

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**USAMA JAMIL HAMAMA**, et al.,

Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910  
Hon. Mark A. Goldsmith  
Mag. David R. Grand  
Class Action

**PETITIONERS/PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR  
RELEASE PURSUANT TO ZADVYDAS ORDER**

Pursuant to this Court's *Zadvydas* Order, ECF 490, Petitioners filed their Motion for Release (ECF 548) of Raid Dawad and Johnny Younan on May 2, 2019, arguing against their prolonged detention. The government's response, ECF 550, narrows the issues: it explains that ICE released Mr. Dawad from custody on May 8, 2019. There is therefore no need for the Court to make a decision with respect to Mr. Dawad at this time. As far as Mr. Younan, the government continues to offer no "strong special justification," ECF 490, PageID#14200 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)), for his ongoing detention, instead arguing that the nearly five months he spent in ICE detention from June 2017 to November 2017 should be excluded from the *Zadvydas* clock. The Court should reject this attempted gerrymander and order his immediate release.

**I. Raid Dawad, A-XXX-XXX-963**

Although Mr. Dawad's final removal order specifies removal to Iraq, ICE seeks to exclude him from the class because, as previously explained, Iraqi officials recently informed ICE that they do not consider Mr. Dawad to be Iraqi. ICE sought travel documents from Jordan, but now reports that Jordan has declined to issue them. ICE accordingly released Mr. Dawad from immigration detention. ECF 550, Pg.ID#14892. As a result, the detention issue no longer needs adjudication.

ICE nonetheless seeks an anticipatory decision by this Court, writing:

ICE may redetain Dawad at a later date should removal become significantly likely in the reasonably foreseeable future. If ICE opts to do so, however, Dawad should be required to request any further relief through a separate action, not this lawsuit, because he is not covered by the *Zadvydas* PI.

*Id.* The Court should reject this request, either on the merits for the reasons already briefed or for reasons of judicial economy. If and when ICE succeeds in obtaining a removal order to some other country, Mr. Dawad would no longer be a class member.<sup>1</sup> But that is not the situation today. Today, all that is needed is an order

---

<sup>1</sup> The government's argument that ICE can remove Mr. Younan to an alternative country ignores both the substantive limits on any such a removal (e.g. whether he is a citizen, subject or national of any such other country) and the procedural limits on any such removal, which require that he first have an opportunity to be heard (*see e.g. Kuhai v. I.N.S.*, 199 F.3d 909, 913-14 (9th Cir. 1999)) (BIA's *sue sponte* change to country of removal, without giving petitioner

that if and when ICE seeks to redetain Mr. Dawad, the Court will review ICE's request for redetention and Mr. Dawad's class membership based on the facts and circumstances at that time.

## II. Johnny Younan, A XXX-XXX-032

Mr. Younan spent 143 days in ICE detention from June 12, 2017, to November 1, 2017, at which time he was transferred to federal Bureau of Prisons (BOP) custody on a federal criminal charge of conspiracy to commit health care fraud. He had pleaded guilty in 2015; he served his federal criminal sentence from November 1, 2017 to March 8, 2019. ICE seeks the Court's permission to ignore its 2017 detention of Mr. Younan; the government would prefer to restart the *Zadvydas* six-month clock on March 8, 2019.

In support of this position, the government cites 8 U.S.C. § 1231, under which the statutory 90-day "removal period" starts on "the latest of the following":

- (i) The date the order of removal becomes administratively final.
- (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.**

ECF 550, PgId #14893 (emphasis added).

Respondents' argument would allow ICE a new removal period each time a

---

an opportunity to brief the issue, violated due process)).

noncitizen with a final order is transferred into and back out of criminal detention—an approach easily manipulated by ICE to restart the clock for anyone who (like Mr. Younan) faces criminal charges and is moved from ICE to criminal custody and back again. It is precisely because the Court recognized the unfairness of resetting the clock for every transfer to criminal custody that the Court previously held with respect to bond hearings that transfers to criminal custody do not reset the clock, absent special circumstances. ECF 254, Pg.ID# 6228.

In any event, even if Respondents are correct that the statutory removal period can restart repeatedly, that does not mean that the *Zadvydas* six-month period similarly restarts. *See, e.g., Farah v. INS*, No. Civ. 02-4725 (DSD/RLE), 2003 WL 221809, at \*5 (D. Minn. Jan. 29, 2013) (holding that when the government releases an alien and then revokes the release based on changed circumstances, “the revocation would merely restart the 90-day removal period, not necessarily the presumptively reasonable six-month detention period under *Zadvydas*”); *Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at \*6 (N.D. Cal. Apr. 19, 2018), appeal dismissed, No. 18-16128, 2018 WL 6624692 (9th Cir. Sept. 14, 2018) (approving the approach, taken by “several courts” that “the six-month period does not reset when the government detains an alien under 8 U.S.C. § 1231(a), releases him from detention, and then re-detains him again”).

Respondents attempt to distinguish this Court’s prior holding in favor of

aggregation of periods of ICE detention since March 1, 2017. See ECF 254, Pg.ID# 6228. But ICE's arguments are logically inconsistent with this Court's *Zadvydas* order. ICE suggests that the *Zadvydas* clock should not run because while Mr. Younan was in criminal custody, "it would not have made sense for ICE to work on his removal." ECF 550, Pg.ID#14895. But the Court's *Zadvydas* injunction rejected the same argument with respect to class members whose motions to reopen have been granted and therefore have pending immigration cases, and class members who had a stay of removal in place.

Finally, as with all the class members, even if Mr. Younan is released, that does not mean that ICE cannot deport him. He has already had a consular interview, but so far no travel documents have resulted. If Iraq does, eventually, release such travel documents, and ICE is successful at arranging a flight, ICE can deport Mr. Younan then. The government has offered no justification for his detention in the meantime. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) (for individuals who face the threat of deportation and separation from their families, "[e]ach day with their families is now particularly precious. Any unjustified loss of liberty for even another day would be a painful form of irreparable harm to them and to the United States citizens who love them.").

Respectfully submitted,

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

*/s/Kimberly L. Scott*

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

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

María Martínez Sánchez (NM  
Bar126375)  
ACLU OF NEW MEXICO  
1410 Coal Ave. SW  
Albuquerque, NM 87102  
[msanchez@aclu-nm.org](mailto:msanchez@aclu-nm.org)

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

Margo Schlanger (P82345)  
Cooperating Attorney, ACLU Fund  
of Michigan  
625 South State Street  
Ann Arbor, Michigan 48109  
734-615-2618  
[margo.schlanger@gmail.com](mailto:margo.schlanger@gmail.com)

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

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

David B. Johnson (Ill. 6186478)  
Cooperating Attorney, ACLU Fund  
Of Michigan  
573 Hawksnest Drive  
(616) 302-5226  
[Notworking2012@gmail.com](mailto:Notworking2012@gmail.com)

*Attorneys for All Petitioners and Plaintiffs*

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

*Attorney for Petitioner/Plaintiff Usama Hamama*

Dated: May 13, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that on May 13, 2019, I electronically filed the foregoing papers with the Clerk of the Court using the ECF system which will send notification of such filing to all ECF filers of record.

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