



UPDATE FOR CLASS MEMBERS
***Hamama v. Adducci*, No. 17-cv-11910 (E.D. Mich.)**
National Class Action to Prevent Iraqi Deportations

August 4, 2019

1. WHAT IS HAPPENING WITH DEPORTATIONS RIGHT NOW?

The federal *Hamama* case no longer prevents your deportation. The Court of Appeals said Judge Goldsmith did not have the power to stop your deportation. Whether you can be deported depends entirely on what happens in your individual immigration case.

You **CANNOT** be deported if you have won your motion to reopen and have not yet gotten a decision on your reopened case. You cannot be deported if you win your immigration case. Winning your immigration case is the only way to ensure you will not be deported.

You **CAN** be deported if you have a final order of removal. You have a final order of removal if you have not filed a motion to reopen, you lost your motion to reopen, or you lost your reopened case (and either did not appeal or lost on appeal at the Board of Immigration Appeals (BIA)). However, you can be deported **ONLY if**:

- 1. You have a final order of removal, AND**
- 2. You have an unexpired Iraqi passport OR Iraq has issued travel documents for you, AND**
- 3. You do not have stay of removal from the immigration judge, BIA, or Court of Appeals in your individual case.**

Has or Will Iraq Issue Travel Documents For You?

- For many years Iraq refused to issue travel documents, which is one of the main reasons you could not be deported.
- While it is unclear exactly what Iraq is doing now, we know that Iraq has issued travel documents in some cases, and people have been deported as a result. **DO NOT ASSUME THAT IRAQ WILL NOT ISSUE YOU TRAVEL DOCUMENTS, EVEN IF THAT USED TO BE THE SITUATION.**
- To date, Iraq has only issued travel documents after doing consular interviews. Iraqi officials have done several rounds of consular interviews at an immigration jail in York, Pennsylvania. We know that travel documents have issued for people who had consular interviews in November 2018, and ICE has publicly said that travel documents have issued for 20 of the 21 people interviewed in April 2019 (one was not Iraqi). Others were interviewed in June 2019.
- To find out if a travel document has issued for you, talk to your deportation officer. You can also try contacting the Iraqi consulate.

IMPORTANT:
IF YOU HAD A CONSULAR INTERVIEW AND HAVE A FINAL ORDER, TALK TO YOUR IMMIGRATION ATTORNEY IMMEDIATELY.

- If you have a final order of removal and you have had a consular interview, you should assume that Iraq has issued or will soon issue your travel document to ICE. Contact an immigration attorney **AS SOON AS POSSIBLE**.
- The situation is most urgent for people who had consular interviews in November of 2018 or April of 2019, but people interviewed in June 2019 are also at risk. Contact your immigration attorney immediately.
- Talk to your immigration attorney about your options, including whether you can file a motion to reopen and for an individual stay of removal.

2. WHAT OPTIONS DO I HAVE IF I DON'T WANT TO BE DEPORTED TO IRAQ?

- The only sure way to stop your deportation is to win in immigration court. **Keep fighting your case!**
- If you have a final order, it is urgent that you talk to an immigration attorney as soon as possible. **Ask your attorney about filing for a motion to stay removal.**
- Every case is different, so what is needed depends on your individual case. Some common options are:
 - Filing a motion to stay removal if your case is on appeal.
 - Filing a motion to reopen and a motion to stay removal.
 - If you lost your earlier motion to reopen or lost on the merits, filing a new motion to reopen.
 - Going back to criminal court to get your criminal convictions vacated—meaning that those convictions would no longer prevent you from getting immigration relief.
NOTE: WHETHER THIS WILL BE HELPFUL DEPENDS ON INDIVIDUAL CIRCUMSTANCES. TALK TO YOUR IMMIGRATION LAWYER.
 - Exploring immigration relief in Canada. See Section 7 below.

3. CAN ICE RE-DETAIN ME?

Although Judge Goldsmith *cannot* stop your deportation, he *does* have authority to decide whether you are detained. (His order requiring release is currently on appeal.)

The process for redetention depends on how much time you have spent in detention and whether you are reporting to ICE as required.

- a. Anyone who fails to report: Judge Goldsmith has allowed ICE to redetain anyone who “absconds,” meaning that they do not report for supervision or cut their tether. **You must follow your order of supervision if you do not want to be arrested and detained.**
- b. Hamama class members who have not spent six months or more in detention: ICE does **not** need an order from Judge Goldsmith to re-detain you. However, if you are held for more than six months, ICE must release you within 30 days or ask Judge Goldsmith for permission to detain you longer.
- c. Hamama class members who have already spent six or more months in detention in the time from mid-2017 to the present: You cannot be re-detained unless ICE files a motion and gets an order from Judge Goldsmith.

Process for Re-detention of Class Members Who Are Following Their Orders of Supervision and Have Spent Six Months in Detention

ICE **cannot** redetain you without first getting permission from Judge Goldsmith. ICE is only likely to ask Judge Goldsmith to redetain you if ICE believes it can deport you very soon. Recently, Judge Goldsmith clarified the re-detention process. **If ICE files a motion to redetain you, you should contact your immigration attorney immediately about your options to prevent deportation.** Judge Goldsmith cannot stop your deportation. He can only decide whether ICE can detain you for the time till you are deported.

This is the process:

- ICE files a motion asking Judge Goldsmith to allow you to be redetained because you are to be deported soon. ICE cannot show you will be deported soon, and therefore is very unlikely to seek you redetention unless the three criteria for deportation are met:
 - You have a final order of removal, AND
 - You have an unexpired Iraqi passport or Iraq has issued you travel documents, AND
 - You have not gotten a stay of removal from immigration court.
- ICE must tell Judge Goldsmith the week during which you are to be deported. Because the motion is filed under seal, the attorneys in the *Hamama* case cannot share the information with you or with your immigration attorney.
- The government has agreed to let the attorneys in the *Hamama* case tell you that the government is trying to redetain you. We cannot tell you when you are scheduled to be deported.
- Once the government files a redetention motion, we have two days to file any objection to the re-detention motion. We can try to argue why you shouldn't be re-detained. We **cannot** ask Judge Goldsmith to stop your deportation to Iraq. In order to stop your deportation, you have to be fighting your case in immigration court.

IMPORTANT:

WHAT TO DO IF *HAMAMA* ATTORNEYS CONTACT YOU ABOUT REDETENTION

- Move fast and contact an immigration attorney **immediately** if you want to continue to fight your case. Some class members have filed emergency motions and won last minute stays to prevent their deportation after their redetention motions were filed.
- Answer all calls from the *Hamama* attorneys immediately. We only have two days to explain why you should not be redetained.
- Judge Goldsmith is not ruling on whether you should be allowed to remain in the United States. He is only ruling on whether you should be re-detained prior to your deportation.
- Judge Goldsmith will likely allow ICE to redetain you unless he is convinced that you will show up to the airport on your scheduled deportation date. In a few cases, Judge Goldsmith has allowed people to report to the airport. **This has not prevented deportation.** The individuals still got deported, but they were not detained for the weeks prior to deportation.
- If you want to oppose redetention, you must work immediately with your immigration attorney and the *Hamama* attorneys to sign a statement explaining why you should not be redetained. You will have to swear that you will go to the airport for deportation if do not get a stay of removal in your immigration case.

4. WHAT HAPPENS IF JUDGE GOLDSMITH GRANTS A REDETENTION MOTION AND I AM RE-DETAINED?

IMPORTANT: If you are re-detained, it is likely that the government will try to remove you soon. Contact your immigration attorney immediately about a motion to stay your deportation.

- If Judge Goldsmith orders your redetention, that order will be sealed, meaning we cannot tell you about it.
- Once ICE detains you, they must notify the Court within two days.
- If ICE is unable to deport you quickly, Judge Goldsmith will decide how long ICE can keep you detained:
 - In order to keep you detained for more than thirty days, ICE has to get permission from the Court and has to explain how much additional detention time it needs to complete the deportation.
 - The government has to explain each step necessary to accomplish removal, for example updating travel documents, securing itineraries, and its estimated time to get this done along with the estimated date of removal.
 - The judge will decide how long you can be detained.
- If you win a stay of removal—which stops your deportation—then ICE must either release you within seven days or file a motion explaining why you should remain detained.
- If you win a motion to reopen—meaning you no longer have a final order of removal—then ICE must either release you within seven days or file a motion explaining why you should remain detained.

5. WHAT HAPPENS IF I DO NOT SHOW UP FOR SUPERVISION OR CUT MY TETHER?

Judge Goldsmith has authorized the re-detention of class members who do not show up for supervision or who cut their tethers. **This means that if you cut your tether or you do not report for supervision, ICE can arrest and detain you without filing something before Judge Goldsmith.**

If you fail to show up for supervision or cut your tether, the process is:

- ICE must file a notice with the court within two days after ICE confirms that you are not reporting and/or have cut your tether.
- Once you are re-detained, ICE must file a notice with the court within two days after you are re-detained.
- ICE can detain you for 60 days to try to deport you. If your travel documents have expired before you can be removed, ICE can detain you for 90 days.
- After that time period, ICE must ask permission from Judge Goldsmith to hold you longer, and must explain each step necessary to complete the deportation, including obtaining/updating travel documents, securing itineraries and the estimated date of removal.

6. CAN I GET IMMIGRATION RELIEF IN CANADA IF I LOST MY IMMIGRATION CASE IN THE UNITED STATES?

If you have been unable to reopen your immigration case, or have lost it on the merits in the U.S., we strongly encourage you to explore whether you may be able to get immigration relief in Canada. Canadian immigration law is very different than U.S. immigration law. Some class members may be eligible for immigration relief in Canada even if they are not able to get immigration relief in the United States.

General information about asylum and other immigration relief in Canada is available [here](#).

In general, to be eligible for immigration relief in Canada, a person must have family members living in Canada. See [here](#). We cannot advise on Canadian immigration law because we are not licensed to practice law in Canada.

Michigan-based class members can seek assistance from Freedom House by filling out their form [here](#). However, if you have a criminal record, Freedom House can only assist you **AFTER** you have had a consult with a Canadian immigration attorney.

IMPORTANT: If you are considering going to Canada, it is critically important that you first speak with an attorney who has expertise on Canadian immigration law. If you go to a U.S.- Canadian border crossing and ask for refugee protection in Canada without assistance from a licensed attorney there is a very high risk of being denied entry, returned to the United States, and detained by U.S. immigration authorities. For a list of Canadian immigration attorneys, please contact hamama@aclumich.org.