

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

USAMA JAMIL HAMAMA,  
ATHEER FAWOZI ALI,  
ALI AL-DILAMI,  
HABIL NISSAN,  
JIHAN ASKER  
MOAYAD JALAL BARASH,  
SAMI ISMAEL AL-ISSAWI, on behalf  
of themselves and all those similarly  
situated,

Petitioners,

Civil No. 17-11910

v.

Honorable Mark A. Goldsmith  
Mag. Judge David R. Grand

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

Respondents.

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RESPONDENTS' CONSOLIDATED BRIEF IN OPPOSITION TO  
PETITIONERS' MOTION TO EXPEDITE BRIEFING SCHEDULE  
FOR PLAINTIFF/PETITIONERS' MOTION FOR PRELIMINARY  
INJUNCTION AND TO EXTEND ORDER STAYING REMOVAL  
(DKT. #50) AND PETITIONERS' MOTION TO EXPEDITE  
DISCOVERY OF CLASS MEMBER INFORMATION (DKT. #51)

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## **COUNTER-STATEMENT OF ISSUES PRESENTED**

1. Prior to a determination of whether this Court has subject-matter jurisdiction to hear Petitioners' claims, should this Court extend the Temporary Restraining Order until the Court rules on Petitioners' motion for preliminary injunction, which has not been filed?

2. Prior to a determination of whether this Court has subject-matter jurisdiction to hear Petitioners' claims, should this Court order expedited discovery for information regarding putative class members?

**MOST CONTROLLING AUTHORITY**

Fed. R. Civ. P. 1

*Arbaugh v. Y&H Corp.*, 546 U.S. 500 (2006)

*Am. Telecom Co. v. Republic of Lebanon*, 501 F.3d 534 (6th Cir. 2007)

## I. INTRODUCTION

This Court should not enter any additional orders before it determines whether it has subject-matter jurisdiction to hear any of Petitioners' claims. The Court entered the functional equivalent of a Temporary Restraining Order ("TRO") expressly for the purpose of determining whether it has jurisdiction to hear Petitioners' claims. Without allowing the Court time to make its determination, Petitioners request the Court enter orders setting briefing schedules and providing expedited discovery. Not only would those orders be nullified by the inevitable finding that the Court lacks subject-matter jurisdiction, but Petitioners do not identify any emergent basis that requires entry of such orders before the Court's determination of its jurisdiction which should be determined before the current TRO expires.. Pursuant to the Order currently in place, no members of the putative class may be removed. If the Court determines, as it must, that it lacks subject-matter jurisdiction, this action must be dismissed. Conversely, if the Court determines it has subject-matter jurisdiction, it can then enter orders as it deems appropriate. There is no interest served by prematurely entering orders before a determination of subject-matter jurisdiction and Petitioners' motions should be denied without prejudice.

## II. BACKGROUND

Respondents reallege and incorporate the background section set forth in their briefing regarding the TRO. (*See* Dkt. #17 and 38). On June 26, 2017, the Court entered an Order enjoining the removal of “all Iraqi nationals in the United States with final orders of removal, who have been, or will be, arrested and detained by ICE as a result of Iraq’s recent decision to issue travel documents to facilitate U.S. removal,” while it determines if it has subject-matter jurisdiction. (*See* Order Expanding Order Staying Removal, Dkt. #43, Pg ID 676.) On June 29, 2017, without waiting for a decision from the Court, Petitioners filed a motion to extend this Order until the Court rules on a yet-to-be-filed motion for preliminary injunction (Dkt. #50) and a motion for expedited discovery of the putative class members (Dkt. #51). Respondents oppose both motions.

## III. LAW AND ANALYSIS

### **A. Any orders on Petitioners’ motions are nullified if the Court determines it lacks subject-matter jurisdiction.**

Respondents contend that, Under 8 U.S.C. § 1252(g) Court lacks subject-matter jurisdiction, and the Court acknowledges that it may lack jurisdiction. (*See* Order Expanding Order Staying Removal , Dkt. #43, Pg ID 671, stating “[T]he Court grants a stay of execution of the final removal orders pertaining to the expanded class members until the Court can determine whether it has subject matter jurisdiction over any portion of Petitioners’ claims.”). Currently, the Court is set to

issue a decision regarding its subject-matter jurisdiction on or before July 10, 2017. (See Dkt. #43.) If the Court determines that it lacks subject-matter jurisdiction, any orders entered other than one dismissing the case are nullified. See *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (“when a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety.”); and *Am. Telecom Co. v. Republic of Lebanon*, 501 F.3d 534, 539 (6th Cir. 2007) (if federal district courts act beyond their jurisdictional authority “their judgments and orders are regarded as nullities”). Rather than consume time and resources on motions that may result in nullified orders, Respondents request the Court take the sensible step of denying without prejudice all of Petitioners’ pending motions, including setting a briefing schedule for a preliminary injunction motion, pending a decision on whether the Court has jurisdiction. See generally *Munaf v. Green*, 553 U.S. 674, 690 (2008) (stating that a Court cannot enter a preliminary injunction based on a question regarding jurisdiction.)

**B. Petitioners do not present any basis why expedited orders are required.**

Petitioners claim that, “the same grounds for the Court’s decision to enter the stay-of-removal order continue to exist” and justify extension of the Order until the Court rules on a motion for preliminary injunction. (Motion to Extend Order, Dkt. #50, Pg ID 728.) The grounds on which the Court entered an Order Staying Removal were the potential for removal of the detainees from the United States before the

Court could decide if it had jurisdiction. (*See* Order, Dkt. #43.) Those grounds no longer exist as there is an Order in place preventing removal while the Court makes its determination an issue which this court should readily resolve within 14 days give the plain lack of jurisdiction for district courts to halt removals. *Id*; *see* 8 U.S.C. 1252(g). If the Court determines it lacks jurisdiction, the action will be dismissed. *See Arbaugh*, 546 U.S. at 514. Conversely, if the Court determines it has jurisdiction, it can enter appropriate relief regarding Petitioners' removals upon a proper showing. There is no harm, much less irreparable harm, to Petitioners if they wait until this Court determines its jurisdiction on or before July 10, 2017, before it addresses briefing on a motion for preliminary injunction. Respondents on the contrary would be harmed if they are either forced to litigate motions or engage in discovery in a case that the Court will likely dismiss for lack of subject-matter jurisdiction.

Likewise, Petitioners present no reason why expedited discovery is necessary before the Court rules on its jurisdiction. Petitioners conceded at the hearing on their motion for a TRO that no discovery is necessary to establish the jurisdictional issue. (*See* 06-21-17 Transcript, Dkt. #31, Pg ID 491-92.) Rather, Petitioners seek extremely expedited discovery to support their "forthcoming motion for a preliminary injunction" on the merits and to, "effectively represent the putative class." (Motion for Expedited Discovery, Dkt. #51, Pg ID 749.) Petitioners request

discovery *responses* even before this Court rules on or before July 10, 2017, whether it has jurisdiction. *Id.* at Pg ID 749-50 (seeking discovery responses “Monday, July 5, 2017” and “Wednesday, July 10, 2017”).<sup>1</sup> Petitioners’ proposed requests seek detailed information about all Iraqi nationals with orders of removal nationwide, with weekly updates thereafter. *Id.* at 761-66.

This Court should decline to enter an order for any discovery at this point. First, Petitioners present no reason why discovery should be ordered on an emergent basis to support a motion based on the merits before this Court rules whether it has jurisdiction. It is axiomatic that if the Court concludes that it lacks jurisdiction, Petitioners are not entitled to discovery at all. Moreover, Respondents will be harmed by being forced to redirect staff from their normal duties to respond to extremely expedited and cumbersome discovery requests in a case that cannot proceed. But if the Court decides it has jurisdiction, it can then enter appropriate orders for discovery at that time.

Second, Petitioners’ discovery requests are overly broad and unduly burdensome. Petitioners represented to the Court that they seek a stay of removal while detainees file motions to reopen their removal proceedings before the immigration court or Board of Immigration Appeals. (*See* 06-21-17 Transcript, Dkt. #31, Pg ID 461-62, 464: “If you’re asking what we’re seeking overall in the case, we

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<sup>1</sup> Monday is July 3, 2017; Wednesday is July 5, 2017.

want enough time that due process is served and we're working very, very hard and many members of the legal community are working very, very hard to get these folks represented and get their motions filed..."; "So your best guesstimate then for motions to reopen for all the class members would be? If, if we had, umm, two months, six weeks or two months, we think that they could all get filed")); *see also* 06-26-17 Transcript, Dkt. #44, Pg ID 697-98): "[One theory that the petitioners advanced last week and I presume they're still advancing it is they want to have an opportunity for the detainees to present their arguments to the immigration courts and they would actually be satisfied with, with that..."). Respondents presented evidence that 79 of the Iraqi nationals detained in the jurisdiction of the Detroit Field Office (covering Michigan and Ohio) have already filed motions to reopen their removal proceedings. (*See* Dec., Dkt. #38-2.) Accordingly, those individuals have already received the relief requested and should be dismissed from this action. As they would not be covered by this purported class action, there is no reason to order expedited discovery on detainees who have already filed motions to reopen their removal proceedings to assert changed country conditions in Iraq. Further, upon information and belief, not all Iraqi nationals with final orders of removal intend or even wish to file motions to reopen. Finally, to the extent that Petitioners request information regarding non-detained Iraqis with final orders of removal, Petitioners have not even alleged that these individuals even belong in this class, as petitioners

have expressed concern only with individuals “who have been, or will be, arrested and detained by ICE. See order Expanding Order staying Removal, Dkt. #43 Pg ID 676. Nor have Petitioners made any allegations that non-detained Iraqis with Final Orders of Removal are subject to the “emergent” circumstances of removal that Petitioners allege form the basis of their claims before this Court.

Fed. R. Civ. P. 1 requires that all rules of civil procedure “be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.” Requiring Respondents to engage in further litigation in a case that must be dismissed for subject-matter jurisdiction (and for which a decision is presumably imminent) is both unnecessary and inefficient. Thus, this Court should deny Petitioners’ motions – or hold them in abeyance -- as Petitioners will not be harmed if they are required to re-file their requests only if the Court determines it has subject-matter jurisdiction.

#### **IV. CONCLUSION**

Because there is no harm to any party to wait until this Court determines whether it has jurisdiction before it sets a briefing schedule for a preliminary injunction motion and addresses any discovery, Respondents request the Court deny Petitioners’ pending motions (Dkt. #50 and 51).

Date: June 30, 2017

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 30, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Eastern District of Michigan by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: June 30, 2017

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