

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

Petitioners submit this opposition to Respondents' Motion to Lift the Stay of Removal for Issam Polus, filed with this Court on Friday, September 8, 2017 ("Resp. Motion"). To date, Petitioners are still trying to arrange for someone to meet with Mr. Polus in order to assess whether his statements that he wanted to be removed to Iraq were "knowing and voluntary," and to assess what steps may be necessary to determine his competency. Until such time, Petitioners are unable to join a stipulation agreeing to his removal and oppose the lifting of the stay in his case.

Additional details concerning Petitioners' Opposition to the Motion are set forth below:

1. For weeks, Petitioners' counsel and Respondents' counsel have been trying to work out a system for dealing with cases where a putative class member requests removal to Iraq. As part of these discussions, Petitioners' counsel have repeatedly asked Respondents to provide timely information about anyone who has expressed a desire to be removed to Iraq, so that Petitioners' counsel can have an opportunity to ascertain whether this decision is knowing and voluntary, and if that is the case, to join a stipulation agreeing to lifting of the stay of removal in their case.
2. Despite these ongoing conversations, Petitioners were not informed about Mr. Polus' situation until late in the afternoon of September 7, 2017 (Resp. Mot. at 1). Respondents' counsel represented that the request was urgent, and could not await resolution of the parties' attempts to negotiate a system for dealing with such cases, as the individual was on hunger strike.
3. Notably, the statements of Mr. Polus on which the government relied were made during an immigration hearing nine days earlier, at which point Mr. Polus had apparently been on a hunger strike for approximately nine days. *See* Resp. Mot. at 1; *id.* at 3 (citing transcript from Mr. Polus'

removal proceeding<sup>1</sup> held on August 29, 2017, attached to Resp. Mot. Ex. C).

4. At Mr. Polus' immigration hearing the immigration judge specifically asked the Department of Homeland Security (DHS) attorney whether there was any merit to a competency review, to which the DHS attorney responded, "[t]here does seem to be some indicia. And also, he is on a hunger strike, so he may be impaired." Resp. Mot., Ex. C at 13. However, the transcript does not indicate that a competency assessment was made, as required under the Board of Immigration Appeals' controlling decision, *Matter of M-A-M*, 25 I & N Dec. 474, 479–481 (BIA 2011) (holding that when indicia of incompetency are present, an immigration judge must determine whether a respondent is sufficiently competent to proceed without safeguards and must state on the record the basis for his/her determination of a respondent's competency). Instead the transcript reflects that, after the immigration judge raised the question of competency, Mr. Polus stated that he was "perfectly competent....I don't care if I die somewhere else. It's better than living here," after

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<sup>1</sup> Petitioners will submit audio recordings of the removal proceedings directly to chambers. Respondents' counsel provided three different audio files from the same proceeding, and Petitioners' counsel has combined them into one audio file.

- which the judge agreed to reinstate Mr. Polus' removal order per his request. *Id.*
5. Immediately after learning from Respondents about Mr. Polus' situation, Petitioners' counsel contacted the attorney who had attempted to represent Mr. Polus in his removal proceedings, as well as Mr. Polus' sister and girlfriend, in order to ascertain whether they believed that his desire to return to Iraq was "knowing and voluntary."
  6. Both Mr. Polus' sister and girlfriend stated repeatedly that they did not believe he was "in his right mind" and that they thought his statements about wanting to be removed to Iraq were the result of the despair, anger, and frustration he felt at having been arrested and locked up by ICE after he had turned his life around. After nearly three months of detention, Mr. Polus was in despair and could not stand being in detention any longer. His family members emphasized that Mr. Polus left Iraq at the age of five, does not speak the language, has no family there, and has Christian tattoos on his body that will make him a special target for persecution/torture.
  7. Mr. Polus' girlfriend also informed Petitioners' counsel that Mr. Polus had been transferred to a detention facility closer to Chicago and that she intended to visit him the following day, Saturday, September 9.

However, before she could visit him, she learned that he had been transferred to ICE's Service Processing Center in El Paso, Texas.

8. On Saturday, September 9, Petitioners' counsel emailed counsel for Respondents to inform them of counsel's desire to speak to Mr. Polus to determine whether his desire to return to Iraq was knowing and voluntary, to find out whether he was still on hunger strike, to express concern about his transfer to El Paso, and to request that ICE facilitate a way for Mr. Polus' girlfriend to speak to him.
9. On Monday, September 10, Petitioners' counsel received an email from Respondents' counsel stating that our email had been forwarded to Respondents. Later that day Respondents' counsel notified Petitioners' counsel that Respondents would make Mr. Polus available for a videoconference call with his girlfriend and an attorney/advocate designated by Petitioners' counsel. The parties are currently in the process of trying to schedule that call.

WHEREFORE, Petitioners' counsel respectfully asks that Respondents' motion be denied, at least until such time as Petitioners' counsel have had an opportunity to speak with Mr. Polus and determine, to the extent possible, that his desire to return to Iraq is knowing and voluntary, and that he is competent to make that decision.

Respectfully submitted,

Michael J. Steinberg (P43085)  
Kary L. Moss (P49759)  
Bonsitu A. Kitaba (P78822)  
Miriam J. Aukerman (P63165)  
AMERICAN CIVIL LIBERTIES  
UNION FUND OF MICHIGAN  
2966 Woodward Avenue  
Detroit, Michigan 48201  
(313) 578-6814  
[msteinberg@aclumich.org](mailto:msteinberg@aclumich.org)

Kimberly L. Scott (P69706)  
Wendolyn Wrosch Richards (P67776)  
Cooperating Attorneys, ACLU Fund  
of Michigan  
MILLER, CANFIELD, PADDOCK  
& STONE, PLC  
101 N. Main St., 7<sup>th</sup> Floor  
Ann Arbor, MI 48104  
(734) 668-7696  
[scott@millercanfield.com](mailto:scott@millercanfield.com)

Nora Youkhana (P80067)  
Nadine Yousif (P80421)  
Cooperating Attorneys, ACLU Fund  
of Michigan  
CODE LEGAL AID INC.  
27321 Hampden St.  
Madison Heights, MI 48071  
(248) 894-6197  
[norayoukhana@gmail.com](mailto:norayoukhana@gmail.com)

Judy Rabinovitz (NY Bar JR-1214)  
Lee Gelernt (NY Bar NY-8511)  
Anand Balakrishnan\* (Conn. Bar 430329)  
ACLU FOUNDATION  
IMMIGRANTS' RIGHTS PROJECT  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004  
(212) 549-2618  
[jrabinovitz@aclu.org](mailto:jrabinovitz@aclu.org)

Margo Schlanger (N.Y. Bar #2704443)  
Samuel R. Bagenstos (P73971)  
Cooperating Attorneys, ACLU Fund  
of Michigan  
625 South State Street  
Ann Arbor, Michigan 48109  
734-615-2618  
[margo.schlanger@gmail.com](mailto:margo.schlanger@gmail.com)

Susan E. Reed (P66950)  
MICHIGAN IMMIGRANT RIGHTS  
CENTER  
3030 S. 9th St. Suite 1B  
Kalamazoo, MI 49009  
(269) 492-7196, ext. 535  
[susanree@michiganimmigrant.org](mailto:susanree@michiganimmigrant.org)

Lara Finkbeiner (NY Bar 5197165)  
Mark Doss (NY Bar 5277462)  
Mark Wasef\* (NY Bar 4813887)  
INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT  
Urban Justice Center  
40 Rector St., 9<sup>th</sup> Floor  
New York, NY 10006  
(646) 602-5600  
[lfinkbeiner@refugeerights.org](mailto:lfinkbeiner@refugeerights.org)

*Attorneys for All Petitioners and Plaintiffs*

William W. Swor (P21215)  
WILLIAM W. SWOR  
& ASSOCIATES  
1120 Ford Building  
615 Griswold Street  
Detroit, MI 48226  
[wswor@sworlaw.com](mailto:wswor@sworlaw.com)

María Martínez Sánchez (NM Bar 126375)  
AMERICAN CIVIL LIBERTIES  
UNION OF NEW MEXICO  
1410 Coal Ave. SW  
Albuquerque, NM 87102  
[msanchez@aclu-nm.org](mailto:msanchez@aclu-nm.org)

*Attorney for Petitioner/Plaintiff Usama  
Hamama*

*Attorneys for Petitioner/Plaintiff Abbas Oda  
Manshad Al-Sokaina*

Dated: September 13, 2017

\* Application for admission forthcoming.

**CERTIFICATE OF SERVICE**

I hereby certify that on September 13, 2017, I electronically filed the foregoing document with the Clerk of the Court using the electronic filing system, which will send notification of such filing to all counsel of record.

By: /s/ Kimberly L. Scott

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