

# Class Action Settlement

*Hamama v. Adducci*

Eastern District of Michigan  
Case No. 17-11910

# Background

# What is the case about?

- This class action case started in June 2017 and challenged removal of Iraqi nationals with final orders of removal to Iraq and their prolonged immigration detention.
- Specifically, this lawsuit alleged that the federal government, including ICE, was violating class members' rights in various ways, including by:
  1. not giving people the time needed to seek legal protection from their removal to Iraq;
  2. detaining them for long periods of time while they pursued immigration relief; and
  3. detaining them despite being unable to remove them to Iraq within a reasonable time frame.

# Why is the case being settled?

- After several years of litigating in court, class counsel and the government negotiated for several years to bring this case to a close.
- The goal of the settlement is to provide certainty to all class members about the procedures that will apply if the government attempts to detain or remove them to Iraq while the settlement agreement is in place.
- The attorneys representing you in this case believe the settlement is fair and provides several key benefits.

# What does the settlement do and not do?

- The settlement limits why, when, and for how long you can be detained during and after removal proceedings.
- The settlement provides other protections to class members, like limiting what counts as a violation of an order of supervision.
- The settlement does not affect your individual immigration case or limit the government's ability to remove you to Iraq if you lose your immigration case.

Summary of Key Terms  
in the Settlement:  
*Definitions*

# Who is covered by the settlement?

- Any Iraqi national in the United States who had a final order of removal at any point between March 1, 2017 and June 24, 2017, and has not already been removed from the United States based on that final order

# Does the settlement apply differently to different people?

## Yes

- The procedures that apply to a particular class member depend on whether:
  1. You have a final order of removal (“pre-order” vs. “post-order”)
  2. The government categorizes you as dangerous (“Category 1” vs. “Category 2”)
  3. You are in detention at the time the case is settled



# What does it mean to be “pre-order” vs. “post-order”?

## Pre-Order

- You do not have a final order of removal,

*including if*

- You file a motion to reopen your immigration case, and your case is reopened, or
- You lost your case before an immigration judge but are appealing to the Board of Immigration Appeals.

## Post-Order

- You have a final order of removal

OR

- You have an order granting withholding of removal

OR

- ICE has a final order to remove you to a country other than Iraq.

# What does it mean to be “Category 1” vs. “Category 2”?

## Category 1

- Threat to national security
  - E.g., terrorism or espionage
- Threat to border security
  - Apprehended while attempting to unlawfully enter or after unlawfully entering the U.S. after November 1, 2020
- Threat to public safety
  - Released from criminal custody within the last 5 years OR
  - Released more than 5 years ago and has committed new criminal conduct
  - *This categorization depends on the government’s review of all the facts and circumstances of your case.*

## Category 2

- All class members who are not Category 1
- *This will generally include class members who were released from criminal custody more than 5 years ago and have not been criminally charged since.*

How long would  
the settlement be  
in place?

**Three years after the Court  
approves it.**

Summary of Key Terms  
in the Settlement:  
*Post-Order Class Members*

# When can “post-order” class members be detained?

**“Post-order” class members may be detained only for removal, for violation of an order of supervision, or if a threat to national security.**

- In other words, the government can only detain post-order class members for one of three reasons:
  1. In order to remove you, which includes the time necessary to obtain removal-related travel documents from Iraq, OR
  2. If you violate an order of supervision, OR
  3. If you are a suspected terrorist or threat to national security.

## Will post-order class members know in advance if ICE is trying to remove them?

- ICE must provide 90 days' written notice before ICE can detain a post-order class member for removal
- *However, ICE does not have to provide notice if you are*
  1. Detained immediately upon release from criminal custody OR
  2. A suspected terrorist or threat to national security OR
  3. At substantial risk of committing a violent or very serious crime

# What happens after the 90-day notice for Category 1 post-order class members?

- ICE can detain you if there is a significant likelihood of removal in the next 90 days.
- If you have been detained for 90 days, ICE must conduct a custody review to determine if you should be released or continue to be detained.
- If ICE does not release you, you can request release from a Special Master (a neutral attorney appointed to oversee these types of disputes), and the government must show a significant likelihood of removal in the next 90 days to continue detention.
- If you are still detained after 180 days, you can request release from the Court, and ICE must show they have travel documents and an itinerary for your removal to continue detention.

# What happens after the 90-day notice for Category 2 post-order class members?

- If you have not obtained a travel document, ICE can require you to report for an interview.
- ICE can detain you for a consular interview only if:
  1. You have previously failed to report for an interview, or
  2. The Special Master gives permission to detain you because
    - a. Detention is necessary to conduct the interview, OR
    - b. You have failed to make reasonable efforts to obtain a travel document.
- Detention for a consular interview is limited to 10 days (video) or 30 days (in person).
- *If ICE has obtained a travel document, you can be detained for 30 days to effectuate removal.*



# What happens if a post-order class member violates an order of supervision?

## Category 1

- ICE can detain you up to 14 days.
- *However, ICE can extend the detention if ICE intends to remove you and there is a reasonable likelihood of removal within 90 days.*

## Category 2

- In most cases, ICE can detain you only for 24 hours.
- *However, if the violation makes you a Category 1 class member, the Category 1 procedures apply.*

# What about post-order class members who are currently detained?

ICE will do a category review for all currently detained class members.

- Category 1 class members can continue to be detained, subject to the other 90/180-day limits.

- Category 2 class members must be released within 10 days.

# What happens if a post-order class member gets a stay of removal?

## *If you are not in detention:*

- ICE cannot detain you unless you violate an order of supervision.

## *If you are Category 1 and in detention:*

- ICE will conduct a custody review, and you can request release from the Special Master.

## *If you are Category 2 and in detention:*

- ICE will release you.

# Can ICE make class members obtain travel documents?

- ICE can require you to make reasonable good faith attempts to obtain travel documents from Iraq and assist ICE in obtaining those travel documents.
  - For example – by appearing for an interview or filling out a form.
- ICE cannot require you to sign papers saying you agree to be removed.
- For class members in the Detroit region, ICE will not require you to visit the consulate to request documents more than once a year.

Summary of Key Terms  
in the Settlement:  
*Pre-Order Class Members*

# When can “pre-order” class members be detained?

- ICE will only detain you after:
  1. Doing a category review, which ICE has agreed, in its discretion, it does not need to conduct unless:
    - a. You are convicted of a new crime, or
    - b. You violated probation or parole, or
    - c. You abscond by not following your conditions of supervision,  
AND
  2. The ICE Assistant Field Office Director approves your detention.
- Reopening your immigration case will not trigger a category review.

# What happens to a pre-order class member after the category review?

## Category 1

- ICE *might* decide to detain you, taking into account your criminal record, evidence of rehabilitation, how long you have been in the U.S., and your family and community ties, among other things.
- If you are detained, your detention is governed by the immigration law that applies to you.

## Category 2

- ICE will not detain you.

# What happens if a pre-order class member violates conditions of supervision?

## Category 1

- *If you would be detained under 8 U.S.C. § 1226(a), ICE can detain you only for the time necessary to address the violation, which can be no more than 14 days. However, if ICE does a category review, it could be longer.*
- *If you would be detained under 8 U.S.C. § 1226(c), ICE can detain you under the applicable immigration laws.*

## Category 2

- *In most cases, ICE can detain you only for 24 hours.*
- *However, if the violation makes you a Category 1 class member, the Category 1 procedures apply.*



## What if you are a pre-order class member already in detention?

- Your detention is governed by the immigration law that applies to you.
- If you reopen your immigration case while in detention, you can request a custody determination.

Summary of Key Terms  
in the Settlement:  
*Supervision Conditions*

# What does not count as a violation of supervision conditions?

1. Reporting within two business days after a scheduled report date.
2. Failing to report prior to the date the Court issues a final order approving this settlement, if, after receiving notice of this settlement and being notified by ICE in writing of a new report date, you resume reporting.
3. Your inability to obtain documents or information despite good faith efforts to do so.
4. Your unwillingness to state, either verbally or in writing, that you agree to be removed.
5. Technical difficulties in remote reporting methods or with electronic monitoring if you bring them to your ICE officer's attention within two business days.

**Can class members ask ICE to review supervision conditions and return bond?**

**Yes**

- If you have been complying with a supervision condition for more than a year, ICE will presume that condition is no longer necessary.
- If you have a final order of removal or order granting protection from removal, you can request in writing that ICE return your bond money.

Summary of Key Terms  
in the Settlement:  
*Seeking Release from  
Detention*

How can  
class  
members  
seek release  
from  
detention?

Custody reviews by ICE will occur:

*For post-order class members:*

- 90 days after you are detained for removal  
OR
- If a stay of removal is granted

*For pre-order class members:*

- If your immigration case is reopened AND
- You request a custody review

# How can class members seek release from detention?

## *Request for Review by the Special Master*

- **Category 1 post-order class members detained more than 90 days** can ask the Special Master to decide whether your removal is significantly likely in the reasonably foreseeable future (in next 90 days, 180 total).
- **Category 1 class members** can ask the Special Master to decide disputes about whether they were most recently released from state or federal imprisonment less than five years ago.
- **Category 2 post-order class members** can ask the Special Master to decide whether detention for a consular interview is permitted.
- **Post-order class members** can ask the Special Master to decide whether detention should be continued after a stay of removal is granted and ICE has conducted a custody review.
- **Post-order class members detained as of the settlement approval date** can ask the Special Master to decide whether the terms of the settlement were followed for their detention.
- Sample motions will be available on the *ACLU Hamama* settlement website.

# How can class members seek release from detention?

## *Request for Release from the District Court*

- You can file a motion if
  1. You are a post-order class member who has been detained more than 180 days; or
  2. You think your detention violates the settlement agreement or the U.S. Constitution.

Sample motions will be available on the ACLU settlement website.

*\*If the issue can be heard by the Special Master, you must first raise it with the Special Master.*



# How can class members seek release from detention? Habeas Corpus Petitions

- You can file a habeas corpus petition with the District Court to challenge your detention.
- You can file in the Eastern District of Michigan if the Court agrees, or where you are detained, or in another court that has jurisdiction.

# Litigating Your Individual Immigration Case

# The Settlement Does Not Prevent Removal

- A main goal of the *Hamama* case was to give class members time to file motions to reopen (MTRs) in your individual immigration case.
- Any immigration relief has to come in your individual immigration case. If you can reopen your case, you may be able to seek asylum or another form of immigration relief.
- Many class members have filed MTRs. Some have had their cases reopened and have won relief, but some have not.
- Other class members have not yet filed MTRs.

# The Settlement Encourages Filing of MTRs

- Under the settlement, filing an MTR or an order granting reopening of your immigration case shall not be the reason for detention.
  - This was added to address class members' concerns that filing an MTR might lead to detention.
  - If you have not yet filed an MTR, we strongly encourage you to consult with an immigration attorney about your options.

# Consult an Immigration Attorney if You Get a 90-day Notice

- Under the settlement, in most cases you will get 90 days notice before ICE can detain you for removal.
  - If you get such a notice, we strongly encourage you to consult with an immigration attorney about your options.
  - You can use this time to file a motion to reopen your case.
  - But it can take a long time for those motions to be decided so we recommend consulting with an immigration attorney now, if you haven't already.

# Resources Available to Support Your Immigration Case

- Extensive resources are available on the ACLU website (click “resources” on *Hamama* settlement page):
  - Expert reports about conditions in Iraq
  - Sample motions to reopen and motions for stays of removal
  - Immigration court and judicial opinions
- If you were detained during 2017-2018, the *Hamama* team may have your A-file.
- Sample motions for release from detention will be available soon.
- *Hamama* attorneys cannot answer questions about your individual immigration issues.

Summary of Key Terms  
in the Settlement:  
*Next Steps*

# What happens next?

- If you agree with the proposed settlement, you do not need to do anything.
- If you disagree with the proposed settlement, you can file a written objection with the Court electronically or by mailing it to the Court.
  - **All objections must be received by the Court by July 17.**
- Judge Goldsmith will hold a Fairness Hearing to decide whether to give final approval to the settlement on July 31 at 2 p.m.
  - You do not have to attend this hearing, but you or your individual attorney may attend if you would like to do so.
  - You can also ask the Court for permission to speak at the hearing to give your opinion on the settlement.



# What if I want more information on the settlement?

Resource	Case Information
Case website-English	<a href="http://aclumich.org/hamama-settlement">aclumich.org/hamama-settlement</a>
Case website-Arabic	<a href="http://aclumich.org/hva-notice-arabic">aclumich.org/hva-notice-arabic</a>
Settlement-English	<a href="http://aclumich.org/hva-settlement-agreement">aclumich.org/hva-settlement-agreement</a>
Settlement-Arabic	<a href="http://aclumich.org/hva-settlement-agreement-Arabic">aclumich.org/hva-settlement-agreement-Arabic</a>
Contact	<a href="mailto:hamama@aclumich.org">hamama@aclumich.org</a>

