

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

USAMA JAMIL HAMAMA, et al.,

Petitioners and Plaintiffs,

v.

REBECCA ADDUCCI, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910

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

Class Action

**PETITIONERS/PLAINTIFFS' REPLY IN SUPPORT OF
PETITIONERS/PLAINTIFFS' MOTION FOR A PRELIMINARY STAY OF
REMOVAL AND/OR PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

	Page
INTRODUCTION	1
I. THE COURT PROPERLY FOUND JURISDICTION.	1
II. GIVEN THE EXTRAORDINARY CIRCUMSTANCES OF THIS CASE, A PRELIMINARY STAY OF REMOVAL IS NEEDED TO ENSURE THAT PETITIONERS HAVE ACCESS TO THE ADMINISTRATIVE IMMIGRATION COURT SYSTEM.....	5
III. THE “SIGNIFICANT CHANCE OF LOSS OF LIFE AND LESSER FORMS OF PERSECUTION” THAT PETITIONERS FACE IF REMOVED TO IRAQ IS IRREPARABLE HARM EASILY OUTWEIGHS ANY INTERESTS OF THE GOVERNMENT.....	9

INTRODUCTION

The government devotes most of its brief to rearguing issues this Court has already decided. It repeats its rejected arguments for why the Court lacks jurisdiction; and, ignoring this Court's explicit decision to the contrary, simply asserts that "there is nothing extraordinary about the facts of this case" that would render the judicial review channeling provision and the motion to reopen process inadequate. But the government provides no new, let alone compelling, arguments for the Court to revisit these issues, and the Court should decline to do so.

I. THE COURT PROPERLY FOUND JURISDICTION.

At the July 13 hearing, the government acknowledged that this Court had found jurisdiction, but stated that it simply wished to *preserve* its jurisdictional arguments in its PI briefs. Ex. H, July 13, 2017 Status Conference Tr. at 40. Accordingly, Petitioners did not address jurisdiction in their opening brief. The government, however, has now devoted a considerable portion of its brief to rearguing jurisdiction. The government's arguments are not new and were all properly rejected by this Court in its July 11 decision. Thus, Petitioners will not address jurisdiction, except to make the following brief points.

First, the government repeats its principal argument: (1) under the Immigration and Nationality Act (INA) challenges to removal must generally be brought in the court of appeals, including where the challenge is based on the

Convention Against Torture (CAT), and (2) this scheme generally satisfies the Suspension Clause. Response in Opposition to Petitioners’ Request for Preliminary Injunction (hereinafter “Gov’t Br.”), ECF 81, Pg.ID# 1964-65. But Petitioners have explicitly conceded, and this Court’s July 11 decision likewise acknowledged, that – as a general matter – challenges to removal orders must be brought by petition for review in the courts of appeals and that this statutory scheme is generally constitutional. Opinion and Order Regarding Jurisdiction (hereinafter “July 11 Opinion”), ECF 64, Pg.ID# 1243. The issue in this case is whether there is habeas jurisdiction under the unique circumstances here. The Court properly found that habeas jurisdiction did exist under the Suspension Clause and narrowly tailored its opinion to the particular circumstances presented here. *Id.* at 1243-47. At no point did the Court remotely suggest, much less hold, that district courts always have habeas jurisdiction to review removals. The government’s arguments are simply unresponsive to the Court’s narrow July 11 decision.

Second, the government asserts that jurisdiction under the habeas statute and the Suspension Clause only encompasses challenges that seek release from detention, and that “the relief Petitioners seek here – a stay of removal – is not available in habeas.” Gov’t Br., ECF 81, Pg.ID# 1960; see *id.* at 1973-74, 1976-77. But this argument is plainly wrong and has already been properly rejected by this

Court. July 11 Opinion, ECF 64, Pg.ID# 1247. The Court's equitable powers as well as its habeas jurisdiction permit it to order a stay. *Mustata v. U.S. Dep't of Justice*, 179 F.3d 1017, 1023 (6th Cir. 1999) (INA does not strip the district court of habeas jurisdiction to enter a stay of removal). Moreover, the position that habeas is limited to challenges to detention is directly contradicted by *INS v. St. Cyr*, 533 U.S. 289 (2001), in which the Supreme Court found habeas review over a challenge to a removal order and held that the unavailability of such review would raise Suspension Clause problems. *St. Cyr* relied on centuries of historical precedent for habeas review of deportation orders. *Id.* at 301-08.

In support of its contrary position, the government relies principally on *Munaf v. Geren*, 553 U.S. 674 (2008), which held that the courts should not block the U.S. military's wartime transfer of two individuals arrested and detained *in Iraq* to the Iraqi government for criminal prosecution. Gov't Br., ECF 81, Pg.ID# 1976-78. The government analogizes between Petitioners' challenge to removal to Munaf's challenge to transfer from the United States' control to Iraq control. *Id.* at 1975. But *Munaf* is wholly different. The Court in *Munaf* unanimously *found* habeas jurisdiction and denied the claim on the merits, stressing the overseas military context. *Munaf*, 553 U.S. at 680 (holding "the habeas statute extends to American citizens held overseas by American forces" but denying relief "[u]nder

circumstances presented [in the instant case]”).¹ The issues of “comity and the orderly administration of criminal justice” that it found key are in no way present here.

More fundamentally, the government’s attempt to analogize this case to *Munaf* and other overseas cases (like the D.C. Circuit’s Guantánamo Bay cases) is flawed because it would mean that *every* challenge to an immigration removal from the United States could be re-characterized as an impermissible attempt to block the “transfer” of the individual to another country. And that would mean that there is no habeas review of immigration removal challenges, which, as already noted, would contradict *St. Cyr*.²

In short, this Court has properly concluded that, under the circumstances here, the Suspension Clause provides jurisdiction.

¹ The government’s reliance on cases like *Kiyemba v. Obama*, 561 F.3d 509 (D.C. Cir. 2009), is misplaced. That case involved enemy combatants held at Guantanamo; the D.C. Circuit held that CAT claims could not be raised by enemy combatants overseas and wholly outside the immigration system. The court did not remotely hold that habeas review did not encompass claims raised by individuals, like Petitioners, who are in the United States and who seek to access the immigration process to raise CAT claims challenging their removal.

² The Supreme Court has continued to favorably cite *St. Cyr*, including in *Boumediene*, a case on which the government relies here. *Boumediene v. Bush*, 553 U.S. 723, 729 (2008) (holding that, at a minimum, the Suspension Clause guarantees review of the proper application or interpretation of relevant law) (quoting *St. Cyr*, 533 U.S. at 302). See also *Cadet v. Bulger*, 377 F.3d 1173, 1182 (11th Cir. 2004) (CAT claim may be brought in habeas); *Saint Fort v. Ashcroft*, 329 F.3d 191, 200–02 (1st Cir. 2003) (same); *Singh v. Ashcroft*, 351 F.3d 435, 441–42 (9th Cir. 2003) (same); *Ogbudimkpa v. Ashcroft*, 342 F.3d 207, 215–22 (3d Cir. 2003) (same); *Wang v. Ashcroft*, 320 F.3d 130, 140–43 (2d Cir. 2003) (same).

II. GIVEN THE EXTRAORDINARY CIRCUMSTANCES OF THIS CASE, A PRELIMINARY STAY OF REMOVAL IS NEEDED TO ENSURE THAT PETITIONERS HAVE ACCESS TO THE ADMINISTRATIVE IMMIGRATION COURT SYSTEM.

The government argues that Petitioners' claims should be heard in the administrative immigration court system. Gov't Br., ECF 81, Pg.ID# 1960. But Petitioners brought this case precisely because they *want* to have their claims heard in the administrative immigration court system. The question is not whether Petitioners' individual claims should be decided in that system, but whether—given the extraordinary circumstances here—the Court should ensure that they actually have an opportunity to access that system. The immigration court system is inadequate if Petitioners do not have a meaningful opportunity to access it.

As this Court has already explained, this case presents an *as applied* challenge, not a facial challenge, to the removal process:

The mechanism provided by the REAL ID Act for judicial review of removal orders—filing motions to reopen proceedings in immigration courts and subsequent review in the courts of appeals—does not take into account the compelling confluence of grave, real-world circumstances present in our case. This makes relegation to the immigration courts, without a stay from this court in place, an alternative that is neither adequate nor effective. Without a stay in place, deportations will begin immediately, which may mean a death sentence for some deportees. Petitioners have presented significant evidence—not contested by the Government—that many will face death.... Obviously, deportees who are murdered will never have the opportunity to present their arguments that their removal orders are prohibited by the CAT or the INA.

July 11 Opinion, ECF 64, Pg.ID# 1243-44.

Nonetheless, the government asserts that “there is nothing extraordinary about the facts of this case.” Gov’t Br., ECF 81, Pg.ID# 1960. In doing so it ignores the following: First, Petitioners face grave danger if removed to Iraq. *See* Lattimer Decls., ECF 77-10, 77-13; Heller Decl., ECF 77-14. While some individuals will face particular threats based on their religion, ethnic identity, political affiliation or other factors, all American-affiliated Iraqis face a significant risk of persecution and torture if removed. *See* Smith Decl., Ex. E, ¶¶ 1-2 (there is an “extremely high likelihood that Iraqis who are deported to Iraq, especially those who are suspected of having criminal records, will be detained upon arrival in Iraq and interrogated by internal security forces” and it “is conventional practice for Iraqi security forces to accompany interrogation with physical violence, isolation, and other techniques that qualify as torture”); Lattimer Decl., ECF 77-13, Pg.ID# 1807 (“there is a particular risk of persecution and attack to Iraqis who are perceived as American”).

Second, because of Iraq’s unwillingness to accept deportees³, Petitioners

³ Although the government contends that some people have been removed to Iraq, it is undisputed that for years Iraq has been unwilling to facilitate removals. It is unclear whether those removed in recent years were “arriving” Iraqis (individuals apprehended at the border when seeking admission), rather than individuals like the Petitioners here who have resided in the United States for years, often after being lawfully admitted, and were subsequently placed in removal proceedings and issued final orders of removal. Before April 18, 2017, when eight Iraqis were deported, Iraq had not accepted a charter flight repatriating Iraqis for more than six years. Clinton Decl., Ex. G. ¶¶ 5-6.

have been living in the United States, often for decades. During that time, Petitioners regularly reported to ICE pursuant to orders of supervision, and had no idea that they would—years after their removal orders were issued—suddenly and without warning be arrested and removed. For Iraqi nationals, the existence of a final order did not portend immediate removal; it simply meant they were subject to a regular reporting requirement. Thus, this case is unlike an ordinary removal case where a final order provides notice that a noncitizen must pursue relief or protection if country conditions change.

Third, as discussed by this Court and detailed in Petitioners' opening brief, the motion to reopen process is complex, time-consuming, and expensive. See July 11 Opinion, ECF 64, Pg.ID# 1231-32; Motion for Preliminary Stay of Removal, ECF 77, Pg.ID# 1723-29. Iraqi nationals, who for decades faced no real prospect of being removed to Iraq, reasonably decided not to spend up to \$80,000 (assuming they had it) to file a motion based on changed country conditions, particularly since country conditions might change again in the future. See Reed Decl., ECF 77-12, Pg.ID# 1799; Smith Decl., Ex. E, ¶ 36 (discussing potential danger to Christian, Yezidi and Shabak Iraqis based on upcoming September 2017 referendum in Kurdistan). Now that Iraqi nationals suddenly do face imminent removal, they need time to obtain counsel and access the immigration court system.

An administrative stay of removal cannot be granted without a motion to reopen; a motion to reopen requires review of the A-file and Record of Proceedings (and a review of criminal history where applicable), and those documents can take months to obtain, particularly since many of these records are very old. Realmuto Decl., ECF 77-26, Pg.ID# 1887; Abrutyn Decl., ECF 77-28, Pg.ID# 1901; Valenzuela Decl., ECF 77-24, Pg.ID# 1876. And of course all of this presupposes that the detainee is not only able to find counsel, but to communicate with counsel to prepare the motion. *See generally* Peard Decl., Ex. F (refuting governments' allegations regarding access to counsel in Florence Correctional Center).⁴

The government claims that “the administrative review procedure [in immigration court] is no different in substance from the relief available in [t]his Court.” Govt. Br., ECF 81, Pg.ID# 1972. They could not be more wrong. What Petitioners seek in immigration court is an adjudication of their individual claims for protection or relief under CAT and the INA. What Petitioners seek from this Court is time.

⁴ The government makes no attempt to address the numerous declarations that attest to the access problems detainees faces, instead relying on their detention standards. Gov't Br., ECF 81, Pg.ID# 1962. But the mere existence of written standards does not show that they are enforced, and Petitioners' declarations show that ICE's detention standards are not.

III. THE “SIGNIFICANT CHANCE OF LOSS OF LIFE AND LESSER FORMS OF PERSECUTION” THAT PETITIONERS FACE IF REMOVED TO IRAQ IS IRREPARABLE HARM EASILY OUTWEIGHS ANY INTERESTS OF THE GOVERNMENT.

The Court has already concluded that Petitioners face irreparable harm. Opinion and Order, ECF 32, Pg.ID# 501-02 (finding “irreparable harm” in the “significant chance of loss of life and lesser forms of persecution” that Petitioners face if removed to Iraq). Nothing in the government’s brief troubles this finding.

First, the government is wrong on the facts. The risk of persecution and torture in Iraq is not faced by Christians alone; nor are the potential perpetrators limited to ISIS, but in fact include Iraqi state officials, both directly and by acquiescence, and militia allies. *Compare* Gov’t Br., ECF 81, Pg.ID# 1986-87 with Heller Decl., ECF 77-14, Pg.ID# 1817-24; Lattimer Decl., ECF 77-13, Pg.ID# 1807; Smith Decl., Ex. E, ¶¶ 1-7.⁵

Second, that the government does not “remove individuals to ISIS controlled territory” or that ISIS controlled territory may shrink is of little solace. The U.N. High Commissioner for Refugees has recently concluded that it is 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

⁵ Notably, respondents have offered no expert opinions or area reports to rebut those provided by Petitioners.

any part of Iraq. UNHCR, *Position on Returns to Iraq* (Nov. 14, 2016), ¶¶ 47-48, available at <http://www.refworld.org/docid/58299e694.html>.⁶ “Such persons, including persons whose claims for 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.” *Id.* All Petitioners are likely to become internally displaced persons if deported.

Finally, the balance of harms is clearly in Petitioners’ favor. Petitioners face the gravest of harms: the prospect of persecution, torture or even death. They seek limited relief: a stay while availing themselves of administrative process.

On the other side, the government fears that a stay here will lead to delays in removal, in other cases, to other countries. The government’s injury is not only speculative, it is premised on a misunderstanding of Petitioners’ claims and this Court’s prior ruling. Petitioners present a unique combination of factors: old final orders of removal that the government did not seek to execute for years before its sudden change in policy; changed country conditions; and the threat of return to a state that presents dramatic, un rebutted, and universally acknowledged threats to the lives of deportees. It is this extraordinary, and extraordinarily rare, combination that justifies the limited intervention requested here.

⁶ Moreover, the declaration of victory over ISIS does not dispel the danger faced by Petitioners, but may in fact increase it, as different factions – including the government – seek to consolidate power and target foreigners and minority groups in order to do so. Smith Decl., Ex. E, ¶¶ 35-37.

Respectfully submitted,

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Dated: July 21, 2017

* Application for admission forthcoming.

CERTIFICATE OF SERVICE

I hereby certify that on July 21, 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 all ECF filers of record.

By: /s/Kimberly L. Scott

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**IN THE UNITED STATES DISTRICT COURT
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Class Action

**INDEX OF EXHIBITS
TO PETITIONERS/PLAINTIFFS' REPLY IN SUPPORT OF
PETITIONERS/PLAINTIFFS' MOTION FOR A PRELIMINARY STAY OF
REMOVAL AND/OR PRELIMINARY INJUNCTION**

Exhibit A: Declaration of Detention and Deportation Officer Julius Clinton

Exhibit B: Third Supplemental Response in Opposition to Petition for Writ of Habeas Corpus (ECF 14), *Ablahid v. Adducci*, Case No. 17-10640

Exhibit C: Declaration of Danielle Hanna
Redacted pursuant to Fed. R. Civ. P. 5.2

Exhibit D: Declaration of Edward Amir Bajoka

Exhibit E: Declaration of Daniel W. Smith

Exhibit F: Declaration of William B. Peard

Exhibit G: Declaration of Detention and Deportation Officer Julius Clinton

Exhibit H: Excerpts of July 13, 2017 Hearing Transcript

EXHIBIT A

DECLARATION OF JULIUS CLINTON

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Sarkoun Ablahid,

Petitioner,

Civil No. 17-10640

v.

Honorable Paul D. Borman
Mag. Judge Stephanie Dawkins Davis

Rebecca Adducci,
Detroit Field Office Director,
Immigration and Customs
Enforcement,

Respondent.

DECLARATION OF DETENTION AND DEPORTATION OFFICER JULIUS CLINTON

I, Julius Clinton, do declare as follows:

1. I am a Detention and Deportation Officer in Removal and International Operations (RIO) assigned to the Headquarters Office of Enforcement and Removal Operations (HQERO), United States Immigration and Customs Enforcement (ICE), within the Department of Homeland Security in Washington D.C.

2. RIO is responsible for assisting field offices in obtaining travel documents necessary to execute administratively final orders of removal. I have been employed with ICE since 2006. I have worked in the Headquarters Office of Enforcement and Removal Operations (HQ ERO) within ICE since February 2010. From September 2014 to the present, I have been employed in my current position as a Detention and Deportation Officer (DDO) within RIO in Washington, D.C.

3. As part of my duties, I regularly communicate with foreign governmental representatives to obtain travel documents for the removal of aliens with final orders of removal. In my current position, I am personally familiar with the procedures for the repatriation of nationals from government of Iraq. In this capacity, I am familiar with the case of ABLAHID, Sarkoun 097 060 847(Ablahid), a citizen and national of Iraq.

4. This declaration is based upon my personal knowledge, information obtained from other individuals employed by ICE, and information obtained from records maintained by ICE.

5. ERO has been in negotiations with the government of Iraq over the past year regarding the repatriation of Iraqi nationals subject to a final order of

removal. As a result of these recent negotiations, via the United States Embassy in Baghdad, Iraq, ERO has received approval from the Iraqi government to return a number of Iraqi nationals ordered removed from the United States.

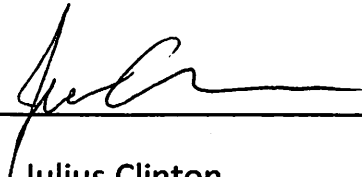
6. On February 6, 2017, ERO received approval to move forward with scheduling the removals. HQ ERO has approved a list of Iraqi nationals that will be repatriated. Iraq will accept these subjects without a travel document. The first group of removals successfully departed in April 2017.

7. Ablahid has been scheduled for removal in June of 2017.

8. Based on past experience, ICE believes it is necessary to keep the exact date of Ablahid's repatriation confidential until after the repatriation is completed for security reasons.

9. Based on the fact that Ablahid is currently scheduled to be removed on a specific date in the near future, I believe, to the best of my knowledge that Ablahid's repatriation will occur in the reasonably foreseeable future.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Signature 
Julius Clinton
Detention and Deportation Officer

DATED this 12th day of June 2017 at Washington, DC.

EXHIBIT B

United States District Court
Eastern District of Michigan
Southern Division

Sarkoun Ablahid,

Petitioner,

Civil No. 17-10640

v.

Honorable Paul D. Borman
Mag. Judge Stephanie Dawkins Davis

Rebecca Adducci,
Detroit Field Office Director,
Immigration and Customs
Enforcement,

Respondent.

**Third Supplemental Response in Opposition to
Petition for Writ of Habeas Corpus**

Respondent submits this third supplemental response to Ablahid's petition for a writ of habeas corpus in response to a temporary restraining order issued by Judge Goldsmith in another case that prevents ICE from removing petitioner on the previously scheduled date in this case.

On June 15, 2017, this Court lifted its stay of removal and permitted ICE to remove Ablahid on a specific date within 45 days of the date of the Court's order. (Dkt. 11).

On the same day, petitioners in an unrelated case requested a temporary restraining order from Judge Goldsmith that would prevent ICE from removing

“all Iraqi nationals within the jurisdiction of the Detroit ICE Field Office, with final orders of removal, who have been, or will be, arrested and detained by ICE as a result of Iraq’s recent decision to issue travel documents to facilitate U.S. removals.” (Ex. 1, *Hamama, et al. v. Adducci, et al.*, 2:17CV11910 MAG DRG (E.D. Mich.) (“*Hamama*”), Dkt. 1, Habeas Petition); (Ex. 2, *Hamama*, Dkt. 32, TRO, PgID 498).

On June 22, 2017, Judge Goldsmith granted the petitioners in *Hamama* a temporary restraining order and issued a stay that “applies to the removal of Petitioners and all members of the class, defined as all Iraqi nationals within the jurisdiction of the Detroit ICE Field Office with final orders of removal, who have been, or will be, arrested and detained by ICE, including those detained in Michigan and transferred outside of Michigan to other detention locations.” (Ex. 2, *Hamama*, Dkt. 32, TRO, PgID 502).

Judge Goldsmith’s broad stay includes aliens uninvolved in the *Hamama* case and prevents ICE from removing Ablahid on the previously scheduled date, effectively reinstating the stay that this Court had previously lifted. Accordingly, Ablahid is no longer scheduled for removal on a specific date within 45 days.

The temporary restraining order in *Hamama* is only scheduled to remain in place for up to 14 days and the government believes the *Hamama* case should be dismissed for lack of jurisdiction in the near future. Upon dismissal of the

Hamama case or dissolution of Judge Goldsmith's temporary restraining order, Ablahid will promptly be rescheduled for removal, thus satisfying the requirements of *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Respectfully submitted,

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Dated: June 23, 2017

Certification of Service

I hereby certify that on June 23, 2017, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

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**U.S. District Court for the
Eastern District of Michigan**

Index of Exhibits

1. Habeas Corpus Class Action Petition in *Hamama, et al. v. Adducci, et al.*, 2:17CV11910 MAG DRG (E.D. Mich.), dated June 15, 2017
2. Opinion and Order Staying Removal of Petitioners Pending Court's Review of Jurisdiction, *Hamama*, Dkt. 32, TRO, PgID 498), dated June 22, 2017

EXHIBIT C

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Mag. David R. Grand

Class Action

DECLARATION OF DANIELLE HANNA

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. My name is Danielle Hanna, I am 26 years old, and I am a U.S. citizen.
2. I am married to Ayad Hanna. We have been married since 2012.
3. We currently reside in Citrus Heights, California with our 3-year-old son. Ayad also has a son from a previous relationship, who is 8 years old and lives in Oregon with his mother. Both children are U.S. citizens.
4. My husband was born on [REDACTED] 1969 and is 48 years old.
5. Ayad is an Iraqi national who entered the United States in February of 1982 when he was 13 years old. He and his family fled Iraq during the war with Iran and entered the United States on tourist visas.
6. Although he has been subject to an order of removal to Iraq since 1991, ICE released him into the community with an order of supervision. In 2005, when he moved to Sacramento, ICE ordered him to regularly report in person. He has been complying with that order for the past twelve years, living in the community and reporting to an immigration officer every six months. When he last reported in January 2017, the ICE agent told him he only had to report once every year in the future.
7. On July 12, 2017, without warning, my husband was pulled over by ICE two blocks from our home, as he was on his way to work. He was detained, and has been held at Rio Cosumnes Correctional Center in Elk Grove, California ever since.
8. In 1989, when my husband was about 20 years old, he was convicted of grand theft auto. Shortly thereafter, he was also convicted of minor drug possession and burglary. He served one year in a state prison for the possession conviction, time in jail for the other two convictions, and successfully completed parole. My husband has not reoffended since then.
9. My husband has turned his life around since then. He moved away from Los Angeles and rehabilitated his life. He is employed full-time, and is the sole provider for me and our son. He regularly attends church. He is a loving father and beloved by his community.
10. My husband fears removal to Iraq, especially because his status as Chaldean-Christian makes him a target for violence and persecution. His entire family lives in the United States and have all become U.S. citizens. He does not have any family in Iraq. He wishes to seek relief from removal. We have retained an attorney in order to pursue available avenues for relief.

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

Executed July 19, 2017 in Citrus Heights, California.


DANIELLE HANNA

EXHIBIT D

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Case No. 2:17-cv-11910

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

Class Action

DECLARATION OF EDWARD AMIR BAJOKA

I, Edward Amir Bajoka, hereby declare:

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

1. My name is Edward Amir Bajoka, I am an attorney licensed in the State of Michigan, and am in good standing with the State Bar.
2. I have been an attorney for close to ten years. My practice is primarily focused on criminal defense and immigration. I practice regularly in Federal and State Courts in Michigan as well as in Immigration Court. I have handled many cases involving individuals who are under Final Order of Removal supervision with ICE.
3. I currently represent an individual named Jony Jarjiss, who is an Iraqi National with a final order of removal.
4. Mr. Jarjiss arrived in the United States in 1993 on a K1 Fiancee visa. This type of visa requires the beneficiary to be married to the petitioner within 90 days of entry into the United States. Mr. Jarjiss and the petitioner never married. Mr. Jarjiss did not depart the United States after the 90-day period expired. Mr. Jarjiss was ordered removed from the United States in January of 1996 due to having overstayed his K1 visa. The government was never able to effectuate Mr. Jarjiss' removal to Iraq, despite his full cooperation. He has remained on Final Order of Removal status since that time.
5. To the best of my knowledge, Mr. Jarjiss reports to ICE as directed and has always been fully compliant with his deportation officer's requests. He was not ordered removed based on any underlying crime. Mr. Jarjiss has indicated to me that he has no criminal convictions. In order to verify this, I have performed a background search using Michigan State Police's ICHAT program. There were no results for any convictions for Mr. Jarjiss. I am also in receipt of an officially stamped document from the Saginaw Court indicating that there is no criminal record there for Mr. Jarjiss.
6. Mr. Jarjiss has resided in the Saginaw area for the majority of his time in the United States. I have interviewed his daughter, his brother, and a friend, and all have indicated that they are unaware of Mr. Jarjiss ever having been convicted of any crime.
7. On July 13, 2017, I accompanied Mr. Jarjiss to his scheduled report date with ICE at the ICE offices on Mt. Elliott St. in Detroit, Michigan. We arrived at approximately 10:00 AM and "checked in" by placing a copy of Mr. Jarjiss' Order of Supervision in the appropriate tray.
8. We waited over 6.5 hours until finally a deportation officer told us that he would be right with us. At this point, we were the last people in the lobby waiting area. I have accompanied many similarly situated individuals to these appointments and my wait time has never been greater than an hour. In every other appointment that I have been to with my clients, the deportation officer will typically bring the attorney and the client back into his office for a discussion on any updates in addresses, attempts to obtain travel documents, case updates, etc. The attorney is usually afforded an opportunity to discuss with the officer any forms of relief that may be being sought in Court, and discuss alternatives to detention. On this occasion, everything was different from the norm. The door to the lobby opened, and the officer motioned to my client to head back into the rear of the facility toward the offices. As I followed, the officer told me that I could not come with my client. I asked if he was being detained. The officer did not respond. He slammed the door behind Mr. Jarjiss, and as I waited helplessly, I heard handcuffs being placed on Mr. Jarjiss. I waited in the lobby, and shortly thereafter, the officer came out to speak with me. He told me that Mr. Jarjiss was in fact being detained, and that he would contact me to let me know to which facility they would be taking him. I began trying to reason with him, explaining that Mr. Jarjiss has an excellent chance for relief, that we were only days away from filing a motion to reopen, that Mr. Jarjiss had no criminal

history. I was rudely interrupted before I could even get a few words in, and asked to leave the facility. I was the last one remaining in the building.

9. Mr. Jarjiss is currently detained in Youngstown, Ohio. If his immigration case is reopened, he faces no bar to eligibility that I am aware of to asylum, which would give him a path toward permanent residency.

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

Executed July 19, 2017 in Detroit, Michigan.

A handwritten signature in black ink, appearing to read 'Edward Amir Bajoka', written over a horizontal line.

EDWARD AMIR BAJOKA

EXHIBIT E

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

USAMA JAMIL HAMAMA, et al.,

Petitioners and Plaintiffs,

v.

REBECCA ADDUCCI, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910

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

Class Action

DECLARATION OF DANIEL W. SMITH

DECLARATION OF DANIEL W. SMITH

I, Daniel W. Smith, declare under penalty of perjury under the laws of the United States that the following statements are true and correct to the best of my knowledge.

SUMMARY:

1. There is an extremely high likelihood that Iraqis who are deported to Iraq, especially those who are suspected of having criminal records, will be detained upon arrival in Iraq and interrogated by internal security forces.
2. It is conventional practice for Iraqi security forces to accompany interrogation with physical violence, isolation, and other techniques that qualify as torture.
3. Even after initial interrogation, deportees face a risk of indefinite detention.
4. Depending on their background – ethnic, religious, and geographic – deportees face a risk of torture in detention centers run by various Iraqi security forces, the judicial system, or transfer to the custody of Iran-backed Shi'a militias, and an ensuing risk of interrogation, torture, and detention.
5. The risks of detention and torture are heightened because of the circumstances of deportations. A deep suspicion of American espionage and other negative intervention in Iraq permeates the country, including those in the government, especially the security forces and Iran-backed Shi'a militias. This suspicion is heightened where, as here, deportations are accompanied by media coverage of the alleged criminal records of deportees. There will be a presumption that deportees are criminals, spies, or terrorists and it is highly possible that coercive interrogation will seek to confirm that presumption.
6. Since 2014, the Iraqi government's reliance on Iran-backed Shi'a militias to take an often dominant role in the fight against ISIS has caused Iran's influence in Iraq to increase. As a result, mistrust and suspicion of those with a strong connection to the United States has also increased. This adds to the danger faced by Iraqi deportees, especially after media coverage that the United States has used Iraq's acceptance of these very deportees as a bargaining chip in connection to the travel ban, widely perceived in the region to be a hostile act toward Muslims in general.
7. These conclusions are supported by my interviews, over the past decade, of government officials, security force officers and prison guards, militia members and leaders, as well as more than one hundred torture victims in Iraq; my firsthand observation of arrest, interrogation and torture by Iraqi security forces; and my review of reports of official use of torture.
8. These opinions are further supported by my recent interviews of Iraqi officials – in the interior ministry and the judiciary – specific to this question.

QUALIFICATIONS:

9. I am a researcher specializing in Iraq who has been living primarily in the Iraqi cities of Baghdad, Sulaimaniya, and Erbil (where I now live) since 2007.
10. From 2010 - 2013, I worked for Human Rights Watch, for which I took part in or led multiple investigations into human rights abuses in Iraq and contributed to multiple public reports, including as primary author, on torture, arbitrary and secret detention, violence against and arrest of peaceful demonstrators, mass executions, failure to enforce legislation banning female genital mutilation, and destruction caused by Iran in populated areas of North Iraq.
11. From 2009 - 2013, I was a research consultant for the International Crisis Group (ICG), contributing to several major reports on Iraq by conducting dozens of interviews with all levels of politicians, security officials, party officials, tribal leaders, and religious figures, as well as collecting and organizing ongoing current events, legislation, and Supreme Court decisions.
12. In 2012, I began working as a consultant, advocate and field protection coordinator for emergency cases, focusing on targeted LGBT youth, for the International Refugee Assistance Project (IRAP), a US-based legal assistance and resettlement organization.
13. As part of my research and advocacy efforts over the years, I have kept regular contact with various international organizations, including the United Nations (UN), the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), and the International Committee of the Red Cross (ICRC). I also met regularly with multiple officers of the US Department of State at the US Embassy in Baghdad, and assisted in the drafting of the Iraq section of the 2011 and 2012 Country Reports on Human Rights Practices by confirming various human rights abuses with political officers authoring the reports.
14. I have also kept in regular contact with numerous levels of key figures in Iraqi politics, security forces, lawyers, judges and civil society. In the latter category, I have particularly continued and close involvement with multiple Iraqi human rights organizations focusing on arrest, detention and torture practices of Iraqi security forces, women's rights, freedom of expression, minority rights, and various violent manifestations of Iraqi sectarianism.
15. Since 2013, I have submitted reports on Iraq country conditions in more than ten immigration court proceedings in the United States and Canada, and testified as an area expert in two US immigration court proceedings.

THREAT OF ARREST, TORTURE, AND INDEFINITE DETENTION BY THE IRAQI GOVERNMENT:

16. An Iraqi deportee arriving at an airport in Iraq, per regulation and common practice, will be taken into police custody by the Ministry of Interior Immigration Office, and an intelligence investigation will commence. The deportee could either be released or be taken to a temporary detention area at the airport, and then be transferred to another detention facility run by any number of security forces, which, almost universally, have well-documented histories of using torture as a routine part of interrogation. Females, though facing danger of being interrogated and tortured, have a substantially higher chance than males of being released if their preliminary intelligence investigation is uneventful.
17. Male deportees are very likely to be sent for interrogation, even if the preliminary intelligence investigation turns up no results. The decision will be based upon subjective suspicions, often fueled by the deportee's religious sect, ethnicity, family or tribal affiliation, and the city/province from which they originate. If the initial intelligence investigation returns with any results regarding the deportee, members of his extended family, or even another individual with a name similar to his, the deportee would have almost no chance of avoiding transfer to a detention center and further interrogation.
18. Torture plays an absolutely integral part in Iraq's confession-based approach to interrogation and criminal justice. This is firmly established by media, reports by human rights organizations, and multiple country reports by the US Department of State and the United Nations.¹
19. Additionally, the likelihood of detainees facing torture is substantially increased by the widespread coverage of US Immigration and Customs Enforcement's (ICE) recent wave of arrests and removal proceedings against multiple Iraqi citizens, and the negotiations between the United States and Iraq. This will serve to increase suspicion and scrutiny of

¹ For example, the 2016 State Department Report on Iraq stated that "government officials as well as local and international human rights organizations documented instances of government agents committing torture and other abuses. Police throughout the country continued to use abusive and coerced confessions as methods of investigation, and courts continued to accept forced confessions as evidence"; "[a]s in previous years, abuse and torture occurred during arrest, pretrial detention, and after conviction."; "[i]nternational human rights organizations documented credible cases of torture and abuse in facilities of the Ministry of Interior and to a lesser extent in detention facilities of the Ministries of Justice and Defense, as well as in facilities of the KRG." See Iraq 2016 Human Rights Report at 6, 7, available at <https://www.state.gov/documents/organization/265710.pdf>.

The 2016 United Nations Assistance Mission for Iraq ("UNAMI") report similarly stated that "Police and investigators continue to rely heavily on confessions, which are often coerced through torture and other forms of ill-treatment, or the evidence of secret informants, to justify charges and trial" and that "[d]uring the reporting period, detainees reported to UNAMI on a number of occasions that they were forced to confess under duress." UNAMI Report on Human Rights in Iraq January to June 2016, available at <http://www.refworld.org/publisher,UNAMI,,5885be0d4,0.html>.

these Iraqi citizens by Iraqi security forces, the Iraqi judicial system, and from Iran-backed Shi'a militias now officially incorporated into Iraq's security apparatus.

20. Conspiracy theories of the United States attempting to destabilize Iraq through espionage are unfortunately very common among many in leadership positions in the Iraqi government and security forces, and most certainly by those in Iran-backed Shi'a militias. Recent pressure by the United States for Iraq to accept multiple detainees have been publicized by the media, and would undoubtedly create heightened suspicion, which would likely include notions that the United States is either sending its most dangerous Iraqi criminals and terrorists to Iraq, or that there are US intelligence agents among them. As a result, security forces would attempt to learn the supposed "real story" behind the Iraqis' deportations, and the normal way to do this in Iraq's confession-based criminal justice system, is torture. If a deportee's initial explanation of his status is not sufficient to match an interrogator's suspicions, something I see as a high probability in the current political environment, the likelihood of torture, and of its increasingly extreme nature, is heightened.
21. Aside from the risk of torture as part of initial interrogations, the threat would continue past this point. It is very difficult to be released from the Iraqi judicial system once incarcerated. Even if a judge orders all charges dropped and the defendant released, it routinely takes at least three months, and either hundreds or thousands of dollars (either called "fees," or outright bribes demanded) paid to various office workers or government officials before they are actually released. Without tireless family members able to afford to make such payments, and otherwise acting as their loved one's advocate, duration of detention and the accompanying threat of torture is, at best, indefinite.
22. Aside from my extensive research, which includes interviewing well over 100 victims of state torture in various detention facilities in Iraq, I also have personal experience, and can speak to the procedures with some degree of certainty. As a result of being suspected by Iraqi military intelligence of being a United States intelligence officer in 2011 because of repeatedly observing, for Human Rights Watch, weekly protests during the so-called "Arab Spring," I was arrested and detained, secretly and incommunicado, in Iraqi military intelligence's infamous "Muthanna Airport Prison" for a period of five days. I witnessed, first hand, practices of investigation, interrogation, and torture, all of which were consistent with my years of research and with my descriptions herein.
23. It should be noted that there is a widely-held belief in Iraq that ISIS was created and is currently supported by the United States, in order to weaken Iran and destabilize Iraq and Syria. This view is held by multiple high-level Iraqi military commanders, and probably near-unanimously by commanders in the Iran-backed militias, and any group deportation of Iraqi citizens, precisely when ISIS is being marginalized in Iraq, will undoubtedly create suspicion among some that they are being sent back to Iraq by the US government for some sort of espionage mission. Even if this sounds far-fetched to an American, these kinds of conspiracies are very commonly believed in Iraq, and there is a credible risk to those suspected of such activities of being tortured to extract information.

THREAT OF TORTURE BY IRAN-BACKED SHI'A MILITIAS:

24. Aside from the threat of torture an Iraqi detainee would face in detention centers run by various traditional and elite security forces, there is an additional credible threat of torture by Iran-backed sectarian Shi'a militias. Since the rise of ISIS in 2014, their status has changed drastically. Because of the largely-ineffective Iraqi military, these groups are now known collectively as the Public Mobilization Forces, and have been officially declared a part of the Iraqi security apparatus, and so can now be considered as acting as the government itself, though they are almost completely outside the military's chain of command.
25. The Immigration Office at Iraqi airports is part of the Ministry of Interior (Police), and their forces would be the first to take custody of any Iraqi upon arrival after being deported from another country. The Interior Minister is currently Qasim al-Araji, a senior member of the political wing of the Badr Organization, the dominant Iran-backed Shi'a militia in the Public Mobilization Forces. The militia would undoubtedly be, at the very least, alerted to the identities of the arriving deportees. Were individuals to be released from the Iraqi judicial system, and not turned directly over to militia forces in some way, the militias would likely be aware of the time and location of the release.
26. The intense hostility toward the United States, both professed and demonstrated by the Iran-backed Shi'a militias, puts all returning Iraqi deportees who have lived in the United States for an extended period of time at a serious risk. It is entirely possible, though more difficult than the above scenarios to ascertain the probability of, that deported Iraqi citizens suspected of being "American spies" by these militias, would be tortured to extract information from them, or simply killed as a result.

CONSULTATION WITH IRAQI OFFICIALS:

27. I consulted an officer stationed in the Ministry of Interior Immigration Office located at Baghdad International Airport, regarding current procedures of receiving Iraqi citizens who have been deported by other countries. I have spoken to him and others at the Ministry of Interior about this subject in the past, but called him again in July 2017, just prior to writing this report, to confirm there are no recent changes in procedure.²
28. According to the officer, upon arrival to Iraq, incoming deportees are to be taken into police custody, regardless of whether or not the reason for the deportation is known. "All would be considered criminals," he said, "So, would require investigation and interrogation." Depending on the results of the initial investigation, the detainee would be transferred to one of several possible detention facilities, run by one of several potential security forces. The detainee would remain there until an investigation into the suspect is completed. This is consistent with other cases I am familiar with, and with known procedures of the Iraqi Ministry of Interior and the Iraqi judicial system.
29. I asked him if the situation would be any different for an individual arriving alone, or at the same time as others. He said that there was a difference. Multiple Iraqi citizens being deported as a group by another government would be taken in a bus or buses (with the

² Because of fear of reprisal, these officials spoke on condition of anonymity.

exception of females, who would be processed separately) directly to a detention center run by whichever security force was decided upon for the further investigations to be conducted. This would necessarily include interrogations, "To learn what their crimes were," said the officer. Detainees would eventually be brought before an "investigation judge," who would rule to either release them or to pursue charges of some sort if they had confessed to crimes "against Iraq" during interrogation.

30. The officer added that the city the detainee was originally from could make a difference in which security force took custody of certain members of such a group. He gave the example that a Sunni Iraqi citizen originally from the cities of Mosul or Hawija, or from Anbar Province (all Sunni-majority areas with a history of insurgency) "would be seen as a terrorist, and he would probably be taken by the Counter-Terrorism Forces or Iraqi Military Intelligence," forces both well-documented to routinely use torture to extract confessions from detainees.
31. I consulted an Iraqi criminal judge, and asked what he thought the likelihood was that members of a group of Iraqi deportees returning from the United States would be tortured. He said that, "A group arriving together would be seen as a very bad group of criminals, if America needed to send them all at one time. Iraq would want to know what they all did. People would think they were terrorists or drug dealers, and people would not want to release them." He said that, to find out what they all did, many would very likely be tortured to get this information, with the probable exception of females and certain exception of children, though both groups would still be detained for some period of time.
32. To demonstrate this kind of attitude in practice, and the general state of much of the Iraqi judicial system, I'll offer the following examples: In my work for Human Rights Watch, I often met with security and judicial officials about prisoners handed over to Iraqi custody by US forces with no charges, only to be tortured until confessing to crimes that often seemed to be based on no more than mere hunches. On more than one occasion, judges have told me that they could not release prisoners who "must have committed crimes to have been arrested," or prisoners, "who we can't prove didn't commit other crimes."
33. There is simply no presumption of innocence. Proving guilt or innocence is not evidence-based, but instead almost completely confession-based, with the arresting security force performing the interrogations until a confession is extracted, typically under torture. Then, the detainee goes before an "investigation judge," at a preliminary hearing, wherein the judge is often pressured by security forces to accept into the case all charges and confessions presented without question.
34. Though forensic labs and training programs have been introduced into Iraq since 2003, they are primarily used incorrectly and only as an uncheckable way for security forces to bolster their cases against detainees. For example, evidence is typically not presented before a court, but rather characterized verbally to the court by an officer, such as telling the judge that fingerprints were found on a gun, etc. without any evidence whatsoever presented or entered into any court record.

ADDITIONAL REMARKS:

35. The decline of ISIS, including the group's military defeat in Mosul, only decreases the particular threat of direct violence at the hands of organized ISIS fighters, not, unfortunately, the threat in general. As ISIS loses territory, Iraqi security forces, Kurdish forces from the Kurdistan Region of Iraq (KR-I), opposing Kurdish forces, and Iran-backed Shi'a militias are all attempting to keep territory lost by ISIS and historically-disputed territories for their own political parties and populations, and wrestle them from each other. In this fashion, as ISIS is pushed out of an area, tensions between groups aspiring to retain dominant control of those areas, and the threat of sectarian violence, ethnic cleansing, and other violence increases.
36. In late September of 2017, the Kurdistan Regional Government is scheduled to hold a referendum on whether or not to break away from Iraq and declare national independence. This carries with it a huge potential for tremendous instability, including armed conflict between various Kurdish forces, Iraqi security forces, and Iran-backed Shi'a militias. This would also result in particular uncertainty and peril for minorities without political or military power, such as Christian, Yezidi and Shabak Iraqis, among others.
37. I consulted Shwan Saber Mustafa, an attorney in Erbil, and leader of the Justice Network for Prisoners (JNP) regarding what different Iraqi populations would face upon being deported to the KR-I, instead of Baghdad. He stated that Arabs from outside the KR-I (including disputed territories) would likely be turned over, as prisoners, to Iraqi security forces, facilitated by the Coordination Committee between Baghdad and the KR-I, and should expect the same treatment they would receive if arriving in Baghdad. Arabs originating from within the KR-I would either be turned over in the same fashion, or be investigated for criminal activity in the KR-I (by Kurdish Asaesh security forces or counter-terrorism forces). After an investigation, Christians could potentially be granted temporary residency in the KR-I, but the majority of Iraqi Christians are from areas such as the "Ninewa Plains" surrounding Mosul or from Baghdad, and could potentially be sent there, or be handed over to Iraqi security forces, in some instances. Kurds from Baghdad or other areas outside the KR-I could potentially be turned over to Iraqi security forces, but it is not overly likely. More likely, they would be released after being held during an investigation, unless they are further detained because they or a family member had previously spoken out against, or otherwise been targeted by, the prominent Kurdish political parties, a fairly common reason for Kurdish Iraqis to have sought residence in the United States.



Daniel W. Smith
Erbil, Iraq
July 20, 2017

EXHIBIT F

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

USAMA JAMIL HAMAMA, et al.,	:	
	:	Case No. 2:17-cv-11910
v.	:	
	:	Hon. Mark A. Goldsmith
REBECCA ADDUCCI, et al.	:	
	:	Mag. David R. Grand
	:	
	:	Class Action

DECLARATION OF WILLIAM B. PEARD

I, William B. Peard, make this statement under the penalties of perjury of the laws of the United States and if called to testify I could and would do so competently based upon my personal knowledge as follows:

1. I currently hold the position of Staff Attorney with the nonprofit law firm ACLU Foundation of Arizona (ACLU of Arizona).
2. Beginning on Friday, June 30, 2017, I began making visits to the Florence Correctional Center (FCC) located in Florence, Arizona with the goal of meeting with immigration detainees who belong to the class in *Hamama v. Adducci*, 2:17-cv-11910-MAG-DRG (E.D. Mich.).
3. Since June 30, 2017, I have made seven visits to the FCC with the express purpose of visiting the *Hamama* class members. In total, I estimate that I have had lengthy one-on-one conversations with at least 17 *Hamama* class members who are currently housed at FCC. Since June 30, my colleagues and I have conducted intake interviews with approximately 43 *Hamama* class members who are housed at FCC.
4. During this time, I have spoken with *Hamama* class members who are both Muslim and Christian, and *Hamama* class members who are represented by immigration counsel and those who are still seeking immigration counsel. In short, I have spoken with *Hamama* class members representing a wide range of life situations and procedural positions.
5. In addition to speaking at length with several of the detainees since June 30, I have also spoken with several family members of the *Hamama* class members and with at least four immigration attorneys who have been recently retained by certain of the *Hamama* class members.
6. During my conversations with *Hamama* class members, I have had several opportunities to listen to the detainees' various frustrations and grievances related to the conditions of

the detention facility. Chief among these grievances is the limited access to communicate with the outside world.

7. In its Response in Opposition to Petitioners' Request for a Preliminary Injunction (Doc. 81 of 2:17-cv-11910), the Government asserts that "ICE's national detention standards ensure that detainees – regardless of their detention location – have the opportunity to maintain ties with their families, communities, legal representatives, and government agencies by providing them reasonable and equitable access to telephone services[.]" Doc. 81 at 12. The Government's reference is to ICE's 2011 Performance-Based National Detention Standards (PBNDS 2011), which includes a detailed section addressing detainees' access to telephones.
8. Based on my many conversations with *Hamama* class members housed at FCC, my understanding is that the vast majority of class members have found it difficult to make phone calls for the purpose of securing legal representation or for the purpose of advancing their immigration case with an existing immigration attorney.
9. For example, the PBNDS 2011 Standards referenced by the Government allow for detainees to "be able to make free calls to the ICE/ERO-provided list of free legal service providers for the purpose of obtaining initial legal representation[.]" The ICE/ERO-provided list of free legal service providers in Florence, Arizona consists of only three nonprofit immigration legal service providers. One of those three providers – Catholic Charities – does not provide any services to detained immigrants at FCC. The other two providers – the University of Arizona School of Law and the Florence Immigrant and Refugee Rights Project – have limited resources and accept only a small number of new intakes. Thus, ICE's policy of allowing detainee access to free phone calls "for the purpose of obtaining legal representation" is meaningful to only a small percentage of the *Hamama* class members housed at FCC.
10. The PBNDS 2011 Standards do not allow for free phone calls to immigration attorneys who are not on ICE's list of free legal service providers. For example, immigration detainees at FCC are unable to make free calls to the ACLU of Arizona, even though the ACLU of Arizona is a free legal service provider. The same is true of private immigration attorneys who have stepped up to offer *pro bono* services to *Hamama* class members. The same is also true of nonprofit legal service providers located in Michigan and other states where *Hamama* class members reside and where they obtained their final order of removal from an immigration judge. In short, *Hamama* class members housed at FCC are required to pay for virtually any phone call they wish to place to an immigration attorney.
11. Based on my conversations with detainees and family members, it is my understanding that large numbers of *Hamama* class members housed at FCC do not have enough credit on their phone accounts to make phone calls to family members and attorneys. The per minute charge for an immigration detainee at FCC is between 21 and 25 cents per minute.
12. Two *Hamama* class members housed at FCC have told me that they asked the guards for permission to call me using a free attorney line. Although the PBNDS 2011 Standards

allow detainees to request free phone calls to attorneys who are not on the list of free service providers, in both instances the detainees were denied by guards and told that the free attorney line is available to call only approved service providers.

13. On at least two occasions, *Hamama* class members and family members of *Hamama* class members have personally asked me to add money to their phone accounts in order that the detainees may communicate with their legal representatives.
14. On at least two occasions, private immigration attorneys in other parts of the U.S. who are currently representing *Hamama* class members have asked me advice on how to contact their clients at FCC. In both instances, the immigration attorneys were retained by family members to file motions to reopen but the immigration attorneys could not figure out how to establish direct communication with their client at FCC.
15. As I explained to both of the immigration attorneys, the regulations do not allow attorneys to call and speak directly with their detained clients at FCC. Rather, an attorney must contact the visitation office at FCC and request that the guards communicate with the detained client. The client, once he receives the message from the guard, can then call his attorney. The client in most instances will be required to pay between 21 and 25 cents per minute in order to return his attorney's phone call.
16. One immigration attorney who currently represents a *Hamama* class member expressed to me that she believes she could have prepared a more thorough motion to reopen had her client not been transferred from the home state to Florence. This particular detainee was transferred by ICE to FCC while the attorney was still in the process of collecting information and documents in support of the motion to reopen. Among other things, this particular attorney was unable to finalize the Form I-589 (application for asylum) on account of her client's sudden transfer out of state. This particular attorney is unable to pay to fly to Arizona.
17. I have spoken with at least seven *Hamama* class members housed at FCC who believed that they were represented by an immigration attorney located in their home state but have yet to speak directly with their attorney. In these instances, the detainee was told by family members that the family member had retained counsel on the detainee's behalf. Despite the detainees' efforts to communicate with their attorneys, the FCC phone system has proven too difficult to communicate with law offices that oftentimes have voice mail phone trees and require clients to leave messages for attorneys.
18. In order to expedite the detainees' efforts to file individual motions to reopen before the immigration courts and the Board of Immigration Review, the law firm of Latham & Watkins, LLP (Latham) has volunteered to assist *Hamama* class members in Arizona. *Pro bono* lawyers from Latham are working this week to prepare motions to reopen for as many of the Arizona *Hamama* class members as possible. Latham has sent more than 12 attorneys to Florence from their various offices throughout the United States. In addition to the attorneys on the ground this week, Latham has assigned several dozen other attorneys to provide support back in the home offices by drafting motions and researching other details in support of the motions. In total, Latham has offered the *pro*

bono services of at least 50 of its attorneys during the week of July 17. Despite this surge in resources on behalf of *Hamama* class members in Arizona, it is unlikely that the Latham team will be able to finalize its motions to reopen before the expiration of the current TRO at midnight on July 24, 2017.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 20th day of July, 2017 in Tucson, Arizona.

A handwritten signature in cursive script that reads "Billy Peard".

William Peard
Staff Attorney, ACLU of Arizona

EXHIBIT G

DECLARATION OF JULIUS CLINTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Sarkoun Ablahid,

Petitioner,

Civil No. 17-10640

v.

Honorable Paul D. Borman
Mag. Judge Stephanie Dawkins Davis

Rebecca Adducci,
Detroit Field Office Director,
Immigration and Customs
Enforcement,

Respondent.

DECLARATION OF DETENTION AND DEPORTATION OFFICER JULIUS CLINTON

I, Julius Clinton, do declare as follows:

1. I am a Detention and Deportation Officer in Removal and International Operations (RIO) assigned to the Headquarters Office of Enforcement and Removal Operations (HQERO), United States Immigration and Customs Enforcement (ICE), within the Department of Homeland Security in Washington D.C.

2. RIO is responsible for assisting field offices in obtaining travel documents necessary to execute administratively final orders of removal. I have been employed with ICE since 2006. I have worked in the Headquarters Office of Enforcement and Removal Operations (HQ ERO) within ICE since February 2010. From September 2014 to the present, I have been employed in my current position as a Detention and Deportation Officer (DDO) within RIO in Washington, D.C.

3. As part of my duties, I regularly communicate with foreign governmental representatives to obtain travel documents for the removal of aliens with final orders of removal. In my current position, I am personally familiar with the procedures for the repatriation of nationals from government of Iraq. In this capacity, I am familiar with the case of ABLAHID, Sarkoun 097 060 847(Ablahid), a citizen and national of Iraq.

4. This declaration is based upon my personal knowledge, information obtained from other individuals employed by ICE, and information obtained from records maintained by ICE.

5. On April 18, 2017, ICE chartered a flight repatriating eight Iraqi nationals to Iraq.

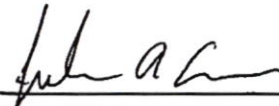
6. The April 18, 2017, flight was the first charter flight repatriating Iraqi nationals to Iraq in more than 6 years.

7. ICE is currently working to complete preparations for a second charter flight of Iraqi nationals to Iraq.

8. Sarkoun Ablahid's name has been submitted to the Iraqi government for inclusion on the manifest of the next charter flight of Iraqi nationals to be repatriated to Iraq.

8. Based on recent developments, ICE's historical knowledge, and experience regarding Iraq repatriation procedures, I believe, to the best of my knowledge that Ablahid's repatriation will occur in the reasonably foreseeable future.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Signature 
Julius Clinton
Detention and Deportation Officer

DATED this 9th day of May 2017 at Washington, DC.

EXHIBIT H

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

USAMA J. HAMAMA, et al,

Petitioners and Plaintiffs,

-v-

Case No. 17-cv-11910

REBECCA ADDUCCI, et al,

Respondents and Defendants.

/

IN-PERSON STATUS CONFERENCE

BEFORE THE HONORABLE MARK A. GOLDSMITH

Detroit, Michigan, Thursday, July 13th, 2017.

APPEARANCES:

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TABLE OF CONTENTS

PAGE

WITNESSES:

NONE

EXHIBITS

1 Detroit, Michigan.

2 Thursday, July 13th, 2017.

3 At or about 1:38 p.m.

4 -- --- --

5 THE CLERK OF THE COURT: Please rise. The United
6 States District Court for the Eastern District of Michigan is
7 now in session, the Honorable Mark Goldsmith presiding. You
8 maybe seated. The Court calls case number 17-11910, Hamama
9 versus Adducci. Counsel, please state your appearances for the
10 record.

11 MS. SCHLANGER: Margo Schlanger for the petitioners,
12 your Honor.

13 MS. AUCKERMAN: Miriam Auckerman for the petitioners.

14 MR. STEINBERG: Michael J. Steinberg for the
15 petitioners.

16 MS. SCOTT: Kimberly Scott for the petitioners.

17 MS. RICHARDS: Wendolyn Richards for the petitioners.

18 MS. YOUHKANA: Nora Youhkana on behalf of the
19 petitioners.

20 MR. SWOR: William Swor on behalf of the petitioners.

21 MR. SILVIS: William Silvis, the Department of
22 Justice on behalf of respondents.

23 THE COURT: Okay. Good afternoon, everyone. All
24 right, we are conducting a conference in this case following
25 the Court's ruling on jurisdiction and I asked for the

1 reasons why that claim doesn't belong here and we'd certainly
2 be, umm, I think again I guess without seeing it, it's hard to
3 determine, but really there would be some defense, too, of the
4 system in place that's been in place for years that the
5 plaintiffs in this case and putative class members could have
6 availed themselves of before their arrests.

7 THE COURT: In terms of the jurisdiction point you're
8 making, is it going to be the same point you've made before and
9 that I've already ruled on?

10 MR. SILVIS: I think we would just preserve that
11 argument. I understand the Court probably doesn't want to see
12 lot on the same issue, I think we want to preserve the issue.
13 It would be related. I think in addition and I know we made
14 these arguments, too, but I think we would hit on as well just,
15 you know, what the process that's in place and that's been set
16 up by Congress and that this is the review and really that, you
17 know, there's no CAT or INA claim here for certain and no
18 jurisdiction and, you know, even a due process claim is sort of
19 created by the lack of a I guess earlier protection of your own
20 interests by the plaintiffs.

21 THE COURT: So if I'm understanding your position,
22 it's that the plaintiffs don't really need to brief a CAT issue
23 because you're saying I don't have to ultimately rule on it and
24 I don't have to look into my crystal ball and make a prediction
25 about how the immigration courts or how the courts of appeal