UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LIA DEVITRI, et al. Petitioners/Plaintiffs, v. CHRIS M. CRONEN, et al. Respondents/Defendants.	Civil Action No. 17-cv-11842-PBS Leave to File Granted on December 22, 2017 [Dkt. No. 70]

PETITIONERS/PLAINTIFFS' REPLY IN FURTHER SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION AND TO EXTEND STAY OF REMOVAL

Absent the stay issued by this Court, dozens of Christian Indonesian nationals – many of whom have lived in the United States for decades and have U.S. citizen children and were encouraged by ICE to "come out of the shadows" for "humanitarian" reasons through an outreach program ICE itself designed for this particular population – face removal to Indonesia, where there is a great likelihood that they will face persecution or violence due to their faith. The only preliminary injunctive relief Petitioners/Plaintiffs ("Petitioners") seek is the unremarkable remedy of being allowed a reasonable opportunity to submit their colorable Motions to Reopen in a manner that does not extinguish their rights. Respondents/Defendants' ("Respondents") Opposition ("Opp.") largely ignores this Court's earlier ruling on its own jurisdiction, and, rather than trying to address the nature of the preliminary relief sought, instead tries to revisit the Court's jurisdictional ruling.[1]

[1] Respondents claim the Petitioners seek a mandatory preliminary injunction, and therefore a "heightened" standard for relief applies. Opp. at 6. Petitioners can meet that standard. But Respondents are wrong. The remedy sought is a traditional prohibitory injunction as the relief sought is a return to the "last uncontested status which preceded the pending controversy" – i.e., the time when removal was not imminent. *United Steelworkers of Am., AFL-CIO v. Textron, Inc.*, 836 F.2d 6, 10 (1st Cir. 1987).

I. The Court Has Already Correctly Ruled That It Has Jurisdiction.

Respondents' extensive argument concerning jurisdiction is misplaced, as those issues have already been decided by this Court's Order of November 27, 2017 [Dkt. No. 65] ("Order"), which held jurisdiction was proper "under both 28 U.S.C. § 2241 (habeas) and 28 U.S.C. § 1331 (federal question jurisdiction) to ensure that there are adequate and effective alternatives to habeas corpus relief in the circumstances of this case." Order at 11. Those issues, which were determined after full briefing and evidentiary hearing, should not be reargued in this motion.[2]

Moreover, Respondents offer no new arguments regarding jurisdiction in their brief. Respondents first repeat their arguments that 8 U.S.C. § 1252(g) bars judicial review over Petitioners' claims. But Respondents already raised this claim. Respondents' Brief on Jurisdiction [Dkt. No. 36] at 5-6, 8-9. Petitioners responded, arguing why it is best interpreted to not apply and why, if it applied, it is unconstitutional. Petitioners' Brief on Jurisdiction [Dkt. No. 49] at 12-13. The Court agreed with Petitioners' constitutional argument and held that if Section 1252(g) "prevented the Court from giving Petitioners an opportunity to raise their claims through fair and administrative procedures, the statute would violate the Suspension Clause." Order at 15.

Respondents additionally argue that Petitioners do not present a cognizable habeas claim because they do not "pursue release, but rather [seek] to halt their upcoming removal." Opp. at 15. This remarkable contention is demonstrably incorrect. As demonstrated by cases like *INS*

[2] Respondents also seek to again revisit already-decided issues through their Opposition by asserting their position that they should be allowed leave to file a motion to dismiss. Opp. at 16, n.9. Petitioners oppose such an effort as both untimely and as mooted by this Court's Order.

v. St. Cyr, 533 U.S. 289 (2001), habeas review has always included challenges to removal as well as physical detention.

Respondents, again, seek to distinguish this case from the Eastern District of Michigan's decision in *Hamama*, on the grounds that Petitioners are not detained and because their return to Indonesia was prevented not by the government of Indonesia but by the actions of the United States government. Opp. at 17-18. The detention of the petitioner class was only one of several factors considered by the district court in finding jurisdiction in *Hamama*, which included the time and difficulty in preparing and filing motions to reopen, the fact that removal was a sudden reversal of longstanding policy, the risk of harm after deportation, and the inadequacy of the administrative process in light of these factors together. *Hamama v Adducci*, 2:17-cv-11910, Opinion & Order Regarding Jurisdiction at 19-24 [Dkt. 64] (E.D. Mich. July 11, 2017) (hereinafter, "*Hamama I*"); *Hamama v Adducci*, 2:17-cv-11910, Opinion & Order Granting Petitioners' Motion for Preliminary Injunction at 8-11, 15-6 [Dkt. 77] (E.D. Mich. July 24, 2017) ("*Hamama II*"). Moreover, that the change in policy is the result of an abrupt and unexplained shift in domestic, and not international, policy is simply of no consequence.

Respondents also repeat their contention that the Suspension Clause is not violated here because the administrative motion to reopen and stay process is an adequate alternative to constitutionally guaranteed habeas review. Opp. at 10-17. But the Court has already addressed this contention as well, and concluded that although the Immigration Court's procedures "typically are an adequate and effective administrative alternative to habeas corpus relief," the "BIA's procedures for considering emergency stay requests will not apply to Petitioners." Order at 19. As discussed below, Petitioners have provided additional evidence to support that point.

In short, this Court has already properly concluded that it has jurisdiction to hear this matter and to order a stay. *Cf. Hamama I* (finding jurisdiction and entering stay before deciding how long stay should be in place). The remaining merits issue, only tangentially addressed by Respondents, is the amount of time the stay of removal should remain in place so Petitioners can meaningfully pursue their CAT and asylum claims through the motion to reopen process.

II. Plaintiffs Are Likely To Succeed On The Merits Question That A Continued Stay Is Necessary.

The stay should continue for the following periods:

a) The stay should remain in place until Petitioners have had an opportunity to seek a stay from the circuit in their individual cases, should their motions to reopen be administratively denied by the Board.[3]

b) Petitioners should have 90 days to file motions to reopen from the time they receive their A Files and record of proceedings; if they fail to do so, they lose the benefit of the stay.[4]

As an initial matter, the Suspension Clause dictates that Petitioners must be able to remain in the country to seek a stay from the court of appeals. Otherwise, an administrative agency could thwart the judicial review required by the Suspension Clause of Petitioners' individual CAT and asylum claims.[5]

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[3] This is the relief ordered in *Hamama*. *See Hamama II* at 33-34.

[4] The length of time for Petitioners to proceed through the administrative reopening process will be significantly shorter in this case than it might otherwise be were Petitioners beginning the process in the immigration court. Almost all of the Petitioners appealed their original removal orders to the Board of Immigration Appeals, vesting jurisdiction for their forthcoming Motions to Reopen with the Board. Only Petitioners Dantje Lumingkewas and Djeine Lumintang will be filing motions before the Boston Immigration Court.

[5] Respondents cite *Khan v. Att'y Gen.*, 691 F.3d 488, 491 (3d Cir. 2012), for the proposition that the court of appeals could issue a stay in an individual case even before the Board denies a motion to reopen. But in *Khan* the court of appeals issued the stay only after the

In addition to the Suspension Clause, the relief requested is required by due process, CAT[6], and the withholding and asylum statutes. ICE may not remove an alien to a country if the government determines that "the alien's life or freedom would be threatened in that country because of the alien's . . . religion." 8 U.S.C. § 1231(b)(3)(A). Order at 10. And "Congress codified the right to file a motion to reopen, 'transform[ing] the motion to reopen from a regulatory procedure to a statutory form of relief available to the alien.'" *Id.* (quoting *Dada v. Mukasey*, 554 U.S. 1, 14 (2008)).

A meaningful opportunity to pursue a motion to reopen for Petitioners in this case means doing so from inside the country given the grave dangers they face if removed, even if in other circumstances a motion to reopen from abroad might be sufficient. *See Perez-Santana v. Holder*, 731 F.3d 50 (1st Cir. 2013). As this Court previously noted, the adjudication of a motion to reopen based on changed country conditions could likely prove a pyrrhic exercise if an individual is already removed to a country where they would face persecution. Order at 12. *Cf. Hamama I* and *II* (holding that Suspension Clause and due process require Iraqis to have meaningful opportunity to pursue motions to reopen from inside the country, where petitioners face torture if removed and cannot realistically pursue motions from abroad).

Respondents do not seriously contest that Petitioners are entitled to a meaningful opportunity to pursue motions to reopen to raise their CAT and persecution claims. Instead,

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Board denied the motion to reopen. And notably, the government argued in that case that the court of appeals lacked jurisdiction to issue a stay prior to a ruling from the Board on the motion to reopen.

6 Respondents argue that CAT offers petitioners no rights here because it is not self-executing. But as the courts have recognized, CAT was executed by Congress with passage of the FARRA. The First Circuit has thus held that the CAT has been implemented in the United States through regulations and, by way of those regulations, "are now the positive law of the United States." *Saint Fort v. Ashcroft*, 329 F.3d 191, 202 (1st Cir. 2003). Respondents' argument is accordingly meritless.

Respondents assert that Petitioners have had a sufficient opportunity to pursue motions to reopen. But Respondents have not produced any new or additional evidence that, in the absence of a stay, the administrative system is adequate under the unique circumstances of this case. And Respondents' assertions are contradicted by the record here.

First, Respondents suggest that Petitioners should have pursued motions to reopen while they were under orders of supervision in the program. But this Court has already concluded that Petitioners did not act unreasonably in failing to anticipate Respondents' abrupt change in deciding to hurriedly remove them.

Second, Respondents note that only 5 Petitioners have thus far filed motions to reopen. Counsel for Petitioners have been working diligently to find individual attorneys to take on these cases, but Respondents have disobeyed this Court's October 27, 2017 Order to produce the A-Files [Dkt. No. 58], that would permit the pursuit of the available administrative remedies by individual attorneys.

A motion to reopen is a 'one-shot' motion that is decided on the papers, without oral argument, which is why the strength of the submission in the first instance will largely determine whether the motion will be granted. *See* Affidavit of Ilana Etkin Greenstein ¶¶ 11-12 (Exhibit C). *See also* Declaration of Ira J. Kurzban (author of leading immigration law treatise) at ¶¶ 11-15 (Exhibit D) (explaining steps and time needed to prepare an adequate motion to reopen). Extraordinary efforts have been made to provide *pro bono* representation to Petitioners, but without sufficient time to prepare the submissions credibly, the 'right' to file will be hollow. Greenstein Aff. ¶¶ 6-11 (Ex. C). This is because the Petitioners still lack the administrative records that they would need to review and properly prepare their cases. *Id.*, ¶¶ 13-14.

Reviewing the administrative record below is particularly important in changed country conditions cases: in order to understand what has 'changed' from the original decision, it is important to know what evidence was presented to the Immigration Court in the first instance. *See Marsadu v. Holder*, 748 F.3d 55, 58 (1st Cir. 2014) (observing that, for the purpose of a motion to reopen, changed country conditions are measured by the "evidence presented in the initial adjudication with newly proffered evidence"). And, in the absence of an administrative record, an attorney cannot understand the full range of relief that might be available to a Petitioner, and potential waiver is a real concern. *See id.*, ¶ 11 (Ex. C).

Nor can Petitioners simply submit boilerplate or "me too" motions simply because they are all Indonesians. The motions must be tailored to the individual circumstances of each Petitioner. *See* Declaration of Deborah Anker (Director of Harvard Law School Immigration and Refugee Clinical Program and author of leading asylum treatise) at ¶¶ 5-8, Exhibit A (noting that the Board requires that asylum and CAT motions be individualized and not based on generalized evidence); *Salim v. Lynch*, 831 F.3d 1133, 1138-1139 (9th Cir. 2016) (granting motion to reopen by Indonesian Christian based on changed circumstances because of voluminous evidence that petitioner faced danger, distinguishing the case from one where the motion to reopen was denied because the Indonesian Christian petitioner "submitted only a single third-party report and his own sworn declaration attesting to increased violence against Christians").

Seeking review of the administrative record is not an unreasonable request at this posture, especially because the Court ordered Respondents to produce files weeks ago. Respondents' refusal to comply with this Court's Order to produce the A-Files has resulted in a waste of time and resources by forcing each Petitioner to file individual FOIA requests. Nevertheless, Petitioners have now secured numerous attorneys who have begun those aspects

of case preparation that do not require the administrative record. Accordingly, Petitioners believe that the timeline set forth in *Hamama* for filing the motions to reopen – 90 days following the receipt of the administrative record – is a reasonable standard for adoption in this case.[7]

Third, Respondents argue that the stay practice before the Board is sufficient. The Board of Immigration Appeals Practice Manual states at § 6(d)(i) that "an emergency stay request may be submitted only when an alien is in physical custody and is facing imminent removal." Because Petitioners are not in physical custody, that mechanism is not available to them.[8] Petitioners are likely to succeed on their claims precisely because of the concern that this Court has already identified in its Order "that the BIA's procedures for considering emergency stay requests will not apply to Petitioners because they are not in physical custody." Order at 19. This concern has already been borne out in practical terms for some of these Petitioners. When Petitioners Heru Kurniawan and Deetje Patty filed Motions to Reopen before

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[7] This Court ordered access to the ROPs at the Boston Immigration Court on October 27, 2017 [Dkt. No. 58]. Notification of their partial assembly was confirmed to Petitioners on December 20, 2017, but access remains restricted to on-site review – no duplication or electronic transmittal is permitted, which results in this access being of very limited utility prior to receipt of the FOIA responses with the full A-Files. *See* Affidavit of J. William Piereson ¶¶ 4-5 (Exhibit G). Notably, it appears that Respondents had access to these A-File records before at least October 17, 2017, when they offered to this Court "Pertinent A-File Records" in response to this Court's September 27, 2017 Order. *See* Index of Exhibits in Support of Respondents' Notice of Production ¶¶ AA-XX [Dkt. No. 37-1].

[8] Respondents assert, without citing any authority or evidence, that "[e]mergency stay motions filed by non-detained individuals are evaluated on a case by case basis." Opp. at 15, n. 8. That assertion is belied by the Respondents' own evidence. Declaration of Christopher Gearin ¶ 9 [Dkt. No. 36-2] (confirming that the Board deems a stay request an emergency if, *inter alia*, "the alien is in the physical custody of the DHS."). The unavailability of this relief is further described in affidavits from experienced immigration counsel submitted on behalf of Petitioners, which show that emergency stays are unavailable where the applicant is not in physical custody. *See* Greenstein Aff. ¶¶ 17-18 (Ex. C); Affidavit of Enrique F. Mesa, Jr. ¶¶ 7-8 (Exhibit F); Affidavit of Saher Macarius ¶ 11 (Exhibit E).

the Board this fall, their concurrent motion to stay was ignored by the Board, presumably because they were deemed not to be in 'physical custody.' *See* Mesa Aff. ¶¶ 7-10 (Ex. F).

Other Petitioners have inquired to the Board and have similarly been advised that they would not be eligible to even submit emergency stay motions because they are not in 'physical custody'; they have been told that such motions by individuals not in physical custody of ICE or whose deportation is not "imminent" will not be considered or ruled upon. *See* Piereson Aff. ¶¶ 11-12 (Ex. G); *see also* Affidavit of R. Linus Chan ¶ 13 (Exhibit B) (discussing difficulty and uncertainty of meeting "imminent removal" requirement).

While 'non-emergency' stay motions exist, they provide no meaningful relief in circumstances here because, absent this Court's order, Petitioners could be ordered by ICE to leave the country at any time due to having volunteered for Operation Indonesian Surrender. The Petitioners seek a stay to be in effect until their motions to reopen are granted, and therefore filing a non-emergency stay motion — which the Board generally rules on simultaneously with the motion to reopen — is not an adequate option or remedy. *See* Greenstein Aff. ¶¶ 20-21 (Ex. C).

Moreover, the BIA's demonstrated failure to timely adjudicate stay motions before the removals are carried out (*see* Affidavit of Trina Realmuto ¶¶ 2–3 [Dkt. No. 49-5]) and its track record of summarily denying motions to stay without adequate consideration of the merits (*see* Chan Aff. ¶¶ 16-17 (Ex. B)) are especially problematic here, where the basis for the motion is changed country conditions: if the person is already removed to the country where the conditions will lead to their persecution, the harm has already occurred.

The BIA stay practice is simply not sufficiently protective in a situation like that of Petitioners, where their program and orders of supervision were abruptly terminated and they would face obvious and grave danger if removed. In short, without the A-Files and time to

prepare motions to reopen, the administrative process will remain illusory. Moreover, the stay must continue through the final administrative adjudication of the motion and a request for a stay in the circuit. The BIA stay process is both in design and in practice inadequate to protect Petitioners.

Finally, Respondents argue that there is no "plausible inference of prejudice" here. Opp. at 17. But because this Court is not being asked to review the individual CAT and asylum claims, the relevant inquiry is not whether Petitioners can show that each will ultimately prevail in their individual motions to reopen. Rather, it is whether Petitioners will be prejudiced by the failure to provide them with a meaningful opportunity to present their claims. See *Hamama II* (rejecting government's argument that to assess prejudice, the district court should examine the individual cases). The prejudice here is the denial of a meaningful opportunity to submit a motion to reopen.

Nor is there any question that Petitioners, as Indonesian Christians, have colorable claims to present in their motions to reopen. Petitioners have produced voluminous, unrefuted evidence that country conditions in Indonesia have changed so that Christians are subject to a greater risk of religious persecution. This evidence includes the affidavit of Professor Jeffrey A. Winters [Dkt. No. 49-6], sworn expert testimony which documents in painstaking detail, citing more than 100 sources, the demonstrable persecution, torture and other harms against Christians in Indonesia. *See, e.g., Salim*, 831 F.3d at 1138-1139 (9th Cir. 2016) (noting dangers Indonesian Christians face and finding that petitioner met the changed circumstances requirement).

III. The Remaining Preliminary Injunction Factors Concerning Harm And The Public Interest Strongly Favor Petitioners.

The final factor in evaluating the motion for preliminary injunction militates sharply in favor of Petitioners. After decades of peaceable residence and steady Christian worship,

Respondents have advanced no rationale for the need to remove these particular individuals on any specific timetable, and no harm that would result from Respondents allowing Petitioners to advance their claims that outweighs the risk of persecution and torture. The harm that Petitioners would face in being returned to a nation where anti-Christian persecution and violence is on the rise, is evident from the record.

CONCLUSION

For the foregoing reasons, the Petitioners ask this court to grant their Motion for Preliminary Injunction and extend the stay through the adjudication of their motions to reopen.

Respectfully Submitted,

PETITIONERS/PLAINTIFFS

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Date: January 5, 2018

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on January 5, 2018.

/s/ W. Daniel Deane

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LIA DEVITRI, et al., Petitioners/Plaintiffs, v. CHRIS M. CRONEN, et al., Respondents/Defendants.	Civil Action No.17-cv-11842-PBS

SWORN DECLARATION OF DEBORAH ANKER

I, Deborah Anker, under oath, depose and say as follows:

1. I am a Clinical Professor of Law at Harvard Law School and Founder and Director of the Harvard Law School Immigration and Refugee Clinical Program. In that capacity, I have supervisory responsibility for a staff of ten persons; I both supervise students working on asylum cases and represent persons seeking asylum in the United States. I have taught immigration, refugee and asylum law to students at Harvard Law School for over thirty years. I am the author of the well-known treatise "Law of Asylum in the United States," and I have published various articles and amicus briefs related to U.S. and international refugee law.
2. In addition to my scholarship, my supervisory responsibilities, and representation of asylum seekers, I stay apprised of developments in immigration and asylum law and in practice by regularly monitoring legal industry publications, published research reports, decisions of the Supreme Court of the United States, United States Courts of Appeal, the Board of Immigration Appeals, various decisions of immigration judges, administrative training and instructional materials, and relevant news sources. I am also a member of a wide variety of "listservs" and working groups wherein academics and practitioners share recent knowledge and experience.
3. I submit this affidavit to explain the steps an attorney must take to prepare an adequate motion to reopen where the applicant is seeking asylum, withholding of removal or Convention against Torture ("CAT") protection.
4. Where a person is in removal proceedings, he or she must file a motion to reopen with either the Immigration Court or the Board of Immigration Appeals, depending upon which body last had jurisdiction over the claim. The regulations

require "the appropriate application for relief and all supporting documentation" be included with the motion. 8 C.F.R. § 1003.2(c) (1). A person filing a motion to reopen in connection with a claim to asylum, withholding or torture protection based on changed country conditions therefore must prepare and file the underlying application for protection. The application and motion must be submitted with evidence showing that circumstances have changed since their last immigration hearing. *See* 8 U.S.C. § 1229a(c)(7)(B) ("The motion shall state the new facts that will be proven at a hearing to be held if the motion is granted, and shall be supported by the affidavits or other evidentiary material."). A person who previously filed such an application can file a motion to reopen based on changed country conditions.

5. The applicant must demonstrate not only changed country conditions, but also evidence of how those conditions create a particularized risk.

6. Preparing a motion to reopen requires an investigation of country conditions as they bear upon the individual circumstances of the applicant. It is not sufficient to offer evidence of changed or deteriorated country conditions in general, no matter how severe these changes may be. In all these forms of protection – asylum, withholding or CAT – a person must establish that he or she is at special risk.

7. For example, there may be country condition evidence of increased repression stemming from the government or the population against a given minority religious or ethnic or political group, or evidence of ineffectual state protection. However, except under extreme circumstances, this will not be sufficient to establish an individualized risk to the claimant. Rather, the applicant must show that, for example, his or her family, persons in his region or neighborhood, fellow members of a student group members of a local church, and/or another group with whom he is she is associated have been targeted, or harmed. The applicant may show that threats against him or her have been made, or authorities are aware of his or her relevant activities or associations, in the United States.

8. Adequate investigation and representation requires a lawyer to examine conditions in light of the individual's personal history and circumstances. Investigation of such particular circumstances requires careful and lengthy interviewing of the applicant to understand his or her relevant personal background and history both in the home country and United States, consultation with persons who know the applicant or knew him or her in the past, experts and relevant international or non-governmental organizations, etc. As noted, in some cases, activities of the applicant in the United States place him or her at greater and particularized risk.

9. This kind of preparation, identification and gathering of relevant evidence requires time. It requires the gathering of corroborating records and declarations from inside and outside the United States.

10. Adequate presentation also requires that a lawyer review the A-File. The A-

File will contain the record of evidence and pleadings from any prior removal proceedings. Because the changed country conditions motion necessarily focuses upon changes since the initial proceeding, the A-File provides the necessary baseline for comparison. It also may provide basic biographical information relevant to present risks.

11. In older cases, careful A-file review may be particularly important. For example, the applicant may previously have submitted corroborating material such as declarations or records of past harm or threats that are relevant to his or her current circumstances and vulnerability to persecution or torture. This material may not exist in another form or otherwise may be unknown or lost.

12. A-Files are in the custody of the United States Citizenship and Immigration Service (USCIS). Currently, a FOIA request for an A-File will take several weeks to months to produce. Older requests will be processed more slowly.

13. I estimate that after receiving A-File, it takes between six weeks to three months and sometimes considerably longer, to prepare and file a motion to reopen.

14. A lawyer cannot request a stay until the motion to reopen itself has been properly prepared and filed. The work done to investigate, prepare, and file a motion to reopen must precede the filing of the stay motion either with the Immigration Judge or the Board of Immigration Appeals. A stay motion will not be granted unless an individual makes a prima facie showing of having met the requirements for both the motion to reopen and the underlying protection sought.

Signed under the pains and penalties of perjury this 4th day of January, 2018.

Deborah Anker

Deborah Anker

EXHIBIT B

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

LIA DEVITRI, et al., Petitioners/Plaintiffs, v. CHRIS M. CRONEN, et al. Respondents.	Case No. 0:17-cv-11842-PBS

SWORN DECLARATION OF R LINUS CHAN

I, R Linus Chan, under oath, depose and say as follows:

1. I am a resident of Minnesota and make this declaration based upon my own knowledge. This declaration is made in support of Petitioners in the above-referenced matter. I have personal knowledge of the facts in this sworn declaration and am competent to testify to them.

2. I received my J.D. from Northwestern University School of Law, cum laude, in 2002. I have worked at the National Immigrant Justice Center as a Senior Staff Attorney at the Detention Project, as a staff attorney and adjunct instructor at the DePaul Asylum and Immigration Law Clinic, and finally as an associate professor of clinical law at the University of Minnesota School Of Law, James H. Binger Center for New Americans. I have been at my current position for the past 4 years.

3. I have worked exclusively as an immigration attorney since 2004 and my practice has focused on removal defense for those in immigration detention, which normally consists of representation in front of the Executive Office of Immigration Review Immigration Courts. This work includes appeals to the Board of Immigration Appeals.

4. During the course of my career I often meet people in immigration detention with final orders of removal whose only remedy from deportation would be to reopen their prior immigration proceedings.

5. I find these cases to often be difficult, time-consuming and fraught with difficulties.

6. On the logistical side these cases sometimes are dealing with proceedings that are very old, and where the documentation and factual recall of events may be missing or incomplete. Often people may be re-detained far from where the original proceeding occurred, which increases the difficulty in getting accurate documentation and information about a prior proceeding. For instance, a person may be detained in Minnesota facing imminent removal, but their removal proceeding may have occurred in Atlanta or California. In those instances, inquiries and filings must be made in the court of the original proceedings, and must be made by physical US mail as the immigration court system does not have electronic filing.

7. These cases often move extremely quickly as many people do not become aware of the imminent nature of their removal until they are detained, and often it becomes a scramble to both figure out when removal would occur and how much time an individual has to file the motion to reopen.

8. By statute and regulation, when a case is older than 90 days, the only means in which to reopen the case (other than based on an extraordinary *sua sponte* authority) would be to file a motion based on changed country conditions that give rise to persecution. These type of motions are incredibly fact-specific, and require copious research about the status of foreign countries. This can become more complicated when the country involved is not an English speaking one, and information may be more difficult to come by.

9. For this type of case time is of the utmost importance, as the filing of a Motion to Reopen does not stay removal. 8 C.F.R. 1003.2(f). This often requires juggling between considerations of making sure the record is as complete as possible to get a favorable decision on either the instant motion or a motion to stay removal, and making sure the filing is done in time to actually allow relief for the client.

10. The Board of Immigration Appeals has created their own stay system which is outlined in the Board of Immigration Appeals Practice Manual. This manual outlines the Board procedures for requesting stays of removal. Board of Appeals Practice Manual Chapter 6.4.

11. First, in order for the Board of Immigration Appeals to consider a stay request, there must be a pending Motion before the Board. This means that one must file the stay only after one completes the actual Motion to Reopen. Second, Motions to stay are automatically categorized into two types of motions, emergency and non-emergency.

12. In my experience a non-emergency stay, which is defined as a stay request where a person is not detained, or detained where removal is not "imminent" is rarely acted upon by the Board of Immigration Appeals.

13. In order to qualify as an "emergency stay" the Board requires that removal be "imminent." This requirement can be hard to meet as the individual ICE officers often do

not provide clear or even accurate assessments of removal. Officers often are either not sure of removal dates, or inform attorneys that such information is not allowed to be disclosed. The Board will at times ask for the contact information of the deportation officer, so that they may call them directly.

14. On several occasions during the course of using the emergency stay procedures, I have had individual deportation officers not be available to speak to the Board and the Board would be forced to try and reach another officer in the office. There is usually a frantic atmosphere of calling the emergency stay line (which is only staffed until 5pm EST) and calling ICE officers to make sure that they are receiving communications from the Board. On the handful of occasions where a stay was granted, there has been instances where ICE has had to pull the client from the bus or plane that was due to depart at the last minute.

15. I have filed several different stay motions based on motions to reopen to the Board of Immigration Appeals, and while I have received grants of emergency stays they are not usually based on changed country conditions, but rather on situations that involve the vacatur of criminal convictions.

16. In the context of stay motions for changed country conditions, I recently filed a request that I believe absolutely met the requirements for a motion to reopen. The Board denied the stay request in one line, the entirety of the decision only states, "After consideration of all information, the Board has concluded that there is little likelihood that the motion will be granted. Accordingly the request for a stay of removal is denied."

17. It is my opinion that the stay procedures in place at the Board do not adequately prevent erroneous deportations, as the Board only considers "emergency" stays with imminent removals where information about actual departures can be difficult to obtain. Moreover, because the stay decisions are only considered and made once departure is "imminent" there is not adequate consideration of the merits of the decision.

Signed under the pains and penalties of perjury on 4th day of January 2018.

Linus Chan

EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LIA DEVITRI, et al., Petitioners/Plaintiffs, v. CHRIS M. CRONEN, et al., Respondents/Defendants.	Civil Action No.17-cv-11842-PBS

AFFIDAVIT OF ILANA ETKIN GREENSTEIN, ESQ.

I, Ilana Etkin Greenstein, under oath, depose and say as follows:

1. I am an adult resident of Massachusetts and make this affidavit based upon my own knowledge. This Affidavit is made in support of Petitioners/Plaintiffs in the above-referenced matter. I have personal knowledge of the facts in this Affidavit, and would be competent to testify thereto.
2. I am an experience immigration law practitioner, and have served as an attorney in Boston for close to two decades. I have handled proceeding before the Boston Immigration Court, the Board of Immigration Appeals, U.S. District Court and the U.S. Court of Appeals for the First, Second and Eleventh Circuits. In addition to handling immigration cases of all kinds, I have routinely served as a mentor to *pro bono* attorneys who seek to represent indigent individuals through law firms or other voluntary programs.
3. I have filed well over a hundred motions to reopen during the course of my career, including dozens based on changed country conditions, and have, in certain circumstances, also filed motions to stay removal pending adjudication of those motions to reopen both before Immigration Court and the Board of Immigration Appeals.

4. In September 2017, I began serving as Senior Technical Assistance Attorney at the Immigration Justice Campaign, a joint initiative of the American Immigration Council (AIC) and the American Immigration Lawyers Association (AILA). AILA is the largest nationwide association of immigration attorneys in the United States, and it serves as a professional organization for practitioners, and as a liaison with federal immigration authorities such as the Department of Homeland Security and the Department of Justice, as an advocacy group for immigration policy issues, and as a technical support and assistance organization for those involved in the immigration system. It works closely with other major immigration law groups, including the American Immigration Council (AIC) and the American Civil Liberties Union's Immigrants' Rights Project (ACLU).
5. AILA and the AIC became aware of the Operation Indonesian Surrender and the government's unfair policy of attempting to remove individuals prior to their ability to file their colorable motions to reopen during the course of the present litigation.
6. Once this Court stayed Petitioners/Plaintiffs' removals, AILA, along with AIC and the ACLU, committed substantial resources to helping the Petitioners/Plaintiffs find counsel to be effectively represented. AILA made this commitment because it recognizes that it is a vital to public policy for individuals to both be granted the time to file motions to reopen, and for those motions to be effectively advanced before the immigration courts.
7. I have now been involved with screening each of the Petitioners/Plaintiffs' underlying cases, and, based on my extensive experience in immigration law, my review of the country conditions described in the Affidavit of Prof. Jeffrey Winter and other sources, I believe that the Petitioners/Plaintiffs have viable claims to reopen their immigration cases based on the changed conditions in Indonesia, and that if properly prepared, those motions will provide Petitioners/Plaintiffs with a viable avenue of relief from removal.

8. One week after the evidentiary hearing in this matter, AIC organized a training session for motions to reopen, and solicited from help including the AILA's New England Chapter, the New Hampshire Bar Association, the Association of Pro Bono Counsel, the ACLU's Immigrants' Rights Project network; those calls for help resulted in nearly 100 individuals participating in overview sessions.
9. However, after describing the amount of work required to prepare a reasonably strong motion to reopen, approximately 30 attorneys agreed to take cases.
10. Those attorneys then were invited to screening sessions held in Boston and New Hampshire, and representation for Petitioners/Plaintiffs was facilitated.
11. As part of the training and mentoring I have been performing, I have advised *pro bono* counsel that filing a motion to reopen without having reviewed the underlying administrative record should only be done if absolutely necessary to preserve a client's rights. Reviewing the administrative record below is particularly important in changed country conditions cases: in order to understand what has 'changed' from the original decision, it is important to know what evidence was presented to the Immigration Court in the first instance. Most crucially, in the absence of the record an attorney cannot fully understand the full range of relief that might be available to petitioner, and potential waiver is a real concern.
12. Additionally, a motion to reopen is a 'one-shot' motion that is decided on the papers, without oral argument or opportunity for supplementation, which is why strength of the submission in the first instance will largely determine whether the motion will be granted.
13. As I understand it, all of the clients who are participating in the mentoring program submitted Freedom of Information Act (FOIA) requests requesting copies of their "A

files" shortly after the evidentiary hearing. To the best of my knowledge, DHS has not produced any of the documents requested in the FOIA requests.

14. I also understand that this Court ordered DHS to produce and serve copies of the A files upon the Petitioners/Plaintiffs in October. To the best of my knowledge, DHS has not complied with that order.

15. Moreover, due to the age of the cases, with the original asylum cases generally heard in the late 1990s and early 2000s, contacting prior counsel to obtain copies of the case files has proven largely fruitless.

16. Additionally, while I understand that Executive Office for Immigration Review's Records of Proceedings for some (though not all) of the Petitioners/Plaintiffs have been assembled at the Boston Immigration Court, access is only by appointment and the records cannot be replicated in any way, which has proven very cumbersome. For example, it is impossible for *pro bono* counsel to photocopy or otherwise record any documents for future reference. This means that it is impossible for them to reference documents while consulting with clients. This makes working with the record very laborious, time-consuming, and ineffective. In short, having the option to review the Record of Proceedings is not a substitute for having a copy of the A file which counsel can have on hand for reference throughout the course of his/her representation.

17. Nearly all of Petitioners/Plaintiffs in this action would be filing their motions to reopen before the Board of Immigration Appeals. I have reviewed the Declaration of Christopher Gearin of the Board of Immigration Appeals' "Emergency Stay Unit", which confirms that, pursuant to BIA Practice Manual at § 6(d)(i) "an emergency stay request may be submitted only when an alien is in physical custody and is facing imminent removal."

18. Because Petitioners/Plaintiffs are not in physical custody, that mechanism is not available to them.
19. The BIA Practice Manual at § 6(d)(ii) references a "non-emergency" stay, but non-emergency stays are not effective in this circumstances because, absent this Court's order, Petitioners could be ordered by ICE to leave the country at any time, but they would not be deemed to be "in physical custody" for "emergency motion" purposes. In my experience, when the BIA deems a motion a "non-emergency," it adjudicates it in conjunction with the underlying claim. The Board, in other words, adjudicates the motion for a stay at the same time that it adjudicates the motion to reopen, essentially rendering the stay request moot.
20. As such, this Court's injunction is the only way to protect these Petitioners/Plaintiffs from imminent removal to Indonesia where the country conditions are extremely hostile to Christians and could put them in danger of persecution, torture, or death.

Signed under the pains and penalties of perjury this 5th day of January, 2018.

/s/ Ilana Etkin Greenstein, Esq.
Ilana Etkin Greenstein, Esq.

EXHIBIT D

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LIA DEVITRI, et al., Petitioners/Plaintiffs, v. CHRIS M. CRONEN, et al., Respondents/Defendants.	Civil Action No.17-cv-11842-PBS

SWORN DECLARATION OF IRA J. KURZBAN

I, Ira J. Kurzban, under oath, depose and say as follows:

1. I am a resident of Florida and make this sworn declaration based upon my own knowledge. This declaration is made in support of Petitioners in the above-referenced matter. I have personal knowledge of the facts in this sworn declaration and am competent to testify to them.

2. I received J.D. and M.A. Degrees from the University of California, Berkeley and a B.A. with honors from Syracuse University, graduating Phi Beta Kappa. I am an honorary fellow of the University of Pennsylvania School of Law. I have also received the Wasserstein Fellowship at Harvard University Law School.

3. I have been a partner in the law firm of Kurzban, Kurzban, Weinger, Tetzeli, & Pratt P.A. of Miami, Florida for over four decades and I am chair of the firm's immigration department.

4. I am a past-national President and former General Counsel of the American Immigration Lawyers Association. I am also a Fellow of the American Bar Association. I have been named by the National Law Journal as one of the top twenty immigration lawyers in the United States. I have been listed for over thirty years in the Best Lawyers in America for my work in immigration and employment law, and, Lawdragon has listed me as one of the top 500 lawyers in the United States. I also have received the Lawyers of the Americas Award for my work on behalf of human rights in this hemisphere given by the University of Miami, the Jack Wasserman Award for excellence in federal litigation, the Edith Lowenstein Memorial Award for excellence in the advancement of immigration law given by the American Immigration Lawyers Association, and the Carol King Award for my efforts in immigration law given by the National Lawyers Guild. In 1986, I was selected by Newsweek Magazine in their commemorative issue on the hundredth anniversary of the Statue of Liberty as one of 100 American heroes for my work on behalf of immigrants.

5. I was also selected by Esquire Magazine as part of America's New Leadership Class. I have been named to Who's Who in America, Who's Who in American Law and Who's Who in the World. I was also named as one of the world's twenty-three most highly regarded corporate immigration lawyers in the International Who's Who of Corporate Immigration Lawyers. Both myself individually and my firm have been listed in Chambers as first-tier lawyers in immigration law since 2010.

6. I have litigated over fifty federal cases concerning the rights of aliens including *Jean* v. *Nelson*, *Commissioner* v. *Jean*, and *McNary* v. *Haitian Refugee Center, Inc.* which I argued before the United States Supreme Court. I have also litigated numerous cases under the Alien Tort Claims Act and the Torture Victim Protection Act, including one that resulted in a $500-million judgment against Jean-Claude Duvalier, the former dictator Haiti.

7. In my immigration practice of almost forty years, I have litigated hundreds of cases before the immigration courts in the United States. I have represented hundreds of asylum applicants and other applicants seeking relief in the immigration courts. During my career, I have filed thousands of motions before the immigration court including motions to reopen, motions to reconsider, motions to suppress evidence, motions to change venue and other motions pertinent to the defense of a respondent in a removal proceeding, including a motion to reopen due to changed country conditions.

8. As a result of my work in immigration court and before the federal courts on behalf of refugees, I was the first recipient of the Tobias Simon Pro Bono Award presented by the Chief Justice of the Florida Supreme Court. I was also one of the founders of the Berkeley Law Foundation, a non-profit organization providing scholarships for law students and law graduates engaged in significant legal assistance programs throughout the United States. I was also one of the founders of Immigrants' List, the first pro-immigrant political action committee in the United States.

9. I am an adjunct faculty member in Immigration and Nationality Law at the University of Miami School of Law and have lectured and published extensively in the field of immigration law, including articles in the Harvard Law Review, San Diego Law Review.

10. I am the author of *Kurzban's Immigration Law Sourcebook*, the most widely used one-volume immigration source in the United States that has been cited authoritatively by numerous Federal Circuit Courts of Appeals, the Board of Immigration Appeals and state Supreme Courts.

11. I make this affidavit to explain the legal work that is required to prepare an adequate Motion to Reopen in an immigration case and to explain why the current system for seeking and obtaining an emergency stay of removal from an immigration judge (IJ) or the Board of Immigration Appeals (BIA or Board) is neither reliable nor effective to ensure that Petitioners' stay motions will be heard and adjudicated while a Motion to Reopen is pending.

12. Petitioners are the subjects of final removal orders but argue that they are now eligible for immigration relief based on changed circumstances. In this situation, the proper means by which to raise their claims before the agency is to file a Motion to Reopen with either the immigration court or the BIA, depending on the procedural history of the case. Under the regulations, it is not possible to file a bare bones motion to reopen. To the contrary, the regulations require that a motion to reopen include "the appropriate application for relief and all supporting documentation." 8 C.F.R. § 1003.2(c)(1). In the cases of Petitioners, this means preparing and filing an application for asylum, withholding, or the Convention Against Torture, unless one has already been filed, and all evidence showing that circumstances have changed since their last immigration hearing. It is not enough to assert changed circumstances, the circumstances must be established through evidence, which takes time to gather and assemble. *See generally* 8 U.S.C. § 1229a(c)(7)(B); 8 C.F.R. § 1003.2(c)(1). And the burden is upon the applicant to show not merely changed circumstances but significant changed circumstances in the country of persecution that would affect the applicant's case in a way that is different than his previous application.

13. Investigating and preparing the Petitioners' Motions to reopen will be time-consuming. Most were unrepresented in their removal proceedings. In many of the cases, counsel filing a Motion to Reopen based on changed circumstances will be making their first appearance on the clients' behalf. An immigration attorney who did not represent the noncitizen in the removal proceeding must obtain the complete record of prior proceedings and any new and previously unavailable evidence, all of which are necessary to permit a full assessment of a claim.

14. To adequately assess the existing record in each case, new counsel will need to obtain both the written and court hearing audio files concerning the individual's case. This includes both the A-File (the comprehensive file of a person's immigration history kept by the Department of Homeland Security) and the Record of Proceedings (the immigration court file kept by the Executive Office for Immigration Review (EOIR), which consists of the immigration courts and the BIA). The A-File is accessed by a Freedom of Information Act (FOIA), 5 U.S.C. § 552, request to the U.S. Citizenship and Immigration Service (USCIS). If a person has had any interaction with U.S. Customs and Border Protection (CBP), it is additionally advisable to file a FOIA request with CBP to obtain records from that agency's file. The Record of Proceedings is accessed by a FOIA request to EOIR. At present, USCIS has a backlog of over 35,000 FOIA requests and generally takes *several months* to produce an A-file. In my experience, EOIR requests can take several weeks to months. Records that are older can take longer than others.

15. Researching and collecting substantial new evidence to support a Motion to Reopen, particularly evidence to support a motion based on changed country conditions, can take significant time and effort both by the attorney and by the noncitizen and/or his or her family. The reopening statute requires that motions "shall be supported by affidavits or other evidentiary material." 8 U.S.C. § 1229a(c)(7)(B). The implementing regulations further mandate that the evidence is "material and was not available and could not have been discovered or presented at the former hearing," as well as either evidence that the

immigration judge did not "fully explain[]" the opportunity to apply for relief at the prior hearing or evidence that relief is now available due to "circumstances that have arisen subsequent to the hearing." 8 C.F.R. § 1003.2(c)(1).

16. Petitioners face imminent removal. To obtain relief from the agency to prevent their removal, they each must seek an emergency stay. But the BIA will not consider a motion for a discretionary or emergency stay unless it is accompanied by an appeal, a Motion to Reopen, or a Motion to Reconsider. It is thus not possible to file with the agency a motion for a stay of removal without also filing the motion to reopen, together with all the supporting documentation for the motion to reopen (as detailed above).

17. The filing of an emergency stay motion does not require ICE to halt a deportation. Instead, either an IJ or the BIA actually must actually grant the stay motion before ICE has a legal obligation to halt a deportation. No legal standard requires that the IJ or the BIA rule on a stay before a person is deported.

18. Attorneys seeking emergency stays of removal from immigration judges face some of the same procedural obstacles as those faced by attorneys seeking emergency stays before the BIA. These include delays in receipt of the stay motion and reluctance to rule on a stay motion until the IJ is satisfied that deportation is imminent. In addition, where a person seeks an emergency stay from an immigration court in conjunction with a motion, the timing for adjudication of the stay motion is entirely dependent on the schedule of that particular immigration judge (as opposed to any number of BIA judges who might adjudicate the stay motion). For example, if a stay motion is filed at 9:00am and deportation is scheduled for 10:00am, the immigration judge may be conducting a hearing in court and, therefore, unaware, unable, or perhaps unwilling to timely adjudicate the emergency stay motion prior to the deportation.

19. Securing an emergency stay before the BIA or immigration judge is challenging and time-consuming even for experienced immigration attorneys. Securing an emergency stay without counsel is nearly impossible. Without competent counsel to advise of the possibility of filing an emergency stay motion in conjunction with a Motion to Reopen, most pro se noncitizens will be unaware of this procedure. Even if they were aware, they must articulate legal arguments and produce new and compelling evidence. These individuals may have little or no formal education and/or face a language barrier that makes this task even more daunting.

20. In short, neither the immigration courts nor the BIA have reliable or sufficient procedures to ensure individualized assessment of the appropriateness of an emergency stay that would provide an opportunity for reasoned decision-making about whether individuals who have filed Motions to Reopen should or should not face removal while those motions are pending.

Signed under the pains and penalties of perjury this 2nd day of January, 2018.

IRA J. KURZBAN

EXHIBIT E

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LIA DEVITRI, et al., Petitioners/Plaintiffs, v. CHRIS M. CRONEN, et al., Respondents/Defendants.	Civil Action No.17-cv-11842-PBS

AFFIDAVIT OF SAHER MACARIUS, ESQ.

I, Saher Macarius, under oath, depose and say as follows:

1. I am an adult resident of Massachusetts and make this affidavit based upon my own knowledge. This Affidavit is made in support of Petitioners/Plaintiffs in the above-referenced matter. I have personal knowledge of the facts in this Affidavit, and would be competent to testify thereto.
2. I am an experienced immigration law practitioner and owner of The Law Offices of Saher Joseph Macarius, LLC in Framingham, Massachusetts. I have served as an immigration attorney for decades. I have handled proceedings before the Boston Immigration Court, the Board of Immigration Appeals, the U.S. District Courts, and the U.S. Court of Appeals for the First Circuit, including dozens of motions to reopen and motions to stay pending adjudication over the course my career. My office was involved in landmark immigration cases which changed immigration law throughout the country such as *Succar v. Ashcroft* (1st Cir. 2005) and *Chedad v. Mukasey* (1st Cir. 2008).
3. I am retained counsel to Petitioners/Plaintiffs Kujono Gunardi and Lenny Sutanto.
4. Gunardi and Sutanto were participants in Operation Indonesian Surrender.

5. During their time in the program, Gunardi and Sutanto carefully abided by the terms of their Orders of Supervision (OSUPs), including making reports to ICE as requested.
6. This office filed repeated Form I-246 (Application for Extension of Stay) with ICE on their behalf, and these were routinely granted; ICE was familiar with my clients due their frequent check-ins.
7. Nothing substantive changed about my client's conduct or status, but unexpectedly, on August 22, 2017, my clients' application of extension of stay was denied; this was surprising because they had abided by the terms of the OSUPs for years.
8. The denial of that stay does not necessarily indicate that physical removal is imminent; I have many clients who have remained in the United States after denial of I-246 Applications.
9. During the following weeks, despite my office's best efforts at advocacy, ICE refused to extend the OSUP and in August 2017, demanded that Gunardi and Sutanto return to ICE in 30 days with tickets to Indonesia 30 days thereafter, essentially demanding that they self-deport as a condition of the OSUP.
10. In September 2017, I filed a motion to reopen before the Board of Immigration Appeals on grounds including changed country conditions. I was able to do this because our office had retained a version of these clients' A-Files from earlier in our representation of them, and therefore we were prepared to file on their behalf.
11. I did not file an emergency motion to stay their deportation because it is both the stated practice of the Board pursuant to BIA Practice Manual at § 6(d)(i), and my considerable experience that the Board will not consider motions to stay if the individual is not in physical custody of ICE.

12. It is my understanding that the only reason my clients were not removed in October 2017 was the order of this Court.
13. For this reason, I believe that if this court dissolves its stay, even if all Petitioners/Plaintiffs will have filed Motions to Reopen, they will remain at risk of immediate removal prior to any action of the Board. This could be devastating, and could subject Petitioners/Plaintiffs, including my clients, to removal to Indonesia where the country conditions are extremely hostile to Christians and could put them in danger of persecution, torture, or death.

Signed under the pains and penalties of perjury this 3rd day of January, 2018.

/s/ *Saher Macarius*

Saher Macarius, Esq.

EXHIBIT F

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LIA DEVITRI, et al., Petitioners/Plaintiffs, v. CHRIS M. CRONEN, et al., Respondents/Defendants.	Civil Action No.17-cv-11842-PBS

AFFIDAVIT OF ENRIQUE F. MESA, JR., ESQ.

I, Enrique F. Mesa, Jr., under oath, depose and say as follows:

1. I am an adult resident of New Hampshire and make this affidavit based upon my own knowledge. This Affidavit is made in support of Petitioners/Plaintiffs in the above-referenced matter. I have personal knowledge of the facts in this Affidavit, and would be competent to testify thereto.
2. I am an experienced immigration law practitioner and name partner at Mesa Law LLC in Manchester, New Hampshire. I have served as an immigration attorney for decades. I have handled proceedings before the Boston Immigration Court, the Board of Immigration Appeals, the U.S. District Courts, and the U.S. Court of Appeals for the First Circuit, including dozens of motions to reopen and motions to stay pending adjudication over the course my career.
3. I am retained counsel to Petitioners/Plaintiffs to Heru Kurniawan and Deetje Patty.
4. Kurniawan and Patty were participants in Operation Indonesian Surrender. Unlike many other program participants, at the time that the program was discontinued in August

2017, Kurniawan and Patty had already been preparing applications for immigration relief and had obtained their administrative file.

5. As a result, at around the time that the Complaint was filed in this action, Kurniawan and Patty filed their motion to reopen before the Board of Immigration Appeals; they did so because they had a U.S. citizen child who had reached age 21 and was able to petition for legal permanent resident status on their behalf; to my knowledge, no other remaining Petitioners/Plaintiffs have U.S. citizen children old enough to support their adjustment application.
6. ICE refused to extend the Order of Supervision (OSUP) and continued to demand that Kurniawan and Patty purchase plane tickets, essentially demanding that they self-deport as a condition of the OSUP.
7. As a result, in September 2017, I filed a motion to reopen along with a motion to stay removal pending adjudication before the Board of Immigration Appeals.On December 20, 2017, the Board denied the motion to reopen, but did not issue any ruling on the concurrently-filed stay motion.
8. Based on my experience and understanding, this is because the Board will not consider motions to stay if the individual is not in physical custody pursuant to BIA Practice Manual at § 6(d)(i).
9. It is my understanding that the only reason my clients were not removed in October 2017 was the order of this Court.
10. Now, in January 2018, since the Board issued a denial of the motion to reopen, but ignored the motion to stay, Kurniawan and Patty remain subject to the conditions of their OSUPs.

11. For this reason, I believe that if this court dissolves its stay, even if all Petitioners/Plaintiffs will have filed Motions to Reopen, they will remain at risk of immediate removal prior to any action of the Board. This could be devastating, and could subject Petitioners/Plaintiffs, including my clients, to removal to Indonesia where the country conditions are extremely hostile to Christians and could put them in danger of persecution, torture, or death.

Signed under the pains and penalties of perjury this 03 day of January, 2018.

/s/

Enrique F. Mesa, Jr., Esq.

EXHIBIT G

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LIA DEVITRI, et al., Petitioners/Plaintiffs, v. CHRIS M. CRONEN, et al., Respondents/Defendants.	Civil Action No.17-cv-11842-PBS

AFFIDAVIT OF JAMES WILLIAM PIERESON, ESQ.

I, James William Piereson, under oath, depose and say as follows:

1. I am an adult resident of Massachusetts and make this affidavit based upon my own knowledge. This Affidavit is made in support of Petitioners/Plaintiffs in the above-referenced matter. I have personal knowledge of the facts in this Affidavit, and would be competent to testify thereto.
2. I am an attorney at Ropes & Gray LLP in Boston. I, along with my colleague Peter P. Holman, Jr., responded to the request for *pro bono* assistance to aid certain of the members of the class of Petitioners/Plaintiffs in light of this Court's temporary stay, and have, in association with that effort, been working to prepare a Motion to Reopen on behalf of my clients Franky and Sandra Massie. Both of my clients are Christian Indonesians living in the United States who fear removal to Indonesia because of the country's rising levels of intolerance of and violence targeting Christians, which they fear could put them in danger of persecution.
3. I have benefited from support services provided by the American Immigration Council in the efforts to prepare that filing, but remain disadvantaged by the difficulty of

obtaining documents relating to prior proceedings and having the opportunity to meaningfully review and keep said documents.

4. While this Court ordered the production of A-Files as part of this litigation in October, I have never received any such records for my clients. This has negatively impacted my ability to meaningfully represent them.
5. I understand that Records of Proceedings for my clients and other members of the class of Plaintiffs/Petitioners have been assembled at the Boston Immigration Court, but access is by appointment only and the records cannot be replicated in any way. For example, it is impermissible to photocopy or otherwise record any documents for future reference. This means that it is impossible for legal counsel to refer to a document while consulting their clients. This also unfairly impedes the full representation of the members of the class of Plaintiffs/Petitioners.
6. I understand that a Motion to Reopen is a "one-shot" filing, and the motion is decided without oral argument or opportunity for supplementation. Filing an incomplete motion that does not contain the forms of relief available to the Plaintiffs/Petitioners, a full procedural history of the case, or the necessary affidavits and evidence could very well result in the denial of the Motion to Reopen, and effectively result in their deportation.
7. I have reviewed Chapter 6.4 of the Board of Immigrations Appeal Practice Manual, which covers the Procedure for Requesting a Discretionary Stay.
8. The Board of Immigrations Appeal Practice Manual (at Chapter 6.4(d)(i)) states that "an emergency stay request may be submitted only when an alien is in physical custody and is facing imminent removal."

9. Because my clients—and, as I understand it, the remainder of the members of the class of Plaintiffs/Petitioners—are not in physical custody, my understanding is that this mechanism is not available to them.
10. The BIA Practice Manual also notes at Chapter 6.4(d)(ii) that a "non-emergency" stay is available, but my understanding from practitioners is that non-emergency stays are not effective in this circumstance because, absent this Court's order, my clients could be ordered by ICE to leave the country at any time, but would not be deemed to be "in physical custody" for "emergency motion" purposes.
11. I called the Board of Immigration Appeals on January 4, 2018, to inquire as to whether the Board would consider a motion to stay their deportation if filed along with the Motion to Reopen. I was advised by the Clerk's Office that the Board would accept, but would not consider or make a ruling on, such a motion to stay their removals if they are not currently in physical custody or if deportation is not imminent.
12. Because the plain terms of the Board of Immigrations Appeal Practice Manual state that such relief does not apply to the members of the class of Plaintiffs/Petitioners, and the Clerk's Office has confirmed that no such motion would considered, I believe this Court's injunction is crucial to prevent my clients and other members of the class of Plaintiffs/Petitioners from being removed to Indonesia where the country conditions are extremely hostile to Christians and could put them in danger of persecution, torture, or death.

Signed under the pains and penalties of perjury this fifth day of January, 2018.

/s/ James William Piereson