

**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

**RESPONDENTS' MOTION TO LIFT THE STAY
OF ENFORCEMENT OF REMOVAL FOR ISSAM POLUS**

Local Rule 7.1(a)(1) requires Respondents to ascertain whether this motion is opposed. On Thursday, September 7, 2017, at 4:17 p.m., Respondents' counsel William C. Silvis sent an e-mail to Petitioners' counsel Margo Schlanger, Miriam Aukerman, and Kimberly Scott identifying the nature of the relief that would be requested, its emergent nature, and when Respondents needed to request relief from the Court. This communication also included the documents and the audio files that support the relief requested. On Friday, September 8, 2017, at 3:34 p.m., Mr. Silvis sent Ms. Schlanger a draft stipulation and the supporting documents that Respondents needed to file due to the emergent nature of the relief requested. This evening, around 6:30 p.m., Ms. Schlanger informed Mr. Silvis that it is possible that Petitioners could agree to the stipulation, but that she would not be able to confirm

that today. For these reasons, and due to the emergent nature of the relief requested, Respondents file this motion with the understanding that Petitioners currently cannot join the relief requested. If Petitioners later indicate that they will join in the relief requested, the parties will file a stipulation and withdraw this motion.

Pursuant to the Court's order granting the preliminary injunction, ECF No. 87, which states that the preliminary injunction shall terminate upon "a class member's consent that this preliminary injunction be terminated as to that class member," Respondents respectfully request that the Court issue and enter this order lifting the stay of enforcement of removal solely for Issam Polus. The grounds for the relief requested are as follows:

1. Issam Polus, an Iraqi national, had a final removal order at the time this Court entered its order granting a preliminary injunction on June 24, 2017.
2. On July 31, 2017, an immigration judge granted a motion to reopen Mr. Polus's removal proceedings. IJ Order dated July 31, 2017 (attached hereto as "Ex. A").
3. On August 29, 2017, Immigration Judge Robin Rosche held a hearing in Mr. Polus's reopened removal proceedings. IJ Order dated August 29, 2017 (attached hereto as "Ex. B").

4. An attorney appeared to represent Mr. Polus at the August 29 hearing, and two of Mr. Polus's family members also attended. Transcript of Hearing dated August 29, 2017, 3:5-9, 4:19-22 (attached hereto as "Ex. C").
5. During the hearing, however, Mr. Polus indicated that he had not hired the attorney, that he did not want her to represent him, and that he wanted to proceed without an attorney. Hr'g Tr. 3:14-4:16, Ex. C.
6. IJ Rosche accordingly allowed Mr. Polus to proceed without counsel. Hr'g Tr. 4:15-17.
7. During the proceeding, Mr. Polus stated that he never requested to have his removal proceedings reopened, Hr'g Tr. 5:14-18, and that he had told his former attorney to withdraw his "appeal." Hr'g Tr. 7:10-12.
8. IJ Rosche then directly asked Mr. Polus, "Now, you said that you do not want your case reopened? Do you want me to just reinstate the prior removal order?" Hr'g Tr. 10:2-4. Mr. Polus responded, "Yes." Hr'g Tr. 10:5.
9. Upon further questioning by IJ Rosche as to his intent, Mr. Polus said:
"Reinstate the order of removal. I never agreed to any of these proceedings. When Immigration picked me up, I was willing to go back willingly, competently. Do you understand that?" Hr'g Tr. 13:14-17.

10. Accordingly, IJ Rosche reinstated Mr. Polus's prior order of deportation, and confirmed that Mr. Polus would not appeal. Hr'g Tr. 13:18-21; IJ Order, Ex. B.

Therefore, based on this evidence, Mr. Polus has clearly stated his consent for the preliminary injunction to be terminated as to himself because he has no desire to reopen his removal proceedings. Furthermore, as he has had an opportunity seek new relief from removal, declined to do so, accepted a new order of removal, and waived appeal, he should be excluded from the class per sections 2b and 2e of the Court's order. Accordingly, for good cause shown, Respondents respectfully request that the Court grant this motion and order that the stay of the enforcement of removal be lifted for Issam Polus, and that Respondents may effectuate his order of removal.

A proposed order accompanies this motion.

Dated: September 8, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

AUGUST FLENTJE
Special Counsel

WILLIAM C. PEACHEY
Director

VINITA B. ANDRAPALLIYAL

MICHAEL A. CELONE
JOSEPH A. DARROW
Trial Attorneys

/s/ William C. Silvis

WILLIAM C. SILVIS

Assistant Director

United States Department of Justice

Office of Immigration Litigation

District Court Section

PO Box 868 Ben Franklin Station

Washington, DC 20044

Tel: (202) 307-4693

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Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused a true and correct copy of the foregoing motion to be served via CM/ECF upon all counsel of record.

Dated: September 8, 2017

Respectfully submitted,

/s/ William C. Silvis
WILLIAM C. SILVIS

Counsel for Respondents

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
525 W. VAN BUREN, SUITE 500
CHICAGO, IL 60607

In the Matter of:
POLUS, ISSAM

Case No.: [REDACTED]

RESPONDENT

Docket: ILLINOIS DOC- STATESVILLE
IN DEPORTATION PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of RESPONDENT

() Motion to Reconsider an Immigration Judge's decision

() Motion to Reopen proceedings

filed in the above entitled matter, it is hereby ordered that the motion

(✓) Be Granted

() Be Denied for reasons indicated in the attached decision

2017 AUG - 1 AM 10: 22

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2017 AUG 1 10:00
CHICAGO, IL

KATHRYN L. DEANGELIS
Immigration Judge
Date: 7/31/17

Appeal: RESERVED (A/I/B)
Appeal Due By: Jul 5, 1997

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [] ALIEN [] ALIEN c/o Custodial Officer [] Alien's ATT/REP [] DHS

DATE: BY: COURT STAFF

Attachments: [] EOIR-33 [] EOIR-28 [] Legal Services List [] Other

IMMIGRATION COURT
525 W. VAN BUREN, SUITE 500
CHICAGO, IL 60607

In the Matter of

POLUS, ISSAM
Respondent

Case No.: [REDACTED]

IN DEPORTATION PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 8/29/17.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

- The respondent was ordered ~~removed~~ ^{deported} from the United States to or in the alternative to .
- Respondent's application for voluntary departure was denied and respondent was ordered removed to or in the alternative to .
- Respondent's application for voluntary departure was granted until upon posting a bond in the amount of \$ _____ with an alternate order of removal to .

Respondent's application for:

- Asylum was () granted () denied () withdrawn.
- Withholding of removal was () granted () denied () withdrawn.
- A Waiver under Section _____ was () granted () denied () withdrawn.
- Cancellation of removal under section 240A(a) was () granted () denied () withdrawn.

Respondent's application for:

- Cancellation under section 240A(b)(1) was () granted () denied () withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
- Cancellation under section 240A(b)(2) was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
- Adjustment of Status under Section _____ was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
- Respondent's application of () withholding of removal () deferral of removal under Article III of the Convention Against Torture was () granted () denied () withdrawn.
- Respondent's status was rescinded under section 246.
- Respondent is admitted to the United States as a _____ until _____.
- As a condition of admission, respondent is to post a \$ _____ bond.
- Respondent knowingly filed a frivolous asylum application after proper notice.
- Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.
- Proceedings were terminated.

Other: Respondent stated he did not want his deportation case reopened. The previous order of deportation is reinstated per the respondent.

Date: Aug 29, 2017

[Signature]
ROBIN J. ROSCHE
Immigration Judge

Appeal: Waived Reserved Appeal Due By:

ALIEN NUMBER: [REDACTED]

NAME: POLUS, ISSAM

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL PERSONAL SERVICE

TO: ALIEN ALIEN c/o Custodial Officer ALIEN's ATT/REP DHS

DATE: 8-29-17 BY: COURT STAFF BKH

Attachments: EOIR-33 EOIR-28 Legal Services List Other

REMOVAL HEARING/ISSAM POLUS, AUGUST 29, 2017

1 I L L I N O I S:

2 IMMIGRATION COURT

3 -----x

4 In the matter of :

5 ISSAM POLUS, : Case No.:

6 Respondent. : [REDACTED]

7 -----x

8 Chicago, Illinois

9 Tuesday, August 29, 2017

10

11 HEARING

12 The following pages constitute the proceedings
13 held in the above-captioned matter before the Honorable
14 Robin J. Rosche held at Immigration Court, 525 W. Van
15 Buren, Suite 500, Chicago, Illinois, when were present
16 on behalf of the respective parties:

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REMOVAL HEARING/ISSAM POLUS, AUGUST 29, 2017

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A P P E A R A N C E S

On behalf of DHS:

SARAH ZELD, ESQUIRE

On behalf of Respondent:

CHRISTINA ABRAHAM, ESQUIRE

REMOVAL HEARING/ISSAM POLUS, AUGUST 29, 2017

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1 P R O C E E D I N G S

2 THE COURT: All right. This is a removal
3 hearing in the matter of Issam Polus, Case Number [REDACTED]
4 [REDACTED], before Immigration Judge Robin Rosche.

5 The Respondent appears by televideo. He is
6 represented by counsel. Counsel, say your names for
7 the record, please.

8 MS. ABRAHAM: Christina Abraham for the
9 Respondent.

10 MS. ZELD: Sarah Zeld on behalf of DHS.

11 THE COURT: All right. Sir, can I get you to
12 say your name for me, please?

13 THE RESPONDENT: Issam Polus.

14 THE COURT: All right. Now, sir, before you
15 got here, I had a discussion with your attorney and she
16 indicated she wasn't sure if you wanted her to
17 represent you. Have you spoken with your attorney?

18 THE RESPONDENT: No.

19 THE COURT: Have you --

20 THE RESPONDENT: She's not my attorney.

21 THE COURT: Why is she not your attorney?

22 THE RESPONDENT: Because I didn't hire her.

REMOVAL HEARING/ISSAM POLUS, AUGUST 29, 2017

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1 THE COURT: Well -- Counsel, are you the one
2 that filed the motion to reopen?

3 MS. ABRAHAM: That's right.

4 THE COURT: Well, you have a final order of
5 deportation, sir, and she filed a motion to reopen and
6 your case has been reopened so that you could apply for
7 a withholding of removal.

8 So do you not want her, Ms. Christina Abraham,
9 to represent you?

10 THE RESPONDENT: I do not want her to
11 represent me.

12 THE COURT: Do you have another attorney you
13 want to represent you?

14 THE RESPONDENT: No.

15 THE COURT: Do you want to represent yourself?

16 THE RESPONDENT: Yes.

17 THE COURT: All right. Counsel?

18 MS. ABRAHAM: Thank you.

19 THE COURT: Now -- does he have family in the
20 courtroom?

21 MS. ABRAHAM: He does. His mother and his
22 sister are here.

REMOVAL HEARING/ISSAM POLUS, AUGUST 29, 2017

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1 THE COURT: Now, your mother and your sister
2 are here. They can also assist you with your case. Do
3 you want them to assist you?

4 THE RESPONDENT: How could they possibly
5 assist me in my case?

6 THE COURT: Sometimes they can give me
7 information that maybe you can't because you're in
8 custody, and they can sometimes answer questions to
9 things that maybe you don't know the answer to. And I
10 let them speak freely to me if they have something to
11 offer.

12 THE RESPONDENT: You act like I care about
13 your decision.

14 THE COURT: Well, sir, it was -- it was your
15 request to have your case reopened to apply for relief
16 from removal. Do you want to do that?

17 THE RESPONDENT: That's a lie. I never
18 requested.

19 THE COURT: Well, what is it you want me to do
20 here, sir?

21 THE RESPONDENT: I want you to tell me why I
22 was refused to be present at my last court hearing.

REMOVAL HEARING/ISSAM POLUS, AUGUST 29, 2017

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1 THE COURT: I don't know why you were not
2 brought. We -- we were told that you were -- was he in
3 the infirmary?

4 MS. ABRAHAM: There was something --

5 MS. ZELD: It was an altercation.

6 THE COURT: Oh, we were -- oh, that's what it
7 was. We were told that you were involved in an
8 altercation and the officers didn't bring you because
9 of something that happened in the center.

10 THE RESPONDENT: Did you demand I be present?

11 THE COURT: I did not.

12 THE RESPONDENT: Isn't that a violation of my
13 due process rights?

14 THE COURT: Well, we're here now, so this is
15 your hearing.

16 THE RESPONDENT: You're avoiding the question.
17 You're avoiding the question!

18 THE COURT: Well, sir, the reason I reset
19 your --

20 THE RESPONDENT: (Inaudible.)

21 THE COURT: Well, let me answer.

22 THE RESPONDENT: Due process rights!

REMOVAL HEARING/ISSAM POLUS, AUGUST 29, 2017

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1 THE COURT: Well, actually, I don't believe
2 so, sir, and here's why: You had representation at the
3 last hearing and she wasn't sure if she wanted to
4 represent you, and so she wanted an opportunity to get
5 the answer to that question. So I did reset the case
6 without you being present.

7 THE RESPONDENT: You violated my rights.

8 THE COURT: And that was really just a week
9 ago. It was August 21st and now it's the --

10 THE RESPONDENT: (Inaudible.) Christina
11 Abraham violated my rights. I gave her exact
12 instructions to withdraw my appeal, period.

13 MS. ABRAHAM: May I say something?

14 THE COURT: Well --

15 THE RESPONDENT: You understand?

16 THE COURT: -- I'm not sure what appeal you're
17 talking about.

18 MS. ABRAHAM: Can I say something?

19 THE COURT: Yes.

20 MS. ABRAHAM: I had requested --

21 THE RESPONDENT: You opened my case.

22 MS. ABRAHAM: -- that he confirm in writing

REMOVAL HEARING/ISSAM POLUS, AUGUST 29, 2017

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1 whether he wanted me to withdraw, and I have not
2 received anything since then. And because of the
3 seriousness of that decision, I needed that decision in
4 writing.

5 THE COURT: Right.

6 MS. ABRAHAM: Because I wasn't sure if what he
7 was saying was coming out of a place of depression and
8 despondency or whether he really meant what he was
9 saying. So by getting it in writing, it would give him
10 a chance to think about the consequences and me
11 confirmation, actually, that I can, you know,
12 adequately, properly withdraw and leave him in the
13 situation I would be leaving him in.

14 THE COURT: All right. So first things first,
15 sir. Do you want this attorney to withdraw from your
16 case?

17 THE RESPONDENT: Yes.

18 THE COURT: Okay. Now, the other question is
19 what -- what appeal are you talking about? Is there an
20 appeal pending?

21 THE RESPONDENT: Did you not -- did she not
22 reopen my removal? Is that not --

REMOVAL HEARING/ISSAM POLUS, AUGUST 29, 2017

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1 THE COURT: It is reopened. It's not an
2 appeal. We're here and your case is open. So --

3 THE RESPONDENT: I didn't ask for it.

4 THE COURT: Okay. So you have a motion to
5 withdraw?

6 MS. ABRAHAM: Yes, Your Honor.

7 THE COURT: All right. I guess on this record
8 I have no choice but to grant your motion to withdraw.

9 MS. ABRAHAM: Thank you.

10 THE COURT: Now, can you tell me if you sent a
11 copy of everything that you filed to the Respondent, or
12 at least with his representatives, so he has a copy of
13 everything you've filed?

14 MS. ABRAHAM: I can send that over to him --

15 THE COURT: All right. If you could do that,
16 I would appreciate it.

17 MS. ABRAHAM: Yes.

18 THE COURT: So if he wants to represent
19 himself, then he can have a copy since you filed a lot
20 of documents in his case.

21 MS. ABRAHAM: Sure.

22 THE COURT: All right. So, sir, I'm going to

REMOVAL HEARING/ISSAM POLUS, AUGUST 29, 2017

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1 let your attorney withdraw.

2 Now, you said that you do not want your case
3 reopened? Do you want me to just reinstate the prior
4 removal order?

5 THE RESPONDENT: Yes.

6 THE COURT: Now, did you want to have a
7 conversation with your mother or your sister about
8 this?

9 THE RESPONDENT: Don't bring my family into
10 this.

11 THE COURT: Well, they're here and I wanted to
12 offer that to you because I thought you might want to
13 talk to them if you hadn't had a chance to.

14 THE RESPONDENT: I haven't talked to them,
15 but, no, I don't want to.

16 THE COURT: And do you feel qualified to
17 represent yourself and make these decisions?

18 THE RESPONDENT: What is a re -- withholding
19 of removal?

20 THE COURT: Well, a withholding of removal,
21 because of your aggravated felony convictions, you're
22 not eligible for asylum. Asylum is where you would

REMOVAL HEARING/ISSAM POLUS, AUGUST 29, 2017

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1 have to show that you either suffered past persecution
2 or you would be persecuted if you returned to Iraq
3 because of your race, your religion, your nationality,
4 your political opinion and membership in a particular
5 social group.

6 Now, withholding of removal is -- is what
7 you're eligible to apply for. It wouldn't -- you
8 wouldn't be eligible for asylum, but withholding is
9 similar. So you would have to prove that there's a
10 clear probability that you would be persecuted if you
11 returned to Iraq based on, I think in your case,
12 Counselor, you -- you've said religion?

13 MS. ABRAHAM: Ethnicity, religion, social
14 group, membership in a social group.

15 THE COURT: Right. I can't -- I didn't
16 actually handle the motion to reopen; another Judge
17 did.

18 So if you believe you would be harmed if you
19 returned to Iraq, that's the application that you would
20 be eligible to apply for to see if you could remain
21 here in the United States.

22 Now, your attorney did --

REMOVAL HEARING/ISSAM POLUS, AUGUST 29, 2017

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1 THE RESPONDENT: (Inaudible.)

2 THE COURT: Well, a lot of documentation has
3 been filed in your case, but an application has not.
4 So if you wanted to apply for that, then I would give
5 you the application. You can actually do it yourself.
6 It would have to be filled out and we would bring you
7 back and I would set you for a final hearing where you
8 could testify or anyone else could testify and present
9 evidence if you thought you would be harmed if you
10 returned to Iraq.

11 THE RESPONDENT: The day I was ordered
12 removed, the Judge told me in plain English, I don't
13 care if they kill you in Iraq, I order you deported.

14 THE COURT: Um --

15 THE RESPONDENT: One, don't interrupt me. I
16 know I will be harmed in Iraq. That is for sure. I
17 don't fucking care! Fuck you and fuck your country! I
18 would rather die in Iraq than continue being locked up
19 in your fucking country!

20 Remove everything that this bitch did and
21 reinstate the order of removal! Do you fucking
22 understand?

REMOVAL HEARING/ISSAM POLUS, AUGUST 29, 2017

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1 THE COURT: I do, sir. Now, does the DHS
2 think there's any merit to a competency review?

3 MS. ZELD: Perhaps. There does seem to be
4 some indicia. And also, he is on a hunger strike, so
5 he may be impaired.

6 THE COURT: I'm not sure how far we'll get.

7 MS. ZELD: I -- that's the only concern is I'm
8 not sure that it would change the outcome.

9 THE COURT: You know what?

10 THE RESPONDENT: I'm perfectly competent.
11 What I'm saying, I don't want to live in your country.
12 Do you understand? I don't care if I die somewhere
13 else. It's better than living here.

14 Reinstatement the order of removal. I never
15 agreed to any of these proceedings. When Immigration
16 picked me up, I was willing to go back willingly,
17 competently. Do you understand that?

18 THE COURT: I do, sir. I will -- I will
19 reinstate the prior order of deportation that you've
20 requested. And you won't appeal of that decision?

21 THE RESPONDENT: Yes.

22 THE COURT: All right. Anything further for

REMOVAL HEARING/ISSAM POLUS, AUGUST 29, 2017

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1 the record?

2 MS. ABRAHAM: No, Your Honor.

3 THE COURT: All right.

4 (Whereupon, the proceeding was concluded.)

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REMOVAL HEARING/ISSAM POLUS, AUGUST 29, 2017

1 CERTIFICATE OF TRANSCRIBER

2 I, PAMELA J. ALEXANDER, do hereby certify that
3 this transcript was prepared from audio to the best of
4 my ability.

5

6 I am neither counsel for, related to, nor
7 employed by any of the parties to this action, nor
8 financially or otherwise interested in the outcome of
9 this action.

10

11

12 09/08/2017

Pamela J Alexander

13 DATE

PAMELA J. ALEXANDER

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

USAMA JAMIL HAMAMA, et al.,

Petitioners,

v.

REBECCA ADDUCCI, Director, Detroit
District of Immigration and Customs
Enforcement, et al.,

Respondents.
_____ /

Civil No. 17-11910
Hon. Mark A. Goldsmith
Mag. Judge David R. Grand

**[PROPOSED] ORDER
GRANTING
RESPONDENTS' MOTION
TO LIFT THE STAY OF
ENFORCEMENT OF
REMOVAL FOR ISSAM
POLUS**

It is hereby ORDERED that Respondents' Motion to Lift the Stay of Enforcement of Removal for Issam Polus is GRANTED. Respondents may effectuate his order of removal.

SO ORDERED

Date: _____

Hon. Mark A. Goldsmith
United States District Judge