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

JOINT STATUS REPORT

The Petitioners/Plaintiffs ("Petitioners") and Respondents/Defendants ("Respondents") submit the following Joint Status Report in advance of the Court's status conference scheduled for September 19, 2017.

Given the length of this report, a Table of Contents is included for the Court's convenience.

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I. Procedure for Determining Whether a Class Member's Desire to Return to Iraq is Knowing and Voluntary

This Court's Preliminary Injunction Order, ECF 87, Pg.ID# 2355-56, provides:

> 2. This preliminary injunction shall be terminated as to a particular class member upon entry by the Court of a stipulated order to that effect in connection with any of the following events:
>
> . . .
>
> e. a class member's consent that this preliminary injunction be terminated as to that class member.
>
> If the parties dispute whether any of the foregoing events has transpired, the matter will be resolved by the Court by motion. Termination of this preliminary injunction as to that class member shall abide the Court's ruling.

The parties have been discussing a process for identifying individuals who voluntarily consent to removal to Iraq, but have been unable to agree on that process.

<u>Petitioners' Statement</u>

Petitioners have no objection to Respondents' desire to affirmatively solicit the entire group of Iraqi detainees to find out which, if any, may wish to terminate the protection from removal afforded by this Court's Preliminary Injunction Order. However, ICE detention is an environment rife with misinformation and the potential for coercion, where the threat of prolonged or indefinite incarceration can lead people who are unaware of their rights to forego them in order to be released from detention. The declarations attached to Petitioners' last status report detail the specific ways in which ICE employees and/or contractors are subjecting the detainees to harassment, factual distortion, and pressure to abandon their rights. *See* Elias Decl., ECF 94-4, Pg.ID# 2448 *et seq*.; Mallak Decl., ECF 94-5, Pg.ID# 2454 *et seq*.; Alkadi Decl., ECF 94-6, Pg.ID# 2461 *et seq*.; Peard Decl., ECF 94-7, Pg.ID# 2466 *et seq*.; Free Decl., ECF 94-8, Pg.ID# 2470 *et seq*.; Peard Decl. ECF 94-10, Pg.ID# 2493 *et seq*.; Hernandez Decl., ECF 94-11, Pg.ID# 2499 *et seq*.; Free Letter, ECF 94-13, Pg.ID# 2506 *et seq*.

Given the grave consequences of removal, which could result in persecution, torture, or even death, it is critical that detainees who elect to forego the protections of the preliminary injunction do so knowingly and voluntarily. Petitioners therefore believe that it is essential to individually evaluate any class member's expressed desire to be returned to Iraq. In Petitioners' view, a waiver form—signed by a detainee under unknown circumstances in the face of unknown pressures and potentially in a language they do not speak or read well—cannot provide sufficient assurance of knowledge and voluntariness.

Since the last status conference, Petitioners have refined their proposal for the process by which detainees who may wish to forego the protections of the Preliminary Injunction Order identify themselves to ICE and Petitioners' counsel. On September 4, 2017, Petitioners provided Respondents with their revised proposal, which was drafted to address ICE's concerns about documenting an individual's desire for removal. An updated version of this proposal is attached as Exhibit 1, and is summarized below.

Petitioners propose that ICE distribute a "Detainee Request for Prompt Removal to Iraq" form to all detainees, along with Know Your Rights information provided by class counsel. The proposed form, attached as Exhibit 1.A, instructs detainees who have an immigration attorney to have that attorney contact both Petitioners' and Respondents' counsel. Petitioners and Respondents agree that assurances from a detainee's counsel about knowledge and voluntariness can provide sufficient confidence to move forward. In such cases, the detainee's counsel, putative class counsel, and Respondents' counsel can stipulate to removal. Indeed, that has already been done for one individual.

For detainees who do *not* have immigration counsel, Petitioners' proposed form allows detainees to indicate that they wish to be removed to Iraq. The form explains that Petitioners' counsel will then try to find an attorney to meet with the detainee and advise the detainee on this decision; it also states clearly that the detainee is not required to meet with the attorney. The form does not waive any rights.

Upon receipt of a detainee's form indicating a possible interest in removal, Petitioners' counsel will ask the advocates already working to locate immigration counsel for class members to identify a pro bono lawyer to visit the detainee's detention location. The pro bono attorney would (a) advise the detainee about available options, (b) confirm that no pressure is being exerted, and (c) ensure that any decision to forego the protections of this Court's stay is knowing and voluntary. The pro bono lawyer can also be alert to the possibility of any indicia of incompetency. Some detainees may wish to acquiesce to their own removal; in that case, the interview will provide Petitioners' counsel the necessary information on which to base a stipulation, following the Court's previously established process. The plan is that these lawyers will be independent—not Petitioners' class counsel—to avoid any possible conflict of interest.

If, after the detainee meets with the volunteer attorney, the detainee still wishes to be removed, the detainee would sign a "Detainee Stipulation to Prompt Removal to Iraq", attached as Exhibit 1.B. This second form could be provided to the detainee by the pro bono lawyer. In addition, the attorney who met with the detainee would write a declaration attesting that advice was given and that, in the attorney's opinion, the detainee's waiver of rights is knowing and voluntary. A sample declaration is attached as Exhibit 1.C.

On the basis of the Detainee Stipulation to Prompt Removal to Iraq and the attorney declaration, the Petitioners and Respondents would file a stipulation and proposed order with the Court providing that the detainee is no longer covered by the preliminary injunction. A sample declaration is attached as Exhibit 1.D. This process is designed to ensure that the Court has sufficient assurance, when entering orders that could result in removal (and potentially great harm) to individual detainees, that those individuals have made knowing and voluntary choices to be removed.

To address ICE's request that there be an end date for this process, Petitioners propose a goal of conducting attorney interviews within three weeks of notification that a detainee seeks removal. Whether this is feasible will depend on several factors, including how many detainees seek removal, how far-flung their detention locations are, whether they are repeatedly transferred, what steps ICE is willing to take to facilitate communications between counsel and detainees in remote locations, and whether ICE provides information about removal requests as they occur or all at once.

To address ICE's request that detainees not be required to meet with an attorney, Petitioners have drafted the form to clearly state that no such meeting is required. While detainees cannot be required to meet with counsel, Petitioners are concerned that the same coercion, pressure and misinformation that could affect detainees' choices about removal could also undermine the reliability of a written waiver of their opportunity to meet with counsel. Accordingly, detainees who decline to meet with counsel should do so in person when the attorney seeks to meet with them, rather than simply by signing a form.

If a detainee declines to meet with a pro bono attorney, it is Petitioners' view that the record will contain insufficient evidence to support a stipulated agreement to the detainee's waiver of rights. The government may choose to move for removal, but it will then be the government's burden to demonstrate to the satisfaction of the Court that the waiver of rights was knowing and voluntary.

Petitioners note that the government's recent motion relating to the removal of one detainee, ECF 104, has raised questions about how the parties and Court should handle cases where competency is at issue. *See Matter of M-A-M-*, 25 I & N Dec. 474, 479-81 (BIA 2011) (holding that when indicia of incompetency are present, an immigration judge must determine whether a respondent is sufficiently competent to proceed without safeguards and must state on the record the basis for his/her determination of a respondent's competency). The stipulation process should either note that there are no indicia of incompetency, or describe the safeguards used to allow fair proceeding notwithstanding such indicia. The parties will need to address situations where there are indicia of incompetency on a case-by-case basis.

Petitioners' Objections to ICE's Proposal

Respondents have not responded in writing to Petitioners' proposal. Rather, during the parties' recent discussions, Respondents' counsel has referred back to a waiver form that ICE drafted prior to the last status conference. *See* ECF 96-2, Pg.ID# 2593 (waiver form refiled as Exh. 2). ICE proposes that class members would use that form to waive their rights. Although the form requires individuals requesting removal to state that they "do not wish to further consult with an attorney," ICE has also suggested that once Petitioners' counsel have those forms, they (or volunteer counsel) could nonetheless attempt to meet with the detainees during a short window (perhaps a week) before ICE would file motions with the Court asking the Court to allow removal based on the forms.

Petitioners do not believe detainees can make knowing and voluntary choices under these circumstances. As outlined in the previously-filed declarations, class members are subject not just to the inherently coercive atmosphere of detention, but also to misinformation and pressure to acquiesce to removal or face prolonged detention. Moreover, although ICE has agreed in principle to provide Know Your Rights information about the *Hamama* litigation, such information, by definition, is only about this case. Information about the *Hamama* litigation is not the same as individualized legal advice about that detainee's specific immigration situation, the likelihood of immigration relief, the likelihood of release from detention, and other issues that are critical for detainees' ability to make knowing and voluntary decisions about possible removal. In other words, a detainee's signature on that form establishes neither voluntariness nor knowledge.

ICE's proposal also promises to be extraordinarily burdensome for the Court since virtually every removal form that is signed will result in a contested motion. Petitioners' counsel cannot know, based on a signed form mailed to ICE, whether the detainee made a knowing and voluntary choice, whether the detainee is competent, or even whether it was actually the named detainee who signed the form. Petitioners' counsel cannot ethically stipulate to removal on that basis, meaning that instead of entering stipulations based on an orderly process, the parties will need to brief and this Court will need to decide motion after motion about whether specific detainees made voluntary and knowing choices to give up their rights.

Petitioners' concerns about ICE's proposed process are exacerbated by the fact that ICE has thus far been unwilling to allow attorneys to meet with detainees who allegedly desire to be removed. For weeks, Petitioners have been requesting the names of any class members whom ICE believes want to be removed to Iraq. Respondents claim that there are approximately a dozen individuals who wish to be removed, but have refused to provide their names to Petitioners' counsel, making it impossible for Petitioners to verify those claims or begin the process of determining whether those individuals actually want to give up their rights.

If those detainees truly desire removal, then ICE's refusal to share their names is prolonging their detention and preventing the prompt removal that ICE claims is its goal. If the detainees are being coerced or if they are simply misinformed about their rights or immigration options, meetings with attorneys would shed light on those issues. In any case, it takes time and effort to identify pro bono counsel who can meet with these detainees (particularly if they are in remote locations). ICE has expressed concern that attorney meetings would introduce delay, but has refused to provide information to allow a reasonable process to begin. Unless ICE's actual objective is to prevent pro bono attorneys from meeting with the detainees, there is no reason to delay starting that process for those detainees who have already allegedly expressed a desire for removal. If Petitioners' counsel can ascertain that detainees are making voluntary and knowing choices to be removed, a prompt stipulation will follow.

Respondents' Position

The parties agree that this is an urgent issue that must be addressed immediately but, despite numerous attempts, have been unable to agree on a process for doing so. The fundamental differences between the parties comes down to two things: (1) should the form that detainees return to ICE if they do not want to be part of this case and want to be removed to Iraq, and are unrepresented by counsel, include any indicia that the detainees actually understood the form and waived their rights under the PI Order; and (2) whether every unrepresented detainee must first meet with an attorney before he or she can consent to the termination of the Court's PI Order as to the individual.

Respondents' proposal is that ICE would deliver two forms to detainees: (1) The ACLU's Know Your Rights information sheet which explains the proceedings in this case; and (2) a form that allows unrepresented detainees to express their desire to be removed to Iraq without further delay (Detainee Request for Prompt Removal to Iraq). *See* Exhibit 2, ECF No. 96-2. The Detainee Request for Prompt Removal to Iraq form includes several built-in safeguards. First, the form makes clear in several parts that it is only to be returned by individuals who do not have attorneys. Second, the form directs individuals who do not have an attorney, but wish to consult with one, to the ACLU's information sheet for guidance on how to do so. Third, the individual has to check a box indicating that he or she was able to read and understand the form, or that the form was read to the person in language understood by the individual. Fourth, an individual who wants to return this form must tear off the bottom portion to demonstrate his or her understanding of the instructions contained therein. Finally, the individual has to sign and date the form and mail it to ICE via the legal mail available at facilities.

Once Respondents receive a valid Detainee Request for Prompt Removal to Iraqvia the Legal Mail for ICE, Respondents would the share the form with Petitioners and allow them one week to visit the detention facility to meet the individual. Following that one-week period, if the individual, an attorney, or Petitioners provided sufficient information indicating that the individual no longer wanted to be promptly removed, Respondents would not seek termination of the PI Order as to that individual. Otherwise, Respondents would proceed with either a stipulation, or a contested motion, before the Court as set forth in the PI Order. Should Respondents have any concerns with the intent expressed by the individual in the Detainee Request for Prompt Removal to Iraq form, they have the opportunity to express their concern not only during that one-week period, but also in opposition to a contested motion. This process provides a fair and full opportunity to allow unrepresented individuals to opt-out of the PI Order while at the same time providing multiple safeguards, including a potential contested motion before this Court, to ensure that the individual really wants to be excluded from the relief provided in the PI Order.

Petitioners have proposed their own process, but it is untenable in two ways. First, Petitioners' process requires that two separate forms be delivered to detainees. The first form would identify the individuals who want to be removed promptly, but would not include any indicia that the individual understood the forms. The second form would be delivered to the detainee at some time after Petitioners attempted—either successfully or unsuccessfully—to have an attorney visit the individual. Regardless of the seemingly open-ended nature of this process, which is entirely in Petitioners' control, there are genuine concerns that this process requires individuals who previously clearly expressed their desire to be removed without meeting first with a lawyer, to now meet with Petitioners' attorneys. Second, it raises concerns about the criteria that will be used by attorneys, who presumably have no prior relationship with the individual, and who have not been retained by the individual, to assess whether the waiver was knowing and voluntary.

Respondents are currently aware only of individuals who have affirmatively approached them regarding potential removal. Respondents also have refrained from providing names of individuals who are seeking removal because, where the alien is represented, he or she needs to consult with his or her individual counsel, not putative class counsel. Respondents' position is that any unrepresented individuals seeking to be excluded from the class should be able to identify themselves and seek class exclusion through a uniform process agreed upon by both parties. As a class has not yet been certified, opposing counsel currently has no relationship with these individuals and, as discussed in more detail below, Respondents' ability to disclose information to third parties is limited.

II. Transmittal of A-Files and Records of Proceedings (ROPs) to Class Members

This Court ordered on July 24, 2017 ordered that a 90-day period for filing motions to reopen commences upon "Respondents' transmittal to the class member of the A-File and ROP pertaining to that class member." Preliminary Injunction Order, ECF 87, Pg.ID# 2355. The Court further ordered that:

> As soon as practicable, Respondents shall transmit to each class member that class member's A-file and ROP, unless that class member advises Respondents that he or she will seek to terminate this preliminary injunction as to that class member.

Id. at Pg.ID# 2356.

The parties disagree on two issues: (1) timeline; and (2) process for producing records.

<u>Petitioners' Position</u>

Timeline for Production of the A-Files and ROPs

To date, Respondents have not transmitted any A-Files or ROPs to class members. By the time of the status conference, 58 days—almost two months—will have passed since the Preliminary Injunction Order. A normal (non-expedited) discovery deadline is 30 days. Fed. R. Civ. Proc. 34(b)(2)(A). The U.S. Citizenship and Immigration Services website shows the current average processing time for FOIA requests for individuals scheduled for hearings before an immigration judge as 43 days,[1] while the Executive Office of Immigration Review typically takes one to three months to respond to FOIA requests. *See* Abrutyn Decl. ¶ 6, ECF 77-28, Pg.ID# 1901.

Not only has the government not produced any A-Files or ROPs, Respondents have refused to commit to a specific date for production. Indeed, despite repeated requests, the government has been unwilling to provide an estimate for when these files will be ready—or even an estimate of when an estimate might be available. This is simply unreasonable.

Respondent's failure to provide A-Files and ROPs is prejudicing class members' claims for relief from removal and needlessly prolonging their detention. For class members who have not yet filed motions, prompt production of the files is critical to prevent unnecessary and prolonged incarceration. For individuals who already filed emergency motions to reopen, the practical result of Respondents' delay is that they lack the information for effective presentation of their cases and

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[1] *See* https://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/foia-request-status-check-average-processing-times/check-status-foia-request. USCIS processes FOIA requests by individuals with a final order of removal under a slower track, with an average processing time of 109 days. *Id.*, *see also* Abrutyn Decl. ¶ 7, ECF 77-28, Pg.ID# 1901. But the point here is that more than 43 days—the normal time for processing A-Files in pending immigration cases—has elapsed.

could end up removed to a country where they face persecution, torture, and death if their motions to reopen are denied before they receive A-Files and ROPs.[2]

For example, in one case, a class member filed emergency motions to reopen and for a stay of removal in the Immigration Court in Eloy, Arizona on July 24. On August 23, the class member moved to defer adjudication of the motion to reopen, on the basis that it had been filed without benefit of the A-File or Record of Proceedings; that ICE had not fulfilled its obligation under the *Hamama* Preliminary Injunction to provide the records; and that without those records, "Respondent cannot competently and thoroughly litigate his Motion to Reopen." *See* Motion to Defer Adjudication of Respondent's Motion to Reopen in Matter of R.A., Exh. 5. ICE opposed the request for deferral of adjudication because "the respondent is currently being detained at government expense" and because "respondent gives no indication as to how long it will take to obtain these materials." *See* Department of Homeland Security Opposition to Defer Adjudication in Matter of R.A., Exh. 6. ICE objected to an "open-ended pause on the adjudication of his motion to reopen," demanding a "hard date"—a demand

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[2] As the Court knows, these kinds of bare bones motions have a much-reduced likelihood of their success. As of September 4, 2017, Petitioners' best information is that 187 Iraqis with final orders—133 of them detained—had so far sought to reopen their cases, nearly all filing prior to this Court's preliminary injunction order. It is highly likely that most of these rushed motions were filed without access to the A-Files and Records of Proceedings.

that is rich given ICE's current refusal to even estimate when it will produce the ordered files. *Id*. The Immigration Court denied both the motion to reopen and the motion to defer adjudication. *See* Order in Matter of R.A., Exh. 7. Should there be additional grounds to reopen presented in the A-File and ROP (at whatever indefinite point in the future the government produces them), the class member will have to attempt to supplement the record, move to reconsider, or file and litigate a new motion to reopen—all while detained, and potentially no longer subject to this court's stay.

Petitioners will further address the appropriate remedy for class members in this position in the next status report. In the interim, Petitioners request that the Court set a reasonable deadline for production of the A-Files and ROPs. Petitioners propose staged production:

- For all cases where motions to reopen have already been filed (whether granted, pending, or denied), the deadline should be 9/26/2017, one week after the date of the status conference, and 64 days after this Court's production order.
- Where no motion to reopen has been filed, but counsel for the class member has, since March 2017, appeared or been active, the deadline should be two weeks later, 10/10/2017.

- For unrepresented class members, for whom the process described in the next section will need to be completed prior to production, the deadline should be 10/17/2017.

Process for Production of A-Files and ROPs

Petitioners and Respondents have discussed the process for producing A-Files and ROPs. The Court's Preliminary Injunction Order states that the A-File and ROP should be "transmit[ted] to each class member." ECF 87, Pg.ID# 2356. While Respondents read this literally to mean that the file should be provided to class members in detention, Petitioners are concerned about the practicalities of such a literal implementation of the Court's order. It is not clear, for example, whether or how detainees would be able to keep, copy, or mail these files, which can number hundreds of pages. Under all three applicable versions of ICE's detention standards, facilities are permitted to impose sharp limits on the accessibility of personal legal files to detainees and are not required to facilitate mailing such materials to counsel or family members.[3] Copying and mailing would be both difficult and expensive, if available at all.

[3] ICE detention facilities are each governed by one of three sets of detention standards: the Performance Based National Detention Standards 2011 (PBNDS 2011); the Performance Based National Detention Standards 2008 (PBNDS 2008), and National Detention Standards, which were promulgated in 2000 (NDS 2000). Which set of standards applies is governed by the applicable detention contract.

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Petitioners' proposal (modified since the last Status Conference to address the government's Privacy Act concerns, and provided to the government on September 4) is as follows:

First, if an attorney has filed a representation form (a G-28, EOIR-27, or EOIR-28) in January 2017 or later, the detainee's A-File and ROP should be transmitted to that attorney unless the detainee directs otherwise. The government proposes to send the files only to attorneys who have filed G-28s, DHS's attorney representation form. But many attorneys have filed appearances in the immigration courts using the DOJ forms, the EOIR-27 or EOIR-28, rather than the G-28. ICE has access to EOIR-27 and EOIR-28 data for each class member (indeed, it is part of the currently required disclosures) and given that the purpose of these files is to facilitate filings in Immigration Court, it makes sense for those appearances to suffice, rather than requiring each lawyer to file an additional DHS form.

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The rules governing legal documents and legal mail vary between the three. For PBNDS 2011, *see* § 5.1 (correspondence and other mail), https://www.ice.gov/doclib/ detention-standards/2011/5-1.pdf, and § 6.3 (law libraries and legal materials), at https://www.ice.gov/doclib/detention-standards/2011/6-3.pdf. For PBNDS 2008, *see* § 26 (correspondence and other mail), http://www.ice.gov/doclib/dro/detention-standards/pdf/correspondence_and_other_mail.pdf; § 36 (law libraries and legal material), http://www.ice.gov/doclib/dro/detention-standards/pdf/law_libraries_and_legal_material.pdf. For NDS, *see* Access to Legal Material, https://www.ice.gov/doclib/dro/detention-standards/pdf/legal.pdf; Correspondence and Other Mail, https://www.ice.gov/doclib/dro/detention-standards/pdf/corresp.pdf.

Second, ICE should provide a form to all class member detainees allowing them to select to whom the A-File and ROP will be sent: the detainee's attorney (who may not yet have an appearance on file), the detainee, or another person such as a family member (provided the detainee grants appropriate authorization under the Privacy Act). A copy of that proposed form, the "Detainee Designation of Representatives to Receive A-File and Record of Proceedings," is attached as Exhibit 3.A. Petitioners believe the proposed process is consistent with the language of the Court's Preliminary Injunction Order, which should be read to require production to the class member's counsel, if represented, and to the class member or his/her designee if the class member is unrepresented. Alternately, Petitioners request modification of the Order to allow for the process proposed.

In response to DHS's concerns that allowing class members to have their files sent to third parties (such as a family member who is seeking to retain counsel) would raise Privacy Act issues, the "Detainee Designation of Representatives to Receive A-File and Record of Proceedings" would include the standard DHS Privacy Act forms (DHS 60-001). *See* Exh. 3.B.

Third, Respondents should also provide Petitioners' counsel with a copy of the A-Files and ROPs, in PDF format. These documents are clearly relevant to Petitioners' claims, and Petitioners intend to ask for them in discovery. As a practical matter, it will be more efficient for Respondents to provide these documents to class counsel at the same time as they are provided to class members and/or class members' individual counsel.

Again, to address the government's Privacy Act concerns, Petitioners have agreed that they will receive A-Files and ROPs only where the class members designate the *Hamama* class counsel as recipients of those files and complete a Privacy Act waiver. *See* Exh. 3.C. In addition, Respondents have expressed concern that different types of redactions may be necessary for class counsel compared to family members or immigration counsel. To address this concern, the Privacy Act waiver forms (DHS 60-001) will be pre-filled to ensure that the government need only redact each file one time with a consistent set of redactions across recipients. *See* Exhs. 3.A and 3.B. (In other words, class members will be allowed to send their entire file or no file to class counsel and family members, rather than choosing to send certain parts of their file to class counsel and certain parts to family members.)

Finally, as discussed above, the delay in production of A-Files and ROPs is highly prejudicial to the class members, undermining their ability to file effective motions and prolonging their incarceration. Petitioners propose that the form allowing unrepresented class members to select the recipient of these documents be sent out as soon as possible, along with the class notice (discussed below), so that

Respondents can meet the deadlines proposed above. Respondents object to sending out the form at this time.

Respondents' Position

Petitioners presume that providing A-files and ROPs is a simple matter of printing copies. This presumption is incorrect, both legally and practically. Petitioners' allegations that Respondents have failed to act on the Court's order are also incorrect. Respondents are still primarily a paper-based agency – compliance with this request includes locating all A-files, some of which are in storage with USCIS, the custodial agency for A-files; scanning all of the files, many of which are hundreds of pages; and uploading each of them into internal data systems for review and redaction in coordination with several other government agencies whose documents are in the files. The files are currently located in a number of jurisdictions nationwide. Respondents have begun the process of locating and scanning files for the review and redaction process. Respondents anticipate files will be produced on a rolling basis. Further, the government has a finite amount of time and resources for handling this production order. Respondents have had to reassign personnel to handle this project in addition to their regular duties. Respondents' efforts in this case must be undertaken in conjunction with other cases with discovery deadlines, FOIA actions requiring review and production of large numbers of documents, and other litigation obligations. Respondents are working to scan files as quickly as possible and have made regular progress since the Court's order, but anticipate that it will be several more weeks before any A-files will be ready for production, as files must be reviewed, redacted, finalized, and then sent to the appropriate field office for service. Respondents are using their best efforts to comply with the order as quickly as possible, but the number of variables, particularly the required coordination with and input from other government agencies, the difference in redactions that would be necessary under Petitioners' proposal and the issues Respondents require the Court to address to obtain clarity on those points, prevents Respondents from providing an exact date for production at this time.

Respondents have informed Petitioners that Respondents are subject to a number of privacy and disclosure laws with respect to A-file production. Petitioners' position and the Court's order make no exception for classified documents, confidential information, or information subject to protection and privileges, including attorney work product protection, and attorney-client, deliberative process, and the law enforcement privileges.

The current order, which does not recognize any of the above mentioned exceptions, demonstrates why ordering the production of an entire A-file is improper without accounting for whether the documents are *considered* to be confidential. *See Dent v. Holder*, 672 F.3d 365, 374 (9th Cir. 2010) (quoting section

240(c)(2) of the Immigration and Nationality Act for the proposition that release of documents is limited to "those not considered by the Attorney General to be confidential").

A-files commonly include confidential information along with information over which Respondents would assert an executive privilege or which would be covered by common law privileges to include attorney work product, attorney-client privilege, and the law enforcement privilege. For example, A-files almost always include government attorneys' notes taken in preparation for litigation and during hearings before the Department of Justice's Executive Office for Immigration Review (EOIR). Respondents would assert the attorney work product protection over these notes. Further, A-files often contain documents or information that Respondents would withhold pursuant to the law enforcement privilege, including information regarding law enforcement procedures and techniques that are not commonly known to the public.

In addition, A-files also commonly include documents that may contain confidential third-party information subject to independent protections that expressly prohibit disclosure. For example, certain information in A-files is governed by the Privacy Act, 5 U.S.C. § 552a. Additionally, other legal restrictions on release will also apply in certain cases. These restrictions on release include, but are not limited to, the personally identifying information of a third party;[4] information relating to asylum or refugee applications;[5] applications under the Violence Against Women Act (VAWA);[6] information relating to Special Agricultural Worker (SAW) or Legalization claims;[7] information relating to an individual's Temporary Protected Status (TPS);[8] and information relating to nonimmigrant S visas[9] and nonimmigrant T or U visas.[10] Importantly, the Privacy Act and certain restrictions of the INA carry criminal and/or civil penalties for disclosure violations. *See*, *e.g*., *Cooper v. FAA*, 596 F.3d 538 (9th Cir. 2010),

[4] *See*, *e.g*., 5 U.S.C. § 552a(b); *see also generally DePlance v. Califano*, 549 F. Supp. 685 (W.D. Mich. 1982) (holding that the Privacy Act prevented the Social Security Administration from disclosing address information regarding a man's children contained in his file and organized and retrievable under his Social Security number because it was neither about the requestor nor did it pertain to him).

[5] *See* 8 C.F.R. §§ 208.6, 1208.6.

[6] *See* 8 U.S.C. § 1367. A-files may contain copies of protection orders, police reports, and other documents relating to crimes of domestic violence, stalking, child abuse, and violations of protection orders. *See* INA § 237(a)(2)(E). Those documents will often contain personally identifying information of the victims. *Cf*. *Pennsylvania v. Ritchie*, 480 U.S. 39, 60 (1987) (reversing lower court ruling "that defense counsel must be allowed to examine all of the confidential information" because, *inter alia*, "[t]o allow full disclosure to defense counsel in this type of case would sacrifice unnecessarily the Commonwealth's compelling interest in protecting its child-abuse information").

[7] *See* INA §§ 210(b)(6), 245a(c)(5).

[8] *See* 8 C.F.R. §§ 244.16, 1244.16.

[9] *See generally* 28 U.S.C. § 16.26(b)(4)–(5) (prohibiting disclosures that would reveal a confidential source or information or records relating to law enforcement investigations).

[10] *See* 8 U.S.C. § 1367.

amended by and reh'g denied 622 F.3d 1016 (9th Cir. 2010) (addressing damages under Privacy Act).

The law recognizes the documents and information discussed above as confidential and privileged and therefore not subject to automatic disclosure, whether during the course of litigation or in response to a FOIA request. Further, the Respondents routinely deem the documents and information discussed above as confidential and privileged and consistently withhold such information from public disclosure whether during the course of litigation or in response to a FOIA request.

Thus, before any A-files can be produced, Respondents must conduct the appropriate review and redactions. The amount and type of information to be redacted depends on the party to whom the information is to be disclosed. For example, asylum information can be produced directly to an alien or counsel of record without redaction. For production to *any* other party, including putative class counsel, this information must be redacted unless the individual waives in writing the confidentiality provisions of the asylum regulations. Respondents have a privacy waiver form that respondents can complete, ECF No. 96-3, but appropriate boxes for disclosures of any applicable information must be checked before information can be released. Such a process would also necessitate individualized review, with potentially a different set of redactions needed for every individual file. Respondents would also be unable to begin review and redaction of an individual's file until the waiver form was returned. This Court's order clearly requires production to class members and Respondents are willing, where practicable, to provide the documents to immigration counsel of record, meaning a current and accurate Form G-28 is on file, instead of service upon the alien. For production to any other parties, including putative class counsel, putative class members must specifically waive privacy rights and any other applicable confidentiality provisions, or Respondents will need to conduct different, and more substantial, redactions. Petitioners' proposed procedure adds substantial amounts of time to what Respondents already anticipate will be a somewhat lengthy process. With respect to detainees, applicable detention standards permit detainees to retain legal documents at the facility and to mail legal documents; Respondents can address any issues with respect to directly serving detainees, such as if the detainee wishes to mail the file elsewhere after service, if and when they arise.

With respect to Immigration Court ROPs, Respondents do not have custody or control over those files. EOIR is the custodian of those files, and Respondents are in communication with EOIR about this Court's order, but can make no representations regarding production other than to state that Respondents currently expect that they will be produced somewhat contemporaneously with the A-files.

III. Notice to Putative Class

Rule 23(d)(1) provides:

> *In General*. In conducting an action under this rule, the court may issue orders that:
> . . .
> (B) require—to protect class members and fairly conduct the action—giving appropriate notice to some or all class members of:
>
> (i) any step in the action . . .

To date, no formal notice has been provided to putative class members regarding this action. On July 18 and 19, Petitioners' counsel mailed an informational letter describing this Court's temporary stay order to 234 class members, who were all the class members known at that time. The letter described the contents of this Court's order extending the temporary stay until July 24 (ECF 61). A significant number of those letters were returned by the Post Office, in part due to detainee transfers from facility to facility. The returned letters were remailed, but Petitioners have no way to know whether the letters were delivered as hoped. Petitioners' counsel and other organizations have also conducted know your rights presentations at the detention facilities in Youngstown, Ohio and Florence, Arizona.

The parties have been discussing distribution by ICE of a Know Your Rights fact sheet, prepared by Petitioners' counsel, accompanied by one or more relevant forms. The parties have been unable to come to agreement, however, with the major stumbling blocks being the process and forms to be used for individuals who may wish to return to Iraq, and the A-File/ROP production process.

Petitioners' Position

Communications with class members and their immigration counsel have revealed that many detainees do not understand this Court's Preliminary Injunction Order or their rights more generally within the immigration system. There is widespread confusion and rumors spread rapidly. Petitioners believe it is imperative that all class members be fully informed about their rights and have an opportunity to consult with an immigration lawyer, so they can make voluntary and knowing choices about whether/how to proceed in their individual immigration cases. *See* Elias Decl., ECF 94-4, Pg.ID# 2448 *et seq*.; Mallak Decl., ECF 94-5, Pg.ID# 2454 *et seq*.; Alkadi Decl., ECF 94-6, Pg.ID# 2461 *et seq*.; Peard Decl., ECF 94-7, Pg.ID# 2466 *et seq*.; Free Decl., ECF 94-8, Pg.ID# 2470 *et seq*.; Peard Decl. ECF 94-10, Pg.ID# 2493 *et seq*.; Hernandez Decl., ECF 94-11, Pg.ID# 2499 *et seq*.; Free Letter, ECF 94-13, Pg.ID# 2506 *et seq*.

The parties have been discussing distribution by ICE of a Know Your Rights fact sheet, prepared by Petitioners' counsel, accompanied by one or more relevant forms. Petitioners have drafted a Know Your Rights document, which will need some revision once the Court decides on various issues raised in this status report. The primary reason that this notice has not gone out is that the parties have not been able to come to agreement on the process and forms for transmittal of A-

Files/ROPs and for individuals who may wish to return to Iraq. In addition, Respondents have not agreed to handle all of these issues in one set of materials.

Petitioners believe the Court should order notice that meets the following criteria:

- The notice should reach all class members. Due to repeated transfers of detainees and more general problems with mail delivery at ICE facilities, mailings by Petitioners' counsel are unlikely to reach all detainees. In addition, ICE continues to arrest and detain additional Iraqi nationals, and any notice procedure should ensure that newly-detained class members are informed of their rights. The Court should set a firm date by which ICE provides this notice to all currently-detained class members. Petitioners propose that this date be set as seven days from the date of the Court's resolution of the A-File/ROP and request-for-removal issues raised in this report.
- The notice should explain this Court's Preliminary Injunction Order, as well as how class members can request legal assistance in their individual cases.
- The notice should facilitate the process Petitioners propose in Section I by which detainees can self-identify their potential interest in terminating their own protection under the Preliminary Injunction Order.
- The notice should cover the A-File/ROP issues discussed in Section II.

<u>Respondents' Position</u>

Respondents do not object to providing notice to detained putative class members, and first approached Petitioners about including information with a form for individuals to opt-out of the class. Respondents object to any process that *requires* individuals to meet with an attorney before being allowed to be excluded from the class and to any forms that Petitioners have drafted regarding A-file or ROP production.

IV. Definition of Putative Class

The Court has defined the putative class as "all Iraqi nationals in the United States who had final orders of removal on June 24, 2017, and who have been, or will be, detained for removal by ICE." *Id*. at Pg.ID# 2354. The class definition used in the Preliminary Injunction Order was adopted at Petitioners' request; this modification was intended to avoid confusion about exactly who is member of the class. This is the group covered by three requirements of the Preliminary Injunction: the bar on removal; the A-File and ROP production requirements; and the court-ordered bi-weekly disclosure requirements.

<u>Petitioners' Position</u>

Respondents have raised concerns about the class definition with respect to both individuals with reopened cases and non-detained individuals. In Petitioners' view, for both groups, the issues are most usefully addressed by separating the three aspects of the Preliminary Injunction.

The Stay of Removal. As far as the Preliminary Injunction's stay of removal, that stay does not actually affect either of the groups Respondents seek to exclude from the class definition. As far as Petitioners understand, ICE always detains individuals prior to removal, and therefore the stay of removal ordered by this Court is irrelevant unless someone is detained. Thus, non-detained people are not facing imminent removal. In addition, individuals who have successfully reopened their cases are statutorily protected by an automatic stay of removal. *See* 8 C.F.R. § 1003.6(a).

A-File and ROP production. With respect to A-File and ROP production, individuals whose motions to reopen have been granted need those files more urgently than anyone. As discussed above, their ability to proceed effectively in immigration court is severely impaired without access to the necessary documents. Accordingly, Petitioners believe production of the files should be prioritized, not eliminated, for these individuals.

With respect to non-detained individuals, Petitioners appreciate that providing A-Files and ROPs to all the non-detained individuals would be a burden for the government. At the same time, for individuals who are *currently* not detained but who will enter the class when they are detained in the future, it is unreasonable to require them to reach out to request their records in anticipation of enforcement action that may never occur. Moreover, an individual who is detained tomorrow, but who has not yet obtained her/his A-File and ROP, has just as much need of those documents as an individual who was detained yesterday. Accordingly, Petitioners propose that the A-File/ROP production obligation cover any detained class member, whether detained now or in the future (including individuals who were detained and are subsequently released). Petitioners would not be required to produce A-Files/ROPS for individuals who have not been detained. The obligation to produce the files would be triggered once the person is detained. (The government's proposal, by contrast, seeks to limit the protections available to individuals who are currently not detained, which would require actual notice to those individuals.)

Bi-Weekly Disclosures. Petitioners are using the existing bi-weekly disclosures to monitor, understand, and help to coordinate what is happening to the pending Motions to Reopen in the Immigration Court and Board of Immigration Appeal cases. If those disclosures were limited to detained individuals, this kind of monitoring would be impossible. For example, Petitioners' counsel are currently working to facilitate consolidated expert testimony in Immigration Court, and amicus briefing in the Board of Immigration Appeals. That kind of aid to the administrative courts' timely and informed resolution of these hundreds of similar cases would be impossible if the government is excused from the already-ordered disclosures for (a) anyone who succeeds in getting a motion to reopen granted, and (b) anyone who is not detained.

In fact, Petitioners request that the Court clarify that both the A-File/ROP and bi-weekly disclosure requirements cover Iraqi nationals who had a final order removal that was inoperative on June 24, 2017 as a result of a previously granted motion to reopen. The due process claims of someone whose motion to reopen was granted on June 23 are no different than those of someone whose motion to reopen was granted on June 25. And the coordination required is precisely the same, as well. Accordingly, Petitioners suggest that the bi-weekly disclosure requirement be amended to cover "all Iraqi nationals in the United States who have been, or will be, detained for removal by ICE; and who had final orders of removal on June 24, 2017, or whose removal proceedings were, as of that date, pending due to a granted Motion to Reopen." Petitioners believe that this modification would add a handful of additional individuals to the disclosure list, as there are a few individuals whose Motions to Reopen were granted before June 24 and hence did not have a then-final order on that date.

Respondents' Position

The Court defined the putative class as "all Iraqi nationals in the United States who had final orders of removal on June 24, 2017, and who have been, or will be, detained for removal by ICE." Prelim. Inj., ECF No. 87 at 33. Petitioners concede that this is the exact definition that they requested from the Court. Pet. Status Report at 11, ECF No. 95. It is also the exact same definition Petitioners use in their motion for class certification. Mot. Class Cert. at 1, ECF No. 83 ("All Iraqi nationals in the United States who had final orders of removal on June 24, 2017, and who have been, or will be, detained for removal by U.S. Immigration and Customs Enforcement (ICE)"). Petitioners now want to expand the definition to include individuals "whose removal proceedings were, as of [June 24, 2017], pending due to a granted Motion to Reopen." Pet. Status Report at 13, ECF No. 95. Respondents, however, believe that all individuals whose motions to reopen have been granted should be excluded from the relief granted under the Preliminary Injunction Order ("PI Order"). Further, Respondents ask the Court to clarify that the PI Order only applies to detained individuals, such that Respondents are not required to (1) provide A-Files or Records of Proceedings (ROPs) to non-detained individuals, and (2) include non-detained individuals in the reporting order under paragraph 4 of the PI Order. The reasons for the requested modifications and clarifications are set forth below.

First, Petitioners' proposal to include individuals whose proceedings have been reopened is not only contrary to the plain language of this Court's order, but is impractical. Respondents do not have a mechanism to determine which of the

Iraqi nationals no longer subject to a final order of removal had their proceedings reopened and on what date that occurred without conducting a manual case-by-case review. Respondents are capable only of providing "snapshots" of data on a specific date, such as individuals who currently have final orders and the dates on which those orders were received. In reporting to date, for individuals who had final orders on June 24, 2017, and have since had their proceedings reopened, Respondents have had to manually track those cases to ensure they remain included on the biweekly reporting list. Further, as this Court correctly recognized, without a date certain to define the putative class, it is impossible to determine which individuals should be class members and which should not. Accordingly, the Court should not modify the PI Order to include individuals whose motions to reopen were granted before June 24, 2017.

Additionally, an individual whose motion to reopen was granted after June 24, 2017, no longer has a final order of removal and therefore should also be excluded from the relief under the PI Order. Petitioners have maintained throughout this litigation that their "primary goal has been to secure time for class members to access the administrative immigration court system," ECF No. 95 at 31, that class members' alleged injury was insufficient time to file a motion to reopen, and that the relief sought before this Court was the time needed to prepare and file a motion to reopen in order to pursue their administrative remedies. When an Immigration Judge ("IJ") or the Board of Immigration Appeals ("BIA"), as appropriate, has granted a motion to reopen, the individual has received all of the relief that he or she sought before this Court. Not only has the individual had his or her opportunity to seek reopening, the individual's motion was granted. The alien will now have the opportunity to appropriately seek protection from removal before the Immigration Judge. There is simply nothing further for this Court to address with respect to aliens who have had their proceedings reopened.[11] Further, there was no evidence presented in the record of the preliminary injunction proceeding that suggests, much less proves, that the administrative proceedings available to individuals in reopened proceedings are constitutionally inadequate. Accordingly, the Court should modify the PI Order so that individuals whose

[11] As Petitioners note, there is little practical difference between aliens who have had their motions to reopen granted and any other alien in removal proceedings. Under the court's preliminary injunction, an alien who files a petition for review cannot be removed until a federal circuit court denies a stay request. In other cases, an alien with a pending petition for review and pending stay motion, except in the Ninth and Second Circuits, may be removed unless a stay is actually granted. Leaving aliens in the class once proceedings have been reopened actually provides them *more* than standard administrative processes and procedures and exceeds what this Court has found is its limited jurisdiction to be – i.e., to provide Petitioners the opportunity to pursue the normal administrative process through the filing of a motion to reopen, and not to supplement the administrative review and petition for review process with additional protections not otherwise available. *See* PI Order at 21 (acknowledging that the court's jurisdiction "is limited to preserving a meaningful opportunity for *access to the process that Congress intended to be followed*." (emphasis added)).

immigration proceedings are reopened are excluded from the relief provided in the PI Order.

Respondents' position does not, as Petitioners allege, "fail to recognize that the due process claims of someone whose motion to reopen was granted on June 23 are no different than those of someone whose motion to reopen was granted on June 25." Pet. Am. Status Rpt at 13, ECF No. 95. In fact, such aliens have received all of the relief sought before this Court and are in exactly the same position as any other alien in removal proceedings. Once a motion to reopen is granted, an alien is no longer subject to a final order of removal and, thus, said order cannot be executed. At that point, an alien will have all procedural protections in place to pursue available relief from removal through immigration proceedings.[12] An alien is not again subject to removal unless the alien is once again ordered removed, all applications for protection are denied, and the order subsequently becomes administratively final, which is after any appeal period (if not waived) has expired or, if the case is appealed, after the BIA issues a decision. 8 C.F.R. § 1241.1.

[12] Because withholding of removal under the Immigration and Nationality Act and withholding or deferral of removal under the regulations implementing Article III of the Convention Against Torture are forms of protection that withhold or defer removal, an alien granted such protection will nevertheless be ordered removed by the immigration court.

Respondents also request that this Court clarify that individuals who are not currently detained are not entitled to receive their A Files or ROPs under the PI Order, and the reporting requirements do not apply with regard to these individuals.[13] Non-detained individuals are not subject to any of the allegations Petitioners make regarding the difficulties of filing a motion to reopen from a detained setting and are fully capable of seeking their own counsel and pursuing their own FOIA requests for A-files. Nor is their removal imminent. Should Respondents detain an individual up until a specific date set by this Court,[14] who is subject to a final order of removal that was in effect on June 24, 2017, and has remained in effect since that date, Respondents will treat the individual as part of the group entitled to relief under the PI Order.

Therefore, Respondents request that this Court's order be modified to clarify that it applies to Iraqi individuals who are detained and remain subject to a final order of removal that was in effect on June 24, 2017, and to make clear that both

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[13] In an abundance of caution, Respondents have been providing the information required in paragraph 4 of the PI Order for detained and non-detained individuals. Going forward, Respondents request clarification from the Court that reporting is only required for detained individuals.

[14] Defendants propose December 31, 2017 as a reasonable date, as it would be roughly 6 months from the date that this action was filed and, accordingly, has permitted more than sufficient time for non-detained individuals to file a motion to reopen.

individuals whose motions to reopen are granted, and individuals who are not detained, are excluded from the relief under the PI Order.

V. Communications by ICE with Class Members Regarding This Litigation

Petitioners' Position

As set out in the declarations that accompanied the last status report, Petitioners' counsel have received numerous reports regarding abuse, coercion, and misinformation directed at *Hamama* class members. *See* Elias Decl., ECF 94-4, Pg.ID# 2448 *et seq*.; Mallak Decl., ECF 94-5, Pg.ID# 2454 *et seq*.; Alkadi Decl., ECF 94-6, Pg.ID# 2461 *et seq*.; Peard Decl., ECF 94-7, Pg.ID# 2466 *et seq*.; Free Decl., ECF 94-8, Pg.ID# 2470 *et seq*.; Peard Decl. ECF 94-10, Pg.ID# 2493 *et seq*.; Hernandez Decl., ECF 94-11, Pg.ID# 2499 *et seq*.; Free Letter, ECF 94-13, Pg.ID# 2506 *et seq*. Beyond the ordinary coercive effects of detention, the situation is exacerbated here by the fact that ICE employees, contractors, and agents—who unlike class counsel have direct, ongoing access to the detainees—seem to be misrepresenting this litigation and the detainees' rights. Class members who are abused or harassed, or who are told that they will suffer in prolonged detention if they get a lawyer, cannot make voluntary and knowing choices about how to proceed with their immigration cases.

In an effort to resolve this issue without Court intervention, Petitioners proposed that ICE send a written directive to all employees, agents, and contractors informing them that they may not discuss the *Hamama* litigation with detainees, and may not provide legal advice. Petitioners requested that a copy of that directive be posted in all housing areas for Iraqi detainees, along with an address for Petitioners' counsel, to which detainees can mail any complaint of a violation of that directive. Respondents did not agree to this proposal, although they have informed Petitioners that they intend to issue (or perhaps have already issued) some kind of directive to some employees. Respondents did not share the timing, content, or audience of that directive. As of the morning of September 15, 2017 when this report was being finalized, Petitioners had not seen it.

Petitioners request the Court to prohibit ICE employees, agents, or contractors from discussing this litigation in any way with class members, and require ICE to inform all employees, agents, or contractors who have or could have contact with class members of this order. The Court should further require ICE to post notice about this order in detainee housing areas, along with Petitioners' counsel's address, so that detainees can mail complaints of any violations. The order should specify that all communications by ICE with class members regarding this litigation should be in writing, and must be reviewed in advance by Petitioners' counsel. The order would not bar ICE employees, agents or contractors from communicating with detainees on custody-related matters.

Respondents' Position

ICE has disseminated a broadcast message instructing ERO officers, if asked about the case, to inform the alien that further information may be available at a later time and to direct the alien to their attorney or, if the alien is unrepresented, inform the alien that he or she may seek counsel and provide the list of pro bono legal service providers upon request. Exhibit 4, ICE Broadcast. The notice further instructs officers not to answer any additional questions or offer further information. *Id.* This broadcast message strikes a balance between addressing opposing counsel's concern and Respondents' operational needs and requirements regarding detainee communication. For example, some communication is necessary for daily operations and, under applicable detention standards, ICE is required under to respond to detainee requests and inquiries. *See, e.g.*, Performance-Based National Detention Standards 2011, Section 2.13 "Staff-Detainee Communication," *available at* https://www.ice.gov/doclib/detention-standards/2011/2-13.pdf.

VI. Information on Hunger Strikers

Petitioners' Position

On September 13, 2017, Petitioners' counsel learned from family members of the detainees that a number of class members—believed to be about forty to fifty individuals—detained at the Northeast Ohio Correctional Center in

Youngstown have been on hunger strike since approximately September 11, 2017. Family members reported that their loved ones say that they would rather die here in America so that their families can bury them, instead of dying or being persecuted in Iraq. The families also report that the detainees participating in the hunger strike are being held in lock-down, and their phone use is restricted.

Petitioners' counsel have asked Respondents' counsel how many detainees are on hunger strike, how long they have been on hunger strike, the names of the detainees on strike, and the demands of the detainees on strike. Respondents have declined to provide this information, describing the request as seeking "medical information," and referring to privacy rules governing ICE's "system of . . . medical, mental health, and dental records that document the medical screening, examination, diagnosis, and treatment of aliens." *See* 80 Fed. Reg. 239, https://www.gpo.gov/fdsys/pkg/FR-2015-01-05/html/2014-30854.htm. But Petitioners did not seek any such medical records. Hunger strikes are an activity; they may raise medical issues, but participation and demands are not "medical screening, examination, diagnosis, or treatment." *Id*.

The government has already provided the Court and Petitioners' counsel with information about another individual, currently being held in El Paso, Texas, who started a hunger strike on approximately August 20. (Petitioners have asked the government, but have not been told, whether that individual is still on hunger strike.) The government informed Petitioners' counsel about that hunger strike on September 7, because the government was seeking Petitioners' consent for that detainee's removal to Iraq.

These hunger strikes reflect the desperation of the class members, who are being held in detention without justification, and who are risking their own lives as a way to try to reunite with their families. Petitioners do not know if other detainees in other facilities are also on hunger strike. Petitioners' counsel are extremely concerned about the safety and treatment of the detainees who are on hunger strike, and request that the Court order Respondents to provide information about them, which Petitioners' counsel can use to negotiate with the government on class members' behalf and to seek further court intervention if necessary. In particular, the Court should order Respondents to provide a daily update with the following information: names and detention locations of each class member on a hunger strike; when each individual's strike started; any demands class members are making; and any planned attempt to forcefeed any hunger striker. In addition, the Court should forbid the isolation or lockdown of such individuals without a doctor's order declaring isolation to be "medically advisable."[15] And finally, the

[15] See, e.g., ICE PBNDS 2011 § 4.2, https://www.ice.gov/doclib/detention-standards/2011/4-2.pdf ("When medically advisable, a detainee on a hunger strike shall be isolated for close supervision, observation and monitoring.").

Court should direct Respondents to allow Petitioners' counsel or their designees to meet confidentially with any hunger-striking class member detainee. To the extent any of this information is deemed "medical," its disclosure by court order, with a protective order, would exempt it from statutory or regulatory privacy restrictions. Cf. 45 C.F.R. § 164.512 (HIPAA regulation).

<u>Respondents' Position</u>

As discussed above, Respondents are subject to a number of laws restricting the release of information about detainees; the exact law applicable is dependent upon the facts and circumstances of an individual case and the information requested. Health information is sensitive and highly personal and not relevant to the underlying claim of this litigation – an opportunity to file a motion to reopen. Petitioners' request is outside the scope and intention of the Court's order.

VII. Revision of Protective Order to Address Amicus and Case Coordination Issues

The Amended Protective Order, entered by the Court on agreement of the parties, provides in pertinent part:

> X. All documents, information and discovery responses designated as CONFIDENTIAL subject to this Order shall be used solely and exclusively for purposes of this action in accordance with the provisions of this Order. No documents, information and discovery response shall be used in or for other cases, proceedings, or disputes, or for any commercial, business, competitive, or other purpose whatsoever, without further order of this Court.

Petitioners wish to use certain information disclosed by the Respondents in order to facilitate case coordination and amicus briefing in the immigration court process—in Immigration Court, before the Board of Immigration Appeals, and in the Courts of Appeals. In particular, Petitioners wish to use the names of individuals facing removal, their A-Numbers, and the disclosed information on the procedural posture of their cases.

Petitioners' Position

With the assistance of pro bono counsel not involved in this district court litigation, Petitioners' counsel plan to seek leave to participate as amicus curiae in a large number of Board of Immigration Appeals cases involving class members. (The amicus curiae briefs would be filed on behalf on organizations representing the *Hamama* Petitioners.) In order to do so, Petitioners need to share with pro-bono counsel the list of individuals with pending BIA cases, their A-numbers (which are used essentially as docket numbers), and the names of their immigration lawyers.

Petitioners believe that the immigration court matters are most reasonably classified as part of "this action," as that phrase is used in the Protective Order. Correspondingly, counsel working with Petitioners' counsel in the coordination efforts relating to Immigration Court, the BIA, and the Courts of Appeals (and, if such cases arise, habeas matters in the federal district courts) should be able to make appropriate use of the disclosed information to, for example, call class members' lawyers or to file briefs.

Because Respondents read the Protective Order differently, and have objected to Petitioners sharing information for the purposes of coordination in the immigration courts, Petitioners propose amending the Protective Order to make it clear that this kind of use of confidential information is authorized. In particular, Petitioners propose amending Paragraphs H and X to read (additions in bold):

> H. For confidential information relating to proposed members of the class or members of the class if the class is certified, the institutions and individuals, to be designated by Counsel of Record from the American Civil Liberties Union Fund of Michigan, who will coordinate access for the proposed or actual class members to independent legal representation **or facilitate coordinated litigation strategy or amicus support related to immigration/habeas cases involving class members**, but only after such persons have completed the certification contained in Exhibit A, Acknowledgment Regarding the Order;
>
> X. All documents, information and discovery responses designated as CONFIDENTIAL subject to this Order shall be used solely and exclusively for purposes of this action, **or for immigration/habeas cases involving class members,** in accordance with the provisions of this Order.

<u>Respondents' Position.</u>

Respondents oppose amending the protective order to allow access to protected information by individuals not engaged in this litigation. The protective order makes clear that "X. All documents, information and discovery responses designated as CONFIDENTIAL subject to this Order shall be used solely and exclusively for purposes of this action in accordance with the provisions of this Order. No documents, information and discovery response shall be used in or for other cases, proceedings, or disputes, or for any commercial, business, competitive, or other purpose whatsoever, without further order of this Court." Protective Order at 9, ECF No. 71. Because immigration proceedings are not part of this litigation, it is not appropriate to amend the protective order to cover such use. Once an alien engages an attorney for purposes of filing a motion to reopen and any related immigration proceedings, it would be their choice as to what personal information they wish to share with that attorney from their A-file, once provided.

VIII. Method For Getting Up-to-Date Detainee Location Information

Petitioners' Position

While the pace of detainee transfers appears to have slowed, ICE continues to transfer class members from one detention facility to another. In addition, it was only yesterday that respondents apparently solved a problem Petitioners had alerted them to: ICE's Online Detainee Locator System did not include information about at least a handful of facilities in which class members have been housed in recent weeks. It is unclear whether or not this fix to the online locator will prove durable.

Even if the online system does not omit any facilities, it inevitably falls a little bit behind the facts. Yet it is crucial for Petitioners' counsel, and the lawyers who are working to match detainees to immigration counsel, to be able to get up-to-date information on where a detainee is located. Otherwise lawyers who want to visit the detainee to discuss their cases cannot be sure that the detainee will be at a given facility, and may well waste many hours of driving. The government has declined to facilitate this simple information.

Petitioners have no preference about the method to meet this need: counsel could call or email the Department of Justice with the relevant (usually short) lists of names, or could call or email ICE Field Offices. The response should be provided within 24 hours.

Respondents' Position

Respondents have been providing biweekly reports as ordered. When Petitioners have made Respondents aware of issues with the detainee locator involving specific detainees or facilities, Respondents have moved to promptly address those issues. On September 11, 2017, Petitioners raised issues involving specific individuals and detention facilities. Respondents promptly provided detention locations for the individuals and immediately began working to resolve the issues regarding the facilities. Respondents believe the issues Petitioners' have identified regarding the detainee locator have been resolved as of September 14, 2017. Respondents will continue to promptly address any additional issues if and when they arise.

IX. Briefing Schedule and Sequencing of Next Steps in Litigation

<u>Petitioners' Position</u>

The current case calendar requires numerous briefs and conferences with the Court over the next six weeks:

- September 19, 2017: Status conference.
- September 25, 2017: Respondents' requested date for response to the motion for class certification.
- September 25, 2017: Respondents' motion to dismiss.
- September 26, 2017: Second joint status report to be submitted to Court.
- September 28, 2017: Status conference with the Court.
- October 2, 2017: Parties' settlement statements to be submitted to Court.
- October 4, 2017 or another date that week: Settlement conference with Magistrate Judge Grand.
- October 9, 2017: Petitioners' reply in support of their motion for class certification (if Respondents' response is set for September 25).
- October 16, 2017: Petitioners' response to the motion to dismiss.
- October 30, 2017: Respondents' reply in support of their motion to dismiss.

This schedule excludes briefing on any potential appeal, and on any additional issues that may emerge, such as detention or emergency situations related to the hunger strike.

The next six weeks will require Herculean efforts by all parties to meet the current deadlines, and will impose a significant burden on the Court. Petitioners agree with the Court's suggestion to address the Respondents' motion to dismiss before completing the briefing on the class certification. Petitioners propose the following schedule:

- Three weeks after the settlement conference (or, if continued, after the date on which settlement discussions conclude), Respondents would file their motion to dismiss. (The settlement conference is currently scheduled for October 4, but that date may change.) Subsequent briefing would follow the ordinary briefing calendar.
- Three weeks after the Court issues its opinion on Respondents' motion to dismiss, Respondents would file their response to the motion for class certification. Subsequent briefing would follow the ordinary briefing calendar.

Respondents' Position

The Court has indicated that its preference would be to entertain the motion to dismiss first, following by the class certification briefing. Additionally, the Court indicated that Petitioners' response period for the motion to dismiss would be stayed until after the settlement conference. Accordingly, Respondents propose that they would file the motion to dismiss within two business days following the settlement conference. Four weeks later, Respondents would file their opposition to class certification. The remaining deadlines would be calculated under the Local Rules, and would allow for staggered briefing of both motions in the order that Respondents understood to be the Court's preference. This would also allow the parties to engage in the Court-ordered settlement conference while at the same time allowing the briefing to proceed promptly after the conference concludes.

Respectfully Submitted,

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* Application for admission forthcoming.

Dated: September 15, 2017

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2017, I electronically filed the foregoing document with the Clerk of the Court using the electronic filing system, which will send notification of such filing to all counsel of record.

By: /s/ Kimberly L. Scott

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

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Exhibit 3: Petitioners' Proposed Forms for Transmittal of A-Files and Records of Proceedings

Exhibit 4: Email from ERO Taskings (September 8, 2017)
Redacted pursuant to Fed. R. Civ. P. 5.2

Exhibit 5: Motion to Defer Adjudication of Respondent's Motion to Reopen (August 23, 2017)
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Redacted pursuant to Fed. R. Civ. P. 5.2

Exhibit 7: Order of the Immigration Judge (September 5, 2017)
Redacted pursuant to Fed. R. Civ. P. 5.2

EXHIBIT 1

Hamama v. Adducci Petitioners' proposed process and forms for detainees seeking prompt removal to Iraq.

1. Notice to detainees explaining the Hamama litigation, information about detention, and the process for seeking prompt removal to Iraq. Includes attached form (Item A) identifying the detainee as potentially interested in pursuing this option. Timing: ASAP.

2. ACLU promptly finds lawyers to meet with detainees and provide them counseling on this decision. Goal: 3 weeks from notification to ACLU to meeting time.

3. Detainees who after counseling wish to be promptly removed to Iraq fill out attached form (Item B).

4. Lawyer who counseled detainees fills out attached form (Item C).

5. On the basis of Forms B and C, Petitioners and Respondents file a stipulation (Item D) with the Court agreeing that the detainee is no longer covered by the Preliminary Injunction.

EXHIBIT 1.A

U.S. Immigration and Customs Enforcement

DETAINEE REQUEST FOR
PROMPT REMOVAL TO IRAQ [ITEM A]

September {}, 2017

You are an Iraqi national who had a final order of removal from the United States as of June 24, 2017, and you are currently detained pending removal to Iraq.

You are currently covered by a court order in a federal lawsuit, *Hamama v. Adducci*, No. 17-cv-11910 (E.D. Mich.), that temporarily prevents the government from removing you to Iraq. Further details regarding your rights under the court order are available in the attached information sheet from the American Civil Liberties Union (ACLU), which is counsel in the litigation.

This form is for you to use if you wish to request prompt removal to Iraq—that is, if you want to request that the existing court order preventing removal to Iraq not apply to you. Note: This form does *not* waive any rights. It will be sent to both ICE and the ACLU.

If you wish to remain in the United States, do NOT fill out this form. Only fill out this form if you want to be removed to Iraq.

If and only if you want to be removed to Iraq:

> **If you have an immigration attorney**, you **must** contact your attorney to discuss the matter, and request that he or she inform ICE by calling the ICE Detroit Office of Chief Counsel and asking to speak with the duty attorney and by emailing the ACLU at hamama@aclumich.org. **Do not fill out this form if you have an immigration attorney.**
>
> **If you do *not* have an immigration attorney**, fill out the form below, and use the envelope provided to return it to ERO (at no cost). Please make sure your name and A-number are clearly readable. The ACLU and other lawyers in the *Hamama* litigation will then try to find an attorney who can meet with you and advise you (without cost to you) on this important decision. (You are not required to meet with the attorney.)

Tear Here---

REQUEST FOR PROMPT REMOVAL TO IRAQ

DO NOT FILL OUT THIS FORM IF YOU HAVE A LAWYER; INSTEAD, YOUR LAWYER SHOULD CONTACT ICE AND THE ATTORNEYS IN THE *HAMAMA* CASE.

☐ I do not have a lawyer, and I currently wish to be removed promptly to Iraq.

Print Detainee Name	A Number
Detainee Signature	Date

Mail to: LEGAL MAIL FOR ICE
Enforcement and Removal Operations
333 Mt. Elliot, Detroit, MI 48207
ATTN: Hamama v. Adducci Litigation

DO NOT WRITE BELOW THIS LINE - FOR ERO USE ONLY

Print Name and Title of ERO Officer Accepting Request	Date

EXHIBIT 1.B

U.S. Immigration and Customs Enforcement

DETAINEE STIPULATION TO PROMPT REMOVAL TO IRAQ [ITEM B]

I wish to be removed to Iraq as promptly as possible, and stipulate that the Preliminary Injunction in *Hamama v. Adducci*, 17-cv-11910 (E.D. Mich.), will no longer prevent that removal.

I make this stipulation knowingly and voluntarily, understanding that it will be introduced in federal court and that it waives my rights under the existing Preliminary Injunction, and will lead to my removal.

I have not been pressured or coerced in any way by ICE or other detention staff or officers.

Print Detainee Name

A Number

Detainee Signature

Date

Mail to: LEGAL MAIL FOR ICE
Enforcement and Removal Operations
333 Mt. Elliot, Detroit, MI 48207
ATTN: Hamama v. Adducci Litigation

DO NOT WRITE BELOW THIS LINE - FOR ERO USE ONLY

Print Name and Title of ERO Officer Accepting Request

Date

EXHIBIT 1.C

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 [NAME OF COUNSEL HERE] [ITEM C]

I, ____________________, 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 am a lawyer admitted to practice in the state of ______________. I have substantial experience in the area of immigration law.

2. On __________________ (date) I agreed to assist in this litigation by providing pro bono counsel to _____________________________, an immigration detainee housed in ____ (name of facility), in ______________(city), _______________ (state).

3. I did not agree to represent Mr/Ms.. __________________________ in his/her immigration case or in federal litigation. Rather, my purpose was to explain to him/her the options available to him/her, under immigration law and procedure and the ongoing federal case, Hamama v. Adducci.

4. Mr./Ms. ______________________ is an Iraqi national, with a final order of removal that existed on June 24, 2017. Therefore, it is my understanding that he is a putative class member in the Hamama litigation, temporarily protected from removal by the Preliminary Injunction granted in that case on July 24, 2017. His/Her A# is ______________________________.

5. Mr./Ms. _____________________ had expressed interest in waiving coverage by the Preliminary Injunction and seeking prompt removal to Iraq. The meeting I had with him/her was to provide assurance that any such waiver was knowing and voluntary.

6. I met with Mr./Ms. _______________ on __________________ (date) at the detention facility already mentioned. We spoke for ___________________ (length of time). I explained to him/her the motion to reopen process, and his/her prospects for success in such a motion, along with the possibility of prolonged detention and the potential routes out of detention short of removal.

7. I communicated in English, a language Mr./Ms. seemed to understand well. [OR: Because Mr./Ms. _________________ seemed to have limited English proficiency, I had the assistance of an ____________ (language) interpreter, _____________________ (name).] I believe that my communication with Mr./Ms. ____________________ was effective.

8. On the basis of my conversation with Mr./Ms. ______________________, considering the information I conveyed and his/her responses to me, I believe that he/she wishes to be promptly removed to Iraq, and that this waiver of the protections provided by the Hamama Preliminary Injunction is both knowing and voluntary.

9. I did not observe any indicia of incompetency, as described in Matter of M-A-M, 25 I&N Dec. 474 (BIA 2011).

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 ____day of ________________, 2017 in _____________, ____________.

EXHIBIT 1.D

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

Stipulated Order Lifting the Preliminary Injunction (ECF 87) for ________________ [Name] [ITEM D]

Undersigned counsel stipulate and agree that this Court issue and enter this Order lifting the stay of enforcement of removal for _____________, only.

The bases for the order are as follows:

1. In {}, Mr. {}, an Iraqi national, was order removed from the United States by {COURT}. {APPELLATE HISTORY}

2. On {}, Mr. {} was arrested by ICE; he has been detained since that date.

3. Mr. {} has consulted with counsel about his prospects for immigration relief, his rights under the Preliminary Injunction in this case, and his prospects for relief from detention. The declaration of {}, a lawyer who gave him advice on these matters, is attached as Exhibit A.

4. Mr. {}'s signed waiver, by which he seeks prompt removal to Iraq, is attached as Exhibit B.

5. The parties believe that Mr. {}'s waiver is knowing and voluntary, and provides an appropriate basis for this Court to lift the Preliminary Injunction as to him, only.

Therefore undersigned counsel stipulate and agree and the Court hereby orders the following:

It is ORDERED that the stay of the enforcement of removal be lifted for _______________. Therefore, ICE may effectuate his order of removal.

SO ORDERED.

EXHIBIT 2

Information for Iraqi nationals in ICE detention about
Hamama v. Adducci, No. 17-cv-11910 (E.D. Mich.)

These attached four pages are provided regarding *Hamama v. Adducci*, No. 17-cv-11910 (E.D. Mich.). There are two documents attached:

1. Know Your Rights under *Hamama v. Adducci*, provided by the ACLU (3 pages).

2. Detainee Request for Prompt Removal to Iraq, provided by ICE (1 page). You should **only** fill out this form if you want to be removed to Iraq. Do **not** fill out this form if you want to stay in the United States.

Please read them carefully.

KNOW YOUR RIGHTS
FOR IRAQIS WITH REMOVAL ORDERS

Information about Hamama v. Adducci, No. 17-cv-11910 (E.D. Mich.)
From the American Civil Liberties Union (ACLU) of Michigan (Aug. 17, 2017)

What is the *Hamama* case about?
The *Hamama* case asks the federal court to **delay deportation** of Iraqi nationals with final orders of removal until you have the chance to hire an immigration lawyer, seek to reopen your immigration case, and demonstrate to the immigration court or Board of Immigration Appeals that you should not be deported to Iraq because you face a likelihood of persecution, torture, or death there.

What has happened in the case so far?
On July 24, 2017, *Hamama*'s district court judge issued a stay of removal which allows you time to fight your removal order in the immigration court system. The stay will apply only for a limited time. So it will help you only if you *also* take action to protect your own rights. **The stay applies to any and all Iraqi nationals in the United States who had final orders of removal on June 24, 2017 and who have been, or will be, detained for removal by ICE.** Here's what it says:

1. Under the court order, before deporting an Iraqi national under a final order of removal, the government must provide that person with their A-File and Record of Proceedings. The A-File contains your immigration history and the Record of Proceedings contains your legal history in immigration court. Your lawyers will need those papers in order to fight your removal.
2. Starting from the day the government sends you (or your lawyer) the A-File and Record of Proceedings, you have 90 DAYS to file a Motion to Reopen your immigration case.
3. ***If*** you file the Motion to Reopen within the 90 day period, the court's stay of removal will remain in place until the immigration court or Board of Immigration Appeals considers your motion AND it will continue to protect you from deportation if you appeal to the Board of Immigration Appeals or Court of Appeals.

The *Hamama* case alone WILL NOT stop your deportation to Iraq. The *Hamama* stay of removal is **TEMPORARY**. Should you choose to fight your final order of removal within the immigration court system (the immigration court and the Board of Immigration Appeals), you will need to file:

1. A Motion to Reopen,
2. A request for a Stay of Removal, and
3. The application for underlying relief (example: Asylum I-589)

What you need to do if you want to take advantage of the stay:

- You SHOULD hire an immigration lawyer to advise you and assist with filings in the immigration court/Board of Immigration Appeals/court of appeals.

- You will **NOT** BE PROTECTED BY THE STAY OF DEPORTATION **if**:
  a. You do not file a Motion to Reopen within the 90-day period, OR
  b. You fail to file an Appeal to the Board of Immigration Appeals or Court of Appeals within the appeal deadlines.

IMPORTANT: It is possible that the government will appeal the district court decision to a higher court. If that happens, the terms of the stay could be changed. Or the higher court could end the stay and ICE could then deport you if you do not have a stay in your individual case from the immigration court system.

How can I be deported if Iraq has never given me travel documents?
Even if you have not received a travel document in the past, you still could be deported. Recently, the Iraqi government agreed to the return of Iraqi nationals even if they do not have travel documents.

<u>What is a Motion to Reopen?</u>

A motion to reopen gives you an opportunity to have your immigration case heard again. Generally, these types of motions must be filed within 90 days of the final order of removal, but there are some exceptions. Most relevant here, you are allowed to file a motion to reopen after the 90 days if you are seeking asylum, withholding from removal, or protection under the Convention Against Torture based on changed country conditions in the country to which you were ordered deported. Because of the recent changes in county conditions in Iraq, some people have had success reopening their immigration cases on this basis. The motion has to state new facts that you will prove at a hearing if the motion is granted, and has to be supported by affidavits and other evidence.

You may be able to reopen your immigration case based on these grounds or others so long as you meet certain eligibility requirements. Because the law has changed a lot over time, you may also be able to file a motion to reopen on the basis of the change in law, or other circumstances, that have rendered you no long deportable or at least entitle you to another hearing on that question.

Your immigration attorney will need to look at your individual situation and any criminal history you may have to see what kinds of immigration relief you are eligible for. You will need copies of your A-file, your immigration court Record of Proceedings, and your criminal history records to file your motion to reopen.

<u>What if I *want* to return to Iraq?</u>

First, you should talk with an immigration lawyer about your options for staying in the United States, what risks you face if deported to Iraq, and what deportation would mean for your ability to return to the U.S. or pursue other kinds of immigration relief. You should be fully aware of your rights before you make the decision. If you still decide that you want to voluntarily leave the U.S., please have your lawyer contact both ICE by calling the ICE Detroit Office of Chief Counsel and asking to speak to the duty attorney and the lawyers in the *Hamama* case by emailing hamama@aclumich.org.

If you do not have counsel and you want to return to Iraq, ICE is providing you with the attached Detainee Request for Prompt Removal to Iraq that you can send in. **Do NOT fill out this request if you want to stay in the United States.** This request tells both ICE and the ACLU that you wish to be removed to Iraq. The ACLU and other lawyers in the *Hamama* litigation will then try, but cannot guarantee, that they will locate an attorney who can meet with you and advise you (without cost to you) on this important decision. The lawyer can give you advice about your individual options for challenging your deportation and about your chances of getting out of detention.

<u>What can I do to get out of detention while I'm challenging my deportation?</u>

So far, the attorneys in the *Hamama* case have focused on preventing your deportation. The *Hamama* case also includes a claim about release from detention, and we are now talking to ICE about this issue.

According to the law, ICE generally has the authority to detain people after a final order of removal for up to 90 days while it attempts to remove them from the United States. ICE believes that this law applies even if you were released into the community after the final order of removal was issued. ICE will conduct a custody review to determine if you can be released after 90 days and again after 180 days. You will have an opportunity to present documents in support of release and may even be interviewed. The Florence Immigrant and Refugee Rights Project has prepared a guide to assist individuals in preparing for their 90-day review, which can be found at: http://firrp.org/media/90-Day-Custody-Review-Guide-2013.pdf. Or to get a copy by mail, write to: Florence Project, P.O. Box 654, Florence, Arizona 85132.

Release at the 90 day point is not automatic. If you were detained by ICE in the past, you may have been released at some point because ICE was not able to obtain travel documents to Iraq. **But now the only thing stopping your removal may be either the stay issued by the district court in the *Hamama* case or a stay issued in your case by the immigration court**. If your motion to reopen has not been granted, ICE may decide to hold you past 90 days. Depending on your criminal history, it is also possible that ICE will use this as a basis to argue that you are a danger.

You should consult with your immigration lawyer about your particular situation and explore any special circumstances that can help you advocate for release, such as medical issues. It is possible you could bring a case in federal district court challenging the legality of your continued detention, especially if you can show that your case is not going to be decided for at least another few months and that ICE cannot remove you during this time.

If your motion to reopen is granted, a different law applies and you may be eligible for bond. Depending on your criminal history, the government may argue that you are subject to mandatory detention. However, there are also arguments why mandatory detention may not apply to you. Talk to your lawyer about whether you should request a hearing to challenge your detention.

<u>What if I don't have a lawyer and can't afford one?</u>
The National Immigrant Justice Center is working to assist Iraqi nationals in finding legal representation.

If you need an immigration lawyer, please contact the National Immigrant Justice Center (NIJC), (312) 263-0901, between 11 am and 2 pm Central Standard Time (CST). 208 S. LaSalle St., Suite 1300, Chicago, IL 60604. Or ask a family member to fill out the form available at https://refugeerights.org/iraqi-deportation-resources/.

Please note that contacting NIJC is for informational and potential referral purposes only and does not guarantee legal representation in your individual case.

<u>How can I find out what is happening in the *Hamama* case?</u>
You or your family members will be able to learn more up-to-date information about the *Hamama* case at the ACLU's website: https://www.aclu.org/cases/hamama-v-adducci.

This fact sheet is not intended to substitute for legal advice regarding your own individual immigration case or any other matter outside of the context of the *Hamama* lawsuit. We advise you to seek independent legal advice about your own individual immigration case and the impact of the *Hamama* lawsuit on your case.

NOTE: ICE/ERO did not prepare this handout and is not responsible for its contents.

DETAINEE REQUEST FOR
PROMPT REMOVAL TO IRAQ

August 17, 2017

You are an Iraqi national who had a final order of removal from the United States as of June 24, 2017, and you are currently detained pending removal to Iraq.

You are currently covered by a court order in a federal lawsuit, *Hamama v. Adducci,* No. 17-cv-11910 (E.D. Mich.),that temporarily prevents the government from removing you to Iraq. Further details regarding your rights under the court order are available in the attached information sheet from the American Civil Liberties Union (ACLU), counsel in the litigation.

This form is for you to use if you wish to request prompt removal to Iraq—that is, if you want to request that the existing court order preventing removal to Iraq not apply to you. Note: This form does *not* waive any rights. It will be sent to both ICE and the ACLU.

If you wish to remain in the United States, do NOT fill out this form.

If and only if you want to be removed to Iraq:

> **If you have an immigration attorney**, you **must** contact your attorney to discuss the matter, and request that he or she inform ICE by calling the ICE Detroit Office of Chief Counsel and asking to speak with the duty attorney and inform the ACLU by emailing hamama@aclumich.org. **Do not fill out this form if you have an immigration attorney.**
>
> **If you do *not* have an immigration attorney**, but wish to consult an attorney regarding this decision, please see the attached information sheet from the ACLU for information on obtaining assistance in locating an attorney who may meet with you and advise you (without cost to you) on this important decision. **Do not fill out this form if you wish to speak with an attorney.**
>
> **If you do not have an attorney, do not wish to consult with an attorney regarding this decision, and wish to be removed to Iraq as promptly as possible**, please complete the fields below, tear off the portion below, and follow the instructions to return to ERO.

Tear Here--

REQUEST FOR PROMPT REMOVAL TO IRAQ

I have read and understand this notice and the attached information sheet regarding the court's order in *Hamama v. Adducci*, 17-cv-11910 (E.D. Mich.). I wish to be removed to Iraq as promptly as possible. I do not wish to further consult with an attorney. I understand that requesting exclusion from the class will result in my removal from the United States to Iraq as promptly as possible. I understand this notice, request for class exclusion, and attached information sheet because: (Check "A" or "B")

☐ A. This notice and attached information sheet was read to me in ________________, a language that I fully understand.

(or)

☐ B. I read this notice and attached information sheet without assistance because I am capable of reading and understanding English.

______________________________ ______________________
Print Detainee Name A Number

______________________________ ______________________
Detainee Signature Date

Mail to: LEGAL MAIL FOR ICE
Enforcement and Removal Operations
333 Mt. Elliott
Detroit, MI 48207
ATTN: Hamama v. Adducci Litigation

DO NOT WRITE BELOW THIS LINE - FOR ERO USE ONLY

____ ______________________
Print Name and Title of ERO Officer Accepting Request Date

EXHIBIT 3

Information for Iraqi nationals in ICE detention about
Hamama v. Adducci, No. 17-cv-11910 (E.D. Mich.)

This attached information is provided by ICE and the ACLU, which is counsel for the plaintiff/petitioners in *Hamama v. Adducci*, No. 17-cv-11910 (E.D. Mich.). There are three documents attached:

1. Know Your Rights under *Hamama v. Adducci*, provided by the ACLU.
2. Detainee Request Relating to A-File/Record of Proceeding, provided by ICE, including two Privacy Act forms.
3. Detainee Request for Prompt Removal to Iraq, provided by ICE. You should **only** fill out this form if you want to be removed to Iraq. Do **not** fill out this form if you want to say in the United States.

Please read them carefully and fill out only the forms that apply to your situation.

EXHIBIT 3.A

U.S. Immigration and Customs Enforcement

DETAINEE DESIGNATION OF REPRESENTATIVES
TO RECEIVE A-FILE AND RECORD OF PROCEEDINGS

September {}, 2017

As required in the federal lawsuit about Iraqi nationals with final orders of removal, *Hamama v. Adducc*i, No. 17-cv-11910 (E.D. Mich.), ICE is preparing to share A-Files and Records of Proceedings (ROP) with each Iraqi national in detention who had a final order of removal as of June 24, 2017. The A-File contains your immigration history and the Record of Proceedings contains your legal history in immigration court.

This form does two things. First, it tells ICE who should receive your A-File and ROP. Second, it tells ICE whether you want your A-file and ROP shared with the lawyers in the *Hamama* case. You must fill out the attached Privacy Act forms in order to share your files with a family member or friend, and you must sign a second Privacy Act form to share your files with the *Hamama* lawyers. Return this form AND the Privacy Act forms to ICE in the envelope provided (at no cost).

I hereby pick the following person to receive my A-File and ROP from ICE:

Pick one

☐ My attorney. Name: ______________________________

Address Line 1: ________________________

Address Line 2: ________________________

City: ___________________________State: ______ Zip: _____________

Please note: If you have an attorney who has filed a representation form (a G-28, EOIR-27, or EOIR-28) in January 2017 or later, your A-File and ROP will be shared with that attorney unless you direct otherwise.

☐ Other person. Specify relationship: ___________________________

Name: ______________________________

Address Line 1: ________________________

Address Line 2: ________________________

City: ___________________________State: ______ Zip: _____________

You must fill out the Privacy Act form to share your file with this person.

☐ Myself, even though I am in detention.

A copy of your A-file and ROP will also be sent to the lawyers in the *Hamama* case, unless you do not want it to be. **You must sign the copy of the Privacy Act form that lists the *Hamama* lawyers in order for your files to be shared with them.**

Pick one

☐ I DO want my A-file and ROP shared with the lawyers in the *Hamama* case.

☐ I do NOT want my A-file and ROP shared with the lawyers in the *Hamama* case.

Print Detainee Name ______________________ A Number ______________________

Detainee Signature ______________________ Date ______________________

Mail to:
LEGAL MAIL FOR ICE
Enforcement and Removal Operations
333 Mt. Elliot, Detroit, MI 48207
ATTN: Hamama v. Adducci Litigation

DO NOT WRITE BELOW THIS LINE - FOR ERO USE ONLY

Print Name and Title of ERO Officer Accepting Request ______________________ Date ______________________

EXHIBIT 3.B

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

PRIVACY WAIVER AUTHORIZING DISCLOSURE TO A THIRD PARTY

Use this form to authorize the U.S. Department of Homeland Security ("DHS") to disclose information and/or records about you to a third party. Taking this action is entirely voluntary; you are under no obligation to consent to the release of your information to any third party. **Authority:** Privacy Act of 1974 (5 U.S.C. § 552a); DHS Privacy Act Regulations (6 C.F.R. § 5.21(d)).

STEP 1 Provide information about yourself and identify the third party that you intend to receive your information and/or records (the "Recipient").

Your Full Name:	Your Alien Registration Number (if applicable):
Your Current Address:	Date of Birth: Country of Birth:
Recipient's Name:	Recipient's Phone Number:
Recipient's Mailing Address (required if requesting disclosure by mail):	
Recipient's Organization, if the waiver will apply to it (e.g. news media, congressional office, law firm):	

STEP 2 Specify what information and/or records DHS is authorized to share with the Recipient.

- ☐ Identifying Data (Date of Birth, etc.)
- ☐ Family Data
- ☐ Travel/Border Crossing
- ☐ Immigration Case
- ☐ Detention Information
- ☐ Medical Information
- ☐ Alien File (A-File)
- ☐ Criminal History
- ☐ Criminal Case

AND/OR

☐ The following information/records (describe): ____________________

____

OR

☒ ALL information and/or Records Requested by the Recipient

For Aliens Only: If you have applied for or received any of the immigration benefits below, you are legally entitled to confidentiality. (See reverse for more information.) If you want DHS to share information about these benefits with the Recipient, you must waive your confidentiality rights by checking the appropriate boxes below. Waiver of these rights is not required; however, if you do not waive these rights DHS may be unable to disclose to the Recipient some or all of the information you identified above.

I waive my right to confidentiality and authorize disclosure to the Recipient regarding these immigration benefits:

- ☒ Temporary Protected Status (TPS)
- ☒ T Visa (for trafficking victims)
- ☒ U Visa (for victims of certain crimes)
- ☒ Seasonal Agricultural Worker
- ☒ Battered Spouse/Child Seeking Hardship Waiver
- ☒ Violence Against Women Act (VAWA)
- ☒ Asylum (confidentially applies even if petition is denied)

STEP 3 Sign the statement below authorizing DHS to disclose your information and/or records to the Recipient.

I certify under penalty of perjury that the information above is accurate. I authorize DHS, its components, offices, employees, contractors, agents, and assignees, to disclose the information or records specified above to the Recipient. I understand this may include and is not limited to reports, evaluations, and notes of any kind, contained in any record keeping system maintained by or on behalf of DHS; that DHS retains the discretion to decide if particular records or information are within the scope of this Waiver; and that DHS has no control over how the Recipient will use or disseminate my information. I agree to release and hold harmless DHS, its components, offices, employees, contractors, agents, and assignees, from any and all claims of action or damages of any kind arising from, or in any way connected to, the release or use of any information or records pursuant to this Waiver.

Your Signature:	Witness Signature:
Date:	Witness Name:

*Privacy Waiver is valid for 90 days from date of signature

*Witness may not be the Recipient or employed by Recipient's employer

Explanation of Immigrant Benefits

If you have applied for or received any of the immigration benefits below, you may be legally entitled to confidentiality regarding these benefits. An explanation of these benefits is provided below to help you identify whether you have applied for such benefits. If you have applied for or received these benefits and you want DHS to share information about these benefits with the Recipient, you must waive your confidentiality rights by checking the appropriate boxes in Step 2 of this form (reverse). You are not required to waive confidentiality regarding these benefits; however, if you do not waive these rights DHS may be unable to disclose to the Recipient some or all of the information you identified above.

Temporary Protected Status (TPS) - 8 U.S.C. § 1254a(c)(6). TPS is for foreign nationals currently residing in the U.S. whose homeland conditions are recognized by the U.S. government as being temporarily unsafe or overly dangerous to return to (e.g., war, earthquake, flood, drought, or other extraordinary and temporary conditions). ICE may disclose information related to TPS to a third party with the consent of the alien.

T Visas and U Visas - Public Law 106-386, Section 701(c)(1)(C). A T visa allows certain victims of human trafficking to remain in the United States for a period of time. A U visa allows certain victims of crimes to remain in the United States for a period of time. ICE may disclose information related to T and U visas to third parties with the consent of the alien.

Legalization Claims, including Seasonal Agricultural Worker (SAW) Claims - 8 U.S.C. § 1255a(c)(4) and (5) and 8 U.S.C. § 1160(b)(5) and (6). Individuals who have applied for legalization, including those individuals employed in agricultural work of a seasonal or temporary nature who have made SAW Claims, may permit ICE to disclose information related to their claim to a third party with the individual's consent.

Battered Spouse or Child Information - 8 U.S.C. § 1186a(c)(4)(C). This provision applies to a battered alien or child who has applied for a hardship waiver from removal under the INA. ICE may disclose information the alien provided to ICE in support his or her request for waiver to a third party with consent of the alien.

Information Relating to Violence Against Women Act (VAWA) Claimants - 8 U.S.C. § 1367(a)(2). This provision applies to a person who has filed a claim under the VAWA. ICE may disclose information related to a person's claim to a third party with the consent of the person.

Asylum Information - 8 C.F.R. § 208.6. This provision applies to individuals who have applied for asylum, and confidentiality regarding the asylum claim applies even if the claim is ultimately denied. ICE may disclose information related to an individual's asylum claim to a third party with the consent of the person.

Revocation of Privacy Waiver

This Privacy Waiver is valid for 90 days from the date of signature unless you have otherwise specified on this form. You may revoke this Privacy Waiver at any time by contacting the ICE Privacy Office (202-732-3300 or ICEPrivacy@dhs.gov) or the relevant ICE office handing this matter or case. Certain information about you may be requested to confirm your identity and you may be asked to revoke the waiver in writing.

EXHIBIT 3.C

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

PRIVACY WAIVER AUTHORIZING DISCLOSURE TO A THIRD PARTY

Use this form to authorize the U.S. Department of Homeland Security ("DHS") to disclose information and/or records about you to a third party. Taking this action is entirely voluntary; you are under no obligation to consent to the release of your information to any third party. **Authority:** Privacy Act of 1974 (5 U.S.C. § 552a); DHS Privacy Act Regulations (6 C.F.R. § 5.21(d)).

STEP 1 Provide information about yourself and identify the third party that you intend to receive your information and/or records (the "Recipient").

Your Full Name:	Your Alien Registration Number (if applicable):
Your Current Address:	Date of Birth: Country of Birth:
Recipient's Name: Petitioners' Counsel in Hammama v. Adducci	Recipient's Phone Number: 734-668-7696
Recipient's Mailing Address (required if requesting disclosure by mail): 101 North Main St., 7th Floor, Ann Arbor, MI 48104	
Recipient's Organization, if the waiver will apply to it (e.g. news media, congressional office, law firm): Petitioners' Counsel in Hamama v. Adducci, c/o ACLU of Michigan	

STEP 2 Specify what information and/or records DHS is authorized to share with the Recipient.

- ☐ Identifying Data (Date of Birth, etc.)
- ☐ Family Data
- ☐ Travel/Border Crossing
- ☐ Immigration Case
- ☐ Detention Information
- ☐ Medical Information
- ☐ Alien File (A-File)
- ☐ Criminal History
- ☐ Criminal Case

AND/OR

☐ The following information/records (describe): ______________________

____

OR

☒ ALL information and/or Records Requested by the Recipient

For Aliens Only: If you have applied for or received any of the immigration benefits below, you are legally entitled to confidentiality. (See reverse for more information.) If you want DHS to share information about these benefits with the Recipient, you must waive your confidentiality rights by checking the appropriate boxes below. Waiver of these rights is not required; however, if you do not waive these rights DHS may be unable to disclose to the Recipient some or all of the information you identified above.

I waive my right to confidentiality and authorize disclosure to the Recipient regarding these immigration benefits:

- ☒ Temporary Protected Status (TPS)
- ☒ T Visa (for trafficking victims)
- ☒ U Visa (for victims of certain crimes)
- ☒ Seasonal Agricultural Worker
- ☒ Battered Spouse/Child Seeking Hardship Waiver
- ☒ Violence Against Women Act (VAWA)
- ☒ Asylum (confidentially applies even if petition is denied)

STEP 3 Sign the statement below authorizing DHS to disclose your information and/or records to the Recipient.

I certify under penalty of perjury that the information above is accurate. I authorize DHS, its components, offices, employees, contractors, agents, and assignees, to disclose the information or records specified above to the Recipient. I understand this may include and is not limited to reports, evaluations, and notes of any kind, contained in any record keeping system maintained by or on behalf of DHS; that DHS retains the discretion to decide if particular records or information are within the scope of this Waiver; and that DHS has no control over how the Recipient will use or disseminate my information. I agree to release and hold harmless DHS, its components, offices, employees, contractors, agents, and assignees, from any and all claims of action or damages of any kind arising from, or in any way connected to, the release or use of any information or records pursuant to this Waiver.

Your Signature:	Witness Signature:
Date:	Witness Name:

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EXHIBIT 4

From: ERO Taskings <[redacted]>
Date: Friday, Sep 08, 2017, 8:37 PM
Subject: Communication with Detainees Regarding the Injunction on Removals to Iraq in Hamama v. Adducci

This message is sent on behalf of Nathalie R. Asher, Acting Assistant Director for Field Operations

To: Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors

Subject: Communication with Detainees Regarding the Injunction on Removals to Iraq in *Hamama v. Adducci*

As you are likely aware, on July 24, 2017, the United States District Court for the Eastern District of Michigan issued a nation-wide injunction against removals to Iraq for all Iraqi nationals in the United States who had a final order of removal in effect on June 24, 2017, and who have been, or will be, detained by U.S. Immigration and Customs Enforcement (ICE) for removal. This injunction was issued in a class action case called *Hamama v. Adducci*, No. 17-cv-11910 (E.D. Mich.). This injunction covers Iraqi nationals who were subject to a final order of removal on June 24, 2017, even if their case has been reopened since that date, and who are currently detained in ICE custody. If you have any question as to whether this injunction applies to a detainee in your area of responsibility, please contact your local Office of Chief Counsel (OCC).

We are aware that several detainees have requested to be excluded from the court's injunction so they can be removed, and may have questions for Enforcement and Removal Operations (ERO) personnel. At this time, there is no process in place for aliens without an attorney to seek exclusion from the class. The parties remain in negotiations to establish a process to distribute further case information to potential class members and instructions for detainees to seek exclusion from the class and injunction.

The Office of the Principal Legal Advisor (OPLA) has advised that [redacted]

If the detainee has questions and has an immigration attorney, please instruct the detainee to contact his/her attorney and have their attorney contact the OCC for additional information. Do not answer any questions or offer further information. For unrepresented detainees, you may only respond that they have the right to seek counsel on their own and that further information regarding the case and injunction may be available at a later time. The List of Pro Bono Legal Service Providers should be made available to any alien upon request.

If the detainee requests exclusion from the class, please send their name and A number to your local OCC, but do not engage in any further conversation with the alien about the issue.

OPLA will provide more information on a process for class exclusion and any other case developments as it becomes available.

If you have any questions about this case, please contact your local OCC.

Limitation on the Applicability of this Guidance. This guidance does not impose any limitations on release where it is determined that an alien does not pose a danger or flight risk; release is required by law, such as when an alien receives a final grant of relief, removal proceedings are dismissed or terminated without ICE opposition; an alien is surrendered to another agency pursuant to a criminal arrest warrant; or a court order or legal precedent requires release. Moreover, this message provides only internal guidance to ICE and does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

EXHIBIT 5

CONFORMED

Kristina Holmstrom
EOIR No. RR666364
Lewis Roca Rothgerber Christie, LLP
201 E. Washington Street, Suite 1200
Phoenix, AZ 85004
Tel: 602-262-5762
Fax: 602-734-3875

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ELOY, ARIZONA

In the Matter of:	)	**DETAINED**
	)	Not assigned to an Immigration Judge
R[redacted]A[redacted]	)	
A#: [redacted]	)	
	)	Ordered removed: September 24, 2005
In Removal Proceedings	)	

MOTION TO DEFER ADJUDICATION OF RESPONDENT'S MOTION TO REOPEN

Respondent, by and through counsel, submitted an Emergency Motion to Reopen and Stay of Removal on July 24, 2017. The Government submitted a response in opposition to the Motion to Reopen on August 8, 2017. Respondent hereby moves this Court to defer adjudication on this Motion to Reopen until Respondent receives a copy of his A-file and record of prior proceedings. The Government's position was sought prior to filing, but no response has yet been received.

RECEIVED
US DEPARTMENT OF JUSTICE

Counsel submitted an expedited FOIA request for these items on August 8, 2017. Receipt was acknowledged on August 22, 2017, but the request to expedite was denied.

Respondent submitted his Motion to Reopen on an emergency basis, because he was being held in ICE custody and removal to Iraq was imminent. Respondent's Motion to Reopen at 1. The temporary stay in place to prevent Respondent's removal was set to expire the day he filed his Motion to Reopen, July 24, 2017. *Id. See also Hamama v. Adducci*, 2:17-cv-11910 (E.D. Mich).[1] As such, Respondent had no choice but to file his Motion to Reopen and Stay of Removal without delay, despite the fact that neither he nor his counsel had a copy of his A-file and prior record of proceedings. Respondent noted in his Motion, however, his intent to supplement his Motion to Reopen once the record had been received. Respondent's Motion to Reopen at 1, FN 1.

After Respondent filed his emergency Motion to Reopen, United States District Judge Mark Goldsmith granted a permanent injunction in the *Hamama* litigation, barring Immigration and Customs Enforcement from removing Respondent until he has had adequate opportunity to litigate his Motion to Reopen before this Court. *See* Exhibit A at 33. In so doing, the Judge recognized that receipt and review of the A-file and record of proceedings is essential to Respondent's due process rights and ability to adequately present his Motion to Reopen. The Judge specifically ordered that "as soon as practicable," DHS "shall transmit to each class member that class member's A-file and ROP."[2] *Id.* at 34. Furthermore, no class member can be removed unless they fail to file their Motion to Reopen <u>ninety days</u> after the A-file and ROP is received. *Id.*

As such, Respondent requests this court to defer adjudication until a reasonable period after Respondent has received his A-file and ROP, such that Respondent has the opportunity to review his file and supplement his motion accordingly. Respondent cannot competently and thoroughly litigate his Motion to Reopen, or respond to the Department's concerns and

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[1] As an Iraqi national who had a final removal order on June 24, 2017, and who is detained by ICE, Respondent is a class member of the *Hamama v. Adducci* litigation.

[2] Counsel undersigned has not yet received a copy of Respondent's A file or ROP. While the preliminary injunction requires DHS to produce the A-file, in an abundance of caution and to exercise due diligence, counsel has also submitted an EOIR FOIA to receive a copy of this Court's audio recording and record of 2005 proceedings. See Attachment B.

argument, until he receives and has an opportunity to review his A-file and record of prior proceedings.

RESPECTFULLY SUBMITTED this 23rd day of August, 2017,

Attorney for Respondent

CERTIFICATE OF SERVICE

On August 23, 2017, I, Carole Hanger mailed a copy of Respondent's Motion to Defer Adjudication of Respondent's Motion to Reopen and any attached pages to the Department of Homeland Security at the following address: US DHS District Attorney, 1705 E. Hanna Road, Eloy, AZ 85131, by placing such copy in U.S. mail, in an envelope duly addressed.

Signed: Carole Hanger

Dated: August 23, 2017

TABLE OF CONTENTS

TAB

EXHIBIT A

EXHIBIT A

OMITTED FROM EXHIBIT 5

EXHIBIT B

EXHIBIT B

Lewis Roca
ROTHGERBER CHRISTIE

Lewis Roca Rothgerber Christie LLP
201 East Washington Street
Suite 1200
Phoenix, AZ 85004

602.262.5311 main
602.262.5747 fax
lrrc.com

Georgia L. Hamann
Admitted in Arizona and New Mexico
602.262.5764 direct
602.734.3916 fax
ghamann@lrrc.com

August 8, 2017

By EMAIL and MAIL

Office of the General Counsel
Attn: FOIA Service Center
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 1903
Falls Church, VA 22041

RE: ***EXPEDITED*** **FOIA REQUEST re: R[redacted] A[redacted]; A [redacted]**

Dear Sir or Madam:

Kristina Holmstrom and I represent detainee R[redacted] A[redacted], A# [redacted] He was ordered removed in Eloy, Arizona, on or around August 19, 2005. We are seeking a copy of (1) the audio recording of proceedings; (2) the Court's file.

We ask that this request be _expedited_. Mr. A[redacted] is an Iraqi native who has been in the United States for the last twenty-one years, admitted as a refugee. Like many other Iraqi natives nationwide, he was living in the United States and reporting regularly to ICE because Iraq would not effectuate his removal order. In May 2017, Iraq agreed to begin accepting returnees, and Mr. A[redacted] was arrested and detained, preparatory to being returned to Iraq. In *Hamama v. Adducci*, Case No. 17-sv-11910 (E.D. Mich.), a Federal Judge granted a preliminary injunction staying deportations of Iraqi nationals until July 24, 2017, in order to allow them to file Motions to Reopen in order to contest removal. Because the stay was expiring and it was unclear if it would be extended, Mr. A[redacted] through counsel, filed emergency motions to reopen his case and stay his deportation (filed July 24, 2017). ICE filed an opposition on August 4, 2017. In order to respond in good faith to ICE and thoroughly argue the case to the court, Mr. A[redacted] needs the record of proceedings and the audio recording of proceedings.

Mr. A[redacted]'s life and physical safety are at risk should he be returned to Iraq, as he has set forth in his motion to reopen. His file and audio record are necessary to ensure his substantial due process rights are preserved in the proceedings before the Immigration Court, since neither he nor his attorney has his file or any record of the proceedings at present. Thus, good cause supports an expedited basis for this request.

Very truly yours,

Georgia L. Hamann
Lewis Roca Rothgerber Christie LLP

C: Kristina Holmstrom, Esq.

102043119_1

EXHIBIT 1

EXHIBIT 1

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

OMB#1125-0006

Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court

(Type or Print)
NAME AND ADDRESS OF REPRESENTED PARTY

[redacted]

(First) (Middle Initial) (Last)

C/O DHS, 1100 Bowling Road

(Number and Street) (Apt. No.)

Florence AZ 85132

(City) (State) (Zip Code)

ALIEN ("A") NUMBER
(Provide A-number of the party represented in this case.)

[redacted]

Entry of appearance for
(please check one of the following):

☑ All proceedings
☐ Custody and bond proceedings only
☐ All proceedings other than custody and bond proceedings

Attorney or Representative (please check one of the following):

☑ I am an attorney eligible to practice law in, and a member in good standing of, the bar of the highest court(s) of the following states(s), possession(s), territory(ies), commonwealth(s), or the District of Columbia (use additional space on reverse side if necessary) and I am not subject to any order disbarring, suspending, enjoining, restraining or otherwise restricting me in the practice of law in any jurisdiction (if subject to such an order, do not check this box and explain on reverse).

Full Name of Court Supreme Court of Arizona **Bar Number (if applicable)** 023384

☐ I am a representative accredited to appear before the Executive Office for Immigration Review as defined in 8 C.F.R. § 1292.1(a)(4) with the following recognized organization:

☐ I am a law student or law graduate of an accredited U.S. law school as defined in 8 C.F.R. § 1292.1(a)(2).
☐ I am a reputable individual as defined in 8 C.F.R. § 1292.1(a)(3).
☐ I am an accredited foreign government official, as defined in 8 C.F.R. § 1291.1(a)(5), from ________ (country).
☐ I am a person who was authorized to practice on December 23, 1952, under 8 C.F.R. § 1292.1(b).

Attorney or Representative (please check one of the following):

☑ I hereby enter my appearance as attorney or representative for, and at the request of, the party named above.
☐ EOIR has ordered the provision of a Qualified Representative for the party named above and I appear in that capacity.

I have read and understand the statements provided on the reverse side of this form that set forth the regulations and conditions governing appearances and representations before the Immigration Court. By signing this form, I consent to publication of my name and any findings of misconduct by EOIR, should I become subject to any public discipline by EOIR pursuant to the rules and procedures at 8 C.F.R. 1003.101 *et seq.* I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

SIGNATURE OF ATTORNEY OR REPRESENTATIVE	EOIR ID NUMBER	DATE
X	RR666346	07/24/2017

NAME OF ATTORNEY OR REPRESENTATIVE, ADDRESS, FAX & PHONE NUMBERS, & EMAIL ADDRESS

Name: Kristina N Holmstrom
(First) (Middle Initial) (Last)

Address: 201 E. Washington #1200
(Number and Street)

Phoenix AZ 85004
(City) (State) (Zip Code)

Telephone: 602-262-5762 Facsimile: 602-734-3875 Email: KHolmstrom@LRRC.com

☐ Check here if new address

Form EOIR - 28
Rev. Dec. 2015

Indicate Type of Appearance:

☑ Primary Attorney/Representative ☐ Non-Primary Attorney/Representative

☐ On behalf of __________________ (Attorney's Name) for the following hearing: __________ (Date)

I am providing pro bono representation. Check one: ☑ yes ☐ no

Proof of Service

I (Name) Carole Hagger mailed or delivered a copy of this Form EOIR-28 on (Date) 07-24-2017 to the DHS (U.S. Immigration and Customs Enforcement—ICE) at 1705 E. Hanna Rd, Eloy AZ 85131

X Carole Hagger
Signature of Person Serving

APPEARANCES - An attorney or Accredited Representative (with full accreditation) must register with the EOIR eRegistry in order to practice before the Immigration Court (see 8 C.F.R. § 1292.1(f)). Registration must be completed online on the EOIR website at www.justice.gov/eoir. An appearance shall be filed on a Form EOIR-28 by the attorney or representative appearing in each case before an Immigration Judge (see 8 C.F.R. § 1003.17). A Form EOIR-28 shall be filed either as an electronic form, or as a paper form, as appropriate (for further information, please see the Immigration Court Practice Manual, which is available on the EOIR website at www.justice.gov/eoir). The attorney or representative must check the box indicating whether the entry of appearance is for custody and bond proceedings only, for all proceedings other than custody and bond, or for all proceedings including custody and bond. When an appearance is made by a person acting in a representative capacity, his/her personal appearance or signature constitutes a representation that, under the provisions of 8 C.F.R. part 1003, he/she is authorized and qualified to represent individuals and will comply with the EOIR Rules of Professional Conduct in 8 C.F.R. § 1003.102. Thereafter, substitution or withdrawal may be permitted upon the approval of the Immigration Judge of a request by the attorney or representative of record in accordance with 8 C.F.R. § 1003.17(b). Please note that although separate appearances in custody and non-custody proceedings are permitted, appearances for limited purposes within those proceedings are not permitted. *See Matter of Velasquez*, 19 I&N Dec. 377, 384 (BIA 1986). A separate appearance form (Form EOIR-27) must be filed with an appeal to the Board of Immigration Appeals (see 8 C.F.R. § 1003.38(g)). Attorneys and Accredited Representatives (with full accreditation) must first update their address in eRegistry before filing a Form EOIR-28 that reflects a new address.

FREEDOM OF INFORMATION ACT - This form may not be used to request records under the Freedom of Information Act or the Privacy Act. The manner of requesting such records is in 28 C.F.R. §§ 16.1-16.11 and appendices. For further information about requesting records from EOIR under the Freedom of Information Act, see How to File a Freedom of Information Act (FOIA) Request With the Executive Office for Immigration Review, available on EOIR's website at http://www.justice.gov/eoir.

PRIVACY ACT NOTICE - The information requested on this form is authorized by 8 U.S.C. §§ 1229(a), 1362 and 8 C.F.R. § 1003.17 in order to enter an appearance to represent a party before the Immigration Court. The information you provide is mandatory and required to enter an appearance. Failure to provide the requested information will result in an inability to represent a party or receive notice of actions in a proceeding. EOIR may share this information with others in accordance with approved routine uses described in EOIR's system of records notice, EOIR-001, Records and Management Information System, 69 Fed. Reg. 26,179 (May 11, 2004), or its successors and EOIR-003, Practitioner Complaint-Disciplinary Files, 64 Fed. Reg. 49237 (September 1999). Furthermore, the submission of this form acknowledges that an attorney or representative will be subject to the disciplinary rules and procedures at 8 C.F.R. 1003.101*et seq.*, including, pursuant to 8 C.F.R. §§ 292.3(h)(3), 1003.108(c), publication of the name of the attorney or representative and findings of misconduct should the attorney or representative be subject to any public discipline by EOIR.

CASES BEFORE EOIR - Automated information about cases before EOIR is available by calling (800) 898-7180 or (240) 314-1500.

FURTHER INFORMATION - For further information, please see the *Immigration Court Practice Manual*, which is available on the EOIR website at *www.justice.gov/eoir*.

ADDITIONAL INFORMATION:

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete this form is six (6) minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

EXHIBIT 2

EXHIBIT 2

U.S Department of Justice

Certification of Identity

FORM APPROVED OMB NO. 1103-0016
EXPIRES 10/31/13

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester [1] [redacted]

Citizenship Status [2] Not a U.S. Citizen Social Security Number [3] [redacted]

Current Address

Date of Birth [redacted] 1968 Place of Birth Iraq

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than $10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than $5,000.

Signature [4] [redacted] **Date** 7/19/2017

OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:

[redacted]

Print or Type Name

[1] Name of individual who is the subject of the record(s) sought.

[2] Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

[3] Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

[4] Signature of individual who is the subject of the record sought.

EXHIBIT 6

Nicole Guzman
Chief Counsel

Megan McLean
Assistant Chief Counsel
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
1705 E. Hanna Rd.
Eloy, AZ 85131
(520) 464-3032

DETAINED

SEP - 6 2017

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ELOY, ARIZONA

In the Matter of:	)	
R[redacted]A[redacted]	)	File No.: A[redacted]
In removal proceedings	)	

DEPARTMENT OF HOMELAND SECURITY
OPPOSITION TO MOTION TO DEFER ADJUDICATION

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ELOY, ARIZONA

In the Matter of:	)	
R[redacted]A[redacted]	)	File No.: A[redacted]
In removal proceedings	)	

DEPARTMENT OF HOMELAND SECURITY
OPPOSITION TO DEFER ADJUDICATION

The Department of Homeland Security (Department) opposes respondent's motion to defer adjudication of his motion to reopen. The respondent essentially seeks an open-ended pause on the adjudication of his motion to reopen, until he can receive his A-file and the prior record of his proceedings. He seeks this extension so that he may supplement his motion to reopen with further briefing. However, the respondent gives no indication as to how long it will take to obtain these materials.

The respondent is currently being detained at government expense. It would be improper under these circumstances to defer adjudication of his motion for an indefinite period of time. Further, the motion to reopen is based in large part on the respondent's argument that country conditions in Iraq have changed since 2005. He has fully fleshed out this argument in his motion to reopen, and has supported it with multiple articles attached to his motion. It is therefore unclear what other relevant information he expects to find within the A-file or the record of prior proceedings.

The Department therefore requests that, if the Court is inclined to defer adjudication for a period, the Court set a hard date, within a reasonable time frame given the respondent's detention, wherein a decision will issue or wherein a status update can be expected.

Respectfully submitted this 31st day of August, 2017.

Megan McLean
Assistant Chief Counsel

Nicole Guzman
Chief Counsel
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

CERTIFICATE OF SERVICE

I hereby certify that one (1) copy of the attached THE DEPARTMENT OF HOMELAND SECURITY OPPOSITION TO MOTION TO DEFER ADJUDICATION was served upon the respondent, through counsel, by placing it in a sealed envelope, in the U.S. Postal Service addressed as follows:

Kristina Holmstrom
Lewis Roca Rothgerber Christie, LLP
201 E. Washington Street, Ste. 1200
Phoenix, AZ 85004

Dated: August 31, 2017

Megan Mack
Assistant Chief Counsel

EXHIBIT 7

SEP - 7 2017

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1705 East Hanna Road, Suite 366
Eloy, Arizona 85231

IN THE MATTER OF	)	IN REMOVAL PROCEEDINGS
S[redacted] [redacted]	)	
	)	File Number: **A** [redacted]
RESPONDENT	)	

ON BEHALF OF RESPONDENT	ON BEHALF OF THE GOVERNMENT
Kristina Holmstrom	Assistant Chief Counsel
Lewis Roca Rothgerber Christie, LLP	Immigration and Customs Enforcement
201 E Washington, Street, Suite 1200	1705 East Hanna Road
Phoenix, AZ 85004	Eloy, Arizona 85131

ORDER OF THE IMMIGRATION JUDGE

The Court has received the following motion from *Respondent/*Attorney/ICE in this case accompanied by a proper certificate of service:

___ Motion for Change of Venue
___ Motion to Continue Individual Hearing
_X_ Motion to Reopen
___ Motion for Administrative Closure
___ Motion to Terminate Removal Proceedings
___ Motion to Dismiss Without Prejudice
___ Motion to Withdraw As Counsel
_X_ **Other: DEFERRED JURISDICTION**

( ) GRANTED: **(X) DENIED**

Date: September 5, 2017

John W. Davis
Immigration Judge

Certificate of Service

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: ( ) ALIEN (/) ALIEN c/o Custodial Officer ~~( ) Alien's~~ ATT/REP (/) ICE
Date: September 5, 2017 BY COURT STAFF
Attachments: ( ) EOIR-33 ( ) EOIR-28 (/) Legal Services List ( ) Other