

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

USAMA JAMIL HAMAMA, et al.,

Petitioners and Plaintiffs,

v.

REBECCA ADDUCCI, et al.,

Respondents and Defendants.

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

**PETITIONERS/PLAINTIFFS' SECOND MOTION TO WITHDRAW
STIPULATED ORDER (ECF 151) AND REINSTATE THE PRELIMINARY
INJUNCTION (ECF 87) FOR WISAM IBRAHIM**

Local Rule 7.1(a)(1) requires Petitioners/Plaintiffs (hereinafter Petitioners) to ascertain whether this motion is opposed. On May 14, 2018, Petitioners' counsel, Margo Schlanger, communicated personally via email with Respondents/Defendants' counsel, William Silvis, explaining that Petitioners hoped to resolve this matter by setting out their respective positions in the Joint Statement of Issues, due May 15, 2018. Mr. Silvis indicated that Respondents' position is that this matter must be handled by motion. On further inquiry, the government has not stated if it concurs in the relief sought.

1. On January 23, 2018, Mr. Saeed Ibrahim Mansy, the father of Wisam Ibrahim, filed an emergency motion seeking to vacate the stipulated order lifting

the preliminary injunction staying removal for Mr. Ibrahim (ECF 207). The same day, this Court temporarily stayed removal (ECF 210).

2. On March 2, 2018, Petitioners filed a Motion to Withdraw the Stipulated Order Lifting the Preliminary Injunction for Wisam Ibrahim (ECF 246). That motion was supported by a psychiatrist's report on Mr. Ibrahim's mental health.

3. Respondents have opposed both motions. After a hearing on March 7, 2018, Respondents have indicated that they wish to conduct their own psychiatric evaluation of Mr. Ibrahim.

4. Respondents have yet to conduct an evaluation of Mr. Ibrahim, although almost four months have elapsed since Mr. Mansy filed his original motion. Both Mr. Mansy's and Petitioners' motions remain pending.

5. Mr. Mansy has since obtained a limited guardianship for Mr. Ibrahim, and through him, Mr. Ibrahim has withdrawn his consent to removal. Accordingly, Petitioners file this second motion asserting this additional basis for vacating the stipulation lifting the injunction.

6. Petitioners proposed that, in light of these new developments, the parties provide updated statements about their positions in the Joint Statement of Issues. Respondents opposed that method of resolving this matter, necessitating this motion. However, Respondents have consented to expedited briefing so that

the matter may be heard at the same time as the status conference scheduled for May 25, 2018. Specifically, Respondents have agreed to file their response by noon on May 24, 2018.

WHEREFORE, Petitioners/Plaintiffs respectfully request that the Court:

1. Order Respondents/Defendants to respond to this motion by noon on May 24, 2018.
2. Rescind the Stipulated Order (ECF 151) Lifting the Preliminary Injunction (ECF 87) for Wisam Ibrahim, and reinstate the July 24, 2017 Preliminary Injunction as to him.
3. Order Respondents to schedule a bond hearing for Mr. Ibrahim at the earliest possible date, to be conducted under the standards set out in this Court's prior orders regarding such hearings, including ECF 191 and ECF 203.
4. Order Respondents to provide digital copies of Mr. Ibrahim's A-file and Record of Proceedings to Mr. Ibrahim's immigration counsel by May 29, 2018.

Respectfully submitted,

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Attorney for Petitioner/Plaintiff Usama Hamama

Dated: May 15, 2018

**IN THE UNITED STATES DISTRICT COURT
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USAMA JAMIL HAMAMA, et al.,

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Hon. Mark A. Goldsmith
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Class Action

**PETITIONERS/PLAINTIFFS' BRIEF IN SUPPORT OF SECOND
MOTION TO WITHDRAW STIPULATED ORDER (ECF 151) AND
REINSTATE THE PRELIMINARY INJUNCTION (ECF 87) FOR WISAM
IBRAHIM**

On November 20, 2017, this Court entered a Stipulated Order Lifting the Preliminary Injunction, ECF 87, for Wisam Ibrahim. ECF 151. Petitioners had stipulated to that order on the understanding that Mr. Ibrahim's waiver of the Court's stay of removal was knowing and voluntary. The process set out by this Court requires that the class member must consent to termination of the preliminary injunction, and that "[i]f the parties dispute whether any of the foregoing events [including consent to removal] has transpired, the matter will be resolve by the Court by motion. Termination of the preliminary injunction as to that class member shall abide the Court's ruling." ECF 87, Pg.ID# 2355-56.

After the stipulation was entered, new facts came to light. On January 23,

2018, Mr. Ibrahim's father, Saeed Ibrahim Mansy, filed an emergency motion informing the Court and the parties of Mr. Ibrahim's significant history of mental illness. ECF 207. That same day, this Court in response temporarily stayed Mr. Ibrahim's removal. ECF 210.

Petitioners were able to arrange for a mental health evaluation of Mr. Ibrahim, to assess his competence to waive his rights in this case. On February 14, 2018, the mental health evaluation was duly conducted by Dr. Debra Pinals. (Dr. Pinals' qualifications were set out in one of Petitioners' prior filings on this topic, ECF 224-3.) In Dr. Pinals' report, she concluded, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹

Based on the information contained in Dr. Pinals' report, Petitioners' prior stipulation that Mr. Ibrahim's waiver was knowing and voluntary could no longer stand. On March 2, 2018, Petitioners therefore filed a Motion to Withdraw Stipulated Order Lifting the Preliminary Injunction for Wisam Ibrahim. ECF 246.

¹ In light of this Court's prior order, ECF 255, restricting dissemination and use of this report, the quotation from this report has been redacted. Copies of this report have previously been provided both to Respondents, subject to the restrictions in ECF 255, and to the Court. An unredacted copy of the present filing, along with an additional copy of the report, will be hand-delivered to the Court. Should the Court wish for these documents to be handled in some other way, Petitioners are of course prepared to do so.

At a hearing on that March 7, 2018, this Court considered the matter, and then issued an order, ECF 255, allowing Respondents to review Dr. Pinals' report and decide if they objected to vacating the stipulation lifting the injunction. Respondents subsequently informed the Court that they wished to conduct their own psychiatric evaluation. However, although it has now been almost four months since Mr. Mansy's motion and more than two months since the hearing on Petitioners' motion, Respondents have still not responded substantively, because they have so far been unable to complete a contract with another expert to conduct another evaluation of Mr. Ibrahim's mental health.²

In the meantime, Mr. Mansy filed a petition in the Macomb County Probate Court for a limited guardianship of his son. Mr. Ibrahim opposed that petition, and was appointed an attorney for those proceedings. *See* Mansy Decl., Exhibit 2. After full consideration, the Probate Court granted the petition, entering a limited guardianship order on May 9, 2018. *See* Probate Court Order, attached to Exhibit 2, Mansy Decl. as Exhibit A. The order designates Mr. Mansy as Mr. Ibrahim's guardian for "immigration proceedings and legal matters only," because Mr.

² *See* Joint Statement of Issues, ECF 286 at § II.C: "Respondents unfortunately had issues finding and securing a third-party medical professional in March and April. ECF 267 at 2. However, Respondents are now in the process of finalizing the contract for a forensic psychologist. The internal processes at the Office of Immigration Litigation are complete. Once the documents are signed-off by the Contracts and Procurement Branch, Respondents will send the forensic psychologist to examine Mr. Ibrahim."

Ibrahim's mental illness renders him incompetent to make decisions for himself in that area. The order states: "Upon the presentation of clear and convincing evidence, . . . by reason of mental illness," Mr. Ibrahim "is impaired to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions and is an incapacitated individual." And, "Upon the presentation of clear and convincing evidence, appointment of a guardian is necessary as a means of providing continuing care and supervision of the individual." *Id.*

In his role as guardian, Mr. Mansy has provided a declaration, in which he formally withdraws Mr. Ibrahim's waiver of this Court's stay of removal, "because removal would be extremely dangerous for Wisam." Exhibit 2, ¶ 7. Mr. Mansy explains: "We are very anxious to move forward with Wisam's immigration case—to seek his release on bond, and to reopen his removal case (which I understand will require getting his ICE A-File and EOIR Record of Proceedings)." *Id.*, ¶ 8.

Petitioners therefore file this second motion to rescind the stipulated order (ECF 151) and reinstate the preliminary injunction (ECF 87) for Wisam Ibrahim in order to assert an additional basis on which the stipulated order should be rescinded: that Mr. Ibrahim has revoked his waiver of the stay of removal. Petitioners' prior motion on this topic, ECF 246, remains appropriate: Petitioners' position, informed by Dr. Pinal's report, is that Mr. Ibrahim was not competent to

knowingly and voluntarily waive his rights under this Court's preliminary injunction. Indeed, the Probate Court order is dispositive on this point, and this Court should defer to that order, based on both comity and the Probate Court's specialized expertise in assessing competency issues. But even without resolving the question of Mr. Ibrahim's competence, months ago, to waive his rights, this Court can and should rescind the prior stipulation because Mr. Ibrahim (by his guardian) is no longer volunteering for removal, but rather is now fighting his immigration case.

If this Court agrees and rescinds the stipulated order, Mr. Ibrahim should also receive an immediate bond hearing: he has been in detention almost a year, since June 2017. At the hearing on this matter, the Court denied the request for a bond hearing in the belief that the matter of his competency would be quickly resolved. ECF 260, Pg.ID #6308. That has not been the case.

Finally, Mr. Ibrahim's immigration counsel should immediately be provided his A-File and Record of Proceedings, so that a motion to reopen can be expeditiously filed. Petitioners have been seeking transmittal of these files for months, and respectfully request that Respondents be given a deadline of May 29, 2018, to provide them.

Respectfully submitted,

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Attorney for Petitioner/Plaintiff Usama Hamama

Dated: May 15, 2018

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2018, I electronically filed the foregoing papers with the Clerk of the Court using the ECF system which will send notification of such filing to all ECF filers of record.

By: /s/ Kimberly L. Scott
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EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
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v.

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Class Action

DECLARATION OF SAEEB IBRAHEM MANSY

I, Saeeb Ibrahim Mansy, hereby make this declaration based upon my own personal knowledge. If called to testify, I could and would do so competently as follows.

1. I am Wisam Ibrahim's father.
2. On March 27, 2018, I filed a petition in The State of Michigan Probate Court, County of Macomb, seeking to be appointed as Wisam's guardian for purposes of his immigration case. I did this because I believed he was and is incompetent to make those decisions for himself, due to his longstanding mental illness.
3. Subsequent to the filing of the guardianship petition, the Macomb County Probate Court appointed Anthony L. Elmore as Guardian Ad Litem for Wisam.
4. Probate Judge Sandra Harrison held a hearing on May 9, 2018. Wisam opposed my appointment, stating that he was able to make his own decisions. For that reason, Wisam was represented at that hearing by attorney Lisa Perkins. Prior to the hearing, Judge Harrison had ordered the report of Wisam's mental health by Dr. Debra Pinalis disclosed to the Court.
5. At the conclusion of the hearing, Judge Harrison entered an order approving my petition for appointment as Wisam's guardian. The order is attached as Exhibit A.

6. In my view, the underlying reasons that justified my appointment mean that Wisam's purported waiver of this case's stay of removal was far from knowing and voluntary; he was incompetent to make that waiver.
7. In any event, as Wisam's guardian, I hereby withdraw his October 30, 2017 waiver of this case's stay of removal, because removal would be extremely dangerous for Wisam.
8. We are very anxious to move forward with Wisam's immigration case—to seek his release on bond, and to reopen his removal case (which I understand will require getting his ICE A-File and EOIR Record of Proceedings).

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury under the laws of the United States that the above statements are true and correct to the best of my knowledge, information, and belief.

Date: 05/14/2018



SAEEB IBRAHEM MANSY

EXHIBIT A

State of Michigan Probate Court Macomb County	LETTER OF LIMITED GUARDIANSHIP	File No: 2018-226927-GL
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In the Matter of **WISAM SAEEB IBRAHIM, LIP**

TO:

SAEEB IBRAHEM MANSY
2042 FOREST MEAD DR
STERLING HEIGHTS MI 48314

1. You have been appointed by the court as **LIMITED** guardian(s) of the individual named above.
2. Having filed an acceptance of appointment, you have the care, custody, and control of that individual:
 - a. together with all authority and responsibilities granted and imposed by law.
 - b. except as follows:
 - c. as to the following powers and responsibilities only: **IMMIGRATION PROCEEDINGS & LEGAL MATTERS ONLY**
3. These letters of guardianship expire on 5/9/2019.



Date: 5/9/2018

Hon. SANDRA A HARRISON, P57456

SEE OTHER SIDE FOR NOTICE OF DUTIES

I certify that I have compared this copy with the original on file and that it is a correct copy of the whole of such original, and on this date, these letters are in full force and effect.

MAY - 9 2018

Date


Deputy Probate Register

AS REQUIRED BY MICHIGAN COURT RULES YOU ARE NOTIFIED:

You are required to file with this court a written report on the indicated form(s) and at the indicated times. Forms are available at the court.

CHANGE OF ADDRESS: You are required to promptly inform the court of any change in the ward's address within 14 days of the change. You are also required to keep the court and interested persons informed in writing within 7 days of any change in your address.

ANNUAL REPORT: Your annual report on condition of ward is due on 5/9 of each year. (Use PC 634 or PC 654). In addition, you must serve the report on the ward and interested persons as specified in the Michigan Court Rules and file proof of service with the court.

DEATH OF WARD: If the ward dies during the guardianship, you must give written notification to the court within 14 days of the individual's date of death.

DELEGATION OF DUTIES: You are required by law to notify the court when you delegate duties under a durable power of attorney.

ATTENTION: **The above provisions are reporting duties only and are not the only duties required of you.** These mandatory provisions are specified in court rules adopted by the Michigan Supreme Court. Your failure to comply may require the court to appoint a special fiduciary in your place and to suspend your powers. This may result in your removal as fiduciary. The court is prohibited by statute from giving you legal advice.

KEEP THIS NOTICE FOR FUTURE REFERENCE

Approved, SCAO

JIS CODE: OAG

STATE OF MICHIGAN PROBATE COURT COUNTY OF <u>Macomb</u>	ORDER REGARDING APPOINTMENT OF GUARDIAN OF INCAPACITATED INDIVIDUAL	FILE NO. <u>18-226 927-GL</u>
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In the matter of Wisam Saeeb Ibrahim

Court ORI	Date of birth <u>6/28/77</u>	Race <u>White</u>	Sex <u>M</u>	Current address of incapacitated individual <u>185 E. Michigan Battle Creek MI 48914</u>
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1. Date of hearing: MAY 09 2018 Judge: SANDRA A. HARRISON Bar no. P5 74528

THE COURT FINDS:

- 2. Notice of hearing was given to or waived by all interested persons.
- 3. The individual is not in need of a guardian.
- 4. Upon the presentation of clear and convincing evidence, the individual named above, by reason of
 - mental illness
 - mental deficiency
 - chronic use of drugs
 - chronic intoxication
 - physical illness or disability
 - other: _____
 is impaired to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions and is an incapacitated individual.
- 5. Upon the presentation of clear and convincing evidence, appointment of a guardian is necessary as a means of providing continuing care and supervision of the individual.
- 6. The individual is partially totally without the capacity to care for himself/herself.
- 7. There is no competent, suitable person willing to act as guardian, and the appointment of a professional guardian is in the best interests of the adult. A bond must be filed.
- 8. Financial protection is required for the individual.

IT IS ORDERED:

- 9. The petition for appointment of guardian is granted. denied on the merits. dismissed/withdrawn.
- 10. Saeeb Ibrahim Mansu, whose address and telephone number are:
 - Name (type or print)
 - 2042 Forest Mead Dr. Sterling Heights, MI 48314 586/5803567
 - Address City State Zip Telephone no.
 is appointed limited. full guardian of the adult and shall qualify by filing an acceptance of appointment.
 - Bond at \$ _____ must be filed.
 The guardian is not permitted to act until letters of guardianship are issued. After qualification, the guardian shall comply with all relevant requirements under the law.
- 11. Upon acceptance of appointment, the guardian shall petition for the appointment of a conservator or for another protective order under MCL 700.5401 et seq.
- 12. The limited guardian shall have only the following powers: immigration proceedings and legal matters only.
- 13. If a guardian is appointed, the Michigan Department of State Police shall immediately enter the legally incapacitated individual's identifying information in this court order on the law enforcement information network.

14. IT IS FURTHER ORDERED: see below

MAY 09 2018

BRADLEY HOBBS 59534
 Attorney name (type or print) Bar no.

300 E. Fourth St. Royal oak MI 48067 248/930-1975
 Address City State Zip Telephone no.

Sandra A. Harrison
 Judge

below this line - For court use only

14.) A Petition modifying, removing, or terminating the guardianship shall not be filed for 182 days without special leave of Court per MCL 700.5310(3).