

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**USAMA JAMIL HAMAMA,
ATHEER FAWOZI ALI,
ALI AL-DILAMI,
HABIL NISSAN,
JIHAN ASKER,
MOAYAD JALAL BARASH,
SAMI ISMAEL AL-ISSAWI**, on behalf
of themselves and all those similarly
situated,

Petitioners,

v.

REBECCA ADDUCCI, Director of the
Detroit District of Immigration and
Customs Enforcement,

Respondent.

Case No. 2:17-cv-11910-MAG-DRG

Hon. Mark A. Goldsmith
Mag. David R. Grand

Class Action

**PETITIONERS' REPLY IN SUPPORT OF MOTION FOR A TEMPORARY
RESTRAINING ORDER AND/OR A STAY OF REMOVAL**

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In response to Petitioners' Motion for a Temporary Restraining Order/Stay of Removal, the Respondent offers only arguments opposing this Court's jurisdiction. These are wrong for the reasons set out below. Respondent offers no argument whatsoever on the applicability of the factors for entry of an emergency order to preserve the status quo—nothing contesting merits of the claim, the obvious irreparable harm, the balance of the equities, or the public interest. The question before this Court in this emergency posture is not who prevails on the merits or even a final decision as to jurisdiction, but whether Petitioners satisfy the standards for emergency relief. They do—and the stakes for them could not be higher. This TRO stands between them and persecution and torture.

Respondent's jurisdictional argument is wrong because it fails to take into account the precise nature of Petitioners' claims. Petitioners' claims could not have been raised in petitions for review in the court of appeals, because the claims arose *after* their prior administrative processes were completed and are based on current conditions in Iraq. Further, Petitioners are not asking this Court to review an exercise of prosecutorial *discretion*, but instead whether their removal would violate mandatory legal duties imposed by the Constitution and federal law, including the Convention Against Torture (CAT). Given the precise nature of Petitioners' claims, this Court has jurisdiction. And there is no question that this

Court has jurisdiction while determining its own jurisdiction, and to enter a stay to preserve the status quo, thereby preventing irreparable harm to Petitioners.

1. Respondent contends that district courts lack jurisdiction over immigration removal orders. That general rule, however, is subject to a settled and constitutionally-required exception: district courts have jurisdiction over claims that could not have been raised in the initial petition for review, and would otherwise go without judicial scrutiny. That is precisely the situation here, where Petitioners claim that their removal, without process, would violate the Constitution and federal law in light of the *current* conditions in Iraq. Thus, the very basis for the claim arose *after* any petition-for-review process was over.

Where a claim could not have been raised by petition for review, district courts have jurisdiction. *See* ECF #11 at pp. 14-17; *Singh v. Gonzales*, 499 F.3d 969, 979 (9th Cir. 2007) (finding jurisdiction over claim based on ineffective assistance of counsel that arose after removal order, explaining that “a successful habeas petition will lead to nothing more than ‘a day in court’ . . . , which is consistent with Congressional intent underlying the REAL ID Act”); *Ilyabaev v. Kane*, 847 F. Supp. 2d 1168, 1174 (D. Ariz. 2012) (finding habeas jurisdiction over claim that “could not have been raised in their removal proceedings”).

Notably, Respondent does not argue that Petitioners’ claims can be insulated from review in any court by any means. The Suspension Clause requires review of

legal and constitutional claims. *See INS v. St. Cyr*, 533 U.S. 289, 300 (2001) (reaffirming that “some judicial intervention in deportation cases is unquestionably required” by Suspension Clause); *id.* at 304, 306-08, 311-12; *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (finding that at minimum, the Suspension Clause guarantees review of proper “‘application or interpretation’ of relevant law”).

Instead, Respondent suggests that Petitioners can simply file motions to reopen, and if those motions are denied, can petition the courts of appeals for review of those denials. But, under these circumstances, that is an inadequate alternative absent intervention by this Court to stay Petitioners’ removal.

Petitioners’ claim that they are entitled to process to determine whether their removal would violate the Constitution and federal law. They do *not* claim that this Court is the *only* forum where that process can occur. The Habeas Corpus Class Action Petition and opening brief made clear that the motion to reopen process may be sufficient. But that process is *only* a sufficient alternative if Petitioners are kept in this country so they can file their motions to reopen and seek administrative stays. If they are removed before that occurs, or before the Board of Immigration Appeals can decide their motions and stay applications, they may be tortured or killed. Thus, Petitioners cannot pursue reopening from outside the country under the circumstances of this case. In short, Petitioners are prepared to access the

requisite process through motions to reopen if this Court prohibits their removal while they pursue that avenue of review.

2. Respondent also contends that even if the district court has jurisdiction, INA 242(g), 8 U.S.C. § 1252(g), precludes review over the “execution” of a removal order. But as the Supreme Court, Sixth Circuit and numerous other courts have held, section 242(g) applies *only* to the government’s exercise of prosecutorial discretion. It does not apply where, as here, the Petitioners claim that their removal would violate mandatory legal duties, including the prohibition on removal without process to a country where torture or persecution is probable.

As the Supreme Court explained in *Reno v. Am-Arab Anti-Discrimination Comm.* (“AADC”), the government may exercise its prosecutorial discretion and decline to execute a removal order for humanitarian reasons. That discretionary decision may not be reviewed under 242(g). *AADC*, 525 U.S. 471, 485 (1999). But the Supreme Court made clear that only the exercise of *discretion* is insulated from review. *Id.* at 485 n.9 (“Section 242(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion.”).

Section 242(g) does not insulate review where, as here, noncitizens are raising non-discretionary claims and arguing that their removal would, without process, violate a mandatory duty not to deport them to a place of persecution or torture. *See Mustata v. U.S. Dep’t of Justice*, 179 F.3d 1017, 1022–23 (6th Cir.

1999) (holding that 242(g) did not bar due process claim based on ineffective assistance of counsel, because the claim was not a challenge to government's discretion); *Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) ("While [242(g)] bars courts from reviewing certain exercises of discretion . . . it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions." (citing *AADC*, 525 U.S. at 485 n.9)); *Flores-Ledezma v. Gonzales*, 415 F.3d 375, 380 (5th Cir. 2005) (finding no 242(g) bar where petitioner "challenges the constitutionality of the statutory scheme allowing for such discretion").¹

Significantly, the Respondent cites no case rejecting jurisdiction over non-discretionary CAT and withholding claims like those raised by Petitioners here. The government has no discretion to send someone back in violation of CAT or other mandatory legal prohibitions. Accordingly, section 242(g) does not apply.

3. Finally, the Respondent does not dispute that this Court "has jurisdiction to determine its own jurisdiction." *In re Pioneer Inv. Servs. Co.*, 21 F.3d 428 (6th

¹ See also *Jama v. I.N.S.*, 329 F.3d 630, 632 (8th Cir. 2003), *aff'd sub nom. Jama v. Immigration & Customs Enf't*, 543 U.S. 335 (2005) (holding that challenge to government's authority to deport petitioner to a country without a functioning government is not barred by 242(g) because the court's "role here . . . is not to second-guess the Attorney General's exercise of his discretion; it is to address a purely legal question of statutory construction"); *Chmakov v. Blackman*, 266 F.3d 210, 215 (3d Cir. 2001) ("[242(g)] limits the power of federal courts to review the discretionary decisions of the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.").

Cir. 1994). Instead, it says that “there is no authority that would permit a court, *after* determination that it lacked subject jurisdiction, to nonetheless, enter orders.” Response at 9 (emphasis added). But Petitioners are not arguing that the Court should enter a stay “after” it determines that it lacks jurisdiction. The point is that the Court has jurisdiction to *determine* whether it has jurisdiction. And if on this expedited TRO schedule, the Court cannot make that determination definitively, it can preserve the status quo while it assesses its own jurisdiction to order further relief. *See, e.g., United States v. United Mine Workers of Am.*, 330 U.S. 258, 290 (1947) (“[T]he District Court unquestionably had the power to issue a restraining order for the purpose of preserving existing conditions pending a decision upon its own jurisdiction.”); *Am. Fed’n of Musicians v. Stein*, 213 F.2d 679, 689 (6th Cir. 1954) (finding that “grave and difficult” jurisdictional questions “justified the district court in its issuance of the preliminary injunction in order to reserve its decision on jurisdiction” after “a hearing, adequate study and reflection”).

4. The Respondent argues that Petitioners have an adequate and effective mechanism for relief from removal based on the changed country conditions in Iraq, because they can file motions to reopen. Petitioners are working diligently to file such motions. But the task is far more onerous and time consuming than the Respondent acknowledges. The Declaration of Nadine Yousif (Ex. A) catalogs the herculean efforts underway to link the class of Petitioners with counsel. Even

among those with counsel, many are not yet in a position to file a motion to reopen, which must be accompanied by a fully developed application for the underlying relief sought. *See id.*; 8 C.F.R. § 1003.2(c); BIA Practice Manual 5.6, available at <https://www.justice.gov/eoir/file/431306/download>. The Declaration of Susan Reed (Ex. B) similarly demonstrates the inadequacy of the government's blithe dismissal of the onerous components of an immigration court or Board of Immigration Appeals motion to reopen.

Petitioners also provide Declarations of Mark Lattimer (Ex. C) and Rebecca Heller (Ex. D), to further substantiate the life-threatening danger faced in Iraq by Christians, other minorities, and American-affiliated persons—that is, by people like Petitioners. These Declarations were not included in the Petitioners' initial filing because of the shortage of time. They are chilling expositions of the irreparable harm this Court can avert.

CONCLUSION

The Court has jurisdiction and should grant the Motion for a Temporary Restraining Order and/or Stay of Removal.

Respectfully submitted,

/s/Michael J. Steinberg
Michael J. Steinberg (P43085)

By: /s/Kimberly L. Scott
Kimberly L. Scott (P69706)

/s/ Margo Schlanger
Margo Schlanger (NY Bar #2704443)

/s/Judy Rabinovitz
Judy Rabinovitz* (NY Bar JR-1214)
Lee Gelernt (NY Bar NY-8511)
Anand Balakrishnan* (CT Bar 430329)

* Application for admission forthcoming

Dated: June 22, 2017

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2017, I electronically filed the foregoing papers with the Clerk of the Court using the ECF system which will send notification of such filing to counsel of record.

By: /s/Kimberly L. Scott
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Class Action

**INDEX OF EXHIBITS TO PETITIONERS' REPLY IN SUPPORT OF
MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR A
STAY OF REMOVAL**

Exhibit A: Declaration of Nadine Yousif

Exhibit B: Declaration of Susan Reed

Exhibit C: Declaration of Mark Lattimer

Exhibit D: Declaration of Rebecca Heller

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
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Class Action

DECLARATION OF NADINE YOUSIF

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I, Nadine Yousif, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am a licensed attorney in good standing practicing law in the State of Michigan (P80421). I have entered an appearance in this matter.
2. I received a Bachelor of Arts degree from Wayne State University and a Juris Doctor degree from Wayne State University Law School.
3. I am the co-founder of CODE Legal Aid (“CODE”), a non-profit organization dedicated to refugee rights and resettlement. CODE was founded in 2015 and serves Wayne, Oakland, Washtenaw, and Macomb County residents. CODE currently operates out of KEYS Grace Academy, 27321 Hampden Street, Madison Heights, Michigan 48071. CODE employs me full-time and also employs a part-time interpreter.
4. Since June 11, 2017 when ICE picked up and detained more than 100 Iraqi immigrants in the Detroit Metro area, CODE has worked desperately to recruit lawyers from the Metro-Detroit area to provide pro bono assistance to the detainees.
5. CODE opened its doors at KEYS Grace Academy on the night of June 11th to receive calls from families in the community and offer guidance. Since then, I along with fifteen to twenty volunteers have worked twelve to fifteen hours days trying to mobilize the Chaldean community and other communities to find immigration attorneys, experienced or otherwise, to take on the detainees’ cases.
6. During this time, CODE has transformed KEYS Grace Academy into a help center. Each day, we see approximate twenty-five families who are looking for information about the detentions and imminent deportations. There are approximately twenty volunteers at CODE who sit down with family members to discuss their particular situation. We complete formal intakes with the family member, find out if the detainee has legal representation, and assess their financial needs if not represented.
7. The volunteers have tried to document key information about each detainee but we have found it arduous to get reliable data. Family members are sometimes unaware of their loved one’s circumstances, do not possess supporting documents, or simply lack the requisite knowledge about specific legal procedures that the detainee went through.
8. At the same time, CODE volunteers have reached out on social media calling for volunteer attorneys and sharing updates. I have reached out via local and national

media outlets to educate the public on the detainees and what threats they would face if returned to Iraq.

9. In addition, we have worked to educate families about the immigration system and how to find their loved ones in detention. We have spent countless hours researching immigration law and advising attorneys and families on the best procedures to obtain relief in immigration court or with Immigration and Customs Enforcement.
10. I reached out to the legal community in Youngstown, Ohio to assist attorneys travelling from Michigan to get into the detention center. I have heard several reports of attorneys being turned away, and some volunteer attorneys have been required to visit the detention center multiple times before being admitted to speak with their clients.
11. I have been in contact with over 100 families of detainees since June 11, 2017. Of those, a majority of them have been referred to volunteer attorneys but it is still unclear how many of them have been able to formally retained legal representation. I believe that numerous detainees are still in need of legal representation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 20, 2017 in Ann Arbor, Michigan.

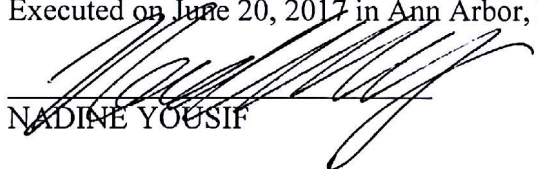

NADINE YOUSIF

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
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Hon. Mark A. Goldsmith
U.S. District Judge

Hon. David R. Grand
U.S. Magistrate Judge

Class Action

DECLARATION OF SUSAN E. REED

I, Susan E. Reed, declare as follows:

1. I am an attorney licensed in the State of Michigan with Attorney Number P66930 and have entered an appearance in this matter.
2. I am the Managing Attorney at the Michigan Immigrant Rights Center (MIRC), a division of the Michigan Advocacy Program (MAP), a nonprofit civil legal services

group established more than 50 years ago. MIRC was founded as a project of MAP in early 2009 to serve as a legal resource center for nonprofit immigration legal services programs and other advocates providing support and technical assistance throughout the state of Michigan.

3. I have practiced immigration and nationality law on a full time basis as a licensed attorney since 2004, exclusively in nonprofit civil legal services settings providing free legal services to clients.
4. I currently serve as the Steering Committee Secretary of the Michigan Coalition for Immigrant and Refugee Rights, a nonprofit membership organization of more than 40 nonprofit, faith, and educational groups founded in 1989 with many members focused on nonprofit immigration legal services. I communicate every single day with a variety of nonprofit immigration legal services providers statewide and in the Detroit metro area.
5. Our office recruits, trains, and mentors pro bono attorneys to handle immigration matters and I engage with volunteer attorneys on a daily basis as well.
6. Market rates for quality immigration legal services in removal proceedings can be extremely high due to the complexity of the law, the rigidity of procedure, the relatively small size of Michigan's immigration bar willing to handle removal cases, and the years to decades-long nature of most removal cases. I am very familiar with market rates for immigration legal services because we receive many calls from individuals seeking free or low cost assistance after initial consultations with private counsel who are unable to afford representation by that counsel.

7. With respect to the proposed class in the above-captioned case, the majority of individual cases that I have reviewed in recent days have extremely complex procedural histories requiring a high level of immigration law knowledge and experience to properly assess.
8. With respect to the proposed class in the above-captioned case, the majority of class members as members of the Chaldean ethno-religious minority in Iraq would have experienced radically changed country conditions following the June 2014 defeat of the Iraqi army by forces of the Islamic State of Iraq and the Levant (ISIL or ISIS) and the loss of government control of Mosul and the Nineveh province.
9. Following that radical deterioration in country conditions, many proposed class members have a new basis for Motions to Reopen to seek certain forms of relief regardless of any past denial of Motions to Reopen, although each case must be assessed individually.
10. I would estimate the typical fee charged for a Motion to Reopen and Stay of Removal in a matter like this for a detained client at between \$5,000 and \$10,000 for the initial motion, with additional fees of \$10,000 to \$30,000 for continuing representation to a merits hearing on the underlying form of relief sought in the event that a motion were granted. One reputable practitioner informed me today that his fee could be up to \$80,000 in a case of this nature, but that he is no longer accepting any new clients due to limited capacity at his firm to take on new matters.
11. These fees are typical for non-detained cases and are likely to be higher where clients are detained in Michigan at the St. Clair, Calhoun, or Monroe County Jails where ICE

has detention contracts. Many attorneys are only willing to visit these facilities where they have multiple clients and can make economically viable trips to obtain signatures and information.

12. Motions to Reopen and Stays of Removal do require original signatures from detained clients on applications for underlying forms of relief and other documents related to the representation and phone access is limited for all detainees, so in-person visits are generally required to prepare emergency motions and stays. Both before the Immigration Court and the Board of Immigration Appeals, a Motion to Reopen must include an attached application for the relief sought. In addition, a variety of supporting documentation is required for an application for a stay including travel documents (passports), medical records if applicable, complete information about country conditions and other new facts and complete legal analysis regarding eligibility for relief, and certified translations of any documents in languages other than English.
13. Getting the documents needed to review a case—immigration records, criminal records, medical records, personal records—can alone take weeks, not days. Only then can counsel do competent research and writing, and produce the application.
14. At that point, counsel must meet again with the applicant, to obtain a signature. Stays of Removal are not typically sought until removal is imminent because they are rarely granted when removal is not imminent and so most practitioners wait to file them with the nonrefundable filing fee until they have some likelihood of being granted.

15. Very few, if any, free or low cost nonprofit immigration legal services providers handle cases of the complexity or duration contemplated here. The Detroit immigration court's list of free immigration legal services providers, available at: <https://www.justice.gov/eoir/file/ProBonoMI/download>, updated April 2017, contains only one potential provider, the University of Detroit Mercy Immigration Law Clinic, because small immigration legal services nonprofits in Michigan, including my own, are unable to handle the volume of calls from detainees and low income respondents in removal proceedings given the volume of calls we already receive and cases we are already handling.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and was executed on June 20, 2017, in Kalamazoo, Michigan.

Signed:


Susan E. Reed

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
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Class Action

DECLARATION OF MARK LATTIMER

DECLARATION OF MARK LATTIMER

I, Mark Lattimer, declare as follows:

I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

I. Qualifications

1. I am Executive Director of Minority Rights Group International (MRG), a position I have held since 2001. Since 2014 I have also coordinated the Ceasefire Centre for Civilian Rights, a multi-year programme supported by the European Union and the Swiss government to implement a system of civilian-led monitoring of human rights abuses in Iraq, focusing in particular on the rights of vulnerable civilians including vulnerable women, internally-displaced persons (IDPs), stateless persons, and ethnic or religious minorities.
2. I am the author or editor of books on human rights including: 'Genocide and Human Rights' (Ashgate, 2006); and (with Philippe Sands QC) 'Justice for Crimes against Humanity' (Oxford, Hart, 2003).
3. I have provided technical consultancy on human rights to United Nations agencies, including UNDP, UNICEF and UN OHCHR, and am frequently used as an expert by the United Nations, the Council of Europe, and the OSCE.
4. I have worked since 2002 on the situation in Iraq, have written or edited numerous reports on the human rights situation and on constitutional issues in Iraq, and have provided technical support to Iraqi parliamentarians and international agencies, including most recently the EU European Asylum Support Office. During 2016-7 my field-work in Iraq (most recently March 2017) has included Baghdad, Kerbala, northern Ninewa and the Kurdistan Region.
5. Minority Rights Group International is an NGO in consultative status with the United Nations that works to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples and to promote cooperation between communities. It works with over 150 partner organizations in over 60 countries worldwide.

II. Summary of Findings and Opinions

6. This additional declaration is made at the request of the American Civil Liberties Union, following reports that significant numbers of Iraqis living in the United States have been detained and are slated for deportation to Iraq. The purpose of the

declaration is to provide information about the current situation in Iraq, particularly as it relates to the threat of persecution and torture against those Iraqis who have lived in the US or who are otherwise associated with the US. This declaration is additional to one dated 14 June 2017 which considered in more detail the situation of particular vulnerable populations in Iraq, including Chaldean Christians.

General reasons for heightened risk to Americans and those associated with Americans in Iraq

7. Although it is far from universal, there is a widespread and ingrained animus against the US and persons associated with the US in Iraq, for the following principal reasons:
 - a) *The US role in the 2003 invasion and subsequent occupation of Iraq.* Although the overthrow of the government of Saddam Hussein was widely welcomed by a range of political forces in Iraq, the years of subsequent occupation saw a marked rise in anti-American feeling. In addition to the remnants of pro-Saddam forces and the growing Sunni Arab insurgency, powerful Shi'a forces including the Sadrist movement and organizations supported by Iran opposed the US presence and were responsible for armed attacks against US personnel, US contractors and those working with them.
 - b) *A moral, religious or political antipathy to the US or the West,* which has become widespread in many circles in Iraq, including some within the government. In such circles the US and the West in general is portrayed as decadent, unreligious (or anti-Muslim) and anti-Iraqi.

The prevalence of anti-American sentiment in Iraq has grown stronger during certain periods since 2003 (for example following US military operations in 2004 – 2006). It has risen again since 2014 on account of:

- c) *Current US engagement in a high-intensity conflict in Iraq.* The US leads the Combined Joint Task Force (Operation Inherent Resolve) which has conducted over 12,000 airstrikes in Iraq since 2014, over two-thirds of them by US aircraft, in operations to support the Iraqi government. The CJTF has confirmed over 70 incidents involving civilian fatalities in Iraq, including 101 civilians killed in a single US air strike in Mosul in March 2017, although independent estimates of the overall number of civilians killed by US air strikes cite much higher figures. Video footage of the effects of US air strikes is widely available in Iraq and is a staple of anti-US propaganda.
 - d) *The growing influence of Iran.* During the 2014 ISIS advance, the military support of Iran was seen as decisive in helping the Iraqi government halt the

advance on Baghdad and regain territory in central Iraq. Iran is a strategic competitor with the US for influence in Iraq, and this contributes to anti-American sentiment, in line with the rise of the Iranian-backed Shi'a militias (see below).

Risk to Iraqi-Americans

8. The US Department of State issues regular travel warnings concerning Iraq. The most recent was issued on 14 June 2017 and states:

'The Department of State warns U.S. citizens against all travel to Iraq. Travel within Iraq remains very dangerous, and the ability of the Embassy to assist U.S. citizens facing difficulty is extremely limited. ...

'U.S. citizens in Iraq are at high risk for kidnapping and terrorist violence. Numerous terrorist and insurgent groups are active in Iraq, including ISIS (also known as the Islamic State in Iraq and Syria or as the Islamic State in Iraq and the Levant, ISIL, Islamic State and Iraq ash-Sham, or Da'esh). Such groups regularly attack both Iraqi security forces and civilians. Anti-U.S. sectarian militias may also threaten U.S. citizens and western companies throughout Iraq. Attacks by improvised explosive devices (IEDs) occur frequently in many areas of the country, including Baghdad. U.S. citizens should pay particular attention to the possibility of terrorist attacks around religious and civic holidays.

'Methods of attack have included explosively formed penetrators, magnetic IEDs placed on vehicles, human and vehicle-borne IEDs, mines placed on or concealed near roads, mortars and rockets, and gunfire. Such attacks often take place in public places, including cafes and markets. Facilities of the Kurdistan Regional Government (KRG), the U.S. government, and western interests remain possible targets.'

The 'Safety and Security' section of the advice repeats the warning for US citizens to avoid all travel to Iraq and states that: 'U.S. citizens in Iraq remain at critical risk for kidnapping and terrorist violence.'

Risk to other Iraqis associated with the US, including from armed militias

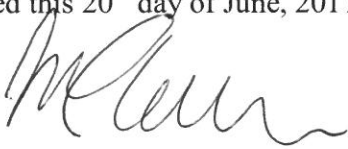
9. As the State Department travel advice suggests, it is not just US citizens who are targeted in Iraq but also 'western interests' more generally. Americans, those perceived to be 'western', and Iraqis who work or associate with them in Iraq have regularly been targeted for attack, by ISIS, by other Sunni insurgent groups, by Shi'a militias including Asaib Ahl Al-Haq, and by criminal gangs who target them for extortion.

10. Iraqis who have worked for US contractors or who have worked in Western compounds (including in the International Zone or 'Green Zone' in Baghdad) have frequently attempted to hide the nature of their work or the identity of their employers from their neighbours for fear of becoming a target of retaliation. This is one of the reasons why most of the support staff in Western compounds are not Iraqi but are recruited from South or South-East Asia or other international staff.
11. An Iraqi who had lived or spent a considerable amount of time in the US would find it difficult to conceal the fact in the neighborhood to which they returned. It would likely already be common knowledge among the local population, with the attendant risks. If they sought to relocate elsewhere in Iraq, that in turn would bring with it the serious risk of persecution faced by internally-displaced people in Iraq's increasingly sectarian environment. It would also potentially involve them in crossing or even residing in territory controlled by armed militias.
12. Large expanses of Iraqi territory are now effectively controlled by armed militias, including Shi'a militias, as well as Sunni tribal forces, within the umbrella of the *Hashd al-Shaabi* or 'Popular Mobilization'. Some of the most powerful militias are supported by Iran, including the Badr Organisation, which controls much of Diyala province, Asa'ib Ahl Al-Haq and Kata'ib Hezbollah. The strong financial and military ties to Iran are acknowledged openly and are a matter of public record.
13. Many of those involved in the militias have a long history of anti-American rhetoric and attacks on US forces, US contractors and other 'western interests' in Iraq. The Deputy Commander of the Popular Mobilization Forces, Abu Mahdi Al-Mohandes, is on the US list of designated terrorists. Asa'ib Ahl Al-Haq has claimed thousands of attacks in the past against US forces or facilities in Iraq and has carried out targeted kidnappings of Westerners.
14. The Popular Mobilization Forces have been officially recognized by the Iraqi government as partners in the liberation of Iraq from ISIS. Despite many cases of forced displacement, torture and cruel, inhuman and degrading treatment, extra-judicial executions and enforced disappearances perpetrated by elements of the PMF, its members are rarely brought to justice and enjoy widespread impunity in Iraq.
15. In summary, there is a particular risk of persecution and attack to Iraqis who are perceived as American or as associating with Americans or US interests; such attacks occur in a climate of general impunity and widespread official complicity. The Iraqi government provides official recognition and support for a wide range of armed militias, many with an anti-American agenda and some of which control significant territory, and is either unable or unwilling to ensure protection against such attacks.

16. The office of the UN High Commissioner for Refugees has stated that it does not currently consider any area of Iraq safe for return. This is also my opinion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of June, 2017 at London, United Kingdom.

A handwritten signature in black ink, appearing to read 'Mark Lattimer', with a stylized, cursive script.

Mark Lattimer

EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**USAMA JAMIL HAMAMA,
ATHEER FAWOZI ALI,
ALI AL-DILAMI,
HABIL NISSAN,
JIHAN ASKER,
MOAYAD JALAL BARASH,
SAMI ISMAEL AL-ISSAWI**, on behalf
of themselves and all those similarly
situated,

Petitioners,

v.

REBECCA ADDUCCI, Director of the
Detroit District of Immigration and
Customs Enforcement,

Respondent.

Case No. 2:17-cv-11910-MAG-DRG

Hon. Mark A. Goldsmith
Mag. David R. Grand

Class Action

DECLARATION OF REBECCA HELLER

Declaration of Rebecca Heller

I, Rebecca Heller, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am the Director and co-founder of the International Refugee Assistance Project (IRAP), a project of the Urban Justice Center, Inc. I am a barred attorney in good standing with the New York State Bar and a Visiting Clinical Lecturer at Yale Law School.
2. As IRAP's Director, I oversee all of IRAP's operations and activities, including programming and development. I am in constant, regular communication with my staff who provide legal representation to vulnerable individuals and consult with pro bono attorneys and law students working on IRAP cases.
3. I also represent a number of refugee and visa cases myself, consult with numerous attorneys working on related cases, monitor field conditions on the ground in the Middle East/North Africa Region, liaise with the U.S. government and the United Nations around refugee and visa processing issues, and coordinate partnerships with numerous NGOs working with and advocating for refugees and immigrants in the U.S. and abroad. Throughout my nine years working on Middle East refugee issues, I have overseen, consulted on and/or represented thousands of cases.
4. IRAP's mission is to provide and facilitate free legal services for vulnerable populations around the world, including refugees and Special Immigrant Visa (SIV) applicants, who seek to escape persecution from their home country.
5. At its founding, IRAP's name was originally the Iraqi Refugee Assistance Project, as the initial client population was Iraqi refugees based in the Middle East. In September 2015, the organization's name changed to the International Refugee Assistance Project to better reflect our global client base. IRAP, however, continues to provide high-quality, expert legal assistance to Iraqis fleeing persecution and violence in their home country. In 2016 alone, IRAP provided legal advice, counseling, interview preparation, or full representation on 729 Iraqi cases, representing thousands of individuals. IRAP currently represents 228 Iraqi cases, representing nearly 40% of our total caseload.
6. It is my firm belief based on my extensive experience that Iraqis deported from the United States will face real and serious threats to their safety if they are returned to Iraq. Although the Islamic State of Iraq and the Levant (ISIL) has suffered recent military losses in Iraq, it has launched an insurgency campaign that has worsened the already fragile security situation in the rest of the country. Furthermore, the Sh'ia militias that the Iraqi government has re-armed in the fight against ISIL continue to commit additional human rights abuses, particularly against religious minorities, women, LGBTI individuals, and U.S.-affiliated Iraqis.

7. In summary, it is my opinion that the removal of any Iraqi from the United States to the country of Iraq, especially those with ties to the U.S. and/or religious minorities, would put the individual at high risk of persecution or torture and is therefore in violation of federal and international law without an individualized determination on their request for relief.¹

The Entire Country of Iraq is Unsafe and Conditions Have Worsened Significantly in Recent Years

8. Iraq is not a safe country by any measure. Since the American invasion of Iraq in March 2003, Iraq has remained in a state wavering between international armed conflict, non-international armed conflict and severe internal political strife, all of which has created a violent insurgency. Iraq has never recovered from this and is highly unlikely to stabilize in the short to medium future.
9. Since the full American withdrawal of forces in 2011, the central government in Baghdad no longer has control over significant parts of Iraq's territory and the country is in a state of civil war or non-international armed conflict.² A large swathe of Western Iraq and the western area surrounding Kirkuk remain under ISIL control.³ The Iraqi government and its allies are actively in combat with ISIL and its lingering insurgency around the Mosul area. Finally, Kurdish Iraqis have created a *de facto* separate state in Northern Iraq that privileges Kurds and discriminates against Arabs, even those indigenous to the area.
10. According to the United Nations Assistance Mission for Iraq and the Office of the High Commissioner for Human Rights, Iraq has been engaged in a non-international armed conflict since at least January 2014.⁴ External actors, including the United States and Iran, have intervened in this non-international armed conflict on the side of governmental actors and pro-government militias, introducing more deadly firepower and various additional destabilizing elements to the conflict.

¹ See 8 U.S.C. § 1229a(c)(7) (2017); 8 U.S.C. § 1231(b)(3) (2017); and 8 C.F.R. §§ 208.16, .17, .18 (2004) ; the United Nations Convention Relating to the Status of Refugees, 189 U.N.T.S. 150 (July 28, 1951).

² See UNHCR, UNHCR Position on Returns to Iraq, 2-3 (2016), <http://www.refworld.org/docid/58299e694.html> (Noting that "Parts of Northern and Central Iraq remain under ISIS control" and even in recaptured areas, "The Iraqi Government is reported to face challenges to establish full and effective authority and the capacity of the state and its institutions to enforce the law and protect civilians remains weak."). BBC, *Iraq*, <http://www.bbc.com/news/world-middle-east-14546763> (last visited June 19, 2017) ("2013 April - Insurgency intensifies, with levels of violence matching those of 2008. By July the country is described as being yet again in a state of full-blown sectarian war").

³ See Tim Arango, *ISIS Fighters in Iraq Attack Kirkuk, Diverting Attention From Mosul*, The New York Times, October 21, 2016, <https://www.nytimes.com/2016/10/22/world/middleeast/iraq-kirkuk.html>; see also Terri Moon Cronk, *Iraqi Forces Pressure ISIS in West Mosul*, U.S. Department of Defense, May 5, 2017, <https://www.defense.gov/News/Article/Article/1174859/iraqi-forces-pressure-isis-in-west-mosul/>.

⁴ See, e.g., UNAMI/OHCHR, Report on the Protection of Civilians During the Non International Armed Conflict in Iraq: 5 June – 5 July 2014, 7 (2014), See, e.g., http://www.ohchr.org/Documents/Countries/IQ/UNAMI_OHCHR_POC%20Report_FINAL_18July2014A.pdf; UNAMI/OHCHR, Report on the Protection of Civilians in the Armed Conflict in Iraq: 1 May – 31 October 2015, i (2015), <http://www.ohchr.org/Documents/Countries/IQ/UNAMIRreport1May31October2015.pdf>.

11. The ongoing armed conflict with ISIL has extended to all of Iraq and made the entire country unsafe. ISIL's human rights violations and violations of international humanitarian law are well-known and do not need to be recited en masse here, but they include forcible displacement, arbitrary executions, torture, sexual enslavement, use of human shields, and targeted persecution of minorities.

ISIL Is Transforming into an Insurgency that Reaches Throughout Iraq

12. As ISIL has suffered military defeats throughout Iraq and Syria, it is transforming into an insurgency.⁵ The insurgency has spread its targets throughout Iraq, and not just in the Sunni-majority areas where it finds its base. As it shifts from a "state" providing basic services in areas it controls to an insurgency that wants to disrupt the Iraqi central government that has now recaptured territory, ISIL's targets reach outside of Sunni-majority areas.
13. Last year, as ISIL was losing its grip on key areas under its control, it retaliated with several powerful bombings against civilians in Shi'ite-majority areas under the central government's control, including in Karada (a neighborhood in Baghdad),⁶ Samara (a Shi'ite-majority city in the strongly Shi'ite and government-controlled Southern Iraq),⁷ and Shi'ite pilgrimage areas in Southern Iraq.⁸ After a series of massive bombings targeting Shi'ites in mid-to-late 2016, the New York Times wrote about a specific attack on a Shi'ite pilgrimage, stating, "that attack alarmed American officials, who worry that efforts to help the Iraqis defeat the Islamic State in Mosul will be squandered if civilians around the country are terrorized by suicide bombings."⁹
14. I expect large-scale violence to continue. ISIL has its roots in the Sunni community that held more power under Saddam Hussein. With the US invasion in 2003 and the subsequent empowerment of the Shi'ite majority and hardline sectarian leaders within it such as Nouri al-Malaki, the divisive Iraqi Prime Minister from 2006-2014, Iraq's Sunni groups turned to insurgency and violence to establish autonomy and assert their power and place. This led to the first Iraqi Civil War, marked largely by a Sunni insurgency and Shi'ite reprisals and retaliations, between 2006 and 2008. IRAP was founded and our initial work flowed out of our work with US-affiliated Iraqis that began to be targeted at this time.

⁵ See e.g. Alia Brahimi, *ISIL after Mosul: Insurgency and rivalry*, Al Jazeera (Mar. 19, 2017), <http://www.aljazeera.com/indepth/opinion/2017/03/isil-mosul-insurgency-rivalry-170319081646052.html>.

⁶ See Al Jazeera.com, *Iraq: Baghdad bombing kills more than 200*, Al Jazeera (Jul. 4, 2016), <http://www.aljazeera.com/news/2016/07/iraq-baghdad-bombings-kill-23-160703045945293.html>.

⁷ See e.g. Reuters.com, *Islamic State suicide attack kills 32 in southern Iraq*, Reuters (May 1, 2016), <http://www.reuters.com/article/us-mideast-crISIL-iraq-blast-idUSKCN0XS0ZN>.

⁸ See Tim Arango, *ISIS Bomb Aimed at Shiite Pilgrims in Iraq Kills at Least 80*, the New York Times, Nov. 24, 2016, <https://www.nytimes.com/2016/11/24/world/middleeast/islamic-state-bombing-shiites-iraq.html?mcubz=0>.

⁹ *Id.*

15. Millions of Iraqis were displaced and tens of thousands of killed. The same underlying tensions led to the new Sunni insurgency in 2014 and which created ISIL. This pattern will continue, making Iraq an unsafe country generally, not just in ISIL-controlled areas.

Shi'ite Militias Have Been Re-Activated, Leading to Further Fragmentation of Iraq and Rampant Human Rights Abuses against Minority Groups

16. Following the fall of Mosul to ISIL in June 2014, the Iraqi government created and mobilized the Popular Mobilization Forces (PMF) to battle against ISIL and to defend Shi'ite areas, particularly Baghdad, from ISIL. The PMF is an umbrella group of mostly Shi'ite organizations that are allied with the Iraqi government and engage in combat targeting ISIL. Many of the organizations are trained by Iran, a US-designated state sponsor of terror, and essentially operate as proxies for the Iranian government.¹⁰
17. Others PMF members are Shi'ite Iraqi militias that have their roots in last decade's conflicts, including fighting coalition troops in the early 2000's and targeting Sunnis during the first Iraqi Civil War (2006-2008). Asa'ib Ahl al-Haq (AAH), for example, is a prominent member of the PMF and an offshoot of the Mahdi Army.¹¹ AAH was founded when they fought alongside Hezbollah, a State Department designated Tier I Terrorist Organization, in the war against Israel in July 2006.¹²
18. These Shi'ite militias do not follow the rules of armed conflict or general human rights norms or protocols.¹³ They have also been engaged in rampant human rights abuses and war crimes in conquered areas that they have recaptured from ISIL.¹⁴

Sunnis in ISIL Areas "Liberated" by PMF Forces Face Persecution

19. Due to past atrocities and human rights abuses, there was widespread fear of reprisal from Shi'ite organizations during the fight to liberate territory in Iraq from ISIL control. This led the Iraqi government to declare that these militias would not take part in the

¹⁰ Priyanka Boghani, *Iraq's Shia Militias: The Double-Edged Sword Against ISIS*, PBS Frontline, March 21, 2017, <http://www.pbs.org/wgbh/frontline/article/iraqs-shia-militias-the-double-edged-sword-against-isis/>.

¹¹ Renad Mansour and Faleh A. Jabar, *The Popular Mobilization Forces and Iraq's Future*, Carnegie Middle East Center, April 28, 2017, <http://carnegie-mec.org/2017/04/28/popular-mobilization-forces-and-iraq-s-future-pub-68810>.

¹² See Stanford University, *Mapping Militant Organizations- Asa'ib Ahl al-Haq*, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/143> (last visited June 19, 2017); see also U.S. Department of State, Foreign Terrorist Organizations, June 19, 2017, <https://www.state.gov/j/ct/rls/other/des/123085.htm>.

¹³ See Christoph Wilcke, *Why Accountability for Iraq's Militias Matters*, Human Rights Watch, May 27, 2016, <https://www.hrw.org/news/2016/05/27/why-accountability-iraqs-militias-matters>.

¹⁴ See PBS Frontline, *Iraq's Shia Militias: The Double-Edged Sword Against ISIS*, March 21, 2017, <http://www.pbs.org/wgbh/frontline/article/iraqs-shia-militias-the-double-edged-sword-against-isis/>

recapture of Mosul.¹⁵ However, notwithstanding the assurance, the Iraqi government has allowed these militias to take part in the recapture of ISIL-controlled areas, which has led to significant human rights violations and violations of International Humanitarian Law.¹⁶

20. According to Amnesty International, “[PMF] militias have carried out a systematic pattern of violations, including enforced disappearance, extrajudicial executions and other unlawful killings and torture of Sunni Arab men and boys, seemingly in revenge for IS attacks, and at times to extort money from the families of those they have abducted.”¹⁷ The 2016 State Department Human Rights Report documented that 643 men and boys were kidnapped by PMF forces following the capture of Fallujah and all remain unaccounted for.¹⁸
21. The State Department’s 2016 Human Rights Report stated that there are documented reports of the PMF “killing, torturing, kidnapping, and extorting civilians,” and that governmental measures to investigate these have not been successful. Rather, “impunity” is the norm.¹⁹
22. For many Sunni IRAP clients that have fled Iraq from areas formerly controlled by ISIL, they fear returning home because the PMF militias will persecute them. They feel that ISIL has simply been replaced by the PMF, reigniting and playing off of sectarian fractures that were ignited after the fall of Saddam Hussein. As Amnesty International reports, “Predominantly Shi’a paramilitary militias operating under the [PMF] exercise effective control over entire cities and neighborhoods and control access to others through manning checkpoints. In areas with mixed populations, where there is a history of intercommunal tensions dating back to the worst period of Sunni Shi’a civil strife from 2006-2007, members of Arab Sunni communities live in constant fear of abduction, killing, loss of property and extortion, prompting many to flee. Militias have also destroyed homes and other civilian property and barred Sunni Arabs from returning to areas recaptured from IS. Others have been afraid to return to their homes fearing revenge attacks by militias who have committed war crimes and serious human rights violations in a climate of impunity.”²⁰

¹⁵ See, e.g., Orla Guerin, *Iraqi Shia militias' show of force in battle for Mosul*, BBC, Dec. 3, 2016, <http://www.bbc.com/news/world-middle-east-38194653>.

¹⁶ Amnesty International, *IRAQ 2016/2017*, <https://www.amnesty.org/en/countries/middle-east-and-north-africa/iraq/report-iraq/> (June 19, 2017). Human Rights Watch, *Iraq: Ban Abusive Militias from Mosul Operation*, July 31, 2016; “Iraq’s Shia Militias: The Double-Edged Sword Against ISIS,” PBS Frontline, <http://www.pbs.org/wgbh/frontline/article/iraqs-shia-militias-the-double-edged-sword-against-isis/>

¹⁷ Amnesty International, *Iraq: Turning a Blind Eye, the Arming of the Popular Mobilization Unit*, 15, (2017), https://www.amnestyusa.org/files/iraq_report_turning_a_blind_eye.pdf.

¹⁸ United States Department of State, *Iraq 2016 Human Rights Report*, 4 (United States (2016), <https://www.state.gov/documents/organization/265710.pdf> (updated 2017).

¹⁹ *Id.* at 2.

²⁰ See *supra* text accompanying note 9, at 16.

23. This instability caused by the PMF's staunch sectarianism sows the seeds for further instability in Sunni areas of Iraq. Without a political solution, various militia groups will continue to operate in these areas and will continue to create unsafe living conditions.

Shi'ite Militias Have Targeted Military-Age Shi'ite Men That Refuse to Join the PMF

24. IRAP has worked with a number of clients from southern portions of Iraq that have fled because they have been targeted for forcible recruitment by the PMF. Shi'ite military-age men are often-times coerced into recruitment in PMF-affiliated groups. IRAP has observed that if they are unwilling to take part, they and family members are targeted for further persecution.

Future Conflict on the Horizon Between Kurdish Forces and the Arab Shi'ite Militias

25. While the PMF's stated goal is to fight ISIL, the creation of overtly sectarian militias in Iraq's resolutely sectarian backdrop has led to even further fragmentation of Iraq. Kurdish authorities fear that the PMF will try to control regions of Iraq with Kurdish populations or Kurdish interests.²¹ This has led to openly sectarian military skirmishes between PMF groups and Kurdish militias, with documented human rights abuses on both sides.²² A very fragile and tacit alliance against ISIL has prevented the explosion of tensions between Kurds and PMF forces, but there is strong evidence that these tensions exist and will come to a head following ISIL's eventual defeat.²³ This is supported by evidence of escalating tensions and skirmishes over the last few months between PMF forces and Kurdish forces.²⁴
26. Kurdish forces have also been involved in the destruction of villages formerly controlled by ISIL after ISIL had been forced to retreat. It is likely that the goal in the destruction of the villages is to prevent Arabs (Sunnis and other minority religions) from returning to these regions.²⁵ Such actions violate fundamental tenants of International Humanitarian Law, including the principle of distinction between military and civilian targets in the course of armed conflict. The intentional displacement of a specific ethnic or religious group from an area of territory also raises serious concerns of ethnic cleansing.

²¹ Renad Mansour, *Mosul After the Islamic State: The Kurdistan Region's Strategy*, "Carnegie Middle East Center, May 20, 2016, <http://carnegie-mec.org/2016/05/18/mosul-after-islamic-state-kurdistan-region-s-strategy-mosul-after-islamic-state-kurdistan-region-s-strategy/iygh>

²² Sharon Behn, *Kurds Warn of Post-IS Fight With Shi'ite Militias*, Voa News (Mar. 27, 2016), <https://www.voanews.com/a/kurds-warn-of-post-is-fight-with-shiite-militias/3256998.html>

²³ Ahmad Majidyar, *Escalating Tension between Iran-Backed P.M.F. Groups and Peshmerga Forces in Sinjar*, Middle East Institute (May 15, 2017), <http://www.mei.edu/content/io/escalating-tension-between-iran-backed-pmf-groups-and-peshmerga-forces-sinjar>; See *supra* Behn.

²⁴ See, e.g., *supra* Majidyar.

²⁵ See Human Rights Watch, *Marked with an "X" Iraqi Kurdish Forces' Destruction of Villages, Homes in Conflict with ISIS*, 3, (2016), https://www.hrw.org/sites/default/files/report_pdf/iraq1116_web.pdf; See also, *supra* text accompanying note 10.

27. According to Kurdish military commanders, after the battle against ISIL is complete, “another conflict could begin – this time against the Iraqi government’s paramilitary units known as the Hashd al-Shaabi.” In 2016, the Kurdish Peshmerga counter-terrorism commander warned:

“If places like Hawija and Mosul get taken, automatically, straight away after that, I think we are going to start having problems with the Iraqi government and the Hashd...They are going to want us out straight away. It will be ‘thank you very much, you’ve helped us, now go back to your places...The Kurds are not going to end up going to take a place, shedding blood for that place, and then being kicked out of that place.’”²⁶

28. All of this tension is further exacerbated by the September 25, 2017 referendum on whether to establish an independent Kurdistan. Given that much of the area Kurds claim for an independent state is oil-rich, and some parts of it are ethnically mixed and disputed (i.e. Kirkuk), all the seeds are sown for renewed internal strife and a potential civil war between the government in Baghdad and the autonomous state of Kurdistan.²⁷ Minorities and otherwise vulnerable populations living in these areas or elsewhere in Iraq will be targeted by militia groups from each of these sides, causing widespread forced displacement and civilian casualties that have become common in every facet of the Iraqi conflict.

Current Threats Faced by Minority Groups in Iraq

29. Against this backdrop of instability and sectarian conflict, religious and ethnic minorities, women, and LGBTI individuals currently face particular risks in Iraq. In 2016, the non-profit organization Minority Rights Group International declared that “[d]espite successes in pushing back ISIL and regaining territory in the centre and west of the country,” Iraq was the “most prominent riser” in their “Peoples under Threat” rankings, which highlights countries most at risk of genocide and mass killing.²⁸ In the last year and a half, numerous human rights organizations have documented violations against these groups.²⁹ The perpetrators include ISIL, Shia militias, government forces, and other non-

²⁶ See *supra* Behn. see also Omar Al Saleh, *Arab-Kurd tensions simmer in shadow of Mosul campaign*, Al Jazeera (Nov. 23, 2016), <http://www.aljazeera.com/news/2016/11/arab-kurd-tensions-simmer-shadow-mosul-campaign-161122055709252.html>The

²⁷ Emily Tamkin, *Kurds Finally Set Date for Independence Referendum*, Foreign Policy (Jun. 7, 2017), <http://foreignpolicy.com/2017/06/07/kurds-finally-set-date-for-independence-referendum/>

²⁸ “Iraq,” Minority Rights Group International, 2016, <http://peoplesunderthreat.org/countries/iraq/#background>

²⁹ See e.g. Shafaq Hasan, *Iraq’s Religious, Ethnic Minorities Disappearing Due to ISIS Violence and Global Inaction*, July 7, 2016, <https://nonprofitquarterly.org/2016/07/07/iraqs-religious-ethnic-minorities-disappearing-due-to-isis-violence-global-inaction/>; “Conclusions of the Washington Conference on Threats against Religious and Ethnic Minorities under Da’esh”, Bureau of Democracy, Human Rights and Labor, August 2, 2016, <https://www.humanrights.gov/dyn/07/daeshconference/>; U.S. Holocaust Memorial Museum, *Iraq: Bearing Witness Report*, November 2015, <https://www.ushmm.org/m/pdfs/Iraq-Bearing-Witness-Report-111215.pdf>.

state actors acting with impunity.³⁰ Through IRAP's extensive work with Iraqis refugees, we have seen numerous examples of individuals fleeing these risks as well.

Dangers Facing Religious and Ethnic Minorities in Iraq

30. Since 2014, ISIL has been committing atrocities against Christians and other religious minorities in Iraq. In June 2014, when ISIL took Mosul, the militants painted the Arabic letter "n" on Christian homes, to represent the word "Nasrene," a Christian slur.³¹ It offered Christian residents a choice: to convert or pay a *jizya* tax--if they refused, they would be killed, raped, or enslaved.³² ISIL has destroyed crosses and burned Christian religious manuscripts in churches,³³ and destroyed the prophet Jonah's tomb, which is a site of special significance to Iraqi Christians.³⁴ By March of 2015, more than 125,000 Christians had fled from their homes in the region, and the violence against Christian Iraqis continues.³⁵
31. In an October 2015 report, the UN Mission to Iraq stated that ISIL's systematic violations against and persecution of religious and ethnic minorities "exemplify ISIL apparent policy of suppressing, permanently expelling, or destroying some communities."³⁶
32. ISIL has also targeted other religious minorities and subjected them to violence, intimidation, abductions, and death. In March 2016, Secretary of State John Kerry declared that ISIL "is responsible for genocide against groups in areas under its control, including Yazidis, Christians and Shia Muslims."³⁷
33. IRAP has several Iraqi Christian clients who fled Iraq between 2014 and 2016 due to ISIL persecution and violence. For example, [WB] is a Christian widow from Mosul who fled her hometown after ISIL entered in 2014 and announced that she would need to

³⁰ Nonprofit Quarterly, *Iraq's Religious, Ethnic Minorities Disappearing Due to ISIS Violence and Global Inaction*, July 7, 2016, <https://nonprofitquarterly.org/2016/07/07/iraqs-religious-ethnic-minorities-disappearing-due-isis-violence-global-inaction/>.

³¹ Eliza Griswold, *Is This the End of Christianity in the Middle East?*, New York Times Magazine (July 22, 2015), <http://nyti.ms/1HIuZ9f>

³² Greg Botelho, *Faith Turns Christians into Terrorist Targets*, CNN (Apr. 24, 2015, 8:57 PM), <http://cnn.it/1GrGdAN>.

³³ *Iraq Christians Flee as Islamic State Takes Qaraqosh*, BBC (Aug. 7, 2014), <http://www.bbc.com/news/world-middle-east-28686998>; Barney Henderson et al., *Islamic State Pulls Down Church Crosses in Northern Iraq as 200,000 Flee*, Telegraph (Aug. 7, 2014, 6:42 PM), <http://www.telegraph.co.uk/news/worldnews/middleeast/iraq/11018298/Islamic-State-pulls-down-church-crosses-in-northern->

³⁴ Dana Ford & Mohammed Tawfeeq, *Extremists Destroy Jonah's Tomb, Officials Say*, CNN (July 25, 2014, 5:04 PM), <http://www.cnn.com/2014/07/24/world/iraq-violence/>.

³⁵ See Nina Shea, *For Christians and Yazidis Escaping Genocide, Obama has no Room at the Inn*, The National Review (Sep. 22, 2015), <http://www.nationalreview.com/article/424401/christians-and-yazidisfleeing-genocide-obama-administration-has-no-room-inn-nina>.

³⁶ See *supra* text accompanying note 2 at i.

³⁷ Tom Gjelten, *State Department Declares ISIS Attacks o Christians Constitute Genocide*. (Mar. 17, 2016), <http://www.npr.org/2016/03/17/470861310/state-department-declares-ISIL-attacks-on-christians-constitute-genocide>.

convert, pay a *jizya* tax, or be killed. After she left, her former neighbors informed her that ISIL had seized her home and her remaining belongings.

34. IRAP is also currently representing two siblings who are young Iraqi Chaldean Christians, who grew up in Baghdad. Because of the numerous kidnappings and murders of Christians there, they moved north to Kurdistan. They, however, continue to face harassment and discrimination. They have been forced to take religious Islamic studies classes and after being threatened by their employer, they have now fled Iraq for Turkey.
35. ISIL is not the only threat to Christians and religious minorities. As detailed above, rising instability and violence has increased sectarian tensions across the country. In 2015, leaders of the Sabaeen-Mandaean community reported robberies and death threats from their neighbors.³⁸ Throughout Iraq, some sectarian armed groups target Sunni Muslims, while others target Shia Muslims or non-Muslim minorities. According to the State Department's 2016 human rights report, "in many regions, minority groups, whatever their religious adherence, said they experienced violence and harassment from the majority group in the region."³⁹
36. Ethnic minorities such as the Shabak, Turkmen, and others have also been disproportionately affected by the most recent waves of violence in Iraq, as the fighting since the fall of Mosul in 2014 has engulfed several regions with predominantly minority populations.⁴⁰ Many have been internally displaced, including Kurdistan, and live in dire humanitarian circumstances.⁴¹
37. Even assuming ISIL is eradicated from Iraq, more powerful factions are expected to seize control of previously ISIL-controlled territories making it unsafe for religious minorities to return home or stay in Iraq. With the impending liberation of Iraqi territory from ISIL forces, minority populations continue to diminish. A post-ISIL phase may be just as or even more dangerous for minority groups in Iraq. Some experts argued that "all indications point to further persecution and discrimination for Iraq's minorities once ISIL has been defeated."⁴²

Dangers Facing Women in Iraq

38. Women face a number of threats to their lives and safety in Iraq. As UNHCR noted in November 2016, "The situation of women and girls has severely deteriorated as a result of the current conflict."⁴³ ISIL has kidnapped, sold, enslaved, and abused Iraqi women. While many of its victims have been Yezidi and Christian women, ISIL has similarly

³⁸ See *supra* text accompanying note 10 at 19.

³⁹ *Id.*

⁴⁰ Minority Rights, Crossroads: The future of Iraq's minorities after ISIL, 7 (2017), http://minorityrights.org/wp-content/uploads/2017/06/MRG_Rep_Iraq_ENG_May17_FINAL2.pdf.

⁴¹ *Id.* at p 15-18.

⁴² *Id.* at 6.

⁴³ UNHCR, UNHCR Position on Returns to Iraq, 6 (2016), <http://www.refworld.org/docid/58299e694.html>.

targeted Shia and Sunni Muslim women.⁴⁴ For example, on December 3, 2014, ISIL public released a ‘Questions and Answers on Taking Captives and Slaves’ pamphlet stating that Christian and other non-Sunni Muslim women can be kidnapped, imprisoned, sold, raped, and murdered.⁴⁵

39. Iraqi women also face other risks in the unstable climate of Iraq. There is no law against domestic violence, and such abuse often goes unreported and unpunished. Women fleeing gender-based violence in Iraq do not generally have access to shelters.⁴⁶ The security situation throughout the country does not afford women with access to reasonable protection from or redress for acts of violence against them.

40. For example, one of IRAP’s client is a Sunni Muslim woman originally from Basra. She and her husband fled to Syria in 2006 due to numerous sectarian attacks against their families. They returned to Iraq, along with their young son, after their home in Syria was shelled and the situation had deteriorated to a point where they thought their home country would be safer. In 2015, they were living in Anbar province when masked men raided her home at night, kidnapped her husband, and brutally raped her. When her husband was released, they fled immediately to Jordan. However, her husband abandoned her shortly afterward when he learned she had been raped. Her story demonstrates the grave risks that face all Iraqi women in a country rife with violence and instability, including those who have recently returned from elsewhere expecting the situation to have improved.

Dangers Facing LGBTI Individuals in Iraq

41. LGBTI individuals also face severe risk of harm in Iraq. In ISIL-controlled territory, individuals “accused of homosexuality” have been shoved off building roofs, and LGBTI Iraqis are treated with brutal violence and persecution.⁴⁷

42. One of IRAP’s LGBTI clients was living in Mosul and attending university when ISIL invaded and took control. Despite the risks associated, he spoke out in support of LGBTI rights in class. Shortly after, he was severely beaten by one of his classmates, an ISIL sympathizer. ISIL militants soon appeared at his home, asking for his family to turn him in. His father, a local imam, was ashamed at his son and attempted to get him into custody. Fortunately, his mother helped him escape to Lebanon just before he was apprehended, surely saving his life. Since his escape, he has seen videos of his former LGBTI friends being thrown off of the roof by ISIL militants.

⁴⁴ U.S. Department of State, Iraq 2016 Human Rights Report, 6-26 (2016).

⁴⁵ See The Middle East Media Research Institute, *Islamic State (ISIL) Releases Pamphlet on Female Slaves*, Dec. 4, 2014, <https://www.memri.org/jttm/islamic-state-ISIL-releases-pamphlet-female-slaves>

⁴⁶ See U.S. Department of State, Iraq 2016 Human Rights Report, 60 (2016).

⁴⁷ See e.g., Ishaan Tharoor, *The Islamic State's Shocking War On Gays*, Washington Post, June 13, 2016, https://www.washingtonpost.com/news/worldviews/wp/2016/06/13/the-islamic-states-shocking-war-on-homosexuals/?utm_term=.98e79378a3b9.

43. ISIL-controlled areas are not the only regions where LGBTI Iraqis face persecution and threat of harm, however. The Shi'ite militias that have recently been empowered by the Iraqi government have also been known to target and commit human rights abuses against LGBTI individuals living in areas under their control.
44. For instance, an IRAP client who is a transgender, Shi'ite Iraqi woman who grew up in Baghdad. She studied law and became an attorney and was clerking in a court when her family learned of her sexual orientation and gender identity. All her life her father had urged her to act more like a man, and had sometimes beaten her, including in public, when he felt that her voice or demeanor were not masculine enough. When he found out about a relationship she was in, he notified his sheikh and the sheikh formed a council which sentenced her to death. Her mother helped her escape before the sentence could be carried out. Her mother told her that she knew of the father's intentions and that they would kill her, leave her body in a dumpster, and blame the matter on a Sunni militia. She fled to Lebanon and through IRAP's assistance, she has successfully scheduled for resettlement to a country in Europe.
45. Furthermore, while same-sex intimacy is not explicitly prohibited by Iraqi law, extra-marital sexual relations are illegal, and same-sex marriage is not permitted—so the law does effectively prohibit all same-sex relations.⁴⁸ In practice, authorities often use public indecency charges or confessions of monetary exchange to prosecute same-sex sexual relations. LGBTI individuals also face abuse and violence at the hands of family and community members, who often act with impunity.⁴⁹

All Iraqis Living in the U.S. Face Grave Dangers if They are Deported to Iraq

46. All Iraqis who have U.S. family or employment ties face heightened risks within Iraq on the basis of their perceived loyalty to the United States. For more than a decade, both Sunni and Shi'ite groups hostile to the United States have persecuted and tortured extended family on account of a single family member's U.S.-affiliated employment or family ties.
47. Congress specifically created a refugee program for U.S.-affiliated Iraqis, passed in 2007, because of the dangers facing Iraqis who have allied themselves with the United States. This program, known as the Direct Access Program for U.S.-Affiliated Iraqis, extends not just to individuals who have been employed by the U.S. government or worked for U.S. NGOs and media, but also their family members. Furthermore, the program is available to Iraqis who have certain family members living as U.S. citizens or legal permanent residents in the United States. It allows Iraqi refugees to enter the U.S. Refugee Admissions Program *from within Iraq* because even the process of fleeing the country can be so dangerous.⁵⁰

⁴⁸ Human Rights Watch, World Report- Iraq Events of 2016, <https://www.hrw.org/world-report/2017/country-chapters/iraq>.

⁴⁹ U.S. Department of State, Iraq 2016 Human Rights Report, 60 (2016).

⁵⁰ Pub. L. No. 110-181, § 1241, 122 Stat., 393 (2008). <https://www.congress.gov/110/plaws/publ181/PLAW-110publ181.pdf>; see also Department of State, Refugee Resettlement Program for Iraqis with U.S. Affiliations

48. The breadth of the program's eligibility criteria indicate a crucial point: any Iraqi with ties to the United States, whether it be through family or employment, is at risk of persecution. We have seen this principle at work throughout our caseload at IRAP. Family members of U.S.-affiliated Iraqi clients have been killed by militant groups in order to send a message. If IRAP clients do make it to safety in the United States, many of them choose to cut off communication with family back home because of the danger in "outing" them as U.S.-affiliated.
49. In addition to Congress's creation of the Direct Access Program for U.S.-affiliated Iraqis, Congress also created the Special Immigrant Visa (SIV) program for Iraqis who had been employed by or on behalf of the U.S. government in Iraq.⁵¹ An Iraqi who is issued an SIV can travel to the United States with their immediate family members and become legal permanent residents.
50. Because Iraqis who worked for the U.S. government faced serious and ongoing threats from anti-American militias and terrorists, Congress required these SIVs to be processed within nine months to allow for speedy travel to the United States to for safety. When the U.S. Departments of State and Homeland Security failed to process cases within that time frame, IRAP sued on behalf of several of its Iraqi clients in federal court. A federal judge ruled that the government has a non-discretionary duty to adjudicate these SIV cases within the timeline provided by Congress.⁵² Again, this underscores that both Congress and the judiciary recognize the urgency in which U.S.-affiliated Iraqi cases must be processed because of how dangerous it is for Iraqis with U.S. ties to remain in Iraq.
51. The threats facing U.S.-affiliated Iraqis have increased significantly in the last few years due to the rise of ISIL and renewed sectarian violence. In ISIL-controlled areas, the U.S. State Department has warned that "people who express support for ...Western institutions are at grave risk in these areas, and may face kidnapping, imprisonment, or execution."⁵³
52. ISIL is not the only source of increased threats to U.S.-affiliated Iraqis, however. The same religious militias that targeted U.S. troops and Iraqi allies during the Iraqi Civil War have once again become active throughout the country. Although at odds with each other, both Sunni and Shi'ite extremist groups share a common goal in targeting and attacking

Bureau of Population, Refugees, and Migration, (2016), <https://static1.squarespace.com/static/580e4274e58c624696efadc6/t/583ceb2fb8a79bc809b1cc32/1480387375511/Direct+Access+Program+for+U.S.-Affiliated+Iraqis.pdf>; Department of State, U.S. Refugee Resettlement Processing for Iraqi and Syrian Beneficiaries of an Approved I-130 Petition - Frequently Asked Questions (2016), <https://static1.squarespace.com/static/580e4274e58c624696efadc6/t/5863d0f6893fc0ab2fda661a/1482936567273/U.S.+Refugee+Resettlement+Processing+For+Iraqi+and+Syrian+Beneficiaries+of+Approved+I-130+Petitions+-+Frequently+Asked+Questions.pdf>.

⁵¹ Pub. L. No. 110-181, § 1241, 122 Stat., 393 (2008) <https://www.congress.gov/110/plaws/publ181/PLAW-110publ181.pdf>.

⁵² *Nine Iraqi Allies Under Serious Threat Because of Their Faithful Serv. to the United States v. Kerry*, 168 F. Supp. 3d 268, 295 (D.D.C. 2016).

⁵³ U.S. Department of State, *Iraq*, <https://travel.state.gov/content/passports/en/country/iraq.html> (last visited June 19, 2017).

Americans and any Iraqis with a significant ties to the United States. For example, in 2016 three Americans were kidnapped in Baghdad after the U.S. embassy received intelligence that a Shi'ite militia was planning to kidnap an American or an American contractor.⁵⁴ U.S. Iraqi allies are also increasingly being targeted in kidnappings, extra-judicial killings, and other attacks throughout the country.⁵⁵

53. Numerous IRAP clients have recently faced persecution, threats, and violence from Shi'ite militias and other armed groups. IRAP represented a Shi'ite family that was under severe threat by Shi'ite militia groups in Baghdad because one sister married as U.S. citizen and moved to the United States. The militia demanded that one family member find and kill his "American sister" in order to "wash his shame," as well as that of "the entire family, religion, sect, and country." Members of the family were then killed in retaliation for the sister's ties to America. In another case, an individual whose mother and brother were resettled to the United States received a phone call from a militia threatening to kill him and telling him that they believed his family were American spies. The individual was forced to flee with his family to Turkey and seek assistance as refugees. IRAP represented another Iraqi family whose son had become a famous painter in the United States. As soon as the story became popular in media, a religious militia attempted to track down and kill the family before they were able to get to safety.

54. Given the grave dangers U.S.-affiliated Iraqis face within Iraq, it is my opinion that any Iraqi who has been in the U.S. for a long period of time will very likely to be seen as "American" or "U.S.-affiliated" and face the same, if not worse, dangers if deported to Iraq. This will be especially true for individuals who have U.S. family members, accented Arabic, do not speak Arabic fluently or at all, or are unfamiliar with certain local customs due to their extensive time spent outside Iraq. If individuals have not been in Iraq since they were young children, they will be clearly identified as American despite their Iraqi ancestry. Returning them to Iraq in the current climate would put them at severe risk of being targeted by ISIL, Shi'ite militias, or other religious extremist groups.

The Situation in Iraq Remains Dire and Returning Iraqis There May Place Them at Substantial Risk of Persecution, Violating Federal and International Law

55. Iraqis within the United States may be at a substantial risk of persecution if they are returned back to Iraq. The prevalence of lawless militias, the weakness and sectarianism of the central state, the specific targeting of Christians and other Iraqi minorities, and the ongoing presence of political tension and civil strife make Iraq dangerous for many Iraqis who may be returned there. In November 2016, the UN High Commissioner for Refugees (UNHCR), the UN refugee agency, issued official guidance on forced returns to Iraq, reiterating many of the facts I have outlined in this declaration. UNHCR "urge[d] States

⁵⁴ See CBS News, *Official: Americans kidnapped from Iraq interpreter's home*, CBS, January 18, 2016, <http://www.cbsnews.com/news/americans-kidnapped-from-iraq-interpreters-home-in-dora-baghdad/>.

⁵⁵ See e.g., George Packer, *Trapped in Iraq*, New Yorker, July 21, 2014, <http://www.newyorker.com/magazine/2014/07/21/trapped-iraq>; see also Martin Chulov, *Iraqi MPs call for US entry ban as translators condemn 'betrayal'*, The Guardian, January 30, 2017, <https://www.theguardian.com/world/2017/jan/30/iraqi-mps-call-for-us-entry-ban-as-translators-condemn-betrayal>.

to refrain from forcibly returning any Iraqis who originate from areas of Iraq that are affected by military action, remain fragile and insecure after having been retaken from ISIL, or remain under control of ISIL. Such persons, including persons whose claims for international protection have been rejected, should not be returned either to their home areas, or to other parts of the country.”⁵⁶

56. For other Iraqi nationals who are outside Iraq, UNHCR further advised that it is not “appropriate for States to deny persons from Iraq international protection on the basis of the applicability of an internal flight or relocation alternative.”⁵⁷ Such an option “would only be available in the exceptional circumstances where an individual can legally access and remain in the proposed area of relocation, would not be exposed to a new risk of serious harm there, and has close family links in the proposed area, with the family willing and able to support the individual.”⁵⁸ For Iraqi-Americans, there is no area of relocation that would be safe for them in Iraq.

Conclusion

57. United States law requires that individuals present in the United States, regardless of whether their legal status or criminal record, to not be deported if they are either eligible for asylum, eligible for withholding of deportation, or qualify for protection under U.S. obligations under the Convention Against Torture. All three forms of relief place an affirmative obligation on the United States government to not remove or send someone back to a country where they have a possibility of suffering persecution and/or torture
58. Based on my personal knowledge and IRAP’s extensive experience in handling thousands of Iraqi refugee and visa cases, I firmly believe that many Iraqis residing in the U.S face grave dangers of persecution should they be deported. Returning Iraqis to Iraq without a meaningful opportunity to present their concerns that they will be subject to persecution and/or torture or other inhuman treatment upon return, will violate both U.S. federal law and international law.
59. I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed at the Urban Justice Center, 40 Rector Street, New York, NY 10006, on June 20, 2017.



Rebecca Heller
June 20, 2017

⁵⁶ UNHCR, UNHCR Position on Returns to Iraq, 47 (November 14, 2016), <http://www.refworld.org/docid/58299e694.html>.

⁵⁷ UNHCR, Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA) in Baghdad for Sunni Arabs from ISIS-Held Areas, <http://www.refworld.org/pdfid/575537dd4.pdf>.

⁵⁸ UNHCR, Iraq: Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA), 2 (April 12, 2017), https://www.ecoi.net/file_upload/1930_1492501398_58ee2f5d4.pdf.

Responses, Replies and Supplemental Briefs[2:17-cv-11910-MAG-DRG Hamama et al v. Adducci](#)**U.S. District Court****Eastern District of Michigan****Notice of Electronic Filing**

The following transaction was entered by Scott, Kimberly on 6/22/2017 at 2:05 PM EDT and filed on 6/22/2017

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Case Number: [2:17-cv-11910-MAG-DRG](#)
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Sami Ismael Al-Issawi
Atheer F. Ali
Jihan Asker
Moayad Jalal Barash
Usama J. Hamama
HABIL NISSAN

Document Number: [30](#)

Docket Text:

REPLY to Response re [11] MOTION for Temporary Restraining Order *and/or Stay of Removal* filed by Ali Al-Dilami, Sami Ismael Al-Issawi, Atheer F. Ali, Jihan Asker, Moayad Jalal Barash, Usama J. Hamama, HABIL NISSAN. (Attachments: # (1) Index of Exhibits, # (2) Exhibit A Declaration of Yousif, Nadine, # (3) Exhibit B Declaration of Reed, Susan, # (4) Exhibit C Declaration of Lattimer, Mark, # (5) Exhibit D Declaration of Heller, Rebecca) (Scott, Kimberly)

2:17-cv-11910-MAG-DRG Notice has been electronically mailed to:

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Document description:Exhibit A Declaration of Yousif, Nadine

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Document description:Exhibit B Declaration of Reed, Susan

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Document description:Exhibit C Declaration of Lattimer, Mark

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Document description:Exhibit D Declaration of Heller, Rebecca

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