

**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

ORDER REGARDING FURTHER PROCEEDINGS

On May 15, 2018, Petitioners and Respondents submitted to this Court a Joint Statement of Issues (“JSI”) setting forth their agreement and respective positions on a number of items related to Petitioners’ discovery requests and implementation of this Court’s previous orders on detention and further proceedings (Dkt. 286). The Court held an in-person status conference on May 25, 2018, to address these issues, Petitioners’ Second Motion to Withdraw Stipulated Order and Reinstate the Preliminary Injunction for Wisam Ibrahim (the “Ibrahim Motion”) (Dkt. 285), and the pending motions regarding Mr. Ibrahim, Dkt. 207, 246. This Order documents the agreements reached by the parties during and after the status conference and the Court’s decisions where the parties were unable to reach agreement.

A. Process for Terminating Stay Where No MTR Filed within 90 Days or No Timely Appeal

The Court previously set out criteria for terminating the preliminary injunction staying removal for particular class members who do not file a Motion to Reopen (MTR) within 90 days from the transmittal of their A-File and Record of Proceedings, or fail to file timely appeals with the Board of Immigration Appeals or United States Courts of Appeals. Dkt. 87, Pg.ID# 2355-56. The Court will consider requests to extend those deadlines upon a showing of good cause, and adopts the following process to allow consideration of the issue, for each individual for whom Respondents seek termination of the existing stay of removal under Dkt. 87, Pg.ID# 2355-56.

1) Respondents shall notify Petitioners' counsel in writing that they believe the stay is terminable for a particular class member, and provide the following information: the date the individual was served his or her A-File and ROP, and a statement that, to date, the individual has not filed an MTR or an appeal. For any non-detained individuals who do not have a lawyer with an EOIR appearance, Respondents shall provide Petitioners' counsel with contact information for the individual, including the most recent address and phone number known to Respondents.

2) Once notice and, where necessary, contact information is provided, Petitioners' counsel shall endeavor to contact each individual and/or his or her

immigration counsel, and ask if the individual or his or her counsel would like to provide the Court a declaration explaining any good cause for delay. Class counsel may attach any such declarations to a filing due two weeks after Respondents provide notice, so that the Court can consider any explanations for late filing offered by these individuals or their immigration counsel. If Respondents are required to provide contact information under paragraph (1), then the two weeks shall start from the date such contact information is provided. The stay of removal, Dkt 87, shall remain in effect pending the Court's decision on good cause.

3) For class members named in the JSI, Dkt. 286, whom Respondents have identified as not having filed an MTR or not having appealed an MTR denial, any declarations asserting good cause shall be filed by June 12, 2018.

4) With respect to individuals who have been identified by Petitioners as having exhibited indicia of mental illness or intellectual disability, Petitioners shall provide the names of those individuals to Respondents. Respondents shall then conduct an evaluation to assess mental health and intellectual disability and shall provide the results to this Court for an *in camera* review for further consideration of next steps. Respondents shall conduct such evaluations within 30 days for AK, XXX-XXX-012 and HAHJ, XXX-XXX-327, both of whom have been identified by Petitioners as exhibiting indicia of mental illness/disability.

5) For AAS, XXX-XXX-907, Petitioners shall provide to Respondents an

email documenting the steps taken to contact AAS. Respondents shall then facilitate a phone call so that Petitioners can determine whether to stipulate to the lifting of the stay of Mr. AAS's removal. Going forward, if Petitioners are unable to reach a class member, they shall provide Respondents with a description of the efforts they have undertaken to reach the class member, and Respondents shall then facilitate phone communication with that class member.

B. Wisam Ibrahim

1) Respondents shall conduct any psychiatric/psychological examination of Wisam Ibrahim as soon as possible, and no later than June 11, 2018. Respondents shall provide a written report of the evaluation to the Court and to Petitioners' counsel by June 18, 2018.

2) As soon as possible, and no later than June 15, 2018, Respondents shall provide a copy of Mr. Ibrahim's A-File and ROP to Mr. Ibrahim's immigration counsel of record, Brad Maze who was immigration counsel as of June 4, 2018. Respondents shall also provide a copy of the same files by June 15, 2018 to Mr. Ibrahim's guardian's counsel, Nour Chammas, and, if either Mr. Ibrahim or his guardian designate Class Counsel to receive the file, to Class Counsel.

3) Petitioners' request for a bond hearing for Mr. Ibrahim is deferred. The Court will decide whether to order a bond hearing if Respondents fail to provide the independent psychiatric/psychological evaluation of Mr. Ibrahim by June 18, 2018,

or, if that evaluation is timely provided, based on the Court's assessment of the likely length of time needed to resolve the questions regarding Mr. Ibrahim's competency to waive the protections of this Court's stay of removal.

C. Undisclosed Possible Class Members

If Respondents seek to remove to Iraq any individual who had a final removal order on a date between March 1, 2017 and June 24, 2017, but whom they consider not protected by this Court's stay of removal (Dkt. 87), and who has not been the subject of a court order lifting that stay of removal, Respondents shall not remove that individual until at least 14 days after that individual's name is disclosed for the first time on the Respondents' bi-weekly disclosures. Petitioners' counsel can then investigate whether the individual is or is not a class member covered by the stay of removal, and the parties can bring to the Court any relevant disputes.

D. A-File and ROP Transmittals

Both ICE and EOIR shall produce all A-Files and ROPs identified in Dkt. 286 at Section II.E (that is, those files not transmitted within 5 weeks of detention) on a rolling basis as soon as they become available, and in no event later than June 15, 2018.

E. Disclosure of Information Regarding BIA Applications for Stays of Bond/Release.

For individuals who appear on the bi-weekly disclosures as having been granted bond or release under this Court's January 2 Order, Petitioners may request

information on (1) whether Respondents have sought a discretionary stay of that bond decision and (2) the outcome of any discretionary stay request, by providing Respondents with the names and A-numbers of those individuals. Respondents shall provide such information within two weeks of receiving the names and A-numbers from Petitioners. Respondents have disclosed that, so far, they have moved for extensions of discretionary stays in 10 cases, and that in one of those, the Board remanded for a new bond hearing pursuant to a joint motion of the parties. By June 15, 2018, Respondents shall disclose the identity of the individual affected by that remand.

F. Further Filings Under Seal

Once this Court has entered an order allowing certain identified documents to be filed under seal, the parties may file those identified documents under seal going forward without a separate or additional motion. This applies to documents filed previously under seal, *see* Dkt. 34, 62, 72, 219, 236, 279, and to any documents for which the Court authorizes filing under seal in the future, unless the Court specifies otherwise.

G. Respondents' Response to First Set of Requests for Production

1) Respondents may not withhold production of records pending their completion of all document review. Respondents shall produce documents weekly on the following rolling basis: 1,000 pages of documents on each of the following

dates: (i) June 19, 2018; (ii) June 26, 2018; (iii) July 3, 2018; and (iv) July 10, 2018.

The balance of documents shall be produced July 17, 2018. Notwithstanding the foregoing, DHS document production shall be completed by June 25, 2018. Failure to produce documents on this schedule will be construed, presumptively, as bad faith, unless Respondents can establish by clear and convincing evidence that there is exceptional good cause for not meeting the schedule.

2) By June 12, 2018, Respondents shall provide written responses and objections to Petitioners' First Set of Requests for Production. Respondents shall provide supplementary written responses and objections when production of responsive documents is complete.

3) The Court previously ordered Respondents "to provide a declaration identifying the names and job titles of the custodians for whom Respondents have collected records and other information responsive to Petitioners' discovery requests describing how the custodians were identified, the methodologies used to identify responsive documents (including the instructions given to custodians, such as the instruction to search email by author or recipient), and any culling methods used by Respondents to narrow the records collected prior to or during their review for records responsive to the discovery requests." *See* Dkt. 254, Pg.ID# 6235-36 at ¶31. Respondents have not fully complied with this order. By June 12, 2018, once the

Proposed Second Amended Protective Order is entered, Respondents shall each provide a declaration containing the following information:

- i. a copy of the declarations of John A. Schultz, Jr., (dated March 30, 2018) and David J. Palmer (dated March 30, 2018) with the unredacted names of the custodians identified;
- ii. the names of *all* individuals who were asked to search for records or whose records were searched, even if no responsive records were located;
- iii. the title and department of each custodian identified in subparagraphs i and ii;
- iv. an explanation of why the custodians were selected, including a description of their involvement in any discussions or negotiations with GOI and other involvement with the issues in this litigation.

4) Documents redacted by Respondents on a claim that they contain nonresponsive material that is highly sensitive and relates to international engagements and law enforcement operations shall be submitted to the Court for in-camera, ex parte review.

H. Respondents' Responses to the First Set of Interrogatories

By May 29, 2018, Petitioners shall provide Respondents a letter identifying the ways in which Petitioners believe Respondents' responses to Petitioners' First Set of Interrogatories are deficient. Respondents shall serve their supplemental interrogatory responses by June 19, 2018. Petitioners may then bring before the Court any remaining disputes regarding the sufficiency of Respondents' interrogatory responses.

If Respondents fail to conduct a reasonable inquiry, respond with information within their control or otherwise obtainable by them, provide an appropriate verification, or fully and completely respond to the interrogatories, Respondents may be sanctioned, including the exclusion of that information in motions, in hearings, at any evidentiary hearing, and at trial.

I. Petitioners' Depositions of Respondents' Representatives

Once Respondents produce a substantial number of records responsive to the Petitioners' requests for production, Petitioners shall preliminarily identify representatives of Respondents whom they plan to depose. Petitioners shall also preliminarily indicate if they will proceed at that time with a Rule 30(b)(6) deposition and, if so, inform Respondents of the topics for that Rule 30(b)(6) deposition. The parties shall coordinate depositions of these individuals at a mutually agreeable time and place to occur no later than September 1, 2018.

SO ORDERED.

Dated: June 12, 2018
Detroit, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on June 12, 2018.

s/Karri Sandusky
Case Manager