

**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

JOINT STATEMENT OF ISSUES

On January 2, 2018, the Court granted Petitioners’ motion for class certification and a preliminary injunction on Petitioners’ detention claims, and permitted the parties to engage in “discovery directed to the *Zadvydas* claims”, including “depositions of appropriate government personnel with knowledge of the Iraq repatriation agreement or program, and production of documents pertaining to that subject.” ECF 191 Pg.ID# 5362. The Court instructed the parties to confer regarding the discovery requests, and submit their respective positions on any disputes in advance of the Court’s status conference scheduled for February 1, 2018, at 12:30 PM.

The parties conferred on January 5, 2018, on the discovery requests issued by Petitioners on October 13, 2017. Based on the Respondents' objections to the discovery requests and in light of statements made and declarations submitted by Respondents since the discovery requests had been issued, Petitioners served amended discovery requests on January 14, 2018. The parties conferred telephonically again on Friday, January 19 and Thursday, January 25, 2018, to discuss Respondents' objections and to clarify the requests. During the January 25 conference, Respondents and Petitioners agreed that Petitioners should amend their deposition notice to cover all Respondents, not just the Department of Homeland Security (DHS); the notice was served on January 26, 2018. A copy of the discovery requests are attached as follows:

Exhibit A: Petitioner/Plaintiff Usama Jamil Hamama's First Set of Interrogatories to Respondent Kirstjen Nielsen;

Exhibit B: Petitioners' Amended First Set of Requests for Production of Documents and Things to Respondents; and

Exhibit C: Petitioners' Amended Notice of Rule 30(b)(6) Deposition directed to all Respondents.

Given the length of this report, a Table of Contents is included for the Court's convenience.

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I. PRELIMINARY ISSUES

A. Meet and Confer Process

Respondents' Position

As an initial matter, Respondents are still in the process of identifying the custodians, documents, and answers necessary to respond to the discovery propounded, and reserve the right to raise additional objections in the course of this process. Respondents' understanding of the purpose of these discussions and the status conference was to engage in a good faith effort to identify the threshold discovery disputes in an effort to facilitate discovery. By doing so Respondents have not forfeited the right to raise any objection permitted under the Federal Rules of Civil Procedure. Respondents further reserve the right to make objections, on their behalf and on the behalf of any third parties, regarding the production of documents or information subject to applicable privileges and other prohibitions on discovery.

The Executive Office of Immigration Review does not have any responsive documents to any of the petitioners' requests for production.

It is Respondents' position that Petitioners' request that Respondents "disclose the identity of custodians possessing responsive documents and information; the locations of electronically stored information; the sources of other responsive documents and information that will be searched (and those that will

not be searched); and the search methodologies to be employed” is premature at this point in the proceedings.

Petitioners’ Position

While the meet and confer process has been useful, there are many issues that still need to be addressed. First, Respondents take the position that the Respondent Attorney General Jefferson Sessions has been sued only in his capacity as head of Executive Office of Immigration Review (EOIR), and will only respond to discovery on behalf of EOIR. Petitioners disagree; Respondent Attorney General Jefferson Sessions was sued in his capacity as the Attorney General of the Department of Justice, which also supervises EOIR. Respondent Sessions is responsible for responding to discovery on behalf of the Department of Justice and EOIR.

Second, Petitioners request that the Court set forth a schedule for Respondents to disclose the following: the identity of custodians possessing responsive documents and information; the locations of electronically stored information; the sources of other responsive documents and information that will be searched (and those that will not be searched); and the search methodologies to be employed.

Third, Respondents have indicated that they will assert certain privileges, including the law enforcement privilege and the deliberative process privilege. *See*

NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150-51 (1975); *In re U.S. Dep't of Homeland Sec.*, 459 F.3d 565, 569 (5th Cir. 2006). Petitioners anticipate that guidance from the Court will be needed to resolve the appropriate scope of these privileges.

Finally, once Petitioners receive responses to the discovery requests, Petitioners may identify additional individuals with relevant information to depose.

B. Clarifications of Petitioners' Discovery Requests

Respondents' Position

As indicated below, Petitioners clarified which discovery requests are directed to either ICE, DHS, or both. If Petitioners address a request to both DHS and ICE, Respondents will make it clear who is responding. Petitioners requested that if Respondents believe a third party is in possession, custody, or control of the requested information or documents, that Respondents identify this third party, if known, to Petitioners. Respondents' counsel have not agreed to this request at this time and need to discuss this issue further with clients and any relevant third party. To the extent that Petitioners reference the United States government as a whole in their interrogatories and requests for production, DHS HQ and ICE can only respond regarding to the materials in their possession, custody or control. Fed. R. Civ. P. 34(a)(1).

Petitioners' Position

For clarification, the requests for production of documents and the deposition notice have been issued to *all* Respondents. To the extent any single Respondent is not in possession, custody or control of information or documents responsive to those requests, Respondents should indicate as such in their response. If a Respondent is in possession, custody or control of information or documents, then Respondents should provide an answer to the discovery request.

The interrogatories were issued to DHS. Petitioners directed certain discovery requests solely to ICE. DHS is defined to include each of its components, departments, directorates, units and offices, and DHS's responses should incorporate information that is in the possession, custody or control of each of its components, departments, directorates, units and offices. Petitioners disagree with Respondents' efforts to limit the scope of DHS's response to "DHS HQ" if DHS has control of the records or information, including the ability to require non-HQ units within DHS to produce the information.

Petitioners agree that the parties walked through the discovery requests, and Respondents indicated, based on the information they possess at this stage of their investigation, if ICE, DHS or both are in possession, custody or control of the records/information responsive to each request. If Respondents' continuing investigation reveals that these representations are not accurate, then Respondents

should answer the discovery requests for each Respondent with possession, custody or control of the discovery sought.

Additionally, Respondents have indicated that they may be in the possession, custody or control of records or information of a third party, and that third party may object and/or assert privileges to the discovery requests. Petitioners requested that Respondents identify those third parties so the Court can evaluate the Respondents' objections. Moreover, to the extent that Respondents assert that they cannot produce documents/information within the possession, custody or control of one of their own components, departments, directorates, units or offices, they should be required to identify the components, departments, directorates, units and offices so the Court can assess the appropriateness of the corresponding objection.

C. Definitions of “Class Member” and “Iraqi National”

Respondents' Position

Petitioners and Respondents identified an existing dispute regarding the definition of class members. It is Respondents' position that both individuals who have “opted-out” and individuals who have had this Court lift their stays of removal are not class members. Petitioners disagree with this characterization and understand class members to include individuals who have had the Court lift their stays of removal. Additionally, Petitioners read the Declaration of Michael V.

Bernacke, dated December 22, 2017, as applying to non-class members. Respondents dispute this characterization. ECF No. 184-2.

Petitioners' Position

The discovery requests define “Class Member” as “any Iraqi National who had a final order of removal at any point between March 1, 2017 and June 24, 2017.” The term “Iraqi National” is defined as “any Iraqi national, including but not limited to Class Members.” Both definitions include those individuals who requested the lifting of the Court’s preliminary injunction that stayed removal (Petitioners do not agree that these can be described as class members who “opted out”.) In general, Petitioners use “Class Member” when seeking discovery about individuals (such as efforts to obtain travel documents for an individual), whereas “Iraqi National” is used to seek discovery about the process of repatriation and the terms of the Iraqi Agreement (the definition of which is set forth in subparagraph E below). Respondents’ statements about repatriation and the terms of the Iraqi Agreement are not limited to the Class Members, but apply to all Iraqi Nationals, including those who requested a lifting of the stay. *See* ECF 81-4 Pg.ID# 2007, 1st Schultz Decl.; ECF 158-2 Pg.ID# 4130, 2d Schultz Decl. (using the term “Iraqi nationals” and discussing removal efforts both before and since this litigation, including for individuals never covered by the stay of removal and individuals who had requested the stay to be lifted); ECF 184-2 Pg.ID# 5071, Bernacke Decl.

(using the term “Iraqi nationals” and discussing the removal efforts for those who requested the stay to be lifted and other individuals not covered by the stay of removal).

D. Definition of “Travel Documents”

Respondents’ Position

Respondents object to Petitioners’ definition of the term “travel document,” which does not reflect the definition of the term as used in the immigration context.

Petitioners’ Position

The term “travel documents” is defined as “documents used or required for travel by an Iraqi from the United States to Iraq.” The term is used in the declarations of Messrs. Schultz and Bernacke to describe the repatriation process. *See* ECF 81-4 Pg.ID# 2007, 1st Schultz Decl.; ECF 158-2, Pg.ID# 4130, 2d Schultz Decl.; ECF 184-2 Pg.ID# 5071, Bernacke Decl.

During the meet and confer, Respondents requested that Petitioners clarify when the discovery requests seek travel documents versus identity documents. Petitioners were unaware prior to this request that Respondents were not including “identity documents” within the term “travel documents.” To alleviate any confusion, the term “travel documents” in Petitioners’ discovery requests should be read as follows: “travel and identity documents.” The exception is Interrogatory Numbers 4 and 5; Number 4 seeks only travel documents and excludes identity

documents, whereas Number 5 seeks only identity documents (and any other document) other than travel documents. Petitioners are willing to send revised discovery requests reflecting these changes, provided Respondents agree that the clock for responding to the discovery requests does not start new upon issuance of the amended requests.

E. Definition of “Iraqi Agreement”

Respondents’ Position

Respondents understand that Petitioners intend the definition of the “Iraqi Agreement” to include all directions/emails/instructions that DHS and ICE employees have received with regard to repatriating Iraqi Nationals. Respondents further interpret the term “Iraqi Agreement” to be limited to the term “Iraqi Agreement” as it is referenced in the Declaration of John A. Schultz, Jr., dated July 20, 2017 (ECF No. 81-4), as well as the agreement(s) referenced in the Declaration of Michael V. Bernacke, dated December 22, 2017 (ECF No. 184-2).

Petitioners’ Position

The Court has permitted discovery of the “Iraq repatriation agreement or **program**” ECF 191 Pg.ID# 5362 (emphasis added). Petitioners defined the term “Iraqi Agreement” broadly to encompass the concept of any repatriation agreement and program. For this reason, the term “Iraqi Agreement” is defined as follows:

The term “Iraqi Agreement” means any agreement, whether oral or written, between the governments of the United States and Iraq regarding the repatriation of Iraqi Nationals after January 2017, including the agreement(s) referenced in the following, and any changes to the agreement(s):

1. Declaration of John A. Schultz, Jr., dated July 20, 2017 at paragraph 5 (“Due to renewed discussions between the United States and Iraq in recent months, Iraq has agreed, using charter flights, to the timely return of its nationals that are subject to final orders of removal”) (ECF 81-4 at Pg.ID# 2006);

2. Declaration of Michael V. Bernacke, dated December 22, 2017 at paragraph 4 (“[I]n 2017, Iraq agreed to the timely return of its nationals subject to a final order of removal. The agreement between the United States and the Iraqi Ministry of Foreign Affairs (MFA) is not memorialized in any written document or treaty. It is a product of ongoing diplomatic negotiations.”) (ECF 184-2, Pg.ID# 5070-71);

3. the reference by Gillian Christensen, a spokeswoman for U.S. Immigration and Customs Enforcement (“As a result of recent negotiations between the U.S. and Iraq, Iraq has recently agreed to accept a number of Iraqi nationals subject to orders of removal”) (see, Mica Rosenberg, U.S. Targets Iraqis for Deportation in Wake of Travel Ban Deal, REUTERS (June 12, 2017), <https://www.reuters.com/article/us-usa-immigration-iraq-idUSKBN19326Z>); and

4. any other agreement(s) since March 1, 2017 between the governments of Iraq and United States setting forth the terms, processes and conditions of repatriation of Iraqi Nationals.

To the extent the Respondents’ definition (which is limited to the agreement referenced in the declarations of Messrs. Schultz and Bernacke) differs from the definition set forth in Petitioners’ discovery requests, the Court should instruct Respondents that they should use Petitioners’ definition.

Additionally, Petitioners’ definition does not include “all directions/emails/instructions that DHS and ICE employees have received with

regard to repatriating Iraqi Nationals.” To the extent Respondents are asserting there is no formal executed agreement, the discovery requests production of documents that reflect the terms of the agreement, which could be contained in directions, emails, instructions, and other documents that Respondents have received or sent. In other words, discovery about the Iraqi Agreement is not limited to a formal executed agreement, as Respondents have asserted that no such agreement exists in that form.

II. INTERROGATORIES

Interrogatory 1: Describe each term of the Iraqi Agreement pertaining to the repatriation of and process for repatriating Iraqi Nationals under the Iraqi Agreement.

Respondents’ Position

a. Respondents object to this interrogatory to the extent it seeks descriptions of documents that are not in Respondents’ possession, custody or control, or that are in the possession, custody or control of third parties.

b. Respondents understand that Petitioners define “Iraqi Agreement” to include all directions/emails/instructions that DHS and ICE employees have received with regard to repatriating Iraqi Nationals. Respondents further interpret the term “Iraqi Agreement” to be properly limited to the term “Iraqi Agreement” as it is referenced in the Declaration of John A. Schultz, Jr., dated July 20, 2017.

ECF No. 81-4. As well as the agreement referenced in the Declaration of Michael V. Bernacke, dated December 22, 2017. ECF No. 184-2.

c. Petitioners indicated that this interrogatory seeks information about class members and individuals who have opted-out and other non-parties. To the extent that Petitioners seek information from individuals who have opted-out and non-parties, Respondents object to providing that information. It is Respondents' understanding that Petitioners direct this interrogatory to both DHS HQ and ICE.

d. Subject to applicable privileges, ICE will respond concerning the Iraqi Agreements referenced in the Schultz and Bernacke declarations. Subject to applicable privileges and to the extent that DHS has responsive information, DHS will respond.

Petitioners' Position

Sections I.B, C, and E above address the issues raised by Respondents.

Interrogatory 2: Describe each criterion an Iraqi National must meet before Iraq will accept an Iraqi National for repatriation, under the Iraqi Agreement or otherwise.

Respondents' Position

a. Respondents understand that Petitioners intend this interrogatory to include criterion for both class members and individuals who have opted-out and other non-parties. However, to the extent that Petitioners seek information

concerning individuals who have opted-out and non-parties, Respondents object to providing that information.

b. To the extent that the phrases and “criterion for repatriation” and “or otherwise” are vague and ambiguous, Respondents understand that Petitioners are defining “criterion for repatriation” as the specific list of documentation that must be presented to Iraq for an individual to be accepted for repatriation to the Iraqi Government. To the extent that that no set criteria exists, DHS shall so state.

c. Respondents further object to this interrogatory to the extent it seeks the description of documents that are not in Respondents’ possession, custody or control, or that are in the possession, custody or control of third parties. It is Respondents’ understanding that Petitioners direct this interrogatory to both DHS HQ and ICE.

d. Subject to applicable privileges, ICE will explain in general terms the process to remove an Iraqi National to Iraq, assuming the stay is lifted, with the caveat that ICE does not speak for the Government of Iraq and the Government of Iraq may make decisions on a case-by-case basis depending on the information and documentation available, which may vary among individual cases. Subject to applicable privileges and to the extent that DHS has responsive information, DHS will respond with any information subject to the same objections and conditions as stated by ICE; DHS similarly cannot speak for the Government of Iraq.

Petitioners' Position

Subparagraphs a and c: These are addressed in Sections I.B and C above.

Subparagraph b: Petitioners clarify that “criterion . . . for repatriation” is not limited to “the specific list of documentation that must be presented to Iraq for an individual to be accepted for repatriation to the Iraqi Government.” The term is broader than “documentation,” and includes any criteria, qualification, requirement or otherwise requested by the Iraqi government before accepting any Iraqi National for repatriation.

Subparagraph d: Because Respondents have framed the scope of their response as “ICE will explain in general terms the process to remove an Iraqi National to Iraq,” it is unclear if they are answering the interrogatory as written (which seeks the “criterion an Iraqi National must meet before Iraq will accept an Iraqi National for repatriation”), or if they are rewriting the interrogatory to provide information that is already sought in Interrogatory Number 1 (which seeks the terms and process for repatriating Iraqi Nationals). Petitioners request that Respondents state if they will provide the information sought in this interrogatory.

Interrogatory 3: Describe each criterion for denying repatriation to an Iraqi National under the Iraqi Agreement, or otherwise.

Respondents' Position

a. Petitioners intend this interrogatory include criterion for both class members and individuals who have opted-out and other non-parties. To the extent that Petitioners seek information from individuals who have opted-out and non-parties, Respondents object to providing that information.

b. Respondents object to the phrases and “criterion for denying repatriation” and “or otherwise” as vague and ambiguous. Respondents understand that Petitioners are defining “criterion for repatriation” as a specific list of documentation that must be presented to Iraq for an individual to be accepted and without which an individual will be rejected. To the extent that no set criteria exists, DHS shall so state. Respondents further object to this interrogatory to the extent it seeks descriptions of documents that are not in Respondents’ possession, custody or control, or that are in the possession, custody or control of third parties. It is Respondents’ understanding that Petitioners direct this interrogatory to both DHS HQ and ICE.

c. Subject to applicable privileges, ICE will explain in general terms the process to remove an Iraqi National to Iraqi, assuming the stay is lifted, with the caveat that ICE does not speak for the Government of Iraq and the Government of Iraq may make decisions on a case-by-case basis depending on the information and

documentation available, which may vary among individual cases. Subject to applicable privileges and to the extent that DHS has responsive information, DHS will respond with any information subject to the same objections and conditions as stated by ICE; DHS similarly cannot speak for the Government of Iraq.

Petitioners' Position

Subparagraph a: This objection is addressed in Section I.C above.

Subparagraph b: Petitioners clarify that the phrase “criterion for denying repatriation” means any reason why Iraq would deny or reject repatriation of any Iraqi National. The term “or otherwise” qualifies the term “Iraqi Agreement” and is intended to capture any repatriation program or assurances, representations or promises from Iraq that form the basis of ICE’s belief that Iraq will accept repatriation or issue travel documents, as stated in the November 30 declaration of Mr. Schultz (ECF 158-2 Pg.ID# 4131).

Subparagraph c: Because Respondents have framed the scope of their response as “ICE will explain in general terms the process to remove an Iraqi National to Iraq,” it is unclear if they are answering the interrogatory as written (which seeks the “criterion for denying repatriation to an Iraqi National under the Iraqi Agreement”), or if they are rewriting the interrogatory to provide information that is already sought in Interrogatory Number 1 (which seeks the terms and

process for repatriating Iraqi Nationals). Petitioners request that Respondents state if they will provide the information sought in this interrogatory.

Interrogatory 4: Identify any travel documents that Iraq requires or will accept before accepting an Iraqi National for repatriation under the Iraqi Agreement or otherwise, and the procedures for obtaining the travel documents.

Respondents' Position

a. Respondents understand that Petitioners are defining “travel documents” in the broadest terms possible to include whatever documents are used to remove or effectuate removal to Iraq, including documents an individual may have had both before and after the stay of removal was implemented by this Court. Respondents further understand that this phrase refers to whatever documents Iraq is requiring DHS and/or ICE produced in order for the Iraqi government to accept an individual for repatriation. Respondents also understand that Petitioners used the phrase “or otherwise” to encompass the distinction between “travel documents” and “identity documents.” Respondents further understand that Petitioners use the phrase “travel documents” to necessarily include “identity documents.” After discussions between the parties, Respondents understand that Petitioners intend to separate Interrogatories 4 and 5 so that Interrogatory 4 only addresses “travel documents” and Interrogatory 5 only addresses “identity documents.”

b. Petitioners intend this interrogatory include both class members and individuals who have opted-out and other non-parties. To the extent that Petitioners seek information from individuals who have opted-out and non-parties, Respondents object to providing that information. It is Respondents' understanding that Petitioners direct this interrogatory to both DHS HQ and ICE.

c. To the extent that each case is presented to Iraq on an individual basis with the information available in that case, much of which can come from information or documents the alien has provided, and that no specific set of documents are required, ICE and DHS shall so state.

d. Respondents object to this interrogatory on the ground that it is overbroad and burdensome to the extent it seeks discovery of information regarding a foreign government's repatriation requirements, a subject matter outside the scope of this litigation and that potentially predates the commencement of this action.

e. Respondents further object to this interrogatory to the extent it seeks documents that are not in Respondents' possession, custody or control, or that are in the possession, custody or control of third parties.

f. Subject to applicable privileges, ICE will explain in general terms the process to remove an Iraqi National to Iraq, assuming the stay is lifted, with the caveat that ICE does not speak for the Government of Iraq and the Government of

Iraq may make decisions on a case-by-case basis depending on the information and documentation available, which may vary among individual cases. The term “travel document” is vague. Subject to applicable privileges and to the extent that DHS has responsive information, DHS will respond.

Petitioners’ Position

Subparagraph a: Respondents are correct that “travel documents” should generally be defined in “the broadest terms possible to include whatever documents are used to remove or effectuate removal to Iraq.” For this interrogatory, however, Respondents can exclude “identity documents,” as Respondents will include “identity documents” in their response to Interrogatory Number 5. Respondents are incorrect that this interrogatory should be limited to “whatever documents Iraq is requiring DHS and/or ICE produce” as the request is not limited to DHS or ICE but includes other governmental entities, to the extent DHS or ICE are in possession, custody, or control of such information. Petitioners further clarify that “or otherwise” does not qualify “travel documents” but “Iraqi Agreement.” It is intended to capture any repatriation program or assurances, representations, or promises from Iraq that form the basis of ICE’s belief that Iraq will accept repatriation or issue travel documents, as stated in the declarations of Mr. Schultz (ECF 158-2 Pg.ID# 4131) and Mr. Bernacke (ECF 184-2 Pg.ID# 5073).

Subparagraph b: This objection is addressed above in Section I. C.

Subparagraph c: Petitioners dispute that Respondents are relieved from responding to this interrogatory by referring Petitioner to information or documents in the possession of noncitizens, or requiring Petitioners to obtain those documents or information from the noncitizens. Respondents are required to respond with the information in their possession, custody, or control, not those of the noncitizens.

Subparagraph d: Respondents cannot refuse to produce documents and information in its possession, custody or control that reflect “a foreign government’s repatriation requirements.” Respondents’ objection that Iraq’s repatriation requirements are “a subject matter outside the scope of this litigation” is contrary to the discovery this Court has allowed: “the Iraq repatriation agreement or program, and product of documents pertaining to that subject.” ECF 191, Pg.ID# 5362.

With regard to Respondents’ objection that the interrogatory seeks documents that “potentially predates the commencement of this action,” the time period of this interrogatory is limited to the date of the Iraqi Agreement.

Subparagraph e: This objection is addressed above in Section I.B.

Subparagraph f: Because Respondents have framed the scope of their response as “ICE will explain in general terms the process to remove an Iraqi

National to Iraq,” it is unclear if they are answering the interrogatory as written (which seeks the identification of travel documents) or if they are rewriting the interrogatory to provide information that is already sought in Interrogatory Number 1 (which seeks the terms and process for repatriating Iraqi Nationals). Petitioners request that Respondents state if they will provide the information sought in this interrogatory.

Interrogatory 5: For the time period since March 1, 2017, identify the documentation or evidence other than travel documents that Iraq requires or will accept before approving an Iraqi National for repatriation under the Iraqi Agreement or otherwise.

Respondents’ Position

a. Respondents understand that Petitioners intend for this interrogatory to address “identity documents.”

b. Petitioners clarified that this interrogatory is directed to information regarding both class members and individuals who have opted-out and other non-parties. To the extent that Petitioners seek information from individuals who have opted-out and non-parties, Respondents object to providing that information.

c. Petitioners direct this interrogatory to both DHS HQ and ICE.

d. Subject to applicable privileges, ICE will explain in general terms the process to remove an Iraqi National to Iraq, assuming the stay is lifted, with the caveat that ICE does not speak for the Government of Iraq and the Government of Iraq may make decisions on a case-by-case basis depending on the information and

documentation available, which may vary among individual cases. The term “travel document” is vague. Subject to applicable privileges and to the extent that DHS has responsive information, DHS will respond with any information subject to the same objections and conditions as stated by ICE; DHS similarly cannot speak for the Government of Iraq.

Petitioners’ Position

Subparagraph a: The interrogatory seeks “documents or evidence other than travel documents,” and includes but is not limited to “identity documents.” Respondents can exclude “travel documents” as Respondents will provide that information in Interrogatory Number 4.

Subparagraphs b and c: These are addressed above in Sections I.B and C.

Subparagraph d: Because Respondents have framed the scope of their response as “ICE will explain in general terms the process to remove an Iraqi National to Iraq,” it is unclear if they are answering the interrogatory as written (which seeks the identification of “documentation or evidence other than travel documents”) or if they are rewriting the interrogatory to provide information that is already sought in Interrogatory Number 1 (which seeks the terms and process for repatriating Iraqi Nationals). Petitioners request that Respondents state if they will provide the information sought in this interrogatory.

Interrogatory 6: For each Class Member (identified by name and A-number) for whom ICE or another relevant department of the U.S. government has since March 1, 2017 requested travel documents from the Iraqi Ministry of Foreign Affairs (or another relevant department of the Iraqi government) for repatriation to Iraq, provide the following:

- a. The date the request for the travel documents was made to the Iraqi government;**
- b. The type of travel documents obtained, the department of the Iraqi government issuing the travel documents, and the date the documents were issued;**
- c. If the request for the travel documents was denied, the department of the Iraqi government issuing the denial, the date of the denial and the reason given for the denial; and**
- d. Whether Iraq denied or approved repatriation of the Class Member, and, if denied, the basis for such denial.**
- e. If repatriation occurred, when, by what travel method (commercial air, charter air, etc.), and to what location.**

Respondents' Position

a. Petitioners clarified that this interrogatory should be construed as a potential subset of Interrogatory 7 and limited to travel documents, as defined previously.

b. Respondents indicated that they would object to 6.d to the extent it is asking for information about individuals outside of the class. Specifically, it is Respondents position that the individuals who have been ordered excluded from the class are not class members, and thus not parties to this litigation, and their specific information and copies of their documents cannot be shared.

c. Respondents object to this interrogatory on the ground that it is overbroad and burdensome to the extent it will require a manual review of

Respondents' files and internal data systems in an effort to ascertain the requested information.

d. Respondents object to this interrogatory to the extent it seeks sensitive information regarding matters of foreign affairs and national security that are protected by the law enforcement privilege.

e. It is Respondents' understanding that Petitioners direct this interrogatory to ICE.

f. Subject to applicable privileges, ICE will provide a list of Class Members for whom ICE requested a travel document from the Government of Iraq since March 1, 2017, and whether the request was approved. This interrogatory has been limited by Petitioners to only apply to ICE and therefore DHS will not provide a response.

Petitioners' Position

Subparagraph a: Petitioners clarified that Interrogatory Number 6 may capture information about a subset of Iraqi Nationals that are also the subject of Interrogatory Number 7. Both seek the Iraqi government's response to requests to repatriate an Iraqi National (*see* No. 6.d and 7.b); however, each interrogatory seeks additional, different information and, thus, they are not duplicative. Additionally, the term "travel documents" should be construed in the broadest sense, and to include "identity documents" (*see* Section I.D).

Subparagraphs b and e: These are addressed above in Sections I.B and C.

Subparagraph c: Respondents' burden objection lacks specificity – how many Class Members, the process for searching for the information, what files and internal data systems contain the information, etc. Without more specificity, Respondents' burden objections should be rejected. Moreover, the relevance of the information sought – whether the U.S. government can or has obtained travel documents – outweighs the burden of providing this information.

Subparagraph d: Respondents' objection that the interrogatory seeks information protected by the law enforcement privilege fails to identify the specific information subject to the privilege, and to otherwise sufficiently state a basis for the objection.

Subparagraph f: Petitioners object to Respondents' proposal to limit the scope of this interrogatory. Respondents are not answering 6.a to 6.e, but, rather, are only identifying those Class Members on whose behalf travel documents were requested and whether the request was approved.

Interrogatory 7: For each Class Member (identified by name and A-number) for whom ICE or another relevant department of the U.S. government has since March 1, 2017 requested from the Iraqi Ministry of Foreign Affairs (or another relevant department of the Iraqi government) to be repatriated to Iraq, provide the following:

- a. The date of the request;**
- b. The response from the Iraqi government, the date of the response, the department of the Iraqi government issuing the response, and, if repatriation was denied, the basis for the denial; and**
- c. If the request for repatriation was granted, any conditions placed on the repatriation of the Class Member.**
- d. If repatriation occurred, when, by what travel method (commercial air, charter air, etc.), and to what location.**

Respondents' Position

a. It is Respondents' understanding that Petitioners intend this interrogatory to be broader than Interrogatory 6.

b. Respondents understand that Petitioners do not limit this request to the term "travel documents", but rather it is seeking any information regarding any request to repatriate rather than just limited to travel documents.

c. Respondents object to the phrase "any conditions placed on the repatriation" as vague and ambiguous.

d. Again, Respondents indicated object to request 7.d to the extent it is asking for information about individuals outside the class.

e. It is Respondents' understanding that Petitioners direct this interrogatory to ICE.

f. Subject to applicable privileges, ICE will provide a list of Class Members for whom ICE made a request for repatriation to the Government of Iraq since March 1, 2017, and whether the request was approved. This interrogatory has been limited by Petitioners to only apply to ICE and therefore DHS will not provide a response.

Petitioners' Position

Subparagraph a: Respondents are correct that this interrogatory seeks information on a broader set of Class Members than those sought in Interrogatory Number 6.

Subparagraph b: Respondents mischaracterize this discovery request, as it is not seeking “any information regarding any request to repatriate,” but, rather, seeks the specific information listed in the interrogatory for the Class Members for the period stated.

Subparagraph c: Petitioners clarify that the phrase “any conditions placed on the repatriation” means any requirements that must be met before Iraq will accept repatriation.

Subparagraphs d and e: These are addressed above in Sections I.B and C.

Subparagraph f: Petitioners object to Respondents' proposal to limit the scope of this interrogatory. Respondents are not answering 7.a to 7.d, but, rather,

are only identifying those Class Member on whose behalf repatriation was sought and whether the request was approved.

Interrogatory 8: For each Class Member (identified by name and A-number), state whether Iraq has agreed to the repatriation of that individual as of the following time:

- a. On the date of the Class Member's arrest by ICE; and**
- b. On the date you answer this Interrogatory.**

Respondents' Position

a. Petitioners noted that any information about non-class members which is already provided within the bi-weekly report may be cited to by the Respondents in their answer.

b. Respondents also object to this interrogatory on the ground that it is overbroad and burdensome to the extent it will require a manual review of Respondents' files and internal data systems in an effort to ascertain the requested information.

c. To the extent that this interrogatory requests information about non-class members, Respondents object on that basis.

d. It is Respondents' understanding that Petitioners direct this interrogatory to ICE.

e. ICE objects because the bi-weekly report provides sufficient, releasable information. Gathering additional information would be unduly

burdensome and may be protected by privilege. This interrogatory has been limited by Petitioners to only apply to ICE and therefore DHS will not provide a response.

Petitioners' Position

Subparagraph a: Petitioners clarify that, to the extent the requested information is already produced as part of the bi-weekly data production by Respondents, Respondent can refer Petitioners to that data. Petitioners note, however, that the bi-weekly data production does not include any information about whether Iraq has agreed to the repatriation of a Class Member.

Subparagraph b: Respondents' burden objection lacks specificity – how many Class Members, the process for searching for the information, what files and internal data systems contain the information, etc. Without more specificity, Respondents' burden objections should be rejected. Moreover, the relevance of the information sought – whether Iraq has agreed to repatriation any of the Class Members – outweighs the burden of providing this information.

Subparagraphs c and d: These are addressed above in Sections I.B and C.

Subparagraph e: Petitioners disagree that the bi-weekly reports provide the information sought in this interrogatory. This interrogatory is seeking information on the date that “Iraq has agreed to the repatriation of that individual.” This request derives from the declaration of Mr. Schultz stating that ICE must gain Iraq's

approval: “The newly established relationship between ICE, in coordination with DOS, and the Iraqi Ministry of Foreign Affairs (MFA), allows ICE to present travel document requests directly to the MFA **to gain the approval to remove Iraqi nationals with final orders of removal.**” ECF 81-4 Pg.ID# 2007 (emphasis added). It also is based on the following statement by Mr. Bernacke that Iraq approves the individuals that will be repatriated:

- “The government of Iraq agreed to accept these removals via charter mission. As a charter mission, rather than a removal conducted via commercial airline flight, formal travel documents are not required. Instead, **ICE submits a proposed manifest for the charter flight to Iraqi officials for approval.**” ECF 184-2 Pg.ID# 5071 (emphasis added).
- “ICE believes that **the central government of Iraq in Bagdad will permit the entry of detained Iraqi nationals** subject to final orders of removal if the injunction is lifted.” *Id.* Pg.ID# 5073 (emphasis added).

Interrogatory 9: The declaration of John Schultz, ECF 81-4, Pg.ID# 2007, states that Iraq previously would accept only its nationals with unexpired passports, but that Iraq will now “authorize repatriation with other indicia of nationality.” State what “other indicia of nationality” Iraq will accept for repatriation; the basis for the U.S. government’s belief that the other indicia of nationality will be accepted, including the identification of the specific agreement(s) or document(s) stating this policy; and the criteria an individual must or can meet before Iraq will accept an Iraqi National for repatriation.

Respondents’ Position

a. Respondents object to this interrogatory to the extent it seeks documents that are not in Respondents’ possession, custody or control, or that are in the possession, custody or control of third parties.

b. Respondents also object to this interrogatory on the ground that it is overbroad and burdensome to the extent it will require a manual review of Respondents’ files and internal data systems in an effort to ascertain the requested information.

c. It is Respondents’ understanding that Petitioners direct this interrogatory to both DHS HQ and ICE.

d. Subject to applicable privileges, ICE will explain what it meant by the phrase “other indicia of nationality” as used in the Schultz declaration. See interrogatory No. 5 for response concerning documents Iraq may accept to establish identity of an Iraqi national. Subject to applicable privileges and to the extent that DHS has responsive information, DHS will respond with any

information subject to the same objections and conditions as stated by ICE; DHS similarly cannot speak for the Government of Iraq.

Petitioners' Position

Subparagraphs a and c: These are addressed above in Sections I.B.

Subparagraph b: Respondents' burden objection lacks specificity – how many Iraqi Nationals, the process for searching for the information, what files and internal data systems contain the information, etc. Without more specificity, Respondents' burden objections should be rejected. Moreover, the relevance of the information sought – the terms under which Iraq will accept repatriation – outweighs the burden of providing this information.

Subparagraph d: Petitioners object to Respondents narrowing the scope of this interrogatory. They are not providing the following information: “the basis for the U.S. government's belief that the other indicia of nationality will be accepted, including the identification of the specific agreement(s) or document(s) stating this policy; and the criteria an individual must or can meet before Iraq will accept an Iraqi National for repatriation.”

Interrogatory 10: Explain each step (in sequence) that has since March 1, 2017 or will be taken by you or the government of Iraq to process an Iraqi National for removal if that Iraqi National does not have travel documents.

Respondents' Position

a. It is Respondents' understanding that Petitioners intend this interrogatory include both class members and individuals who have opted-out and other non-parties. To the extent that Petitioners seek information from individuals who have opted-out and non-parties, Respondents object to providing that information.

b. Respondent objects to the extent it requests information on the future actions of a foreign government.

c. Respondents understand that Petitioners direct this interrogatory to both DHS HQ and ICE.

d. Subject to applicable privileges, ICE will explain in general terms the process to remove an Iraqi National to Iraq, assuming the stay is lifted, with the caveat that ICE does not speak for the Government of Iraq and the Government of Iraq may make decisions on a case-by-case basis depending on the information and documentation available, which may vary among individual cases. Subject to applicable privileges and to the extent that DHS has responsive information, DHS will respond with any information subject to the same objections and conditions as stated by ICE; DHS similarly cannot speak for the Government of Iraq.

Petitioners' Position

Subparagraphs a and c: These are addressed above in Section I.B and C.

Subparagraph b: An objection to producing information as to “future actions of a foreign government” is incomprehensible. Respondents should produce the requested information that is in their possession, custody, or control.

Subparagraph d: Because Respondents have framed the scope of their response as “ICE will explain in general terms the process to remove an Iraqi National to Iraq,” it is unclear if they are answering the interrogatory as written (which seeks “each step (in sequence) . . . to process an Iraqi National for removal if that Iraqi National does not have travel documents”) or if they are rewriting the interrogatory to provide information that is already sought in Interrogatory Number 1 (which seeks the terms and process for repatriating Iraqi Nationals). Petitioners request that Respondents state if they will provide the information sought in this interrogatory.

Interrogatory 11: For each Class Member (identified by name and A-number) who, prior to March 1, 2017, was living in the community, state whether ICE released that individual to the community because ICE determined that Iraq would not accept that individual for repatriation the reason ICE determined that Iraq would not accept the individual for repatriation, and whether the individual was subject to an order of supervision or other release conditions.

Respondents' Position

a. Respondents object to this interrogatory on the ground that it is overbroad and burdensome to the extent it seeks to obtain information that is not tracked in a statistically reportable manner and/or would require a burdensome manual search to gather the data and pertains to a subject matter outside the scope of this litigation and that potentially predates the commencement of this action.

b. ICE has already stated that Iraq's practices were different prior to March 1, 2017, thus this point is not dispute and discovery is unnecessary.

c. It is Respondents' position that the history of order of supervision and release conditions are wholly unrelated to the *Zadvydas* issue, which is the only subject on which the court has ordered discovery.

d. Petitioners direct this interrogatory to ICE.

e. ICE objects to the interrogatory as it has no relevance on removability, which is the *Zadvydas* issue; this appears more related to petitioners' detention claims, which are not properly the subject of this discovery. In addition, this interrogatory has been limited by Petitioners to only apply to ICE and

therefore DHS is not providing a response, though DHS concurs with ICE's objection.

Petitioners' Position

In light of Respondents' objection that portions of this request are outside discovery of the *Zadvydas* claims, Petitioners will strike the following language from the request: "and whether the individual was subject to an order of supervision or other release conditions." The request now reads:

Interrogatory 11: For each Class Member (identified by name and A-number) who, prior to March 1, 2017, was living in the community, state whether ICE released that individual to the community because ICE determined that Iraq would not accept that individual for repatriation and the reason ICE determined that Iraq would not accept the individual for repatriation.

With this revision, the request is now limited to issues of Class Members' repatriation.

Interrogatory 12: The name, title and department of the government (for both Iraq and the United States) of each individual negotiating the Iraqi Agreement, including the "ongoing diplomatic negotiations" referenced in the declaration of Michael V. Bernacke at paragraph 4 (ECF 184-2, Pg.ID# 5070-71), identification of the individuals authorized to enter into any agreement reached by the governments regarding the repatriation of Iraqi Nationals, and the date each individual engaged in the "ongoing diplomatic negotiations."

Respondents' Position

a. Respondents object to this interrogatory to the extent it seeks documents that are not in Respondents' possession, custody or control, or that are

in the possession, custody or control of third parties. It is Respondents' understanding that Petitioners direct this interrogatory to both DHS HQ and ICE.

b. At this time, ICE and DHS object to the interrogatory based on relevance because the identity and locations of individuals do not affect the terms of an agreement. ICE and DHS also note that any response will likely be privileged and/or protected from disclosure.

Petitioners' Position

Subparagraph a: Section I.B addresses the issues raised here.

Subparagraph b: This interrogatory seeks information on those individuals with direct knowledge of negotiations of the Iraqi Agreement and the "ongoing diplomatic negotiations" referenced in Mr. Bernacke's declaration. This information is relevant, and Petitioners are entitled to the disclosure in order to determine who possesses information and documents relevant to the *Zadvydas* claims and who should be deposed, and to confirm that Respondents have reasonably conducted a search for and produced responsive documents. This Court has permitted "depositions of appropriate government personnel with knowledge of the Iraq repatriation agreement or program, and production of documents pertaining to that subject." ECF 191 Pg.ID# 5362. Identification of those individuals who negotiated the Iraqi Agreement is the first step in that process.

III. REQUESTS FOR PRODUCTION

Respondents' Position

After meeting and conferring with Petitioners, it is Respondents' understanding that Petitioners do not want Respondents to engage in a full-fledged ESI search at this time. Instead, the first step Petitioners would like is for Respondents to, in good faith, identify the custodians of potentially responsive materials, and Respondents will either produce those documents or identify those documents on a privilege log. Respondents' counsel have not agreed to this ESI plan at this time and need to discuss this issue with our clients. As stated above, Respondents reserve the right to claim any and all applicable privileges with regard to any responsive documents. Further, Respondents note that they can only produce responsive materials that are located in their possession, custody, or control.

Petitioners' Position

Petitioners are willing to negotiate an appropriate search methodology to locate responsive documents. This includes the identification of custodians, sources of electronically stored information, and locations of other documents and information, and a process to efficiently identify responsive records. To date, though, Respondents have not provided any information so the parties can engage in a meaningful discussion. In the absence of any transparency by Respondents that

would allow Petitioners to assess the adequacy of Respondents' searches, a search of email and other ESI based on key words may be required.

RFP 1: The Iraqi Agreement or, if no Iraqi Agreement exists in written form, documents memorializing the terms of the Iraqi Agreement pertaining to repatriation of Iraqi Nationals. The phrase "memorializing the terms" as used here is defined as a written synopsis or other statement documenting your understanding of what was said, decided, and who is responsible for the terms of and process(es) for the repatriation of Iraqi Nationals pursuant to the Iraqi Agreement, created by a representative of either the Iraqi or United States government.

Respondents' Position

a. Respondents understand that Petitioners intend the definition of the "Iraqi Agreement" to include all directions/emails/instructions that DHS and ICE employees have received with regard to repatriating Iraqi Nationals. Respondents further interpret the term "Iraqi Agreement" to be properly limited to the term "Iraqi Agreement" as it is referenced in the Declaration of John A. Schultz, Jr., dated July 20, 2017. ECF No. 81-4. As well as the agreement referenced in the Declaration of Michael V. Bernacke, dated December 22, 2017. ECF No. 184-2. Respondents object to this request to the extent it seeks documents that are not in Respondents' possession, custody or control, or that are in the possession, custody or control of or belonging to third parties. Respondents understand that Petitioners direct this RFP to both DHS HQ and ICE.

b. Subject to applicable privileges and to the extent there are discoverable documents, ICE and DHS anticipate responding to the request but note that any written agreement with Iraq pertaining to the repatriation of Iraqi Nationals entered into since March 1, 2017, will likely be privileged.

Petitioners' Position

Subparagraph a: Sections I.B and E address the issues raised by Respondents.

Subparagraph b: Petitioners propose that Respondents produce a copy of the privileged documents for the Court's *in camera* review to determine if the records are privileged and, if so, if any portion of the records can be produced to Petitioners.

RFP 2: The requests from DHS, ICE, or other relevant departments of the U.S. government to the Iraqi Ministry of Foreign Affairs (or other relevant departments of the Iraqi government), since March 1, 2017 requesting or otherwise inquiring that Iraq issue travel documents for Class Members, including Class Members for whom the Court has lifted the July 24, 2017 stay of removal (ECF 87), and the responses from the Iraqi Ministry of Foreign Affairs (or another relevant department of the Iraqi government).

Respondents' Position

a. It is Respondents' understanding that Petitioners intend to limit this RFP to class members.

b. Respondents noted they will likely object to this RFP as overly broad and unduly burdensome because it requires a manual case by case review.

c. Additionally, Respondents object to answering for “other relevant departments of the U.S. government.”

d. It is Respondents’ understanding that if there are no responsive materials, DHS and ICE should so state.

e. Respondents understand that Petitioners direct this RFP to both DHS HQ and ICE.

f. Subject to applicable privileges and the following objections, ICE and DHS anticipate responding to the request. ICE and DHS object for individuals who are not Class Members. Additionally, ICE and DHS note that any request sent by ICE or response received from Iraq pertaining to the repatriation of Iraqi Nationals sent since March 1, 2017, will likely be privileged. ICE and DHS cannot provide information concerning other relevant departments of the United States Government.

Petitioners’ Position

Subparagraph a: The request seeks documents for “Class Members, including Class Members for whom the Court has lifted the July 24, 2017 stay of removal.” This issue is addressed in Section I.C.

Subparagraph b: Respondents' burden objection lacks specificity – how many Class Members, the process for searching for the information, what files contain the information, whether the information sought can be obtained by conducting electronical searches, etc. Without more specificity, Respondents' burden objections should be rejected. Moreover, the relevance of the information sought – Iraq's response to the request for travel documents needed to effectuate repatriation – outweighs the burden of providing this information.

Subparagraphs c and e: Section I.B addresses these issues.

Subparagraph f: Petitioners propose that Respondents produce a copy of the privileged documents for the Court's *in camera* review to determine if the records are privileged and, if so, if any portion of the records can be produced to Petitioners.

RFP 3: The requests from DHS, ICE, or other relevant departments of the U.S. government to the Iraqi Ministry of Foreign Affairs (or other relevant departments of the Iraqi government), since March 1, 2017 requesting or otherwise inquiring about repatriation of Class Members, including Class Members for whom the Court has lifted the July 24, 2017 stay of removal (ECF 87), and the responses from the Iraqi Ministry of Foreign Affairs (or other relevant departments of the Iraqi government).

Respondents' Position

- a. Petitioners and Respondents noted the dispute regarding this RFP.

b. Respondents understand this RFP be limited to class members, and object to producing any information concerning non-class members. Petitioners disagree with this characterization.

c. Respondents noted they will likely object to this RFP as overly broad and unduly burdensome because it requires a manual case by case review.

d. Additionally, Respondents object to answering for “other relevant departments of the U.S. government.”

e. It is Respondents understanding that Petitioners direct this RFP to both DHS HQ and ICE.

f. Subject to applicable privileges and the following objections, ICE and DHS anticipate responding to the request. ICE and DHS object for individuals who are not Class Members. Additionally, ICE and DHS note that any request sent by ICE or response received from Iraq pertaining to the repatriation of Iraqi Nationals sent since March 1, 2017, will likely be privileged. ICE and DHS cannot provide information concerning other relevant departments of the United States Government.

Petitioners’ Position

Subparagraphs b, d and e: Sections I.B and C address these issues.

Subparagraph c: Respondents’ burden objection lacks specificity – how many Class Members, the process for searching for the information, what files

contain the information, whether the information sought can be obtained by conducting electronical searches, etc. Without more specificity, Respondents' burden objections should be rejected. Moreover, the relevance of the information sought – Iraq's response to requests or inquiries to repatriate specific individuals – outweighs the burden of providing this information.

Subparagraph f: Petitioners propose that Respondents produce a copy of the privileged documents for the Court's *in camera* review to determine if the records are privileged and, if so, if any portion of the records can be produced to Petitioners.

RFP 4: The manifests for the charter flights for repatriation of Iraqi Nationals since March 1, 2017, including the charter flight referenced in the declaration of Michael V. Bernacke at paragraph 6 (ECF 184-2, Pg.ID# 5071), and the charter flights referenced in the declaration of John A. Schultz at paragraphs 6-8 (ECF 81-5, Pg.ID# 2007-08), and the response(s) from the Iraqi Ministry of Foreign Affairs (or another relevant department of the Iraqi government) to the manifests.

Respondents' Position

a. After a discussion, Petitioners claimed that the April charter flights for repatriation of Iraqi Nationals have become an issue of fact as raised by the Declaration of John A. Schultz, Jr., dated July 20, 2017. ECF No. 81-4. It is Respondents' position that manifests never materialized because of the temporary restraining orders and the stay of removal entered in this case, and that the April manifest, which preceded the filing of this lawsuit, would include non-class

members. Therefore, Respondents object to this request on that basis. It is Respondents' understanding that Petitioners direct this RFP to ICE.

b. ICE objects at this time on the basis that all charters were cancelled due to the stay of removal and notes that if there is any responsive information regarding planning it is likely to be privileged. This request for production has been limited by Petitioners to only apply to ICE and therefore DHS will not provide a response.

Petitioners' Position

Subparagraph a: Respondents should produce what is in their possession, custody or control responsive to the request, including any response from Iraq to a proposed manifest. Respondents have raised the April 2017 manifest in defense to claims that no Iraqi Agreement exists – opening the door to the discovery. *See* ECF 81-4 Pg.ID# 2007, 1st Schultz Decl.

Subparagraph b: Petitioners propose that Respondents produce a copy of the privileged documents for the Court's *in camera* review to determine if the records are privileged and, if so, if any portion of the records can be produced to Petitioners.

RFP 5: Documents relied on or cited by Respondents in answering any interrogatory.

Respondents' Position

a. Respondents understand that Petitioners direct this RFP to both DHS HQ and ICE.

b. Subject to applicable privileges, ICE and DHS anticipate responding to the request.

Petitioners' Position

Subparagraph a: This issue is addressed in Section I.B. To the extent Respondent DOJ is also in possession, custody or control of the documents, it should also provide a response to this request.

RFP 6: Documents relied on by Mr. Schultz in drafting or confirming the accuracy of the statements made in his declarations dated July 20, 2017 (ECF 81-4) and November 30, 2017 (ECF 158-2).

Respondents' Position

a. Respondents understand that Petitioners direct this RFP to both DHS HQ and ICE.

b. Subject to applicable privileges, ICE anticipates responding to the request. DHS objects to the extent this request relates to documents relied on by an ICE declarant and no DHS employee participated in the “drafting or confirming the accuracy of the statements” in Mr. Schultz’s declaration. Subject to applicable

privileges and to the extent DHS has responsive documents, DHS anticipates responding to the request.

Petitioners' Position

Subparagraph a: This issue is addressed in Section I.B. To the extent the DOJ is also in possession, custody or control of the documents, it should also provide a response to this request.

RFP 7: Documents relied on by Mr. Bernacke in drafting or confirming the accuracy of the statements made in his declaration dated December 22, 2017 (ECF 184-2).

Respondents' Position

a. Respondents understand that Petitioners direct this RFP to both DHS HQ and ICE.

b. Subject to applicable privileges, ICE anticipates responding the request. DHS objects to the extent this request relates to documents relied on by an ICE declarant and no DHS employee participated in the “drafting or confirming the accuracy of the statements” in Mr. Bernacke’s declaration. Subject to applicable privileges and to the extent DHS has responsive documents, DHS anticipates responding to the request.

Petitioners' Position

Subparagraph a: This issue is addressed in Section I.B. To the extent Respondent DOJ is also in possession, custody or control of the documents, it should also provide a response to this request.

RFP 8: Documents memorializing agreements relating to the repatriation of Iraqi Nationals that have arisen from the “ongoing diplomatic negotiations” referenced in the Declaration of Michael V. Bernacke, dated December 22, 2017. The term “memorializing” as used here is defined as a written synopsis or other statement documenting your understanding of what was said, decided, and who is responsible for an agreement relating to terms and process(es) for the repatriation of Iraqi Nationals, created by a representative of either the Iraqi or United States government.

Respondents’ Position

a. Respondents object to this request to the extent that it is requesting information regarding non-class members. Petitioners disagree with Respondents’ position because they read the Declaration of Michael V. Bernacke, dated December 22, 2017, to apply to non-class members. ECF No. 184-2. Respondents understand that Petitioners direct this RFP to both DHS HQ and ICE.

b. Subject to applicable privileges and to the extent there are discoverable documents, ICE and DHS anticipate responding to the request but note that any memorializing of an agreement with Iraq pertaining to the repatriation of Iraqi Nationals referenced in the Bernacke declaration will likely be privileged.

Petitioners' Position

Subparagraph a: Sections I.B and C address the issues raised by Respondents.

Subparagraph b: Petitioners propose that Respondents produce a copy of the privileged documents for the Court's *in camera* review to determine if the records are privileged and, if so, if any portion of the records can be produced to Petitioners.

IV. RULE 30(B)(6) DEPOSITION

Respondents' Position

Generally, Petitioners intend to re-serve this to "Respondents" as a whole and intend the term "Respondents" to include all named Respondents in this case. Respondents will then identify the deponent(s) for each topic. Respondents noted the need for temporal scope as the current before and since March 1, 2017 timeline is too broad. Petitioners agreed to work with Respondents in finding a reasonable point to start.

Respondents noted their standing objections in total to both Topics 3 and 4. Topic 3 is likely to cover information subject to privilege or otherwise protected from disclosure, and is interpreted as irrelevant to the *Zadvydas* issue. Topic 4 is interpreted as completely outside the scope of whether an individual is likely subject to removal in the reasonably foreseeable future. Additionally, this Court

does not have jurisdiction over protection claims.

In addition, EOIR does not have responsive information for the 30(b)(6) topics and thus, will not be proving a witness.

a. Subject to applicable privileges and other prohibitions on disclosure, ICE will provide a witness who will be able to speak in general terms concerning the repatriation of Iraqi Nationals to Iraq since March 1, 2017. Given DHS's limited involvement in repatriation of aliens, and subject to applicable privileges and other prohibitions on disclosure, at this time DHS does not intend to produce a 30(b)(6) deponent in addition to that provided by ICE. To the extent that DHS has additional information, the ICE witness can be educated to speak on behalf of the agency.

b. Subject to applicable privileges and other prohibitions on disclosure, ICE will provide a witness who will be able to speak in general terms concerning the process of repatriating Iraqi Nationals to Iraq since March 1, 2017. Given DHS's limited involvement in repatriation of aliens, and subject to applicable privileges and other prohibitions on disclosure, at this time DHS does not intend to produce a 30(b)(6) deponent in addition to that provided by ICE. To the extent that DHS has additional information, the ICE witness can be educated to speak on behalf of the agency.

c. ICE and DHS object at this time as any responsive information concerning negotiations with the Government of Iraq concerning future actions is likely to be privileged. Given DHS's limited involvement in repatriation of aliens, and subject to applicable privileges and other prohibitions on disclosure, at this time DHS does not intend to produce a 30(b)(6) deponent in addition to that provided by ICE. To the extent that ICE and DHS have non-privileged information on this topic, the ICE witness can be educated to speak on behalf of the agency. However, DHS agrees with ICE's objection that any such information is likely to be privileged.

d. ICE and DHS object as this subject is not relevant to *Zadvydas* nor is it within the court's jurisdiction to make determinations regarding protection claims.

e. ICE and DHS object as this subject is not relevant to *Zadvydas* as the only issue is ability to effectuate removal of class members (not non-class members who are Iraqi nationals).

Petitioners' Position

Petitioners amended the deposition notice to address Respondents' concerns and served it on Respondents on January 26. It is now addressed to all Respondents. Topic number 1 was amended to seek information from fiscal year

2007, which mirrors the period discussed in Mr. Schultz's declaration dated July 20, 2017 (ECF 81-4 Pg.ID# 2005-06).

Topic Number 3 goes to multiple statements made in declarations submitted by Respondents and is relevant to discovery on the *Zadvydas* claim:

- Mr. Schultz's statement that "ICE believes" Iraq will issue travel documents once the stay is lifted (ECF 158-2 Pg.ID# 4131);
- Mr. Schultz's statement that "ICE believes the removal of these detainees is significantly likely in the reasonably foreseeable future" (*id.*);
- Mr. Bernacke's statement that an agreement with Iraq "is not memorialized in any written document" but "is a product of ongoing diplomatic negotiations" (ECF 184-2 Pg.ID# 5070-71); and
- Mr. Bernacke's declaration that "ICE believes" that Iraq "will permit the entry of detained Iraqi nationals subject to final orders of removal if the injunction is lifted" (*id.* at Pg.ID# 5073).

Topic number 4 is seeking information about one term of any agreement with Iraq on repatriation, which may or may not exist – whether the agreement addresses any protections from persecution, torture or death for repatriated Iraqi Nationals. To the extent this is a term of the Iraqi Agreement or has been the subject of the negotiations discussed in Mr. Bernacke's declaration, it is relevant to the *Zadvydas* claims.

Petitioners request that Respondents state whether the DOJ (Respondent Attorney General Jefferson Sessions) – and not just EOIR – is in possession, custody or control of information sought in the Rule 30(b)(6) Notice.

Petitioners object to Respondents’ narrowing of the scope of the deposition topics. First, Respondents are not producing a witness for Topic Number 1 which seeks testimony about specific Iraqi Nationals, including identification of those individuals repatriated and declined for repatriation, dates of repatriation and attempted repatriations, criteria for acceptance or declination by Iraq, processes used, and amount of time required.

Second, Respondents are only producing a witness “able to speak in general terms” concerning the terms of the Iraqi Agreement and process of repatriation of Iraqi Nationals (Topic Number 2). Topic Number 2 seeks more than the “general terms” of repatriation and process of repatriation; it seeks testimony about the specific terms of the Iraqi Agreement and repatriation process, changes to the Iraqi Agreement and repatriation process, and specific statements made by Messrs. Schultz and Bernacke.

Third, Respondents are not producing a witness to testify about any negotiations with Iraq about repatriation of Iraqi Nationals, which are sought in Topic Numbers 2, 3 and 4.

Fourth, Respondents are not producing a witness for Topic Number 5.

Finally, Petitioners take no position on Respondents' proposal as to the witness(es) it will present for deposition. Respondents are aware of their obligations, and, if the witness(es) do not possess sufficient knowledge of the topics noticed, Petitioners will seek appropriate relief from the Court, including attorneys' fees, costs, and additional depositions as necessary.

Respectfully submitted,

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Dated: February 1, 2018

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2018, 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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EXHIBIT A

**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

**PETITIONER/PLAINTIFF USAMA JAMIL HAMAMA’S FIRST SET OF
INTERROGATORIES TO RESPONDENT KIRSTJEN NIELSEN**

Petitioners/Plaintiff Usama Jamil Hamama, pursuant to Fed. R. Civ. P. 33, requests Respondent/Defendant Kirstjen Nielsen¹, in her official capacity as the Secretary of the U.S. Department of Homeland Security. Petitioner requests that, to the extent Respondents intend to produce documents pursuant to Rule 33(d), Respondents produce the documents on February 13, 2018.

DEFINITIONS

A. The term “you” or “**Respondents**” means Respondents/Defendants and their agents and representatives.

¹ The Senate confirmed Kirstjen Nielsen as Secretary of the Department of Homeland Security on December 5, 2017.

A. The term “**you**” or “**Respondents**” means Respondents/Defendants and their agents and representatives.

B. The term “**Class Member**” is defined as any Iraqi National who had a final order of removal at any point between March 1, 2017 and June 24, 2017.

C. The term “**Iraqi National**” means any Iraqi national, including but not limited to **Class Members**.

D. The term “**travel documents**” means documents used or required for travel by an Iraqi from the United States to Iraq.

E. The term “**process**” means to complete all steps necessary in order for an Iraqi to be permitted to travel to and enter Iraq.

F. The term “**Iraqi Agreement**” means any agreement, whether oral or written, between the governments of the United States and Iraq regarding the repatriation of **Iraqi Nationals** after January 2017, including the agreement(s) referenced in the following, and any changes to the agreement(s):

1. Declaration of John A. Schultz, Jr., dated July 20, 2017 at paragraph 5 (“[d]ue to renewed discussions between the United States and Iraq in recent months, Iraq has agreed, using charter flights, to the timely return of its nationals that are subject to final orders of removal”) (ECF 81-4 at Pg.ID# 2006);

2. Declaration of Michael V. Bernacke, dated December 22, 2017 at paragraphs 4 (“[I]n 2017, Iraq agreed to the timely return of its national subject

to a final order of removal. The agreement between the United States and the Iraqi Ministry of Foreign Affairs (MFA) is not memorialized in any written document or treaty. It is a product of ongoing diplomatic negotiations.”) (ECF 184-2, Pg.ID# 5070-71);

3. the reference by Gillian Christensen, a spokeswoman for U.S. Immigration and Customs Enforcement (“As a result of recent negotiations between the U.S. and Iraq, Iraq has recently agreed to accept a number of Iraqi nationals subject to orders of removal”) (*see*, Mica Rosenberg, *U.S. Targets Iraqis for Deportation in Wake of Travel Ban Deal*, REUTERS (June 12, 2017), <https://www.reuters.com/article/us-usa-immigration-iraq-idUSKBN19326Z>); and

4. any other agreement(s) since March 1, 2017 between the governments of Iraq and United States setting forth the terms, processes and conditions of repatriation of **Iraqi Nationals**.

G. The terms “**and**” and “**or**” as used in these requests for production of documents are not intended as words of limitation. Thus, any sentence or phrase herein formed in the disjunctive shall also be taken in the conjunctive, and vice versa. Similarly, any word formed in the singular shall also be taken in the plural, and vice-versa. Also, any verb in the present tense shall also be taken in the past, imperfect and future tenses, and vice-versa. Finally, any pronoun in the masculine gender shall also be taken in the feminine gender, and vice-versa.

H. The term “**identify**” when used in reference to a natural person means to state to the fullest extent possible the following information:

1. His or her full name; and
2. Present or last known address (whether business or residence); and
3. The name and address of that person’s employer and his or her job title at times pertinent to the pending action, including any changes therein.

I. Except as otherwise provided herein, the term “**identify**” when used in reference to a document means to state to the fullest extent possible the following information:

1. The type of document, such as letter or memorandum;
2. The identity of the person or persons preparing the document;
3. A description of its subject matter;
4. The number of pages in the document;
5. The identity of each addressee, recipient or signor;
6. The date on which the document was prepared;
7. The date on which the document was distributed or transmitted; and
8. The present location of each copy of the document and the identity of the present or last known location custodian of each copy of the document.

J. The term “**identify**” when used in connection with statements and communications means to state to the fullest extent possible the following information:

1. State when and where such statement or communication was made;

2. Identify each of the makers and recipients thereof, and all other persons present;
3. State the medium of the statement or communication, such as personal conversation, telephone conversation or media broadcast; and
4. State the substance of the statement or communication.

K. The terms “**document**,” “**documents**,” or “**documentation**” refer to any and all tangible items or sources of information within the meaning of Fed. R. Civ. P. 34.

L. The term “**date**” means the day, month, and year, if ascertainable, or if not, the best approximation (including relationship to other events).

M. The terms “**statement**,” “**communication**,” “**communicate**,” and “**communicated**” mean any oral or written utterance, notation, or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations (whether direct or overheard), dialogues, discussions, interviews, consultations, agreements, and other understandings between or among two or more persons, whether made orally, by Document, made face-to-face, or made by telephone, mail, personal delivery, e-mail, electronic transmission, or otherwise, whether or not recorded by Document or other means.

INSTRUCTIONS

A. Each interrogatory should be read so as not to seek information subject to a privilege from discovery, if necessary to permit providing information

otherwise responsive to the request. To the extent that an interrogatory calls for the disclosure of information subject to a privilege from discovery, the written response to that interrogatory should so indicate, but you should disclose the balance of the information not subject to a claim of privilege, which falls within the scope of the interrogatory.

B. If you cannot answer any interrogatory fully and completely after exercising due diligence to make inquiry and secure the information necessary to do so, so state, and answer each such interrogatory to the fullest extent possible; specify the portion of such interrogatory that you contend you are unable to answer fully and completely and the facts on which you rely to support said contention and state the full extent of your knowledge, information and belief concerning the unanswered portion of each such interrogatory. In accordance with Rule 26(b)(5) of the Federal Rules of Civil Procedure, if you withhold any requested information on grounds of privilege, trial preparation material, or otherwise:

1. Identify the nature of the privilege which is being claimed and, if the privilege is governed by state law, indicate the state's privilege rule being invoked; and

2. Provide the following information, unless such information would cause disclosure of the allegedly privileged information:

- a. If you exercise an option to produce business records pursuant to Rule 33(d) of the Federal Rules of Civil

Procedure, but production in whole or part is withheld on the ground of privilege, as to each such withheld Document state the following information:

- (i) Which privilege is claimed;
- (ii) Who is asserting the privilege;
- (iii) A precise statement of facts upon which said claim of privilege is based;
- (iv) Describe each purportedly privileged Document by providing:
 - (1) A brief description sufficient to identify its nature, i.e., agreement, letter, memorandum, etc.
 - (2) A brief description sufficient to identify its subject matter and purpose of the Document;
 - (3) The date the Document bears;
 - (4) The identity of the Person preparing the Document;
 - (5) The identify of each Person to whom it was sent; and
 - (6) The identity of each Person who represented or purported to represent You.

3. If any Document is withheld on the ground that it calls for information that is privileged or exempt from discovery for any other reason, as to each such withheld Document state the following information:

- a. Which privilege is claimed;
- b. Who is asserting the privilege;
- c. A precise statement of facts upon which said claim of privilege is based;
- d. Describe each purportedly privileged Document by providing:

- (i) A brief description sufficient to identify its nature, i.e., agreement, letter, memorandum, etc.
- (ii) A brief description sufficient to identify its subject matter and purpose of the Document;
- (iii) The date the Document bears;
- (iv) The identity of the Person preparing the Document;
- (v) The identify of each Person to whom it was sent; and
- (vi) The identity of each Person who represented or purported to represent You.

4. If any portion of a Document is withheld under claim of privilege, any non-privileged portion of such Document must be produced with the portion claimed to be privileged redacted.

5. Each Document is to be produced in its entirety, without deletion or excision (except as qualified by the Instructions above), regardless of whether you consider the entire Document to be relevant or responsive.

C. Unless otherwise specified or the context otherwise indicates, each interrogatory requires responses for the entire period from March 1, 2017 to the present (the “Relevant Time Period”), and requires answers and/or the production of Documents created, sent, received, dated, or in effect during that period.

D. These interrogatories shall be deemed to be continuing so as to require you or your counsel to provide supplemental answers in a reasonable time to these interrogatories.

E. If you produce documents pursuant to Fed. R. Civ. P. 33(d), the records should be produced in the following format:

1. Scanned documents should be produced in single-page Tagged Image File Format (TIFF) with accompanying load files as described in Exhibit A – Electronic and Hard Copy Specifications for Producing Party. The documents should be logically unitized and contain correct document breaks. Multi-page Optical Character Recognition (OCR) text for each document should also be provided.

2. All ESI should be produced in their native file format with accompanying load files as described in Exhibit A – Electronic and Hard Copy Specifications for Producing Party. Multi-page extracted text for each document should also be provided.

3. To the extent discovery requires production of discoverable electronic information contained in a database, in lieu of producing the database, reports generated from the database should be produced in the image format as described in Paragraph E(1) above. Additionally, the following should be produced:

- (a) Identification of the specific fields of information being produced;
- (b) Identification of any fields of information that you contend cannot be produced from the database; and

- (c) Information explaining the database scheme, codes, and abbreviations.

INTERROGATORIES

1. Describe each term of the Iraqi Agreement pertaining to the repatriation of and process for repatriating Iraqi Nationals under the Iraqi Agreement.

RESPONSE

2. Describe each criterion an Iraqi National must meet before Iraq will accept an Iraqi National for repatriation, under the Iraqi Agreement or otherwise.

RESPONSE

3. Describe each criterion for denying repatriation to an Iraqi National under the Iraqi Agreement, or otherwise.

RESPONSE

4. Identify any travel documents that Iraq requires or will accept before accepting an Iraqi National for repatriation under the Iraqi Agreement or otherwise, and the procedures for obtaining the travel documents.

RESPONSE

5. For the time period since March 1, 2017, identify the documentation or evidence other than travel documents that Iraq requires or will accept before approving an Iraqi National for repatriation under the Iraqi Agreement or otherwise.

RESPONSE

6. For each Class Member (identified by name and A-number) for whom ICE or another relevant department of the U.S. government has since March 1, 2017 requested travel documents from the Iraqi Ministry of Foreign Affairs (or another relevant department of the Iraqi government) for repatriation to Iraq, provide the following:

- a. The date the request for the travel documents was made to the Iraqi government;
- b. The type of travel documents obtained, the department of the Iraqi government issuing the travel documents, and the date the documents were issued;
- c. If the request for the travel documents was denied, the department of the Iraqi government issuing the denial, the date of the denial and the reason given for the denial; and
- d. Whether Iraq denied or approved repatriation of the Class Member, and, if denied, the basis for such denial.
- e. If repatriation occurred, when, by what travel method (commercial air, charter air, etc.), and to what location.

RESPONSE:

7. For each Class Member (identified by name and A-number) for whom ICE or another relevant department of the U.S. government has since March 1, 2017 requested from the Iraqi Ministry of Foreign Affairs (or another relevant department of the Iraqi government) to be repatriated to Iraq, provide the following:

- a. The date of the request;
- b. The response from the Iraqi government, the date of the response, the department of the Iraqi government issuing the response, and, if repatriation was denied, the basis for the denial; and
- c. If the request for repatriation was granted, any conditions placed on the repatriation of the Class Member.

d. If repatriation occurred, when, by what travel method (commercial air, charter air, etc.), and to what location.

RESPONSE:

8. For each Class Member (identified by name and A-number), state whether Iraq has agreed to the repatriation of that individual as of the following time:

- a. On the date of the Class Member's arrest by ICE; and
- b. On the date you answer this Interrogatory.

RESPONSE:

9. The declaration of John Schultz, ECF 81-4, Pg.ID# 2007, states that Iraq previously would accept only its nationals with unexpired passports, but that Iraq will now "authorize repatriation with other indicia of nationality." State what "other indicia of nationality" Iraq will accept for repatriation; the basis for the U.S. government's belief that the other indicia of nationality will be accepted, including the identification of the specific agreement(s) or document(s) stating this policy; and the criteria an individual must or can meet before Iraq will accept an Iraqi National for repatriation.

RESPONSE:

10. Explain each step (in sequence) that has since March 1, 2017 or will be taken by you or the government of Iraq to process an Iraqi National for removal if that Iraqi National does not have travel documents.

RESPONSE:

11. For each Class Member (identified by name and A-number) who, prior to March 1, 2017, was living in the community, state whether ICE released that individual to the community because ICE determined that Iraq would not

accept that individual for repatriation the reason ICE determined that Iraq would not accept the individual for repatriation, and whether the individual was subject to an order of supervision or other release conditions.

RESPONSE:

12. The name, title and department of the government (for both Iraq and the United States) of each individual negotiating the Iraqi Agreement, including the “ongoing diplomatic negotiations” referenced in the declaration of Michael V. Bernacke at paragraph 4 (ECF 184-2, Pg.ID# 5070-71), identification of the individuals authorized to enter into any agreement reached by the governments regarding the repatriation of Iraqi Nationals, and the date each individual engaged in the “ongoing diplomatic negotiations.”

RESPONSE:

Respectfully submitted,

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Kary L. Moss (P49759)
Bonsitu A. Kitaba (P78822)
Miriam J. Aukerman (P63165)
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/s/ Kimberly L. Scott
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Wendolyn Wrosch Richards (P67776)
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*Attorney for Petitioner/Plaintiff
Usama Hamama*

Dated: January 14, 2018

CERTIFICATE OF SERVICE

The undersigned certifies that she is an employee of the law firm of Miller, Canfield, Paddock and Stone, P.L.C., and says that on January 14, 2018 she caused a copy of Petitioner Hamama's First Set of Interrogatories and this Certificate of Service in the above-captioned matter to be served upon the following via electronic mail to:

William C. Silvis
Assistant Director
United States Department of Justice
Office of Immigration Litigation
District Court Section
P.O. Box 868 Ben Franklin Station
Washington, DC 20044.

By: /s/Kimberly L. Scott
Kimberly L. Scott (P69706)
Cooperating Attorney, ACLU Fund of Michigan
Miller, Canfield, Paddock & Stone, PLC
101 N. Main St., 7th Floor
Ann Arbor, MI 48104
(734) 668-7696
scott@millercanfield.com

EXHIBIT A**Electronic and Hard Copy Production Specifications for Producing Party**

- Mixed production format (images for hard copy and electronic documents, except spreadsheets, presentations, audio and video files, which are to be provided in native file format)
- Black and white images as single-page, Group IV TIFFs, 300 dpi, 1 bit depth
- Color images as JPEG images, 150-300 dpi
- Concordance/Relativity image load file format (.OPT)
- Native files to include corresponding field identifying file path to the native (NATIVE FILE)
- OCR / Extracted Text at the document level and provided as a separate text file with the same naming convention as the TIFF/native, and relative file path identified in the load file (EXTRACTED TEXT)
- Metadata load file (.DAT) with the following delimiters and fields:
 - Column Delimiter: ¶
 - Quote Delimiter: p
 - New Line Delimiter: ®
 - Multi-Entry Delimiter ;

Field Name	Description	Electronic/ Native Files	Paper/Hard Copy
Prod Beg	Bates number of the first page of a document (imaged) or the identifying number of an electronic document (native)	X	X
Prod End	Bates number of the last page of a document (imaged)		X
Prod Beg Attach	Bates range of document family - first page of parent (imaged) or identifying number of parent (native)	X	X
Prod End Attach	Bates range of document family - last page of last attachment (imaged) or identifying number of last attachment (native)	X	X
Page Count	Total number of pages in an imaged document	X	X
Custodian	Document custodian in format Last Name, First Name	X	X
Author	Author of an e-doc extracted from metadata	X	
Email From	Author of an email message	X	
Email To	Main recipient(s) of an email message	X	
Email CC	Recipient(s) of "carbon copies" of an email message	X	
Email BCC	Recipient(s) of "blind copies" of an email message	X	
Date Created	Creation date of a native e-doc	X	
Date Last Modified	Date an e-doc was last modified	X	
Date Received	Received date of an email message	X	
Date Sent	Sent date of an email message	X	
Email Subject	Subject of the email message	X	
Document Extension	File extension of native file	X	
Original Folder Path	Full path to source files (if e-doc or loose email) or folder path contained within a mailstore (if NSF or PST)	X	
Filename	Original filename of native file	X	
File Description	Description of native file program or application	X	
MD5 Hash	Unique identifier ("fingerprint")	X	
Extracted Text	Relative file path to text file containing OCR / extracted text	X	X
Native File	Relative file path created during processing to link native files to database for review	X	

EXHIBIT B

**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' AMENDED FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS TO RESPONDENTS**

Petitioners/Plaintiffs (hereinafter Petitioners) request Respondents/Defendants (hereinafter Respondents) to produce the documents and other tangible things specified below in their possession, custody and/or control on February 13, 2018. The documents and things should be produced at the offices of Miller, Canfield, Paddock and Stone, P.L.C., 101 N. Main St., 7th Floor, Ann Arbor, MI 48104 to the attention of Ms. Kimberly Scott, or electronically to Scott@millercanfield.com.

DEFINITIONS

A. The term “you” or “Respondents” means Respondents/Defendants and their agents and representatives.

B. The term “**Class Member**” is defined as any Iraqi National who had a final order of removal at any point between March 1, 2017 and June 24, 2017.

C. The term “**Iraqi National**” means any Iraqi national, including but not limited to **Class Members**.

D. The term “**travel documents**” means documents used or required for travel by an Iraqi from the United States to Iraq.

E. The term “**process**” means to complete all steps necessary in order for an Iraqi to be permitted to travel to and enter Iraq.

F. The term “**Iraqi Agreement**” means any agreement, whether oral or written, between the governments of the United States and Iraq regarding the repatriation of **Iraqi Nationals** after January 2017, including the agreement(s) referenced in the following, and any changes to the agreement(s):

1. Declaration of John A. Schultz, Jr., dated July 20, 2017 at paragraph 5 (“[d]ue to renewed discussions between the United States and Iraq in recent months, Iraq has agreed, using charter flights, to the timely return of its nationals that are subject to final orders of removal”) (ECF 81-4 at Pg.ID# 2006);

2. Declaration of Michael V. Bernacke, dated December 22, 2017 at paragraphs 4 (“[I]n 2017, Iraq agreed to the timely return of its national subject to a final order of removal. The agreement between the United States and the Iraqi Ministry of Foreign Affairs (MFA) is not memorialized in any written document or

treaty. It is a product of ongoing diplomatic negotiations.”) (ECF 184-2, Pg.ID# 5070-71);

3. the reference by Gillian Christensen, a spokeswoman for U.S. Immigration and Customs Enforcement (“As a result of recent negotiations between the U.S. and Iraq, Iraq has recently agreed to accept a number of Iraqi nationals subject to orders of removal”) (*see*, Mica Rosenberg, *U.S. Targets Iraqis for Deportation in Wake of Travel Ban Deal*, REUTERS (June 12, 2017), <https://www.reuters.com/article/us-usa-immigration-iraq-idUSKBN19326Z>); and

4. any other agreement(s) since March 1, 2017 between the governments of Iraq and United States setting forth the terms, processes and conditions of repatriation of **Iraqi Nationals**.

G. The terms “**and**” and “**or**” as used in these requests for production of documents are not intended as words of limitation. Thus, any sentence or phrase herein formed in the disjunctive shall also be taken in the conjunctive, and vice versa. Similarly, any word formed in the singular shall also be taken in the plural, and vice-versa. Also, any verb in the present tense shall also be taken in the past, imperfect and future tenses, and vice-versa. Finally, any pronoun in the masculine gender shall also be taken in the feminine gender, and vice-versa.

H. The term “**identify**” when used in reference to a natural person means to state to the fullest extent possible the following information:

1. His or her full name; and
2. Present or last known address (whether business or residence); and
3. The name and address of that person's employer and his or her job title at times pertinent to the pending action, including any changes therein.

I. Except as otherwise provided herein, the term “**identify**” when used in reference to a document means to state to the fullest extent possible the following information:

1. The type of document, such as letter or memorandum;
2. The identity of the person or persons preparing the document;
3. A description of its subject matter;
4. The number of pages in the document;
5. The identity of each addressee, recipient or signor;
6. The date on which the document was prepared;
7. The date on which the document was distributed or transmitted; and
8. The present location of each copy of the document and the identity of the present or last known location custodian of each copy of the document.

J. The term “**identify**” when used in connection with statements and communications means to state to the fullest extent possible the following information:

1. State when and where such statement or communication was made;
2. Identify each of the makers and recipients thereof, and all other persons present;

3. State the medium of the statement or communication, such as personal conversation, telephone conversation or media broadcast; and
4. State the substance of the statement or communication.

K. The terms “**document**,” “**documents**,” or “**documentation**” refer to any and all tangible items or sources of information within the meaning of Fed. R. Civ. P. 34.

L. The term “**date**” means the day, month, and year, if ascertainable, or if not, the best approximation (including relationship to other events).

M. The terms “**statement**,” “**communication**,” “**communicate**,” and “**communicated**” mean any oral or written utterance, notation, or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations (whether direct or overheard), dialogues, discussions, interviews, consultations, agreements, and other understandings between or among two or more persons, whether made orally, by Document, made face-to-face, or made by telephone, mail, personal delivery, e-mail, electronic transmission, or otherwise, whether or not recorded by Document or other means.

INSTRUCTIONS

A. Each Request for Production of Documents (“Request”) extends to all documents and things in your possession, custody or control, including documents in the possession of your attorneys, employer, consultants, accountants and other agents or representatives.

B. These Requests are continuing in nature and call for prompt, further and supplemental productions of documents and things whenever you receive or discovery any additional documents or things responsive to these Requests.

C. You are to produce to Petitioners a copy of the original documents, including those stored electronically, as they are kept in the usual course of business, organized by source or custodian, and containing a clear indication of where each document ends and the next begins. Documents maintained in a file folder or binder should be preceded by a copy of the file finder or binder label, if one exists, and should contain a clear indication of where the file folder or binder begins and ends. All attachments to a record should be produced with the record. A unique control number should be affixed to each page or, where electronically stored information (ESI) is produced in its native format, to each document.

D. Where a request seeks the identification of documents, things, or other information not within your actual or constructive possession, custody, or control, or knowledge, you shall so state and shall answer the request to the extent of its knowledge or belief based on the best information presently available. Where you have knowledge or belief as to other persons having such possession, custody, control, or knowledge, you shall identify, to the extent know and based on the best information presently available, all such persons, together with a brief summary of

the nature of the document, things, or other information believed to be known to such persons.

E. The singular form shall be construed to include the plural, and vice-versa, whenever such a dual construction will serve to bring within the scope of a production category any documents or information.

F. The past tense form shall be construed to include the present tense, and vice-versa, whenever such a dual construction will serve to bring within the scope of a production category any documents or information that would otherwise not be within its scope.

G. In the event that multiple copies of a document exist, produce every copy on which appear any notations or markings of any sort that do not appear on every other copy and, for those copies not produced, indicate each custodian that possessed a copy of the document.

H. All grounds for any objection shall be stated with specificity. If any document responsive to any of these Requests is withheld on the ground that it calls for information that is privileged or exempt from discovery for any other reason, prepare and provide a log of the same in Microsoft Excel native format. As to each such withheld document, include the following information on the log(s):

- (a) Which privilege is claimed;
- (b) Who is asserting the privilege;
- (c) A precise statement of facts upon which said claim of privilege

is based;

- (d) Describe each purportedly privileged document by providing:
 - (i) A brief description sufficient to identify its nature, i.e., agreement, letter, memorandum, etc.
 - (ii) A brief description sufficient to identify its subject matter and purpose of the document;
 - (iii) The date the document bears;
 - (iv) The identity of the person preparing the document;
 - (v) The identity of each person to whom it was sent; and
 - (vi) The identity of each person who represented or purported to represent you.

I. If any portion of a document responsive to these Requests is withheld under claim of privilege, any non-privileged portion of such document must be produced with the portion claimed to be privileged redacted.

J. Each document requested herein is to be produced in its entirety, without deletion or excision (except as qualified by Instructions above), regardless of whether you consider the entire document to be relevant or responsive to the Requests.

K. Scanned documents should be produced in single-page Tagged Image File Format (TIFF) with accompanying load files as described in Exhibit A – Electronic and Hard Copy Specifications for Producing Party. The documents should be logically unitized and contain correct document breaks. Multi-page Optical Character Recognition (OCR) text for each document should also be provided.

L. All ESI should be produced in their native file format with accompanying load files as described in Exhibit A – Electronic and Hard Copy Specifications for Producing Party. Multi-page extracted text for each document should also be provided.

M. To the extent discovery requires production of discoverable electronic information contained in a database, in lieu of producing the database, reports generated from the database should be produced in the image format as described in Paragraph M above. Additionally, the following should be produced:

- (a) Identification of the specific fields of information being produced;
- (b) Identification of any fields of information that you contend cannot be produced from the database; and
- (c) Information explaining the database scheme, codes, and abbreviations.

DOCUMENT REQUESTS

1. The Iraqi Agreement or, if no Iraqi Agreement exists in written form, documents memorializing the terms of the Iraqi Agreement pertaining to repatriation of Iraqi Nationals. The phrase “memorializing the terms” as used here is defined as a written synopsis or other statement documenting your understanding of what was said, decided, and who is responsible for the terms of and process(es) for the repatriation of Iraqi Nationals pursuant to the Iraqi Agreement, created by a representative of either the Iraqi or United States government.

RESPONSE

2. The requests from DHS, ICE, or other relevant departments of the U.S. government to the Iraqi Ministry of Foreign Affairs (or other relevant departments of the Iraqi government), since March 1, 2017 requesting or otherwise

inquiring that Iraq issue travel documents for Class Members, including Class Members for whom the Court has lifted the July 24, 2017 stay of removal (ECF 87), and the responses from the Iraqi Ministry of Foreign Affairs (or another relevant department of the Iraqi government).

RESPONSE:

3. The requests from DHS, ICE, or other relevant departments of the U.S. government to the Iraqi Ministry of Foreign Affairs (or other relevant departments of the Iraqi government), since March 1, 2017 requesting or otherwise inquiring about repatriation of Class Members, including Class Members for whom the Court has lifted the July 24, 2017 stay of removal (ECF 87), and the responses from the Iraqi Ministry of Foreign Affairs (or other relevant departments of the Iraqi government).

RESPONSE:

4. The manifests for the charter flights for repatriation of Iraqi Nationals since March 1, 2017, including the charter flight referenced in the declaration of Michael V. Bernacke at paragraph 6 (ECF 184-2, Pg.ID# 5071), and the charter flights referenced in the declaration of John A. Schultz at paragraphs 6-8 (ECF 81-5, Pg.ID# 2007-08), and the response(s) from the Iraqi Ministry of Foreign Affairs (or another relevant department of the Iraqi government) to the manifests.

RESPONSE:

5. Documents relied on or cited by Respondents in answering any interrogatory.

RESPONSE:

6. Documents relied on by Mr. Schultz in drafting or confirming the accuracy of the statements made in his declarations dated July 20, 2017 (ECF 81-4) and November 30, 2017 (ECF 158-2).

RESPONSE:

7. Documents relied on by Mr. Bernacke in drafting or confirming the accuracy of the statements made in his declaration dated December 22, 2017 (ECF 184-2).

RESPONSE:

8. Documents memorializing agreements relating to the repatriation of Iraqi Nationals that have arisen from the “ongoing diplomatic negotiations” referenced in the Declaration of Michael V. Bernacke, dated December 22, 2017. The term “memorializing” as used here is defined as a written synopsis or other statement documenting your understanding of what was said, decided, and who is responsible for an agreement relating to terms and process(es) for the repatriation of Iraqi Nationals, created by a representative of either the Iraqi or United States government.

RESPONSE:

Respectfully submitted,

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Kary L. Moss (P49759)
Bonsitu A. Kitaba (P78822)
Miriam J. Aukerman (P63165)
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*Attorney for Petitioner/Plaintiff
Usama Hamama*

Dated: January 14, 2018

CERTIFICATE OF SERVICE

The undersigned certifies that she is an employee of the law firm of Miller, Canfield, Paddock and Stone, P.L.C., and says that on January 14, 2018, she caused a copy of Petitioners' Amended First Set of Requests for Production of Documents and Things and this Certificate of Service in the above-captioned matter to be served upon the following via electronic mail to:

William C. Silvis
Assistant Director
United States Department of Justice
Office of Immigration Litigation
District Court Section
P.O. Box 868 Ben Franklin Station
Washington, DC 20044.

By: /s/Kimberly L. Scott
Kimberly L. Scott (P69706)
Cooperating Attorney, ACLU Fund of Michigan
Miller, Canfield, Paddock & Stone, PLC
101 N. Main St., 7th Floor
Ann Arbor, MI 48104
(734) 668-7696
scott@millercanfield.com

EXHIBIT A**Electronic and Hard Copy Production Specifications for Producing Party**

- Mixed production format (images for hard copy and electronic documents, except spreadsheets, presentations, audio and video files, which are to be provided in native file format)
- Black and white images as single-page, Group IV TIFFs, 300 dpi, 1 bit depth
- Color images as JPEG images, 150-300 dpi
- Concordance/Relativity image load file format (.OPT)
- Native files to include corresponding field identifying file path to the native (NATIVE FILE)
- OCR / Extracted Text at the document level and provided as a separate text file with the same naming convention as the TIFF/native, and relative file path identified in the load file (EXTRACTED TEXT)
- Metadata load file (.DAT) with the following delimiters and fields:
 - Column Delimiter: ¶
 - Quote Delimiter: ¨
 - New Line Delimiter: ®
 - Multi-Entry Delimiter;

Field Name	Description	Electronic/ Native Files	Paper/Hard Copy
Prod Beg	Bates number of the first page of a document (imaged) or the identifying number of an electronic document (native)	X	X
Prod End	Bates number of the last page of a document (imaged)		X
Prod Beg Attach	Bates range of document family - first page of parent (imaged) or identifying number of parent (native)	X	X
Prod End Attach	Bates range of document family - last page of last attachment (imaged) or identifying number of last attachment (native)	X	X
Page Count	Total number of pages in an imaged document	X	X
Custodian	Document custodian in format Last Name, First Name	X	X
Author	Author of an e-doc extracted from metadata	X	
Email From	Author of an email message	X	

Field Name	Description	Electronic/ Native Files	Paper/Hard Copy
Email To	Main recipient(s) of an email message	X	
Email CC	Recipient(s) of “carbon copies” of an email message	X	
Email BCC	Recipient(s) of “blind copies” of an email message	X	
Date Created	Creation date of a native e-doc	X	
Date Last Modified	Date an e-doc was last modified	X	
Date Received	Received date of an email message	X	
Date Sent	Sent date of an email message	X	
Email Subject	Subject of the email message	X	
Document Extension	File extension of native file	X	
Original Folder Path	Full path to source files (if e-doc or loose email) or folder path contained within a mailstore (if NSF or PST)	X	
Filename	Original filename of native file	X	
File Description	Description of native file program or application	X	
MD5 Hash	Unique identifier (“fingerprint”)	X	
Extracted Text	Relative file path to text file containing OCR / extracted text	X	X
Native File	Relative file path created during processing to link native files to database for review	X	

EXHIBIT C

**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' AMENDED NOTICE OF RULE 30(B)(6) DEPOSITION

TO: William C. Silvis
Assistant Director
United States Department of Justice
Office of Immigration Litigation
District Court Section
P.O. Box 868 Ben Franklin Station
Washington, DC 20044
Tel: (202) 307-4693

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Petitioners will take the deposition of Respondents on a date and time to be mutually agreed beginning at the offices of Miller, Canfield, Paddock & Stone, 150 West Jefferson, Suite 2500, Detroit, Michigan. Respondents shall designate one or more persons to testify on its behalf regarding the subjects listed in Exhibit A to this notice. The deposition will be taken by stenographic and/or videographic means before a notary public authorized to administer oaths.

The deposition is being taken in accordance with the Federal Rules of Civil Procedure, may be used for all purposes, and will be continued until completed consistent with the Federal Rules of Civil Procedure.

Respectfully Submitted,

Michael J. Steinberg (P43085)
Kary L. Moss (P49759)
Bonsitu A. Kitaba (P78822)
Miriam J. Aukerman (P63165)
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*Attorney for Petitioner/Plaintiff
Usama Hamama*

Dated: January 26, 2018

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SCHEDULE A

DEFINITIONS & INSTRUCTIONS

A. The term “**Class Member**” is defined as any Iraqi National who had a final order of removal at any point between March 1, 2017 and June 24, 2017.

B. The term “**Iraqi National**” means any Iraqi national, including but not limited to **Class Members**.

C. The term “**process**” means to complete all steps necessary in order for an Iraqi to be permitted to travel to and enter Iraq.

D. The term “**Iraqi Agreement**” means any agreement, whether oral or written, between the governments of the United States and Iraq regarding the repatriation of **Iraqi Nationals** after January 2017, including the agreement(s) referenced in the following, and any changes to the agreement(s):

1. Declaration of John A. Schultz, Jr., dated July 20, 2017 at paragraph 5 (“Due to renewed discussions between the United States and Iraq in recent months, Iraq has agreed, using charter flights, to the timely return of its nationals that are subject to final orders of removal”) (ECF 81-4 at Pg.ID# 2006);

2. Declaration of Michael V. Bernacke, dated December 22, 2017 at paragraph 4 (“[I]n 2017, Iraq agreed to the timely return of its nationals subject to a final order of removal. The agreement between the United States and the Iraqi Ministry of Foreign Affairs (MFA) is not memorialized in any written document or

treaty. It is a product of ongoing diplomatic negotiations.”) (ECF 184-2, Pg.ID# 5070-71);

3. the reference by Gillian Christensen, a spokeswoman for U.S. Immigration and Customs Enforcement (“As a result of recent negotiations between the U.S. and Iraq, Iraq has recently agreed to accept a number of Iraqi nationals subject to orders of removal”) (*see*, Mica Rosenberg, *U.S. Targets Iraqis for Deportation in Wake of Travel Ban Deal*, REUTERS (June 12, 2017), <https://www.reuters.com/article/us-usa-immigration-iraq-idUSKBN19326Z>); and

4. any other agreement(s) since March 1, 2017 between the governments of Iraq and United States setting forth the terms, processes and conditions of repatriation of **Iraqi Nationals**.

DEPOSITION TOPICS

1. Repatriation of Iraqi Nationals from fiscal year 2007 to present, including the number and identity of those repatriated and declined for repatriation, the dates of repatriations and attempted repatriations, the criteria for acceptance or declination by Iraq, the processes used, and the amount of time required.

2. The terms of the Iraqi Agreement pertaining to the repatriation of Iraqi Nationals and the process for repatriating Iraqi Nationals; any changes to or since that Agreement; and the statements made in the following declarations about the negotiations and terms of the Iraqi Agreement:

- a. John A. Schultz, Jr., dated July 20, 2017 (ECF 81-4);
- b. John A. Schultz, Jr., dated November 30, 2017 (ECF 158-2);
and
- c. Michael V. Bernacke, dated December 22, 2017 (ECF 184-2).

3. The assurances, representations, or promises from Iraq, or lack thereof, regarding its continuing willingness to accept repatriation of Iraqi Nationals, including after the Court's July 24, 2017 stay (ECF 87) is lifted for any Class Member or if that stay is reversed for all Class Members on appeal.

4. Discussions, assurances, representations, or promises from Iraq regarding protections from persecution, torture or death for repatriated Iraqi Nationals.

5. Any way that the matters described above differ for Class Members compared to other Iraqi Nationals.

CERTIFICATE OF SERVICE

The undersigned certifies that she is an employee of the law firm of Miller, Canfield, Paddock and Stone, P.L.C., and says that on January 26, 2018, she caused a copy of Petitioners' Amended Notice of Rule 30(b)(6) Deposition and this Certificate of Service in the above-captioned matter to be served upon the following via electronic mail to:

William C. Silvis
Assistant Director
United States Department of Justice
Office of Immigration Litigation
District Court Section
P.O. Box 868 Ben Franklin Station
Washington, DC 20044.

By: /s/Erika L. Giroux
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