NO. 18-1233

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

USAMA JAMIL HAMAMA, *et al.*,
Petitioners-Appellees,

v.

THOMAS HOMAN, Deputy Director and Senior Official Performing the Duties of the Director, U.S. Immigration and Customs Enforcement, et al.,
Respondents-Appellants.

ON APPEAL FROM AN ORDER OF THE UNTIED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN
D. Ct. No. 2:17-cv-11910

BRIEF OF NATIONAL IMMIGRANT JUSTICE CENTER AS AMICUS CURIAE IN SUPPORT OF PETITIONERS-APPELLEES' PETITION

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 18-1233 Case Name: Hamama, et al., v. Homan, et. al.

Name of counsel: Nareeneh Sohbatian

Pursuant to 6th Cir. R. 26.1, Amicus, National Immigrant Justice Center
Name of Party

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

The National Immigrant Justice Center is a program of the Heartland Alliance for Human Needs and Human Rights, a nonprofit corporation. It is not publicly owned.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No

CERTIFICATE OF SERVICE

I certify that on April 19, 2018 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/Nareeneh Sohbatian

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

CONSENT TO FILE AS *AMICUS CURIAE*

Petitioner's counsel and the Government consent to the filing of this brief.

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I. INTRODUCTION

In June 2017, Immigration and Customs Enforcement ("ICE") detained hundreds of Iraqi nationals with immigration final orders of removal who had been released on orders of supervision and placed these individuals in immigration detention facilities in order to effectuate their removal.[1] These individuals had been living in the United States, many of them for decades. *See* Petitioners-Appellees Brief, R.39, Pg.ID#14 citing to appeal No. 17-2171; *see also* Petitioners-Appellees Brief, R.39, Pg.ID#30, citing to Op., R.191, Pg.ID#5320-22. They had been in compliance with the terms of their supervision. *See* Petitioners-Appellees Brief, R.39, Pg.ID#30 citing to Op., R.191, Pg. ID#5322. The merits portion of this case sought a brief pause to allow immigration courts to consider whether to reopen removal proceedings, largely for purposes of immigration relief. *See* Petitioners-Appellees Brief, R.39, Pg.ID#14 citing to appeal No. 17-2171. While putative class members pursued motions to reopen their immigration cases and after decisions granting reopening in their cases, many remained detained without bond. The district court's January 2, 2018 preliminary injunction granted the Petitioners-Appellees (hereinafter, "Petitioners") the right to receive a bond

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[1] No party's counsel authored this brief in whole or in part; no party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person other than *Amicus Curiae* (including their counsel, their members, and their employees) contributed money intended to fund preparing or submitting the brief.

hearing when their detention reached six months. Without that injunction the Petitioners would have been subjected to continued prolonged detention.

Amicus Curiae urges the Court to reaffirm the lower court's preliminary injunction. *Amicus Curiae* does not focus on the success of the merits, as Petitioner-Appellees' brief addresses this point. Rather, *Amicus Curiae* focuses on the other three preliminary injunction factors: irreparable harm, balance of equities, and public interest factors. This brief highlights examples of class members who were living in their communities for decades, and whose stories exemplify the harm of detention.

- YAS entered the United States as an Iraqi refugee in 1994 and became a lawful permanent resident ("LPR") in 1996.[2] His LPR status was terminated in 2011. He has lived in Wichita, Kansas for more than two decades with significant community and family ties, which include three United States citizen brothers, a common-law wife since 2008, three step-children and three United States citizen children from a prior marriage. Prior to his detention, he had been employed by the same establishment for 10 years.

[2] *Counsel for Amicus Curiae* has used initialed pseudonyms for cases that are not publicly available, to protect the individuals' privacy. The facts of these cases are on file with *Amicus Curiae*.

- YAN and his family had received asylum in March 1997 and YAN had been living in the United States since he was 12 years old, more than 20 years. Prior to his detention, YAN had been gainfully employed.
- AA is a male Chaldean Christian who came to the United States at the age of 14. His parents and siblings live in the United States. AA sees his United States citizen middle school-age daughter four or five times a week and co-parents her with his ex-wife. He provides financial support to his family and he attends church.
- LH is a 42-year-old male who came to the United States in 1982 when he was six years old. He has been married to a United States citizen since November 8, 2015 and has two United States citizen children with his wife- his oldest daughter is a little over year old and his youngest daughter is about nine months old. LH runs his own business, owns his family home, and provides financial and emotional support to his elderly parents, who have medical issues, as well as his United States citizen sister who uses a wheelchair. He attends church regularly.
- KW is a fifty-three year old male who has lived in the United States for approximately 33 years. He converted to Messianic Judaism in 2008. SA is a thirty-one year old Chaldean Christian male. He came to the United States as a refugee on September 28, 1994, and became an LPR one year later.

Their stories and those of many others in the Petitioners' class demonstrate that the irreparable harm, balance of equities, and public interest factors all weigh in favor of reaffirming the lower court's injunction.

II. STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus Curiae, National Immigrant Justice Center ("NIJC"), a program of the Heartland Alliance, is a Chicago based national non-profit organization with longstanding commitments to providing legal services to immigrants detained in Department of Homeland Security ("DHS") custody. NIJC provides free legal representation to low-income immigrants, including detained immigrants who are seeking asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). In addition to representing individuals, NIJC also screens and provides legal orientation to hundreds of individuals who are detained at immigration detention facilities. NIJC has provided specific assistance to the putative *Hamama* class members by helping to match class members with *pro bono* counsel, advising *pro bono* counsel representing class members in bond proceedings and motions to reopen, and directly representing a number of class members.

Amicus Curiae has an interest in ensuring immigrants who are detained in federal government custody receive a meaningful opportunity to be heard on whether their mandatory detention is justified.

III. ARGUMENT

In order for a court to grant a preliminary injunction, a four-prong test is applied. There must be a balancing of the following: (1) the likelihood of success on the merits, (2) the irreparable harm in the absence of relief, (3) the balance of equities, and (4) the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009); *see also Blue Cross & Blue Shield Mut. Of Ohio v. Blue Cross and Blue Shield Ass'n,* 110 F.3d 318, 321 (6th Cir. 1997). Factors two, three, and four tend to be more fact-bound factors. *Blue Cross & Blue Shield Mut. Of Ohio,* 110 F.3d at 332.

Amicus Curiae's brief will focus on the three fact-bound factors: the irreparable harm in the absence of relief, the balance of equities, and the public interest.

A. The Irreparable Harm Factors Weigh in Favor of Reaffirming the Lower Court's Injunction and Requiring Bond Hearings

Many Petitioners endured prolonged detention. Petitioners were deprived of their liberty and as a consequence, suffered irreparable harm. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty"). The irreparable harm that Petitioners and their family members suffered as a result of Petitioners' detention is exemplified by some of the Petitioners' experiences, detailed in the below paragraphs.

For example, in YAS' and YAN's cases, their families depended on them for emotional and financial support. As a result, their families suffered when they

were detained. In AA's case, AA's daughter, who is in middle school, became withdrawn and depressed without her father. Prior to his detention, AA was actively involved in his daughter's life. He would see her five or six times a week. After her father's detention, AA's daughter developed a fear that she would lose her father and began to sleep in her mother's room. She began to do poorly in school. As a result of AA's detention, his ex-wife became a single parent. Without AA to help her care for their daughter and the impact that his detention had on their daughter's life, AA's ex-wife had to take time off her job, reducing her income. Also, AA was not able to provide financial support to his daughter as he did prior to his detention, creating further financial harm to his family.

In LH's case, LH missed the birth of his youngest daughter, who was born during the time that he was detained. As a consequence, LH went approximately five months without meeting his daughter. Prior to his detention, LH ran his own business to support his family so that his wife could stay at home, which LH also owns, to care for his family. LH took care of his elderly parents, who suffer from many medical ailments. His father suffers from coronary artery disease, diastolic heart failure, hypothyroidism, chronic kidney disease, and anxiety. His mother suffers from chronic back pain and hypertension. He also cared for his United States citizen sister, who has been diagnosed with transverse myelitis and uses a

wheelchair. As a result of his detention, LH's family members did not receive the emotional and financial support that he provided them prior to his detention.

In SA's case, detention had horrendous consequences for him and his family. SA suffered severe depression, and was seeing a counselor in detention. He lost his job and his wife almost became destitute. She had to rely on family members to stay with her children and had to change her employment from part-time to full-time. As a result of SA's detention, SA's wife accumulated a large debt and could not make ends meet. Further, SA fell behind on child support payments to his child from a prior relationship, which he had consistently maintained prior to his detention.

As highlighted by these accounts, unnecessary detention resulted in irreparable harm for the Petitioners and their family members. Petitioners' cases demonstrate the real hardships that they and their family members faced due to Petitioners' detention. Families were impacted on many levels, including financially, emotionally, and even physically. The detention of these individuals who were leading productive lives in their respective communities had tremendous ripple effects across families and communities.

B. The Balance of the Equities Weighs in Favor of Reaffirming the Lower Court's Injunction and Requiring Bond Hearings

The balance of the equities weighs in favor of reaffirming the lower court's injunction and requiring bond hearings, as Petitioners did not constitute flight risk,

nor did they pose dangers to the community. The balancing of the equities also should take into consideration that not detaining the Petitioners is a conservation of government resources.

1. The Petitioners were Detained For a Lengthy Period of Time, Despite Not Constituting a Flight Risk and Not Posing a Danger to the Community

Prior to their sudden detention in 2017, Petitioners had lived in their communities for years and were in compliance with the terms of their orders of supervision. *See* Petitioners-Appellees Brief, R.39, Pg.ID#30 citing to Op., R.191, Pg. ID#5320-22. Petitioners were then detained in immigration detention facilities for lengthy periods of time, despite not constituting a danger to the community nor a flight risk. That Petitioners did not pose a danger and they were not flight risks is evidenced by the fact that as of April 2018, 117 Petitioners (more than half) were released following a bond hearing. Petitioners-Appellees' Brief, R.39, Pg.ID#22, citing to Ex. A, Schlanger Decl., ¶ 27, tbl.2. In 63% of cases, when considering detention pursuant to the injunction, immigration judges determined that the individuals did not present a danger and either that there was no flight risk or that their flight risks could be mitigated by bond. *Id.*

AA's case exemplifies the strong family ties and community connections that many Petitioners share. AA is Chaldean and attended Catholic Christian churches in his community. His immediate family, including parents, brothers, and

four sisters, lives in the United States. Prior to his detention, he lived with one of his sisters and her family. AA and his ex-wife co-parent their only daughter, who is in middle school. There is no indication AA posed a danger or a flight risk, and as such, his prolonged detention was unnecessary.

KW had been dedicated to the Messianic Jewish faith since 2008. Further, KW had not had a criminal offense in over thirteen years, at the time of his detention. Evidence of rehabilitation is a factor common to many of the putative *Hamama* class members who were suddenly detained in July 2017.

YAS has also lived in the United States for many years as a productive member of society. YAS entered the United States as an Iraqi refugee in 1994 after being tortured for refusing to join Saddam Hussein's army. YAS became a LPR in 1996. YAS has not committed an offense since his 2009 conviction, which was related to his use of marijuana to treat his chronic anxiety and bipolar disorder; that conviction led the 2011 order of removal. Since his conviction, he sought help and successfully completed probation. He likewise successfully complied with his ICE order of supervision for approximately six years, from September 2011 until May 2017. He has lived in Wichita, Kansas for more than two decades with significant community and family ties. YAS has numerous family members in the United States, including his three United States citizen brothers. He has cousins, nieces and nephews in the United States. He has been in a common-law marriage with a

United States citizen since approximately 2008 and has helped raise his common-law wife's three children ages 11, 13, and 15. He also has three United States citizen children ages 12, 15, and 20, from a prior marriage. Furthermore, he had been employed as a cook for the Wichita Country Club for ten years at the time of his detention. YAS' employer described him as "dependable, hardworking and an incredible asset." The facts in YAS' case demonstrate he was neither a danger nor a flight risk and his detention was unnecessary at the outset.

Likewise, YAN has been dutifully attending his ICE order of supervision check-ins for five years, totaling no fewer than 13 check-ins. YAN has been gainfully employed throughout this period. His record of rehabilitation and community involvement are also good evidence that he was not a danger to the community at the outset of his detention.

LH faced the same tribulations as the previously described individuals. LH came to the United States in 1982 at the age of six. He had been dutifully complying with his ICE check-ins for years prior to his re-detention. LH's criminal convictions occurred years ago before he married and he has since rehabilitated himself. LH has been married to a United States citizen since November 8, 2015, and has two United States citizen children, a daughter a little over a year old and a nine-month-old. LH cares for his elderly parents, who suffer from several medical problems. He cares for his United States citizen sister. Prior to his detention, LH

ran his own business and had bought a home. Furthermore, LH regularly attends church. The facts (as later found by the immigration judge) demonstrated that LH was not a flight risk or a danger, a strong indication that his detention was unnecessary.

SA faced similar circumstances. SA escaped Iraq with his family when he was five years old. SA entered the United States as a refugee in 1994, when he was approximately nine years old. SA's criminal conviction occurred several years ago. He had been in 100% compliance with his order of supervision since October 5, 2015. At his last reporting date in May 3, 2017, he was informed that he did not need to report again until May 8, 2018. SA has been married since January 23, 2013, to a United States citizen and together they have two minor United States citizen children. SA has a third United States citizen child from a prior relationship, whom he financially supports. SA's mother and four siblings live in Michigan and all except two siblings are United States citizens. SA had been employed as a cook in Michigan since February 2016 and his employer relied on him heavily to manage his business. SA is a Chaldean Christian. Like the Petitioners, whose cases were previously highlighted, SA was not a flight risk nor a danger and should not have detained.

2. *Conserving Resources Is a Factor that Further Balances the Equities in Favor of the Petitioners*

In the context of this claim, bond hearings allow the government to conserve its resources by releasing individuals who do not pose a flight risk or a danger to the community. In this particular matter, the harm to the government is diminished where a blanket mandatory detention policy without individualized assessments could lead to individuals being deprived of their fundamental interest, liberty, and results in excessive and unnecessary costs to the Government.[3] This is particularly so because many of the Petitioners have meritorious defenses to their removal and also because all of the Petitioners had been living in their communities under ICE orders for supervision for several years prior to their re-detention. *See supra* III.B.1. As such, all detention accomplishes is to increase the government's cost and waste its resources and erroneously deprives individuals of a fundamental interest, liberty. For example, KW won his immigration case on November 22, 2017, and DHS waived appeal; however, he remained detained until January 16,

[3] Courts have criticized the DHS's regulations providing internal review of the individual's detention finding that such review is not sufficient to address the constitutionality of continued detention and that a hearing before an immigration judge is the appropriate remedy. *See Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir. 2011); *see also Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 951-52 (9th Cir. 2008).

2018. He was detained for seven and a half months, which required substantial government resources, without vindicating any government interest.

A blanket detention policy is also counterproductive because the government will invariably incur tremendous cost to detain Petitioners through the conclusion of their cases. Immigration cases are taking years to process. *See* http://trac.syr.edu/phptools/immigration/court_backlog/. Indeed, it is not entirely clear that Iraq will be issuing travel documents and accepting the Petitioners even ***if there*** is a final adjudication and denial of their requests for particular immigration benefits. *See Hamama v. Adducci*, 285 F.Supp. 3d 997, 1013 (E.D. Mich. 2018). For example, in AA's case, an immigration judge granted AA asylum on February 1, 2018, months after he had been detained. In SA's case, DHS appealed the immigration judge's August 28, 2017 decision granting SA withholding of removal to the Board of Immigration Appeals ("BIA") on September 12, 2017. During this time, SA remained in detention. On February 2, 2018, months after DHS appealed the immigration judge's decision to the BIA, SA was granted a $25,000 bond. In YAS's case, he received a bond hearing months after his detention and he was released on bond in January 2018. His motion to reopen was filed on February 20, 2018, the motion was granted on March 7, 2018, and a master calendar hearing--an initial hearing--has been scheduled for September 18, 2018, over six months after the granting of the motion to reopen.

Therefore, far from impinging on governmental interests, bond hearings before neutral arbiters actually alleviate fiscal burdens on the government by potentially releasing some Petitioners and eliminating the government's cost in continuing to detain them. A bond hearing will properly weigh the government's interest in continued detention (i.e., whether or not Petitioners demonstrate a flight risk or a danger), and the Petitioners will be released if their detention is no longer provided for by law.

The Petitioners' experiences demonstrate the equities weigh in their favor. The fact that many Petitioners, like those highlighted in this section, were living in accordance with the law, providing emotional and financial support to their families and communities, attending church, participating in community activities, and maintaining regular employment demonstrates why it is critical that the Petitioners have a venue in which to raise the appropriateness of their ongoing detention. They call for reaffirming the need for meaningful neutral review of detention as ordered by the lower court.

C. Public Interest Factors Favor the Petitioners

Public interest factors favor affirming the Petitioners' injunctive relief and access to bond hearings. Doing so would ensure that justice is preserved by our judicial system. Petitioners faced unnecessary, unjustified detentions while they pursued *bona fide* challenges to their removals. As noted, these immigration cases

may be pending for several years. The public interest factors warrant upholding the lower court's determination.

1. Petitioners were Detained for Prolonged Periods of Time Despite Pursuing Bona Fide Challenges to Removal

These cases demonstrate why public interest factors weigh in favor the Petitioners and the need for individualized bond hearings. Many Petitioners were incarcerated in immigration detention facilities for unreasonably lengthy periods of time, despite pursuing *bona fide* challenges to removal. Before the district court's preliminary injunction, which finally allowed the Petitioners to receive bond hearings, nearly all of the Petitioners had been detained for over six months without any individualized determinations regarding their danger or flight risk. *See* Petitioners-Appellees' Brief, R. 39, Pg.ID #22, citing to Ex. A Schlanger Decl., ¶ 26, R.174-3, Pg.ID#4923.

Even where individuals won their cases before the courts, they remained detained, unnecessarily extending their detention. For instance, ICE detained KW on May 26, 2017. He was detained at an immigration detention center for nearly seven and a half months. On November 22, 2017, an immigration judge granted deferral of removal under CAT in his case, recognizing that if he was forced to return to Iraq KW would be tortured. KW remained detained for nearly two additional months, despite the grant of protection under CAT and DHS' waiver of any appeal in his case. On January 31, 2018, after nearly seven and a half months

in detention, KW's bond request was granted and he was released from DHS custody. Here, KW prevailed on his case, demonstrating the need for a meaningful opportunity to be heard on the matter of his detention *prior* to the adjudication of his immigration case on the merits.

KW's circumstance is not unique. ICE detained LH, who filed a motion to reopen his immigration proceedings on May 31, 2017. His motion to reopen was denied on June 27, 2017. He appealed this decision to the BIA on July 31, 2017. On January 25, 2018, after nearly eight months in detention, LH had a bond hearing before an immigration judge at which time he received a $30,000 bond. On March 8, 2018, the BIA granted his appeal and remanded his case to an immigration judge. LH's immigration case is now scheduled for a master calendar hearing on November 29, 2019. This example again demonstrates how another Petitioner was incarcerated in an immigration detention facility for an unreasonably lengthy period of time, despite pursuing a *bona fide* challenge to removal.

ICE also detained AA when he presented himself to ICE for a routine check-in. AA filed a motion to reopen, which was initially denied. He appealed this decision to the BIA. On October 20, 2017, the BIA granted AA's motion to reopen and remanded his case to an immigration judge for further proceedings. On December 20, 2017, while still detained, AA appeared before an immigration

judge for his individual hearing. On February 1, 2018, the immigration judge issued a decision granting AA asylum, recognizing AA's well-founded fear of being persecuted if forced to return to Iraq on the basis of his Chaldean Christian religion. AA's case is another example of a Petitioner who was detained for a substantial period despite having a strong legal defense to removal.

ICE also detained SA on June 11, 2017. On June 15, 2017, SA filed a motion to reopen his immigration proceedings requesting that the proceedings be reopened due to his fear of returning to Iraq because of his Christian religion and Chaldean ethnicity. SA's motion to reopen was granted on June 21, 2017. On August 28, 2017, an immigration judge granted SA withholding of removal. DHS appealed this decision on September 12, 2017, to the BIA, an appeal that remains pending. After almost nine months of detention, on February 28, 2018, SA received a $25,000 bond; he was released from detention.

Another case example is YAS. ICE detained YAS in May 2017, after he had been living in Wichita, Kansas, peacefully with his family for years. YAS was approaching the ninth month of confinement when he was represented by a *pro bono* attorney in a bond hearing on January 16, 2018. He was granted a $5,000 bond and released days later to his family. His case was subsequently reopened and he has been scheduled for an initial master calendar hearing on September 18, 2018, approximately 16 months after his initial detention.

YAN's case also presents an example of a Petitioner who was unnecessarily detained. YAN and his family had received asylum in March 1997 and YAN had been living in the United States since he was 12 years old, more than 20 years. ICE detained YAN in 2017. His motion to reopen was filed on February 23, 2018, and it was granted on March 9, 2018. He was released on bond.

Incarcerating Petitioners for months on end despite the fact that they were pursuing *bona fide* challenges to removal mitigates strongly in favor of weighing the public interest factor in their favor.

2. Immigration Proceedings May Pend for Several Years, which also Indicates a Public Interest in Not Continuing to Detain the Petitioners

As reflected in the individual stories of the Petitioners highlighted in this brief, immigration proceedings may be pending for years. Due to the backlogs in immigration courts, it may take years for individual immigration hearings to address the merits of the claim to be scheduled. Indeed, noncitizens must wait an average of 711 days for an immigration hearing.[4] If an individual is not successful at his individual hearing, he has the opportunity to appeal his case with the BIA. *See* 8 C.F.R. § 1003.1. The BIA can remand a case to an immigration judge for further proceedings. *See Fernandes v. Holder*, 619 F.3d 1069, 1074 (9th Cir. 2010). If the BIA denies an individual's case, the individual can appeal his case via

[4] *See* http://trac.syr.edu/phptools/immigration/court_backlog/.

a Petition for Review to the pertinent Court of Appeals with jurisdiction over his case. *See* 8 U.S.C. § 1252(b)(1). The Court of Appeals can also remand. *See Andia v. Ashcroft*, 359 F.3d 1181, 1184 (9th Cir. 2004). It also takes months or years for an appeal to be heard in the Courts of Appeals. *See, e.g., Casas-Castrillon*, 535 F.3d at 944-45 (detailing an example of a detained immigration case pending for approximately six years without a resolution). For all these reasons, it may take years for a final decision in an individual's immigration matter to be made.

Without the opportunity to address their detention, the Petitioners would need to remain in immigration detention until a final decision was rendered in their cases. Without a federal court injunction, the Petitioners would not have had an opportunity to appear before an impartial adjudicator on the issue of their detention, which ultimately was unjustified. AA, KW, LH, SA, YAN, and YAS, whose cases were previously discussed, serve as examples of individuals who, but for the federal court injunction, would not have had the opportunity to receive a review of their unjustified detention otherwise. Without an opportunity to be heard on their detention before an impartial adjudicator, these individuals certainly would have remained in detention.

Moreover, when Petitioners are successful in removal proceedings, there is no guarantee that they will be immediately released from detention. In fact, it often does not happen. As recounted above, KW was unnecessarily detained for two

additional months *after* the immigration judge granted him relief and *after* DHS waived appeal. This indicates that a bond hearing is critical to address the necessity of detention, as even those individuals who have been successful in their immigration cases have been subjected to detention following a finding by an immigration judge that they should not be removed to Iraq, as they will be tortured or harmed upon their removal.

In sum, public interest factors also favor Petitioners. Without these bond hearings, the Petitioners would not have had an opportunity to appear before an impartial adjudicator on the issue of their detention. The Petitioners would have ultimately remained unnecessarily detained and subjected to a prolonged unjustified detention while pursuing *bona fide* claims.

IV. CONCLUSION

For the foregoing reasons, the Court should uphold the lower court's decision and find that the Petitioners should not be detained without an individualized bond hearing, as the irreparable harm to the Petitioners is substantial, and the balance of equities and the public interest weigh in favor of the Petitioners.

Dated this 19th day of April, 2018.

Respectfully submitted:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the Fed. R. App. P. 29 and 32(a)(7)(B) because it contains 4,716 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), Fed. R. App. P. 32(f), and Sixth Circuit Rule 32(b)(1). It complies with the typeface and style requirements of the Fed. R. App. P. 32(a)(5) and 32(a)(6) because it is in 14 point Times New Roman font using Microsoft Word and proportionally spaced.

Dated: April 19, 2018

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system on April 19, 2018. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: April 19, 2018

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