

**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

**RESPONDENTS' SUPPLEMENTAL RESPONSE TO PETITIONERS'
MOTION FOR RELIEF ON ISSUES RELATED TO
IMPLEMENTATION OF DETENTION ORDERS**

On February 8, 2018, Petitioners' filed their Motion for Relief on Issues Related to Implementation of Detention Orders, ECF No. 227. Petitioners challenge, *inter alia*, ICE's ability to utilize the regulations found at 8 CFR § 1003.19(i) to request a stay of an immigration judge's (IJ) bond decision from the Board of Immigration Appeals (BIA) in cases where ICE is appealing the IJ's decision. Following the status conference held on March 7, 2018, the Court ordered the parties to provide their positions on the discretionary stay procedure¹ in supplemental briefs. Accordingly, Respondents' position on the use of discretionary stays of bond decisions follows.

For context, Respondents have utilized the discretionary stay procedure very judiciously. Of the at least 231 bond hearings² that had been held pursuant to this Court's Order, ECF No. 191, only 10 discretionary stays of IJ bond decisions have been requested and granted. *See* Declaration of Donna Carr, Chief Clerk of the BIA ("Carr Decl.") ¶ 4 (attached hereto as "Exhibit 1"). In all cases in which U.S. Immigration and Customs Enforcement (ICE) has sought discretionary stays, the detainees have *multiple* criminal convictions, and at least one, if not multiple, violent offenses. *See* Declaration

¹ Because no subclass members were subject to automatic stays at the time of the status conference (or at the time of this filing), the requested supplemental briefing was limited to the discretionary stay procedure under 8 C.F.R. § 1003.19(i)(1).

² This number was taken from the number of bond hearings that had been held as of the biweekly report sent to Petitioners' counsel on February 7, 2018.

of Joseph Salvatera, Deportation Officer, Detroit Field Office, Office of Enforcement and Removal Operations (ERO), ICE (“Salvatera Decl.”) ¶ 2.a.-2.g. (attached hereto as “Exhibit 2”). Additionally, many of these detainees have a record of failing to comply with the terms of their orders of supervision. *Id.* ¶ 2. Accordingly, ICE has used this procedure only where there is a strong basis for believing that the individuals involved pose a risk to public safety, a flight risk, or in many cases—both.

The authority for appealing IJ bond determinations and for requesting discretionary stays is provided by regulation. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3)(i). The BIA adjudicates each request for a discretionary stay on a case by case basis and makes an individualized determination whether or not a stay of the IJ’s bond order is warranted pending adjudication of the bond appeal. *Id.*; *see also Organista v. Sessions*, No. 18-00285, 2018 WL 776241, *2 (D. Ariz. Feb. 8, 2018) (discretionary stay process provides for adjudication by “neutral decionsmaker”). If the stay is granted, the IJ’s bond ruling does not go into effect until the BIA decides the appeal.³ Once the stay order is signed, the BIA immediately attempts to contact the parties by telephone, and will then fax and send copies of the stay decision by mail.

³ The BIA gives priority to cases or custody appeals involving detained aliens, and, except in exigent circumstance, completes the appeal in no more than ninety days of completion of the record on appeal. 8 C.F.R. § 1003.1(e)(8).

See Declaration of Christopher J. Gearin, manager of the BIA’s Emergency Stay Unit (“Gearin Decl.”) ¶ 10 (attached hereto as “Exhibit 3”). Either party may file a motion to reconsider the BIA’s decision concerning the stay request. *Id.* ¶ 11; *see also* Executive Office for Immigration Review, Fact Sheet: BIA Emergency Stay Requests (March 2018) (“BIA Fact Sheet”) *available at* <https://www.justice.gov/eoir/file/1043831/> download (visited March 15, 2018); *see also* 8 C.F.R. § 1003.2(b).

Despite these procedures, Petitioners argue that the regulation is “problem[atic]” because it permits the BIA to grant a stay of release before a detainee or a detainee’s counsel has notice and an opportunity to respond, and they therefore ask the Court to re-write the regulations and impose additional standards on the BIA. Pet’rs’ Mot. 15.⁴

⁴ The regulation gives the BIA discretion to enter a stay before the detainee receives notice and the opportunity to respond because without the stay, individuals who may be a danger to the community, a flight risk, or both—like the 10 detainees in this case—will be released from detention. And, in cases where an individual is released before ICE has the opportunity to request a discretionary stay, the interest in returning the individual to detention promptly is no less compelling. Indeed in promulgating the Final Rule, the Department of Justice (DOJ) recognized the concern, raised by commenters at the time (there as a challenge to automatic stays, yet the same rationale applies to discretionary stays), that the stay procedure could override an IJ’s release determination before the detainee had the opportunity to be heard by a neutral arbiter. DOJ noted, however, that “the INA places no restrictions on the Attorney General’s or the Secretary’s discretion to prescribe procedures for the adjudication of bond requests by aliens during removal proceedings, and agencies are generally afforded great

Other courts that have considered similar challenges have analyzed the specific circumstances of the cases, as every due process analysis requires, not merely a broad allegation that the language of the regulation is a *per se* violation of due process, as Petitioners argue here. *See, e.g., Organista*; *see also El-Dessouki v. Cangemi*, No. 06-3536, 2006 WL 2727191, *2 (D. Minn. Sept. 22, 2006) (holding that “finite period of detention to allow the BIA an opportunity to review the immigration judge’s bond redetermination is a narrowly tailored procedure that serves the government’s interest in preventing flight of aliens likely to be ordered removable and in protecting the community” and thus does not violate petitioner’s right to substantive due process).

In *Organista*, the court considered a challenge to a discretionary stay that ICE obtained from the BIA the day after the petitioner was released from custody after posting bond. 2018 WL 776241, *2. In that case, petitioner argued that he did not receive notice and an opportunity to be heard before the discretionary stay was entered. *Id.* The court conducted the three part analysis under *Mathews v. Eldridge*, 424 U.S. 319 (1976), to determine “whether a pre-deprivation hearing is required and what specific procedures must be employed at that hearing given the particularities of the

latitude in organizing themselves internally and in developing procedures for carrying out their responsibilities.” 71 FR 57873-01, 2006 WL 2811410 (citing *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 544 (1978) (quotation omitted).

deprivation.” *Id.* (internal citation omitted). The court in *Organista* found that petitioner had a liberty interest in being heard before his detention could be continued by the stay but it also acknowledged the government’s interests in obtaining a stay in exigent circumstances where an alien may present a danger or flight risk. 2018 WL 776241 at *2. Based on the totality of circumstances, the court found that petitioner had failed to show that he was likely to establish a due process violation, and denied the motion for a preliminary injunction. Specifically, the court noted that there was evidence in the record that petitioner had been contacted before the BIA had entered the stay, and had the opportunity—albeit brief—to respond to ICE’s discretionary stay request. *Id.* at *3. Moreover, the court noted that petitioner had the opportunity to file a motion to reconsider with the BIA, and had failed to do so. *Id.* The court specifically recognized that this post-deprivation remedy of filing a motion to reopen could also satisfy due process concerns. *Id.*

Likewise here, the Court must consider the circumstances of each stay request to determine if a due process violation has occurred. In this case, one petitioner filed an opposition to the motion for a discretionary stay before the BIA granted the request. Carr Decl. ¶ 4. Thus, that individual undeniably had notice and the opportunity to be heard. *See El-Dessouki*, 2006 WL 2727191, *2. Petitioners who were unable to file oppositions to the stay motions before they were granted in their cases can file a motion

to reconsider with the BIA Clerk's Office. Carr Decl. ¶ 2; *see also* BIA Fact Sheet. In this case, of the 10 discretionary stays that ICE requested and the BIA granted, 3 petitioners filed motions for reconsideration. Carr Decl. ¶ 4. In these cases, the BIA adjudicated the motions promptly (14 days in one case, 10 days in another, and 5 days in the other). *Id.* This is precisely the type of post-deprivation remedy that the court in *Organista* suggested could satisfy due process. The 7 individuals who have not yet done so still have the ability to file motions for reconsideration, which the BIA has been adjudicating promptly, and have thus not demonstrated that the procedures provided to them violate their rights to due process.

Petitioners also raise concerns that there is “no announced standard for granting a discretionary stay” and suggest that the normal rule for staying the decision of a lower tribunal is that there must be a showing of a “strong likelihood of success on the merits.” Pet'rs' Mot. 16. (quoting *Ne. Ohio Coal. for Homeless and Serv. Int'l Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1009 (6th Cir. 2006)). However, the courts have consistently recognized that the Attorney General has extremely broad discretion in deciding whether or not to release an alien on bond. *See Carlson v. Landon*, 342 U.S. 524, 540 (1952). Imposing a standard such as the one the petitioners suggest would interfere with EOIR's “administrative discretion in deciding how, in light of internal organization considerations, it may best proceed to develop the needed evidence and

how its prior decision should be modified in light of such evidence as develops.” *Vermont Yankee*, 435 U.S. at 544. At the very least, a petitioner raising concern about the BIA’s discretion to grant or deny a stay must come forward with facts demonstrating that the BIA has abused that discretion in their case, and Petitioners here have undeniably failed to do so.⁵

Lastly, Petitioners contend that “once stays are granted, they can result in many additional months of incarceration. ‘A discretionary stay has no regulatory time limit; it lasts as long as the bond appeal takes, which can be many months.’” *See Maze Declaration*, Ex. 7. Pet’rs’ Mot. 16. While it is possible that discretionary stays could last until the BIA rules on the merits of the bond appeal, Petitioners have not demonstrated that this is tantamount to violation of due process. To date, only 3 of the 10 individuals subject to discretionary stays have attempted to utilize the motion for reconsideration process available to them and the BIA has adjudicated their motions. This post-deprivation remedy is available to them, and weighs against a finding of a due process violation. *See Organista*, 2018 WL 776241 at *4.

Accordingly, the Court should deny Petitioners’ request to modify the discretionary stay procedures available under the current regulations.

⁵ Indeed, under 8 U.S.C. 1226(e), there are serious questions about whether the Court has jurisdiction to impose standards on the BIA that would dictate how it exercises its discretion under 8 C.F.R. 1003.19(i).

Dated: March 16, 2018

Respectfully submitted,

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Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused a true and correct copy of the foregoing to be served via CM/ECF upon all counsel of record.

Dated: March 16, 2018

Respectfully submitted,

/s/ William C. Silvis
WILLIAM C. SILVIS

Counsel for Respondents

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

USAMA JAMIL HAMAMA, et al.,	}	Case No. 2:17-cv-11910
Plaintiffs-Petitioners,		
	}	Hon. Mark A. Goldsmith
v.		Mag. David R. Grand
REBECCA ADDUCCI, et al.,	}	Class Action
Defendants-Respondents.		
	}	DECLARATION OF
		DONNA CARR, CHIEF CLERK

I, DONNA CARR, Chief Clerk of the Board of Immigration Appeals (BIA), do hereby declare under penalty of perjury that the following statements are true and correct to the best of my knowledge, information, and belief:

1. The BIA Clerk's Office is responsible for receiving appeals and motions filed by the parties to a proceeding before the BIA, including any motions from the Department of Homeland Security ("DHS") to stay the order of an immigration judge redetermining the conditions of custody pursuant to 8 C.F.R. § 1003.19(i)(1).
2. Either side may file a motion to reconsider the BIA's decision granting or denying a motion for a discretionary stay of an Immigration Judge's custody decision pursuant to 8 C.F.R. § 1003.19(i)(1).
3. There is no fee to file such a motion to reconsider, so long as the appeal of the Immigration Judge's custody decision remains pending before the BIA.

1
2 4. I have reviewed the records for the following individuals: A-D-J- (820);
3 Y-B- (001); A-H-A (919); A-R-M- (314)¹; B-M- (710); A-M-A- (938); S-
4 M- (319); A-S- (847); A-S-B- (623); M-C-J- (541). According to our
5 records, the BIA stayed the Immigration Judges' orders redetermining the
6 conditions of custody pursuant to 8 C.F.R. § 1003.19(i)(1), in each of
7 these cases. On February 26, 2018, A-S- (847), through counsel, filed a
8 motion to reconsider the BIA's order staying the execution of the
9 Immigration Judge's custody decision in his case. On March 12, 2018, the
10 BIA denied the motion to reconsider. On March 8, 2018, M-C-J- (541),
11 through counsel filed a motion to reconsider the BIA's order staying the
12 execution of the Immigration Judge's custody decision in his case. On
13 March 13, 2018, the BIA denied the motion to reconsider. On February
14 22, 2018, A-S-B- (623), through his attorney, filed an opposition to the
15 DHS motion for discretionary stay. On March 12, 2018, the BIA granted
16 DHS's motion for a discretionary stay. On March 5, 2018, A-M-A- (938),
17 through his attorney, filed a motion to reconsider the BIA's order staying
18 the execution of the Immigration Judge's custody decision in his case. On
19 March 15, 2018, the BIA denied the motion to reconsider. Based on our
20 records, the other individuals identified above have not filed motions to
21 reconsider the BIA's orders staying the execution of the Immigration
22 Judges' custody decisions in their cases.

23 Executed this 15th day of March 2018 in Falls Church, Virginia:

24 

25 Donna Carr
26 Chief Clerk, Board of Immigration Appeals

27
28 ¹ On March 5, 2018, A-R-M- (314), through his attorney, and DHS filed a joint motion to remand to the immigration court for a new custody hearing.

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A [REDACTED] 938 – Detroit, MI

Date: **MAR 15 2018**

In re: A [REDACTED] A [REDACTED] M [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Shanta Driver, Esquire

ON BEHALF OF DHS: Theresa Bross
Assistant Chief Counsel

APPLICATION: Stay of Execution of the Bond Order

On February 2, 2018, the Board entered an order granting the Department of Homeland Security's request for an emergency discretionary stay of the Immigration Judge's January 26, 2018, bond order in this case. Counsel for the respondent has now filed a motion to reconsider the Board's February 2, 2018, decision.¹ After consideration of all the information presented by both parties, we do not find an adequate basis to warrant reconsideration of the February 2, 2018, decision.

ORDER: The motion to reconsider the Board's February 2, 2018, decision is denied.



FOR THE BOARD

¹ We disagree with the respondent's contention that the Board mistakenly granted the DHS's stay request in its February 2, 2018, order, because the DHS had withdrawn its request on February 1, 2018. The record reveals that the DHS had specifically withdrawn its Form EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination, which had automatically stayed the Immigration Judge's January 26, 2018, custody order. *See* 8 C.F.R. § 1003.19(i)(2). On February 2, 2018, however, the DHS filed a Form EOIR-26, appealing the Immigration Judge's January 26, 2018, order; as well as a separate Emergency Motion for a Discretionary Stay of the same order. *See* 8 C.F.R. § 1003.19(i)(1). As a result, the Board granted the DHS's discretionary stay request on February 2, 2018.

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A [REDACTED] 847 – Detroit, MI

Date: **MAR 12 2018**

In re: S [REDACTED] A [REDACTED]

IN BOND PROCEEDINGS

APPEAL

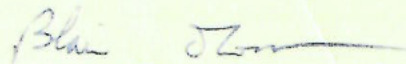
ON BEHALF OF RESPONDENT: Bradley Maze, Esquire

ON BEHALF OF DHS: Robert Melching
Assistant Chief Counsel

APPLICATION: Stay of Execution of the Bond Order

On February 6, 2018, the Board entered an order granting the Department of Homeland Security's request for an emergency discretionary stay of the Immigration Judge's January 31, 2018, bond order in this case. Counsel for the respondent has now filed a motion to reconsider the Board's February 6, 2018, decision. After consideration of all the information presented by both parties, we do not find an adequate basis to warrant reconsideration of the February 6, 2018, decision.

ORDER: The motion to reconsider the Board's February 6, 2018, decision is denied.



FOR THE BOARD

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: [REDACTED] 541 -- Detroit, MI

Date: MAR 13 2018

In re: C [REDACTED] J [REDACTED] M [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Bradley Maze, Esquire

ON BEHALF OF DHS: Jonathan Goulding
Senior Attorney

APPLICATION: Stay of Execution of the Bond Order

On February 13, 2018, the Board entered an order granting the Department of Homeland Security's request for an emergency discretionary stay of the Immigration Judge's January 30, 2018, bond order in this case. Counsel for the respondent has now filed a motion to reconsider the Board's February 13, 2018, decision. After consideration of all the information presented by both parties, we do not find an adequate basis to warrant reconsideration of the February 13, 2018, decision.

ORDER: The motion to reconsider the Board's February 13, 2018, decision is denied.



FOR THE BOARD

UNITED STATES DISTRICT COURT
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

Class Action

DECLARATION OF JOSEPH SALVATERA

In accordance with 28 U.S.C. § 1746, I Joseph Salvatera, make the following declaration:

1. I am a Deportation Officer employed in the Detroit Field Office, Office of Enforcement and Removal Operations (ERO), United States Immigration and Customs Enforcement (ICE). I have been in this position since November of 2008.

2. I have reviewed the cases for which my office has requested discretionary stays and make this declaration based on my knowledge obtained from that review. In all cases, the individuals have multiple criminal convictions. Many have also failed to comply with the terms of their orders of supervision by missing report dates. Examples of the cases in which stays were sought include:

a. A-M-A- (938), an individual with 2011 convictions for three counts of Assault with Intent to do Great Bodily Harm Less than Murder; Firearms Discharge toward a building; Felony Firearm, to wit: Handgun; and Malicious Destruction of Property, More than \$200 but Less than \$1000. Upon completion of his criminal sentence, he entered ICE custody. On October 15, 2013, this individual was released from ICE custody on an

order of supervision due to inability to effectuate removals to Iraq. This same individual failed to comply with ICE's order of supervision by failing to report to ICE or comply with the Alternatives to Detention Program, as required, on October 6, 2014, November 6, 2014, January 5, 2016, January 13, 2016, January 19 – 29, 2016, February 11, 2016, February 29, 2016, October 20, 2016, December 22, 2016, December 27, 2016 and May 1, 2017.

b. Y-B- (001), an individual with a twenty-five year criminal history in the United States. Specifically, this individual was convicted in 1991, for Retail Fraud 2nd Degree; in 2006, for Disturbing the Peace and for Domestic Violence; and in 2008, for Malicious Destruction of Property and Driving While Suspended. In 2013, the individual was convicted of Flee-Elude, Resist of Police Officer, License Suspension, resulting from an incident where he reached a speed of 100 mph while cutting across traffic in flight from the police, exited his vehicle, ran across lanes of traffic in an attempt to escape authorities, and refused to comply with commands. In addition to his numerous convictions, in 2013 while this individual was incarcerated in Calhoun County Jail on immigration charges, the facility received numerous complaints regarding his constant confrontations with other inmates and his irate conduct, resulting in the individual's transfer to another unit.

c. M-C-J- (541), an individual who has the following criminal history: a January 1997 conviction for assault with dangerous weapon (held responsible as a juvenile); a December 2001 conviction for Possession of Methamphetamine; June 3, 2002 conviction for domestic violence; June 18, 2002 conviction for operating with license suspended, revoked, denied; January 3, 2003 conviction for driving with a suspended license; May

15, 2003 conviction for possession of marijuana; April 27, 2006 conviction for two counts of possession of marijuana (dropped from delivery/manufacture); January 9, 2008 conviction for delivery/manufacture methamphetamine/ecstasy; May 7, 2010 conviction for operating without a license on person; December 2012 convictions for two counts of Delivery/Manufacture of a Controlled Substance, Creation/Delivery of a Counterfeit Substance, and Maintaining a Drug House; February 8, 2013 conviction for operating with license suspended, revoked, denied; March 13, 2013 conviction for domestic violence; and May 21, 2015 conviction for operating without a license on person.

Regarding the March 13, 2013 domestic violence conviction, the police report indicates that on December 7, 2012, the individual's sister reported to police that he had pushed her, choked her, and punched her on the side of her face. This was consistent with the responding officers' observations that the victim's face was swollen and red.

On May 1, 2014, it was discovered that this individual also has two outstanding warrants for his arrest for child neglect, and an outstanding warrant for a traffic violation. Finally, this individual failed to report to ICE pursuant to his order of supervision on September 10, 2014, and criminal records indicate that he failed to appear to court as directed during criminal proceedings on at least two occasions.

d. A-D-J- (820), an individual who has an extensive criminal history, with numerous criminal convictions spanning almost a 20-year period. Specifically, in 1998, this individual was arrested for Assault with a Dangerous Weapon (Felonious Assault), for making an assault on the victim by means of a knife. This individual was provided a benefit and placed in Youthful Trainee Status and placed on probation in March 1998. However, in November 1998, Youthful Trainee Status was revoked after the individual

was convicted on September 30, 1998, of Contempt of Court-Failure to Appear. On February 1, 2005, he was convicted of assault or assault & battery for grabbing his mother by her arms. He was again convicted on February 17, 2005, of Domestic Violence.

Following his release from criminal custody, he was taken into ICE custody and ordered removed. While he reserved appeal of this order, no appeal was taken. On or about April 17, 2006, this particular individual was released from ICE custody on an order of supervision. He was subsequently taken back into ICE custody on August 1, 2008, August 24, 2010, and February 1, 2011, for violating the conditions of his release by committing crimes and being associated with criminal activity while on the order of supervision. He was detained on each occasion for approximately two to three months then released on an order of supervision when his removal could not be effected. Since his order of removal on November 8, 2005, this individual has been convicted of the following:

- Breaking and Entering- Illegal Entry and Malicious Destruction of Building (July 24, 2007).
- Breaking and Entering-Illegal Entry (October 30, 2007).
- Malicious Destruction of Building (July 31, 2008).
- Police Officer-Assaulting/Resisting/Obstruction (July 16, 2009).
- Disorderly Person (August 19, 2010).
- Police Officer-Assaulting/Resisting/Obstruction (December 9, 2010).
- Disorderly Person (August 25, 2011).
- Home Invasion and Possession of Marijuana or Synthetic Equivalents (March 16, 2015).
- Larceny-Less than \$200 (December 3, 2015).
- Disorderly Person and Receiving Stolen Property-Receiving and Concealing less than \$200 (February 25, 2016).
- Larceny-Less than \$200 (June 21, 2016).
- Breaking and Entering-a vehicle to steal property less than (February 14, 2017)

Further, this individual did not have a fixed address and, in fact, was homeless for significant periods since the November 2005 order, which affected ICE's ability to locate him. On one occasion in January 2011, ICE Officers went to the residence listed for this individual to discover that it was empty. This individual's order of supervision was revoked for his either engaging in criminal activity or failing to report to ICE on August 1, 2008, August 25, 2010, February 1, 2011, and June 8, 2017.

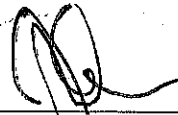
e. A-S- (847), an individual who was convicted on September 16, 2011, of Domestic Violence in violation of MCL § 750.812; on September 29, 2011, of Extortion in violation of MCL § 750.213; and on October 5, 2011, of Possession of Child Sexually Abusive Material in violation of MCL § 750.145c(4)(A). He was taken into ICE custody from the Michigan Department of Corrections on August 16, 2016, following a June 10, 2015 probation violation with regard to his conviction for possession of child sexually abusive materials. During his immigration detention, this individual was repeatedly cited for disruptive and dangerous conduct including fights, transferring pills meant for other detainees, and verbal abuse of detainees and guards.

f. A-S-B- (623), an individual whose known criminal history spans an extended period of time, to include: a 2000 conviction for Operating Vehicle if License, Registration Certificate, or Designation Suspended, Revoked, or Denied in violation of MCL § 257.904; a 2001 conviction for Disorderly Conduct – OBST., RST., Hinder; a 2004 conviction for Controlled Substance use of Marihuana; a 2004 conviction for Operating Vehicle if License, Registration certificate, or Designation Suspended, Revoked, or Denied; 2007 conviction for Operating Vehicle if License, Registration

Certificate, or Designation Suspended, Revoked, or Denied; a 2007 conviction for Accessory After the Fact to a Felony (Murder), where the victim in this case was stabbed to death; a 2009 conviction for Operating a Motor Vehicle while Impaired; a 2011 conviction for Bribing/Intimidating/Interfering with Witnesses; and a 2011 conviction for Operating a Motor Vehicle while Intoxicated, for which he violated the terms of his probation by drinking alcohol. While in detention, this individual was also cited on three separate occasions in March 2014, for being in Possession of Items not Authorized for Receipt or Retention; in May 2014 for threatening another with bodily harm; and again in May 2014 for fighting/assault.

g. B-M- (710), an individual whose criminal history extends over a 13-year period, to include: a 1997 conviction for Possession of Cocaine with Intent to Distribute; a 2000 conviction for Possession of Cocaine; a 2002 conviction for Possession of Cocaine; a 2002 conviction for Possession of Cocaine with Intent to Distribute; two separate convictions in 2009 for Domestic Violence; a 2009 conviction for Possession of a Controlled Substance; a 2010 conviction for Possession of Cocaine with Intent to Distribute; and a 2010 conviction for Conspiracy to Possess Cocaine with Intent to Distribute. This individual's ICE order of supervision was revoked in 2009 as a result of his conviction that same year for Domestic Violence.

Executed this 16th day of March, 2018.



Joseph Salvatera
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Office of Enforcement and Removal
Operations
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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

USAMA JAMIL HAMAMA, et al., Plaintiffs-Petitioners, v. REBECCA ADDUCCI, et al., Defendants-Respondents.	))))))))))	Case No. 2:17-cv-11910 Hon. Mark A. Goldsmith Mag. David R. Grand Class Action DECLARATION OF CHRISTOPHER J. GEARIN
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1. I serve as an attorney team leader for the Executive Office for Immigration Review's ("EOIR") Board of Immigration Appeals ("Board"). The Board is the highest administrative body for interpreting and applying the immigration laws of the United States. 8 C.F.R. § 1003.1.

2. In this role, I directly supervise and manage a team of paralegals, whose duties include the Board's Emergency Stay Unit ("ESU"). I have managed the ESU since April 2013.

3. The purpose of this declaration is to explain the Board's procedures for promptly processing and adjudicating a DHS discretionary stay request of an Immigration Judge's order re-determining the conditions of an alien's custody when DHS appeals that Order, as well as any motion to reconsider that Order.

4. I have knowledge of the facts stated in this declaration.

A. Background

5. The Board may enter a stay of an Immigration Judge's order redetermining the conditions of an alien's custody if the DHS files a motion to stay the execution of the

1 bond along with the DHS's appeal of the custody decision, or on its own motion pursuant
2 to 8 C.F.R. § 1003.19(i)(1). DHS is entitled to seek a discretionary stay (whether or not
3 on an emergency basis) from the Board in connection with such an appeal at any time. 8
4 C.F.R. § 1003.19(i)(1). Either party may file a motion to reconsider the Board's decision.

5 **B. The Emergency Stay Unit**

6 6. The ESU is separate and apart from the Board's Clerk's Office. The Board's
7 Clerk's Office is responsible for receiving all appeals and motions filed by the parties and
8 for entering them into EOIR's database. The ESU is composed of Board legal staff,
9 including trained paralegals, who prepare the record for Board Member adjudication of
10 emergency stay requests. As stated above, I supervise the ESU.

11 7. When an alien or alien's attorney contacts the ESU, the ESU explains the
12 requirements and procedures for filing emergency stays. The ESU telephone line at (703)
13 306-0093 is staffed Monday – Friday, during normal business hours. Messages can be left
14 at any time and will be returned.

15 8. When the DHS requests a stay of an Immigration Judge's order redetermining the
16 conditions of an alien's custody pursuant to 8 C.F.R. 1003.19(i)(1): 1) the stay request
17 must be in writing; 2) the stay request should accompany the appeal of the Immigration
18 Judge's custody decision; 3) the appeal of the Immigration Judge's custody decision must
19 be filed and pending before the Board; 4) and the alien's release from detention appears to
20 be imminent.

21 9. When the DHS files a discretionary stay request of an Immigration Judge's Order
22 redetermining the conditions of an alien's custody with an appeal of the custody decision
23 with the Board's Clerk's Office, the DHS is expected to separately notify the ESU so that
24 it may promptly process the stay request. As noted previously, the ESU is not a part of
25 the Clerk's Office and the ESU cannot act on a stay request until the Clerk's Office has
26 entered the DHS's bond appeal and it is pending before the Board.

27 10. Once the ESU confirms that the bond appeal and stay request are properly filed and
28 the release of the alien from detention appears to be imminent, the ESU prepares the stay

1 request for immediate delivery to a Board Member for prompt adjudication. Once the
2 Board Member signs the stay order, the ESU immediately attempts to contact the parties
3 by telephone. The ESU will then fax a copy of the signed and dated stay order to DHS
4 and the alien's counsel (if any) and thereafter will serve a copy by mail.

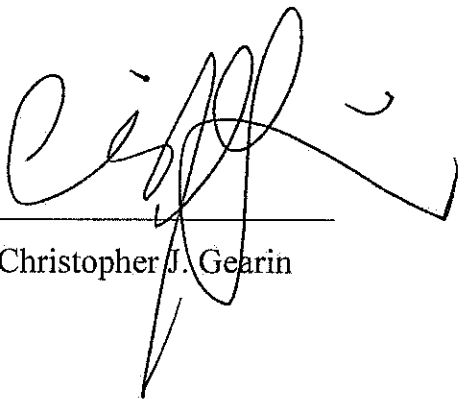
5 11. A party may file a motion to reconsider the Board's decision staying the execution
6 of an Immigration Judge's bond order. To expedite the process, a party seeking
7 reconsideration of the Board's order should contact the ESU so that the ESU can prepare
8 the record for adjudication of the motion to reconsider.

9 12. The Board's ESU is comprised of dedicated professionals who understand the
10 gravity and urgency of the requests they process, and our Board Members treat these cases
11 as a high priority. The ESU does all that it can to achieve the timely adjudication of every
12 request it receives.

13 I declare under penalty and perjury that the foregoing is true and correct to the best
14 of my information and belief.

15 Executed this 12th Day of March 2018.

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Christopher J. Gearin