RUNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

JANET MALAM, Petitioner-Plaintiff, QAID ALHALMI *et al.*, Plaintiff-Intervenors, and ZAID SHAHER MOHAMMAD AL-ARAJ, AHAMMAD ALI, JUAN GUERRERO BERNARDEZ, ZIGGY MARCUS GARVIE, GAN JIN, and TAUQIR NIAZI Potential Plaintiff-Intervenors, - against - REBECCA ADDUCCI, *et al.*, Respondent-Defendants.	No. 5:20-cv-10829-JEL-APP

REPLY BRIEF IN SUPPORT OF MOTION TO INTERVENE BY NON-PARTIES ZAID SHAHER MOHAMMAD AL-ARAJ, AHAMMAD ALI, ZIGGY MARCUS GARVIE, JUAN GUERRERO BERNARDEZ, GAN JIN, AND TAUQIR NIAZI

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Defendants do not dispute that Applicants are at heightened risk of severe harm from COVID-19, thus sharing clear common questions of fact and law with Plaintiffs. Instead, Defendants recycle previously rejected arguments of forum shopping and argue that each medically vulnerable Calhoun detainee must file a separate, individual case—a problematic and inefficient course that Plaintiffs have warned of since the beginning of this lawsuit.[1] Defendants' position is unavailing.

First, judicial efficiency supports intervention. This Court is intimately familiar with this action, having made numerous findings of fact regarding ICE's practices at Calhoun. In fact, this is the *only* Court before whom Calhoun ICE detainees have pending COVID-19 claims for habeas and declaratory relief. Requiring Applicants to file separate claims identical to those here would waste the time of this Court, other judges in this district, and Defendants, who must then defend each separate case. It would also be hugely inefficient for the Plaintiffs. And it would undermine the purpose of the proposed class action, which is to ensure common and efficient adjudication of common questions of law and fact.

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[1] After Plaintiffs predicted during the first hearing that there would be a large number of individuals seeking relief, the Court directed the parties to confer on possible mechanisms for efficient resolution of the expected influx. *See* April 8, 2020 ACLU Letter Regarding Existing COVID-19 Actions ("April 8 Letter"), pp. 1, 3, Ex. A. While the parties were unable to identify a process that would address all the needs of the situation, *see* April 8, 2020 Email from Jennifer Newby Regarding Summary Provided at Conference, Ex. B, the entire purpose of this conversation was to address the inefficiencies inherent in mass individual filings.

Second, intervention is timely. Defendants ignore the obvious challenges Applicants face as immigrant detainees during the COVID-19 pandemic. Applicants moved diligently to contact counsel upon learning of this case through questionnaire outreach in late May to early June, and managed to file quickly despite the lengthy and cumbersome process of collecting the necessary information required to file.

Finally, because Applicants are at heightened risk of severe harm from COVID-19, time is of the essence. There is no assurance that separate actions would provide Applicants with faster relief than intervention, particularly given that this Court has far more knowledge than any other of the factual and legal claims at hand.

Plaintiffs clearly meet the liberal requirements for permissive intervention under Rule 24(b)(1), and also meet the further requirements for intervention as of right under Rule 24(a)(2). Intervention should be granted.

ARGUMENT

A. Applicants Are Entitled to Permissive Intervention Under Rule 24(b)(1).

Intervention under Rule 24(b)(1) should be liberally granted. *Allied Constr. Indus. v. City of Cincinnati*, No. 1:14-CV-450, 2014 WL 11429028, at *5 (S.D. Ohio Nov. 24, 2014) (permissive intervention to be liberally granted to promote the convenient disposition of all claims in one lawsuit); *Hertel v. Mortg. Elec. Registration Sys., Inc.*, No. 1:12-CV-174, 2012 WL 6596142, at *4 (W.D. Mich. Dec. 18, 2012) (internal citation omitted) (noting Rule 24(b) is to be construed

liberally, with doubt resolved in favor of permitting intervention). The Court may permit Applicants to intervene if: (1) their claims share common legal and factual questions with the main action and (2) their application is timely. Fed. R. Civ. P. 24(b)(1)(B). Defendants concede—and largely ignore—the first point. Indeed, the legal and factual questions are identical. Defendants contest only timeliness. *See* Defs.' Opp. to Mot. to Intervene ("Opp."), Dkt. 152, PageID.4937–38. But Defendants fail to acknowledge: (1) the challenges Applicants face in navigating the judicial system during the pandemic; (2) the imminent danger that necessitates prompt resolution; and (3) the need for judicial efficiency.

Applicants' motion is timely. Defendants provide no evidence for their baseless suggestion that Applicants "knew about this claim for months" and made a strategic decision to wait to intervene. *See id.* at PageID.4938. Applicants face unique challenges affecting their ability both to become aware of their rights and to file a complex federal habeas proceeding—a pandemic that has interrupted legal communications, language barriers, lack of access to information, including medical information, and a foreign legal system, to name a few.[2] After counsel became aware of Applicants and successfully contacted them,[3] Applicants proceeded quickly.

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[2] *See generally* Gardner Decl., Dkt. 130-7; April 8 Letter, pp. 2–3, Ex. A (explaining difficulties inherent to representing clients with limited English proficiency and lack of access to adequate local attorneys and experts).

[3] Counsel learned about five of the six Applicants based on Defendants' May 11 list of 51 detainees whom they identified as suffering from chronic medical

Because Defendants had not conceded the medical vulnerability of most of the Applicants from the May 11 List, counsel necessarily had to investigate and gather support for their specific medical conditions—a lengthy and difficult process that this Court acknowledged in its June 16 Order—for Defendants to facilitate distribute and return of signed medical releases. Gardner Decl., Dkt. 130-7 ¶ 9; June 16 Order Regarding Production of Medical Records, Dkt. 118, PageID.4089. Lastly, counsel learned of additional individuals following the Court's June 16, 2020 Order for Defendants to identify those they believe to be at heightened risk from COVID-19, including three Applicants. June 18 List, Dkt. 130-5. Counsel proceeded as quickly as possible to prepare the materials for this group,[4] and filed within less than two weeks after receipt of the June 18 List. For all of these reasons, Defendants' airy assertion that Applicants could have filed sooner is divorced from reality, and should be rejected.[5]

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conditions. May 11 List, Dkt. 130-6. Counsel needed to mail out and receive completed questionnaires before counsel could even begin the laborious process of establishing direct contact, gathering evidentiary support, and putting together sworn statements for filing. Gardner Decl., Dkt. 130-7 ¶¶ 4–8. Defendants speculate, without proof, that the Applicants knew of this action sooner, despite language barriers and other obstacles. But even if, hypothetically, they did, they could scarcely have moved any quicker.

[4] Indeed, due to the same logistical hurdles and time pressures described throughout this brief, counsel were unable to complete the intake process for one of the detainees on the June 18 List. Gardner Decl., Dkt. 130-7 ¶ 11.

[5] Defendants cite *Blount-Hill v. Zelman*, 636 F.3d 278, 286 (6th Cir. 2011), for the contention that Applicants could have brought suit sooner. But there, the court found that the applicants "had actual or constructive knowledge of their interests in

Unlike in Defendants' cited cases, where "extensive progress" precluded a finding of timeliness, discovery here has only proceeded for just over two months and remains ongoing.[6] *See, e.g.*, *Pride v. Allstate Ins. Co.*, No. 10-13988, 2011 WL 692299, at *3 (E.D. Mich. Feb. 18, 2011) (granting a motion to intervene where "[o]nly two months had passed[,]" the case had "not made major progress[]," and there was continued discovery). Moreover, no dispositive motions have been filed, and the Court has not made any dispositive rulings.

Nor do the prior preliminary injunctions in this case make intervention "patently unfair." Opp., Dkt. 152, PageID.4939. As Plaintiffs argued in their June 2, 2020 motion to amend, Dkt. 91—which the Court granted following several preliminary injunction orders—the newly added Plaintiffs would be placed in a

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this litigation for *several years*," had no extenuating circumstances, and had conceded a desire to wait for the results of a statewide Attorney General's election before deciding to intervene. *Id.* at 285–86 (emphasis added).

[6] *Compare* Opp., Dkt. 152, PageID.4938 (listing upcoming activity including "conducting discovery with Calhoun, opposing Plaintiffs' motion for additional discovery, potentially conducting that discovery, and preparing for an evidentiary hearing") *with Zelman*, 636 F.3d at 286 n.4 (describing "more than a half a decade" of discovery efforts that had occurred prior to applicants' motion to intervene); *Johnson v. City of Memphis*, 73 F. App'x 123, 132 (6th Cir. 2003) (denying intervention due to "extensive progress in the district court[,]" including that "a trial date had been scheduled for [before the motion to intervene was filed], all witnesses had been identified, expert witnesses had submitted their reports and testified in court, depositions had been taken, and Plaintiffs' motion for partial summary judgment had been granted"); *Stupak-Thrall v. Glickman*, 226 F.3d 467, 475 (6th Cir. 2000) (same where "discovery was closed, the experts were producing their reports, and the court's previously-identified 'finish line' . . . was fast approaching").

difficult position if forced to wait until class issues were resolved or if they had to proceed separately. *See, e.g.*, Pls.' Mot. to Amend, Dkt. 91, PageID.2746 n.4; Order Granting Leave to Amend, Dkt. 96, PageID.3239 (granting leave "[f]or the reasons stated on the record").[7] The prior rulings in this case do not "assure" that Applicants will obtain the same result (either preliminarily or on final judgment), because the Court "in no way . . . prejudge[s] the outcome" of individual cases. Apr. 3 Tr., Dkt. 110, PageID.3747:22–48:3.

Defendants argue that litigating Applicants' claims would be prejudicial given the briefing schedule in this case, but fail to explain how briefing numerous separate actions would be any less onerous. To the contrary, more cases mean more work. And another court would not be nearly as familiar with the factual and legal claims of Calhoun detainees, which could involve more extensive briefing and potentially duplicative discovery. The burden of allowing intervention is grossly overstated: Defendants were aware of, and did not dispute, almost all of Applicants' medical

[7] Defendants' cited cases are easily distinguishable. *See Tennessee v. Gibbons,* No. 3:16-CV-00718, 2017 WL 4535947, at *4 (M.D. Tenn. Oct. 10, 2017) (finding strong allegations that the case was only brought in the particular venue because counsel could not get *pro hac vice* status in the proper jurisdiction); *Hernandez v. City of El Monte*, 138 F.3d 393, 398 (9th Cir. 1998) (plaintiffs admitted to selecting a forum first to gain litigation advantage, and then changing forums again after the judge was assigned in the first forum).

vulnerabilities before Applicants moved to intervene,[8] and the legal issues have been frequently briefed already. Denying invention, on the other hand, puts Applicants—who due to their medical vulnerabilities face a heightened risk of severe illness or death from COVID-19—in imminent danger while they wait for class-wide relief.

Finally, efficiency and consistency support intervention. Applicants have a strong interest in avoiding conflicting declaratory relief within the same district. Moreover, Defendants concede that "[t]he Court is well aware of the underlying facts of the case," Opp., Dkt. 152, PageID.4935, which counsels in favor of intervention. This is the only Court before whom Calhoun ICE detainees have pending claims for habeas and declaratory relief, which is the reason intervention is sought here. (By contrast, where the undersigned represented five individuals detained at the Monroe and St. Clair jails, counsel filed a separate action because no specific judge was already overseeing an active and intensive litigation concerning those facilities. *See Albino-Martinez v. Adducci*, 20-cv-10832 (E.D. Mich.) (Murphy, J.).). Even if Applicants did file separate claims, they would be filed as related cases, and could still end up in front of this Court, belatedly.[9] And of course

[8] *See* July 1 Mot. to Intervene, Dkt. 130, PageID.4288–90 (explaining that Defendants conceded that all but one of the Applicants suffer from medical conditions that expose them to high risk from COVID-19).

[9] *See Zaya v. Adducci*, Case 5:20-cv-10921-JEL-APP (E.D. Mich. Apr. 13, 2020), Dkt. 3, PageID.386 (reassigning from Judge Friedman to Judge Levy as "companion case").

Applicants are also putative class members; requiring them to file separate cases undermines the very efficiencies that the class action vehicle is designed to promote. *See In re Bridgestone Sec. Litig.*, 430 F. Supp. 2d 728, 740 (M.D. Tenn. 2006) ("[R]equiring individual parties to file separate lawsuits while a potential class action is pending would unnecessarily multiply litigation, lead to potentially different results and defeat the purpose of class action lawsuits.").

B. Applicants are Entitled to Intervention as of Right under 24(a)(2).

Defendants claim Applicants (1) do not have a substantial legal interest in the case and (2) are not inadequately represented in the litigation. Defendants are wrong.

First, as stated above, Applicants have a strong interest in avoiding conflicting declaratory relief within the same district. In addition, absent intervention, Applicants would be forced to file independent actions before courts less fluent in the facts and law, resulting in delay. It would be incredibly inefficient for the parties (not to mention the court) to litigate effectively the same case, six separate times, in potentially six different forums. *See G.D. v. Riley*, No. 2:05-CV-980, 2009 WL 3682252, at *3 (S.D. Ohio Nov. 2, 2009) (noting that denial of intervention could "as a practical matter" impair the legal interests of proposed intervenors through "the expense and inconvenience of separate, and to some extent duplicative, litigation"); *Grubbs v. Norris*, 870 F.2d 343, 347 (6th Cir. 1989) ("[J]udicial economy and swift

resolution of disputes counsel [the Court] to urge that this related matter be addressed in this primary lawsuit").

Second, the Sixth Circuit has expressly stated that proposed intervenors' "burden in showing inadequacy is minimal." *Grutter v. Bollinger*, 188 F.3d 394, 400 (6th Cir. 1999). As previously explained, *see* July 1 Mot. to Intervene, Dkt. 130, PageID.4305, while Applicants present urgent claims for preliminary relief that cannot wait until resolution of class issues, Plaintiffs have an interest in "properly litigating class-wide relief." This divergence in interests—albeit slight—is more than sufficient to meet the "minimal" burden required to demonstrate inadequacy. *See Grutter*, 188 F.3d at 400; *G.D. v. Riley*, No. 2:05-CV-980, 2006 WL 8441785, at *3 (S.D. Ohio Oct. 4, 2006) (granting motion to intervene because "[t]he proposed intervenors are not presently members of a certified class and have no rights in the pending litigation until such time as the class is certified"). Moreover, Mr. Garvie and Mr. Guerrero Bernardez (who inexplicably did not appear on Defendants' June 18 List) as well as Mr. al-Araj (who was *never* identified by Defendants) have an additional interest in ensuring that Defendants' identification of medically vulnerable detainees is not underinclusive.

For all of the foregoing reasons, Applicants respectfully request that the Court grant their Motion to Intervene (Dkt. 130). Additionally, in light of the fact that Defendants do not contest Applicants' medical vulnerabilities, Applicants

respectfully request that the Court accept Applicants' Supplemental Petition (Dkt. 130-2) and Motion for Temporary Restraining Order (Dkt. 130-3) as filed, and order an expedited briefing schedule on Applicants' Motion for Temporary Restraining Order (Dkt. 130-3).

Dated: July 22, 2020

Respectfully submitted,

/s/ Miriam J. Aukerman

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Attorneys for Plaintiffs

* Application for admission forthcoming

CERTIFICATE OF SERVICE

I, Jeannie S. Rhee, certify that on July 22, 2020, I caused a true and correct copy of the foregoing document to be filed and served electronically via the ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. I also caused true and correct copies of the foregoing document as well as copies of the exhibit filed under seal to be served by electronic mail on counsel for Defendants.

Respectfully submitted,

/s/ Jeannie S. Rhee

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

JANET MALAM,

Petitioner-Plaintiff,

QAID ALHALMI *et al.*,

Plaintiff-Intervenors,

and

ZAID SHAHER MOHAMMAD AL-ARAJ, AHAMMAD ALI, JUAN GUERRERO BERNARDEZ, ZIGGY MARCUS GARVIE, GAN JIN, and TAUQIR NIAZI

Potential Plaintiff-Intervenors,

- against -

REBECCA ADDUCCI, *et al.*,

Respondent-Defendants.

No. 5:20-cv-10829-JEL-APP

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Exhibit A: April 8, 2020 ACLU Letter to the Court Regarding Existing COVID-19 Actions

Exhibit B: April 8, 2020 Email from Jennifer Newby Regarding Summary Provided at Conference

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April 8, 2020

Via Email

The Honorable Judith Levy
United States District Court for the
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Federal Building
200 E. Liberty Street, Suite 300
Ann Arbor, MI 48104

Re: *Malam v. Adducci*, 20-cv-10829

Dear Judge Levy,

We are writing to respond to the Court's request to provide further information on the number of immigration detention filings in this district, as well as on our conversations with opposing counsel regarding possible mechanisms for efficient and speedy resolution of these cases.

As the Court is aware, the situation in immigration detention facilities is evolving rapidly, most recently with a confirmed COVID-19 case in the St. Clair facility.[1] The legal landscape is changing almost as quickly. There have been a number of additional cases filed since Friday's hearing. The ACLU and our colleagues at Paul, Weiss, Rifkind, Wharton & Garrison LLP yesterday filed a new case on behalf of five individuals detained in the Monroe and St. Clair jails. *See Albino-Martinez v. Adducci*, 20-cv-10829 (Murphy, J.). Additional cases have also been filed by other attorneys. In addition, we have learned of earlier-filed cases that we were unaware of last week.[2] There may well be additional pending cases that we

[1] We have been informed that hearings, including bond hearings, at St. Claire have been cancelled due to the diagnosis, and that additional restrictions may be in place.

[2] When Ms. Escobar and Mr. Toma moved to intervene in *Malam v. Adducci*, we were unaware of *Murai v. Adducci*, 20-10816 (Cleland, J.). The government, in its

are unaware of. The attached chart outlines the cases we currently know about. All seek emergency relief from immigration detention in light of the COVID-19 pandemic. Because these filings are sealed, we do not have complete information on each case.

We understand that you may be discussing with your colleagues whether there may be a more efficient way to handle these cases. Judicial economy and preservation of litigation resources is clearly important. The Court has already seen a huge volume of release/supervision filings in the criminal context, and has adopted an Administrative Order to address the urgency and volume of these filings during the pandemic. *See* 20-AO-024 (March 26, 2020).

While the danger facing immigration detainees is similar to that facing criminal detainees (and indeed immigration detainees in Michigan are housed in facilities that also hold pre-trial and sentenced prisoners), the procedural context is different. In federal criminal cases, there are existing cases within which to file for release. Judges in those cases are already familiar with the defendant's history, and defendants generally already have counsel. In the immigration context, by contrast, there are not existing cases, so new filings are required. Moreover, many immigrant detainees do not have counsel. Where detainees are represented by immigration counsel, those attorneys – many of whom practice exclusively in immigration court – may not have experience in federal court and, indeed, many are not even admitted to practice in this Court and do not have ECF filing privileges. In addition, immigration attorneys typically practice in small firms, and do not have easy access to experts.

While it is difficult to predict how many immigration detention cases will ultimately be filed, it is likely there will be a significant number, given that the stakes are so high. Exact data is not available, but there are approximately 360 immigration detainees in Michigan.[3] Attorneys and family members for dozens of immigration detainees are in contact with the ACLU and Co-counsel Paul, Weiss,

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responsive filing on the intervention motion, identified that case as filed after *Malam*. ECF 15, Pg.ID#238. In fact, it appears that it was filed earlier.

[3] *See* Freedom for Immigrants, *Mapping U.S. Immigration Detention*, https://www.freedomforimmigrants.org/map (listing the Michigan population count as 362) (last visited April 4, 2020). That site identifies the facility breakdown as: 172 in Calhoun, 89 in St Clair, 54 in Monroe, and 41 in Chippewa.

Rifkind, Wharton & Garrison LLP. In addition, cases are likely to be filed by other counsel, as well as by pro se litigants, including individuals with limited English proficiency. The defendants in these cases are all likely to be represented by the U.S. Attorney's Office, taxing resources in that office if every case is litigated separately.

As directed by the Court, we have conferred with the U.S. Attorney's Office regarding whether a joint proposal could be submitted to the Court for more efficient resolution of these cases. Unfortunately, we have, as of now, been unable to identify a clear path forward, although that may change as events unfold.

There are several concerns. The first and most critical is the need for speedy resolutions. As this Court has said "detention confinement creates a 'tinderbox scenario' where rapid outbreak is extremely likely, and extremely likely to lead to deadly results as resources dwindle on an exponential level." R.22 at 25. Unless cases are ruled on quickly, there is a high risk that detained immigrants "will suffer irreparable harm in the form of loss of health or life as a result of contracting the COVID-19 virus." *Id.* Time is of the essence. It is, unfortunately, no exaggeration to say that absent a mechanism to expeditiously resolve claims brought by immigration detainees, some of them will become seriously ill and die. The parties have been unable to identify a process that would not slow down case adjudication.

The second difficulty is that, as the chart makes clear, there are already a significant number of cases assigned to different judges. Some cases involve one facility and others involve multiple facilities. The claims brought also differ, as do the plaintiffs' attorneys involved and the plaintiffs' countries of origin. The cases are at various stages of adjudication. To our knowledge, this Court is the first to have ruled, but other cases are proceeding rapidly as well. There is thus no obvious way to assign cases.

The parties discussed the possibility of assigning new cases to the low-number judge by facility. However, some cases involve multiple facilities. Requiring attorneys who represent multiple clients at different facilities to file multiple lawsuits, rather than one lawsuit, would not be more efficient. (We, for example, are now litigating two separate cases, one of which finished briefing this morning and in the second of which the government has been ordered to respond by this Friday; this situation results in duplication of effort for the Court, the U.S. Attorney's Office, and us.) Moreover, some facilities have more detainees than others, so this could result in an inequitable division among judges of this Court.

Events are unfolding rapidly and it is quite possible that there will be options that are not apparent today, that become apparent in the days ahead. We will continue to talk with the U.S. Attorney's Office about possible mechanisms that would allow for speedy resolution of these cases, while preserving judicial resources.

Please let us know if the Court needs any further information.

Respectfully submitted,

/s/ Miriam J. Aukerman
Senior Staff Attorney

cc: Jennifer Newby

Plaintiffs	Case No	Judge	Date filed	Claims Brought	Detention facilities	Countries	Status of case	Plaintiffs' Counsel
Awshana, Oliver*; Ali Al Sadoon**; Hamana, Wisam**	20-10699	Lawson	3/16/2020	Somewhat unclear; possibly 8 U.S.C. §1182(d)(5)(A)	Calhoun	Iraq	Response to Petition 3/27/2020; Reply to Response 3/28/2020; Reply to Reply by government 3/30/2020	Shanta Driver
Murai,* Mohamad Ahmad	20-10816	Cleland	3/27/2020	Unknown	Calhoun	Iraq	Only petition filed so far	Shanta Driver
Alkufi, Aqil Tahir Hassan*	20-10817	Roberts	3/29/2020	Unknown	Appears to have been released	Iraq	Order granting motion to withdraw Habeas 4/2/2020	Shanta Driver
Czerwinski, Tadeo	20-10826	Borman	3/30/2020	Fifth Amendment	Chippewa	Argentina	Response filed 4/3	Andrew Stacer, Rosana Garbacik
Malam, Janet; Escobar, Ruby; Toma, Amer*	20-10829	Levy	3/30/2020	Fifth Amendment; *Zadvydas*	Calhoun	United Kingdom; El Salvador, Iraq	TRO granted for Malam 4/5; TRO briefing on Escobar and Toma complete	Andrew Stacer and Rosana Garbacik for Malam; ACLU & Paul, Weiss

Plaintiffs	Case No	Judge	Date filed	Claims Brought	Detention facilities	Countries	Status of case	Plaintiffs' Counsel
								for Escobar and Toma
Perez-Perez, Roderico Filadelfo	20-10833	Lawson	3/31/2020	Fifth Amendment	Monroe	Guatemala	Response filed 4/6/2020	Shanta Driver
Alyasiri, Badr Thaer	20-10857	Friedman	4/2/2020	Fifth Amendment; Fifth Amendment/ Fair trial	St. Clair	Iraq	Response filed 4/7/2020	George Mann
Fofana, Ibrahim; Mawas, Abdul Rahman; Khesfeh, Nhdmamdouh; Hila, Emilian; Sterbyci, Jurgen	20-10869	Drain	4/3/2020	Fifth Amendment; Fifth Amendment re immigration hearing timing; mandamus	Chippewa, Monroe	Mali, Syria, Albania	Order directing government to respond 4/6/2020	Carrie Pastor
Albino-Martinez, Reynaldo; Chavez-Vargas, Jose Nicolas;	20-cv-10829	Murphy	4/7/2020	Fifth Amendment; *Zadvydas*	Calhoun; Monroe; St. Claire	Mexico, Costa Rica, UK	Order directing government to respond by 4/8/2020	ACLU & Paul, Weiss

Plaintiffs	Case No	Judge	Date filed	Claims Brought	Detention facilities	Countries	Status of case	Plaintiffs' Counsel
Chinchilla-Flores, Gener Alejandro; Doble, Craig; Aparicio Navas, Miguel								

* Iraqi national who is **not** a class member in *Hamama v. Adducci*, 2:17-cv-11910 (E.D. Mich.) (Goldsmith, J.).

** Iraqi national who **is** a class member in *Hamama v. Adducci*, 2:17-cv-11910 (E.D. Mich.) (Goldsmith, J.).

Shik, Oleg M

From: Newby, Jennifer (USAMIE) <Jennifer.Newby@usdoj.gov>
Sent: Wednesday, April 8, 2020 5:14 PM
To: Miriam Aukerman; William Barkholz
Cc: Andrew Stacer; Anand Balakrishnan; Rhee, Jeannie S; Mendelsohn, Mark F; rgarbacik@stacerplc.com; Dan Korobkin; My Khanh Ngo; Caplan, Peter (USAMIE); Mays, Vanessa (USAMIE)
Subject: RE: Malam v. Adducci, 2:20-cv-10829, Motion to Intervene and Motion to Expedite

Good afternoon,

Respondent concurs in the summary provided by Ms. Aukerman of the parties' conference that neither side had a proposal that met all of the concerns of this situation. I write only to add that as of yesterday, ICE detainees in Michigan were distributed as follows:

Calhoun – 130
Chippewa – 28
Monroe – 39
St. Clair – 40

Total – 237

Thank you,

From: Miriam Aukerman <maukerman@aclumich.org>
Sent: Wednesday, April 08, 2020 4:58 PM
To: William Barkholz <William_Barkholz@mied.uscourts.gov>
Cc: Andrew Stacer <astacer@stacerplc.com>; Newby, Jennifer (USAMIE) <jnewby@usa.doj.gov>; abalakrishnan_aclu.org <abalakrishnan@aclu.org>; Rhee, Jeannie S <jrhee@paulweiss.com>; Mendelsohn, Mark F <mmendelsohn@paulweiss.com>; rgarbacik@stacerplc.com; Dan Korobkin <dkorobkin@aclumich.org>; My Khanh Ngo <MNgo@aclu.org>
Subject: RE: Malam v. Adducci, 2:20-cv-10829, Motion to Intervene and Motion to Expedite

Dear Mr. Barkholz,

As requested by the Court, attached please find a letter with information on the number of immigration detention filings in this district, as well as on our conversations with the U.S. Attorney's Office regarding possible mechanism for efficient and speedy resolution of these cases.

Best regards,

Miriam

Miriam Aukerman
Senior Staff Attorney
American Civil Liberties Union of Michigan

From: William Barkholz <William_Barkholz@mied.uscourts.gov>
Sent: Wednesday, April 8, 2020 7:54 AM

To: Miriam Aukerman <maukerman@aclumich.org>
Cc: Andrew Stacer <astacer@stacerplc.com>; Newby, Jennifer (USAMIE) <Jennifer.Newby@usdoj.gov>; abalakrishnan_aclu.org <abalakrishnan@aclu.org>; Rhee, Jeannie S <jrhee@paulweiss.com>; Mendelsohn, Mark F <mmendelsohn@paulweiss.com>; rgarbacik@stacerplc.com
Subject: Re: Malam v. Adducci, 2:20-cv-10829, Motion to Intervene and Motion to Expedite

Thank you for the update.

Sent from my iPhone

On Apr 7, 2020, at 5:25 PM, Miriam Aukerman <maukerman@aclumich.org> wrote:

> Dear Mr. Barkholz,
>
> At the hearing last week Judge Levy asked to be kept informed about any instances of confirmed COVID-19 cases in ICE detention in Michigan. ICE is now reporting a confirmed case in St. Clair County Jail. *See* https://www.ice.gov/coronavirus. While that is a different facility than Calhoun, we thought the Court would want to know.
>
> Best regards,
>
> Miriam
>
> **Miriam Aukerman**
> Senior Staff Attorney
> American Civil Liberties Union of Michigan

From: Andrew Stacer <astacer@stacerplc.com>
Sent: Monday, April 6, 2020 11:11 AM
To: 'William Barkholz' <William_Barkholz@mied.uscourts.gov>; 'Newby, Jennifer (USAMIE)' <Jennifer.Newby@usdoj.gov>; Miriam Aukerman <maukerman@aclumich.org>
Cc: 'abalakrishnan_aclu.org' <abalakrishnan@aclu.org>; 'Rhee, Jeannie S' <jrhee@paulweiss.com>; 'Mendelsohn, Mark F' <mmendelsohn@paulweiss.com>; rgarbacik@stacerplc.com
Subject: RE: Malam v. Adducci, 2:20-cv-10829, Motion to Intervene and Motion to Expedite

Hello, thank you. We will keep an eye out for this, as her brother is set to pick her up in Battle Creek.

Andrew

From: William Barkholz [mailto:William_Barkholz@mied.uscourts.gov]
Sent: Monday, April 06, 2020 10:56 AM
To: Newby, Jennifer (USAMIE); Miriam Aukerman
Cc: abalakrishnan_aclu.org; Rhee, Jeannie S; Mendelsohn, Mark F; astacer@stacerplc.com
Subject: RE: Malam v. Adducci, 2:20-cv-10829, Motion to Intervene and Motion to Expedite

Good morning,

I will check with Judge and get back with you.

William J. Barkholz
Case Manager to
Honorable Judith E. Levy

United States District Judge
Eastern District of Michigan
(734) 887-4701

From: Newby, Jennifer (USAMIE) <Jennifer.Newby@usdoj.gov>
Sent: Monday, April 6, 2020 10:53 AM
To: William Barkholz <William_Barkholz@mied.uscourts.gov>; Miriam Aukerman <maukerman@aclumich.org>
Cc: abalakrishnan_aclu.org <abalakrishnan@aclu.org>; Rhee, Jeannie S <jrhee@paulweiss.com>; Mendelsohn, Mark F <mmendelsohn@paulweiss.com>; astacer@stacerplc.com
Subject: RE: Malam v. Adducci, 2:20-cv-10829, Motion to Intervene and Motion to Expedite

Good morning,

ICE has asked me to clarify, is home detention permitted under the amended order or would that be considered confinement? Also, I presume GPS monitoring is permissible?

Thank you!

From: William Barkholz <William_Barkholz@mied.uscourts.gov>
Sent: Sunday, April 05, 2020 8:14 PM
To: Miriam Aukerman <maukerman@aclumich.org>
Cc: Newby, Jennifer (USAMIE) <jnewby@usa.doj.gov>; abalakrishnan_aclu.org <abalakrishnan@aclu.org>; Rhee, Jeannie S <jrhee@paulweiss.com>; Mendelsohn, Mark F <mmendelsohn@paulweiss.com>; astacer@stacerplc.com
Subject: RE: Malam v. Adducci, 2:20-cv-10829, Motion to Intervene and Motion to Expedite

Counsel,

I checked with Judge Levy and the filing is responsive to the Court's request.

Thank you!

William J. Barkholz
Case Manager to
Honorable Judith E. Levy
United States District Judge
Eastern District of Michigan
(734) 887-4701

From: Miriam Aukerman <maukerman@aclumich.org>
Sent: Sunday, April 5, 2020 9:10 AM
To: William Barkholz <William_Barkholz@mied.uscourts.gov>
Cc: Newby, Jennifer (USAMIE) <Jennifer.Newby@usdoj.gov>; abalakrishnan_aclu.org <abalakrishnan@aclu.org>; Rhee, Jeannie S <jrhee@paulweiss.com>; Mendelsohn, Mark F <mmendelsohn@paulweiss.com>; astacer@stacerplc.com
Subject: RE: Malam v. Adducci, 2:20-cv-10829, Motion to Intervene and Motion to Expedite

Dear Mr. Barkholz,

We very much appreciate that the Court found time to hear our intervention motion on Friday afternoon on such short notice.

During the hearing Judge Levy offered us the opportunity to file a brief by noon today regarding whether plaintiffs may seek relief through habeas or, in the alternative, whether there is an implied action under the Due Process Clause. As we plan to file our petition and a TRO motion for the intervenors Ruby Briselda Escobar and Amer Toma by mid-day today, we have included briefing on those issues in our TRO brief, rather than filing a separate brief. If the Court would prefer the briefing on those two questions in some different format, please let us know.

Thank you.

Miriam Aukerman
Counsel for Intervenors

Miriam Aukerman
Senior Staff Attorney
American Civil Liberties Union of Michigan

From: William Barkholz <William_Barkholz@mied.uscourts.gov>
Sent: Friday, April 3, 2020 11:57 AM
To: Miriam Aukerman <maukerman@aclumich.org>
Cc: Newby, Jennifer (USAMIE) <Jennifer.Newby@usdoj.gov>; abalakrishnan_aclu.org <abalakrishnan@aclu.org>; Rhee, Jeannie S <jrhee@paulweiss.com>; Mendelsohn, Mark F <mmendelsohn@paulweiss.com>; astacer@stacerplc.com
Subject: RE: Malam v. Adducci, 2:20-cv-10829, Motion to Intervene and Motion to Expedite

Ms. Aukerman,

Yes, it's a public hearing and the call-in information will be the same.

William J. Barkholz
Case Manager to
Honorable Judith E. Levy
United States District Judge
Eastern District of Michigan
(734) 887-4701

From: Miriam Aukerman <maukerman@aclumich.org>
Sent: Friday, April 3, 2020 11:49 AM
To: William Barkholz <William_Barkholz@mied.uscourts.gov>
Cc: Newby, Jennifer (USAMIE) <Jennifer.Newby@usdoj.gov>; abalakrishnan_aclu.org <abalakrishnan@aclu.org>; Rhee, Jeannie S <jrhee@paulweiss.com>; Mendelsohn, Mark F <mmendelsohn@paulweiss.com>; astacer@stacerplc.com
Subject: Malam v. Adducci, 2:20-cv-10829, Motion to Intervene and Motion to Expedite

Dear Mr. Barkholz,

We just received the order regarding the hearing on our motion to intervene, to be held at 4:45 p.m. today. Would it be possible for us to listen in on the 4 p.m. hearing so that we are aware of

how the Court has handled Ms. Malam's TRO motion? Would that be the same or different call-in information?

Thank you so much.

Miriam Aukerman

Miriam Aukerman
Pronouns: she, her

Senior Staff Attorney
American Civil Liberties Union of Michigan
1514 Wealthy, Suite 260
Grand Rapids, MI 49506
(Offices in Detroit, Grand Rapids and Lansing)
616 301 0930 | maukerman@aclumich.org
<image001.jpg>