

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

CLASS NOTICE FOR IRAQI NATIONALS IN THE HAMAMA CASE
REGARDING COURT ORDER ON
BOND HEARINGS OR RELEASE FROM DETENTION

January 19, 2018

If you need this notice in Arabic, ICE will provide it to you: contact your ERO officer.

إذا كنت بحاجة إلى هذا الإشعار باللغة العربية، فإن بإمكان دائرة (أيس) أن توفره لك، عليك الإتصال بالضابط (ERO) الخاص بك.

In June 2017, the American Civil Liberties Union (ACLU) and its partners, who represent the Petitioners, filed this class action case on behalf of Iraqi nationals with final orders of removal seeking a stay of removal to Iraq and relief from detention. **This notice is for Iraqi nationals in immigration detention who have a final order of removal from before June 24, 2017. It also applies to Iraqi immigration detainees who had a final order in effect at any time between March 1, 2017 and June 24, 2017, if their case was then reopened.**

On January 2, 2018, Judge Mark A. Goldsmith issued a decision granting part of the motion filed by the Petitioners for release from detention. That decision affects detainees who meet certain criteria. **The Court ruled that U.S. Immigration and Customs Enforcement (ICE) can hold those detainees for more than six months only if they are given the opportunity to seek bond in the immigration court, unless there is some individual special situation that means no bond hearing is required.**

You may be entitled to a bond hearing as a result of that decision. **TO FIND OUT WHETHER AND HOW THIS DECISION AFFECTS YOU, READ THIS NOTICE CAREFULLY.** Most but not all of the Iraqi nationals whom this Notice is for will get bond hearings as a result of that decision. The Court's precise language for who is covered is at the very end of this notice, and it is explained throughout, especially at Question 8.

IMPORTANT: Even if you are released from detention, **ICE still has the authority to deport/remove you.** An earlier order in this case has stayed your deportation/removal to Iraq, but this stay only protects you for 90 days after you received your immigration file from the Government, unless you file a motion to reopen your immigration case. ***For most detainees, that 90-day period ends February 25, 2018.*** Even if you are released (or if you remain in detention), you could be deported/removed unless you file a motion to reopen by the deadline. If your motion is denied, your stay of deportation/removal will not continue unless you appeal.

IMPORTANT: The Government has said it may appeal Judge Goldsmith's order and may try to request a stay of the order requiring bond hearings until the Court of Appeals rules on the appeal. If the courts agree to stay the order, you may not be released and will not get a bond hearing while the case is on appeal.

IMPORTANT: If you have filed an individual habeas petition, you will ***not*** be given a bond hearing or be released under the Court's order, unless you withdraw the habeas petition within three weeks of receiving this notice. You have three weeks to decide whether to continue with your own individual habeas case or to participate in the detention part of this case. You cannot do both.

1. WILL I GET RELEASED AND HOW WILL THAT HAPPEN?

If you are covered by the judge's order, the Government must either give you a bond hearing or release you, unless there is some individual special situation that means no bond hearing is required.

Immigration judges holding these bond hearings may order you released on bond, on conditions, or on your own recognizance. Or they may deny release. At the bond hearings for people who have been in detention for over six months, the Government must prove by clear and convincing evidence that you pose a danger or flight risk that cannot be addressed by conditions of release. Absent such a finding by the immigration court, ICE is required to release you if you pay the bond set by the immigration court.

At the bond hearing, you will have the opportunity to present evidence and call witnesses. The kind of evidence that the immigration court may consider includes but is not limited to your employment history, your family and community ties, your history of reporting while on an order of supervision, your record of appearance in immigration court, your history of immigration violations, your length of residence in the United States, your criminal history, including the seriousness and number of your offenses and the length of time since your last offense. You and your attorney can begin to gather that evidence now.

Either you or the Government may appeal the bond decision to the Board of Immigration Appeals. If bond is denied or set higher than you can afford, you can ask for a second bond hearing, but only **AFTER** there has been a material change in your circumstances since the prior bond determination. For example, if bond was denied while you had a final order and then you have a motion to reopen granted, you can request another bond hearing, which the immigration judge may or may not allow.

2. CAN I HAVE AN INDIVIDUAL HABEAS CASE AND ALSO GET A BOND HEARING UNDER THE RELEASE ORDER?

No. If you have already filed an individual habeas petition, you have to choose whether you want to keep your own individual habeas case or whether you want to be covered by the release order in this class action case. **If you want to be covered by the release order, you have three weeks from when you get this notice to file a motion to withdraw or dismiss that petition.** A motion to dismiss is a document with the caption of your case and your signature in which you tell the Court that you want to dismiss your case. If you want to dismiss your case, you need to send such a document to the court where your individual habeas case is within three weeks and send a copy to the Government.

If you receive a ruling on your habeas petition before you dismiss your individual habeas case, you cannot be in the group covered by Judge Goldsmith's order.

If you withdraw/dismiss your individual habeas case within three weeks of receiving this notice, you will be covered by Judge Goldsmith's order. After the judge in your individual habeas case dismisses your case, the Government will then have two weeks to either schedule a bond hearing, explain to the federal court in Detroit why no bond hearing is appropriate, or release you. If there are future detention rulings in this case, including any possible future rulings by the Court of Appeals that stop the bond hearings, you will also be covered by those rulings.

IMPORTANT:

If you have an attorney in your habeas case, you should talk to that attorney about whether to dismiss your individual habeas case. You can also ask your immigration attorney for advice.

If you have not filed an individual habeas petition but think you might want to, you should talk to your lawyer first because you will no longer be within the class as defined and may lose your right to a bond hearing under Judge Goldsmith's order.

3. WHERE WILL MY BOND HEARING BE?

Your bond hearing will be in the immigration court that covers the detention facility where you are being held. That may be a different immigration court than the immigration court that otherwise handles your case.

Depending on where you are detained, you may appear via video teleconference, or in person. Your attorney and your witnesses can go to the immigration court or they can ask to appear by phone or video teleconference (although an immigration judge may deny their request and require them to appear in person).

If you or your attorney ask that your bond hearing be moved to the immigration court that otherwise handles your case, and the immigration judge allows you make that change, the Government will promptly reschedule the hearing for a new date in the other court, but the new date will not necessarily be before the deadlines set out in Question 4 below.

4. WHEN WILL MY BOND HEARING BE?

The Government will schedule these bond hearings, but you or your immigration attorney will get at least 48 hours' notice of your hearing. You can ask for your bond hearing to be rescheduled. If you do that, the immigration judge may agree to reschedule the hearing, and if so, must do so promptly, but not necessarily before the deadlines.

The timing of your bond hearing depends on how long you have been detained and where you are detained.

A. For People Who Have Already Been In Detention Six Months as of January 2, 2018

i. Detainees in the Areas Covered by the Cleveland and Detroit Immigration Courts.

Because there are a lot of detainees in Ohio and Michigan, the judge has given the Government additional time to hold all the required bond hearings for detainees in those states. **The immigration courts in Cleveland, Ohio and Detroit, Michigan, must complete 65 bond hearings by February 2, 2018, and the remaining bond hearings by February 16, 2018.**

You are part of this group if you are detained in facilities in Ohio or Michigan, including:

- Detroit Immigration Court: Calhoun County Jail, Chippewa County Jail, Monroe County Jail, St. Clair County Jail
- Cleveland Immigration Court: Northeast Ohio Correctional Facility (Youngstown), Geauga County Jail, Butler County Jail, Seneca County Jail

ii. Detainees in All Other Areas

Your bond hearing must be completed by February 2, 2018 (unless you ask for it to be rescheduled or continued).

B. For People Who Were Not Yet in Detention Six Months As Of January 2, 2018:

If you were not yet in detention for 6 months on January 2, 2018, the Government will have 30 days after you hit the six-month mark to either give you a bond hearing or release you, unless there is some individual special situation that means no bond hearing is required.

5. CAN I GET BOND HEARING IF I AM IN “MANDATORY DETENTION”?

If your motion to reopen has been granted and you have been held in “mandatory detention” there are two ways to get a bond hearing depending on how long you have been detained. If you have been in detention more than six months, a bond hearing will be scheduled for you. See Question 4.

If you have not yet been in detention six months, you can now choose to ask for a bond hearing, and you (rather than ICE) have the burden of proof. You should talk to your attorney about whether to request a bond hearing before six months.

6. HOW DO I PAY THE BOND AND GET OUT OF DETENTION?

Immigration bonds can be paid at an ICE Bond Acceptance Facility. They cannot be paid at the detention center unless the detention center is also a bond acceptance facility. They cannot be paid until the Immigration Court order is received by ICE. It may take up to a full day for the Bond Acceptance Facility to receive the order and be ready to accept a bond after the Immigration Judge sets it. If possible, ask the Government attorney at the bond hearing how soon the bond can be paid.

Here is a list of the places where bond can be paid:

<https://www.ice.gov/ice-ero-bond-acceptance-facilities>

Bonds must be paid either with a money order or a cashier's check from a bank, which must be made out to the U.S. Department of Homeland Security. No other forms of payment are accepted nationwide. For bonds that are \$10,000 and over, only one cashier's check from a bank will be accepted.

There are also surety companies operating in some places that will provide "surety" bonds for ICE. The person who pays the bond is called the "Obligor." Only someone who is 18 or older and has legal status can be a bond obligor. Generally, the ICE ERO Field Office requires that the Obligor provide a valid Employment Authorization Document, a U.S. birth certificate or passport, an original Certificate of Citizenship or Certificate of Naturalization, or a Lawful Permanent Resident card. In addition to these, the Obligor should also bring a state-issued driver's license or identification card and their Social Security Card. The Obligor will have to provide all of the information required by ICE Form I-352:

<https://www.ice.gov/sites/default/files/documents/Document/2017/i352.pdf>

The information on the form includes: Name and Contact Information for Obligor; Social Security Number (or other Taxpayer Identification Number) for Obligor; Alien Registration Number (A Number) for Detainee; Address and Telephone Number Where the Detainee Will Live; and Place and Date Detainee Entered the U.S. Be prepared with this information.

It can take several hours to post a bond, so be sure to have the person who is posting your bond go early in the day to make sure that the entire process can be completed. ICE will communicate the payment of the bond to the detention facility so that they can release you. It can take several hours but it usually happens on the same day. The Obligor will be given Form I-305. It is very important to keep this document because it is required for the bond refund at the end of the case. You should review the order from the Immigration Judge and any documents from ICE with your attorney so that you understand any the terms of your release.

After being released on a bond, if you miss an Immigration Court hearing or an ICE appointment, you will be in violation of the bond terms. When this happens, ICE sends the Obligor an ICE Form I-340, Notice to Obligor to Deliver Alien, via certified mail, return receipt requested. The notice demands that the Obligor present the bonded alien at the ICE Field Office at a specific date and time, usually in the morning. The date will likely be within a few weeks after receipt of the notice, so the Obligor will have limited time to find and make arrangements with you. If the Obligor fails to present you at the requested date and time, ICE will send an ICE Form I-323, Notice of Immigration Bond Breached. In this case the Obligor will not receive a bond refund.

At the end of the case, which can take months or years, a bond refund usually takes about 3-4 weeks after ICE receives your original Form I-305 and Form I-391.

7. WHAT WILL HAPPEN IF I DON'T FOLLOW MY BOND CONDITIONS?

If the immigration judge puts conditions on your bond, you must follow all of those conditions. If you do not, you may be in violation of the bond terms. You could sacrifice your bond, get rearrested, and/or put back in detention.

8. DOES THE RELEASE ORDER APPLY TO ME?

The release order applies to Iraqi immigration detainees who have a final order of removal from before June 24, 2017). It also applies to Iraqi immigration detainees who *had* a final order in effect at any time between March 1, 2017 and June 24, 2017, but then had a motion to reopen granted, and are currently being held in “mandatory detention.” The Court’s exact language about who is covered is at the end of this Notice.

You will NOT get a bond hearing or be released if you are in one of three groups:

A. Detainees Who are NOT Being Held In Mandatory Detention and Who Do NOT Have Final Orders of Removal

To be covered by the release order you must EITHER have a final order of removal OR have had a motion to reopen granted and be held in mandatory detention. Talk to your individual immigration lawyer if you have questions about whether you are covered by the release order. You can also contact class counsel (the ACLU and its partners) using one of the ways listed below in Question 9.

B. Detainees Who Filed Individual Habeas Petitions

The order **DOES NOT apply to detainees with open individual habeas petitions.** You will not be covered by the release order if you have filed an individual habeas petition, unless you withdraw your individual petition within 3 weeks of receiving this notice. See Question 2 above for more information.

C. Detainees Who Requested Removal to Iraq and For Whom the Court Has Entered an Order Lifting the Stay of Removal

If you requested to be removed to Iraq AND the Court has entered an order specific to you saying that you can be removed to Iraq, you will not receive a bond hearing or release under the Court’s release order. If you have questions about this, you can contact class counsel (the ACLU and its partners) using one of the ways listed below in Question 9.

9. HOW CAN I GET MORE INFORMATION?

Your individual immigration attorney can advise you about your individual situation. If you do not have an immigration lawyer, you can contact class counsel who will refer your request to an individual who is matching pro bono lawyers with detainees. There is no guarantee that a pro bono attorney will be able to take on your immigration case.

You can also contact class counsel. Class counsel are the attorneys that the judge appointed to represent the petitioners in this case. They represent the class members in this lawsuit, but they do not represent you in your individual immigration case. You can reach class counsel by writing to:

Legal Mail
Attn: Hamama v. Adducci Litigation
101 N. Main, 7th Floor
Ann Arbor, MI 48104

Or have your family or your lawyer email: hamama@aclumich.org.

You or your family can get the main court decisions in this case on the ACLU casepage: <https://www.aclu.org/cases/hamama-v-adducci/>.

COURT ORDER LANGUAGE REGARDING WHO IS COVERED

This case is a class action. The court “certified” several subclasses, meaning that people in that group get the same relief as the named Petitioners. The two subclasses covered by the court’s release order are the “Detained Final Order Subclass” and the “Mandatory Detention Subclass.” If you are a member of one of those two subclasses, you are covered by the release order.

The “Detained Final Order Subclass” is defined as: “All Primary Class members with final orders of removal, who are currently or will be detained in ICE custody, and who do not have an open individual habeas petition seeking release from detention.”

The “Mandatory Detention Subclass” is defined as: “All Primary Class members whose motions to reopen have or will be granted, who are currently or will be detained in ICE custody under the authority of the mandatory detention statute, 8 U.S.C. § 1226(c), and who do not have an open individual habeas petition seeking release from detention.”

The definition of the “Primary Class” to be used for the purposes of defining the subclasses is: “All Iraqi nationals in the United States who had final orders of removal at any point between March 1, 2017 and June 24, 2017, and who have been, or will be, detained for removal by ICE.”
