

**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

ORDER REGARDING FURTHER PROCEEDINGS

On January 10, 2018, Petitioners and Respondents submitted to this Court a Joint Statement of Issues (“JSI”) setting forth their agreement and respective positions on a number of items related to this Court’s Opinion & Order Denying in Part Respondents’ Motion to Dismiss (Dkt. 135), Granting in Part Petitioners’ Motion for Preliminary Injunction (Dkt. 138), and Granting in Part Petitioners’ Amended Motion to Certify Class (Dkt. 139) (“January 2 Order,” Dkt. 191). The Court conducted an in-person status conference on January 11, 2018, and telephonic status conferences on January 17 and January 19, 2018, to address the items identified in the JSI. Both sides reserve the right to appeal the Court’s January 2, 2018 Order, ECF No. 191, without limitation.

This Order documents the agreements reached by the parties during the

status conferences and the Court's decision where the parties were unable to reach agreement. Other items will be addressed in a future order.

Procedures for Implementing this Court's January 2 Order

1. To facilitate an orderly implementation of the January 2 Order:
 - a. For those detainees subject to the jurisdiction of the Cleveland or Detroit immigration courts, the Government shall conduct bond hearings for at least 65 detainees by February 2, 2018, with the balance to be conducted by February 16, 2018. For detainees subject to the jurisdiction of other immigration courts, the date by which the Government shall conduct bond hearings remains February 2, 2018.
 - b. Each immigration court that is holding bond hearings shall accept E-28 appearance forms from affected detainees' counsel, including by overnight mail or delivery.
 - c. For the bond hearings ordered by this Court, the Government shall notice the hearings for all detainees for whom it intends to conduct bond hearings. Notice shall be provided to class counsel, the detainee, and immigration counsel with an appearance in that immigration court.
 - d. Immigration counsel shall be afforded at least 48 hours' notice of bond hearings.

e. Immigration counsel or a detainee may request a continuance of the bond hearing. If a continuance is granted, the bond hearing must be conducted promptly, but may be conducted after the deadlines specified in 1(a).

2. Immigration judges holding bond hearings pursuant to the January 2 Order may order an immigration detainee released on bond, conditions, or his or her own recognizance. At these bond hearings, the Government bears the burden of proving by clear and convincing evidence that a class member poses a danger or flight risk that cannot be addressed by conditions of release. Absent such a finding by the immigration court, Respondents shall release class members. The January 2 Order does not alter the burden of proof for individuals detained for less than 180 days to demonstrate by a preponderance of the evidence that they he or she is not a danger or a flight risk.

3. The Government shall not revoke release granted pursuant to ¶ 2 solely because of an individual's failure to obtain travel documents.

4. The references to orders of Supervision in the January 2 order on Pg.ID# 5344 and Pg.ID# 5361 are amended as follows:

- Pg.ID# 5344: "Any bond hearing shall be conducted before an immigration judge at which the judge shall release the detainee under ~~an appropriate order of supervision~~ **conditions of release** unless the

Government establishes by clear and convincing evidence that the detainee is a flight or public safety risk.”

- Pg.ID# 5361: “c. At the bond hearing, the immigration judge shall release the detainee under ~~an order of supervision~~ **conditions of release** unless the immigration judge finds, by clear and convincing evidence, that the detainee is either a flight risk or a public safety risk.

5. Either party may appeal adverse bond decisions to the Board of Immigration Appeals.

6. Detainees may seek a subsequent bond hearing if there has been a material change in their circumstances (e.g., their motion to reopen has been granted). *Cf.* 8 C.F.R. § 1003.19(e). The immigration court shall decide whether the circumstances merit such relief.

7. The Court’s January 2 Order relating to detention does not affect detainees for whom the Court has entered an order lifting the July 24 stay of removal, or for whom the parties have filed stipulations for such an order although no such order has yet been entered.

8. Those Mandatory Detention Subclass members who have not yet been detained for six months are entitled to a bond hearing under ordinary scheduling practices, if they request one, under 8 U.S.C. § 1226(a).

Data Disclosure

9. The Government shall supply the following data to Petitioners:

a. By January 24 for all currently-detained class members, and in the existing bi-weekly disclosure for newly detained individuals: Date current detention started (the date being used to calculate the 180-day clock that qualifies a detainee for a prolonged detention bond hearing).

b. By January 26, 2018, identification of each A-File or ROP transmitted to any detainee, counsel, or designee, including the name and A-number of the detainee, the name of the recipient of the file, and the date of transmittal for all such transmittals not previously noticed to Petitioners.

c. In the bi-weekly disclosures beginning February 7, 2018, the Government shall supply the following data to Petitioners:

- Hearing date
- Hearing court and judge
- Decision date (if available)
- Decision, including bond amount, if any
- If any appeal or stay has been filed and (if available) the outcome.

Respondents shall answer reasonable occasional questions by Petitioners relating to possible inaccuracies in the data just identified. Following the February 21, 2018 production, the Court will convene a status conference to address the continued need for disclosure, if still at issue.

d. In the bi-weekly disclosures beginning February 21, 2018, the

government shall identify each detainee whose time in detention has reached 180 days or more but whom the government does not consider eligible for a bond hearing, and the reason asserted for non-eligibility.

Communication with the Class

10. ICE shall, as soon as practicable upon the issuance of this Order, instruct each detention facility where class members are held that the facility shall (1) allow group meetings between class members and class counsel or their designees, (2) schedule such meetings within five days of request, and (3) treat the written materials and oral content for such meetings as confidential.

11. The government shall provide its views on proposed class notice to Petitioners' counsel by 4 pm on January 18, 2018; the parties shall submit proposed class notice to the Court by 9 am on January 19, 2018, with any disagreements noted. The Court will approve class notice on January 19, 2018, and the government shall post that notice in common areas accessible to each of the class members, in the detention facilities that house them, on January 20, 2018, and shall deliver class notice to each class member by close-of-business on January 24, 2018.

Class Counsel

12. Miriam Aukerman, of the ACLU of Michigan, and Judy Rabinovitz, of the ACLU Immigrants' Rights Project, are hereby appointed as additional class counsel.

Modification/Clarification to July 24 Stay of Removal

13. This Court's July 24 Order Granting Petitioners' Motion for Preliminary Injunction is hereby supplemented as follows:

In the event that a motion to reopen filed prior to transmittal of the A-File and ROP is or has been denied in the Board of Immigration Appeals (whether filed in or appealed to the BIA), and, within 90 days of proper transmittal of the files, the alien files a new motion to reopen, motion to reconsider, or similar motion in immigration court or the BIA, the period covered by ¶2 of the Court's July 24, 2017 stay of removal order will include the period until final resolution of any new motion to reopen, motion to reconsider, or similar motion filed in immigration court or the BIA, or, if such a motion is the subject of a petition for review in the United States Court of Appeals, the denial of a motion for a stay by the United States Court of Appeals.

Individual Habeas Petitioners

14. Detainees identified in Exhibit A of the Joint Statement of Issues (Dkt. 198) as having filed individual habeas petitions shall have until three weeks after the class notice is delivered to them to move to withdraw or dismiss their pending habeas petitions. If they do so, they will be included in the appropriate detention subclass once the Court where the habeas petition is pending has issued an order or taken another action to dismiss or otherwise close the matter. Detainees in Exhibit A who have not moved to dismiss or withdraw their individual habeas petitions before the cut-off date cannot subsequently become subclass members. If a detainee's habeas petition has been decided on the merits, the detainee cannot become a subclass member.

15. Once a habeas matter is voluntarily dismissed, withdrawn, or otherwise closed pursuant to ¶ 14, the Government shall have two weeks from the time the Government is notified of the dismissal, withdrawal, or closure to conduct a bond hearing, release the detainee, or file a memorandum objecting to a bond hearing for the particular detainee.

16. Each party will promptly notify the other on becoming aware of any additional individual habeas petition by an Iraqi immigration detainee who had a final order of removal at any point between March 1, 2017 and June 24, 2017.

Discovery

17. The parties will meet-and-confer about Petitioners' proposed discovery on January 19, 2017, and will provide the Court with a description of any disputes by 9:30 a.m. January 22, 2018. The Court will hold a status conference relating to discovery at 1:45 pm on January 22, 2018.

SO ORDERED.

Dated: January 19, 2018
Detroit, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on January 19, 2018.

s/Karri Sandusky
Case Manager