**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' MOTION FOR DISCOVERY**

Local Rule 7.1(a)(1) requires Petitioners/Plaintiffs (hereinafter Petitioners) to ascertain whether this motion is opposed. Petitioners' counsel Margo Schlanger communicated personally midday on Saturday, December 2, 2017, via email, with William Silvis, counsel for Respondents/Defendants (hereinafter Respondents), explaining the nature of the relief sought and seeking concurrence in the briefing schedule here proposed. Ms. Schlanger renewed the request on Sunday evening, December 3, this time including the precise discovery requested. No reply to either communication has been received.

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1. On November 22, 2017, the Court denied Petitioners' motion for discovery related to the detention issues raised in their Motion for Preliminary Injunction and Motion for Class Certification. Order on Discovery, ECF 153.

Respondents had opposed any discovery. The Court denied the discovery based, in part, on the Government's assertions that "it would be disclosing in its response to Petitioners' motion for preliminary injunction information that may be of utility to Petitioners to meet the Government's response" and "the Government's response …may supply information that would obviate the need for the significant effort that Petitioners seek the Government to undertake." *Id.* Pg.ID# 3936.

2. The Court, however, allowed Petitioners to seek discovery after receiving the Government's response:

> While Petitioners may have a justifiable concern that they would not be prepared to file a reply brief without additional information, that concern can be addressed by allowing additional time to take discovery and file a reply. . . . To protect Petitioners' interest in preparing a reply that fully addresses the Government's arguments, Petitioners may file a motion to extend the time to file a reply brief and to take discovery after the Government's response is filed.

*Id*.

3. Given the toll detention is taking on the detainees, Petitioners do not want to delay resolution of their motions by extending the reply date. That is particularly true given that Respondents included only one declaration in response to the extensive evidence provided by the Petitioners. Schultz Decl., ECF 158-2.

4. There is, however, one factual issue where more precision, while not, in Petitioners' view, strictly necessary, may be helpful to the Court, and where the relevant information should be easily available to the Respondents. That issue is

the identity and number of individuals in the proposed Mandatory Detention Subclass.

5. Respondents argue that the proposed Mandatory Detention Subclass does not meet the numerosity requirement of Federal Rule of Civil Procedure Rule 23(a)(1). *See* ECF 159 Pg.ID# 4163-64. The Government disputes that the subclass currently consists of nearly 59 members, stating that the record is "insufficient to establish numerosity at this stage of the litigation." *Id.* Pg.ID# 4164.

6. Petitioners' evidence of class size comes from the data received from the Government as part of its disclosures required under the Court's Order dated June 24, 2017. ECF 87 Pg.ID# 2356. There were, at the end of October, 59 detained individuals whose Motions to Reopen had been granted; Petitioners produced a sworn declaration explaining that "it appears that the vast majority are being detained without bond under 8 U.S.C. § 1226(c) (and are therefore members of the Mandatory Detention Subclass)." Schlanger Dec. ¶ 31, ECF 138-2 Pg.ID# 3409.

7. It is striking that Respondents did not provide the actual number of detainees held under 8 U.S.C. § 1226(c). In other words, the Government did not dispute the facts asserted by providing contradictory information, which if it exists is in its (and not Petitioners') possession, but rather merely suggests, erroneously, that Petitioners' information is insufficiently precise. Nor has the Government

disputed Petitioners' assertion that, as additional class members with final orders win their motions to reopen, ICE will hold them under the purported authority of 8 U.S.C. § 1226(c). Thus the number of detainees in the Mandatory Detention Subclass will swell over time.

8. Petitioners' initial Request for Production No. 6 (seeking, in part, notices informing putative class members that they were deemed subject to mandatory detention) would have been useful in establishing numerosity for the Mandatory Detention Subclass. ECF 130 Pg.ID# 3137-38. But an easier way to get more directly at the issue is to simply require Respondents to share names and A-numbers of each putative class member deemed by ICE currently or potentially subject to mandatory detention.

9. Accordingly, Petitioners now seek extremely limited discovery: **the identity (by name and A-number) of each currently detained Iraqi national who had a final order of removal as of March 1, 2017 who: (a) is currently subject to mandatory detention pursuant to ICE's interpretation of 8 U.S.C. § 1226(c), or (b) who, if his or her immigration case is reopened, *will be* subject to mandatory detention under ICE's interpretation of that same mandatory detention statute.**

10. Petitioners further request the Court order Respondents to provide any opposing briefing by 10 a.m. on December 5, 2017, and then order the production

of this information by noon on December 8, 2017. This is three and a half days prior to the December 12 due date for Petitioners' reply brief for the preliminary injunction and class action motions.

11. The Government will not be burdened by the quick turnaround requested. In order to argue that the number of detainees in the proposed Mandatory Detention Subclass is insufficient to establish numerosity, as the Government does, Respondents must have investigated who is currently in the subclass. They, therefore, should already be in possession of the requested information, and therefore require no additional efforts before producing it.

12. If Respondents claim they cannot provide the discovery by December 8, it amounts to an admission that insufficient investigation was undertaken prior to the statements in the Class Certification Response. Consequently, if Respondents object to producing this discovery, the Court could instead disregard the Government's numerosity arguments relating to the Mandatory Detention Subclass.

WHEREFORE, Petitioners respectfully request that the Court order the Government to respond to this motion Tuesday, December 5 by 10 a.m. Eastern, and to order production of the names and A-numbers of each currently detained Iraqi national who had a final order of removal as of March 1, 2017 who: (a) is currently subject to mandatory detention pursuant to ICE's interpretation of 8

U.S.C. § 1226(c), or (b) who, if his or her immigration case is reopened, *will be* subject to mandatory detention under ICE's interpretation of that same mandatory detention statute. In the alternative, if the Government claims it does not have this information available for production by December 8, the Court should disregard the Government's argument that the Mandatory Detention Subclass does not meet the numerosity requirement.

Respectfully submitted,

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

*/s/Kimberly L. Scott*
Kimberly L. Scott (P69706)
Wendolyn Wrosch Richards (P67776)
Cooperating Attorneys, 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

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

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

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

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

Lara Finkbeiner (NY Bar 5197165)
Mark Doss (NY Bar 5277462)
Mark Wasef (NY Bar 4813887)
INTERNATIONAL REFUGEE ASSISTANCE PROJECT
Urban Justice Center
40 Rector St., 9th Floor
New York, NY 10006
(646) 602-5600
lfinkbeiner@refugeerights.org

María Martínez Sánchez(NM Bar126375)
AMERICAN CIVIL LIBERTIES UNION OF NEW MEXICO
1410 Coal Ave. SW
Albuquerque, NM 87102
msanchez@aclu-nm.org

*Attorneys for All Petitioners and Plaintiffs*

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

*Attorney for Petitioner/Plaintiff Usama Hamama*

Dated: December 4, 2017

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**PETITIONERS/PLAINTIFFS' BRIEF IN SUPPORT OF ITS MOTION FOR DISCOVERY**

The basis for Petitioners' motion is fully explained therein. For the reasons set forth in the motion, Petitioners respectfully request that the Court order the Government to respond to this motion by Tuesday, December 5, by 10 a.m. Eastern, and to order the production by noon on Friday, December 8, of the names and A-numbers of each Iraqi national who:

> (a) is currently subject to mandatory detention pursuant to ICE's interpretation of 8 U.S.C. § 1226(c), or
>
> (b) who, if his or her immigration case is reopened, *will be* subject to mandatory detention under ICE's interpretation of that same mandatory detention statute.

In the alternative, if the Government claims it does not have this information available for production by December 8, the Court should disregard the

Government's arguments that the Mandatory Detention Subclass does not meet the numerosity requirement.

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Michael J. Steinberg (P43085)
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AMERICAN CIVIL LIBERTIES UNION FUND OF MICHIGAN
2966 Woodward Avenue
Detroit, Michigan 48201
(313) 578-6814
msteinberg@aclumich.org

*/s/Kimberly L. Scott*
Kimberly L. Scott (P69706)
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Cooperating Attorneys, ACLU Fund of Michigan
MILLER, CANFIELD, PADDOCK & STONE, PLC
101 N. Main St., 7th Fl., Ann Arbor, MI 48104(734) 668-7696
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125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2618
jrabinovitz@aclu.org

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

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

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

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

*Attorneys for All Petitioners and Plaintiffs*

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

*Attorney for Petitioner/Plaintiff Usama Hamama*

Dated: December 4, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that on December 4, 2017, 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., 7th Floor
Ann Arbor, MI 48104
(734) 668-7696
scott@millercanfield.com