack Wasserman Excellence in Litigation awards.

3. Over the last 5-10 years, I have represented, either individually or as co-counsel, more than 20 Iraqi Chaldeans. Through my role as mentor and active membership in AILA, I have spoken with many local attorneys about their representation of Iraqi Chaldeans.

4. The local Immigration Court's view on the dangers facing Iraqi Christians has changed. Until recently, Immigration Judges in Detroit frequently denied applications for asylum and withholding of removal filed by Iraqi Christians. *See, e.g., Sako v. Gonzales*, 434 F.3d 857 (6th Cir. 2006); *Yousif v. Holder*, No. 11-4072 (6th Cir. Oct. 9, 2012). More recently, however, this changed in the face of overwhelming evidence of the brutal harm inflicted on Christians in Iraq by militias, terrorists, and others.

5. Congress promulgated Section 1247 of the Refugee Crisis in Iraq Act of 2007, Pub. L. No. 110-181, in recognition of the significant dangers in Iraq. This provision allowed otherwise time-barred Iraqi applicants for asylum and withholding of removal to file motions to reopen.

6. Because Iraqi Chaldeans face such a high likelihood of persecution in Iraq, based on my experience before Immigration Judges in Detroit, they are invariably or nearly invariably successful in obtaining protection from removal, in cases in which those claims are not statutorily barred. Indeed, the Detroit Office of Chief Counsel for Immigration and Customs Enforcement (ICE) concedes that Iraqi Chaldeans have a greater than 50% chance of being persecuted in Iraq, and the grant rate in the Detroit Immigration Court for Chaldeans who are not statutorily barred from withholding of removal is at or very near 100%. In my own experience, none of my Iraqi clients have been deported.

7. The persecution Chaldeans currently face in Iraq has been described as akin to genocide, something that has been recognized by the U.S. State Department.

8. In *Yousif v. Lynch*, 796, F.3d 622 (6th Cir. 2015), a case I recently litigated, the Court of Appeals held there "is no dispute that Yousif is a Chaldean Christian and that his status as a Christian alone entitles him to withholding of removal, given that there is 'a clear probability' that he would be subject to future persecution if returned to contemporary Iraq." *Id.* at 628. A clear probability means that there is a greater than 50% chance of future persecution.

9. Based on my personal knowledge and experience with several of the Iraqis who were detained by ICE during the last several days, a significant portion of them may have a basis to reopen their removal proceedings to apply for relief based on changed conditions in Iraq or changes in the law that affect their removability or eligibility for relief from removal.

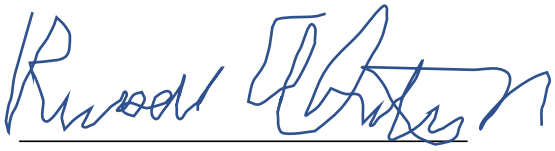
10. For example, on the morning of June 13, 2017, I filed a motion to reopen with the Detroit Immigration Court for an individual who was detained by ICE on June 11, 2017. In 2011, the Immigration Court erroneously found that his conviction for delivery or manufacture of marijuana was an aggravated felony drug trafficking offense under 8 U.S.C. § 1101(a)(43)(B), thereby rendering him statutorily ineligible for asylum. Subsequently, however, the Supreme Court clarified that, under the categorical approach, convictions under state marijuana laws that include the social sharing of small quantities of marijuana for no remuneration are not aggravated felonies. *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013). As a result, the classification of my client's conviction under MCL § 333.7401(2)(D)(3) as an aggravated felony was erroneous and he should be eligible for asylum. *See People v. Green*, 299 Mich. App. 313, 315 (Mich. App. 2013) *aff'd* 494 Mich. 865 (Mich. 2013). Shortly after I filed the motion to reopen, the Immigration Court granted a stay of removal pending a decision on the merits of the motion to reopen. If the motion to reopen is granted, my client will be able to apply for relief from removal and, if successful, retain his lawful permanent resident status.

11. I was only able to file the motion to reopen so quickly because I had a pre-existing relationship with the client and was already in the process of preparing the motion to reopen at the time of his arrest. This client was lucky because I had spent the last several months obtaining his files from prior counsel, preparing his applications for relief, and gathering hundreds of pages of supporting evidence. I have spoken with numerous family members of other individuals who were detained during the last several days and they are generally not in a position to quickly file a motion to reopen because they do not have copies of relevant documents or even know for sure why their loved one was ordered removed.

12. Thus, while I have no doubt that there are many others with a basis for filing meritorious motions to reopen, without representation of counsel such motions will not be filed and these individuals will be deported to persecution, torture and possible death.

13. To file a motion to reopen in Immigration Court or the Board of Immigration Appeals, the movant must attach a copy of the application for relief and supporting documentation, including affidavits. 8 C.F.R. §§ 1003.2(c)(1) and 1003.23(b)(3). It takes time to prepare the applications and supporting evidence, especially if the noncitizen has been transferred to a remote detention facility like the Northeast Ohio Correctional Facility in Youngstown, Ohio. Youngstown is 226 miles from Detroit and it is difficult for Michigan attorneys to make the trip. For individuals with older removal orders, it is not uncommon for them to lack crucial documents from their original removal proceedings, so there is added delay in obtaining these documents from other sources.

14. The fact that some Iraqi Christians arrested by ICE in the past few days have not yet been able to file motions to reopen does not indicate that they lack a basis for seeking relief, but rather that there has not yet been enough time for preparation of the filings, especially if they are without counsel as is the case for the overwhelming majority of the detainees.



Russell Abrutyn

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

USAMA JAMIL HAMAMA,
ATHEER FAWOZI ALI,
ALI AL-DILAMI,
HABIL NISSAN,
JIHAN ASKER,
MOAYAD JALAL BARASH,
SAMI ISMAEL AL-ISSAWI, on behalf of themselves and all those similarly situated,

Petitioners,

v.

REBECCA ADDUCCI, Director of the Detroit District of Immigration and Customs Enforcement,

Respondent.

Case No. 2:17-cv-11910-MAG-DRG

Hon. Mark A. Goldsmith
Mag. David R. Grand

Class Action

DECLARATION OF PETITIONER NORA YOUKHANA IN SUPPORT OF PETITIONERS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR A STAY OF REMOVAL

DECLARATION OF NORA YOUKHANA

I, Nora Youkhana, hereby declare:

I make this declaration based on my own personal knowledge, and if called to testify, I could and would do so competently as follows:

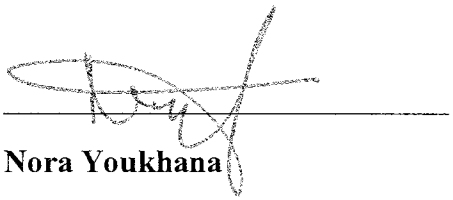
1. I am a licensed attorney practicing law in the State of Michigan. I am employed with Fieger, Fieger, Kenney & Harrington, PC in Southfield, Michigan where I dedicate my practice to social justice and injury law.
2. I attended Wayne State University where I received a bachelor's degree in Communication Studies and a Juris Doctor degree.
3. I am the co-founder of CODE Legal Aid ("CODE"), a non-profit organization dedicated to refugee rights and resettlement. CODE was founded in 2015 and serves Wayne, Oakland, Washtenaw, and Macomb County residents. CODE is operating out of KEYS Grace Academy, 27321 Hampden Street, Madison Heights, Michigan 48071.
4. On June 11, 2017, ICE picked up and detained more than 100 Iraqi immigrants living in the Metro-Detroit area. From that day on, CODE and volunteers have recruited and organized lawyers from the Metro-Detroit area to provide pro bono assistance. The goal has been to find representation for all those detained on June 11 and any further Iraqis with final orders of removal who will be detained.
5. In the 48 hours since the raids, we have been able to assemble a list of at least 24 attorneys and organizations willing to help on a pro bono basis. Organizations include the National Immigrant Rights Center and the law firm of Jaffe, Raitt, Heuer & Weiss, PC.
6. We have been in contact with detainees' families to identify who was apprehended and gather the basic information necessary for volunteer lawyers.

7. Both the distance between our lawyers and the detainees and the potential of removal at any time raise the concern that people will be sent back to Iraq, where they fear persecution and torture, before a lawyer can help them raise these claims or, in some cases, even meet with them.
8. The majority of the lawyers in our network are located in the Metro Detroit area.
9. The vast majority of the Iraqi detainees were transferred out of Michigan soon after being arrested and are being held in Youngstown, Ohio. Others are located in Calhoun and St. Clair Counties.
10. Because Youngstown is over 200 miles away, most volunteer attorneys have not yet been able to visit and consult with detainees, even where they have been able to establish a lawyer-client relationship.
11. To my knowledge, approximately 40% of those detained have not yet met or been contacted by attorneys affiliated with CODE. From speaking to family members of detained Iraqis, I know that some still have no legal representation at all at this time.
12. Out of the remainder of detainees, some had pre-existing attorney client relationships with CODE-affiliated attorneys. However, their transfer to Ohio has made it difficult for even these willing attorneys to communicate with, consult with, or aid their clients as they are located in the Metro Detroit area.
13. Our goal is to file motions to reopen for those who have been apprehended. Iraqis who have lived in the United States for years or, in some cases, decades face a real threat of persecution or torture if returned to Iraq. Others who have been detained may have other grounds for relief that can only be discovered and raised with the help of an attorney.

14. In a few cases, attorneys have been able to file motions to reopen. The majority of these motions were filed on behalf of Iraqi detainees who immigrated to the United States from Iraq.
15. For volunteer attorneys and attorneys with new clients, filing these motions to reopen require substantial time and resources. Attorneys must be able to visit clients, interview them, gather documents, and draft pleadings.
16. Even gathering necessary documents can be time consuming. For example, many families will not have copies of the necessary immigration court and other records, especially where the immigration case ended years ago and the detentions were so sudden. In order to know what forms of relief clients have and even to file a motion to reopen, lawyers will need copies of the files. Getting these files can take several days and sometimes weeks.
17. Volunteers are actively attempting to make the time in addition to their normal caseloads. In some cases, this includes driving to Youngstown in evenings, meeting with clients late at night before returning to Detroit, and meeting with family members late into the night.
18. I am concerned that despite the dedication of our legal community, many of the Iraqi detainees who have been picked up will be deported before they get the help they need. Even if the Iraqi detainees were not transferred to Ohio, we would still need additional lawyers to provide representation to the unrepresented. And given the situation now, even those lawyers with pre-existing relationships with detainees may not have adequate time to protect their clients.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed June 14, 2017 in Southfield, MI.



Nora Youkhana

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

USAMA JAMIL HAMAMA,
ATHEER FAWOZI ALI,
ALI AL-DILAMI,
HABIL NISSAN,
JIHAN ASKER,
MOAYAD JALAL BARASH,
SAMI ISMAEL AL-ISSAWI, on behalf of themselves and all those similarly situated,

Petitioners,

v.

REBECCA ADDUCCI, Director of the Detroit District of Immigration and Customs Enforcement,

Respondent.

Case No. 2:17-cv-11910-MAG-DRG

Hon. Mark A. Goldsmith
Mag. David R. Grand

Class Action

DECLARATION OF PETITIONER AMEER SALMAN IN SUPPORT OF PETITIONERS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR A STAY OF REMOVAL

DECLARATION OF AMEER SALMAN

I, Ameer Salman, hereby declare:

I make this declaration based on my own personal knowledge, and if called to testify, I could and would do so competently as follows:

1. I am Atheer Ali's brother.
2. Atheer Ali a 40 year old Iraqi national who has lived in the United States since around 1992. Since coming to the United Sates he has lived in Michigan. He currently lives in Shelby Township, MI.
3. Atheer Ali has a 12 year old daughter who is in the seventh grade, [redacted].
4. On June 11, 2017, Mr. Ali was arrested and transferred to a detention center in Youngstown, Ohio.
5. If he is sent to Iraq, Atheer Ali fears he will be persecuted for at least two different reasons.
6. First, he is a Christian. Our father was Muslim, but converted, and so my brother is Christian as well. As a Christian, he will face persecution in Iraq. He will be known to be Christian because he has a tattoo of cross on his shoulder.
7. Second, [redacted] He will be targeted as a member of his father's family.
8. To my knowledge, Atheer Ali has had a final order of removal since 2004. Since that time, he has been living under supervision. He has complied fully with the orders of his supervision.
9. Mr. Ali has a criminal history. In 1996, he was convicted of a felony charge of breaking and entering. In 2009 and 2014, he was convicted of misdemeanor convictions for possession of marijuana in 2009 and 2014. He was never sentenced to prison time.

10. Mr. Ali has a lawyer who is representing him in his immigration proceedings.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed June 15, 2017 in Sterling Heights, MI.

Ameer Salman

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

USAMA JAMIL HAMAMA,
ATHEER FAWOZI ALI,
ALI AL-DILAMI,
HABIL NISSAN,
JIHAN ASKER,
MOAYAD JALAL BARASH,
SAMI ISMAEL AL-ISSAWI, on behalf of themselves and all those similarly situated,

Petitioners,

v.

REBECCA ADDUCCI, Director of the Detroit District of Immigration and Customs Enforcement,

Respondent.

Case No. 2:17-cv-11910-MAG-DRG

Hon. Mark A. Goldsmith
Mag. David R. Grand

Class Action

DECLARATION OF PETITIONER ALBERT VALK IN SUPPORT OF PETITIONERS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR A STAY OF REMOVAL

DECLARATION OF ALBERT VALK

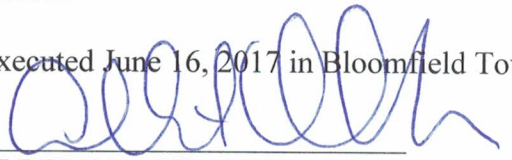
I, Albert Valk hereby declare:

1. I am an attorney in good standing licensed to practice in the State of Michigan. Within the last few days, I was retained by the family of Jihan Asker to seek relief in her immigration case after she was detained by ICE.
2. Jihan Asker is an Iraqi national who has lived in the United States since the age of five, most of this time near Warren, Michigan. She was born on September 21, 1975 and is 41 years old now. She has three children ages 23, 22, and 15, all of whom are US citizens in addition to her mother and sister.
3. Ms. Asker has been subject to a final order of removal to Iraq since 1986 when she was ten years old. She has been under an order of supervision since 2008 and for the past nine years, has been living in the community complying with this Order.
4. On approximately June 11, 2017, without warning, ICE arrested her and transferred her to a detention center in Calhoun County, Michigan, where she awaits imminent removal to Iraq. That same day, Ms. Asker was scheduled to enter the hospital [redacted] Her relatives told me that she is currently suffering from excruciating pain as being in the detention center she cannot leave for surgery or get timely medical attention.
5. Ms. Asker is a beneficiary of the approved I-130 Petition filed by her USC daughter, which classified her as an immediate relative. As a result, Ms. Asker is eligible to seek lawful permanent residency in the US.
6. The documentation brought by relatives also revealed that Ms. Asker is a beneficiary of an I-360 Self-Petition as [redacted] of a U.S. citizen, approved in 1999.

7. Ms. Asker fears removal to Iraq, especially because her status as a Chaldean makes her a target for violence and persecution. Her family was able to retain a lawyer for her immigration proceedings.
8. To the best of my knowledge, Ms. Asker's only encounter with law was fourteen years ago in 2003. Ms. Asker pleaded under advisement to a 93-day misdemeanor fraud charge and ordered to six months' probation. After probation ended on January 28, 2004, a judgment of acquittal/dismissal was entered. She has not reoffended since.
9. Ms. Asker fears persecution and torture if returned to Iraq and wishes to seek relief from removal.

I declare under penalty of perjury of the laws of the United States the foregoing is true and correct.

Executed June 16, 2017 in Bloomfield Township, Michigan.



ALBERT VALK

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

USAMA JAMIL HAMAMA,
ATHEER FAWOZI ALI,
ALI AL-DILAMI,
HABIL NISSAN,
JIHAN ASKER,
MOAYAD JALAL BARASH,
SAMI ISMAEL AL-ISSAWI, on behalf of themselves and all those similarly situated,

Petitioners,

v.

REBECCA ADDUCCI, Director of the Detroit District of Immigration and Customs Enforcement,

Respondent.

Case No. 2:17-cv-11910-MAG-DRG

Hon. Mark A. Goldsmith
Mag. David R. Grand

Class Action

DECLARATION OF PETITIONER SILVANA NISSAN IN SUPPORT OF PETITIONERS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR A STAY OF REMOVAL

DECLARATION OF SILVANA NISSAN

I, SILVANA NISSAN, hereby declare:

1. I am the sister of Habil Nissan.
2. My brother Habil Nissan is an Iraqi national who lawfully entered the United States in 1997 as a refugee at the age of 16 years old. Habil is currently 36 years old and resides in Sterling Heights, Michigan with his family.
3. Habil has two U.S. citizen daughters, ages 9 and 10, who reside with their mother.
4. In 2007, Habil received an order of removal but, nevertheless, was released to the community under an order of supervision, with which he was complying. On or about June 11, 2017, without warning, he was arrested by ICE and immediately transferred to the detention center in Youngstown, Ohio where he awaits imminent removal to Iraq.
5. In 2005, Habil plead guilty to a misdemeanor destruction of property charge, and two misdemeanor assault charges. Habil was ordered to twelve months of probation. The case was later dismissed and closed.
6. As a Catholic, Habil fears persecution and torture if returned to Iraq. Habil and his family are trying to find counsel to assist him in seeking relief from removal.
7. [redacted]

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed June 15, 2017 in Sterling Heights, Michigan.

SILVANA NISSAN

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

USAMA JAMIL HAMAMA,
ATHEER FAWOZI ALI,
ALI AL-DILAMI,
HABIL NISSAN,
JIHAN ASKER,
MOAYAD JALAL BARASH,
SAMI ISMAEL AL-ISSAWI, on behalf of themselves and all those similarly situated,

Petitioners,

v.

REBECCA ADDUCCI, Director of the Detroit District of Immigration and Customs Enforcement,

Respondent.

Case No. 2:17-cv-11910-MAG-DRG

Hon. Mark A. Goldsmith
Mag. David R. Grand

Class Action

DECLARATION OF PETITIONER EMAN JAJONIE-DAMA IN SUPPORT OF PETITIONERS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR A STAY OF REMOVAL

DECLARATION OF EMAN H. JAJONIE-DAMAN

I, EMAN H. JAJONIE-DAMAN hereby declare:

1. I am an attorney in good standing licensed to practice law in the State of Michigan and federal court since 1992.
2. I am also a part-time magistrate at the 46th District Court in Southfield, Michigan since February 2008.
3. I graduated from the University of Detroit Law School. I have been practicing immigration and nationality law exclusively for the past 15 years.
4. During my practice, I have filed hundreds of applications for relief under the Convention Against Torture ("CAT") on behalf of Iraqi Chaldean Christian individuals. Most of the submitted applications were granted.
5. On June 9, 2017, the Board of Immigration Appeals granted two motions to reopen cases for my clients. The grants will enable my clients to seek the protection of deferral of removal under CAT. These two individuals are Iraqi Chaldean Christians (see attached orders).
6. Since the ICE raid and detainment of numerous Iraqi Christians in Metro Detroit on June 12, 2017, I have been contacted by over 50 families asking me to file emergency motions to stay the detainees' imminent deportation.
7. I have found it nearly impossible to meet with my detained clients because they were all transferred to Youngstown, Ohio approximately 4 hours away from the Metro Detroit Area where I practice and where their families reside.
8. It is very difficult for me to continue the client-attorney communication when I am unable to see my clients to obtain necessary information and

documentation for their representation. Further, many attorneys, including myself, have found it difficult to call into the detention center in Ohio to speak to their clients. We have to wait until detainees are given time to make calls home and when they do, they are granted only a few minutes to relay information.

9. The detained Iraqi Christians face imminent death if sent back to Iraq, a country which is war torn and riddled with militias who have been and continue to target the Christian population.

10. In my experience before Immigration Judges in Detroit and the Board of Immigration Appeals, a motion to reopen to request relief under CAT is a viable solution for detainees with limited alternative means for relief.

I declare under penalty of perjury of the laws of the United States the foregoing is true and correct.

Executed June 15, 2017 in Warren, Michigan.

EMAN H. JAJONIE-DAMAN

EXHIBIT G

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

USAMA JAMIL HAMAMA,
ATHEER FAWOZI ALI,
ALI AL-DILAMI,
HABIL NISSAN,
JIHAN ASKER,
MOAYAD JALAL BARASH,
SAMI ISMAEL AL-ISSAWI, on behalf of themselves and all those similarly situated,

Petitioners,

v.

REBECCA ADDUCCI, Director of the Detroit District of Immigration and Customs Enforcement,

Respondent.

Case No. 2:17-cv-11910-MAG-DRG

Hon. Mark A. Goldsmith
Mag. David R. Grand

Class Action

DECLARATION OF PETITIONER WILLIAM SWOR IN SUPPORT OF PETITIONERS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR A STAY OF REMOVAL

DECLARATION OF WILLIAM SWOR

I, WILLIAM SWOR hereby declare:

1. I am an attorney in good standing licensed to practice in the State of Michigan. I was retained by Usama Jamil Hamama to handle his immigration case and pending Application for Pardon to the Michigan Department of Corrections.
2. Mr. Hamama is an Iraqi national who lawfully entered the United States in 1974 as a refugee. He and his family now reside in West Bloomfield, Michigan. Until his conviction, he was a lawful permanent resident in the US.
3. Mr. Hamama is 54 years old. He is married and has four USC children, ages 11, 15, 17, and 19.
4. Although he has been subject to an order of removal to Iraq since October 4, 1994, Mr. Hamama was released to the community without an order of supervision. Seventeen years later, he was temporarily detained and released under an order of supervision. He has been under an order of supervision, in complete compliance, since December 2011.
5. Mr. Hamama recently retained a lawyer to attempt to address his immigration issues and filed an appearance on his behalf. On June 11, 2017, without notice to his attorney, ICE came to his home and arrested him in front of his wife and children. ICE transferred Mr. Hamama to the St. Claire County Jail where he awaits imminent removal to Iraq.
6. Mr. Hamama fears removal to Iraq, especially because his status as a Chaldean makes him a target for violence and persecution.
7. Twenty-eight years ago, Mr. Hamama was involved in a road rage incident which resulted in convictions for felonious assault, possession of felony firearm, and carrying a

pistol in a motor vehicle, for which he served a two year sentence. At the time of his conviction, these offenses did not support a petition for removal. They only became grounds for removal two years after his conviction when Congress amended the Immigration and Nationality Act.

8. Mr. Hamama and his family suffered substantial emotional and financial difficulties as a result of his convictions. He has not reoffended in over twenty-eight years. Mr. Hamama has always supported civic and social activities – volunteering his time and resources to the Rotary Club of Farmington, baseball and bowling teams, the City of Harper Woods' fundraiser for a K9, and Gleaners Food Bank, among others. He has received numerous awards for his charitable work including an Appreciation Award from the United States Air Force and an Award for Supporting Children's Special Olympics Program.
9. Mr. Hamama fears persecution and torture if returned to Iraq and wishes to continue his ongoing efforts to seek relief from removal.
10. Mr. Hamama has severe health problems, [redacted] and is concerned with the unavailability of necessary medicines and medical services in Iraq.

I declare under penalty of perjury of the laws of the United States the foregoing is true and correct.

Executed June 13, 2017 in Detroit, MI.

WILLIAM SWOR

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

USAMA JAMIL HAMAMA,
ATHEER FAWOZI ALI,
ALI AL-DILAMI,
HABIL NISSAN,
JIHAN ASKER,
MOAYAD JALAL BARASH,
SAMI ISMAEL AL-ISSAWI, on behalf of themselves and all those similarly situated,

Petitioners,

v.

REBECCA ADDUCCI, Director of the Detroit District of Immigration and Customs Enforcement,

Respondent.

Case No. 2:17-cv-11910-MAG-DRG

Hon. Mark A. Goldsmith
Mag. David R. Grand

Class Action

DECLARATION OF PETITIONER CYNTHIA BARASH IN SUPPORT OF PETITIONERS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR A STAY OF REMOVAL

DECLARATION OF CYNTHIA BARASH

I, Cynthia Barash, hereby declare:

I make this declaration based on my own personal knowledge, and if called to testify, I could and would do so competently as follows:

1. I am the daughter of Moayad Jalal Barash.
2. I am eighteen years old.
3. Moayad Jalal Barash is 47 years old. He is from Iraqi and has lived in the United States since around 1979 when he was 8 years old.
4. He has spent most of his life in Michigan. On June 11, 2017, he was arrested from our home in Warren, Michigan. He was taken to a jail in Youngstown, Ohio.
5. Mr. Barash is married and has four U.S. Citizen children, aged 21, 20, 18 and 7 years old. [redacted] In addition, our cousin lives with us and my dad takes care of him also.
6. Mr. Barash is the only one of my parents who works. He is also involved in church activities.
7. Because my dad was picked up so suddenly, and because he is being held so far away, we have had trouble speaking to him and getting information.
8. For example, I'm not sure where he has kept his immigration documents.
9. I've been trying to get accurate information to help him. We have been trying to find representation for him and very recently (the night of June 14) spoke to a lawyer, but I don't know when that lawyer will be able to visit my dad or even talk to him.
10. Mr. Barash and our family are Christian, and if he is sent to Iraq he is worried that he will be persecuted.

11. [redacted]

12. My dad was ordered removed back to Iraq more than two decades ago. But he has been living in the United States since and was on an order of supervision. He had to check in with immigration every six months, which he did.

13. I do not know what my family will do without my dad. Even having him taken away for this short time is difficult. Not being able to talk to him or visit him makes it even more difficult.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed June 15, 2017 in [redacted], MI.

Cynthia Barash

EXHIBIT I

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

USAMA JAMIL HAMAMA,
ATHEER FAWOZI ALI,
ALI AL-DILAMI,
HABIL NISSAN,
JIHAN ASKER,
MOAYAD JALAL BARASH,
SAMI ISMAEL AL-ISSAWI, on behalf of themselves and all those similarly situated,

Petitioners,

v.

REBECCA ADDUCCI, Director of the Detroit District of Immigration and Customs Enforcement,

Respondent.

Case No. 2:17-cv-11910-MAG-DRG

Hon. Mark A. Goldsmith
Mag. David R. Grand

Class Action

DECLARATION OF PETITIONER MARK LATTIMER IN SUPPORT OF PETITIONERS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR A STAY OF REMOVAL

DECLARATION OF MARK LATTIMER

I, Mark Lattimer, declare as follows:

I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

I. Qualifications

1. I am Executive Director of Minority Rights Group International (MRG), a position I have held since 2001. Since 2014 I have also coordinated the Ceasefire Centre for Civilian Rights, a multi-year programme supported by the European Union and the Swiss government to implement a system of civilian-led monitoring of human rights abuses in Iraq, focusing in particular on the rights of vulnerable civilians including vulnerable women, internally-displaced persons (IDPs), stateless persons, and ethnic or religious minorities.

2. I am the author or editor of books on human rights including: 'Genocide and Human Rights' (Ashgate, 2006); and (with Philippe Sands QC) 'Justice for Crimes against Humanity' (Oxford, Hart, 2003).

3. I have provided technical consultancy on human rights to United Nations agencies, including UNDP, UNICEF and UN OHCHR, and am frequently used as an expert by the United Nations, the Council of Europe, and the OSCE.

4. I have worked since 2002 on the situation in Iraq, have written or edited numerous reports on the human rights situation and on constitutional issues in Iraq, and have provided technical support to Iraqi parliamentarians and international agencies, including most recently the EU European Asylum Support Office. During 2016-7 my field-work in Iraq (most recently March 2017) has included Baghdad, Kerbala, northern Ninewa and the Kurdistan Region.

5. Minority Rights Group International is an NGO in consultative status with the United Nations that works to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples and to promote cooperation between communities. It works with over 150 partner organizations in over 60 countries worldwide.

II. Summary of Findings and Opinions

6. This declaration is made at the request of the American Civil Liberties Union, following reports that significant numbers of Iraqis living in the United States, including Chaldean Christians, have been detained and are slated for deportation to Iraq. The purpose of the declaration is to provide information about the current

situation in Iraq as it relates to minorities and other vulnerable populations, and in particular to explain how this situation has changed since 2014.

7. Iraq is extremely dangerous for civilians, and minorities in particular face high risks of attack. This has been the case since the conflicts following the 2003 invasion of Iraq, but the situation has recently become much worse, following the rise of the so-called Islamic State (ISIS) and its occupation of large swathes of Iraqi territory in 2014, and the launch of a military campaign by government-affiliated forces to retake those territories from ISIS control. Iraq consistently features within the top six most dangerous countries in the world for minorities according to MRG's *Peoples under Threat* ranking, which highlights countries most at risk of genocide and mass killing.

8. In the years following 2003 minorities, including Christians, Yezidis, Turkmen, Sabean-Mandaeans and others, were subject to bombings, large-scale displacement, assassinations, kidnappings, torture, threats and attacks on their businesses and places of worship. Iraqi Christians (including Chaldeans, Assyrians – sometimes collectively referred to as Chaldo-Assyrians – Syriacs and Armenians) who had worked for foreign companies or multi-national forces were particularly singled out for attack, but the Christian community as a whole was viewed with suspicion because of its perceived religious ties with the West. As a result of the violence, Iraq witnessed a mass exodus of Christians during this period, with UNHCR reporting in 2011 that Christians made up more than half of new refugees in Lebanon and Turkey, despite that fact that they formed only three percent of the population in Iraq. The size of the Christian community in Iraq, which was estimated at 1.4 million prior to 2003, was reduced to 350,000 as of early 2014. Many Christians who remained in Iraq were displaced from Baghdad and other large cities to the Ninewa plains in northern Iraq, the historic homeland of the Chaldo-Assyrian community.

9. In June 2014, ISIS took control of the Iraq's second largest city, Mosul, in Ninewa governorate, prompting the exodus of at least 500,000 civilians. Attacks on Christians and damage to churches were reported. After ISIS issued an ultimatum calling on Christians to pay a protection tax, convert to Islam, or be killed, almost all of Mosul's Christian residents fled, mostly to the Ninewa Plains or Iraqi Kurdistan. Christian homes were marked with 'N' (for Nazarene, or Christian) and expropriated by ISIS.

10. In August 2014, ISIS swept into Sinjar and the Ninewa Plains, uprooting entire minority populations in the process. The group destroyed or desecrated numerous churches, mosques, shrines, monasteries, and other sites of immense historic and cultural importance. The group also carried out large-scale killings and abductions of civilians who were not able to flee. Among the worst-affected groups was the

Yezidi community, of which thousands were either killed or abducted and subject to sexual slavery and other serious violations. It is estimated that several hundred Christian women were abducted by ISIS and subject to rape and other violations, although their situation is not well known internationally.

11. The number of Iraqis displaced as a result of the ongoing conflict is over 3 million. The majority are living as internally displaced persons (IDPs) in central and southern Iraq or the Kurdistan Region. Due to overcrowding and long waiting lists in IDP camps, many IDPs have been forced to live in informal settlements. Living conditions vary widely for IDPs, with those living in informal settlements more likely to suffer from lack of access to humanitarian assistance, basic services, and healthcare. Many IDPs are traumatized by their exposure to acts of violence and in need of psychosocial support in addition to basic medical care. Women who have been victims of sexual violence are particularly vulnerable. Meanwhile, the ongoing military offensive in Mosul continues to displace thousands of civilians, exacerbating the humanitarian crisis.

12. Despite the fact that large areas of territory have now been recovered from ISIS control, current conditions render return of IDPs to these areas unfeasible. The security situation is the Ninewa Plains is in flux, as retaken territories are patrolled by a diverse array of militia groups with competing aims and loyalties. Sporadic confrontations have been reported and there is little reassurance that further conflict will not break out. Many areas are also heavily contaminated with explosive remnants of war (ERDs) or Improvised Explosive Devices (IEDs).

13. Areas retaken from ISIS are also characterized by widespread destruction of private property as well as infrastructure and public services. Many homes have been completely looted, whether by ISIS, the Iraqi army, the Pershmerga, the Popular Mobilization Front, or other militia groups. Other homes were burnt or blown up as ISIS retreated. Christian farms and businesses have also been expropriated, looted, or destroyed, eliminating future sources of income. Moreover, the lack of basic services such as electricity and water makes return to these areas untenable at present. In Sinjar, the Kurdish authorities have imposed a blockade, preventing even the movement of food and medical supplies into the area.

14. There is also no consensus as to the future status of retaken areas, many of which have been disputed between the Iraqi Federal Government and the Kurdish Regional Government since 2003. There are indications that suggest that both governments may be preventing the return of displaced persons to retaken areas in the absence of a political settlement. Complicated and constantly changing entry procedures at checkpoints have prevented IDPs from travelling to their homes to assess the possibility or return, and rendered them unable to bring in much-needed supplies and materials for reconstruction. Even more worryingly, there are reports

that the various parties to the conflict have destroyed entire villages in an attempt to discourage returns.

15. While Christians and other minorities face particular protection issues, the current situation in Iraq is extremely precarious for civilians in general. Parties on all sides of the conflict are responsible for widespread violations of human rights and international humanitarian law. Even in areas firmly under the control of the Iraqi Federal Government, car bombings and suicide attacks are a regular feature of everyday life. The climate of impunity in Iraq means that perpetrators of violence, whether acting as individuals or in association with armed groups, are rarely held accountable. Popular Mobilization Forces, including powerful Shi'a militias sponsored by neighbouring Iran, have been recognized officially by the Iraqi Government but face numerous credible allegations of enforced disappearances, torture and killing of civilians.

16. Women in particular suffer from the effects of impunity due to the high levels of violence they face not only from armed actors, but also from members of their own families in 'honour crimes'. Against the backdrop of an ongoing economic and political crisis, the government has shown itself either unable or unwilling to provide protection or an adequate level of humanitarian assistance to many Iraqis affected by the conflict.

17. Due to the severity of the human rights situation in Iraq and the poor prospects of significant improvement in the near future, emigration remains a recourse for many Iraqis, especially minorities. MRG has repeatedly warned that ethnic and religious minorities are at risk of extinction in Iraq due to the continued presence of factors that push them towards emigration.

18. The office of the UN High Commissioner for Refugees has stated that it does not currently consider any area of Iraq safe for return. This is also my opinion.

I declare under penalty of perjury under the laws of the United States and the District of Columbia that the foregoing is true and correct.

Executed this 14th day of June, 2017 at London, United Kingdom.

Mark Lattimer

EXHIBIT J

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

✓ **Jajonie Daman, Eman Hayat**
Jajonie Daman, P.C.
8424 E. 12 Mile Road, Suite 200
Warren, MI 48093

DHS LIT/York Co. Prison/ALW
3400 Concord Road
York, PA 17402

Name: [redacted] [redacted]

Date of this notice: 6/9/2017

Enclosed is a copy of the Board's decision and order in the above-referenced case.

RECEIVED
JUN 12 2017
BY: .....

Sincerely,

Cynthia L. Crosby
Deputy Chief Clerk

Enclosure

Panel Members:
Kendall Clark, Molly

RussellN
Userteam: Docket

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: [redacted] – York, PA

Date: JUN - 9 2017

In re: [redacted]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Eman H. Jajonie-Daman, Esquire

ON BEHALF OF DHS: Jon D. Staples
Assistant Chief Counsel

APPLICATION: Reopening

ORDER:

This matter was last before the Board on November 10, 2009, when we dismissed the respondent's appeal from the Immigration Judge's decision denying his application for protection under the Convention Against Torture (CAT). On March 30, 2017, more than 7 years after the Board's order, the respondent filed a motion to reopen.[1] Section 240(c)(7)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2). The Department of Homeland Security has opposed the motion. In view of the overall circumstances including the evidence presented with the motion, we find materially changed country conditions and will therefore reopen the proceedings and remand the record to the Immigration Judge. Accordingly, the motion to reopen is granted and the record is remanded to the Immigration Judge for further proceedings and the entry of a new decision.

Molly Dwyer Clark
FOR THE BOARD

[1] The respondent seeks reopening only for deferral of removal under CAT as he is not eligible for other relief due to his 1990 conviction.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

RECEIVED
JUN 12 2017
BY: .....

Jajonie Daman, Eman H.
Jajonie Daman, P.C.
8424 E. 12 Mile Road
Suite 200
Warren, MI 48093

DHS/ICE Office of Chief Counsel - DET
333 Mt. Elliott St., Rm. 204
Detroit, MI 48207

Name: [redacted] [redacted]

Date of this notice: 6/9/2017

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Cynthia L. Crosby
Deputy Chief Clerk

Enclosure

Panel Members:
Kendall Clark, Molly

bashorea
Userteam: Docket

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: [redacted] – Detroit, MI Date: JUN - 9 2017

In re: [redacted]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Eman H. Jajonie-Daman, Esquire

ON BEHALF OF DHS: Jason A. Ritter
Assistant Chief Counsel

APPLICATION: Reopening

The respondent is a native and citizen of Iraq. On October 31, 2002, the Board summarily affirmed the Immigration Judge's decision. On March 29, 2017, the respondent filed the instant motion to reopen. The Department of Homeland Security (DHS) has filed an opposition to the motion. For the following reasons, the motion is granted and the record is remanded for further proceedings.

The respondent seeks reopening and a remand due to changed country conditions in Iraq. He is a Chaldean Christian, and he has submitted extensive evidence of worsening violence against Christians since his 1999 hearing before the Immigration Judge.

The motion is untimely. *See* section 240(c)(7)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2). However, the time limitation does not apply to a motion to reopen based on changed country conditions or circumstances. Section 240(c)(7)(C)(ii) of the Act; 8 C.F.R. § 1003.2(c)(3)(ii).

The additional evidence reflects materially changed country since the respondent's last hearing before the Immigration Judge. The DHS opposes the motion and emphasizes the respondent's criminal history. Despite the respondent's criminal history, he would be eligible for the limited relief of deferral of removal under the Convention Against Torture. 8 C.F.R. § 1208.17. Accordingly, the following orders will be issued.

ORDER: The motion to reopen is granted.

FURTHER ORDER: The record is remanded for further proceedings in accordance with this decision and the entry of a new decision.

FOR THE BOARD

EXHIBIT K

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JESSICA M. COLOTL COYOTL,

Plaintiff,

v.

JOHN F. KELLY, Secretary, Department of Homeland Security; MARK J. HAZUDA, Director, Nebraska Service Center, U.S. Citizenship and Immigration Services; JAMES McCAMENT, Acting Director, U.S. Citizenship and Immigration Services; THOMAS D. HOMAN, Acting Director, U.S. Immigration and Customs Enforcement; and SEAN W. GALLAGHER, Atlanta Field Office Director, U.S. Immigration and Customs Enforcement,

Defendants.

CIVIL ACTION FILE

NO. 1:17-CV-1670-MHC

ORDER

This case comes before the Court on Plaintiff Jessica M. Colotl Coyotl's Emergency Motion for a Temporary Restraining Order and/or for a Preliminary Injunction [Doc. 14] ("Pl.'s Mot."). Plaintiff seeks an order from this Court that temporarily enjoins the revocation of her deferred action immigration status under the Deferred Action for Childhood Arrivals ("DACA") program pending an

eligibility determination that comports with the Administrative Procedure Act ("APA") and the Due Process Clause of the Fifth Amendment. First Am. Compl. For Declaratory & Injunctive Relief [Doc. 8] ("Am. Compl.") ¶¶ 74-85.

I. BACKGROUND

A. Plaintiff Jessica Colotl

Plaintiff is a twenty-eight-year-old citizen of Mexico, who has lived continuously in the United States since she first entered here without inspection in 1999 when she was eleven years old. Decl. of Jessica M. Colotl Coyotl dated May 22, 2017 [Doc. 14-2] ("Colotl Decl.") ¶ 1; Am. Compl. ¶ 17. She graduated from Lakeside High School in DeKalb County, Georgia, in May 2006, with honors. Colotl Decl. ¶ 2. She then earned a bachelor's degree in political science from Kennesaw State University in 2011, where she was named to the President's List for her academic performance. Id. ¶¶ 3-4. While attending college, she was active in several student organizations, including the Hispanic Scholarship Fund and the Mexican American Student Alliance. Id. ¶ 3. She also helped found the Epsilon Alpha Chapter of the Lambda Theta Alpha sorority, an organization dedicated to the needs of Latinas and women. Id.

Since graduating, Plaintiff has worked at a local law firm and aspires to attend law school and become an immigration lawyer. Id. ¶ 5. She has also

continued to remain active in the community, volunteering for the Annual Latino Youth Leadership Conference, donating blood platelets at Northside Hospital in Atlanta, Georgia, and fundraising for St. Jude Children's Hospital. Id. ¶¶ 6-7. She is also a member of a church in Norcross, Georgia and remains active in her sorority. Id. ¶¶ 6-7. Plaintiff has advocated for immigration reform locally and in Washington, D.C. Id. ¶ 8.

B. Plaintiff's Arrest and Criminal Proceeding

On March 29, 2010, Plaintiff was pulled over by campus police for allegedly blocking traffic while waiting for a parking space. Id. ¶ 9; Am. Compl. ¶ 47. She had no driver's license because she is ineligible to obtain one in Georgia due to her immigration status. Colotl Decl. ¶ 9. The next day, Plaintiff was arrested on charges of impeding the flow of traffic and driving without a license, and booked into the Cobb County jail. Id. ¶ 10; Am. Compl. ¶ 48. After a jury trial, Plaintiff was acquitted of impeding the flow of traffic, but found guilty of the misdemeanor offense of driving without a license, for which she served three days in jail and paid a fine. Colotl Decl. ¶ 10; Am. Compl. ¶ 48.

In February 2011, Plaintiff was indicted for allegedly making a false statement during the process whereby she was booked into the Cobb County jail on the earlier traffic violation charges. Colotl Decl. ¶ 11; Am. Compl. ¶ 52. It was

alleged that Plaintiff knowingly provided a false address during booking; although she never told an officer her address, an officer recorded address information from a vehicle insurance card that the officer took from her purse. Colotl Decl. ¶¶ 11-12. The address the officer recorded from Plaintiff's insurance card was, in fact, her correct permanent home address at that time. Id. ¶ 13. Her parents moved from that address one month later, in April 2010. Id.

Plaintiff entered a plea of not guilty to the false statement charge and the District Attorney offered her the option of entering into a pre-trial diversion program as an alternative to prosecution, whereby she would not be required to enter a guilty plea and the charge would be dismissed upon completion of her community service. Id. ¶ 14; Am. Compl. ¶ 52. Plaintiff elected to enter the diversion program and signed a "Diversion Agreement" containing a statement acknowledging that her participation in the program constituted an admission of guilt to the charge against her. Diversion Agreement [Doc. 14-25] at 84-87. Plaintiff successfully completed the diversion program, and the false statement charge was dismissed in January 2013. See Order dated Jan. 9, 2013 [Doc. 14-4] (dismissing criminal case against Plaintiff). Plaintiff has no other criminal history. Colotl Decl. ¶ 18.

C. Plaintiff's Removal Proceeding

After Plaintiff's arrest in March 2010, she was referred to U.S. Immigration and Customs Enforcement ("ICE"), which initiated removal proceedings. Id. ¶ 19; Am. Compl. ¶¶ 55-56. Plaintiff was placed in immigration detention during the removal proceedings, where she was detained for approximately one month. Colotl Dec. ¶ 20. On April 28, 2010, she accepted an order of voluntary departure, which permitted her to leave the United States within thirty days without the entry of a deportation order. Id. ¶ 21; Am. Compl. ¶ 57. After receiving her voluntary departure order, Plaintiff was granted deferred action status by the U.S. Department of Homeland Security ("DHS"), resulting in her release from detention and allowing her to remain in the United States to complete her undergraduate degree. Colotl Decl. ¶ 22; Am. Compl. ¶ 58.

On July 15, 2014, Plaintiff moved the immigration court to reopen her removal proceeding and administratively close the case. See Decision of Board of Immigration Appeals ("BIA") dated Oct. 6, 2016 [Doc. 14-11] ("BIA Decision"); Am. Compl. ¶ 59. The immigration judge denied her request on January 26, 2015, and Plaintiff appealed. BIA Decision; Am. Compl. ¶ 60. The BIA sustained Plaintiff's appeal, reversed the immigration judge's decision, reopened Plaintiff's removal proceeding, and remanded the case to the immigration court for

administrative closure. BIA Decision; Am. Compl. ¶ 60. Although her immigration case was remanded to the immigration court on October 6, 2016, with an order to administratively close the case, no action has been taken to close that case and it remains pending as of the date of this Order. Am. Compl. ¶ 61. On March 29, 2017, ICE counsel filed a brief in opposition to Plaintiff's motion to reopen her removal proceeding and administratively close her case, making the following argument: "[O]n February 20, 2017, the Department [of Homeland Security] issued a memorandum, titled 'Enforcement of the Immigration Laws to Serve the National Interest.' Due to the respondent's criminal history, she is an enforcement priority under this memorandum." DHS's Suppl. Br. on Eligibility for Relief [Doc. 14-12] (filed in Plaintiff's removal proceeding) at 3.

D. Plaintiff's Deferred Action Status From 2010-2017

Plaintiff has been on deferred action status from May 5, 2010, until May 3, 2017, the last four years of which have been under the DACA program. Colotl Decl. ¶ 22; Am. Compl. ¶ 17. Plaintiff first received deferred status under DACA on July 1, 2013. Colotl Decl. ¶ 29. She applied for and received a renewal of her DACA status on May 19, 2015, which remained valid through May 18, 2017. Id. Plaintiff also applied for and received work authorization in conjunction with the grants of deferred action and DACA. Id. ¶ 30. Each of Plaintiff's applications for

DACA disclosed all relevant information regarding her criminal history, including a copy of her pre-trial diversion agreement. Id. ¶ 32.

Plaintiff's latest application for a renewal of her DACA status and work authorization was submitted on December 19, 2016. Id. ¶ 31. On May 2, 2017, Plaintiff's renewal application was denied. Id. ¶ 33; Am. Compl. ¶ 69. Although Plaintiff did not receive notice on May 2, 2017, that her DACA renewal application was denied, DHS's website that day indicated that her DACA renewal application was denied and that a decision notice was mailed to her "that explains why we denied your case and your options." Screenshot of U.S. Citizen and Immigration Services ("USCIS") website [Doc. 19-2].

Subsequently, on May 3, 2017, USCIS issued a notice of termination of Plaintiff's DACA status and employment authorization. See Termination Notice [Doc. 1-11] at 7, attached as an Ex. to DHS's Second Suppl. Br. in Pl.'s removal proceeding; Colotl Decl. ¶ 34. The May 3, 2017, Termination Notice provided that: "USCIS has determined that exercising prosecutorial discretion in your case is not consistent with the Department of Homeland Security's enforcement priorities." Termination Notice; Colotl Decl. ¶ 34; Am. Compl. ¶ 70. The Termination Notice did not contain any further explanation of the decision and

made no reference to the denial of Plaintiff's DACA renewal application one day earlier.[1] Termination Notice; Colotl Decl. ¶ 34; Am. Compl. ¶ 70.

On May 8, 2017, USCIS issued a "Decision" as to Plaintiff's DACA renewal application indicating that her "previous request for DACA was terminated on May 3, 2017," and stating that "USCIS has determined, in its unreviewable discretion, that you have not demonstrated that you warrant a favorable exercise of prosecutorial discretion and it will not defer action in your matter." Decision [Doc. 18-2]. Plaintiff has been provided no opportunity to contest either the May 3, 2017, Termination Notice or the May 8, 2017, Decision.

E. The DACA Program

On June 15, 2012, former Secretary of Homeland Security Janet Napolitano announced the creation of the DACA program. Memorandum from Janet Napolitano dated June 15, 2012 [Doc. 14-14] ("Napolitano Memo"). In her memorandum, Napolitano provided DHS with guidelines regarding the exercise of

[1] Several media outlets previously reported that a USCIS spokesperson publicly stated that Plaintiff's DACA status was terminated because of her guilty plea associated with her entry into the pre-trial diversion program. See, e.g., Kate Brumback, Protection from Deportation Revoked for Former Cause Celebre, Associated Press, May 10, 2017 [Doc. 14-28]; Jeremy Redmon, Trump Administration Strips Georgia Woman of Reprieve from Deportation, Atlanta Journal-Constitution, May 10, 2017 [Doc. 14-29]. However, Defendants now acknowledge that "Plaintiff's pre-trial diversion agreement was not a conviction for immigration purposes." Mem. of Law in Opp'n to Pl.'s Mot. [Doc. 18] ("Defs.' Resp.") at 17 n.10.

its prosecutorial discretion to focus enforcement efforts away from low priority cases, including individuals who came to the United States as children. Id. The Napolitano Memo listed the following five criteria that must be satisfied before an individual can be considered for an exercise of prosecutorial discretion under DACA:

- came to the United States under the age of sixteen;
- has continuously resided in the United States for a least five years preceding the date of this memorandum and is present in the United States on the date of this memorandum;
- is currently in school, has graduated from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
- has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
- is not above the age of thirty.

Id. Individuals must also pass a criminal background check to be eligible for DACA. Id. at 2. Under the DACA program, deferred action is provided for a renewable period of two years, and DACA recipients are eligible to apply for work authorization during the period of deferred action. Id. at 3; see also 8 C.F.R.

§ 274a.12(c)(14) (permitting USCIS to establish a specific period for employment authorization for aliens who have been granted deferred action).

The National Standard Operating Procedures ("SOP") issued by DHS describe the procedures to be followed in adjudicating DACA requests and terminating DACA status. See National Standard Operating Procedures (SOP), Deferred Action for Childhood Arrivals (DACA), Version dated Apr. 4, 2013 [Doc. 14-17] ("April 4 SOP"), and Version dated Aug. 25, 2013 [Docs. 18-2 & 24-1] ("August 28 SOP").[2] The SOP states that it is applicable to all personnel performing adjudicative functions and the procedures to be followed are not discretionary. April 4 SOP at 16; Tr. of Mot. for Prelim. Inj. Hr'g [Doc. 27] at 29 (including the confirmation from counsel for Defendants that "[t]hey are the guidelines that adjudicators are to apply.").

[2] In their response to Plaintiff's motion, Defendants attached a revised portion of Chapter 14 of the SOP dated August 28, 2013, as well as an Appendix to the SOP dated December 29, 2015. [Doc. 18-2 at 59-70.] At the June 8, 2017, hearing on Plaintiff's motion, the Court provided Defendants until the end of that day to provide a more complete version of the SOP, which was filed provisionally under seal based upon Defendants' contention that they had insufficient time to redact those portions of the SOP that may reveal privileged or sensitive law enforcement information. See Defs.' Mot. to File Supp. Exs. Under Seal [Doc. 25]. The Court will rule on Defendants' motion to seal by a separate order. Nevertheless, citations to the April 4 SOP reflect that there has been no change to the cited provisions in the August 28 SOP.

1. The SOP Requirements Relating to DACA Applications

Chapter 8 of the SOP, entitled "adjudication of the DACA Request," indicates that

> Officers will NOT deny a DACA request solely because the DACA requestor failed to submit sufficient evidence with the request (unless there is sufficient evidence in our records to support a denial). As a matter of policy, officers will issue an RFE [Request for Evidence] or a Notice of Intent to Deny (NOID).
>
> If additional evidence is needed, issue an RFE whenever possible.
>
> When an RFE is issued, the response time given shall be 87 days.
>
> ***
>
> When a NOID is issued, the response time given shall be 33 days.

April 4 SOP at 45. The SOP also states that: "In general, the officer shall issue a denial whenever the requestor's response to a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) is insufficient to establish eligibility. There may be exceptions when a NOID or second RFE is appropriate after an initial RFE." Id. at 105.

To clarify these directives, DHS issued an internal question and answer section specifically pertaining to DACA applications:

> Question: Should centers deny a DACA request without first issuing an RFE or NOID?
>
> Answer: In general, SCOPS [Service Center Operations] requires the Centers to issue either an RFE or NOID before

denying a DACA request. An RFE is appropriate when the record lacks sufficient evidence to demonstrate that the requestor satisfies one or more of the guidelines, and a NOID is appropriate when the record contains evidence that the requestor clearly does not satisfy one or more of the guidelines (e.g., disqualifying action/event).

However, the Centers may deny a DACA request without first issuing an RFE or NOID when the record contains irrefutable evidence that the requestor:

- Is deceased.
- Was in immigration detention at the time of filing, remains in immigration detention as of the date the I-821D is adjudicated, and
  - ICE indicates that it does not intend to physically release the requestor within 30 days; or
  - ICE confirms the individual is an enforcement priority.
- At the time of filing, was under age 15 and was not in removal proceedings, did not have a final removal order, or did not have a voluntary departure order.
- Did not arrive in the United States before reaching his/her 16th birthday.
- Was age 31 or older on 6/15/2012.
- Was convicted of a felony that poses a threat to public safety, as described on pages 3 & 4 of the 11/7/2011 NTA Memorandum.
- Already received deferred action as a childhood arrival from USCIS or ICE.
- Acquired lawful immigration status after 6/15/2012 and is in a lawful immigration status as of the date the I-821D is adjudicated.
- Was a lawful permanent resident on 6/15/2012.

- Was under an order of voluntary departure or deportation, exclusion, or removal **and** was physically removed by ICE **or** voluntarily departed the U.S. while their form I-821D was pending with USCIS **and such departure was witnessed by a DHS official**.
- USCIS records show that the requestor's previous DACA request (initial or renewal) was terminated on the basis of 1) issuance of an NTA; 2) travel outside of the U.S. without advance parole; 3) being an enforcement priority/public safety concern; or 4) fraud.

When the Centers deny a DACA request without issuing an RFE or NOID, they will include a brief executive summary of the decision in the A-file.

Please see the DACA SOP and Internal FAQs for additional information about handling procedures for these scenarios. If you believe a straight denial is appropriate for a particular case that does not fall within one of the categories identified above, please send a Request for Adjudicative Guidance to the HQSCOPS [Headquarters Service Center Operations] DACA mailbox.

DHS Internal FAQ: NOID vs. Denial updated Sept. 2, 2015 [Doc. 24-1], submitted as Ex. K to Defs.' Resp. (emphasis in original).[3]

[3] DACA SOP Appendix E (NOIDS) contains language to be used in Notice of Intent to Deny letters under different factual circumstances. See DACA SOP, Appendix E [Doc. 24] ("App. E") submitted as Ex. H to Defs.' Resp. For example, the DACA SOP contemplates sending a Notice of Intent to Deny to an applicant who has been convicted of three or more non-significant misdemeanors, id. at 8, and to an applicant who has been convicted of one significant misdemeanor. Id. at

In summary, the SOP provides that, in the usual circumstance, an application for an initial or renewed DACA status should not be denied without the issuance of a Request for Evidence or a Notice of an Intent to Deny, either of which provides time for the applicant to respond prior to final action being taken. There are several listed scenarios under which a DACA application can be denied without first issuing a RFE or NOID, but Defendants have not presented any evidence that any of those listed scenarios applies to Plaintiff. Finally, if the adjudicator believes that a "straight denial" without the opportunity for an applicant to respond is "appropriate," and the situation is not covered by any of the listed scenarios, a "Request for Adjudicative Guidance" must be made; moreover, if a denial of a request is made without providing the applicant with an opportunity to respond, a "brief executive summary" of that decision must be placed in the file.

2. The SOP Requirements Relating to DACA Terminations

Chapter 14 of the SOP, entitled "DACA Termination," provides as follows:

> If it comes to the attention of an officer that removal was deferred under DACA in error, the officer should reopen the case on Service motion and issue a Notice of Intent to Terminate, unless there are criminal, national security, or public safety concerns (see below). The individual should be allowed 33 days to file a brief or statement contesting the grounds cited in the Notice of Intent to Terminate. The

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10. There is no suggested language concerning an applicant who has been convicted of one non-significant misdemeanor.

> Notice of Intent to Terminate should include a statement that if deferred action for childhood arrivals is terminated, any associated employment authorization granted during the period of deferred action will be terminated for cause.
>
> If the adverse grounds are not overcome, or no response is received to the Notice of Intent to Terminate, the officer should prepare a Termination Notice and seek supervisory review of the draft Termination Notice, prior to issuance. The Termination Notice should indicate that the individual's employment authorization is terminated for cause as of the date of the notice.

August 28 SOP at 136. However, if it comes to light that an applicant is granted DACA status in error due to, among other things, a disqualifying criminal offense, the SOP provides as follows:

> If disqualifying criminal offenses or public safety concerns, which are deemed to be EPS [Egregious Public Safety], arise after removal has been deferred under DACA, the officer should forward the case to the BCU [Background Check Unit] DACA Team who, in turn, will refer the case to ICE and follow the handling procedures outlined in the November 7, 2011 NTA [Notice to Appear] memorandum for EPS cases. If ICE accepts the case, the issuance of the NTA will result in the termination of DACA. Upon the filing of the NTA with EOIR [Executive Office for Immigration Review], the individual's employment authorization terminates automatically.
>
> If ICE does not accept the case or if the disqualifying criminal offense is non-EPS per the November 7, 2011 NTA memorandum, the BCU DACA Team should reopen the case on Service motion and issue a Notice of Intent to Terminate. The individual should be allowed 33 days to file a brief or statement contesting the grounds cited in the Notice of Intent to Terminate. The Notice of Intent to Terminate should include a statement that if deferred action for childhood arrivals is terminated, any associated employment authorization

> granted during the period of deferred action will be terminated for cause.
>
> If the adverse grounds are not overcome, or no response is received to the Notice of Intent to Terminate, the officer should prepare a Termination Notice and seek supervisory review of the draft Termination Notice prior to issuance. The Termination Notice should indicate that the individual's employment authorization is terminated for cause as of the date of the notice. Consequently, the Class of Admission (COA) code in CIS [Central Index System] should be changed to DAT (Deferred Action Terminated) for employment verification purposes. Additionally, the BCU DACA Team should forward the individual's name to ERO [Enforcement and Removal Operations].

Id. at 137.

> In another circumstance,
>
> If after consulting with ICE, USCIS determines that exercising prosecutorial discretion after removal has been deferred under DACA is not consistent with the Department of Homeland Security's enforcement priorities, and ICE does not plan to issue an NTA, the officer should refer the case to HQSCOPS [Headquarters Service Center Operations], though the normal chain of command, to determine whether or not a NOIT is appropriate. If it is determined that the case warrants final termination, the officer will issue DACA 603—Termination Notice . . . .

Id. at 138.

In summary, the SOP provides that, in the usual circumstance, a termination of an individual's DACA status will not occur without prior notice to that individual. In the situation where USCIS determines that the continued exercise of prosecutorial discretion after removal has been deferred "is not consistent with

[DHS's] enforcement priorities," the matter must be referred to a more senior authority for a determination of whether a notice of intent to termination "is appropriate."

F. The Preliminary Injunction Hearing

At the hearing on Plaintiff's motion held on June 8, 2017, counsel for Defendants confirmed that Plaintiff has at all relevant times met all five DACA program eligibility criteria delineated in the Napolitano Memo and that there has been no change with respect to those criteria since Plaintiff initially obtained deferral under DACA on July 1, 2013.

> THE COURT: Under the Secretary Napolitano's memo – let me pull that out here – of June 15, 2012, there are five criteria listed that need to be satisfied before an individual is even considered for the exercise of prosecutorial discretion under DACA.
>
> It's true, is it not, that the plaintiff fulfilled those criteria during the period of time that she was granted DACA status and then renewed DACA status the first time, is that correct?
>
> MR. ROBINS: Yes.
>
> THE COURT: All right. Are any of those five criteria, did something occur prior to the current decisions which are before the Court? And that is, not to renew her DACA status in particular, but also to terminate her DACA status where she no longer fulfills one of these – all five of those criteria.
>
> MR. ROBINS: No, I don't believe so, your Honor.

Tr. of Mot. for Prelim. Inj. Hr'g at 30. Counsel for Defendants also admitted that there was no disqualifying criminal offense or egregious public safety concern that arose after Plaintiff's removal was deferred. Id. at 33.

Counsel for Defendants indicated that the only change that has occurred since Plaintiff initially received her DACA status and had that status renewed is the issuance of a Memorandum from the current Secretary of DHS, John Kelly, on February 20, 2017, entitled "Enhancing Public Safety in the Interior of the United States" [Doc. 18-2 at 48-53] ("Kelly Memo"). Tr. of Mot. for Prelim. Inj. Hr'g at 40-41. Although the Kelly Memo purports to rescind and supersede "all existing conflicting directives, memoranda, or field guidance regarding the enforcement of our immigration laws and priorities for removal," it specifically excludes "the June 15, 2012, memorandum entitled 'Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,'" *i.e.*, the Napolitano Memo. Kelly Memo at 2.

In addition, DHS has published on its website a series of questions and answers related to how the Kelly Memo will be implemented operationally. See printout of DHS website dated May 18, 2017 [Doc 14-16]. The document poses the question: "Do these memoranda affect recipients of Deferred Action for

Childhood Arrivals (DACA)?" The answer is clear and unambiguous: "No." Id. at 9.

Counsel for Defendants was unable to provide the Court the actual reason for the decisions to terminate Plaintiff's DACA status and deny her renewal application. Tr. of Mot. for Prelim. Inj. Hr'g at 42-45. Counsel for Defendants confirmed that Plaintiff's pre-trial diversion agreement is not considered to be a conviction for immigration purposes, but speculated that USCIS may have considered Plaintiff's misdemeanor conviction of driving without a license (which Defendants were aware of since 2010) as well as the Kelly Memo (which, as stated above, specifically excludes the DACA Program). Likewise, Defendants were unable to confirm that DHS's Standard Operating Procedures under the DACA program were followed with respect to the review of Plaintiff's renewal application or the decision to terminate her DACA status. See id. at 33-34, 42-43.

II. SUBJECT MATTER JURISDICTION

The first issue which must be determined is whether the Court has jurisdiction to hear this case. Plaintiff alleges that the Court has jurisdiction pursuant to: (1) 28 U.S.C. §§ 1331, 1343; (2) 5 U.S.C. § 701 *et seq.* (the APA);[4]

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[4] The APA does not provide the Court with an independent basis for subject matter jurisdiction. See Califano v. Sanders, 430 U.S. 99, 106-07 (1977). If at all, subject matter jurisdiction is proper under the APA only in combination with the Court's

and (3) authority to grant declaratory relief under 28 U.S.C. §§ 2201, 2202 (the Declaratory Judgment Act). See Am. Compl. ¶ 14. Defendants argue the Immigration and Nationality Act ("INA") explicitly precludes review of (1) the discretionary decision to terminate Plaintiff's DACA status, (2) the effects of that decision on Plaintiff's removal proceeding, and (3) any subsequent decision to take Plaintiff into custody during the pendency of her removal proceeding and any appeals. Defs.' Resp. at 10-16. Specifically, Defendants argue that two provisions within the INA, 8 U.S.C. §§ 1252(g) and 1252(b)(9), strip this Court of subject matter jurisdiction to hear Plaintiff's case. Defendants also contend that the APA does not permit judicial review of cases where agency action is committed to agency discretion by law.

Section 1252(g) provides that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." See also Gupta v. McGahey, 709 F.3d 1062, 1066 (11th Cir. 2013) (affirming the district court's dismissal

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federal question jurisdiction under 28 U.S.C. § 1331. 14A Charles A. Wright, Arthur C. Miller & Edward H. Cooper, Federal Practice and Procedure § 3659, at 51 (3d ed. 1998). The federal question statute confers jurisdiction on the district courts over actions "arising under" federal law. 28 U.S.C. § 1331.

pursuant to § 1252(g) after finding that the plaintiff was challenging "actions taken to commence removal proceedings.").

Section 1252(b)(9) ("Requirements for review of orders of removal") states that, with respect to review of an order of removal under the INA:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9).

The Court agrees with Defendants that § 1252(g) strips this Court of jurisdiction to review the government's ultimate discretionary determination as to Plaintiff's DACA status. See Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 485 (1999) ("Section 1252(g) seems clearly designed to give some measure of protection to 'no deferred action' decisions and similar discretionary determinations, providing that if they are reviewable at all, they at least will not be made the bases for separate rounds of judicial intervention outside the streamlined process that Congress has designed."); see also Rodriguez v. Sessions, No. 15-72487, 2017 WL 695192, at *1 (9th Cir. Feb. 22, 2017) ("We lack jurisdiction to

consider [the plaintiff's] eligibility for Deferred Action for Childhood Arrivals."); Vasquez v. Aviles , 639 F. App'x 898, 901 (3rd Cir. 2016) ("[Section 1252(g)] deprives all courts of jurisdiction to review a denial of DACA relief because that decision involves the exercise of prosecutorial discretion not to grant a deferred action.") (citing Reno, 525 U.S. at 485); Fabian-Lopez v. Holder, 540 F. App'x 760, 761 n.2 (9th Cir. 2013) (determining that Section 1252(g) deprived the court of jurisdiction to consider the plaintiff's DACA eligibility); Tinoco v. Johnson, No. C 15-02801 WHA, 2015 WL 4396351, at *1 (N.D. Cal. July 17, 2015) ("Federal courts, however, lack subject-matter jurisdiction to determine DACA eligibility, as stated in 8 U.S.C. § 1252(g) . . . ."). However, the Court finds that neither of the statutes relied upon by Defendants applies to the narrower issue also presented by this case; specifically, whether Defendants complied with their own procedures to (1) adjudicate Plaintiff's DACA renewal application, and (2) terminate Plaintiff's DACA status.

Section 1252(b)(9) relates to the review of orders of removal. Although Plaintiff is involved in an on-going removal proceeding that ultimately may result in an order regarding her removal from this country, there has been no such order issued. Similarly, the Court is not deprived of jurisdiction by § 1252(g) to consider whether Defendants followed their own procedures in denying Plaintiff's

application for DACA renewal or terminating her DACA status. Section 1252(g) only strips district courts of jurisdiction to hear cases involving a "decision or action . . . to commence proceedings, adjudicate cases, or execute removal orders." As the Supreme Court explained in Reno, § 1252(g) does not apply to the entire universe of deportation-related claims, but instead

> applies only to three discrete actions that the Attorney General may take: her "decision or action" to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." There are of course many other decisions or actions that may be part of the deportation process-such as the decisions to open an investigation, to surveil the suspected violator, to reschedule the deportation hearing, to include various provisions in the final order that is the product of the adjudication, and to refuse reconsideration of that order.

Reno, 525 U.S. at 482 (emphasis in original); see also Alvarez v. U.S. Immigration & Customs Enforcement, 818 F.3d 1194, 1202 (11th Cir. 2016) (stating that Reno "instructs us to narrowly interpret § 1252(g)—a command that our sister circuits have applied in subsequent cases."). In this case, a removal proceeding was commenced against Plaintiff in May 2010, but that decision to commence the proceedings is not presently before the Court. Likewise, there has been no adjudication in Plaintiff's removal proceeding nor is there any order to be executed. Accordingly, the Court finds that neither of these statutes divests this Court of jurisdiction to hear Plaintiff's challenge to the *non-discretionary* process

by which her DACA renewal application was determined and the *non-discretionary* process by which her DACA status was terminated.

Likewise, Defendants' argument that § 701(a) of the APA bars this Court from reviewing an agency's non-discretionary review process fails. The Eleventh Circuit's decision in Perez v. U.S. Bureau of Citizenship & Immigration Servs. (USCIS), 774 F.3d 960 (11th Cir. 2014), illustrates the important distinction between challenges to an agency's ultimate discretionary decision and challenges to non-discretionary administrative determinations. In Perez, the plaintiff challenged a determination regarding his eligibility to apply to adjust his immigration status. Id. at 963. The court recognized that while the "ultimate decision whether to grant adjustment of status under the [Cuban Adjustment Act] is discretionary[,] . . . USCIS initial statutory-eligibility decisions, which are made before the discretionary decision whether to grant adjustment of status, are purely legal questions that do not implicate agency discretion." Id. at 965 (citing Mejia Rodriguez v. U.S. Dep't of Homeland Sec., 562 F.3d 1137, 1143-44 (11th Cir. 2009) (citation omitted). Put another way, "simply because the Secretary has the ultimate discretionary authority to grant an immigration benefit does not mean that every determination made by USCIS regarding an alien's application for that benefit is discretionary, and hence not subject to review." Mejia Rodriguez, 562

F.3d at 1143. Similarly, in this case, Defendants' failure to follow the procedures detailed in the DACA SOP does not implicate agency discretion. Therefore, the jurisdiction-stripping provisions of 8 U.S.C. §§ 1252(g) and 1252(b)(9) and 5 U.S.C. § 701(a) are not applicable to prevent this Court from determining whether DHS complied with its non-discretionary procedures.

III. PRELIMINARY INJUNCTION - STANDARD OF REVIEW[5]

To obtain a preliminary injunction, a movant must demonstrate: (1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the injunction is not granted; (3) that the threatened injury to movant absent an injunction outweighs the harm to Defendants if an injunction is granted; and (4) that granting the injunction would not disserve the public interest. Scott v. Roberts, 612 F.3d 1279, 1290 (11th Cir. 2010); Project Vote, Inc. v. Kemp, 208 F. Supp. 3d 1320, 1348 (N.D. Ga. 2016). "The likelihood of success on the merits is generally considered the most important of the four factors." Furman v. Cenlar FSB, No. 1:14-CV-3253-AT, 2015 WL 11622463, at *1 (N.D. Ga. Aug. 26, 2015) (citation and quotation omitted); see also Garcia-Mir v. Meese, 781 F.2d 1450,

[5] This Court conducted a hearing on Plaintiff's motion on June 8, 2017, after notice to all parties and an opportunity for both sides to submit briefs. Accordingly, as both parties had notice of the motion and appeared at the hearing, this Court considers Plaintiff's motion as a motion for preliminary injunction. See FED. R. CIV. P. 65(a).

1453 (11th Cir. 1986) ("Ordinarily the first factor is the most important."). A preliminary injunction is "an extraordinary and drastic remedy" and should be granted only when the movant clearly carries the burden of persuasion as to each of the four prerequisites. Four Seasons Hotels & Resorts, B.V. v. Consorcio Barr, S.A., 320 F.3d 1205, 1210 (11th Cir. 2003). The purpose of a preliminary injunction is to maintain the status quo until the court can enter a final decision on the merits of the case. Bloedorn v. Grube, 631 F.3d 1218, 1229 (11th Cir. 2011).

IV. ANALYSIS

A. Substantial Likelihood of Success

Count I of Plaintiff's Amended Complaint seeks relief pursuant to § 706(2)(A) of the APA based on Defendants' decisions to deny her renewal application and terminate her DACA status, both of which Plaintiff alleges were made in a manner that was not consistent with Defendants' non-discretionary procedures. Plaintiff argues that she is likely to succeed on the merits of this claim because these decisions violated DHS's own procedures and were, therefore, arbitrary, capricious, and contrary to law. Am. Compl. ¶¶ 74-77. The Court agrees.

> The APA provides: "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702. The APA further states "[a]gency action

> made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review." Id. § 704. An agency action is final when two conditions are met: (1) "the action must mark the consummation of the agency's decision-making process [ ]—it must not be of a merely tentative or interlocutory nature"; and (2) "the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." Mejia Rodriguez, 562 F.3d at 1145 (citation and internal quotation marks omitted). A reviewing judge shall "compel agency action unlawfully withheld or unreasonably delayed" and set aside agency actions found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(1), (2)(A).

Perez, 774 F.3d at 965.

As explained above, the DACA SOP specifically details three procedures by which a person's DACA status can be terminated. Although Defendants were unable to inform the Court which process was followed in this case, if any, the record before the Court reveals that their efforts fell short under any of the three scenarios. Under the first scenario, the government would issue a Notice of Intent to Terminate ("NOIT"), which would in turn grant the applicant/recipient thirty-three days to contest the grounds cited in the Notice. Plaintiff was given no such notice or opportunity to contest the decision in this case.

Under the second scenario, the DACA SOP provides that DACA status can be terminated upon the discovery that it was granted in error due to a disqualifying criminal offense which is deemed to present an "Egregious Public Safety" concern.

August 28 SOP at 137. Defendants, however, have foreclosed this as a viable option in this case by admitting that Plaintiff's pre-trial diversion agreement in this case was not a "conviction" that would render her ineligible for DACA treatment, see Defs.' Resp. at 17 n.10, and admitted in open Court that this matter did not involve an "Egregious Public Safety" concern.

The third scenario provides that DACA status can be terminated without notice

> [i]f after consulting with ICE, USCIS determines that exercising prosecutorial discretion after removal has been deferred under DACA is not consistent with the Department of Homeland Security's enforcement priorities, and ICE does not plan to issue an NTA [notice to Appear], the officer should refer the case to HQSCOPS [Headquarters Service Center Operations], though the normal chain of command, to determine whether or not a NOIT [Notice of Termination] is appropriate.

August 28 SOP at 138. However, there is no indication in the record before the Court that this process of referring the case to multiple entities for various determinations prior to termination—which it appears may allow termination of Plaintiff's DACA status without notice—was followed by Defendants.

Defendants apparently also failed to follow the DACA SOP in their adjudication of Plaintiff's renewal application. The DACA SOP regarding DACA applications requires that a DACA applicant be provided a notice of intent to deny the application, or a request from the government for more evidence from the

applicant, along with an opportunity for the applicant to respond, before a denial of the application is issued. See April 4 SOP at 3, 8. Appendix E to the DACA SOP even includes Notice of Intent to Deny form letters to be sent to applicants who, for example, are convicted of three misdemeanors or of one significant misdemeanor. App. E at 8, 10. At most, the record reveals that Plaintiff's only relevant criminal offense was her misdemeanor conviction of driving without a license. However, no notice of intent to deny her application was issued to Plaintiff in this case and she was not afforded an opportunity to respond to the decision to deny her renewal application.

It is also evident that nothing in the record before the Court indicates that there is irrefutable evidence that Plaintiff falls under one of the enumerated criteria that would permit USCIS to deny her request for renewal of her DACA status without notice. In addition, the record lacks any evidence that a request for adjudicative guidance was made to justify a "straight denial" of a request to renew under DACA when there was no record evidence to support such a denial.

Defendants place great reliance upon the Kelly Memo in an effort to justify their determinations with respect to Plaintiff's DACA status. However, the Kelly Memo, by its own terms, has no application to the DACA program.

Because Defendants have failed to present any evidence that they complied with their own administrative processes and procedures with regard to the termination of Plaintiff's DACA status and the denial of her renewal application, Plaintiff has shown that she is likely to prevail on her claim that Defendants violated the APA.[6] Plaintiff is entitled to at least the process afforded in Defendants' own procedures with regard to the termination of her DACA status as well as the adjudication of her renewal application.

B. Irreparable Injury in the Absence of an Injunction

If an injunction is not entered to prevent Plaintiff's DACA status from being terminated or not renewed because of Defendants' failure to follow its own procedures, Plaintiff will suffer irreparable harm. Prior to Defendants' actions, Plaintiff's DACA status meant that it was unlikely that she would be removed from the United States. Now that her DACA status has been unlawfully terminated, she faces the real potential of removal, particularly because Defendants have seen fit to deny her that status without offering evidence that the denial was made in

[6] Because the Court concludes that Plaintiff is likely to succeed on the merits of her First Claim of Relief in her Amended Complaint, which alleges that Defendants' actions were arbitrary and capricious in violation of the APA by failing to renew and terminating her DACA status in contravention of DHS's own procedures, it is unnecessary to consider Plaintiff's second and third claims for relief in conjunction with her motion for preliminary injunction.

accordance with their own procedures. In addition, Plaintiff's emotional distress caused by this insecurity is another factor in determining that Plaintiff will suffer irreparable injury without the entry of a preliminary injunction which compels Defendants to comply with DHS's SOP prior to denying Plaintiff her application to renew her DACA status or terminating that status.

C. The Threatened Injury to Plaintiff Outweighs Any Harm to Defendants and Does Not Disserve the Public Interest.

The Court finds that the harm to Plaintiff in the absence of an injunction will exceed any harm suffered by Defendants because of the grant of a preliminary injunction. By granting an injunction until the merits of the underlying dispute are adjudicated, the Court is simply requiring Defendants to comply with DHS's written procedures as to the adjudication of DACA applications and the termination of DACA status. There can be no harm to Defendants in requiring them to follow their own written guidelines, but the harm to Plaintiff by Defendants' failure to do so is significant.[7] Furthermore, because the public has an

[7] Defendants argue that their interest in enforcing immigration laws outweighs any harms alleged by Plaintiff. Defendants' interest in enforcing immigration laws does not justify them running roughshod over Plaintiff by ignoring their own required procedures prior to undertaking action to deny or terminate her DACA status. Defendants admit that Plaintiff's pre-trial diversion proceeding does not constitute a criminal conviction under immigration law, there is nothing in Plaintiff's history that classifies her as an egregious public safety risk, and there has been no change in circumstances since the last time Plaintiff's DACA status

interest in government agencies being required to comply with their own written guidelines instead of engaging in arbitrary decision making, Plaintiff has made the requisite showing that the public interest would be served by this Court's entry of a preliminary injunction enjoining Defendants from failing to comply with their written operating procedures.

V. CONCLUSION

For the foregoing reasons, Plaintiff's Emergency Motion For a Temporary Restraining Order and/or for a Preliminary Injunction [Doc. 14] is **GRANTED IN PART** as follows.

It is hereby **ORDERED** that USCIS's decision to terminate Plaintiff's status under the Deferred Action for Childhood Arrivals program memorialized in the May 3, 2017, Termination Notice is preliminarily enjoined. This preliminary injunction also applies to enjoin Defendants' termination of Plaintiff's employment authorization, which was included as a portion of the May 3, 2017, Termination Notice.

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was renewed. Defendants' attempt to rely on the Kelly Memo to justify their decisions reinforces the arbitrariness of their actions against Plaintiff, when the Kelly Memo expressly exempts the DACA program from its scope. Defendants have presented no evidence to this Court which justifies the failure to follow their own procedural guidelines prior to denying Plaintiff's application for renewal of her DACA status and terminating that status.

It is further **ORDERED** that USCIS's decision to deny Plaintiff's renewal application for DACA status memorialized in the May 8, 2017, Decision is preliminarily enjoined.

It is further **ORDERED** that Defendants shall reconsider the termination of Plaintiff's DACA status and re-adjudicate Plaintiff's renewal application in a manner consistent with the Department of Homeland Security's Standard Operating Procedures and this Order.

It is further **ORDERED** that Plaintiff's DACA status, including her employment authorization, is reinstated pending Defendants' re-adjudication of Plaintiff's renewal application and reconsideration of the termination of Plaintiff's DACA status. This Order shall remain effective until further Order from this Court, which will issue only after Defendants have submitted sufficient proof that they have followed all relevant standard operating procedures regarding the adjudication of Plaintiff's renewal application and any termination of Plaintiff's DACA status.

IT IS SO ORDERED this 12th day of June, 2017.

Mark H. Cohen

MARK H. COHEN
United States District Judge

EXHIBIT L

2007 WL 708628
Only the Westlaw citation is currently available.
United States District Court,
W.D. Michigan,
Southern Division.

Navtej KUMAR, Petitioner,
v.
Alberto GONZALES, et al., Respondents.

No. 1:07–CV–003.
|
March 5, 2007.

Attorneys and Law Firms

Behzad Ghassemi, Law Office of Behzad Ghassemi, East Lansing, MI, for Petitioner.

Jennifer L. McManus, U.S. Attorney, Grand Rapids, MI, for Respondents.

OPINION

GORDON J. QUIST, United States District Judge.

***1** Petitioner is currently detained awaiting his removal from the United States. He has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, and the matter is now before this court on respondents' motion to dismiss for lack of jurisdiction (docket no. 6), and petitioner's motion for stay of removal proceedings (docket no. 2).

Background

Petitioner is a native and citizen of India and entered the United States by way of Mexico in 1994, without inspection. Petition at ¶¶ 4–5. On April 26, 2000, petitioner was found subject to removal and ordered by an Immigration Judge in New York City to voluntarily depart the United States on or before August 24, 2000. *In the Matter of Navtej Kumar*, Case No. A72–690–648; *See* Exh. D attached to Petition.[1] Petitioner remained in the United States, however, and moved to re-open his removal proceedings on or about March 8, 2002. *See* Exh. 8 attached to Resp. Brief. An Immigration Judge denied this motion in an order entered April 12, 2002. *See* Exh. G attached to Petition. Petitioner appealed this order, which the Bureau of Immigration Appeals affirmed on May 27, 2003. *See* Exh. 10 attached to Resp. Brief.

[1] Petitioner has been the subject of removal proceedings dating back to the mid–1990's. In the hearing leading to the April 26, 2000 order, petitioner apparently conceded removability and unsuccessfully sought political asylum.

Proceedings in This Court

Petitioner has been detained by the government since September 6, 2006 and housed at the Calhoun County, Michigan, Jail. *See* Exh 11 attached to Resp. Brief. On January 3, 2007, petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C 2241, together with a motion to stay removal. The government responded on January 29, 2007, with a motion to dismiss the habeas petition for lack of subject jurisdiction, to which petitioner responded. The court afforded the government time to file a reply in support of its dispositive motion, but none was submitted and the motion is now at issue. In a surprising turn of events, however, petitioner's counsel advised the court on March 1, 2007, that he had just learned that his client had been taken out of the Calhoun County Jail, and that petitioner's location was unknown. Upon inquiry, the court was informed by government counsel, for the first time, that petitioner was being placed on a plane for India that very afternoon. The court thereupon immediately entered an order on March 1, 2007, to temporarily stay petitioner's removal to give the court an opportunity to consider the motion to dismiss the government had brought before it, and to decide its own jurisdiction.

Discussion

The April 26, 2000 order, which serves as the basis of petitioner's removal, has three components. First, the order granted petitioner voluntary departure in lieu of removal by August 24, 2000 "or any extensions as may be granted by the District Director." Second, the order set the condition that petitioner provide the INS with appropriate travel documentation by June 26, 2000 "sufficient to assure lawful entry into the country to which the alien is departing" and that the travel documents were "due to 26 Federal Plaza, N.Y.C." Third, the order also contained a standard provision converting it into an order of removal

upon petitioner's failure to meet the conditions of the voluntary departure, specifically stating:

> ***2** It is FURTHER ORDERED that if any of the above ordered conditions are not met as required, the above order shall be withdrawn without further notice or proceeding and the following shall thereupon be immediately effective: respondent [Navtej Kumar] shall be removed to INDIA on the charge(s) in the Notice to Appear.

Order (April 24, 2000). *See*, 8 C.F.R. § 1240.26(d) ("[u]pon granting a request made for voluntary departure ... the immigration judge shall also enter an alternate order of removal"). The record reflects that petitioner received the order, did not meet its conditions, and received no extensions; therefore there is no issue that an order of removal exists in this case.

Petitioner attacks the validity of the removal order in this court pursuant to 28 U.S.C. § 2241. Title 8 U.S.C. § 1252, as amended by the REAL ID Act of 2005, Pub.L. No. 109–13, 119 Stat. 231, provides the exclusive means of reviewing a final order of removal. It states in pertinent part:

> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) of this section. For purposes of this chapter, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms "judicial review" and "jurisdiction to review" include habeas corpus review pursuant to section 2241 of Title 28, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).

28 U.S.C. § 1252(a)(5).[2] The statute further states that "[t]he petition for review shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." § 1252(b)(2).

[2] The exceptions set forth in § 1252(e) are inapplicable to petitioner.

Thus, the clear and unambiguous language of § 1252, as amended, precludes this court from exercising jurisdiction over any claim by petitioner which necessitates review of an order of removal.

Petitioner urges the court to retain jurisdiction of this matter, because "[a] petitioner who challenges the very existence of a removal order does not seek 'review of an order of removal' within the meaning of the REAL ID Act, citing *Madu v. U.S. Attorney General*, 470 F.3d 1362 (11th Cir.2006) and *Kumarasamy v. Attorney General of the United States*, 453 F.3d 169 (3rd Cir.2006).[3] In these two decisions, the courts concluded that neither Madu nor Kumarasamy sought to review an order of removal. In *Madu*, petitioner left the country voluntarily before the order of removal became operative, and in *Kumarasamy* the petitioner alleged no removal order had been issued. Consequently, both courts found that the REAL ID Act did not apply. *Madu*, 470 F.3d at 1365–68; *Kumarasamy*, 453 F.3d at 171–72.

[3] Petitioner indicates that he has attached copies of these decisions to his brief. He has not.

***3** These two cases are distinguishable from the present case. In this case, the actual existence of a removal order as a document received by petitioner is not in doubt; rather the legal efficacy of it is challenged. Petitioner contends that his removal order arose due to the ineffective assistance of his former counsel, who essentially is alleged to have failed to take certain action on petitioner's behalf. Petitioner's Answer at 2. In petitioner's words, "[h]ad this action been taken by the former counsel, a removal order would not have existed." *Id.*

Petitioner's claims of ineffective assistance of counsel are no different in kind from the classic petition for a writ of habeas corpus routinely filed by criminal defendants who allege their convictions are invalid due to the ineffective assistance of counsel. It is precisely this type of petition for a writ of habeas corpus which the REAL ID Act

precludes this court from hearing. A virtually identical situation arose in *Feldman v. Gonzalez*, No. 04–3784, 2005 WL3113488 at *2 (6th Cir., November 21, 2005) (unpublished) in which an alien's basis for filing a habeas petition was also an ineffective assistance of counsel based upon his representative's failure to act. Although the petitioner framed his habeas petition only as an ineffective assistance of counsel claim, and not as a direct challenge to the merits of the order of removal, the Sixth Circuit determined that "Feldman's habeas petition challenges the Order of Removal issued against him", and implicitly assumed jurisdiction over the petition, treating it as a petition for review under the REAL ID Act. *See Kellici v. Gonzalez*, 472 F.3d 416, 419 at fn. 1 (6th Cir.2006).

Conclusion

For the reasons discussed, judicial review of a removal order is governed by 8 U.S.C. § 1252, as amended by the REAL ID Act of 2005. This statutory provision provides that the sole and exclusive means of asserting a challenge to a final order of removal is to file a petition for review with the appropriate court of appeals, which in this case is the U.S. Court of Appeals for the Second Circuit. The type of claim asserted by petitioner in this action is clearly encompassed by § 1252, as amended. Therefore, petitioner's habeas challenge in this district court to his final order of removal may not be considered.

Accordingly, the government's motion to dismiss for lack of subject matter jurisdiction (docket no. 6) will be GRANTED, and the petition for writ of habeas corpus DISMISSEW.[4] The order for a temporary stay of removal issued March 1, 2007 (docket no. 10) will be lifted, and petitioner's motion for a stay of removal (docket no. 2) will be DENIED.

[4] Petitioner also seeks in his prayer for relief a show cause hearing as to why he should not be released from custody. Petitioner has not pursued this issue and it is clear that this court retain this case only if petitioner challenged just his continued detention, and not his removal as well. *See Kelliei v. Gonzalez,* 472 F.3d 416, 419 (6th Cir.2006).

All Citations

Not Reported in F.Supp.2d, 2007 WL 708628

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EXHIBIT M

2008 WL 253041
Only the Westlaw citation is currently available.
United States District Court,
E.D. Michigan,
Southern Division.

Ralphael OKORO, Petitioner,
v.
Vincent CLAUSEN, Detroit Field Office Director, Bureau of Immigration and Customs Enforcement, Respondent.

No. 07-13756.
|
Jan. 30, 2008.

Attorneys and Law Firms

Ralphael Okoro, Sault Ste. Marie, MI, pro se.

Derri T. Thomas, U.S. Attorney's Office, Detroit, MI, for Respondent.

ORDER GRANTING MOTION TO VACATE STAY OF REMOVAL [17] AND DENYING PETITION FOR HABEAS CORPUS [1] AS WELL AS OTHER MOTIONS [13, 15, 16, 19, 21]

ARTHUR J. TARNOW, District Judge.

***1** On September 6, 2007, Ralphael Okoro, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. The government responded and petitioner replied. This court assumed jurisdiction over the case and stayed Okoro's deportation under 28 U.S.C. § 1651. The government later filed a motion to vacate the stay of removal, and petitioner responded.

Petitioner is a lawful permanent resident. He had been placed in removal proceedings in 2007 because of federal drug trafficking convictions. The Seventh Circuit affirmed those convictions.

Okoro's habeas petition asks this Court to enjoin ICE from removing him pending the outcome of a civil suit before Judge Borman, 05-70269, and a related appeal before the Sixth Circuit, 06-1816.

The government is correct that this Court does not have jurisdiction to enjoin the commencement of removal proceedings. *See* 8 U.S.C. § 1252(g) ("no court shall have jurisdiction to hear any cause or claim ... arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders, against any alien under this chapter.").

Since the time that Okoro filed the instant habeas petition, Immigration Judge Elizabeth Hacker issued an order of removal on November 6, 2007. If Okoro seeks judicial review of that order, a habeas petition before this Court is not the proper vehicle. For this reason, it is irrelevant whether Okoro's pending suits concern his underlying criminal convictions, because such suits would inevitably challenge petitioner's removability.

Rather, Okoro would have to appeal the immigration judge's order to the Board of Immigration Appeals. From Okoro's January 18, 2008 letter, the Court understands that the BIA affirmed the immigration judge's order of removal. Even then, a habeas petition in this Court would only be viable if it challenged merely the fact or conditions of detention while the order of removal was being reviewed. *See Hernandez v. Gonzales*, 424 F.3d 42 (1 st Cir.2005) (citing 8 U.S.C. § 1252(a)(5)); *see also Kellici v. Gonzales*, 472 F.3d 416, 418 (6th Cir.2006). Any challenge to the underlying removability of the alien can only proceed through a petition for review with the U.S. circuit courts of appeals. *See* 8 U.S.C. 1252(a)(5) ("[n]othwithstanding any other provision of law (statutory or non-statutory), ... a petition for review filed with an appropriate court of appeals in accordance with this section shall be the *sole and exclusive means for judicial review of an order of removal* ...") (emphasis added). Therefore, this Court cannot vacate the BIA's "unintelligent 1-14-08 decision 'without opinion.' " Okoro Letter Dated January 18, 2008 at 1, ¶ 1.

Okoro does not challenge his detention pending the outcome of judicial review of the order of removal, though. Although he states that his legal papers have been illegally withheld from him, the Court does not understand this to be Okoro's stated basis for his habeas petition. If Okoro wants to file a habeas petition in this Court challenging the conditions of his detention, such as the withholding of his legal papers from him, without contesting the fact that he is removable, he may do so. The Court believes that Okoro's complaints about the nature of his confinement are ancillary to his real concern: that he will be removed.

***2** Because this court does not have jurisdiction over Okoro's petition, his other motions are denied as well. This includes his

- Letter requesting consideration of supplemental authority (docket entry 7). Okoro asks the Court to consider a couple of cases that he thinks would

permit the Court to take jurisdiction over claims asking for injunctive relief. However, the cases he cites were decided before the jurisdiction-stripping provisions of the Real ID Act became effective in 2005.

• Letter dated October 11, 2007 asking the Court to declare the deportation proceeding unconstitutional (docket entry 11). Okoro says that Immigration Judge Hacker decided his motion objecting to his deportation without receiving his reply to the government's response. But any argument about the removal proceeding's failure to accord Okoro due process of law goes to the substance of Okoro's removability and is not properly before this Court.

• Emergency Motion to issue warrant (docket entry 13). In this motion, petitioner asks the Court to issue an arrest warrant against the respondent, the immigration judge, the magistrate judge in Judge Borman's case, and the assistant U.S. attorney defending the habeas petition. Okoro states that the immigration judge commenced removal proceedings and that the magistrate judge in his pending civil suit failed to enjoin the commencement of those proceedings, contravening this Court's stay of deportation. But this Court never said that removal proceedings could not be initiated against Okoro, and it never had the authority to do so. The Court had only stayed Okoro's actual removal.

• The same analysis applies to the letter dated October 18, 2007 (docket entry 12). Petitioner asks the Court to incarcerate Immigration Judge Hacker and the Assistant U.S. Attorney defending the habeas petition for commencing removal proceedings.

• Motion to introduce newly discovered evidence (docket entry 15). In this motion, Okoro argues that there is new evidence that shows that his underlying drug convictions were prosecuted improperly. In particular, Okoro presents an affidavit by Drug Enforcement Agency agent, which petitioner alleges was fabricated as part of a conspiracy of corrupt police officers. Again, these arguments attempt to undermine the basis of his removability, but this Court is without jurisdiction to entertain such a challenge.

• Motion to compel respondent to produce/secure petitioner's permanent resident card, Nigerian passport, driver's license and state ID (docket entry 16). Okoro alleges that corrupt police officers stole some of these items, along with a substantial amount of money, while he was being arrested on the underlying drug offenses. Once again, if Okoro merely wants these items back, he can file a habeas petition asking for that relief, but he may not attempt to present evidence undermining his drug convictions before this Court.

• Motion to vacate order of deportation (docket entry 19). Okoro filed this motion after Immigration Judge Hacker entered the removal order in November, 2007. He attacks Judge Hacker for refusing to consider his argument that he is innocent of the crimes for which he was convicted. But this Court cannot consider such an argument either.

***3** • Motion pursuant to the Eighth Amendment (docket entry 21). Here, Okoro protests the several jail transfers he has undergone, as well as the poor quality of the food, "food no man in his right mind would feed a dog." Mot. at 2. He also says that the MRSA bacteria is rampant in his current jail, and that his cellmate is infected. Okoro asks to be placed in a federal prison. This is the sort of challenge that this Court can properly consider. Okoro may present a habeas petition making this argument as long as he makes clear that he is not contesting the fact that he can be removed.

• So also may Okoro's September 24, 2007 letter (docket entry 8) be considered in another habeas petition. In that letter, Okoro alleges that Monroe County jail guards were withholding his legal mail and had used "barbaric obscenities" and "threatened to 'fuck' [him] up" when Okoro told them that he had informed this Court about his inability to get legal mail.

• Okoro's allegations in a letter dated September 21, 2007 (docket entry 9) could also be a basis for another habeas petition. He complains of jail guards obstructing his mail and asks the Court to order the jail to provide him with materials and access to facilities, like a photocopier and law library, to pursue his litigation.

• Okoro's most recent allegations from his January 18, 2008 letter that his legal mail is obstructed and that his jailers turn the temperature in his cell so that it is inhumanely cold are also properly considered in another habeas petition.

Therefore, the Court GRANTS the government's motion to vacate the stay of removal and DENIES the habeas petition as well as Okoro's remaining motions without prejudice to the filing of a habeas petition that challenges only the conditions of his detention.

IT IS SO ORDERED.

All Citations

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EXHIBIT N

2011 WL 251437
Only the Westlaw citation is currently available.
United States District Court,
N.D. Ohio.

Tobias R. REID, Plaintiff,
v.
James HOOD, et. al., Defendants.

No. 1:10 CV2842.
|
Jan. 26, 2011.

Attorneys and Law Firms

Tobias R. Reid, Cleveland, OH, pro se.

MEMORANDUM OF OPINION AND ORDER

JAMES S. GWIN, District Judge.

***1** Before the court is *pro se* plaintiff Tobias R. Reid's Motion for a Preliminary Injunction/Temporary Restraining Order (TRO) [Dkt.# 6] filed against the City of Cleveland Heights Police Department ("CHPD"), CHPD Officer James Hood, and Prosecutor Kim Segerbarth.[1] Dr. Reid filed a complaint on December 16, 2010 under 42 U.S.C. § 1983 and 42 U.S.C. § 2000e seeking damages, in part, from the defendants for their alleged unconstitutional use of force during his arrest. He seeks a "restraining order" against the defendants.[2]

1 On January 26, 2010, this Court granted Dr. Reid's Motion for Leave to Amend his Complaint to add the CHPD and Prosecutor Segerbarth as party defendants.

2 Dr. Reid filed an earlier Motion for Restraining Order [Dkt. # 3] on December 16, 2010. Because the facts were dependent on his original pleading, which has now been superceded, the Court will only address the second Motion for Restraining Order on the merits.

Consistent with the rules of federal practice, the Court will rely on the facts set forth in Dr. Reid's amended pleading, as it supersedes the original pleading. *See* 6 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1476 (2d ed.1990). Facts not incorporated into the amended pleading are considered *functus officio*. *Nisbet v. Van Tuyl*, 224 F.2d 66, 71 (7th Cir.1955) ("An amended pleading ordinarily supersedes the prior pleading. The prior pleading is in effect withdrawn as to all matters not restated in the amended pleading, and becomes *functus officio."*); *see Tollen v. Ashcroft*, 377 F.3d 879, 882 n. 2 (8th Cir.2004) (collecting cases). The Sixth Circuit has indicated that the "better rule" is against taking judicial notice of a superseded pleading. *Shell v. Parrish*, 448 F.2d 528, 530 (6th Cir.1971).

Relevant Facts

Dr. Reid was walking at the intersection of North Taylor Road and Greyton Road in Cleveland Heights at 3:45 a.m. on December 13, 2010. He claims Officer Hood was operating his police cruiser when he shined a light on him as he arrived at Greyton. Dr. Reid then proceeded to walk down Greyton Road when Officer Hood exited his vehicle and stated to him: "Hey you, get over here." (Am. Compl. at 1.) Dr. Reid complied with the request, but complained that the temperature was below zero that night, with high winds blowing drifts of snow. When Officer Hood asked where he was going, Dr. Reid replied he was on his way to work.[3] When Officer Hood requested identification, Dr. Reid explained it was in his wallet, but his "hands are frozen." Dr. Reid then asked to leave, to which Officer Hood replied, "No." At that point, Dr. Reid "turned to pull his emergency kit out of the street." (Am. Compl. at 2.) Officer Hood kicked the kit three times, which prompted Dr. Reid to ask, "What's wrong with you, I am going to work. Let me go to work." When Officer Hood asked where Dr. Reid was employed, he again asked if he could leave and Officer Hood stated he could not.

3 Dr. Reid states he is "employed as a practicing engineer, Horticultural therapist, and of [sic] Holistic Medicine." (Mot. at 1.) He does not disclose by whom he is employed.

When Dr. Reid started to walk away, Officer Hood swept his feet behind Dr. Reid causing him to hit the ground and bruise his knees. He alleges Officer Hood then jumped on his back, hand cuffed him and struck him on the back of his head causing his face to hit the ground. The impact of hitting the ground caused a "hemorrhage to the lower lip," which immediately starting bleeding. While Dr. Reid was handcuffed Officer Hood allegedly hit him again in the head. A Cleveland Heights investigator assisted in the arrest, while a booking officer secured Dr. Reid's "emergency kit."

***2** A pre-trial hearing was held on December 21, 2010 in

the Cleveland Heights Municipal Court. Dr. Reid filed a "Notice of Appearance." The "defendants" provided Dr. Reid with a copy of Officer Hood's sworn statement of the facts. When he asked Prosecutor Segerbarth to "exchange discovery," she allegedly refused and "[i]nstead made discovery available to City of Cleveland Heights Attorney who is on record for this case." (Am. Compl. at 3.)

Preliminary Injunction/Temporary Restraining Order

The Sixth Circuit has explained that "the purpose of a TRO under Rule 65 is to preserve the status quo so that a reasoned resolution of a dispute may be had." *Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 227 (6th Cir.1996). The standard for issuing a temporary restraining order is logically the same as for a preliminary injunction with emphasis, however, on irreparable harm given that the purpose of a temporary restraining order is to maintain the status quo. *Motor Vehicle Board of California v. Orrin W. Fox, et al.*, 434 U.S. 1345, 1347 n. 2, 98 S.Ct. 359, 54 L.Ed.2d 439 (1977). If the balance of equities so heavily favors the moving party that justice requires the court to intervene to secure the positions until the merits of the action are ultimately determined, then there is cause to preserve the status quo. *University of Texas v. Camenisch*, 451 U.S. 390, 395, 101 S.Ct. 1830, 68 L.Ed.2d 175 (1981).

A court considers four factors in determining whether to grant injunctive relief: "(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction." *Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 432 (6th Cir.2004). A court need not make specific findings on each factor, if fewer factors dispose of the issue. *Six Clinics Holding Corp., II v. Cafcomp Systems, Inc.*, 119 F.3d 393, 399 (6th Cir.1997). "[An injunction] is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972, 117 S.Ct. 1865, 138 L.Ed.2d 162 (1997) (quotations and citations omitted). In balancing the four considerations applicable to TRO decisions, the court finds equitable relief is not warranted.

a. Likelihood of Success

i. **Improper defendants**

As a threshold matter, the Court cannot issue orders against individuals who are not parties to the suit pending before it. *See Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 112, 89 S.Ct. 1562, 23 L.Ed.2d 129 (1969) (holding that it was error for the lower court to enforce an order against a nonparty without having determined, in a proceeding to which the nonparty was a party, that the nonparty acted in concert with the defendants and received actual notice of the order by personal service or otherwise). While this Court exercised its discretion to allow Dr. Reid to amend his complaint to include Prosecutor Segerbarth and the CHPD, these defendants are not proper parties in this action.

***3** Prosecutors were traditionally immune from suits at common law, and the Supreme Court extended this common law immunity in 1976 to actions brought under 42 U.S.C. § 1983. *See Imbler v. Patchman*, 424 U.S. 409, 424–427, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976). The court explained the necessity of this immunity by noting that if the prosecutor were not immune from suit, "harassment by unfounded litigation would cause a deflection of the prosecutor's energies from his public duties, and the possibility that he would shade his decisions instead of exercising his independence of judgment required by his public trust." *Id.* at 422–23. Absolute prosecutorial immunity is available only for those activities "intimately associated with the judicial phase of the criminal process." *Id.* at 430. Thus, prosecutors are absolutely immune in § 1983 actions only in "initiating a prosecution and in presenting the State's case." *Id.* at 430. Attorney Segerbarth is absolutely immune from suit based on Dr. Reid's allegations. *See Ireland v. Tunis*, 113 F.3d 1435 (6th Cir.1997) (absolute immunity encompasses those "administrative or investigative acts necessary for a prosecutor to initiate or maintain the criminal prosecution.")

A municipal police department is not *sui juris* and thus cannot act on its own behalf. Actions against such entities are construed as brought against the municipality itself, because a judgment against a municipal police department imposes liability on the municipality. *Renz v. Willard Police Department*, 2010 WL 3789563, *2 (N.D.Ohio 2010) (*see, e.g., Harris v. Sutton*, 183 Ohio App.3d 616, 918 N.E.2d 181 (2009)). Municipalities may be held liable under Section 1983 when the injury inflicted is a result of "a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy." *Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 311 (6th Cir.2005) (citing *Monell v. Department of Social Services*, 436 U.S.

658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978)). A municipality cannot be held liable solely because it employs a tortfeasor-or, in other words, a municipality cannot be held liable under Section 1983 on a respondeat superior theory. *Id.* (citing *Monell*, 98 S.Ct. at 2036). There must be a direct causal link between the policy and the alleged constitutional violation to the extent that the municipality's deliberate conduct can be deemed the moving force behind the violation. *Id.* (citing *Graham ex rel. Estate of Graham v. County of Washtenaw*, 358 F.3d 377, 383 (6th Cir.2004) (internal citations omitted)).

Dr. Reid has not alleged any facts that support a finding of a constitutional violation arising from an affirmative act by the CHPD or from a policy or custom endorsed by the City of Cleveland Heights. Accordingly, defendants CHPD and Segerbarth are dismissed from this suit as improper parties.

ii. **No Title VII Claim**

Title VII of the Civil Rights Act makes it unlawful for an employer, employment agency or labor union "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e–2(a)(1); *see* § 2000e–2(b) & (c). There is no allegation Dr. Reid was employed by Officer Hood. Without alleging facts to support a claim of discrimination by an employer, employment agency or labor union, Dr. Reid cannot pursue his Title VII claim in this action.

iii. **Civil Rights Violations—Officer Hood**

***4** With regard to the likelihood of success of the underlying petition, Dr. Reid has not set forth a compelling argument. He claims, without decisional authority, to be entitled to a district court order "against ... Officer Hood ... because plaintiff Dr. Tobias R. Reid, PhD, is and has been employed as a practicing engineer, Horticultural therapist, and of [sic] Holistic Medicine." (Mot. at 1.) Relying on this as factual support, the Court finds it is impossible for Dr. Reid to make any of the necessary findings required under *Chabad.* This is because his Motion for a Restraining Order does not include allegations that Officer Hood is currently harassing or intimidating him. The requested relief sought in any request for a preliminary injunction must bear some relationship to the type of harm that is alleged in that action. If the Court were to grant the relief requested it would not, in any respect, remedy his claim that Officer Hood used excessive physical force against him on or around December 13, 2010, in Cleveland Heights.

Dr. Reid's allegations are devoid of circumstances giving rise to a constitutional violation. The facts alleged in Dr. Reid's motion for a restraining order clearly do not give rise to a claim for relief under the Constitution. Thus, it is not necessary to address the remaining elements of Dr. Reid's Motion. *See Six Clinics.*, 119 F.3d at 399.

Conclusion

Based on the foregoing, Dr. Reid's Motion for Restraining Order [Dkt.# 3] is DISMISSED AS MOOT, the Motion for Preliminary Injunction/Temporary Restraining Order [Doc. # 6] is DENIED and his Motion to Proceed *In Forma Pauperis* is GRANTED. The court retains jurisdiction of this matter for further proceedings.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2011 WL 251437

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

USAMA JAMIL HAMAMA,
ATHEER FAWOZI ALI,
ALI AL-DILAMI,
HABIL NISSAN,
JIHAN ASKER,
MOAYAD JALAL BARASH,
SAMI ISMAEL AL-ISSAWI, on behalf of themselves and all those similarly situated,

Petitioners,

v.

REBECCA ADDUCCI, Director of the Detroit District of Immigration and Customs Enforcement,

Respondent.

Case No. 2:17-cv-11910-MAG-DRG

Hon. Mark A. Goldsmith
Mag. David R. Grand

Class Action

DECLARATION OF PETITIONER BRIANNA AL-DILAIMI IN SUPPORT OF PETITIONERS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR A STAY OF REMOVAL

DECLARATION OF BRIANNA AL-DILAIMI

I, BRIANNA AL-DILAIMI hereby declare:

1. I am Brianna Al-Dilaimi, I am 36 years old, and a U.S. citizen. I am married to Ali Al-Dilaimi.
2. My husband is an Iraqi national who entered the United States in 1998 as a refugee when he was nineteen years old. We currently reside in Conneaut, Ohio with our three-year old child and 18-year old step-child. Both our children are U.S. citizens.
3. My husband was born on [redacted] and is now 38 years old. We have been married for sixteen years.
4. Although he has been subject to an order of removal to Iraq since May 21, 2004, ICE released him to the community after seven months of detention with an order of supervision. He has been complying with that order for the past thirteen years, living in the community and regularly reporting to an immigration officer.
5. On June 11, 2017, without warning, ICE came to his home and arrested him. My husband suffered [redacted] my husband was transferred to a detention center in Youngstown, Ohio where he awaits imminent removal to Iraq.

6. Seventeen years ago, my husband was involved in the assault of a man who had previously attacked him. He was sentenced to one year, of which he served five months. His refugee visa was revoked because of this. My husband has not reoffended since. In 2008, he filed paperwork to expunge his criminal record. His records have since been expunged of this prior conviction.

7. [redacted] since 2005 and cannot work. He is currently not receiving his medication while in detention and, if deported, he will have difficulty receiving proper medical treatment.

8. My husband fears removal to Iraq, especially because his status as Shia Muslim makes him a target for violence and persecution. He wishes to seek relief from removal.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed June 15, 2017, in Michigan.

Brianna Al-Dilaimi

BRIANNA AL-DILAIMI

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2017, I electronically filed the foregoing papers with the Clerk of the Court using the ECF system which will send notification of such filing to Jennifer L. Newby, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants:

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