

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**USAMA J. HAMAMA**, et al.,  
Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, et al.,  
Respondents and Defendants.

Case No. 17-cv-11910

Hon. Mark A. Goldsmith  
Mag. David R. Grand

Class Action

**ORDER REGARDING FURTHER PROCEEDINGS**

On March 7, 2018, the Court conducted a status conference to consider Petitioners' Motion for Additional Disclosure (ECF 225), Motion for Relief on Issues Related to Implementation of Detention Orders (ECF 227), and Emergency Motion for a Stay of Removal with Respect to Aalan Kamal (ECF 212).

This Court also previously instructed Petitioners and Respondents to engage in a series of meet-and-confers regarding Petitioners' discovery requests. On February 16, 2018, Petitioners and Respondents submitted to this Court a Joint Statement of Issues ("JSI") setting forth their agreement and respective positions on a number of items related to discovery, as well as several items related to this Court's previous orders on detention and production of A-Files and Records of Proceedings (ROPs).

This Order documents the agreements reached by the parties during the status conference and the Court's decision where the parties were unable to reach

agreement.

**A-File and ROP Production**

1. If Respondents are unable to produce a newly detained class member's A-File and ROP to that detainee's immigration counsel or, if the individual is unrepresented, to the detainee (or designee), within five weeks of the class member's detention by ICE, *see* ECF 110 Pg.ID# 2816-17, Respondents shall provide notice to Petitioners' counsel of the class member's name and the reason for delay, biweekly.

2. By March 16, 2018, Respondents shall transmit the following files to the appropriate parties:

(a) For the class member previously identified as Anon-36 and Anon-46, Respondents shall produce the A-Files and ROPs to the class members' respective immigration counsel. For Anon-36, the 90-day clock started January 16, 2018. For Anon-46, the clock is shortened to 60 days, and will start on delivery of the files to his counsel.

(b) For the class member previously identified as Anon-10, Respondents shall produce the ROP to the class member's immigration counsel.

- (c) For the class member previously identified as Anon-62, Respondents shall produce the A-File to the class member's immigration counsel.
- (d) For each letter notifying a detainee or his or her immigration counsel that an A-File or ROP has been lost, Respondents shall produce the letter to Petitioners, and shall disclose to whom it was sent and when. (For any such letter sent in the future, Respondents shall produce the letter and corresponding information to Petitioners within seven days of its transmittal.)

3. By March 23, 2018, for class member M.L. A# XXX-XXX-034, Respondents shall transmit to immigration counsel the following Bates-stamped pages of the A-File: anything before 239005; 239006 to 007; 239012; 239014 to 015; 239017 to 098; 239106; 230111 to 239229; anything after 239234.

**New and Potential New Class Members**

4. ICE detainees J.I., A XXX-XXX-247 and M.R.S, A XXX-XXX-199 are members of the primary class. Respondents shall include them in future data disclosures, provide them with class notice, provide their immigration counsel (or them if they are not represented) with their A-Files and ROPs, and hold bond hearings for them if required under ECF 191.

5. In addition, Respondents shall report to Petitioners by March 23, 2018 the results of a diligent search for other detainees who are currently protected from removal under the Convention Against Torture, but whom ICE is actively seeking to remove to Iraq.

6. If Petitioners receive information about individuals that suggests they may be or are primary class members, but whose identity has not been disclosed by Respondents, they may provide the individuals' names and other identifying information to Respondents. Respondents shall review the information and within 14 days and either agree that the individuals are indeed class members or explain why they are not.

7. If an individual not previously identified as a primary class member is agreed or found to be such a class member, Respondents shall include all required information about that individual in subsequent bi-weekly reporting. If the individual is detained, Respondents shall, within one week, share the class notice with the individual; and within five weeks, produce the individual's A-File and ROP to immigration counsel or, if the individual is unrepresented, the detainee (or designee).

8. If an individual not previously identified as a primary class member is agreed or found to be such a class member, Respondents shall determine within 14 days if there are other individuals with a similar situation and provide the

individual's name and other identifying information to Petitioners so the parties can determine if these similarly situated individuals should be deemed class members.

### **Resolution of Future Issues**

9. The parties shall endeavor to resolve issues as they arise, and to resolve time-sensitive issues within the timeframe that the issue demands. Weekly, Petitioners' counsel shall provide notice to Respondents' counsel in writing summarizing all outstanding and newly arising issues. Within 14 days of receiving the initial notice of an issue from Petitioners' counsel, Respondents shall provide a response to the identified issue. If Respondents are not able to address an issue within 14 days, Respondents shall provide to Petitioners an estimated deadline for the response. If the parties are unable to resolve an issue using this process, either party may bring this issue to the Court's attention via email, with copy to opposing counsel.

### **Notice of Bond Hearings**

10. Respondents shall provide notice of all initial bond hearings for class members as soon as practicable after they are scheduled.

### **Stays of Bond Decisions**

11. The parties have identified a dispute regarding implementation of this Court's January 2 Order (ECF 191) related to stays of bond decisions. Respondents shall file a brief explaining their position on stays no later than March 13, 2018.

Petitioners shall file their response by March 15, 2018. The briefs must be no longer than seven (7) pages.

12. By March 12, 2018, Respondents shall provide the names and A-numbers of all individuals for whom stays have been sought who are currently known to Detroit Chief Counsel Catherine Pincheck, along with the type of stay and the outcome of each stay application. If Petitioners have questions about whether a stay has been sought or obtained for any other individuals, they will provide names and A-numbers for those individuals and Respondents will provide the requested information as soon as practicable.

**Issues Related to the Class Definition**

13. The parties have also identified a dispute regarding the detention of individuals purportedly held under 8 U.S.C. § 1225, and the Petitioners have moved to amend the definition of the Mandatory Detention Subclass. By March 16, 2018, Respondents shall brief their position on whether these individuals may be detained without opportunity for a bond hearing. Petitioners shall have until March 20, 2018, to file a response. Briefing is limited to seven (7) pages.

14. The parties shall confer on the types of final adjudications that constitute a final order for purposes of membership in the Detained Final Order Subclass. *See* ECF 191, Pg.ID# 5359-60. If the parties cannot agree, this briefing may also include the parties' respective positions on that issue.

### **Calculation of the 180-Day Detention Clock**

15. Each class member detained by ICE is entitled to a bond hearing under this Court's January 2 Order (ECF 191) upon reaching 180 days in ICE detention since March 1, 2017, regardless of whether that individual was transferred to criminal custody at any point after being detained by ICE and later returned to ICE custody. If Respondents believe that special circumstances warrant dispensation from this rule with respect to any particular class member, Respondents may seek such dispensation by motion.

### **Previously Non-Disclosed Individuals**

16. By March 28, 2018, Respondents shall identify to Petitioners, by name and A-number, each individual—detained or not detained—who had a final order of removal at any point between March 1, 2017 and June 24, 2017, whom ICE is seeking to remove to Iraq (including individuals who are not Iraqi nationals) but whose identity has not already been disclosed to Petitioners.

### **Biweekly Data Disclosures**

17. Respondents' biweekly data disclosures to Petitioners shall, beginning March 21, 2018, include the following information:

- (a) In ICE's biweekly detention location report, detained primary class members whose motions to reopen ("MTRs") have been granted; and

- (b) In EOIR's biweekly report, primary class members whose MTRs have been granted and/or who are no longer in detention, including those individuals who have been released from detention prior to this Order.

18. For those class members who have been released from detention, Petitioners will provide Respondents with a list identifying these individuals by name and A-number. Beginning with the next biweekly report, the Respondents shall include these individuals in the EOIR biweekly data disclosures.

19. Respondents shall continue to supply the following bond-related data to Petitioners in its biweekly data disclosures:

- Hearing date
- Hearing court and judge
- Decision date (if available)
- Decision, including bond amount, if any
- If any appeal has been filed and (if available) the outcome.

### **Discovery Response and Production Schedule**

20. Respondents shall serve written responses to Petitioners' Interrogatories no later than March 23, 2018. Respondents shall supplement their response(s) to Interrogatory Number 11 by March 30, as set forth in more detail in paragraph 38.

21. To the extent Respondents withhold information responsive to an interrogatory on the basis that the information sought is subject to a privilege or other doctrine permitting withholding of the information (other than the attorney-client privilege or attorney work product doctrine), their answer shall state the privilege being asserted, and the basis for asserting the privilege with respect to the specific discovery sought. By March 23, 2018, Respondents shall also file a memorandum supporting their privilege assertions and other basis for withholding information responsive to the interrogatory (other than attorney-client privilege and attorney work product doctrine).

22. Respondents shall begin production of documents no later than March 30, 2018. By March 23, 2018, Respondents shall provide an estimate to Petitioners of the volume of responsive documents and a proposed schedule for completing the production of records responsive to Petitioners' discovery requests and a date that Respondents will produce their privilege log. Respondents shall serve a written response to Petitioners' Requests for Production no later than the last document production.

23. Petitioners may revise the topics listed in their Rule 30(b)(6) Deposition Notice once Respondents have responded to the other discovery requests and the Court rules on Respondents' privilege assertions, without causing any delay in Respondents' production of a witness(es) to testify. The deposition(s) will be

scheduled so that the Court can be available to rule on any privilege or other objections to disclosure of testimony asserted by Respondents. The deposition may take place in Washington, D.C., provided that Skype or other accommodations are made so that the parties can contact the Court during the deposition(s).

**Discovery Privilege Briefing**

24. The process for resolving discovery disputes based on the assertion of privilege (other than attorney-client privilege and attorney work product) shall be as follows for any privilege asserted by Respondents or a third party in response to Petitioners' Request for Production:

- (a) Concurrently with each tranche of document production, Respondents shall produce a privilege log to Petitioners identifying documents responsive to Petitioners' discovery requests that Respondents, or the third party to whom the documents belong, claims to be privileged. The log will include all privileges asserted and any other bases for withholding discovery, including attorney-client privilege and attorney work product doctrine. The log will be produced as a Microsoft Excel document. For any document claimed to be privileged or that is otherwise withheld from discovery, the privilege log shall identify the name and nature of the document, the date, the

author, the recipient, the privilege asserted, and any other information necessary to support the privilege.

- (b) Within 5 days of receipt of the final privilege log, Petitioners shall inform Respondents of any documents whose withholding Respondents have determined, based on the privilege log, that they will not challenge.
- (c) Within 2 business days of being notified by Petitioners of the entries that they are challenging on Respondents' privilege log, Respondents shall submit the documents to the Court for an *in camera* review. On the same day, Respondents shall also file a memorandum supporting their basis for asserting the privilege. The publicly filed version of this memorandum may redact information that Respondents assert is privileged. An unredacted version shall be submitted to the Court but not to Petitioners' counsel.
- (d) Petitioners' counsel may file a response addressing the privilege assertions.
- (e) The Court shall then conduct an *in camera* review of the documents and information claimed to be privileged and

determine whether the asserted privilege prevents disclosure of the documents or information.

25. Nothing in the foregoing process prohibits Petitioners from challenging Respondents' withholding of discovery on the basis of the attorney-client privilege or the attorney work product doctrine.

### **Agreements and Objections to Petitioners' Discovery Requests**

26. **Definition of "travel documents."** The term "travel documents" used in Petitioners' discovery requests should be read as follows: "travel and identity documents." The exceptions are Interrogatory Numbers 4 and 5; Number 4 seeks only travel documents and excludes identity documents, whereas Number 5 seeks only identity documents (and any other document) other than travel documents.

27. **Clarification of Respondent Responding to Discovery Requests.** Respondents clarified that they understand that Petitioners' requests for production and the deposition notice have been issued to all Respondents - Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), and Department of Justice ("DOJ"). Petitioners served interrogatories on Respondent Kirstjen Nielsen. The interrogatories define DHS to include each of its components, departments, directorates, units and offices, and DHS's responses should incorporate information that is in the possession, custody or control of each of its components, departments, directorates, units and offices. Respondents have investigated and,

based on their investigation, have determined that DHS Headquarters and ICE are the only Respondents likely to be in possession, custody or control of responsive documents and information. “DHS Headquarters” is defined as the Department of Homeland Security and any offices, directorates, or subunits within it—but not its components (USCIS, CBP, Coast Guard, FEMA, ICE, Secret Service, TSA). Based on their investigations, Respondents determined that the DOJ, Executive Office of Immigration Review (“EOIR”) and other component agencies (including departments, directorates, units and offices) of the DOJ and DHS are not in possession, custody or control of documents or information responsive to Petitioners’ requests. Should Respondents become aware at a later date that any components of DHS (other than DHS Headquarters and ICE) or DOJ possess responsive material or information, Respondents will update their discovery responses in accordance with Rule 26 of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 26(a)(1)(A)(ii) and 26(e)(1).

28. **Discovery on and Definition of “Iraqi Agreement.”** For the purpose of responding to Petitioners’ discovery requests, Respondents agree to use Petitioners’ definition of “Iraqi Agreement,” as defined in the Joint Statement of Issues, ECF 217, Pg.ID# 5560, which is the same definition as in Petitioners’ discovery requests. Respondents, however, may object in their formal written responses to the discovery requests to the term “Iraqi Agreement” insofar as no

formal agreement was ever memorialized between the governments of Iraq and the United States; nonetheless, Respondents will not withhold any relevant or responsive documents or information based on this objection.

**29. Objection to Answering on Behalf of the Iraqi Government or Other U.S. Governmental Agencies.** Respondents will respond to the discovery requests providing information and documents in their possession, custody or control, whether or not it was received or otherwise obtained from the Iraqi government or other U.S. governmental agencies. Petitioners may serve subpoenas on other U.S. governmental agencies, including the U.S. State Department, directed to the *Zadvydas* claims.

**30. Definition of “Class Member” and “Iraqi National.”** Respondents’ objection to producing discovery relating to non-Class Members is overruled. Respondents shall produce discovery on those individuals “for whom the Court has lifted the July 24, 2017, stay of removal (ECF 87)” and Iraqi Nationals as defined in Petitioners’ discovery requests. This discovery is relevant to the Iraqi Agreement and how the Iraqi Agreement is being implemented.

**31. Respondents’ Custodians, ESI and Hard Copy Document Sources, and Search Methodologies.** When Respondents serve their first set of documents in response to Petitioners’ discovery requests, they will also provide a declaration identifying the names and job titles of the custodians for whom Respondents have

collected records and other information responsive to Petitioners' discovery requests and describing how the custodians were identified, the methodologies used to identify responsive documents (including the instructions given to custodians, such as the instruction to search email by author or recipient), and any culling methods used by Respondents to narrow the records collected prior to or during their review for records responsive to the discovery requests. Petitioners may depose any custodian or issue a deposition notice under Rule 30(b)(6) concerning the Respondents' search for and collection of records and information responsive to the discovery requests.

If Petitioners determine that there is a gap in Respondents' discovery responses or the responses are otherwise insufficient due to a failure to collect from a custodian or source containing potentially responsive records or information, the parties shall meet and confer. If the parties cannot resolve the issue(s), Petitioners may seek guidance from the Court.

32. **Interrogatories in General.** The Respondents shall answer the interrogatories as written, and may not rewrite them to narrow the scope of the request or the applicable time period. If no information exists responsive to an interrogatory, Respondents' answer will indicate as such.

33. **Interrogatory No. 1:** DHS and ICE will respond concerning the Iraqi Agreement as Respondents have explained that they understand that term.

Respondents agree with Petitioners' definition of the Iraqi Agreement as defined in the Joint Statement of Issues, ECF No. 217, Pg.ID# 5560-62.

34. **Interrogatory Nos. 2-5:** Respondents shall respond to this interrogatory as written, and may not limit their response to an "explain[ation] in general terms [of] the process to remove an Iraqi National to Iraq, assuming the stay is lifted, with the caveat that ICE does not speak for the Government of Iraq."

35. **Interrogatory No. 6:** Respondents' relevance objections to producing information responsive to subparagraphs c, d and e are overruled as the information is relevant to the *Zadvydas* claim; Respondents shall respond to those subparagraphs. By March 21, 2018, Respondents shall investigate whether any individuals who "for whom the Court has lifted the July 24, 2017, stay of removal (ECF 87)" have been denied travel documents or repatriation, and provide the information in their response to this interrogatory due on March 21, 2018. If Respondents need more time to complete their investigation, they will explain to Petitioners why more time is needed and provide a date on which the information will be provided.

36. **Interrogatory No. 7:** Respondents' relevance objections to producing information on denials by the Iraqi government for repatriation of a class member are overruled as the information is relevant to the *Zadvydas* claim, and Respondents shall respond to the interrogatory. By March 21, 2018, Respondents shall investigate the situation of any individuals who "for whom the Court has lifted the July 24, 2017,

stay of removal (ECF 87)”, and provide the information in their response to this interrogatory due on March 21, 2018. If Respondents need more time to complete their investigation, they will explain to Petitioners why more time is needed and provide a date on which the information will be provided.

37. **Interrogatory No. 10:** Respondents’ objections that the interrogatory is overbroad and irrelevant are overruled. Respondents will answer the interrogatory as written, and may not limit the response to “the process as it is normally followed.”

38. **Interrogatory No. 11:** Respondents will investigate if there exists any working file or system containing the information, or whether information responsive to this request is otherwise centrally or easily available and if so in whose custody, and will report the results of this investigation by March 23, 2018.

Respondents will also conduct a sample of the A-files or other individual records of 30 class members who are currently in detention to determine if the A-files contain information responsive to this request. That sample shall include any named Petitioner who remains detained. Petitioners’ counsel will provide the names and A-numbers to Respondents’ counsel by March 12, 2018. The results of the review of the named Petitioners’ A-files and the A-files of the random sample will be provided by March 30, 2018.

39. **Interrogatory No. 12:** Respondents’ objections on the basis of relevance are overruled. Respondents shall respond to the interrogatory as written.

40. **Requests for Production No. 4.** Respondents' objections on the basis of relevance are overruled. Respondents shall respond to the request, including the production of whatever documents and other information referred to in the declarations of Messrs. Schultz and Bernacke (ECF 81-4 and 184-2).

SO ORDERED.

Dated: March 13, 2018  
Detroit, Michigan

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

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on March 13, 2018.

s/Karri Sandusky  
Case Manager