

**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 28, 2017.

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

Both Petitioners and Respondents submit that an in-person conference with the Court on these issues may be unnecessary at this time and respectfully request that any outstanding issues needing immediate resolution be decided through a telephonic conference or, if the Court thinks it appropriate, on the papers.

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I. Respondents' Introduction

Respondents understand this Joint Status Report to solely focus on the validity of Petitioners' discovery requests at this stage in the litigation. The parties agreed to finalize the issues to be presented in this report by noon on Friday, September 22, 2017, and Petitioners offered no other issues to be included at that time. Accordingly, Respondents solely offer their position on discovery below. All other parts of the report are not, in Respondents' view, a true joint status report.

Respondents further note that they only were provided with copies of Petitioners' supporting exhibits at approximately 11:30 PM yesterday and, accordingly, cannot fully address them in this report, of which the parties had originally agreed to exchange drafts by 9 AM.

II. Petitioners' Report on Status of the Putative Class

Pursuant to this Court's order, Respondents are providing specified information every two weeks. The last such production occurred on September 20, 2017. The data produced is a few days old on the date of production.

A. Motions to Reopen

Of the approximately 1,400 Iraqis who had final orders of removal on June 24, 2017, approximately 285 were detained on September 16, 2017. As of September 18, 2017, about 190 Iraqi nationals with final orders—about 130 of them detained—had taken steps to reopen their cases before the Immigration

Judges (IJs) or the Board of Immigration Appeals (BIA). 158 of those approximately 190 motions to reopen were filed prior to this Court's preliminary injunction dated July 24, 2017.

138 of the approximately 190 motions to reopen were filed in Immigration Court; as of September 18, IJs have granted 64 and denied 60; 14 are pending in immigration court. (Of the IJ denials, on appeal, the BIA has ruled on only 4 so far, reversing 2 and affirming 2.) The remainder of the 190 motions to reopen began in the BIA, which has granted 4 and denied 7; the others are pending.

B. Releases and Custody Reviews

In August, ICE began conducting 90-day post-order custody reviews ("POCRs") for class members arrested and detained in June 2017. As discussed below, Petitioners are asking the Court to allow immediate discovery about post-order custody reviews, bond hearings, and any other custody determinations. To the extent Petitioners are able to derive information by comparing the current biweekly disclosures, it appears that 21 individuals have been released from detention since July 1, 2017, although the bases for these releases is unknown to Petitioners in most cases. For those cases where the basis for release is known, the class members prevailed in immigration proceedings (winning not only a motion to reopen but the underlying substantive relief), were released for medical reasons, or were granted bond pending reopened removal proceedings.

III. Discovery

Petitioners' Statement

A. Overview of Discovery on Detention-Related Issues

More than three months have passed since most class members were detained, during which time the government has failed to provide any meaningful determination that they pose a danger or flight risk that would justify their detention. Virtually all of the class members were living in the community under orders of supervision, often for decades, prior to their sudden detention in June 2017. They now face months or even years of legal proceedings while they obtain the documents necessary to pursue immigration relief, litigate their motions to reopen, and then litigate their underlying claims for relief.

Petitioners seek discovery relating to two general categories of information directly relevant to their ongoing detention: 1) the 90-day POCRs and any other custody determinations, including bond hearings and the revocation of non-detention orders of supervision; and 2) the terms of any repatriation agreement between the governments of the United States and Iraq entered after January 2017 (the "Iraq agreement"), including the process and criteria by which Iraq issues travel documents to putative class members or decides whether to accept repatriation of putative class members without travel documents. Respondents oppose this discovery.

The first category of discovery—information on the 90-day POCR process and any other custody determinations, including bond hearings and revocation of orders of supervision—is directly relevant to Petitioners’ claims that the government (1) has failed to provide any meaningful determination that class members pose a danger or flight risk that would justify their prolonged detention, in violation of due process and federal statutory law, and (2) has failed to comply with its own regulations governing re-detention of those previously released on orders of supervision, POCRs, and the detention of those whose motions to reopen have been granted. *See* First Amended Habeas Corpus Petition and Complaint, ECF 35, Pg.ID# 514, 544.

The second category of discovery sought by Petitioners—information on Iraq’s criteria and processes for repatriation of Iraqi nationals—is directly relevant to Petitioners’ legal claim (*id.*) that their removal is not “significantly likely in the reasonably foreseeable future,” and thus violates the post-final-order detention statute, 8 U.S.C. § 1231(a)(6).¹ *See Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). Very little is known about what criteria Iraq is applying to decide whether to accept particular class members for repatriation. As discussed in more detail below, the detention of any individual whom Iraq will not accept in the reasonably foreseeable future is unlawful.

¹ This is the statute under which class members were initially detained and remain detained unless their motions to reopen are granted.

Petitioners are now seeking permission to proceed with limited discovery in these two areas. Respondents have long been aware of the information Petitioners seek since Petitioners submitted document requests as an attachment to the status report filed on August 30, 2017. (ECF 94-14, Pg.ID# 2509-21.) Petitioners amended those requests to address issues of burden raised by Respondents. (Ex. 1.) To address the Respondents' anticipated argument that some of the requested documents could be privileged, Petitioners now also submit interrogatories (Ex. 2) and a Rule 30(b)(6) deposition notice (Ex. 3) to which the government can respond with relevant non-privileged information.

B. Discovery on Custody Determinations is Directly Relevant to the Legality of Petitioners' Continued Detention.

Respondents cannot detain class members absent legal authority, and must comply with regulations governing custody decision-making. Petitioners seek discovery on three types of custody determinations: 1) POCRs, which apply to class members with final orders of removal; 2) ICE custody determinations and immigration court bond hearings, which apply to class members whose removal proceedings are pending after their motions to reopen were granted; and 3) revocations of release, which apply to class members who were living in the community subject to Orders of Supervision before their recent detention.

1. Discovery about the Post Order Custody Review (“POCR”) Process.

By definition, each class member has been subject to a final order of removal. Most still are; of the approximately 300 in detention, about 160 have not yet filed motions to reopen, and about 80 more have not (yet) had such a motion granted. These individuals are detained pursuant to 8 U.S.C. § 1231, which governs the “Detention and Removal of Aliens Ordered Removed.”

In *Zadvydas v. Davis*, the Supreme Court construed 8 U.S.C. § 1231 as authorizing detention only where removal is “significantly likely in the reasonably foreseeable future.” *See Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). In Petitioners’ view, the current situation of prolonged detention for class members—which flows from the government’s insistence on detaining them while they seek to reopen and then litigate their cases in the immigration courts—is extremely problematic under *Zadvydas*. For some class members, the process is moving quickly, but for many more, many months and possibly over a year will go by as they wait for the records they need, file their motions to reopen, and then litigate in the immigration court and the Board of Immigration Appeals. This situation has been exacerbated by Respondents’ delay in producing class members’ A-Files and ROPs.

In any event, even assuming *arguendo* that class member detention meets the *Zadvydas* standard for reasonable foreseeability, detention violates Due Process

unless it is “reasonably related” to the government’s purpose, which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at 700 (“[I]f removal is reasonably foreseeable, the habeas court should consider the risk of the alien’s committing further crimes,” to determine whether detention is justified.); *id.* at 699 (purpose of detention is “assuring the alien’s presence at the moment of removal”); *id.* at 690-91 (discussing twin justifications of detention as preventing flight and protecting the community). That is, Due Process requires a meaningful determination that class members pose a danger or flight risk that warrant post-final-order detention, regardless of whether their removal can be effectuated within a reasonable period of time.

The government’s own regulations implement this requirement; they dictate that even after ICE determines that removal is reasonably foreseeable—and that detention therefore does not *per se* exceed statutory authority—the government must still determine whether continued detention is warranted based on flight risk or danger. 8 U.S.C. § 1231 provides for a 90-day removal period, § 1231(a)(1), after which custody reviews must be conducted to determine whether continued detention is justified, § 1231(a)(6). The mandated process, known as the post-order custody review or “POCR,” requires ICE to consider release of individuals who pose no danger or flight risk, 8 C.F.R. § 241.4(e)-(f). *See* 8 C.F.R. § 241.13(g)(2) (providing that where removal is reasonably foreseeable, “detention will continue

to be governed under the established standards” in 8 C.F.R. § 241.4). Section 241.4(e) and (f) also sets forth release criteria which govern the POCRs, including “ties to the United States such as the number of close relatives residing here lawfully”; whether the noncitizen “is a significant flight risk”; and “any other information that is probative of whether” the noncitizen is likely to “adjust to life in a community,” “engage in future acts of violence,” “engage in future criminal activity,” pose a danger to themselves or others, or “violate the conditions of his or her release from immigration custody pending removal from the United States”.

Individuals with final orders who are released after a POCR are typically subject to orders of supervision. 8 C.F.R. § 1231(a)(3). Class members were living under exactly such orders of supervision prior to their recent arrest and detention. ICE’s internal guidance for conducting the POCRs confirms that release on an order of supervision is appropriate “if it is determined that the alien would not pose a danger to the community or a flight risk, without regard to the likelihood of the alien’s removal in the reasonably foreseeable future.” U.S. ICE Guidance Relating to 8 C.F.R. § 241.4, Continued Detention of Aliens Beyond the Removal Period (Nov. 14, 2007) (attached as Ex. 4).

Petitioners’ POCR-related discovery is highly relevant to their claim that the government has violated both Due Process and its own regulations in failing to provide them a meaningful determination that they pose a danger or flight risk that

would justify their continued detention. It seems likely that Respondents have completed the mandated 90-day POCR for most class members. However, the most recent data disclosures provided by the Respondents, which are current as of mid-September, suggest that very few, if any, of these reviews resulted in release of class members. Only 21 of the approximately 300 class members who have been detained at any recent point have been released from such detention. For several, this has been for medical reasons; others were released when they won their immigration cases. Petitioners lack sufficient information on others—and it's a very small number in any event.

Moreover, the few POCR decisions already obtained by Petitioners' counsel seem to be boilerplate—facially noncompliant with regulations and the agency's own guidance specifying that POCR denial letters must be individualized and reference the criteria set forth in the regulations. The letters state either: “[a]t this time we will not release you due in part to the following: *You have a final order of removal from the United States and ICE is actively pursuing your removal,*” or “[d]ue to you being an Immigration Enforcement Priority, you will remain in detention.” *See* Post-Order Custody Review Decisions (attached as Ex. 5) (emphasis in original). These denials make no mention of the other criteria which are supposed to guide POCR decisions, namely danger and flight risk. *Id.*

Given that few, if any, class members have been released from detention as a result of the POCR process, there is ample reason to question the government's compliance with its own regulations and the requirements of Due Process, justifying Petitioners' request for discovery about how the POCR reviews were and are being conducted. That is particularly true given that virtually all class members were living peaceably in the community and reporting regularly to ICE under orders of supervision prior to their arrests—belying any argument that they are a danger or flight risk.

2. Discovery into the Basis for Continued Detention of Those Whose Motions to Reopen have been Granted.

Petitioners also seek information about the basis for the continued detention of those class members whose motions to reopen have been granted. They are no longer detained pursuant to final orders of removal—so their detention is no longer governed by 8 U.S.C. § 1231(a)(6). Rather, the applicable authority is the pre-final-order detention statute, 8 U.S.C. § 1226, which governs detention pending a determination of whether an individual is to be removed.

Information already obtained by Petitioners' counsel suggests the government is unlawfully detaining class members under 8 U.S.C. § 1226(c), the so-called “mandatory detention” provision. The government seems to have decided to detain class members without bond, even after they have successfully moved to

reopen their cases. This is a broad misapplication of the mandatory detention provision.

First, Section 1226(c) authorizes mandatory detention only for the “*expedited* removal of criminal aliens.” *Casas-Castrillon v. Dep’t of Homeland Sec.*, 535 F.3d 942, 947-48 (9th Cir. 2008) (emphasis added). A noncitizen “whose case is being adjudicated before the agency for a second time—after having fought his case in this court and won, a process which often takes more than a year—has not received expeditious process.” *Id.* at 948. As the Sixth Circuit elaborated in *Ly v. Hansen*, 351 F.3d 263, 271-72 (6th Cir. 2004), Section 1226(c) authorizes detention only for a reasonable period of time. Factors for determining when detention becomes unreasonable include whether an individual has been subjected to immigration detention for a longer period of time than he was incarcerated for his criminal conviction, the likelihood that he will actually be ordered removed, and the government’s inability to effectuate an order of removal if one ultimately issues. *Id.*

Moreover, 8 U.S.C. § 1226(c) only authorizes mandatory detention pending removal proceedings for individuals convicted of certain crimes “when . . . released” from criminal custody for such a crime. Yet, most class members were not detained “when . . . released” from criminal custody, but instead, years later. *See Preap v. Johnson*, 831 F.3d 1193, 1206–07 (9th Cir. 2016) (detention is not

mandatory where there is a gap between release from criminal custody and ICE apprehension), *petition for cert pending*; *Castañeda v. Souza*, 810 F.3d 15, 18–43 (1st Cir. 2015) (en banc) (same); *Rosciszewski v. Adducci*, 983 F. Supp. 2d 910, 916 (E.D. Mich. 2013) (same); *Khodr v. Adducci*, 697 F. Supp. 2d 774, 778–79 (E.D. Mich. 2010) (same) (Ex. 9); *Mudhallaa v. Bureau of Immigration & Customs Enft*, No. 15-10972, 2015 WL 1954436, at *4 (E.D. Mich. Apr. 29, 2015) (same); *Rosario v. Prindle*, No. CIV. 11-217-WOB-CJS, 2011 WL 6942560, at *3 (E.D. Ky. Nov. 28, 2011) (Ex. 10), report and recommendation adopted, No. CIV.A. 2011-217 WOB, 2012 WL 12920 (E.D. Ky. Jan. 4, 2012) (same).² The limited discovery Petitioners seek is essential for assessing and eventually demonstrating to the Court the extent to which the government may be misapplying mandatory detention in these cases.

3. Discovery on the Process of Revocation of Supervised Release.

Finally, Petitioners seek limited discovery concerning the revocation of class members' supervised release. Regulations govern the procedures that the government must follow when it detains individuals who were previously released on orders of supervision based on a determination that their removal cannot be

² *But see Olmos v. Holder*, 780 F.3d 1313 (10th Cir. 2015) (disagreeing with the First and Ninth Circuits to hold that “when released” does not require that noncitizen be placed in immigration detention immediately upon release from criminal sentence); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015) (same); *Sylvain v. Attorney Gen. of U.S.*, 714 F.3d 150 (3d Cir. 2013) (same); *Hosh v. Lucero*, 680 F.3d 375 (4th Cir. 2012) (same).

effectuated. *See* 8 C.F.R. § 241.13(i). These regulations provide that release may be revoked if the individual violates the conditions of their supervision, or if “there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.” § 241.13(i)(2). However, the government is required to notify individuals of the reasons for revocation of release, and “conduct an initial informal interview promptly after [the individual’s redetention] to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” § 241.13(i)(3) (“Revocation Procedures”). In addition, the detainee:

may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

Id. Based on Respondents’ apparent noncompliance with these regulations, Petitioners’ discovery seeks fuller information.

C. Discovery on the U.S.-Iraq Agreement is Directly Relevant to the Legality of Petitioners’ Continued Detention.

In *Zadvydas*, as explained above, the Supreme Court held that the primary purpose of detention under 8 U.S.C. § 1231 is to effectuate removal. If removal cannot be effectuated, detention of individuals—even individuals with final orders of removal—is not reasonably related to this purpose. For the sake of “uniform administration in the federal courts” and in light of prior statements by Congress

indicating that detention in excess of six months would be unconstitutional, the *Zadvydas* Court announced that six months of post-final-order detention was “presumptively reasonable.” *Id.* at 701. After six months, if the detainee “provides good reason to believe that removal is not significantly likely in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.* Otherwise, the individual must be released under supervision. *Id.*

The *Zadvydas* Court analogized its adoption of a six month rule to the 48-hour rule for probable cause hearings adopted by the Court in *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991). *See Zadvydas*, 533 U.S. at 701. If removal is not reasonably foreseeable, a detainee is entitled to release even before six months of detention. *Id.* *See also* 8 C.F.R. § 241.13(b)(1) (authorizing release from post-final-order detention after 90 days where removal is not reasonably foreseeable). *C.f. Riverside*, 500 U.S. at 56 (while a probable cause hearing held within 48 hours of arrest is constitutional “as a general matter,” such a hearing may in particular circumstances be unconstitutional if “delayed unreasonably”).

In order to assess the foreseeability of the class members’ repatriation to Iraq, Petitioners seek discovery on the agreement between the United States and Iraq, the criteria Iraq is now using to decide whom it will accept for repatriation, the number of individuals Iraq will accept, and the timeframe for such

repatriations. This information goes to the heart of the legality of Petitioners' detention.

The overwhelming majority of class members were previously released under orders of supervision based on the government's determination that their removal to Iraq could not be effectuated. The only evidence that the government has so far provided to the contrary is vague at best. *See* ECF 81-4, Pg.ID.# 2007, Declaration of John A. Schultz (describing "a newly established relationship between ICE, in coordination with DOS, and the Iraqi Ministry of Foreign Affairs (MFA), [which] allows ICE to present travel document requests directly to the MFA to gain the approval to remove Iraqi nationals with final orders of removal"); *id.* (stating that the Iraqi government has changed its prior policy of accepting only nationals with unexpired passports and traveling on commercial flights and "[n]ow Iraq will authorize repatriation with other indicia of nationality," and charter flights, but failing to state what "other indicia of nationality" are sufficient).³

Typically individuals set to be deported must obtain travel documents—usually a passport—from their nation of citizenship. But when class members attempted to do that, some of them were denied the requisite documents by the

³ While the government reported that it removed eight Iraqi nationals during 2017, it has provided no information that would indicate that any of these individuals are similarly situated to class members who were previously released on orders of supervision based on the government's inability to obtain travel documents in their cases. *See* Schultz Decl., ECF 81-4, Pg.ID# 2007.

Iraqi consulate. Other class members were designated as Iraqi by the U.S. government but either they or Iraq challenge the nationality designation because they were not born in Iraq. *See Documents from Class Members Regarding Iraq's Refusal to Issue Travel Documents* (attached as Ex. 6). Moreover, even where Iraq agrees to repatriation, the process of securing the necessary documents for individuals and coordinating the travel of these individuals is—as Respondents themselves concede—“a time consuming, complicated and costly process.” Schultz Decl., ECF 81-4, Pg.ID# 2008. Given the large number of Iraqi detained and the labor-intensive process involved in removing even those Iraq has agreed to accept, it could take many months for Respondents to deport the almost 300 class members currently in detention, not to mention the 1100 other Iraqis with final orders of removal.

Thus, it remains unclear how many individuals Iraq has agreed to repatriate, under what circumstances Iraq will agree to their repatriation, and how long that process will take. Because class members cannot be detained unless their removal is significantly likely in the reasonably foreseeable future, expedited discovery in these issues is warranted.

D. Timing and Process for Resolving Discovery Disputes

Petitioners ask that the Court deem the discovery requests served on September 26, 2017, the date of this Joint Status Report, and allow Petitioners to

proceed with the proposed deposition under Fed. R. Civ. Proc. 30(b)(6). Petitioners ask this Court to order Respondents to respond to the interrogatories by October 10, 2017 (two weeks from the next status conference), and to provide updated responses to interrogatories 1 through 3 (data on POCR reviews, bond hearings, and other custody reviews) every two weeks thereafter, on the same time schedule as Respondents' current data productions. Petitioners also ask that Respondents be required to respond to document request number 1, which seeks the post order custody review decisions, by October 10, 2017. All other discovery responses would be due 30 days after service of the requests.

To the extent that Petitioners are seeking an expedited response to the interrogatories and production of the POCR decisions, such limited expedited discovery is warranted. Litigants are entitled to expedited discovery "upon a showing of good cause," *North Atlantic Operating Co. v. Huang*, 194 F. Supp. 3d 634, 637 (E.D. Mich. 2016). Factors that courts have applied in finding good cause include "when the scope of the discovery sought is narrow, and when expedited discovery would substantially contribute to moving the case forward." *Id.* Good cause also exists "where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party." *Fabreeka Int'l Holdings, Inc. v. Haley*, No. 15-cv-12958, 2015 WL 5139606, at *5 (E.D. Mich. Sept. 1, 2015) (Ex. 7) (internal citations and quotation marks omitted).

Further, expedited discovery of information relating to government proceedings has been found proper where necessary to prove that a practice violates the plaintiffs' constitutional rights. *C.f. Oglala Sioux Tribe v. Van Hunnik*, 298 F.R.D. 453, 459 (D.S.D. 2014) (granting request for expedited discovery of the transcripts of 48-hour Indian Child Welfare Act proceedings as they were necessary to provide that defendants engaged in policies, practices and customs which violate the plaintiffs' constitutional rights).

Expedited discovery is warranted here where hundreds of class members are potentially being wrongfully held in detention. The limited information Petitioners seek on an expedited basis is essential to assessing whether these class members are entitled to release, or at a minimum, to a meaningful individualized determination that their detention is warranted based on danger and flight risk. While Petitioners believe that the other document productions and the 30(b)(6) deposition will also be important, to minimize the burden on the government, Petitioners are requesting only the POCR review decisions and the responses to interrogatories on an accelerated basis.

To timely resolve any objections to the proposed discovery, Petitioners also ask this Court to adopt the process set forth by the Court in *Arab American Civil Rights League v. Trump*, Case No. 17-10310 (E.D. Mich. May 11, 2017) (Roberts, J.) (ECF 89) (Ex. 8):

- If Respondents object to any discovery request, their discovery response shall provide their reasoning and legal justifications, with full citations and argument.
- If Petitioners file a motion to compel regarding a specific discovery request, they must include the Defendants' full objection to that request as an exhibit, which the Court will treat as the Respondents' brief for deciding the motion.
- Respondents will not file a response brief.

Respondents' Position

Petitioners ask this Court to exempt them from the normal timing of discovery and instead to impose an expedited discovery schedule in advance of a Rule 26(f) conference for issues unrelated to Petitioners' current claims. They seek discovery related to (1) Respondents' detention of certain putative class members pending their removal and (2) the likelihood that Iraq will accept putative class members for return to Iraq. *See* ECF No. 94-14. At approximately 11:30 PM last night, Petitioners emailed counsel for Respondents a set of discovery requests embedded in proposed exhibits to the joint status report, including a Rule 30(b)(6) deposition notice, a first set of interrogatories, and an amended set of requests for production.

The requests should be denied because Petitioners fail to meet the traditional standard of good cause required for expedited discovery, for multiple reasons.

First, the requested discovery is irrelevant to the claims that formed the basis for the Court's preliminary injunction, and Petitioners offer no compelling reason for why the discovery cannot be sought through the ordinary course. Second, Respondents intend to move to dismiss Petitioners' Amended Complaint, and any additional, meaningful discovery beyond the reporting and production requirements imposed by the preliminary injunction should only occur after the Court has disposed of Respondents' forthcoming motion to dismiss. Third, much of the requested discovery would be subject to numerous privileges and would raise important separation of powers issues requiring extensive briefing by the parties and careful analysis by this Court before moving forward.

First, the parties have not engaged in a Rule 26(f) discovery conference, and there is "a general moratorium on discovery that precedes the Rule 26(f) discovery conference." 6-26 Moore's Federal Practice - Civil § 26.121 (2016). Expedited discovery is atypical; it is a "deviation from the normal timing of discovery[]" and is rightfully rare. *Gen. Ret. Sys. v. Onyx Capital Advisors, LLC*, No. 10-CV-11941, 2010 U.S. Dist. LEXIS 54990, at *11 (E.D. Mich. June 3, 2010).

"Within this Circuit, district courts have found good cause for granting expedited discovery" under four categories of exceptional circumstances: "[1] when the true identities of the defendants are unknown, [2] when the moving party alleges infringement [or other concrete harm, such as spoliation, that will result

from the lack of discovery on an expedited basis], [3] when the scope of the discovery sought is narrow, and [4] when expedited discovery would substantially contribute to moving the case forward.” *N. Atl. Operating Co. v. Huang*, 194 F. Supp. 3d 634, 637 (E.D. Mich. 2016).

To the extent Petitioners argue that they have good cause to pursue their discovery requests, they misconstrue the limited circumstances in which expedited discovery is appropriate and the extreme narrowness of expedited discovery requests that have previously been granted by courts in this circuit. Their requests are not related to the three claims on which they moved for a preliminary injunction—claims under the Convention Against Torture and the procedural Due Process clause. *See* ECF No. 35, at 34–36; ECF No. 84. Indeed, discovery regarding Respondents’ ability to effectuate Petitioners’ removal absent the Court’s preliminary injunction is not relevant to any of Petitioners’ claims as pled; Petitioners do not raise allegations casting doubt on the likelihood that Iraq would not accept Petitioners for return. Further, Petitioners fail to offer a compelling reason for why the requested discovery cannot be sought through the standard mechanisms for civil discovery—*i.e.*, after a discovery conference is held under Rule 26(f) and under the deadlines and procedures provided in Rule 26–36.

Second, the parties are both engaged in numerous tasks related to implementing the Court’s preliminary injunction order and its order to engage in a

settlement conference. Respondents are utilizing all available interagency resources to produce A files and records of proceedings (“ROPs”) for the detained putative class members as quickly as possible, complete the biweekly status reports, and field issues related to the lawsuit as they arise—such as, for example, the issue of how to fully resolve the desires of certain putative class members to return to Iraq. Respondents further believe that Petitioners’ claims may be disposed of without additional discovery, because they turn on purely legal questions of jurisdiction and legal sufficiency, and intend to file a motion to dismiss in accordance with the Court’s order on a briefing schedule. ECF No. 110. As Petitioners themselves have stated, “the next six weeks will require Herculean efforts by all parties to meet the current deadlines,” efforts further complicated for Respondents by the Court’s recently imposed, extremely tight deadlines for production of the first wave of A files and ROPs. ECF No. 110. Therefore, Respondents do not believe it is appropriate to add unrelated discovery requests to their obligations at this time.

Finally, the proposed discovery would raise significant privilege issues, including potentially within the highest levels of the Executive Branch. To the extent Petitioners seek Respondents’ rationales for their post-order custody review standards and pre-decisional communications, materials relating to the absence of Iraq from the list of countries mentioned in EO 13780, and sensitive diplomatic

communications with Iraq, much of this information would fall under material at least potentially withheld from production under the deliberative process, and law enforcement privileges. Extensive briefing and analysis from the Court would have to be undertaken before any such information could be produced.

Accordingly, because Petitioners have failed to demonstrate that there is good cause for the expedited discovery that they request, and because the discovery is unrelated to the relief sought in the preliminary injunction and would fall upon the same individuals already engaged in complying with widespread relief ordered therein, the Court should deny the request for expedited discovery.

IV. Data Issues.

Petitioners' Position

The Court directed Respondents to make bi-weekly disclosures relating, especially, to the motion to reopen process. So far, those disclosures have been incomplete in several ways. However, yesterday, the Respondents agreed to try to fill in the data that has been missing in prior disclosures, on the next disclosure date, October 4, 2017. If problems remain and cannot be resolved, Petitioners will bring that to the Court's attention in the future.

V. Access to Clients.

Petitioners' Position

Petitioners' counsel have obvious ethical obligations to consult with their clients. *See* Michigan Rule Pro. Conduct 1.4:

Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and comply promptly with reasonable requests for information. A lawyer shall notify the client promptly of all settlement offers, mediation evaluations, and proposed plea bargains.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

However, such consultation is rendered extremely difficult by a confluence of circumstances created by Respondents:

First, Respondents have elected to detain Petitioners in a large number of distant facilities. There are currently ten named Petitioner/Plaintiffs. Two are not currently in detention; the other eight are housed in seven different detention facilities:

Jena/Lasalle Detention Facility (Jena, LA)
El Paso Servicing Processing Center (El Paso, TX)
Geauga County Jail (Chardon, OH)
Calhoun County Jail (Battle Creek, MI)
Northeast Ohio Correctional Center (Youngstown, OH)
St. Clair County Jail (Port Huron, MI)
Chippewa County Jail (Sault Ste. Marie, MI)

St. Clair County and Calhoun County, with one named Petitioner each, are reasonably accessible. Visits to the other facilities require at least a full day of travel.

Second, although a number of ICE detention facilities will facilitate incoming lawyer phone calls to detainees, they generally require a form G-28 on file. The G-28 is a DHS form for appearance of counsel in agency proceedings. See <https://www.uscis.gov/g-28>. But Petitioners' counsel are ineligible to file a G-

28, because they are not appearing in agency proceedings but rather in this court. Petitioners have chosen not to offer the same client access provided attorneys who appear in agency matters to detainees' counsel in civil rights cases such as this one.

Third, detainees are given limited opportunity to place outgoing calls—which means they sometimes cannot call at all, and frequently cannot call at a set time, which would facilitate scheduling. Moreover, outgoing calls are costly.

In short, it is extremely challenging for Petitioners' counsel to consult with Petitioners. As a solution, Petitioners have proposed to Respondents that ICE direct the detention centers housing named Petitioners to facilitate reasonable confidential incoming phone calls to them, by class counsel. Petitioners' counsel could file a modified G-28, to ensure appropriate information was kept on record.

Respondents' Position

Petitioners informed Respondents of this proposal on the morning of Monday, September 24, 2017. Respondents' counsel passed the proposal onto their client counsel but have not been apprised of their client's position yet.

Accordingly, Respondents submit that this issue is not ripe for presentation to the Court and should not have been included in this report.

VI. Unresolved Issues From Last Status Report

One issue from the last joint status report remains unresolved. This Court's Order Regarding Further Proceedings, ECF 110, Pg.ID# 2815, addresses the schedule on which Respondents shall produce A-files and Records of Proceedings. As previously briefed in the parties' September 15, 2017 Joint Status Report, ECF 107, the parties also disagree about the process for production of these documents. Specifically, Petitioners believe that unrepresented class members should be able to choose where their A-files/ROPS should be sent, and should be able to elect to send those documents to class counsel after completing appropriate privacy waivers. Respondents disagree.

The parties' respective arguments are set out in full at Pg.ID# 2718-22, 2723-27 of the previously filed Joint Status Report. The parties request speedy resolution of this issue, as it implicates the information that will be sent out with the class notice.

Respectfully Submitted,

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* Application for admission forthcoming.

Dated: September 26, 2017

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 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

**INDEX OF EXHIBITS
TO JOINT STATUS REPORT**

- Exhibit 1: Petitioners' First Set of Requests for Production
- Exhibit 2: Petitioners' First Set of Interrogatories to Elaine C. Duke
- Exhibit 3: Petitioners' Notice of Rule 30(b)(6) Deposition
- Exhibit 4: U.S. ICE Guidance Relating to 8 C.F.R 241.4, Continued Detention of Aliens Beyond the removal Period (Nov. 14, 2007)
- Exhibit 5: Collection of Post-Order Custody Review Decisions
Redacted pursuant to Fed. R. Civ. P. 5.2
- Exhibit 6: Collection of Letters Notifying Recipient that Iraq Will Not Issue Travel Documents
Redacted pursuant to Fed. R. Civ. P. 5.2
- Exhibit 7: *Fabreeka Int'l Holdings, Inc. v. Haley*, No. 15-cv-12958, 2015 WL 5139606 (E.D. Mich. Sept. 1, 2015)
- Exhibit 8: Order Denying Defendants' Motion to Extend Time for Issuance of a Scheduling Order (Doc. 77), *Arab American Civil Rights League v. Trump*, Case No. 17-10310 (E.D. Mich. May 11, 2017) (Roberts, J.)

Exhibit 9: *Mudhalla v. Bureau of Immigration and Customs Enforcement*,
No. 15-10972, 2015 WL 1954436 (E.D. Mich. Apr. 29, 2015)

Exhibit 10: *Rosario v. Prindle*, No. 11-217-WOB-CJS, 2011 WL 6942560
(N. D. Ky. Nov. 28, 2011)

EXHIBIT 1

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

USAMA JAMIL HAMAMA, et al.,

Petitioners and Plaintiffs,

v.

REBECCA ADDUCCI, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910
Hon. Mark A. Goldsmith
Mag. David R. Grand
Class Action

**PETITIONERS' AMENDED FIRST REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS TO RESPONDENTS**

Petitioners request Respondents to produce the documents and other tangible things specified below in their possession, custody and/or control. The documents and things should be produced at the offices of Miller, Canfield, Paddock and Stone, P.L.C., 101 N. Main St., 7th Floor, Ann Arbor, MI 48104 to the attention of Ms. Kimberly Scott, or electronically to Scott@millercanfield.com.

DEFINITIONS

A. The term “you” means Respondents/Defendants and their agents and representatives.

B. The term “custody review” refers to 90-day custody reviews conducted pursuant to 8 C.F.R. 241.4

C. The term “bond hearing” means a custody hearing before an immigration judge as provided for under 8 C.F.R. 1236, including a “Joseph” hearing as provided for under 8 C.F.R. 1003.19(h)(2)(ii); *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999).

D. The term “Iraqi National” means any Iraqi national who has or had a final order of removal on or after March 6, 2017 who is or has been detained by Immigration and Customs Enforcement (ICE) at any time since March 6, 2017.

E. The terms “document,” “documents,” or “documentation” refer to any and all tangible items or sources of information within the meaning of Fed. R. Civ. P. 34, whether original or non-identical copies of such items, in both final and draft form, of every kind and nature whatsoever, that are within Respondents’ possession, custody, or control, or that are known by Respondent to exist. These terms include, but are not limited to, the following materials: any and all papers, documents, correspondence, letters, electronic mail, manuals, computer disks, data, photographs, videos, drawings, films, computer generated information, web site information, handwritten or typewritten notes, charts, graphs, publications, journals, calendars, diaries, logs, log books, messages, databases, reports, or any other papers or writings or communications or summaries thereof, as well as physical models or physical embodiments.

F. “Identify” as used herein means:

(a) In the case of a person other than a natural person, its name, the address of its principal place of business, its telephone number, and the name of its chief executive officer, as well as, if it has a person other than a natural person that ultimately controls it, that other person's name, the address of that person's principal place of business, that other person's telephone number, and the name of that other person's chief executive officer;

(b) In the case of a natural person, his or her name, home and business addresses and telephone numbers, employer and title or position;

(c) In the case of documents;

(i) the author of the documents;

(ii) its title, or a description of the general nature of the subject matter;

(iii) the identity of the recipients of original or copies, if any;

(iv) the date of preparation;

(v) the dates and manner of distribution and publication if any;

(vi) the present location and custodian; and

(vii) any privileges claimed, describing the specific basis therefor; and

(d) "Identify" or "state" as used herein in connection with an act means:

(i) Furnish the date and place of the act;

(ii) Identify the person acting, the person for whom the act was performed, and the person against whom the act was directed; and

(iii) Describe the act in detail.

G. “And” and “or” shall be construed both conjunctively and disjunctively.

INSTRUCTIONS

A. Each Request for Production of Documents (“Request”) extends to all documents and things in your possession, custody or control, including documents in the possession of your attorneys, employer, consultants, accountants and other agents or representatives.

B. These Requests are continuing in nature and call for prompt, further and supplemental productions of documents and things whenever you receive or discovery any additional documents or things responsive to these Requests.

C. You are to produce to Petitioners a copy of the original documents, including those stored electronically, as they are kept in the usual course of business, organized by source or custodian, and containing a clear indication of where each document ends and the next begins. Documents maintained in a file folder or binder should be preceded by a copy of the file finder or binder label, if one exists, and should contain a clear indication of where the file folder or binder

begins and ends. All attachments to a record should be produced with the record. A unique control number should be affixed to each page or, where electronically stored information (ESI) is produced in its native format, to each document.

D. Where a request seeks the identification of documents, things, or other information not within your actual or constructive possession, custody, or control, or knowledge, you shall so state and shall answer the request to the extent of its knowledge or belief based on the best information presently available. Where you have knowledge or belief as to other persons having such possession, custody, control, or knowledge, you shall identify, to the extent know and based on the best information presently available, all such persons, together with a brief summary of the nature of the document, things, or other information believed to be known to such persons.

E. The singular form shall be construed to include the plural, and vice-versa, whenever such a dual construction will serve to bring within the scope of a production category any documents or information.

F. The past tense form shall be construed to include the present tense, and vice-versa, whenever such a dual construction will serve to bring within the scope of a production category any documents or information that would otherwise not be within its scope.

G. In the event that multiple copies of a document exist, produce every copy on which appear any notations or markings of any sort that do not appear on every other copy and, for those copies not produced, indicate each custodian that possessed a copy of the document.

H. All grounds for any objection shall be stated with specificity. If any document responsive to any of these Requests is withheld on the ground that it calls for information that is privileged or exempt from discovery for any other reason, prepare and provide a log of the same in Microsoft Excel native format. As to each such withheld document, include the following information on the log(s):

- (a) Which privilege is claimed;
- (b) Who is asserting the privilege;
- (c) A precise statement of facts upon which said claim of privilege is based;
- (d) Describe each purportedly privileged document by providing:
 - (i) A brief description sufficient to identify its nature, i.e., agreement, letter, memorandum, etc.
 - (ii) A brief description sufficient to identify its subject matter and purpose of the document;
 - (iii) The date the document bears;
 - (iv) The identity of the person preparing the document;

(v) The identity of each person to whom it was sent; and

(vi) The identity of each person who represented or purported to represent you.

I. If any portion of a document responsive to these Requests is withheld under claim of privilege, any non-privileged portion of such document must be produced with the portion claimed to be privileged redacted.

J. Each document requested herein is to be produced in its entirety, without deletion or excision (except as qualified by Instructions above), regardless of whether you consider the entire document to be relevant or responsive to the Requests.

K. Scanned documents should be produced in single-page Tagged Image File Format (TIFF) with accompanying load files as described in Exhibit A – Electronic and Hard Copy Specifications for Producing Party. The documents should be logically unitized and contain correct document breaks. Multi-page Optical Character Recognition (OCR) text for each document should also be provided.

L. All ESI should be produced in their native file format with accompanying load files as described in Exhibit A – Electronic and Hard Copy Specifications for Producing Party. Multi-page extracted text for each document should also be provided.

M. To the extent discovery requires production of discoverable electronic information contained in a database, in lieu of producing the database, reports generated from the database should be produced in the image format as described in Paragraph M above. Additionally, the following should be produced:

- (a) Identification of the specific fields of information being produced;
- (b) Identification of any fields of information that you contend cannot be produced from the database; and
- (c) Information explaining the database scheme, codes, and abbreviations.

DOCUMENT REQUESTS

Documents pertaining to class members' custody status

1. All decisions issued as a result of a custody review for an Iraqi National since June 11, 2017.

RESPONSE:

2. The following documents related to custody reviews conducted since June 11, 2017 for each Iraqi National:
 - a. all notices, worksheets, recommendations, headquarters' reviews, and correspondence with the Iraqi National pertaining to the review;
 - b. any submissions by the Iraqi National for consideration as part of their reviews; and

- c. any notes of interviews of the Iraqi National that were conducted as part of the custody review process.

RESPONSE:

3. Documents about how the custody reviews should be conducted, both in general and in particular, with regard to Iraqi Nationals, including all training, guidance, memos, and other documents issued by ICE or any other governmental agency or department.

RESPONSE:

4. Orders of Supervision/Notices of Conditional Release issued to each Iraqi National since entry of their final removal orders, and the documents relating to each Iraqi National that were considered or created by ICE in the process of determining whether to issue such Orders/Notices.

RESPONSE:

5. All notices of revocation of release issued to any Iraqi National since entry of their final removal orders, and the documents relating to each Iraqi National that were considered or created by ICE in the process of determining whether to issue such revocation notices.

RESPONSE:

6. The following documents pertaining to detention of any Iraqi National whose motion to reopen has been granted:
 - a. notices of bond hearings and notices informing the Iraqi National that they were subject to mandatory detention;

- b. ICE, Immigration Judge, and BIA decisions granting or denying bond or release on bond or other conditions;
- c. correspondence from ICE to an Iraqi National related to any Iraqi National's continuing detention and eligibility for bond.

RESPONSE:

Documents Pertaining to Repatriations to Iraq

- 6. Communications to or from DHS, ICE, or another relevant department of the U.S. government, and the Iraqi Ministry of Foreign Affairs (or another relevant department of the Iraqi government), since January 1, 2017 requesting or otherwise inquiring that Iraq or other countries issue travel documents for Iraqis, or accept repatriation of Iraqis without travel documents.

RESPONSE:

- 7. Agreement(s) (whether an executed or unexecuted agreement, letter, email or other document) entered in 2017 between the United States and Iraq by which the government of Iraq has agreed to accept the repatriation of Iraqis ordered removed from the United States, and any correspondence or documents created discussing the terms or that agreement or any further agreement between the two countries related to the return of Iraqis ordered removed.

RESPONSE:

- 8. Documents after January 27, 2017 requesting, providing, or related to assurances by the government of Iraq to the U.S. government regarding the safety or treatment of Iraqis removed to Iraq from the United States.

RESPONSE:

9. Documents evidencing, reporting, responding to, or otherwise relating to communications between Iraqi Nationals and the Iraqi government requesting, providing, or concerning the Iraqi government's issuance of (or refusal to issue) travel documents.

RESPONSE:

Respectfully submitted,

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Dated: September 25, 2017

* Application for admission forthcoming.

EXHIBIT A**Electronic and Hard Copy Production Specifications for Producing Party**

- Mixed production format (images for hard copy and electronic documents, except spreadsheets, presentations, audio and video files, which are to be provided in native file format)
- Black and white images as single-page, Group IV TIFFs, 300 dpi, 1 bit depth
- Color images as JPEG images, 150-300 dpi
- Concordance/Relativity image load file format (.OPT)
- Native files to include corresponding field identifying file path to the native (NATIVE FILE)
- OCR / Extracted Text at the document level and provided as a separate text file with the same naming convention as the TIFF/native, and relative file path identified in the load file (EXTRACTED TEXT)
- Metadata load file (.DAT) with the following delimiters and fields:
 - Column Delimiter: ¶
 - New Line Delimiter: ®
 - Quote Delimiter: ¨
 - Multi-Entry Delimiter;

Field Name	Description	Electronic/ Native Files	Paper/Hard Copy
Prod Beg	Bates number of the first page of a document (imaged) or the identifying number of an electronic document (native)	X	X
Prod End	Bates number of the last page of a document (imaged)		X
Prod Beg Attach	Bates range of document family - first page of parent (imaged) or identifying number of parent (native)	X	X
Prod End Attach	Bates range of document family - last page of last attachment (imaged) or identifying number of last attachment (native)	X	X
Page Count	Total number of pages in an imaged document	X	X
Custodian	Document custodian in format Last Name, First Name	X	X
Author	Author of an e-doc extracted from metadata	X	
Email From	Author of an email message	X	

Field Name	Description	Electronic/ Native Files	Paper/Hard Copy
Email To	Main recipient(s) of an email message	X	
Email CC	Recipient(s) of “carbon copies” of an email message	X	
Email BCC	Recipient(s) of “blind copies” of an email message	X	
Date Created	Creation date of a native e-doc	X	
Date Last Modified	Date an e-doc was last modified	X	
Date Received	Received date of an email message	X	
Date Sent	Sent date of an email message	X	
Email Subject	Subject of the email message	X	
Document Extension	File extension of native file	X	
Original Folder Path	Full path to source files (if e-doc or loose email) or folder path contained within a mailstore (if NSF or PST)	X	
Filename	Original filename of native file	X	
File Description	Description of native file program or application	X	
MD5 Hash	Unique identifier (“fingerprint”)	X	
Extracted Text	Relative file path to text file containing OCR / extracted text	X	X
Native File	Relative file path created during processing to link native files to database for review	X	

EXHIBIT 2

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

USAMA JAMIL HAMAMA, et al.,

Petitioners and Plaintiffs,

v.

REBECCA ADDUCCI, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910
Hon. Mark A. Goldsmith
Mag. David R. Grand
Class Action

**PETITIONERS' FIRST SET OF INTERROGATORIES TO
RESPONDENT ELAINE C. DUKE**

Petitioners, pursuant to Fed. R. Civ. P. 33, request Respondent Elaine C. Duke,¹ in her official capacity as the Secretary of the U.S. Department of Homeland Security, to respond to the following interrogatories.

DEFINITIONS

A. The term “you” means the U.S. Department of Homeland Security (DHS) or the other Respondents/Defendants and components under your control, including Immigration and Customs Enforcement (ICE).

¹ Respondents substituted Elaine C. Duke for John F. Kelly on September 21, 2017. (ECF 108, Pg.ID# 2812.)

B. The term “custody review” refers to 90-day custody reviews conducted pursuant to 8 C.F.R. 241.4

C. The term “bond hearing” means a custody hearing before an immigration judge as provided for under 8 C.F.R. 1236, including a “Joseph” hearing as provided for under 8 C.F.R. 1003.19(h)(2)(ii); *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999).

D. The term “Iraqi National” means any Iraqi national who has or had a final order of removal on or after March 6, 2017 who is or has been detained by Immigration and Customs Enforcement (ICE) since March 6, 2017.

E. The terms “and” and “or” as used in these requests for production of documents are not intended as words of limitation. Thus, any sentence or phrase herein formed in the disjunctive shall also be taken in the conjunctive, and vice versa. Similarly, any word formed in the singular shall also be taken in the plural, and vice-versa. Also, any verb in the present tense shall also be taken in the past, imperfect and future tenses, and vice-versa. Finally, any pronoun in the masculine gender shall also be taken in the feminine gender, and vice-versa.

F. The term “identify” when used in reference to a natural person means to state to the fullest extent possible the following information:

1. His or her full name; and
2. Present or last known address (whether business or residence);
and

3. The name and address of that person's employer and his or her job title at times pertinent to the pending action, including any changes therein.

G. Except as otherwise provided herein, the term "identify" when used in reference to a document means to state to the fullest extent possible the following information:

1. The type of document, such as letter or memorandum;
2. The identity of the person or persons preparing the document;
3. A description of its subject matter;
4. The number of pages in the document;
5. The identity of each addressee, recipient or signor;
6. The date on which the document was prepared;
7. The date on which the document was distributed or transmitted; and
8. The present location of each copy of the document and the identity of the present or last known location custodian of each copy of the document.

H. The term "identify" when used in connection with statements and communications means to state to the fullest extent possible the following information:

1. State when and where such statement or communication was made;
2. Identify each of the makers and recipients thereof, and all other persons present;
3. State the medium of the statement or communication, such as personal conversation, telephone conversation or media broadcast; and
4. State the substance of the statement or communication.

I. The terms “document,” “documents,” or “documentation” refer to any and all tangible items or sources of information within the meaning of Fed. R. Civ. P. 34, whether original or non-identical copies of such items, in both final and draft form, of every kind and nature whatsoever, that are within Respondent’s possession, custody, or control, or that are known by Respondent to exist. These terms include, but are not limited to, the following materials: any and all papers, documents, correspondence, letters, electronic mail, manuals, computer disks, data, photographs, videos, drawings, films, computer generated information, web site information, handwritten or typewritten notes, charts, graphs, publications, journals, calendars, diaries, logs, log books, messages, databases, reports, or any other papers or writings or communications or summaries thereof, as well as physical models or physical embodiments.

J. The term “date” means the exact day, month, and year, if ascertainable, or if not, the best approximation (including relationship to other events).

K. The terms “statement,” “communication,” “communicate,” and “communicated” mean any oral or written utterance, notation, or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations (whether direct or overheard), dialogues, discussions, interviews, consultations, agreements, and other understandings

between or among two or more persons, whether made orally, by Document, made face-to-face, or made by telephone, mail, personal delivery, e-mail, electronic transmission, or otherwise, whether or not recorded by Document or other means.

L. The terms “relate,” “related,” and “relating” mean concerning, reflecting, referring to, having a relationship to, pertaining to, evidencing, or constituting, in whole or in part, the subject matter of the particular Request for Production of Documents.

INSTRUCTIONS

A. Each interrogatory should be read so as not to seek information subject to a privilege from discovery, if necessary to permit providing information otherwise responsive to the request. To the extent that an interrogatory calls for the disclosure of information subject to a privilege from discovery, the written response to that interrogatory should so indicated, but you should disclose the balance of the information not subject to a claim of privilege, which falls within the scope of the interrogatory.

B. If you cannot answer any interrogatory fully and completely after exercising due diligence to make inquiry and secure the information necessary to do so, so state, and answer each such interrogatory to the fullest extent possible; specify the portion of such interrogatory that you contend you are unable to answer fully and completely and the facts on which you rely to support said contention and

state the full extent of your knowledge, information and belief concerning the unanswered portion of each such interrogatory. In accordance with Rule 26(b)(5) of the Federal Rules of Civil Procedure, if you withhold any requested information on grounds of privilege, trial preparation material, or otherwise:

1. Identify the nature of the privilege which is being claimed and, if the privilege is governed by state law, indicate the state's privilege rule being invoked; and

2. Provide the following information, unless such information would cause disclosure of the allegedly privileged information:

a. If you exercise an option to produce business records pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, but production in whole or part is withheld on the ground of privilege, as to each such withheld Document state the following information:

- (i) Which privilege is claimed;
- (ii) Who is asserting the privilege;
- (iii) A precise statement of facts upon which said claim of privilege is based;
- (iv) Describe each purportedly privileged Document by providing:
 - (1) A brief description sufficient to identify its nature, i.e., agreement, letter, memorandum, etc.
 - (2) A brief description sufficient to identify its subject matter and purpose of the Document;
 - (3) The date the Document bears;
 - (4) The identity of the Person preparing the Document;

- (5) The identify of each Person to whom it was sent; and
- (6) The identity of each Person who represented or purported to represent You.

3. If any Document responsive to any of these Requests for Production of Documents is withheld on the ground that it calls for information that is privileged or exempt from discovery for any other reason, as to each such withheld Document state the following information:

- a. Which privilege is claimed;
- b. Who is asserting the privilege;
- c. A precise statement of facts upon which said claim of privilege is based;
- d. Describe each purportedly privileged Document by providing:
 - (i) A brief description sufficient to identify its nature, i.e., agreement, letter, memorandum, etc.
 - (ii) A brief description sufficient to identify its subject matter and purpose of the Document;
 - (iii) The date the Document bears;
 - (iv) The identity of the Person preparing the Document;
 - (v) The identify of each Person to whom it was sent; and
 - (vi) The identity of each Person who represented or purported to represent You.

4. If any portion of a Document is withheld under claim of privilege, any non-privileged portion of such Document must be produced with the portion claimed to be privileged redacted.

5. Each Document is to be produced in its entirety, without deletion or excision (except as qualified by the Instructions above), regardless of whether you consider the entire Document to be relevant or responsive.

C. Unless otherwise specified or the context otherwise indicates, each interrogatory requires responses for the entire period from March 6, 2017 to the present (the “Relevant Time Period”), and requires answers and/or the production of Documents created, sent, received, dated, or in effect during that period.

D. These interrogatories shall be deemed to be continuing so as to require you or your counsel to provide supplemental answers in a reasonable time to these interrogatories.

E. If you produce documents pursuant to Fed. R. Civ. P. 33(d), the records should be produced in the following formats:

1. Scanned documents should be produced in single-page Tagged Image File Format (TIFF) with accompanying load files as described in Exhibit A – Electronic and Hard Copy Specifications for Producing Party. The documents should be logically unitized and contain correct document breaks. Multi-page Optical Character Recognition (OCR) text for each document should also be provided.

2. All ESI should be produced in their native file format with accompanying load files as described in Exhibit A – Electronic and Hard

Copy Specifications for Producing Party. Multi-page extracted text for each document should also be provided.

3. To the extent discovery requires production of discoverable electronic information contained in a database, in lieu of producing the database, reports generated from the database should be produced in the image format as described in Paragraph E(1) above. Additionally, the following should be produced:

- (a) Identification of the specific fields of information being produced;
- (b) Identification of any fields of information that you contend cannot be produced from the database; and
- (c) Information explaining the database scheme, codes, and abbreviations.

INTERROGATORIES

1. For each Iraqi National who has received a custody review, provide the information listed below. In lieu of supplementing your answer pursuant to Rule 26(e)(1) as additional information becomes available (which may require daily supplementation during certain periods), Petitioners seek supplementation every two weeks.
 - a. The number and identity (by name and A-number) of Iraqi Nationals who have been released since March 6, 2017 pursuant to a custody review, the date of that review, and the basis for each individual's release; and
 - b. The number and identity (by name and A-number) of Iraqi Nationals who have been retained in detention since March 6, 2017 following a custody review, the date of that review, and the basis for each individual's continued detention.

ANSWER:

2. For each Iraqi National who has received a bond hearing since March 6, 2017, provide the information listed below. In lieu of supplementing your answer pursuant to Rule 26(e)(1) as additional information becomes available (which

may require daily supplementation during certain periods), Petitioners seek supplementation every two weeks.

- a. The number, identity (by name and A-number), and date of the bond hearing of Iraqi nationals who have been released since March 6, 2017 pursuant to a bond hearing, and the basis for each individual's release; and
- b. The number, identity (by name and A-number), and date of the bond hearing of Iraqi nationals who have not been released since March 6, 2017 following a bond hearing, and the basis for each individual's continued detention.

ANSWER:

3. For each Iraqi National who has sought to be released or has been released from detention other than based on a custody review or bond hearing, provide the information listed below. In lieu of supplementing your answer pursuant to Rule 26(e)(1) as additional information becomes available (which may require daily supplementation during certain periods), Petitioners seek supplementation every two weeks.
 - a. For any individual released, identity (by name and A-number), the date of release, and any conditions imposed; and

- b. For any individual who has sought release but not obtained it, the date the denial of the request, and the basis for continued detention.

ANSWER:

- 4. For Iraqi Nationals who have had motions to reopen granted, state whether ICE considers the following facts in determining the appropriateness of mandatory detention under 8 U.S.C. § 1226(c):
 - a. The amount of time the individual spent in immigration detention, both in the current detention period and in any prior detentions;
 - b. The amount of time it will likely take for reopened removal proceedings to conclude;
 - c. The length of time the individual was incarcerated for the conviction that is the alleged basis for mandatory detention under 8 U.S.C. § 1226(c);
 - d. The amount of time that has elapsed since the individual's release from criminal custody for the conviction that is the alleged basis for mandatory detention under 8 U.S.C. § 1226(c); and

- e. Whether ICE can effectuate the individual's removal to Iraq if removal is eventually ordered?

ANSWER:

5. For each Iraqi National who has filed a motion to reopen that has been granted and who was or is detained under 8 U.S.C. § 1226(c), provide the information listed below. In lieu of supplementing your answer pursuant to Rule 26(e)(1) as additional information becomes available (which may require daily supplementation during certain periods), Petitioners seek supplementation every two weeks.

- a. Indicate whether an immigration judge or the Board of Immigration Appeals reversed ICE's determination to detain the Iraqi National under 8 U.S.C. § 1226(c); and
- b. If an immigration judge or the Board of Immigration Appeals reversed ICE's determination to detain the Iraqi National under 8 U.S.C. § 1226(c), identify (by name and A-number) the Iraqi national and the date of the immigration judge or Board of Immigration Appeals decision.

ANSWER:

6. State what training, guidance, policy, or direction has been provided to ICE staff conducting custody reviews or bond hearings for Iraqi Nationals.

ANSWER:

7. Identify (by name and A-number) each Iraqi National currently detained who was transferred directly from criminal custody to ICE detention at the outset of his/her current period of ICE detention.

ANSWER:

8. For each Iraqi National, provide the following:
- a. The date on which the Iraqi national was most recently detained by ICE and, if the Iraqi national has been released, the date of the most recent release.
 - b. The start and end dates of any prior periods of immigration detention.

ANSWER:

9. Identify (by name and A-number) the eight Iraqi nationals referenced in the declaration of John Schultz, ECF 81-4, Pg.ID# 2007, who were removed to Iraq in April 2017, and provide their last known contact information both in

the United States and in Iraq, and contact information for their next of kin or other emergency contact.

ANSWER:

10. For each Iraqi National for whom ICE or another relevant department of the U.S. government has requested travel documents or approval of repatriation from the Iraqi Ministry of Foreign Affairs (or another relevant department of the Iraqi government), provide the following:
- a. Name and A-number;
 - b. What type of travel documents or other approval of repatriation was obtained, if any;
 - c. Whether travel documents were denied, and the basis for such denial; and
 - d. Whether approval of repatriation was denied, and the basis for such denial.

ANSWER:

11. For each Iraqi National known to ICE or DHS to have requested travel documents from the Iraqi Ministry of Foreign Affairs (or another relevant department of the Iraqi government), provide the following:

- a. Name and A-number;
- b. The type of travel documents obtained, if any; and
- c. Whether travel documents were denied, and the basis for such denial.

ANSWER:

12. Identify the travel documents or other documentation or evidence Iraq requires or will accept before approving an Iraqi for repatriation.

ANSWER:

13. State the number of Iraqis whose repatriation Iraq can process per month, including the total number of individuals Iraq has agreed to accept and the length of time it will take to process the repatriation of that number of individuals.

ANSWER:

14. The declaration of John Schultz, ECF 81-4, Pg.ID# 2007, states that Iraq previously would accept only its nationals with unexpired passports, but that Iraq will now “authorize repatriation with other indicia of nationality.” State what “other indicia of nationality” Iraq will accept for repatriation; the basis for the U.S. government’s belief that the other indicia of nationality will be

accepted, including the identification of the specific agreement(s) or other document(s) stating this policy; and all criteria an individual must or can meet before Iraq will accept an Iraqi national for repatriation.

ANSWER:

15. For each Iraqi that Iraq has declined to repatriate since March 6, 2017, identify (by name and A-number) the individual and the reasons stated by Iraq for denying repatriation.

ANSWER:

16. State what assurances, if any, the Iraqi government provided to the United States regarding the safety of Iraqis, including a description of all steps that Iraq has agreed to take to prevent the persecution, torture or death of repatriated individuals.

ANSWER:

Respectfully submitted,

Michael J. Steinberg (P43085)
Kary L. Moss (P49759)
Bonsitu A. Kitaba (P78822)
Miriam J. Aukerman (P63165)
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Attorney for Petitioner/Plaintiff
Usama Hamama

Dated: September 25, 2017

* Application for admission forthcoming.

EXHIBIT A**Electronic and Hard Copy Production Specifications for Producing Party**

- Mixed production format (images for hard copy and electronic documents, except spreadsheets, presentations, audio and video files, which are to be provided in native file format)
- Black and white images as single-page, Group IV TIFFs, 300 dpi, 1 bit depth
- Color images as JPEG images, 150-300 dpi
- Concordance/Relativity image load file format (.OPT)
- Native files to include corresponding field identifying file path to the native (NATIVE FILE)
- OCR / Extracted Text at the document level and provided as a separate text file with the same naming convention as the TIFF/native, and relative file path identified in the load file (EXTRACTED TEXT)
- Metadata load file (.DAT) with the following delimiters and fields:
 - Column Delimiter: ¶
 - New Line Delimiter: ®
 - Quote Delimiter: p
 - Multi-Entry Delimiter ;

Field Name	Description	Electronic/ Native Files	Paper/Hard Copy
Prod Beg	Bates number of the first page of a document (imaged) or the identifying number of an electronic document (native)	X	X
Prod End	Bates number of the last page of a document (imaged)		X
Prod Beg Attach	Bates range of document family - first page of parent (imaged) or identifying number of parent (native)	X	X
Prod End Attach	Bates range of document family - last page of last attachment (imaged) or identifying number of last attachment (native)	X	X
Page Count	Total number of pages in an imaged document	X	X
Custodian	Document custodian in format Last Name, First Name	X	X
Author	Author of an e-doc extracted from metadata	X	
Email From	Author of an email message	X	
Email To	Main recipient(s) of an email message	X	
Email CC	Recipient(s) of "carbon copies" of an email message	X	
Email BCC	Recipient(s) of "blind copies" of an email message	X	
Date Created	Creation date of a native e-doc	X	
Date Last Modified	Date an e-doc was last modified	X	
Date Received	Received date of an email message	X	
Date Sent	Sent date of an email message	X	
Email Subject	Subject of the email message	X	
Document Extension	File extension of native file	X	
Original Folder Path	Full path to source files (if e-doc or loose email) or folder path contained within a mailstore (if NSF or PST)	X	
Filename	Original filename of native file	X	
File Description	Description of native file program or application	X	
MD5 Hash	Unique identifier ("fingerprint")	X	
Extracted Text	Relative file path to text file containing OCR / extracted text	X	X
Native File	Relative file path created during processing to link native files to database for review	X	

EXHIBIT 3

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

USAMA JAMIL HAMAMA, et al.,

Petitioners and Plaintiffs,

v.

REBECCA ADDUCCI, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910
Hon. Mark A. Goldsmith
Mag. David R. Grand
Class Action

PETITIONERS' NOTICE OF RULE 30(B)(6) DEPOSITION

TO: William C. Silvis
Assistant Director
United States Department of Justice
Office of Immigration Litigation
District Court Section
P.O. Box 868 Ben Franklin Station
Washington, DC 20044
Tel: (202) 307-4693

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rule of Civil Procedure, Petitioners will take the deposition of Respondent Department Homeland Security ("DHS") on [date to be inserted], 2017 beginning at 9:00 a.m. at the offices of Miller, Canfield, Paddock & Stone, 150 West Jefferson, Suite 2500, Detroit, Michigan. Respondent shall designate one or more persons to testify on its behalf regarding the subjects listed in Exhibit A to this notice. The deposition will be taken by stenographic and/or videographic means before a

notary public authorized to administer oaths. The deposition is being taken in accordance with the Federal Rules of Civil Procedure, may be used for all purposes, and will be continued until completed consistent with the Federal Rules of Civil Procedure.

Respectfully Submitted,

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Kary L. Moss (P49759)
Bonsitu A. Kitaba (P78822)
Miriam J. Aukerman (P63165)
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Attorney for Petitioner/Plaintiff
Usama Hamama

Dated: September 25, 2017

* Application for admission forthcoming.

SCHEDULE A

DEFINITIONS & INSTRUCTIONS

1. The term “Iraqi National” means any Iraqi national who has or had a final order of removal as of March 6, 2017 and who is or has been detained by Immigration and Customs Enforcement (ICE) as of or after March 6, 2017.
2. The term “custody reviews” refers to the 90-day custody reviews conducted pursuant to 8 C.F.R. 241.4.
3. The term “bond hearings” means a custody hearing before an immigration judge as provided under 8 C.F.R. 1236, including a “Joseph” hearing as provided under 8 C.F.R. 1003.19(h)(2)(ii); *Matter of Joseph*, 22 I&N Dec. 299 (BIA 1999).
4. The term “Iraqi Agreement” means any agreement between the governments of the United States and Iraq regarding the repatriation of Iraqi nationals after January 2017, including the agreement referenced (1) in the Declaration of John A. Schultz, Jr., dated July 20, 2017 at paragraph 5 (“[d]ue to renewed discussions between the United States and Iraq in recent months, Iraq has agreed, using charter flights, to the timely return of its nationals that are subject to final orders of removal” (ECF 81-4 at Pg.ID 3); and (2) by Gillian Christensen, a spokeswoman for U.S. Immigration and Customs Enforcement (“As a result of recent negotiations between the U.S.

and Iraq, Iraq has recently agreed to accept a number of Iraqi nationals subject to orders of removal”) (see, Mica Rosenberg, *U.S. Targets Iraqis for Deportation in Wake of Travel Ban Deal*, REUTERS (June 12, 2017), <https://www.reuters.com/article/us-usa-immigration-iraq-idUSKBN19326Z>).

DEPOSITION TOPICS

1. Custody reviews since March 6, 2017 of Iraqi Nationals, including but not limited to:
 - a. the training, guidance, policy, or direction provided to ICE staff for conducting the custody reviews;
 - b. the criteria for determining whether a custody review will result in the release or detention of an Iraqi National;
 - c. the basis for the custody review determinations made for any Iraqi National;
 - d. the result of the custody review for any Iraqi National, and
 - e. the documents or information considered during custody reviews by ICE in deciding if an Iraqi National will be released or detained.
2. The eligibility for bond and the process for obtaining bond for Iraqi Nationals whose motions to reopen have been granted since March 6, 2017, including but not limited to:

- a. the basis for determining whether an Iraqi National is eligible for a bond hearing;
 - b. the notice or information given to the Iraqi National about their eligibility for a bond hearing;
 - c. the procedures and processes for conducting bond hearings for Iraqi Nationals, including the allocation of responsibility between ICE and the Executive Office of Immigration Review (EOIR) and the communications between them regarding the eligibility of any Iraqi Nationals for bond hearings; and
 - d. the training, guidance, policy, or direction provided to ICE staff regarding the bond hearings for Iraqi nationals.
3. Release of Iraqi Nationals from detention for reasons other than a custody review or bond hearing.
4. The terms of the Iraqi Agreement pertaining to the repatriation of Iraqis and the process for repatriating Iraqis, including but not limited to:
 - a. the criteria an Iraqi must meet before Iraq will accept the Iraqi for repatriation;
 - b. the criteria that would lead Iraq to deny repatriation for an Iraqi;

- c. the travel documents that Iraq ordinarily requires before accepting an Iraqi for repatriation, and the procedures for obtaining such documents;
- d. the situations in which travel documents will not be required for repatriation, and any procedures that substitute for such travel documents;
- e. the number of Iraqi nationals whose repatriation Iraq can process per month, including the total number of Iraqis who Iraq has agreed to accept and the length of time it will take to process the repatriation of that number of Iraqis; and
- f. the communications between the U.S. government and Iraq regarding the safety of Iraqis if they are repatriated, and assurances or plans by Iraq regarding their safety.

EXHIBIT 4

Office of Detention and Removal Operations
U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

NOV 14 2007

MEMORANDUM FOR:

Field Office Directors
Deputy Field Office Directors

FROM:

Gary E. Mead *[Signature]*
Assistant Director for Management

SUBJECT:

Guidance Relating to 8 CFR § 241.4, Continued Detention of Aliens Beyond the Removal Period and New Procedures Relating to Case Transfers to the Custody Determination Unit (CDU)

Purpose

The purpose of this memorandum is to standardize the procedures relating to the Post Order Custody Review (POCR) process, as provided in 8 CFR § 241.4 and also to effect new procedures relating to case transfers to CDU.

Background

In our continuing efforts to ensure that the field offices maintain POCR case in compliance with current regulations and that Headquarters receives the required information it needs to make custody decision, we are implementing a new worksheet. The worksheet will replace the current process of preparing a memorandum for cases being transferred to HQ and for follow-up reviews. CDU currently receives many variations of the memorandums, some with too much information and others missing pertinent information. We believe that the worksheets will facilitate the process for both the field and HQ by collecting the information required to make custody decisions. In addition, the worksheet will allow HQ to make consistent decision.

Post Order Custody Reviews (POCRs)

Under 8 CFR § 241.4 field offices are required to conduct a POCR for all aliens with administratively final orders of removal detained 90 days beyond the removal period. As a reminder, the two factors that the field office should consider in the custody review process are: would the alien pose a danger to the community or is the alien a flight risk. Under 8 CFR § 241.4, an alien may be released on an Order of Supervision (OSUP) if it is determined that the alien would not pose a danger to the community or a flight risk, without regard to the likelihood of the alien's removal in the reasonably foreseeable future. The removal period stops when a stay is in effect or if the alien fails to cooperate (FTC) in effecting his removal, and the jurisdiction remains with the field office. Once the stay is lifted or the alien begins to cooperate with the removal process, the removal period restarts. The field will continue to prepare the 90-day worksheet, which is inclusive of all immigration history, criminal history, removal efforts, family history, etc. The worksheet will

Subject: Guidance Relating to 8 CFR § 241.4, Continued Detention of Aliens Beyond the Removal Period and New Procedures Relating to Case Transfers to the Custody Determination Unit (CDU) Page 2

continue to be reviewed and signed by the Supervisory Deportation Officer or Supervisory Detention and Deportation Officer. The Field Office Director will then make the custody decision pursuant to 8 CFR § 241.4. Authority to sign POCR reviews cannot be delegated to levels lower than the Deputy Field Office Director. Once the decision is complete, the alien must be served a decision in accordance with the regulations.

Case Transfers to CDU

After the 90-day removal period, if the alien is not released from custody, or has not been removed and removal is not eminent, the case should be transferred to CDU immediately. Historically, cases have been transferred to CDU with a follow up memorandum that addressed events that occurred after the POCR has been completed. In order to standardize the decision making process and ensure CDU receives all relevant information, effective immediately, the attached HQ POCR Checklist will be used in lieu of a follow up memorandum. Unless a stay is in effect or the alien is a FTC, at day 180 the case must immediately be transferred to CDU with a completed POCR worksheet and a completed HQ POCR Checklist. The POCR worksheet, decisions served, and HQ Checklist should be scanned and sent via e-mail to ICE.DRO-CDU@DHS.GOV. CDU will then make a custody determination pursuant to 8 CFR § 241.13. In addition, at all appropriate interval where subsequent field review is required, i.e. initial transfer of custody from the Field Office to HQ or subsequent, a new worksheet must be sent as outlined above.

After the case is transferred to CDU, the case officer must continue to pursue the issuance of a travel document, if applicable, and to communicate all information to CDU that would affect the custody decision. The case management responsibility is always with the field office for both POCR related follow-up actions and travel document request. Continuous and timely communication between the field offices and HQCDU is essential in the management of these cases.

Effective fifteen calendar days after the issuance of the memorandums, all cases transferred to CDU must be compliant with the above.

Any question regarding POCR issues should be forwarded to CDU Chief [REDACTED] at 202-732-

b6, b7c

5 or

b6, b7c

HQ POCR Checklist for 241.4 Reviews

To be completed for all cases transferred to CDU for a custody jurisdiction review under 8 CFR § 241.13. List only

b2High

EXHIBIT 5

Office of Enforcement and Removal Operations
U.S. Department of Homeland Security
333 Mt. Elliott St.
Detroit, MI 48207



**U.S. Immigration
and Customs
Enforcement**

A [REDACTED]

H [REDACTED], M [REDACTED]
c/o Immigration and Customs Enforcement
Detroit Field Office

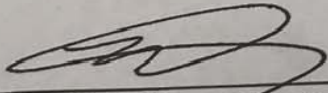
Decision to Continue Detention

This letter is to inform you that your custody status has been reviewed and it has been determined that you will not be released from the custody of U.S. Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your file and/or your personal interview and consideration of any information you submitted to ICE's reviewing officials.

At this time we will not release you due in part to the following: *You have a final order of removal from the United States and ICE is actively pursuing your removal*

Based on the above, you are to remain in ICE custody pending your removal from the United States. You are advised that you must demonstrate that you are making reasonable efforts to comply with the order of removal and that you are cooperating with ICE's efforts to remove you by taking whatever actions ICE requests to affect your removal. You are also advised that any willful failure or refusal on your part to make timely application in good faith for travel or other documents necessary for your departure, or any conspiracy or actions to prevent your removal or obstruct the issuance of a travel document, may subject you to criminal prosecution under 8 USC Section 1253(a).

While your removal remains temporarily stayed by order of the United States District Court for the Eastern District of Michigan in *Hamama, et al. v. Adducci, et al.*, Case No. 2:17-cv-11910, your custody status will periodically be reviewed again to determine if your release from custody is appropriate. You will be notified in advance of your next review.


R. Lynch
Detroit Deputy Field Office Director

SEP 07 2017

Date

Office of Enforcement and Removal Operations

U.S. Department of Homeland Security
333 Mt. Elliott
Detroit, MI 48207



U.S. Immigration
and Customs
Enforcement

H [REDACTED], U [REDACTED]
c/o Immigration and Customs Enforcement
Detroit Field Office

A [REDACTED]

Decision to Continue Detention

This letter is to inform you that your custody status has been reviewed and it has been determined that you will not be released from the custody of U.S. Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your file and/or your personal interview and consideration of any information you submitted to ICE's reviewing officials.

At this time you will not be released from custody due in part to the following: *You have a final order of removal from the United States and ICE is actively pursuing your removal to Iraq.*

Based on the above, you are to remain in ICE custody pending your removal from the United States. You are advised that you must demonstrate that you are making reasonable efforts to comply with the order of removal and that you are cooperating with ICE's efforts to remove you by taking whatever actions ICE requests to affect your removal. You are also advised that any willful failure or refusal on your part to make timely application in good faith for travel or other documents necessary for your departure, or any conspiracy or actions to prevent your removal or obstruct the issuance of a travel document, may subject you to criminal prosecution under 8 USC Section 1253(a).

While your removal remains temporarily stayed by order of the United States District Court for the Eastern District of Michigan in Hamama, et al. v. Adducci, et al., Case No. 2:17-cv-11910, your custody status will periodically be reviewed again to determine if your release from custody is appropriate. You will be notified in advance of your next review.

R. Lynch
Deputy Field Office Director

SEP 06 2017

Date

Enforcement and Removal Operations

Washington Field Office

U.S. Department of Homeland Security
2675 Prosperity Avenue, MS 5216
Fairfax, Virginia 20598-5216



U.S. Immigration
and Customs
Enforcement

M [REDACTED] J [REDACTED]
C/O Virginia Peninsula Regional Jail
9320 Merrimac Trail
Williamsburg, VA 23185

A Number: [REDACTED]

Decision to Continue Detention

This letter is to inform you that your custody status has been reviewed and it has been determined that you will not be released from the custody of U.S. Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your file and/or your personal interview and consideration of any information you submitted to ICE's reviewing officials.

Due to you being an Immigration Enforcement Priority, you will remain in detention.

Based on the above, you are to remain in ICE custody pending your removal from the United States. You are advised that you must demonstrate that you are making reasonable efforts to comply with the order of removal, and that you are cooperating with ICE's efforts to remove you by taking whatever actions ICE requests to effect your removal. You are also advised that any willful failure or refusal on your part to make timely application in good faith for travel or other documents necessary for your departure, or any conspiracy or actions to prevent your removal or obstruct the issuance of a travel document, may subject you to criminal prosecution under 8 USC Section 1253(a).

If you have not been released or removed from the United States by November 25, 2017 jurisdiction of the custody decision in your case will be transferred to the Headquarters Case Management Unit (HQRIO), 500 12th Street SW, Washington, DC 20024. HQRIO will make a final determination regarding your custody.

Signature of Deputy Field Office Director, ERO/Designated Representative

8/28/17
Date

Print Name, Title and Location: Adonnis T. Smith, (A) Deputy Field Office Director, Fairfax, VA

Office of Enforcement and Removal Operations

U.S. Department of Homeland Security
333 Mt. Elliott St.
Detroit, MI 48207



U.S. Immigration
and Customs
Enforcement

A. A. [REDACTED]
c/o Immigration and Customs Enforcement
Detroit Field Office

A. [REDACTED]

Decision to Continue Detention

This letter is to inform you that your custody status has been reviewed and it has been determined that you will not be released from the custody of U.S. Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your file and/or your personal interview and consideration of any information you submitted to ICE's reviewing officials.

At this time we will not release you due in part to the following: *You have a final order of removal from the United States and ICE is actively pursuing your removal.*

Based on the above, you are to remain in ICE custody pending your removal from the United States. You are advised that you must demonstrate that you are making reasonable efforts to comply with the order of removal and that you are cooperating with ICE's efforts to remove you by taking whatever actions ICE requests to affect your removal. You are also advised that any willful failure or refusal on your part to make timely application in good faith for travel or other documents necessary for your departure, or any conspiracy or actions to prevent your removal or obstruct the issuance of a travel document, may subject you to criminal prosecution under 8 USC Section 1253(a).

While your removal remains temporarily stayed by order of the United States District Court for the Eastern District of Michigan in *Hamama, et al. v. Adducci, et al.*, Case No. 2:17-cv-11910, your custody status will periodically be reviewed again to determine if your release from custody is appropriate. You will be notified in advance of your next review.


R. Lynch
Deputy Field Office Director

SEP 11 2017
Date

www.ice.gov

Office of Enforcement and Removal Operations

U.S. Department of Homeland Security
333 Mt. Elliott St.
Detroit, MI 48207



U.S. Immigration
and Customs
Enforcement

A [REDACTED], A [REDACTED]
c/o Immigration and Customs Enforcement
Detroit Field Office

A [REDACTED]

Decision to Continue Detention

This letter is to inform you that your custody status has been reviewed and it has been determined that you will not be released from the custody of U.S. Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your file and/or your personal interview and consideration of any information you submitted to ICE's reviewing officials.

At this time we will not release you due in part to the following: *You have a final order of removal from the United States and ICE is actively pursuing your removal.*

Based on the above, you are to remain in ICE custody pending your removal from the United States. You are advised that you must demonstrate that you are making reasonable efforts to comply with the order of removal and that you are cooperating with ICE's efforts to remove you by taking whatever actions ICE requests to affect your removal. You are also advised that any willful failure or refusal on your part to make timely application in good faith for travel or other documents necessary for your departure, or any conspiracy or actions to prevent your removal or obstruct the issuance of a travel document, may subject you to criminal prosecution under 8 USC Section 1253(a).

While your removal remains temporarily stayed by order of the United States District Court for the Eastern District of Michigan in Hamama, et al. v. Adducci, et al., Case No. 2:17-cv-11910, your custody status will periodically be reviewed again to determine if your release from custody is appropriate. You will be notified in advance of your next review.

R. Lynch
Detroit Deputy Field Office Director

SEP 07 2017
Date

Lionbridge Arabic translator
#4247420

EXHIBIT 6

القنصلية العامة لجمهورية العراق
CONSULATE GENERAL OF THE REPUBLIC OF IRAQ

ديترويت
DETROIT



No. [REDACTED]

Date: AUGUST 04, 2017 التاريخ:

To whom it may concern

The Consulate General of the Republic of Iraq in Detroit hereby confirms that Mrs. K [REDACTED] K [REDACTED] has visited the Consulate on AUGUST 04, 2017 to apply on behalf of her brother Mr. K [REDACTED] A [REDACTED] for an Iraqi passport according to the U.S power of attorney. Unfortunately the consulate unable to process her request because this type of application needs specific Iraqi requirements as it is mentioned below:

- Presence of applicant for biometric screening.
- Iraqi Nationality Card or New Iraqi personal Identification card.
- New Iraqi citizenship certificate.

For any further information please contact us.

Sincerely,


Dr. MUSTAFA AHMED MUSTAFA
CONSUL



مبلغ الرسوم (20) \$

التاريخ: 2017/8/7



الجمهورية العراقية
CONSULATE GENERAL OF THE REPUBLIC OF IRAQ

ديترويت
DETROIT



No. [REDACTED]

Date: JUNE 20, 2017 التاريخ:

To whom it may concern

The Consulate General of the Republic of Iraq in Detroit hereby confirms that Ms. R [REDACTED] S [REDACTED] has visited the Consulate on JUNE 20, 2017 to apply on behalf of her father Mr. A [REDACTED] S [REDACTED] for Iraqi documents. Unfortunately the consulate unable to process her request because her father is unable to confirm his Iraqi nationality. For any further information please contact us.

Sincerely,

ALMANHAL ALSAFI
CONSUL GENERAL



مبلغ الرسوم (20)
التاريخ: 2017/6/20



الجمهورية العراقية
بالبصرة
EMBASSY OF THE REPUBLIC OF IRAQ

وashington
WASHINGTON



July 7th 2017

U.S. Immigration and Customs Enforcement
Office of Detention and Removal Operation
U.S. Department of Homeland Security
Potomac center north 500 12th st. SW
Washington DC 20024
Officer: Julius A. Clinton

RE: Mrs. J [REDACTED] M [REDACTED] (A [REDACTED])

According to the request of her family whom came to our consular section on July 7th 2017, mentioned individual request for a travel document, kindly be advised that the Consular Section in Iraq Embassy in Washington D.C is unable to issue her a travel document as she didn't provide the required official Iraqi documents original and valid Iraqi Personal Identification Card and Iraqi Citizenship Certificate.

Please accept our consideration with regards.

Sincerely,



EXHIBIT 7

Fabreeka International Holdings, Inc. v. Haley, Not Reported in F.Supp.3d (2015)

2015 WL 5139606

2015 WL 5139606
Only the Westlaw citation is currently available.
United States District Court,
E.D. Michigan, Southern Division.

Fabreeka International Holdings, Inc., Plaintiff,
v.
Robert Haley, and [Armadillo Noise & Vibration LLC](#), Defendants.

Case No. 15-cv-12958

|
Signed 09/01/2015

Attorneys and Law Firms

[James F. Hermon](#), Dykema Gossett Detroit, MI [James F. Hermon](#), Dykema Gossett, Detroit, MI, for Plaintiff.

OPINION AND ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER [4], AND ORDERING DEFENDANTS TO SHOW CAUSE WHY THE COURT SHOULD NOT GRANT PLAINTIFF'S MOTION FOR EXPEDITED DISCOVERY [6] AND/OR ISSUE A PRELIMINARY INJUNCTION

GERSHWIN A. DRAIN, United States District Court
Judge

I. INTRODUCTION

*1 Fabreeka International Holdings, Inc. ("Fabreeka" or "Plaintiff") commenced the instant action against its former employee, Robert Haley, and his new employer, Armadillo Noise & Vibration ("Armadillo"), (collectively "Defendants") on August 20, 2015. *See* Dkt. No. 1. In the Complaint, Fabreeka alleges that Haley unlawfully accessed its computers to obtain confidential information in violation of the Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. § 1030. Additionally, Fabreeka brings claims against Haley under Michigan law for Breach of Contract, Conversion, and violating the Michigan Uniform Trade Secrets Act ("MUTSA"), MICH. COMP. LAWS § 445.1901 *et seq.* *Id.* Fabreeka

brings a claim against Armadillo for Tortious Interference with Contractual Relations. *Id.*

Presently before the Court are Fabreeka's Motions for a Temporary Restraining Order [4], and Expedited Discovery [6]. The Court held a hearing on these Motions with Fabreeka present on August 24, 2015. After considering the parties briefing and argument during the hearing, the Court will **DENY** Fabreeka's Motion for Temporary Restraining Order [4]. The Court will continue to take Fabreeka's Motion for Expedited Discovery [6] under advisement. Moreover, the Court will order Defendants to Show Cause why the Court should not grant Plaintiff's motion for Expedited Discovery [6] or issue a preliminary injunction. The Court's Opinion and Order is set forth in detail below.

II. BACKGROUND

Fabreeka International Holdings, Inc. ("Fabreeka" or "Plaintiff") is a Massachusetts corporation with a principle place of business at 1023 Turnpike Street, Stoughton, Massachusetts 02072. *See* Dkt. No. 1 at ¶ 1. Fabreeka designs, manufactures, installs and services shock control, vibration isolation and thermal break equipment for manufactures. *See id.* at ¶ 2. Fabreeka is owned by Fabreeka Group Holdings, Inc., which is a wholly-owned subsidiary of Kaydon Corporation ("Kaydon"), a Delaware Corporation with a principle place of business at 2723 South State Street, Suite 300, Ann Arbor, Michigan 48104. *See id.* at ¶ 3.

Robert Haley is believed to be a Massachusetts resident who was employed by Fabreeka in a variety of sales, marketing and engineering positions from 1986 until he resigned on July 24, 2014. *See* Dkt. No. 1 at ¶¶ 4–5. On August 5, 2015, Haley accepted a position as President of Armadillo Noise & Vibration LLC ("Armadillo"), which is a Massachusetts limited liability company that is managed by Jonathan Shaw and affiliated with Armadillo Noise & Vibration Ltd., based in West Yorkshire, United Kingdom. *See id.* at ¶ 6.

Fabreeka commenced this action alleging that Haley stole files from the computer system of Fabreeka and used those files and the trade secrets they contained to improperly solicit business with his new employer. *See* Dkt. No. 1 at ¶ 11. Fabreeka contends that Haley's actions were in violation of federal and state laws and the confidentiality, non-compete, non-solicitation, assignment of inventions and return of corporate property provisions

Fabreeka International Holdings, Inc. v. Haley, Not Reported in F.Supp.3d (2015)

2015 WL 5139606

set forth in his Employment Agreement (the “Agreement”). See Dkt. No. 1 at ¶ 11.

*2 Upon learning of Haley’s alleged transgressions, Fabreeka states that it sent correspondence to both Haley and Armadillo demanding that the parties refrain from using confidential and proprietary information in violation of the law. See Dkt. No. 1 at ¶ 44. Fabreeka states that this outreach was unsuccessful leading Fabreeka to commence this action, and seek the Temporary Restraining Order and Expedited Discovery to protect its confidential information and legitimate business interests. See *id.* at ¶¶ 45–46

III. DISCUSSION

As mentioned previously, the Court held a hearing on August 24, 2015 in order to allow Fabreeka to make its case for a temporary restraining order. After listening to Fabreeka’s argument, the Court indicated that it was not swayed that a temporary restraining order was appropriate at this stage. However, the Court was amenable to expedited discovery and did not foreclose a preliminary injunction in the future once there was more information, as the Court has yet to hear from the Defendants. Accordingly, the Court set a hearing for September 10, 2015 at 10:00 a.m. to hear from Defendants. This Order will serve as official notice to the Defendants to Show Cause why this Court should not permit expedited discovery and why this Court should not permit expedited discovery and/or issue a preliminary injunction. A brief analysis for the Court’s reasoning is below.

A. Temporary Restraining Order will be Denied

Pursuant to [Rule 65 of the Federal Rules of Civil Procedure](#), a temporary restraining order may be issued “without written or oral notice to the adverse party or its attorney only if: (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.” [FED. R. CIV. P. 65\(b\)\(1\)](#).

Temporary restraining orders and preliminary injunctions are extraordinary remedies designed to preserve the relative positions of the parties until further proceedings on the merits can be held. See [Bonnell v. Lorenzo](#), 241 F.3d 800, 808 (6th Cir.2001). Whether to grant such relief

is a matter within the discretion of the district court. See [Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.](#), 511 F.3d 535, 540 (6th Cir.2007). The same factors are considered in determining whether to grant a request for either a temporary restraining order or a preliminary injunction. See [Ohio Republican Party v. Brunner](#), 543 F.3d 357, 361 (6th Cir.2008). Those factors are (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of the injunction. [Certified Restoration](#), 511 F.3d at 542.

“Although no one factor is controlling, a finding that there is simply no likelihood of success on the merits is usually fatal.” [Gonzales v. National Bd. of Medical Examiners](#), 225 F.3d 620, 625 (6th Cir.2000). “None of these factors, standing alone, is a prerequisite to relief; rather, the court should balance them.” [Golden v. Kelsey-Hayes Co.](#), 73 F.3d 648, 653 (6th Cir.1996). The Court reiterates that preliminary injunctive relief is an extraordinary remedy that should be granted only if the movant carries his burden of proving that the circumstances clearly demand it. [Overstreet v. Lexington-Fayette Urban County Gov’t](#), 305 F.3d 566, 573 (6th Cir.2002). Applying the factors, the Court does not find that injunctive relief is appropriate at this juncture.

1. It is not clear that Fabreeka has a strong likelihood of success on the merits.

*3 Fabreeka is adamant that it has a strong likelihood of success on the merits. See Dkt. No. 5 at 20–25. However, Fabreeka only focuses on its state law claims and does not focus on its only claim pursuant to federal law, which was brought under the CFAA. In [American Furukawa, Inc. v. Hossain](#), another case before this Court, the Court conducted a comprehensive analysis of the CFAA. — [F.Supp.3d](#). —, 2015 WL 2124794, at *5 (E.D.Mich. May 6, 2015). In [Furukawa](#), this Court found that the following standards must be met to set forth claims under the CFAA:

[T]o set forth a proper civil claim under the CFAA based on a violation of Subsection (a)(2), Furukawa must show that Hossain: (1) intentionally accessed a computer, (2) without authorization or exceeding authorized access, and that he (3) thereby obtained information (4) from any protected computer (if the conduct involved an interstate or foreign

Fabreeka International Holdings, Inc. v. Haley, Not Reported in F.Supp.3d (2015)

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communication), and that (5) there was loss to one or more persons during any one-year period aggregating at least \$5,000 in value. See *LVRC Holdings LLC v. Brekka*, 581 F.3d 1127, 1132 (9th Cir.2009).

To successfully bring an action under the CFAA based on a violation of Subsection (a)(4), Furukawa must show that Hossain: (1) accessed a “protected computer,” (2) without authorization or exceeding such authorization that was granted, (3) “knowingly” and with “intent to defraud,” and thereby (4) “further [ed] the intended fraud and obtain[ed] anything of value,” causing (5) a loss to one or more persons during any one-year period aggregating at least \$5,000 in value. See *id.* (citing *P.C. Yonkers, Inc. v. Celebrations the Party and Seasonal Superstore, LLC*, 428 F.3d 504, 508 (3d Cir.2005)).

Furukawa, 2015 WL 2124794, at *5. In *Furukawa*, the Court adopted a narrow definition of the CFAA’s “without authorization” language, finding that the Sixth Circuit has adopted the Ninth Circuit’s approach to find that “[n]othing in the CFAA suggests that a defendant’s liability for accessing a computer without authorization turns on whether the defendant breached a state law duty of loyalty to an employer.” *Id.* at *9 (citing *Brekka*, 581 F.3d at 1135); see also *id.* (referencing the Sixth Circuit decision in *Pulte Homes, Inc. v. Laborers’ International Union of North America*, 648 F.3d 295 (6th Cir.2011)). However, the Court did not adopt a narrow definition of the CFAA’s “exceeds authorization” language, and relied on the unambiguous definition provided by Congress to find that “ ‘an individual who is authorized to use a computer for certain purposes but goes beyond those limitations ... has ‘exceed [ed] authorized access.’ ” *Id.* (quoting *Pulte Homes*, 648 F.3d at 304, which quotes *Brekka*, 581 F.3d at 1133)).

Keeping these standards in mind, the Court finds that it is not immediately clear that Fabreeka has a strong likelihood of success on the merits after reading its briefs and listening to its argument. The CFAA is briefly mentioned once in Plaintiff’s Motion for Temporary Restraining Order, and the analysis is conflated with Fabreeka’s MUTSA argument. See generally Dkt. No. 5 at 15. For the most part, Fabreeka exclusively focuses on Haley’s breach of the confidentiality agreement and state law claims under the MUTSA. See generally Dkt. Nos. 4, 5; cf. *Furukawa*, 2015 WL 2124794, at *9 (quoting *Brekka*, 581 F.3d at 1135 and referencing *Pulte Homes*, 648 F.3d at 304 to note that “[n]othing in the CFAA suggests that a defendant’s liability for accessing a computer without authorization turns on whether the defendant breached a state law duty of loyalty to an employer.”). Similarly, at the hearing Plaintiff only spoke

broadly about the claim under the CFAA after being pressed by the Court. Cf. Dkt. No. 1 at ¶¶ 47–53 (merely laying out the elements of the CFAA). In light of these facts, the Court finds that this factor does not support the issuance of preliminary injunctive relief at this time.

2. Fabreeka may suffer irreparable injury without injunctive relief.

*4 To satisfy the second factor, a party must demonstrate that unless the injunction is granted, it will suffer “ ‘actual and imminent harm’ rather than harm that is speculative or unsubstantiated.” *Abney v. Amgen, Inc.*, 443 F.3d 540, 552 (6th Cir.2006). “Loss of customer goodwill and fair competition can support a finding of irreparable harm. Such losses often amount to irreparable injury because the resulting damages are difficult to calculate.” *Superior Consulting Co. v. Walling*, 851 F.Supp. 839, 847 (E.D.Mich.1994) appeal dismissed and remanded sub nom. *Superior Consultant Co. v. Walling*, 48 F.3d 1219 (6th Cir.1995) (concluding that the use of confidential information concerning the “specific needs and service provided to the plaintiff’s clients” would enable the defendant “effectively to solicit [the plaintiff’s] clients, and to undercut [the plaintiff’s] rates while providing the same services provided by [the plaintiff].”). In light of this standard, the Court is persuaded that Fabreeka may suffer irreparable injury without the injunction. See Dkt. No. 5 at 25–27; Cf. *Lowry Computer Products, Inc. v. Head*, 984 F.Supp. 1111, 1116 (E.D.Mich.1997) (“If [Defendant] is working for a direct competitor in a similar area, her knowledge is bound to have a significant adverse impact on [Plaintiff’s] business. The injury will be irreparable if [Plaintiff] loses customers it has spent years and significant resources obtaining.”).

3. The final two factors generally support injunctive relief in this situation.

The final two factors “depend mainly on the amount of confidential information that defendant possesses and might be reasonably expected to divulge [.]” *Lowry*, 984 F.Supp. at 1116. Whether injunctive relief would cause substantial harm to others centers on the balance of hardship between the parties. See *Walling*, 851 F.Supp. at 847. Obviously, precluding Mr. Haley from his current employment is likely to cause substantial harm to Mr. Haley. However, he would not be precluded from working altogether. Cf. *Lowry*, 984 F.Supp. at 1116

Fabreeka International Holdings, Inc. v. Haley, Not Reported in F.Supp.3d (2015)

2015 WL 5139606

("[D]efendant is not precluded from selling other computer products, and appears to be a well-qualified sales person."). Moreover, this court has determined that the enforcement of non-compete agreements is in the public interest. *Walling*, 851 F.Supp. at 848. Accordingly, the Court finds that these two factors generally support injunctive relief in this situation.

4. The balancing of the factors weighs against the injunctive relief at this time.

The Court reiterates that "[n]one of these factors, standing alone, is a prerequisite to relief; rather, the court should balance them." *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648, 653 (6th Cir.1996). However, the Court emphasizes that "[a]lthough no one factor is controlling, a finding that there is simply no likelihood of success on the merits is usually fatal." *Gonzales v. National Bd. of Medical Examiners*, 225 F.3d 620, 625 (6th Cir.2000).

Here, the Court emphasizes that Fabreeka's CFAA claim is the only federal claim before the Court. If Fabreeka does not demonstrate a likelihood of success on this claim, this Court would dismiss the case and avoid a needless decision of state law. See *Gaines v. Blue Cross Blue Shield of Michigan*, 261 F.Supp.2d 900, 905 (E.D.Mich.2003) (citations omitted) (noting that in determining whether to exercise its supplemental jurisdiction, this Court must consider "judicial economy, convenience, fairness and comity, and also avoid needless decisions of state law."); see also *Widgren v. Maple Grove Tp.*, 429 F.3d 575, 586 (6th Cir.2005) (quoting *Musson Theatrical, Inc. v. Fed. Express Corp.*, 89 F.3d 1244, 1254-55 (6th Cir.1996) to state: "When all federal claims are dismissed before trial, the balance of considerations will usually point to dismissing the state law claims[.]").

Although the other three factors weigh in favor of issuing injunctive relief, the Court will deny Plaintiff's Motion for Temporary Restraining Order [4], because Fabreeka has not sufficiently explained the basis for its CFAA claim. Because the other factors have been shown, the Court is not foreclosing future injunctive relief at a later date. The Court will wait to hear from the Defendants and hear a full argument before deciding to grant future injunctive relief.

B. Expedited Discovery Will be Taken Under Advisement

*5 With respect to expedited discovery, the Court notes that Rule 26 of the Federal Rules of Civil Procedure authorizes the Court to permit discovery prior to the Rule 26(f) conference of the parties. See *Arista Records, LLC v. Does 1-15*, No. 2:07-CV-450, 2007 WL 5254326, at *2 (S.D. Ohio May 17, 2007). Expedited discovery may be granted upon a showing of good cause. *Id.* Plaintiff, as the party seeking expedited discovery, bears the burden of demonstrating good cause. See *Qwest Communications Int'l Inc. v. Worldquest Networks, Inc.*, 213 F.R.D. 418, 419 (D.Colo.2003) (citing relevant authority).

"Good cause may be found where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party." *Arista Records, LLC*, 2007 WL 5254326, at *2 (quoting *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D.Cal.2002)). In determining whether good cause exists, the Court may also consider whether evidence may be lost or destroyed with time and whether the scope of the proposed discovery is narrowly tailored. See *Caston v. Hoaglin*, Civ. No. 2:08-cv-200, 2009 WL 1687927, at *2 (S.D. Ohio June 12, 2009).

Throughout its briefs and at the hearing, Fabreeka has put forth a convincing argument that good cause exists for expedited discovery. Indeed, as mentioned previously, the majority of factors supporting injunctive relief have been shown, such that the Court is not foreclosing future injunctive relief. If Fabreeka sufficiently explains its CFAA claim, Fabreeka will likely need expedited discovery in order to make its argument for a preliminary injunction. Accordingly, the Court will Order Defendants to show cause in writing why this Court should not grant Plaintiff's motion for Expedited Discovery [6] and/or issue a preliminary injunction. The Court will cover both of these topics at the September 10, 2015 hearing.

IV. CONCLUSION

For the reasons discussed, the Court **HEREBY DENIES** Plaintiff's Motion for Temporary Restraining Order [4]. Additionally, the Court **HEREBY ORDERS** Defendants to Show Cause why this Court Should not Grant Plaintiff's Motion for Expedited Discovery [6] and/or Issue a Preliminary Injunction. Defendants shall show cause *in writing no later than September 8, 2015*.

IT IS SO ORDERED.

Fabreeka International Holdings, Inc. v. Haley, Not Reported in F.Supp.3d (2015)

2015 WL 5139606

All Citations

Not Reported in F.Supp.3d, 2015 WL 5139606

End of Document

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EXHIBIT 8

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ARAB AMERICAN CIVIL RIGHTS
LEAGUE, et al.,

Plaintiffs,
v.

Case No. 17-10310
Honorable Victoria A. Roberts

DONALD TRUMP, et al.,

Defendants.

**ORDER DENYING DEFENDANTS' MOTION TO EXTEND
TIME FOR ISSUANCE OF A SCHEDULING ORDER [Doc. 77]**

I. INTRODUCTION and BACKGROUND

Plaintiffs' lawsuit challenges the constitutionality of President Donald Trump's Executive Order No. 13,780, issued on March 6, 2017 and entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States" (the "Executive Order"). See 82 Fed. Reg. 13209 (Mar. 6, 2017). Among other things, the Executive Order restricts the entry into the United States of nationals from Iran, Libya, Somalia, Yemen, Sudan and Syria for 90 days and suspends entrants from the U.S. Refugee Admissions Program for 120 days.

On March 16, 2017, Plaintiffs filed a second amended complaint and a motion to expedite discovery. The Court denied Plaintiffs' motion without prejudice on March 31.

On April 6, Plaintiffs served limited discovery requests on Defendants, comprised of five interrogatories and five document requests. The parties also conferred on April 6; however, they dispute whether the meeting was a Rule 26(f) conference. On April

13, 2017, the Court held a telephonic status conference regarding discovery, case management issues and upcoming motions the parties planned to file.

On April 17, 2017, Defendants filed a motion to dismiss [Doc. 76] and the underlying motion to extend time for issuance of a scheduling order under Rule 16(b) [Doc. 77]. The motion to extend is fully briefed.

For the following reasons, Defendants' motion to extend time for issuance of a scheduling order [Doc. 77] is **DENIED**.

II. DISCUSSION

Under Federal Rule of Civil Procedure 16(b), the Court must issue a scheduling order "after receiving the parties' report under Rule 26(f)" or "after consulting with the parties' attorneys . . . at a scheduling conference." Fed. R. Civ. P. 16(b)(1). The Court must enter a scheduling order "as soon as practicable" and – unless there is good cause for delay – "within . . . 60 days after any defendant has appeared." Fed. R. Civ. P. 16(b)(2).

Defendants appeared February 2, 2017; sixty days from that date was April 3, 2017. Because 60 days has passed since Defendants appeared, and the April 13 status conference qualifies as a consultation with the attorneys for purposes of Rule 16(b)(1), the Court must now enter a scheduling order unless good cause exists. See Fed. R. Civ. P. 16(b)(1) and (2). See also *Lasisi v. Follett Higher Educ. Grp., Inc.*, 598 Fed. Appx. 437, 441 (7th Cir. 2015) ("[A] district judge may issue a scheduling order without first receiving the parties' report under Rule 26(f) so long as the judge consults 'with the parties' attorneys and any unrepresented parties.'" (quoting Fed. R. Civ. P. 16(b)(1)(B))).

Defendants argue good cause exists to extend the time for entry of a scheduling order, because: (1) their pending motion to dismiss is either fully dispositive of the case, such that no discovery will be necessary, or partially dispositive, such that the issues for which discovery is necessary will be narrowed; (2) the motion to dismiss raises jurisdictional matters (i.e., issues of standing and ripeness) which the Court should decide before anything else; (3) the Court must first find that “it can look beyond the Order’s facially neutral content and bona fide official purpose” before any of the discovery Plaintiffs seek would be relevant; (4) discovery is unnecessary for Plaintiffs to file a motion for preliminary injunction based on the amount of information in the public domain, as demonstrated by plaintiffs in two similar cases who challenged the Executive Order and successfully moved for preliminary injunction without the benefit of discovery; and (5) the discovery sought will implicate complex privilege issues and a constitutional issue of first impression concerning information related to a president-elect’s activities.

Plaintiffs partially oppose the motion. They “agree that the Court can defer entering a full pretrial scheduling order,” but say that they should be allowed to “proceed immediately with the very limited discovery they seek to support their motion for preliminary injunction, so that the remainder of the case can move forward without further delay.” Plaintiffs argue that it is “highly unlikely” that Defendants’ motion to dismiss will completely dispose of the case, and point out that “even if some of the claims of some of the Plaintiffs are ultimately dismissed the case will move into discovery as long as [at least] a single claim from a single plaintiff remains viable.”

[Doc. 78, PgID 1081 (citing *ACLU of Ky. v. Grayson Cnty.*, 591 F.3d 837, 843 (6th Cir. 2010) (“The presence of one party with standing is sufficient.”))].

The Court agrees with Plaintiffs. After a cursory review of Defendants’ motion to dismiss, the Court is not convinced that it will be fully dispositive of this case. As Plaintiffs state, as long as a single claim survives, they will be entitled to discovery. Moreover, because Plaintiffs currently seek only limited discovery that will be relevant to any claim, the Court finds that the ruling on the motion to dismiss will not impact whether the limited discovery will be relevant to the surviving claim(s). In that sense, it would not make sense to delay discovery and, as a result, delay the progress of the entire case.

Similarly, because the Court is convinced – albeit not one-hundred percent certain – that at least one plaintiff will have standing, it is appropriate to allow the discovery process to begin in the limited nature that Plaintiffs suggest. Although Defendants are correct that “[p]roceeding to the merits while Plaintiffs’ standing (and thus, the Court’s jurisdiction) is in doubt ‘carries the courts beyond the bounds of authorized judicial action,’” [Doc. 77, PgID 1066 (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998))], that does not mean there can be no discovery – especially where the discovery could relate to issues of standing and/or ripeness.

Defendants’ third argument – i.e., that the Court must first determine that it can look beyond the face of the Executive Order before any of the discovery sought would be relevant – may be true, but it does not provide good cause to delay entry of a scheduling order. The courts that have considered preliminary injunction motions related to the Executive Order have uniformly found that statements by Trump and his

advisors are relevant to determining the purpose of the Executive Order. See *Hawai'i v. Trump*, No. 1:17-cv-00050, --- F. Supp. 3d ---, 2017 WL 1011673, at *12-16 (D. Haw. Mar. 15, 2017) (rejecting the government's argument that the court may not look beyond the Executive Order's "neutral text . . . to evaluate purpose" and noting that: "A review of the historical background here makes plain why the Government wishes to focus on the Executive Order's text, rather than its context. The record before this Court is unique. It includes significant and un rebutted evidence of religious animus driving the promulgation of the Executive Order and its related predecessor."); *Int'l Refugee Assist. Proj. v. Trump*, No. 8:17-cv-00361-TDC, --- F. Supp. 3d ---, 2017 WL 1018235, at *11-16 (D. Md. Mar. 16, 2017) (rejecting the government's argument and finding that considering statements "made by President Trump and his advisors[] before his election, before the issuance of the First Executive Order, and since the decision to issue the Second Executive Order. . . is appropriate because courts may consider 'the historical context' of the action and the 'specific sequence of events' leading up to it."). Even the case Defendants rely upon to argue that the Court must confine its analysis to the Executive Order's "facially neutral content and bona fide official purpose" undercuts their position. See *Sarsour v. Trump*, No. 1:17-CV-00120, --- F. Supp. 3d ---, 2017 WL 1113305, at *11 (E.D. Va. Mar. 24, 2017) ("[T]he Court rejects the Defendants' position that since President Trump has offered a legitimate, rational, and non-discriminatory purpose stated in EO-2, this Court must confine its analysis of the constitutional validity of EO-2 to the four corners of the Order."). Like every other court that has addressed the issue, this Court finds that it is not limited to the four corners of the Executive Order in determining its constitutionality.

Although three Courts ruled on preliminary injunction motions without the benefit of discovery, that does not mean Plaintiffs are required to proceed without discovery. Moreover, because the two preliminary injunctions already entered are based on the information in the public domain, it would be redundant for Plaintiffs to seek a preliminary injunction based on the same evidence of animus. Plaintiffs are entitled to litigate their own case; and here, where there is no other reason to prevent the limited discovery Plaintiffs initially seek, the Court will not require them to move for a preliminary injunction without discovery, nor will it delay the start of discovery indefinitely.

Moreover, in light of the other findings – especially the finding that the motion to dismiss will not dispose of the case entirely – Defendants’ concern that the discovery sought will implicate several complex privilege issues, including a matter of first impression pertaining to information related to a president elect’s activities, weighs in favor of allowing Plaintiffs to initiate limited discovery immediately. Because these issues will inevitably be raised, there is no point in delaying discovery and delaying the progress of this case, just to avoid having to decide these issues now.

In addition, Plaintiffs say they have carefully crafted their initial discovery to avoid executive privilege; they seek information pre-dating the election and information after the election but before Trump’s inauguration. On numerous occasions in other cases challenging the Executive Order, the government has argued that Trump’s statements before he became President “may not be considered because they were made outside the formal government decisionmaking process or before President Trump became a government official.” See, e.g., *Int’l Refugee Assist. Proj.*, 2017 WL 1018235, at *14.

Defendants cannot repeatedly make that argument, only later to assert an executive privilege objection to discovery regarding information related to pre-inauguration Trump. The Court believes Defendants exaggerate the number of legitimate objections they will have and the complexity of the issues those objections will raise.

Defendants fail to establish that good cause exists to prevent Plaintiffs from immediately engaging in discovery on a limited basis. Therefore, the Court will enter a scheduling order, pursuant to Rule 16(b), and allow Plaintiffs to conduct the limited discovery they propose.

III. CONCLUSION

Defendants' motion to extend time for issuance of a scheduling order under Rule 16(b) [Doc. 77] is **DENIED**.

Plaintiffs suggest the following two-stage approach to discovery:

First, the parties would proceed only with initial disclosures and the limited discovery that Plaintiffs served on April 6. On the basis of the discovery obtained, . . . Plaintiffs will be prepared to file a motion for a preliminary injunction. Second, within 21 days of the Court's ruling on the Defendants' motion to dismiss, the parties would confer and submit a joint report to the Court regarding the remainder of the case, including with respect to briefing of a motion for a preliminary injunction.

[Doc. 78, PgID 1087-88]. They request that the Court enter a scheduling order requiring: (1) "initial disclosures to be exchanged within one week of entry of the Scheduling Order"; (2) "Defendants to produce the single document responsive to Document Request 1 (the Giuliani memo) within one week of entry of the Scheduling Order"; and (3) "Defendants to respond to Document Requests 2-4 and Interrogatories 1-5 within three weeks of entry of the Scheduling Order." [*Id.*, PgID 1088].

The Court finds this timeline reasonable. The parties must exchange initial disclosures by **May 19, 2017**. Regarding the discovery requests Plaintiffs served on Defendants on April 6, Defendants must produce the document responsive to document request 1 by **May 19, 2017**, and they must respond to the remaining discovery requests by **June 2, 2017**.

Of course, Defendants may object to requests as allowed by the Federal Rules of Civil Procedure. To handle objections, the Court adopts the following procedure to streamline the process. If Defendants object to any discovery request, they must set forth their reasoning and legal justification, with full citations and argument, in the response to Plaintiffs. If Plaintiffs file a motion to compel regarding a specific discovery request, they must include the Defendants' full objection to that request as an exhibit, which the Court will treat as the Defendants' brief for deciding the motion. Defendants may not file a response brief. If the Court needs additional briefing, it will request supplemental briefing.

Like always, the parties must work together in good faith in an attempt to resolve any discovery dispute. Failure to confer and interact reasonably and in good faith may result in sanctions.

IT IS ORDERED.

s/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: May 11, 2017

EXHIBIT 9

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4M* O#+*-@ &*4*+4%2+ 29 #N%+1 k>M*+I 4M* @ #-
-*N*#1*& -*\K%-*1 4M#4 4M* @ ?* &*4#%+*& #4 4M* 4%O*
29 -*N*#1*(hUb <)*=\$>_-)?\$%#) 0- @?5=+/ jee](BKDD(
EYES. EYEe T>(")(#1M(EjieU TgLM* DN#%+ O*#+%+, 29
4M%1 N#+,K#,* %1 4M#4 %4 #DDN%*1 %OO**N@ #94*- -*N*#1*
9-2O %+3#-3*-#4%2+. +24 42 #N%+1 -*N*#1*& O#+@ @*#-1
#-N%(hUb A'35*)5\$%+ eSW](BKDD(Q& #4 QdP TBC)==\$
'D &'()* m%1n 32+4#-@ 42 4M* DN#%+ N#+,K#,* 29 4M*
14#4K4*(LM* 3N*#- DK-D21* 29 X EQQPT3UTEU %1 42 #K4M2-%7*
4M* O#+*-@ &*4*+4%2+ 29 %OO%, -#41 >M2 M#\$*
32OO%44*& 299*+1*1 *+KO*-#4*& >%4M%+ X EQQPT3UTEU
TOU!T**U %OO**N@ KD2+ 4M*%- -*N*#1* 9-2O 3-%O%+N
1*+4*+3*1 92- 4M21* 1#O* 299*+1*1.h *\$*+ %9 4M* @ #-
14%N 1*-\$%+, 4M21* 1*+4*+3*1 gK+&*- D#-2N*. 1KD*-\$%1*&
-*N*#1*. 2- D-2?#4%2+(hU T*ODM#1%1 %+ 2%, %+#NU(

)M*N* 24M*- 32K-41 M#\$* 32+3N%K*& 4M#4 g>M*+h 3#+
#N12 O*#+ g#4 #+@ 4%O* #94*-.h 4M* H2K-4 &*3N%+*1 42
92N2> 4M%1 +2+!?!&#%+, #K4M2-%4@ (@%% E*/ 0- A34%\$*+
PWR](d& deS TY4M H%-(QREQu @F90)5# 0- 2==*\$%F G%#%\$)9
'D =/% H5%-%, @)=-%*+ eEY](d& ESR Td& H%-(QREDU(LM*
?-2#& %4*+D-4#4%2+ 29 g>M*+ (((-*N*#1*&h #&\$234*&
?@ 4M* 52\$*-+O*+4 #+& #&2D4*& ?@ 4M* LM%-& #+&
J2K-4M H%-3K%4 H2K-41 29 ODD*#N1 9%+&1 +2 1KDD2-4
9-2O 4M* 14#4K42-@ 4*a4 +2- 9-2O 4M* H2+, -*11%2+#+
%+4*+4. 32+4#-@ 42 4M* 52\$*-+O*+4_1 #11*-4%2+1(/9
H2+, -*11 %4*+&*& 4M#4 O#+*-@ &*4*+4%2+ ?* #DDN%*&
#4 #+@ 4%O* #94*- #+ %&%\$%&K#N >#1 -*N*#1*&. %4 32KN&
M#\$* K1*& N#+,K#,* 32+1%14*+4 >%4M 4M%1 %4*+4. 1K3M #1
g#94*- 4M* #N%+ %1 -*N*#1*&h 2- g-*, #-&N*11 29 >M*+ 4M*
#N%+ %1 -*N*#1*&(h @%% I3%6),>J345*+ dEe](BKDD(Q&
#4 EQdR(]K-4M*-O2-*. %9 4M%1 H2K-4 >*- 42 #&2D4
4M* 52\$*-+O*+4_1 D-2D21*& %4*+D-4#4%2+ 29 g>M*+h
#1 M#\$%+, +2 %OO** 4*OD2-#N N%O%4. 4M* g>M*+
4M* #N%+ %1 -*N*#1*& N#+,K#,*h ?*32O*1 K+*+3*11#-@
1K-D1K1*,* (@%% K)9,%6+ WeY](BKDD(Q& #4 EQPS(<#14N@.
4M* H2K-4_1 %4*+D-4#4%2+ 32OD2-41 >%4M H2+, -*11_1

%4*+4 %+ D#11%+, X EQQPT3U 42 g&*4#%+ 4M* O214 &#+, *-2K1
3-%O%+N1 ?*3#K1* 4M*%- %OO** &*4*+4%2+ D-2\$%&*1
O2-* D-24*34%2+ 42 4M* 32OOK+4@ (h ",- T3%4%+, L%?*\$%
0- 15?+ SdW A(B(SER. EQd B(H4(EeRW. ESS <(G&(Q& eQY
TQRRdU(

LM*-92-*. 32+1%14*+4 >%4M 1/*,\$ #+& 4M* O#^2-%4@
29 32K-41 4M#4 M#\$* -*\$%>*& 4M%1 %11K*. 4M* g>M*+
4M* #N%+ %1 -*N*#1*&h N#+,K#,* %1 K+O%?,K2K1 #+&
32+9%+*1 X EQQPT3U_1 #DDN%3#4%2+ 42 #N%+1 4#7*+ %42
/HG 3K142&@ %OO**N@ KD2+. 2- >%4M%+ #- -*#12+?N*
D*-%2& 29 4%O* 4M*-*#94*-. 4M* #N%+_1 -*N*#1* 9-2O
3-%O%+N %+3#-3*-#4%2+(1/*,\$+ Pje](BKDD(Q& #4 eejo
WRb K)9,%6+ WeY](BKDD(Q& #4 EQPSb I3%6),>J345*+
dEe](BKDD(Q& #4 EQdRb A'35*)5\$%+ eSW](BKDD(Q& #4
QdPb <)*=\$>_-)?\$%#)+ jee](BKDD(#4 EYEe(]K-4M*-.
>M%N* 4M* H2K-4 -*32,+Z*1 4M* &%99%3K14@ >%4M -*1D*34
42 &*4*-O%+%, # -*#12+?N* 4%O* D*-%2&. 4M*-* 3#+ ?*
+2 1*-%2K1 \K*14%2+ 4M#4 *N*\$*+ @*#-1 %1 K+ -*#12+?N*(
M)),5+ QRRS >< dESedee. #4 fEoQ. QRRS A(B(**%14(
<G /B dEjEY. #4 fs T32+3N%K%+, 4M#4 # 4>2 @*#-
,#D ?*4>*** -*N*#1* 9-2O 3-%O%+N 3K142&@ #+& /HG
&*4*+4%2+ >#1 K+ -*#12+?N* 92- X EQQPT3U DK-D21*1Ub
I3%6),>J345*+ dEe](BKDD(Q& #4 EQQS TO#+*-@
&*4*+4%2+ 29 X EQQPT3U %+#DDN%3#?N* #94*- 4M*-* @*#-1
9-2O -*N*#1* 9-2O 3K142&@Ub 1/*,\$+ Pje](BKDD(Q& #4
eWR T9%+&%, g3N*#-N@ K+ -*#12+?N* &N%h %+ 4#7%+, 4M*
D*4%4%2+*- %42 3K142&@ 92K- @*#-1 #94*- M%1 -*N*#1* 9-2O
%+3#-3*-#4%2+(U

1? &*45*6%7*85+ jWd](BKDD(Q& #4 jESoEP(

LM* H2K-4 #, -*1 >%4M 4M* #+N@1%1 #+& 32+3N%K1%2+ %+
&*45*6%7*85 #+& 1/*,\$- 6*4%4%2+*- %1 +24 1K?^*34 42
O#+*-@ &*4*+4%2+ K+&*- X EQQPT3U(J* >#1 +24 4#7*+
%42 3K142&@ %OO**N@ KD2+ M%1 -*N*#1* 9-2O 14#4*
3K142&@ 2- >%4M%+ #- -*#12+?N* 4%O* 4M*-*#94*- (C#4M*-.
6*4%4%2+*- >#1 4#7*+ %42 3K142&@ #4 4M* ?2-&* 2\$*- 92K-
@*#-1 #94*- 1*-\$%+, M%1 14#4* 32K-4 32+\$%34%2+(6*4%4%2+*- %1
%+ *99*34 ?*%+, &*4#%+*& K+&*- X EQQPT#U >M%3M D*-O%41 #
-*&*4*-O%+4%2+ 29 3K142&@ %4 4M* 92-O 29 # ?2+& M*#-#+, (

/F(H2+3N%K1%2+

J2- 4M* -*#12+1 14#4*& #?2\$*. 4M* D*4%4%2+ %1 5CO=LG"(
LM%1 O#44*- %1 CG80=*G** 42 4M* ***4-2%4 /OO%, -#4%2+
H2K-4 92- 4M* N%O%4*& DK-D21* 29 D-2\$%&%, 6*4%4%2+*- >%4M
?2+& M*#-#+, K+&*- X EQQPT#U(/9 4M* %OO%, -#4%2+ 32K-4
9#N1 42 D-2\$%&* 6*4%4%2+*- >%4M # ?2+& M*#-#+, >%4M%+ 4*+

#\$%&'((2*) +\$,-'\$/11125, 42-5 '\$% 6\$74-17 85/-,9-1-34, <-4 ->-4% 15***

TERU &#@1 29 4M%1 2-&*-. C*1D2+&*+4 1M#NN -*N*#1* 6*4%4%2+*-
9-20 3K142&@(
"88 /#*#/\$&)

B I I C "GCG"(=24 C*D2-4*& %+ J(BKDD(d&. QRES)< EjSYydP

Footnotes

- 1 Upon review of the parties' papers, the Court deems this matter appropriate for decision without oral argument. See [Fed.R.Civ.P. 78\(b\)](#); E.D. Mich. LR 7.1(f)(2).
- 2 Given the current conditions in Yemen, it is unlikely that Petitioner will ever see Yemen.
- 3 [Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.](#), 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984).
- 4 Respondent notes that the First Circuit has held that the government loses its authority to mandatorily detain a person who is not taken into custody immediately upon release from criminal custody or within a reasonable time thereafter. However, Respondent notes that the First Circuit's decision has been withdrawn pending en banc review. See [Castaneda v. Souza](#), 769 F.3d 32 (1st Cir.2014).

EXHIBIT 10

#\$%&'(\$)+ , - . / 0 1 2 3 4 5 6 7 8 9 ; < =



"#\$%&'(\$)+ , - . / 0 1 2 3 4 5 6 7 8 9 ; < =

5&6- . 2#7 8&9 ; \$ <946*4 0- >264*9 @=5< / =? AB2k) CD? CEFG

#\$%&'(\$)+ , - . / 0 1 2 3 4 5 6 7 8 9 ; < =

, - . / 0 1 2 &230.45 6704078- 73 69;;2-0./ 4<47.4= .2>

?-702@ A04023 B730;760 C89;00 E>B> F2-096G/0

H8;012;- B7<7378-0 40 C8<7-I08->

J4-92. B2 K2393 L4M7.74 N, AONP, Q207078-2;

E@54;@ QNPHB'ED 20 4.> N23R8-@2-03>

C7<7. H8> %%S#%TS&, USCKA>

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"##\$%&'(\$)+ , - . / 0 1 2 3 4 5 6 7 8 9 ; < =

H2#4' 1= A66#IT? >JH2\$-4? H2*+4 K 1*4#2? L*Mk60k))#?
 ''(? %9-2)#6 N*9? %9k0- . *? PL? Q-22'' A- L#0k4? P2&6
 R= H#44#'? <#44#2 K H)*0S? LLT? 8-69k4. '*4? 5%? I*2
 T#''k*4#2=

%9#2\$) 5= U*2. -4? V=@= A''*24#Sj6 >IIk0#? L#Wk4. '*4?
 ''(? N* ; #2' 5= /#-0#? HM2)k4. '*4? ''(? I*2 N#6B*47#4'6=

"#\$%&'(\$)+ , - . / 0 1 2 3 4 5 6 7 8 9 ; < =

%A/5A%R <= @UPIX? V4k' #7 @' - ' #6 U- . k6'2- ' # <M7. #=

2 >4 @#B'#3; #2 C? CEFF? T#''k*4#2? '92*M. 9 0*M46#)?
 l&)#7 - T#''k*4 I*2 82k' *IX- ; # - 6 %*2BM6 M47#2 CY V=@= %=
 Z CCDF [N= F\= >4 >0* ; #2 J? CEFF? N#6B*47#4'6 I) #7 -
 N#M24 '* '9# T#''k*4 [N= FY\? '* +9k09 T#''k*4#2 I) #7
 - N#B)\$ [N= CF\= N#6B*47#4' 8*4. -)6* I) #7 - U*'k*4
 '* 5k63k66 [N= F^\? -47 T#''k*4#2 9-6 4*+ 2#6B*47#7 [N=
 CC\= X-0&4. -) 2#)#0-4' 7*0M3#4'6 ; #I*2# '9# %*M2? '9#
 3-''#2 k6 4*+ 2kB# I*2 0*46k7#2- 'k*4 -47 '9# k66M-40# *I -
 N#B*2' -47 N#0*33#47- 'k*4= CY V=@= % Z JGJ[-\= ; *2 '9#
 2#-6*46 6# 'I*2'9 ; #) *+? k' k6 %3\$00* &+ '9- ' '9# 5k6'2k0'
 %*M2' + '& (N#6B*47#4' 8*4. j6 U*'k*4 '* 5k63k66? 4%&#
 l& 5*%# T#''k*4#2j6 T#''k*4 I*2 82k' *IX- ; # - 6 %*2BM6 '*
 '9# #W' #4' 9# 2#_M#6'6 '9- ' '9# P33k. 2- &*4 %*M2' 9*)7
 -4 k47k0k7M-)k' #7 ; *47 9#-2&4. BM26M-4' '* Y V=@= % Z
 FCCJ[-? -47 + '& (l& 5*%# 9k6 2#_M#6' I*2 k33#7k- ' # 2#)#-6#
 -47 -''*24#S I##6=

67 ."89;

I9# 2#)#0-4' I-O'6 -2# M47k6BM'#7= T#''k*4#2? - JEa
 \$#-2a*)7 0k&' #4 *I '9# 5*3k4k0-4 N#BM;)k0? 9-6 ; ##4
 -)-+IM) B#23-4#4' 2#6k7#4' *I '9# V4k' #7 @' - ' #6 6k40#
 F^^^= [N= DaF? FYab\= P4 /#0#3; #2 CEEb? 9# B)#7 .Mk)'S
 &4 '9# V4k' #7 @' - ' #6 5k6'2k0' %*M2' I*2 '9# 5k6'2k0' *I
 U&44#6*'- '* -4 P4I*23- 'k*4 09-2. k4. 9k3 +k'9 -k7k4.
 -47 - ; #'&4. - 0*46Bk2-O\$ '* 0k*)- ' # Y V=@= % Z FGcy? +9k09
 B2*9k& ; &'6 k3B*2' - 'k*4 *I -)k4#6 k4'* '9# V4k' #7 @' - ' #6 I*2
 B2*6'k'M'k*4 -47 *'9#2 k33*2-) BM2B*6#6= T#''k*4#2j6 2*)#
 &4 '9# 0*46Bk2-O\$ + -6 7k6'2k& ; M'k4. 0*47*36 '* ; M6k4#66#6
 9# S4# + + #2 ; 2*9#)6= [N#S\= A' 9k6 6#4' #40k4. ? T#''k*4#2
 2#0#k0#7 - ' + ' !) #0#) 2#7M0'k*4 k4 9k6 *II#46#) #0#) I*2 ; #k4.
 - 3k4*2 B-2'k0B-4' = [N= DaF\= I9# %*M2' -00#B'#7 9k6
 T)# - -47 #4' #2#7 <M7. 3#4' ? 6#4' #40k4. 9k3 '* 'k3#6#20#7?
 +9k09 + -6 I*2 7-\$6 k40-20#2- 'k*4 B)M6 k0# 3*4'96 - ' -
 9-)I+ - \$ 9*M6#- [N= DaJ\=

>4 U-209 CF? CEFE? k0# 3*4'96 -I' #2 9k6 02k3k4-) 0-6#
 0*40)M7#7 -47 ' + * \$#-26 -47 ' #4 3*4'96 -I' #2 ; #k4.
 2#)#-6#7 *4 ; *47? T#''k*4#2 + -6 09-2. #7 +k'9 ; #k4.
 6M; c#0' '* 2#3*0-) I*2 9-0k4. 0*33k' #7 - 02k3# *I
 3*2-) 'M2B'k'M7# M47#2 Y V=@= % Z FFYC[-\C\A\k\P\
 -47 + -6 7#'-&4#7 k4 '9# 0M6'*7\$ *I '9# P33k. 2- &*4
 -47 /- 'M2-)k' - '&*4 @#20k0# [dP/ @e\= [N= FYaC? FYaG\=
 T#''k*4#2 0*40#7#7 9# + -6 k4#)k. k. ; #) '* ; # -73k' #7 '*
 '9# V4k' #7 @' - ' #6 M47#2 Y V=@= % Z FFYC[-\C\A\k\P\? -47
 l&)#7 -4 -BB)k0- &*4 I*2 0-40#)) - &*4 *I 9k6 2#3*0-) M47#2
 Y V=@= % Z FCC^ ; [-\? +9k09 B#23k'6 '9# A''*24#S Q#4#2-)
 '* 0-40#) 2#3*0-) I*2 -4 k4-73k66k; # -)k4 +9* 9-6 ; ##4 -
 -) -+IM) B#23-4#4' 2#6k7#4' I*2 k0# \$#-26? 9-6 2#6k7#7 &4 '9#
 V4k' #7 @' - ' #6 0*4'k4M*M6)\$ I*2 6#0#4 \$#-26? -47 9-6 4*'
 ; ##4 0*40k0' #7 *I -4 - . . 2-0- ' #7 I#) *4\$= [N= DaFC\=

>4 <M4# D? CEFE? '9# P33k. 2- 'k*4 <M7. # #4' #2#7 -4
 *27#2 *I 2#3*0-) -47 7#4k#7 T#''k*4#2j6 -BB)k0- 'k*4 I*2
 0-40#)) - 'k*4 *I 2#3*0-) ? I k47k4. 9# + -6 4* * #)k. k. ; #) M47#2
 Z FCC^ ; [-\ ; #0-M6# 9k6 02k3# 0*46'k'M' #7 -4 - . . 2-0- ' #7
 I#) *4\$= [N= FYab\= >4 @#B'#3; #2 CE? CEFE? '9# H*-27 *I
 P33k. 2- 'k*4 ABB#-)6 [dHPAe\ -IIk23#7 '9# P33k. 2- 'k*4
 <M7. #k6 7#0k6k*4= T#''k*4#2 I) #7 - B#''k*4 I*2 2#0k# + +k'9
 '9# @#0#4'9 %k20Mk' = [N= FYaY\= >4 AM. M6' CD? CEFF? '9#
 @#0#4'9 %k20Mk' 0-0- ' #7 '9# P33k. 2- 'k*4 <M7. #k6 *27#2
 *I 2#3*0-) -47 2#3-47#7 '9# 3-''#2 '* '9# - . #40\$
 '* 2#0*46k7#2 T#''k*4#2j6 -BB)k0- &*4 I*2 0-40#)) - &*4 *I
 2#3*0-) ? I k47k4. T#''k*4#2j6 02k3# + -6 4*'-4 - . . 2-0- ' #7
 I#) *4\$ M47#2 Y V=@= % Z FFEF[-\DG\k' '\P\= [N= DaF\=

< T#''k*4#2 9-6 ; ##4 k40-20#2- ' #7 I*2 3*2# '9-4
 6#0#4' #4 3*4'96? -47 6#kS6 #k'9#2 '* ; # 2#)#-6#7 B#47k4.

#\$%&'(\$) + , - . 0 1 2 3 4 5 6 7 8 9 ; < :
#\$%&' (\$) + , - . 0 1 2 3 4 5 6 7 8 9 ; < :
#\$%&' (\$) + , - . 0 1 2 3 4 5 6 7 8 9 ; < :

'9# 2#0*46#7#2- 'I*4 *I 9#6 -BB)0- 'I*4 I*2 0-40#))-'&*4 *I
2#3*0-) *2? -' - 3#4#3M3? '9-0# - ; *47 9#-2&4. ; #I*2#
'9# P33# 2-#&*4 <M7. #=

667 "'=" , > ; 6 ;

A= '?'5\$&+'&# @ \$&4 /) * A%\$5"% '?'5\$&+'&#
N#6B*47#4' \$*4. 6##S6 '* ; # 7#63#66#7 I2*3 '9#6 -0'&*4?
-2.M&4. 9# #6 4*' - B2*B#2 2#6B*47#4' '* - B#&'&*4
I*2 +2# 'I 9- ; # -6 0*2BM6 ; #0-M6# 9# #6 4*' T#&'&*4#2#6
&33#7&- '# OM6*'7&-4? 0&'&4. %&' (\$) + , - . # / + . 0 fDC V= @=
DCJ [CEED]= P4 %&' (\$) + , - . 9* + #0#2? '9# @MB2#3# %*M2'
6B#0#I0-))\$ 4*'7# # + -6 4*' 7#'#23#4#4. +9* + -6 '9#
B2*B#2 2#6B*47#4' '* - 9- ; # -6 B#&'&*4 I#7 ; \$ -4 -)#4
7#'-#4#7 B#47&4. 7#B*2'- 'I*4= "#\$ - ' DGf 4= Y=

I9# @MB2#3# %*M2' 9-0#4. 7#0#4#7 '* 7#0#7# '9# #66M#?
'9#6 %*M2' #6 ; *M47 ; \$ '9# @#W'9 %&20M#J6 7#0#6#4 #4
%1' -2 , \$ 3(4561)70 GDE , =G7 GFD? GCEaCF [/ '9 %&2-CEEG\
P4 %1' -2 '9# @#W'9 %&20M# 9#)7 '9- '9# P#@ 5#6'2#0'
5&2#0'*2 I*2 '9# 7#6'2#0' +9#2# '9# T#&'&*4#2 #6 ; #4.
9#)7 #6 '9# B2*B#2 2#6B*47#4' #4 - 9- ; # -6 -0'&*4= "#
- ' GCF= I9M6? N#6B*47#4' \$*4. ? ; #4. '9# P33# 2-#&*4
-47 %M6'*36 R4I*20#3#4' [dP%Re\ , #)7 5#2#0'*2 I*2 '9#
"4#MOS\$, #)7 >I#0# *0#26##4. H**4# %*M4'\$ +9#2#
T#&'&*4#2 #6 ; #4. 7#'-#4#7? #6 '9# B2*B#2 N#6B*47#4' -47
69*M)7 4*' ; # 7#63#66#7=

B7 A'#/#/\$&'% /) &\$# ; CDE'3# # \$ F* & + * # \$ % (G' #' & # / \$ &
T#&'&*4#2 6##S6 '* ; # 2#) #-6#7 +9#) '9# P33# 2-#&*4
<M7. # 2#0*46#7#26 9#6 -BB)0- 'I*4 I*2 0-40#))-'&*4 *I
2#3*0-) BM26M-4' '* '9# @#0#4'9 %&20M#J6 2#3-47= I9#
7#'#4'&*4 *I - 4*40#&'&4 7M2#4. '9# B#47#40\$ *I 9&6
2#3*0-) B2*0##7#4.6 #6 . *0#24#7 ; \$ Y V= @= % - Z FCCJ C
N#6B*47#4'6 -2. M# '9- ' T#&'&*4#2 #6 6M ; c#0' '* 3-47- '*2\$
7#'#4'&*4 M47#2 Z FCCJ/[0= T#&'&*4#2 -2. M#6 9#6 7#'#4'&*4
&6 . *0#24#7 ; \$ Z FCCJ[-\? +9#09 B2*0#7#6 '9# A''*24#\$
Q#4#2-) +# '9 7#602#&'&4 #4 9#6 7#'#4'&*4 7#0#6#4#46? 4*' Z
FCCJ/[0? +9#09 3-47- '#6 7#'#4'&*4=

I9# #66M# 9#2# #6 +9# '9#2 Z FCCJ/[0 -BB)#6 '* T#&'&*4#2
#640# 9# + -6 4*' 7#'-#4#7 #33#7# - '#)\$ MB*4 ; #4. 2#) #-6#7
I2*3 OM6*'7\$ *4 9#6 02#3#4-) 3-''#2= I* -46 + #2 '9#6
_M#6'&*4 '9# %*M2' 3M6' 7#'#23#4# +9# '9#2 '9# d+9#4
'9# -)#4 #6 2#) #-6#7e)-4. M- . # 4 Z FCCJ/[0 2#I#26 '* -4
-)#4#6 &33#7&- '# 2#) #-6# I2*3 02#3#4-) OM6*'7\$ *2 2#I#26
'* -4\$&3# -I'2 -4 -)#4#6 2#) #-6#=

I9# HPA 9-6 9#)7 '9- ' 3-47- '*2\$ 7#'#4'&*4 M47#2
Z FCCJ/[0 -BB)#6 '* - 02#3#4-) -)#4 +9* + -6 4*' &
&33#7&- '#)\$ 7#'-#4#7 ; \$ &33#2-#&*4 *I#0#-6 MB*4 9#6
2#) #-6# I2*3 02#3#4-) OM6*'7\$= 8** 9.77*6 1) %1 ; -(0 CG P=
K / = 5#0= FFb [HPA CEEF\
89#) '9# 0#20M# '0*M2'6 9-0# 4*' -772#66#7 '9#6 6B#0#I#0
&66M#? G 6#0#2-) 7#6'2#0' 0*M2'6 9-0# 2#C#0'7 9.77*6 1)
%1 ; -((-BB)0- 'I*4 *I Z FCCJ/[0 '* -)#4#6 +9* + #2# 4*' &
&33#7&- '#)\$ 7#'-#4#7 MB*4 '9#2# 2#) #-6# I2*3 02#3#4-)
OM6*'7\$? I#47#4. '9# d+9#4 '9# -)#4 #6 2#) #-6#7e)-4. M- . #
&6 M4-3 ; # M*#M6 -47)&3#6 Z FCCJ/[0# -BB)0- 'I*4 '* '9#6#
'-S#4 #4' * #33# 2-#&*4 OM6*'7\$ #33#7# - '#)\$ MB*4 '9#2
2#) #-6# I2*3 02#3#4-) OM6*'7\$= 8** -.6) . / , \$ =1+ #60
/ = FFaDYbb? CEFF 8L DYCG^G^F? -' g]ab [5= / < < > O =
FF? CEFF\ [6#0'&*4 FCCJ/[0 7*#6 4*' -BB)\$ '* -)#4 4*'
'-S#4 #4' * #33#7# - '# OM6*'7\$# >*1 , \$?&5*61 / = Fi
FFa00a]FD? CEFF 8L CbD]FYC? -' gG [R=5= j= <M)\$ FG?
CEFF\ [6-3#h =1(4 , \$?&5*610 / = FiFFa00aD]D? CEFF
8L FyBFCCC? -' gG [R=5= j= U- \$ F]? CEFF\ [6-3#h
>41#6 , \$ 3##85#0 j^b , =@MBB=C7 bbd? bbY [R=5= U#09=CEFE\
[6-3#h ?1#(/.16* , \$ 9&+*60 bfy , =@MBB=C7 CC? CGJ
[@=5= / (=CEFE\ [6-3#h 85.6*77 , \$ @8\$ A*B? =1' +.2#
8*5\$ C&6* . & 1) " " /D6.7/12 E F&(71 " (G2)165* " *270 JGC
, =@MBB=C7 CFD? CF^ [8=5= / (=CEE\ H.)) / , \$?1/(+*0
fCb , =@MBB=C7 DYE? DYY [R=5= j= CEEb\ [6#0'&*4 FCCJ/[0
7*#6 4*' -BB)\$ '* -)#4 '-S#4 #4' * #33# 2-#&*4 OM6*'7\$
*0#2 *4# 3*4'9 -I'2 FCCF? FCCf [8=5= 8-69=CEED\
[6#0'&*4 FCCJ/[0 7*#6 4*' -BB)\$ '* -)#4 7#'-#4#7 '92##
\$#-26 -I'2 2#) #-6# I2*3 02#3#4-) OM6*'7\$=

89#) '9# 0#20M# '0*M2'6 9-0# 4*' -772#66#7 '9#6 6B#0#I#0
&66M#? G 6#0#2-) 7#6'2#0' 0*M2'6 9-0# 2#C#0'7 9.77*6 1)
%1 ; -((-BB)0- 'I*4 *I Z FCCJ/[0 '* -)#4#6 +9* + #2# 4*' &
&33#7&- '#)\$ 7#'-#4#7 MB*4 '9#2# 2#) #-6# I2*3 02#3#4-)
OM6*'7\$? I#47#4. '9# d+9#4 '9# -)#4 #6 2#) #-6#7e)-4. M- . #
&6 M4-3 ; # M*#M6 -47)&3#6 Z FCCJ/[0# -BB)0- 'I*4 '* '9#6#
'-S#4 #4' * #33# 2-#&*4 OM6*'7\$ #33#7# - '#)\$ MB*4 '9#2
2#) #-6# I2*3 02#3#4-) OM6*'7\$= 8** -.6) . / , \$ =1+ #60
/ = FFaDYbb? CEFF 8L DYCG^G^F? -' g]ab [5= / < < > O =
FF? CEFF\ [6#0'&*4 FCCJ/[0 7*#6 4*' -BB)\$ '* -)#4 4*'
'-S#4 #4' * #33#7# - '# OM6*'7\$# >*1 , \$?&5*61 / = Fi
FFa00a]FD? CEFF 8L CbD]FYC? -' gG [R=5= j= <M)\$ FG?
CEFF\ [6-3#h =1(4 , \$?&5*610 / = FiFFa00aD]D? CEFF
8L FyBFCCC? -' gG [R=5= j= U- \$ F]? CEFF\ [6-3#h
>41#6 , \$ 3##85#0 j^b , =@MBB=C7 bbd? bbY [R=5= U#09=CEFE\
[6-3#h ?1#(/.16* , \$ 9&+*60 bfy , =@MBB=C7 CC? CGJ
[@=5= / (=CEFE\ [6-3#h 85.6*77 , \$ @8\$ A*B? =1' +.2#
8*5\$ C&6* . & 1) " " /D6.7/12 E F&(71 " (G2)165* " *270 JGC
, =@MBB=C7 CFD? CF^ [8=5= / (=CEE\ H.)) / , \$?1/(+*0
fCb , =@MBB=C7 DYE? DYY [R=5= j= CEEb\ [6#0'&*4 FCCJ/[0
7*#6 4*' -BB)\$ '* -)#4 '-S#4 #4' * #33# 2-#&*4 OM6*'7\$
*0#2 *4# 3*4'9 -I'2 FCCF? FCCf [8=5= 8-69=CEED\
[6#0'&*4 FCCJ/[0 7*#6 4*' -BB)\$ '* -)#4 7#'-#4#7 '92##
\$#-26 -I'2 2#) #-6# I2*3 02#3#4-) OM6*'7\$=

H >4)\$ *4# 7#6'2#0' 0*M2' #4 '9#6 0#20M# 9-6 -772#66#7
'9# #66M# 8** >41#6 j^b , =@MBB=C7 -' bbY= I9# 0*M2' #4
>41#6 7#0#4#7 '* .#0# F4* ,612 7#I#2#40# D '* '9# HPAJ6
7#0#6#4 #4 9.77*6 1) %1 ; -(0 I#47#4. d'9# 6'-M' #6 0#) #-2
'9- '9# 7#'#4'&*4 3M6' ; # #33#7# - '#e^ "# -' bb^= I9#
0*M2' -OS4*+) #7. #7? 9* + #0#2? '9# 7#I#0M) #6 '9- ' -)#2-)
d&33#7# -OSe 2#_M&2#3#4' +*M)7 B*6# *4 #33# 2-#&*4
*I#0#-6? -47 9#)7 '9- '9# A''*24#\$ Q#4#2-) 3M6' '-S#
'9# -)#4 #4' * OM6*'7\$ +&'9#4 - 2#-6*4- ;)# B#2#7 *I
'&3# -I'2 9#6 02#3#4-) 2#) #-6#= "#\$ -' bYE= 89#) #4 *'
#6'- ;)#69#4. - ; 2# 9')#4# '6# I*2 2#-6*4- ;)#4#66? '9# 0*M2'
I*M47 I*M2 \$#-26 + -6 0#) #-2\$ M42#-6*4- ;)# "#\$ [0#&4.
I . J. # / , \$ F4*671)) / = EfaEGGG? CEEf 8L GFfbbbb?
- ' gf [/ = % -) = / = 0 = CC? CEEf\ [I#47#4. Ca\$#-2 . -B
 ; # ' + # #4 2#) #-6# I2*3 02#3#4-) OM6*'7\$ '* P#R 7#'#4'&*4
M42#-6*4- ;)#H H.)) / fCb , =@MBB=C7 -' DYY [-)#4 '-S#4
&4' * #33# 2-#&*4 OM6*'7\$ *0#2 F 3*4'9 -I'2 2#) #-6#

#\$%&'(\$) + , - . 0 1 2 3 4 5 6 7 8 9 ; < ;
#\$%% &'()*+(\$

I2*3 02k3k4-) 0M6'*7\$ B2#0)M7#7 -BB)k0- 'k*4 *I Z FCCJ[0\ \ 85.6*770 JGC , =@MBB=C7 -' CF^ [FYa3*4'9 -.-B ; #' + ##4 2#)#-6# -47 P%R 7#'#4'k*4 '**) *4. \h K&*L.#.MC&5/10 Gfb , =@MBB=C7 -' FCCf [8=5=8-69=CEED\ [3-47-'*2\$ 7#'#4'k*4 7k7 4*' -BB)\$ +9#4 -)k#4 '-S#4 k4'* 0M6'*7\$ G \$#-26 -I'#2 2#)#-6#7 I2*3 02k3k4-) 0M6'*7\$ \=

19# 7#0k6k*4 k4 >41#6 k6 0*46k6'#4' +k'9 '9# k4'#4' ; #9k47 Z FCCJ[0\ \ k*7#'-k4 7-4. #2*M6 02k3k4-) -)k#46 ; #I*2# '9#\$ -2#B#23k'7#7 '* -66k3k)- '# ; -OS k4'* '9# 0*33M4k'\$ +9#2# '9#\$ 3-\$ B*6# #k'9#2 - 2k6S *I 7-4. #2 '* '9# 0*33M4k'\$ -47I*2 - 2k6S *I I)&9' 8** A/1B , \$ "FGI=1'*+.2# 8*5\$ Jfj , =G7 CCF? CGF JG7 %k2=CEFF\X#2#? T# 'k'k*4#2 +-6 -22#6#7 *4 '9# 02k3k4-) 3-'#2 *4 U-\$ F^? CEEb- [N= DaD\ = >4 U-\$ CG? CEEb? 9# +-6 2#)#-6#7 '* -9-)I+-8 9*M6# *4 - mCfEEE M46#0M2#7 ; *47- [#S -' G? FY\ = >4 >O*'; #2 Cf CEEb? 9k6 ; *47 0*47k'k*46 +#2# 3*7k6#7? -47 9# +-6 B#23k'7#7 '* 2#M24 9*3# >4 /0#3 ; #2Jf CEE^? T# 'k'k*4#2 +-6 6#4'#40#7 '* 'k3# 6#20#7 -47 '92# # \$#-26 6MB#20k6#7 2#)#-6# I9M6? T# 'k'k*4#2 9-7 ; ##4 B#23k'7#7 '* 2#3-k4 I2# 7M2k4. '9# B#47#40\$ *I 9k6 02k3k4-) -0'k*4 -47 +-6 4*' 6#4'#40#7 '* -4\$ IM2'9#2 '9#23 *I k40-20#2-k*4= >4 U-209 CG? CEFE? -)3*6' k0# 3*4'96 -I'#2 9k6 02k3k4-) 0-6# 0*40)M7#7 -47 '+* \$#-26 -47 '9# 3*4'96 -I'#2 9# +-6 2#)#-6#7 *4 ; *47? T# 'k'k*4#2 +-6 '-S#4 k4'* 0M6'*7\$; \$ P/@ B#47k4. 9k6 2#3*0-)= [N= F]aG\ = 19# 2#0*27 7*#6 4*' 6MBB*2' - k47k4. '9- ' T# 'k'k*4#2 k6 '9# '\$B# *I 7-4. #2*M6 -)k#4 '* +9k09 Z FCCJ[0\ +-6 k4'#47#7 '* -BB)\$=

ABB)\$k4. '9# 2- 'k*4-) # *I '9# 0*M2' k4 >41#6 k' k6 '9#2#I*2# %3\$00*&+' + '9- 'Y V=@-%= Z FCCJ[0\ ; #I*M47 4*' '* -BB)\$ '* T#&'k*4#2 k4 '9k6 0-6# X# +-6 4*' k33#7k- '#) \$ 7#'-k4#7 MB*4 9k6 2#)#-6#? -47 k6 #4'k'7#7 '* -4 k47k0k7M-)k'7# ; *47 9#-2k4. ; #I*2# '9# P33k. 2- 'k*4 %M2' BM26M-4' '* Y V=@-%= Z FCCJ[-] ^

87 "##\$%&' (. '')
T# 'k'k*4#2 2#_M#6'6 k4 9k6 B2-\$#2 I*2 2#)#k#I '9-' '9# %M2' -+-27 -2#-6*4-;) # -''*24#\$ I## M47#2 '9# R_-M-) AOO#66 '* <M6'k0# AO? CY V=@-%= Z CDFC b 19#)-OS *I @kW'9 %k20Mk')-+ *4 '9k6 02k'k0-) k66M#? -6 +#)) -6 '9# HPAJ6 7#0k6k*4 k4 9.77*6 1) %1 ; -(0 B2*3B' '9# 0*40)M6k*4 '9- 'N#6B*47#4'6I B*6k'k*4 9#2#k4 +-6 4*' 6M;6'-4'k-))\$ M4cM6'kI#7= A4 -+-27 *I -''*24#\$ I##6 k6 '9#2#I*2# &\$# %3\$00*&+' +7 8** A.2D , \$?10*0 Fi%faFEaEDD]? CEFE 8L CEDDjGD? -' gC

[U-5=T- U-\$ CE? CEFE\ [4* -''*24#\$ I##6 -+-27#7\h C&62(, \$ F/554/0 bEC , =@MBB=C7 CYF? C^D [5- /<=CEFE\ [7#4\$ k4. 2#_M#6' I*2 -''*24#\$ I##6 *4 k7#4k0-) k66M#? 6k40# 4* 0k20Mk' B2#0#7#4'\=

6667 8k=8, J; 6k= ''=G ?K8k FFK=G''96k= L , *2 '9# 2#-6*46 6'-#7 9#2#k4? 69 6; ?K8IFFK=GKG -6 I*)) *+6i

[F\ N#6B*47#4' 8*4. J6 U*'k*4 '* 5k63k66 [N= F^ \ ; # GK=6KGM

[C\ T# 'k'k*4#2)6 T# 'k'k*4 I*2 - 82k' *I X-; # -6 %*2BM6 [N= F\ ; # N?'''=9KG 6= A''?9 '* '9# #W#4' 9# 2#_M#6'6 '9# P33k. 2- 'k*4 %M2' 9*)7 -4 k47k0k7M-)k'7# ; *47 9#-2k4. BM26M-4' '* Y V=@-%= Z FCCJ[-] ^ -47 ; # GK=6KKG 6= A''?9 -6 '* 9k6 2#_M#6' I*2 &33#7k- '# 2#)#-6# -47 I*2 -4 -+-27 *I -''*24#\$ I##6h -47?

[G\ 19# 3-'#2 ; # ?KF''=GKG '* '9# P33k. 2- 'k*4 %M2' '* B2*0k7# T#&'k*4#2 +k'9 -4 k47k0k7M-)k'7# ; *47 9#-2k4. BM26M-4' '* Y V=@-%= Z FCCJ[-] ^ +k'9k4 FD 7-\$6 I2*3 '9# 7-'# *I '9# B2#6k7k4. 5k6'2k0' <M7. #6 6M;6#_M#4' *27#2 -772#66k4. '9k6 N#B*2' -47 N#0*33#47-'k*4=

@B#0kI#0 * ; c#0'k*46 '* '9k6 N#B*2' -47 N#0*33#47-'k*4 3M6' ; # k6)7 +k'9 '9# %) #2S *I %M2' +k'9k4 I*M2'##4 [FD\ 7-\$6 *I '9# 7-'# *I 6#20k0# *2 IM2'9#2 -BB-) k6 +-k0#7= P41' . (, \$ 3620 bCY , =C7 YFG [J '9 %k2=F^YD\ .))#0 Dbd V=@ FDE? Fff[F^Yf\ = A . #4#2-) * ; c#0'k*4 '9- ' 7*#6 4*' d6B#0kIS '9# k66M#6 *I 0*4'#4'k*4e k6 4*' 6MIIk0k#4' '* 6-'k6IS '9# 2#_M#2#3#4' *I - +2k'7#4 -47 6B#0kI#0 * ; c#0'k*4= 9/+*6 , F&66/* fE , =G7 GbG? GYE [J '9 %k2=F^f\ [0k'k4. =10.6# , \$ 8*5 1) =* . +74 E =&' . 28*6, (\$ ^GC , =C7 fEf fEYaE^ [J '9 %k2=F^FV\ = T*2)\$ 72-I'7# * ; c#0'k*46? . #4#2-) * ; c#0'k*46? *2 * ; c#0'k*46 '9- ' 2#_M&2# - cM7. #6 k4'#2B2#'- 'k*4 69*M)7 ; # -II*27#7 4* #II#0' -47 -2# k46MIIk0k#4' '* B2#6#20# '9# 2k. 9' *I -BB-) =10.6# ^GC , =C7 -' fE^ = A B-2'\$ 3-\$ 2#6B*47 '* -4*'9#2 B-2'\$J6 * ; c#0'k*46 +k'9k4 I*M2'##4 [FD\ 7-\$6 *I ; #k4. 6#20#7 +k'9 '9*6# * ; c#0'k*46- , #7=N-%k0-T- bCj ; \C\

'' 8/#*#/\$&)
/'* N#B*2'7#4 k4 , =@MBB=C7? CEFF 8L J^DCfJE

#\$%&'(\$) * + , - . / 0 1 2 3 4 5 6 7 8 9 : ; <

Because the Petition involves only issues of law, not fact, an evidentiary hearing is not required. See *Edwards v. Parker*, 52 F.3d 325 (unpublished table decision), 1995 WL 222184, at * 1 (6th Cir.1995)

2 8 U.S.C. § 1226(a) and (c) provide, in part:

(a) Arrest, detention, and release [of aliens]

On a warrant issued by the Attorney General, an alien **may** be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) of this section and pending such decision, the Attorney General—

(1) may continue to detain the arrested alien; and

(1) may release the alien on—

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole[.]

(c) Detention of criminal aliens

(1) Custody

The Attorney General **shall** take into custody any alien who-

(A) is inadmissible by reason of having committed any offense covered in [section 1182\(a\)\(2\)](#) of this title,

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

8 U.S.C. § 1226 (emphasis added).

3 The First Circuit did, however, hold on an unrelated issue that the “when released” language modifies the enumerated offenses that proceed it, which lends support to Petitioner's position. See *Saysana v. Gillen*, 590 F.3d 7, 13–15 (1st Cir.2009)

4 *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984), provides that when interpreting a statute, a court and agency “must give effect to the unambiguously expressed intent of Congress.” *Id.* at 842–43. Where, however, Congress's intent is ambiguous, a court should defer to the agency's construction of a statute it administers. *Id.* at 843 n. 9.

5 The court explained: “If Congress wished to permit the Attorney General to take custody of criminal aliens at any time after being released from criminal confinement, it could have done so using the phrase ‘at any time after the alien is released.’ But, by using the word ‘when,’ Congress demonstrated its intent that such aliens be taken into custody contemporaneous with their release or not at all (at least under [section 1226\(c\)](#)).” *Khodr*, 697 F.Supp.2d at 778–79

6 Since it is recommended that Petitioner be found not subject to mandatory detention, the Court need not review Petitioner's alternative grounds for relief based on a Due Process claim for the unreasonable length of the mandatory detention.

7 [Section 2412\(d\)\(1\)\(A\)](#) provides: “Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses ... incurred by that party in any civil action ... unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.”