

No. _____

In The Supreme Court of the United States

USAMA JAMIL HAMAMA, ET AL.,

Applicants / Petitioners,

v.

REBECCA ADDUCCI, ET AL.,

Respondents.

Application for Extension of Time to File a Petition
for A Writ of Certiorari to The United States Court
of Appeals for the Sixth Circuit of United States
Court of Appeals

**APPLICATION TO THE HONORABLE
SONIA SOTOMAYOR, CIRCUIT JUSTICE**

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APPLICATION FOR EXTENSION OF TIME

To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5 and 30.2 of this Court, Applicants/Petitioners Usama Jamil Hamama, Atheer F. Ali, Ali Al-Dilami, Habil Nissan, Jihan Asker, Moayad Jalal Barash, Sami Ismael Al-Issawi, Qassim Hashem Al-Saedy, Abbas Oda Manshad Al-Sokaini, Adel Shaba, Kamiran Taymour, Jony Jarjiss, Jami Derywosh, Anwar Hamad, and the certified class they represent (hereafter “Applicants”), pray for a 60-day extension of time to file their petition for a writ of certiorari in this Court, to and including August 30, 2019. Unless extended, the time for filing a petition for a writ of certiorari will expire on July 1, 2019.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Hamama, et al. v. Adducci, et al.*, 912 F.3d 869 (6th Cir. 2018), which is attached as Exhibit A.

JURISDICTION

The judgment below was in the consolidated appeal from two grants of preliminary relief in favor of Applicants by the United States District Court for the Eastern District of Michigan. On July 24, 2017, the district court granted Applicants’ motion for a preliminary stay of removal/preliminary injunction to stay removal proceedings by Respondents against a class of Iraqis with final removal orders. Respondents appealed that order on September 21, 2017 (Appeal 17-2171).

On January 2, 2018, the district court granted Applicants' motion for preliminary injunction from continued detention without bond hearings. Respondents appealed that order on March 2, 2018 (Appeal 18-1233). After briefing and oral argument, the Sixth Circuit, Judge White dissenting, reversed the district court's grants of both preliminary injunctions on December 20, 2018. *See* Exhibit A. Applicants timely petitioned for rehearing en banc. The petition for rehearing was denied on April 2, 2019. *See* Exhibit B. Under Rule 13.1 of this Court, Applicants' time to petition for certiorari in this Court expires on July 1, 2019. Applicants file this application for extension of time more than 10 days in advance of that date. *See* Sup. Ct. R. 13.5, 30.2. This Court will have jurisdiction over any timely filed petition pursuant to 28 U.S.C. § 1254(1).

NATURE OF THE ACTION

Applicants represent a class of Iraqis, or persons classified by Respondents as Iraqis, who lived for years in the United States, notwithstanding final orders of removal, because Iraq refused to accept their repatriation. In June 2017, Respondents, believing that Iraq would now accept returnees, detained many members of the class for immediate removal. Country conditions in Iraq had by then changed drastically since the time of the final removal orders entered against Applicants, including the exertion of control over significant areas of that nation by ISIS. Applicants wanted to assert claims for withholding and deferral of removal under the Convention Against Torture ("CAT") before an Immigration Judge and/or Board of Immigration Appeals, but their sudden detention and the imminent

removal planned by Respondents made that impossible. Applicants alleged that they faced persecution, torture or death if removed without an opportunity to present claims under the CAT before the appropriate immigration authority. Applicants instituted this action, seeking a stay of removal proceedings to allow for that opportunity.

Respondents opposed the stay, and moved for dismissal, arguing *inter alia* that 8 U.S.C. §1252(g) divested the district court of jurisdiction.¹ The district court held that section 1252(g) would, if operative, strip it of jurisdiction, but further held that, under the confluence of circumstances here—where sudden detentions followed decades of Iraq’s refusal to allow repatriation and where country conditions had radically changed in a way making torture and even death a significant likelihood without time to pursue relief under the CAT from the immigration courts—the statute *as applied* suspended the writ of habeas corpus in violation of the Constitution. The district court preliminarily barred Respondents from returning any Iraqis until they had been afforded a meaningful opportunity to present claims for relief from their final orders of removal through the immigration courts.

In October 2017 Applicants amended their complaint to assert challenges to their continued detention, and in November 2017 moved for a preliminary injunction seeking relief from detention. The district court granted preliminary

¹ That statute provides that “no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.”

relief providing that several sub-classes of detained class members be given bond hearings after six months of detention.

Respondents timely appealed from each of these two orders and, as noted above, the Sixth Circuit Court of Appeals consolidated the two appeals. At oral argument the court raised the question of whether 8 U.S.C. §1252(f)(1) applied and, if so, whether it precluded class-wide injunctive relief, an issue never raised by Respondents in the district court.² The parties provided additional letter briefs addressing that and several other issues.

On December 20, 2018 the appellate court reversed the grants of preliminary injunction, over a dissent. With respect to the stay of removal, the court held both that 8 U.S.C. §1252(g) divested the district court of jurisdiction, and that this provision does not violate the suspension clause because the habeas writ does not apply where Applicants are bringing withholding and torture claims, which do not guarantee a right to stay in the United States but rather preclude removal to a certain country. With respect to the appeal of the order granting bond hearings, the court held that 8 U.S.C. §1252(f)(1) stripped the district court of authority to enter such class-wide injunctive relief.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicants respectfully submit that good cause exists to justify the requested 60-day extension of time to petition for a writ of certiorari.

² That statute provides that “no court...shall have jurisdiction to enjoin or restrain the operations of [8 U.S.C. §§1221-31]...other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.”

The appellate court's ruling on the scope of relief in the removal context raises issues similar to those in the recent Ninth Circuit opinion in *Thuraissigiam v. United States Dept. of Homeland Security*, 917 F.3d 1097 (9th Cir 2019). Counsel for Petitioner in that case are also counsel for Applicants here. The government has indicated its intent to seek certiorari in that action, and its petition is due July 5, 2019. See *Department of Homeland Security v. Thuraissigiam*, 18-55313, application (18A1219). Applicants wish to have time to review and consider that petition before any filing in this case, as doing so may help sharpen and clarify whether and what issues need be presented for review.

In addition, counsel for Applicants have numerous other significant and time-sensitive obligations, both in this case and others. Respondents have appealed another order entered by the district court in this matter, and Applicants' brief is due in the Sixth Circuit on July 19, 2019. Litigation in the district court continues unabated with some 560 docket entries to date. Senior counsel here are juggling multiple competing obligations including deadlines in a 44,000-member class action, *John Does #1-6 v. Whitmer*, 2:16-cv-13137 (E.D. Mich.), to comprehensively revise Michigan's sex offender registration statute; significant work on injunction compliance in *Ms. L. v. United States Immigration and Customs Enforcement*, 18-cv-428 (S.D. Cal.) (class action challenging family separation); briefing due June 19, 2019, in the Ninth Circuit Court of Appeals in *Innovation Law Lab v. McAleenan*, No. 19-15716 (9th Cir.) (challenging policy requiring asylum seekers to return to Mexico); and briefing due June 27, 2019 on motions to dismiss and for a preliminary

injunction in *Padilla v. United States Immigration and Customs Enforcement*, 18-cv-928 (W.D. Wash.) (class action challenging policies denying asylum seekers the opportunity to present claims or seek release from detention).

The extension will not prejudice Respondents. The mandate has already issued to the district court. There is no court-ordered impediment to removal and court-ordered bond hearings have ceased.

Wherefore, Applicants respectfully request that an order be entered extending their time to petition for certiorari to and including August 30, 2019.

June 17, 2019

Respectfully Submitted,


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