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UPDATE ON *HAMAMA V. ADDUCCI*:

HOW THE SIXTH CIRCUIT'S DENIAL OF THE EN BANC PETITION WILL AFFECT DETENTION OF *HAMAMA* CLASS MEMBERS

APRIL 16, 2020

WHAT HAS HAPPENED IN THE CASE?

On January 3, 2020, a three-judge panel of the Sixth Circuit Court of Appeals (in a 2-1 decision) reversed Judge Goldsmith's order requiring release of class members from immigration detention. We then asked the full Sixth Circuit Court of Appeals to hear the case. This is called an "en banc petition." While our request was being considered, Judge Goldsmith's orders preventing the redetention of *Hamama* class members were still in effect.

On April 15, 2020, the Sixth Circuit denied our request for the full Court to hear the case. That means that on April 23, 2020, Judge Goldsmith's order preventing the redetention of *Hamama* class members will go away. ICE may then be able to redetain some class members. How this will affect you depends on your individual immigration case. You should speak to your individual immigration attorney about your specific situation.

IMPORTANT: The Sixth Circuit said that Judge Goldsmith could not grant an injunction ordering everyone in the class released. However, you may be able to seek relief individually, if you are redetained. The *Hamama* lawyers are also reviewing options to seek other types of class relief. PLEASE, have your immigration attorney consult with us before filing any individual case, because it may affect your rights under the *Hamama* case.

WILL ICE REDETAIN CLASS MEMBERS DURING THE PANDEMIC?

We don't really know. We don't know if ICE intends to redetain Iraqis or not, or how the pandemic will affect ICE's decisions. ICE has publicly said that during the pandemic it will "focus enforcement on public-safety risks and individuals subject to mandatory detention based on criminal grounds." ICE has also said that it "will exercise discretion to delay enforcement actions until after the crisis or use alternatives to detention, as appropriate."

Legally, the situation now is not that different from what it was before the *Hamama* case started: ICE can pick you up to try to deport you, but ICE may decide not to. We simply don't know what ICE will do.

What ICE intends to do may depend on your individual situation. You should talk to your immigration attorney. You can also talk to your deportation officer.

CAN I BE REDETAINED? IF I AM REDETAINED, CAN I GET RELEASED AGAIN?

You should speak to your individual immigration attorney about your specific situation. In general, whether you can be redetained, and what claims you have to get out of detention if you are detained, depend largely on three things:

1. What is the status of your immigration case? Do you have a final order, are you pre-order, or have you won your immigration case?
 - You have a final order of removal if you have not filed a motion to reopen, you lost your motion to reopen, you lost your reopened case (and either did not appeal or lost on appeal at the Board of Immigration Appeals (BIA)).
 - You are pre-order if you won your motion to reopen, and are waiting for a hearing, or you lost your reopened case and your case is on appeal to the BIA.
2. If you are pre-order, are you eligible under the Immigration and Nationality Act for bond? The answer is no, if you are considered an "arriving alien" or if you are subject to "mandatory detention" under the Immigration and Nationality Act. "Mandatory detention" generally depends on your criminal history. If you do not know whether you are an "arriving alien" or are subject to mandatory detention, talk to your immigration attorney.
3. How did you get released? Were you released through:
 - a regular bond hearing?
 - a *Hamama* bond hearing? (Most of these releases were in early 2018.)
 - Judge Goldsmith's release order that limited detention to six months? (These releases were in late 2018 or thereafter.)

Because the combination of these three things will be different in every case, this explanation is just a general guide and cannot go into every scenario. Talk to your individual immigration attorney.

IMPORTANT: Your history of reporting since you were released is very important. ICE may consider your reporting history in deciding whether to detain you. If you have another bond hearing or seek release in federal court, the judge will consider your reporting history. If you do not report, it will be much harder to convince a judge that you should be released in the future.

CAN I BE REDETAINED IF I HAVE A FINAL ORDER?

ICE can generally detain people who have a final order, but the length of detention is limited under a Supreme Court case called *Zadvydas v. Davis*. Under *Zadvydas*, six months of detention is assumed to be reasonable, and thereafter the government has to show that removal is significantly likely in the reasonably foreseeable future. Judge Goldsmith's class-wide release order in late 2018 was based on *Zadvydas*.

While the Court of Appeals said that Judge Goldsmith could not enter an injunction ordering class-wide release, *Zadvydas* still applies to you if you have a final order. If you are detained, please let us know right away by having your family email hamama@aclumich.org, or call 616 301 0930. You can also contact your immigration attorney about your options. **Please ask your immigration lawyer to talk to the *Hamama* lawyers before filing anything.**

CAN I BE REDETAINED IF I AM PRE-ORDER?

Some people in pre-order detention are bond-eligible and others are not. This generally depends on your criminal history.

If you are NOT an arriving alien or subject to mandatory detention:

You can get a bond hearing under regular immigration law. The *Hamama* bond hearings in early 2018 were done under a different, better standard than regular bond hearings. If you had one of those special hearings, it is possible that ICE will say you need to do another bond hearing. However, given the pandemic, ICE might also not want to do more bond hearings and might just let you remain out on bond, as long as you follow your bond conditions.

Some people were denied bond at their bond hearings, but were later released under Judge Goldsmith's *Zadvydas* release order. If you are redetained and are not subject to mandatory detention, you should consult your immigration attorney about whether you can ask for another bond hearing even if you were denied bond before.

If you ARE an arriving alien or subject to mandatory detention:

You cannot get a bond hearing under regular immigration law. If you had a bond hearing, it was only because of the *Hamama* case. Since then, the Sixth Circuit has said that Judge Goldsmith could not order bond hearings on a class-wide basis.

The Sixth Circuit did *not* make a final decision about whether people in prolonged mandatory detention are able to get bond hearings as individuals. If you are redetained, ask your immigration lawyer to work with the *Hamama* team to figure out the best strategy in your case.

CAN I BE REDETAINED IF I WON MY IMMIGRATION CASE?

If you have won final immigration relief and your case is completely over, you cannot be redetained, absent some major change in circumstances, like a new criminal conviction. Winning final relief in your immigration case is the only sure way to prevent detention.

If you won withholding or deferral, it is possible that you could be redetained for a period of time if ICE is seeking to remove to a country other than Iraq. Talk to your immigration attorney.

If you have won in front of an immigration judge and the government has appealed to the BIA, it is possible that ICE could redetain you.

CAN I BE REDETAINED IF I HAVE SERIOUS HEALTH ISSUES?

ICE claims that it is considering people's medical conditions in making detention decisions during the pandemic. However, many people with serious health conditions are still in detention. Across the country, detained immigrants who are particularly vulnerable to COVID-19 have sued for release. Some have won and some have lost.

If you have serious medical conditions, you should gather information about your conditions, like medical records or statements from your doctors. Put those papers in a safe place where your family or immigration attorney can get them. Make sure both your immigration lawyer and your deportation officer are aware of your medical conditions.

WHAT ARE THE NEXT STEPS IN THE *HAMAMA* CASE?

Under the Sixth Circuit decision, Judge Goldsmith cannot order what is called "class-wide injunctive relief." Basically, that means he cannot order the government to do something for everyone in the class. However, we believe that Judge Goldsmith can still give everyone what is called "class-wide declaratory relief," which is basically a judgment saying what your rights are. If the government then violates your rights, you may be able to use the declaratory judgment in an individual case to try to prevent redetention or seek release.

In addition, Judge Goldsmith can order release in individual cases, even though the Court of Appeals said he cannot order release for the whole class. If you are redetained, you may be able to get release individually. However, **please have your lawyer talk with the *Hamama* team before your lawyer files an individual habeas petition.** What your options are will depend on whether you have a final order of removal, whether you won or lost your bond hearing, and whether (if you don't have a final order) you are considered a "mandatory detainee."

In the months ahead, the *Hamama* legal team will be reviewing the Sixth Circuit decision to decide whether to ask the Supreme Court to hear the detention part of the case. (We have already asked the Supreme Court to hear the deportation part of the case.) Asking the Supreme

Court to hear the case will not change the fact that Judge Goldsmith's orders on detention will no longer be in effect.

WHAT IS HAPPENING WITH DEPORTATIONS RIGHT NOW?

The federal *Hamama* case no longer prevents your deportation. The Court of Appeals said over a year ago Judge Goldsmith did not have the power to stop your deportation. (We have asked the Supreme Court to hear that part of the case, but in the meantime, Judge Goldsmith's stay of removal that got entered in July 2017 is no longer in effect.) Whether you can be deported depends entirely on what happens in your individual immigration case.

The pandemic is also affecting removals, making it very difficult for ICE to remove people to Iraq due to the absence of commercial flights, the closure of many international borders, and the disruption in government operations in the United States, Iraq, and transit countries.

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 to Iraq if you win your immigration case. Winning your immigration case is the only way to ensure you will not be deported to Iraq.

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, as it currently stands, you can be deported to Iraq **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 a 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.
- It is unclear exactly what Iraq is doing now, particularly given the pandemic. We know that before the pandemic, Iraq 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, which take place after a person has been detained. 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 peopled interviewed in April 2019 (one was not Iraqi).

- 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.

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

We have received inquiries from class members who have lost their immigration cases and are interested in moving to Canada rather than being deported to Iraq. Canadian immigration law is very different from 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. In general, to be eligible for immigration relief in Canada, a person must have family members living in Canada. See <https://www.cbsa-asfc.gc.ca/agency-agence/stca-etps-eng.html>. We cannot advise on Canadian immigration law as we are not licensed to practice law in Canada.

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.

Michigan-based class members can seek assistance from Freedom House by filling out their form here: <https://www.freedomhousedetroit.org/index.php/our-work/seeking-asylum>. However, if you have a criminal record, Freedom House can only assist you **after** you have had a consult with a Canadian immigration attorney.

General information about asylum and other immigration relief in Canada is available at <https://plattsburghcares.org/hestia-front/resources/>.

HOW CAN I MAKE SURE I KNOW WHAT IS GOING ON IN THE *HAMAMA* CASE?

When major developments happen, we do a Facebook live on the ACLU of Michigan Facebook page. You can also send questions to Hamama@aclumich.org.

It is very important that we be able to reach you by mail or email. **If you have not already done so, fill out the attached contact form, so that we can continue to communicate with you.**

Please send the form to:

ACLU of Michigan, Attn: Hamama v. Adducci Litigation
2966 Woodward Ave.
Detroit, MI 48201

This posting is not legal advice regarding your own individual immigration case or any other matter outside of the context of the *Hamama* lawsuit. We expressly advise you to seek independent counsel to advise you regarding your own individual immigration case and also with respect to the information we are sharing with you here.

HAMAMA CLASS MEMBER CONTACT FORM

Name	
A-Number	
Today's Date	
Ethnicity	
Religion	
Year you came to the U.S.	
Preferred Language	
How well do you speak English?	
Your phone number, email/messaging, and home address if released	
Family/Friend Contact Person 1: phone number, email/messaging, address, and relationship	
Family/Friend Contact Person 2: phone number, email/messaging, address, and relationship	
Family/Friend Contact Person 3: phone number, email/messaging, address, and relationship	
If you are deported, how can we contact you in Iraq? Include multiple ways to reach you (phone, email, social media (Facebook) Whatsapp)	

Iraqi Family/Friend Contact Person 1: phone number, email/messaging, address, and relationship	
Iraqi Family/Friend Contact Person 2: phone number, email/messaging, address, and relationship	
Immigration Attorney Information: Name, phone number, email, address.	