

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

USAMA J. HAMAMA, et al.,

Petitioners,

vs.

Case No. 17-cv-11910

HON. MARK A. GOLDSMITH

REBECCA ADDUCCI, et al.,

Respondents.

OPINION AND ORDER REGARDING CLASS NOTICE AND COERCION ISSUES

The Court held a telephonic status conference on July 3, 2018 to discuss three issues raised by Petitioners: (i) posting the class notice ordered by the Court's June 20, 2018 Order (Dkt. 316) in the Alexandria Staging Facility; (ii) alleged mistreatment of class members at Calhoun County Jail; and (iii) alleged penalization of those receiving post-order custody reviews for failing to state a desire to return to Iraq. During the call, the parties agreed to provide the Court with further briefing on these issues. Petitioners filed their brief regarding the above issues on July 9, 2018 (Dkt. 329), and the Government responded on July 17, 2018 (Dkt. 343). The Court will address these matters in turn.

A. Class Notice Posting at the Alexandria Staging Facility

On June 20, 2018, the Court ordered the United States Immigration and Customs Enforcement ("ICE") to post a notice "in all facilities housing Hamama class members in a location visible to all class members, and to hand deliver that notice to each detained class member who has [] met with Iraqi embassy or consular officials since May 1, 2017." (Dkt. 316). The notice informs class members about their rights and obligations with regard to their final removal orders. Respondents posted the notice at all of the facilities housing Hamama class members. Resp. to

Pet'rs Stmt. at 1, PageID.7862. However, ICE has not posted the notice at the Alexandria Staging Facility in Louisiana ("Alexandria"), and other similar facilities around the country, which are used to temporarily house certain detainees before consular interviews or other matters. Id. at 1-2, PageID.7862-7863.

Petitioners argue that the class notice should be posted at Alexandria, and other facilities used to temporarily house these detainees, because it is the last chance such detainees have to view the class notice prior to their respective consular interviews. Pet'rs Stmt. at 2, PageID.7694. Additionally, they argue the Court's June 20, 2018 order directed Respondents to post the class notice at all facilities housing Hamama class members and therefore the Court's order necessarily contemplated posting at facilities such as Alexandria. Id. Respondents, on the other hand, argue that the burden on ICE to post the notice in every staging facility where Hamama class members may pass through for a brief period of time outweighs Petitioners' need, particularly because the notice has already been posted in every detention facility where class members are housed on a long-term basis. Resp. to Pet'rs Stmt. at 2, PageID.7863. Moreover, they argue that there is no certainty that Petitioners will return to Alexandria. Id. Respondents have the better part of the argument.

The Court's order requires that the class notice be posted at the facilities where Petitioners are housed. Alexandria is a staging facility used by ICE to, among other things, route Petitioners to Farmville, Louisiana for consular interviews. Id. Petitioners are detained at Alexandria for a brief period and then returned to their home facility. Id. The Court's class notice posting requirement was not intended to follow Petitioners to every facility where they might be moved to for a brief period. The purpose of the class notice was served by virtue of the posting at the

Petitioners' regular place of lodging. Accordingly, Petitioners' request that the class notice be posted at Alexandria, and other similar temporary detention facilities, is denied.

B. Mistreatment of Class Members at Calhoun County Jail

Petitioners' second issue is more troubling. Petitioners contend that class members are potentially suffering mistreatment at the Calhoun County Jail, in Battle Creek, Michigan, due to their involvement in the Hamama case. Pet'rs Stmt. at 2-3, PageID.7694-7695. On June 20, 2018 the Court ordered, among other things, the following:

Immigration and Customs Enforcement (ICE) and Department of Homeland Security (DHS) employees, agents, or contractors (including all detention facility staff) shall not:

- a. communicate about this litigation in any way with class members; or
- b. make any statement
 - i. threatening prosecution;
 - ii. projecting or suggesting how long an individual might remain in detention;
 - iii. projecting or suggesting an individual's likelihood of removal to Iraq;
 - iv. regarding the consequences of signing the prompt removal documents, ECF 110, Pg.ID# 2815-16;
 - v. about the impact that being part of the Hamama case has on the likelihood of removal or length of detention; or
 - vi. suggesting that an individual will be returned to Iraq (unless Respondents have an order from this Court stating that the Court's stay of removal has been lifted).

6/20/2018 Order at 3, PageID.7576.

Petitioners' allegations of mistreatment are supported by the declaration of Monica Andrade, a legal fellow at ACLU Michigan. Andrade Decl., Ex. A to Pet'rs Stmt. (Dkt. 329). The class members at Calhoun allege that facility or ICE staff frequently tell detainees that they are still being detained "because of the Hamama case." Andrade Decl. ¶ 9. An ICE officer reportedly told a detainee that if he "left the class" he would be released from detention. Id. ¶ 10. Detainees have been told that they will be returned to general population "when [they] sign papers and get

out of Hamama.” Id. ¶ 12. A class member reported that an ICE officer said to him that “the Hamama case is why [the detainee] is still being detained, and that if he left the class, he could possibly be released.” Id. ¶ 13. Another ICE officer reportedly told a detainee, “[t]o keep it real, the only reason you are still here is because of Hamama. . . . [and that] if he were not part of Hamama he would be out on supervision or with electronic monitoring.” Id. ¶ 14.

To compound the matter, Andrade says that she has received reports that many of the Hamama class members are being subjected to solitary confinement for trivial matters, such as taking off a shirt to shave or standing on a toilet to kill a spider. Id. ¶ 9. Others class members report that the reasons for confinement are essentially fabricated or completely nonexistent. See id. ¶¶ 11-13. According to Andrade, detainees believe that the use of segregation is improperly motivated and that the detainees are considering a mass hunger strike to protest the mistreatment at the Calhoun facility. Id. ¶¶ 8, 11. Respondents do not deny any of these allegations. Instead, they argue that the detainees would be better served by availing themselves of Calhoun’s grievance process. Resp. to Pet’rs Stmt. at 4-5, PageID.7865-7866. In light of the serious nature of Petitioners’ allegations, the Court concludes that these matters must be addressed promptly.

Under Federal Rule of Civil Procedure 23(d)(1)(C), the Court “has both the duty and the broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel and parties.” Gulf Oil Co. v. Bernard, 452 U.S. 89, 100 (1981). Furthermore, the Supreme Court has “repeatedly recognized the power of a federal court to issue such commands under the All Writs Act as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued” United States v. New York Telephone Co., 434 U.S. 159, 172 (1977). The Court’s power also extends to orders against

“persons who, though not parties to the original action . . . , are in a position to frustrate the implementation of a court order or the proper administration of justice.” Id. at 174.

Petitioners are seeking a court order directing ICE to inform the Calhoun jail authorities of the contents of the Court’s June 20, 2018 order. They also seek the names of detainees sent to administrative or disciplinary segregation, the dates of the stays, the basis for the segregation, and ICE’s views on whether this conforms to policy. Because there is substantiation of the allegations and because the coercion appears to be an attempt to undermine the Court’s prior orders on removal, the Court finds the relief requested reasonable, despite the burden on Respondents. Accordingly, Petitioners’ requested relief will be granted.

C. Avoiding Penalization of Class Members for Failure to Volunteer for Removal to Iraq

Petitioners recently became aware of a class member who, during a post-order custody review, was seemingly penalized for failing to state that he or she wished to be returned to Iraq. Pet’rs Stmt. at 5-6, PageID.7697-7698. Petitioners seek a court order directing Respondents to send an email to Field Office Directors explaining that the Government’s policy against penalizing individuals for refusing to state that they voluntarily want to return to Iraq applies to post-order custody reviews, and directing the Field Office Directors to share that policy with appropriate personnel. Id. at 6, PageID.7698. Respondents argue that they have already sent an email to the Field Office Directors admonishing them not to consider whether a class member is volunteering to return to Iraq and therefore another email would be redundant. Resp. to Pet’rs Stmt. at 5, PageID.7866. Additionally, Respondents maintain that the interviewer’s rationale for observing that the class member was refusing to cooperate was related the class member’s failure to provide certain information rather than failing to volunteer to be removed. Id.

The class member in question received a Notice of Failure to Comply Pursuant to 8 CFR 241.4(g) stating that he or she had refused to cooperate at an interview by failing to provide identifying documents, a true name, and a signature on an Iraq travel document application. Notice, Ex. B to Pet'rs Stmt., PageID.7710 (Dkt. 329). The form said that “[a]s you are still within the removal period, you are to remain in ICE custody until you demonstrate that you are making reasonable efforts to comply with the order of removal and that you are cooperating with ICE’s efforts to remove you.” Id. The class member was further warned that failure to cooperate may result in criminal prosecution. Id. The attorney for this class member contacted ICE and requested that the post-order custody review be redone, which it was. Nonetheless, Petitioners are concerned that other class members are potentially being penalized for failing to state a desire to return to Iraq. Pet'rs Stmt. at 6, PageID.7698.

The language in the Notice of Failure to Comply is somewhat ambiguous. Under the circumstances, it is not difficult to understand how a class member would perceive the notice as a threat to prosecute those who do not volunteer to return to Iraq. Petitioners’ counsel have been working vigorously to explain to class members that there is a difference between cooperating with removal proceedings and volunteering to be removed. Indeed, the main thrust of the notice resulting from the Court’s June 20 order was an attempt to clarify this point of tension. However, the Court need not resolve this matter at this time. Currently, there is only one case of alleged threatening behavior regarding the post-order custody review of a class member, which appears to have been resolved. If further complaints come to light, the Court will address such complaints given their particular circumstances. Therefore, Petitioners’ request for relief regarding the potential penalization of class members for failure to volunteer for removal to Iraq is denied.

CONCLUSION

Accordingly, it is **ORDERED** that Respondents inform the Calhoun County Jail authorities of the contents of the Court's June 20, 2018 order (Dkt. 316) **on or before August 29, 2018** and furnish verification to Petitioners' counsel.

It is further **ORDERED** that Respondents provide to Petitioners' counsel the names of detainees at Calhoun County Jail who have been sent to administrative or disciplinary segregation, the dates of the stays, and the basis for the segregation **on or before August 31, 2018**.

It is further **ORDERED** that, **on or before September 7, 2018**, Respondents submit a written report to Petitioners' counsel and the Court addressing whether the detainees' segregation at Calhoun County Jail conforms to the relevant Calhoun County Jail policy, ICE policy, and the Court's June 20, 2018 order.

SO ORDERED.

Dated: August 22, 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 August 22, 2018.

s/Karri Sandusky
Case Manager