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

**USAMA JAMIL HAMAMA,** et al.,

Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910

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

Class Action

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# EXHIBIT A

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

**USAMA JAMIL HAMAMA,** et al.,

Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910

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

Class Action

**DECLARATION OF RUSSELL ABRUTYN**

# DECLARATION OF RUSSELL ABRUTYN

**STATE OF MICHIGAN )**
**) ss**
**COUNTY OF OAKLAND )**

I, Russell Abrutyn, declare under penalty of perjury as follows:

1. I have been licensed to practice law in Michigan since 2002 and Washington State since 1999. I am also licensed to practice before the Second, Sixth, and Ninth Circuit Courts of Appeals, the Eastern and Western Districts of Michigan, and the Eastern and Western Districts of Washington. I graduated from the University of Michigan Law School in 1999.

2. My practice is focused exclusively on immigration law. I am a member of the American Immigration Lawyers Association (AILA) and the Secretary of the Michigan chapter. I also serve on the Detroit Immigration Court Liaison Committee. Since my involvement with AILA, I have received the President's Commendation, Sam Williamson Mentor of the Year, and Jack Wasserman Excellence in Litigation awards.

3. Over the last 5-10 years, I have represented, either individually or as co-counsel, more than 20 Iraqi Chaldeans. Through my role as mentor and active membership in AILA, I have spoken with many local attorneys about their representation of Iraqi Chaldeans.

4. The local Immigration Court's view on the dangers facing Iraqi Christians has changed. Until recently, Immigration Judges in Detroit frequently denied applications for asylum and withholding of removal filed by Iraqi Christians. *See, e.g.*, *Sako v. Gonzales*, 434 F.3d 857 (6th Cir. 2006); *Yousif v. Holder*, No. 11-4072 (6th Cir. Oct. 9, 2012). More recently, however, this changed in the face of overwhelming evidence of the brutal harm inflicted on Christians in Iraq by militias, terrorists, and others.

5. Congress promulgated Section 1247 of the Refugee Crisis in Iraq Act of 2007, Pub. L. No. 110-181, in recognition of the significant dangers in Iraq. This provision allowed otherwise time-barred Iraqi applicants for asylum and withholding of removal to file motions to reopen.

6. Because Iraqi Chaldeans face such a high likelihood of persecution in Iraq, based on my experience before Immigration Judges in Detroit, they are invariably or nearly invariably successful in obtaining protection from removal, in cases in which those claims are not statutorily barred. Indeed, the Detroit Office of Chief Counsel for Immigration and Customs Enforcement (ICE) concedes that Iraqi Chaldeans have a greater than 50% chance of being persecuted in Iraq, and the grant rate in the Detroit Immigration Court for Chaldeans who are not statutorily barred from withholding of removal is at or very near 100%. In my own experience, none of my Iraqi clients have been deported.

7. The persecution Chaldeans currently face in Iraq has been described as akin to genocide, something that has been recognized by the U.S. State Department.

8. In *Yousif v. Lynch*, 796, F.3d 622 (6th Cir. 2015), a case I recently litigated, the Court of Appeals held there "is no dispute that Yousif is a Chaldean Christian and that his status as a Christian alone entitles him to withholding of removal, given that there is 'a clear probability' that he would be subject to future persecution if returned to contemporary Iraq." *Id.* at 628. A clear probability means that there is a greater than 50% chance of future persecution.

9. Based on my personal knowledge and experience with several of the Iraqis who were detained by ICE during the last several days, a significant portion of them may have a basis to reopen their removal proceedings to apply for relief based on changed conditions in Iraq or changes in the law that affect their removability or eligibility for relief from removal.

10. For example, on the morning of June 13, 2017, I filed a motion to reopen with the Detroit Immigration Court for an individual who was detained by ICE on June 11, 2017. In 2011, the Immigration Court erroneously found that his conviction for delivery or manufacture of marijuana was an aggravated felony drug trafficking offense under 8 U.S.C. § 1101(a)(43)(B), thereby rendering him statutorily ineligible for asylum. Subsequently, however, the Supreme Court clarified that, under the categorical approach, convictions under state marijuana laws that include the social sharing of small quantities of marijuana for no remuneration are not aggravated felonies. *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013). As a result, the classification of my client's conviction under MCL § 333.7401(2)(D)(3) as an aggravated felony was erroneous and he should be eligible for asylum. *See People v. Green*, 299 Mich. App. 313, 315 (Mich. App. 2013) *aff'd* 494 Mich. 865 (Mich. 2013). Shortly after I filed the motion to reopen, the Immigration Court granted a stay of removal pending a decision on the merits of the motion to reopen. If the motion to reopen is granted, my client will be able to apply for relief from removal and, if successful, retain his lawful permanent resident status.

11. I was only able to file the motion to reopen so quickly because I had a pre-existing relationship with the client and was already in the process of preparing the motion to reopen at the time of his arrest. This client was lucky because I had spent the last several months obtaining his files from prior counsel, preparing his applications for relief, and gathering hundreds of pages of supporting evidence. I have spoken with numerous family members of other individuals who were detained during the last several days and they are generally not in a position to quickly file a motion to reopen because they do not have copies of relevant documents or even know for sure why their loved one was ordered removed.

12. Thus, while I have no doubt that there are many others with a basis for filing meritorious motions to reopen, without representation of counsel such motions will not be filed and these individuals will be deported to persecution, torture and possible death.

13. To file a motion to reopen in Immigration Court or the Board of Immigration Appeals, the movant must attach a copy of the application for relief and supporting documentation, including affidavits. 8 C.F.R. §§ 1003.2(c)(1) and 1003.23(b)(3). It takes time to prepare the applications and supporting evidence, especially if the noncitizen has been transferred to a remote detention facility like the Northeast Ohio Correctional Facility in Youngstown, Ohio. Youngstown is 226 miles from Detroit and it is difficult for Michigan attorneys to make the trip. For individuals with older removal orders, it is not uncommon for them to lack crucial documents from their original removal proceedings, so there is added delay in obtaining these documents from other sources.

14. The fact that some Iraqi Christians arrested by ICE in the past few days have not yet been able to file motions to reopen does not indicate that they lack a basis for seeking relief, but rather that there has not yet been enough time for preparation of the filings, especially if they are without counsel as is the case for the overwhelming majority of the detainees.

**Russell Abrutyn**

# EXHIBIT B

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

| | |
|---|---|
| **USAMA JAMIL HAMAMA,** et al.,<br><br>Petitioners and Plaintiffs,<br><br>v.<br><br>**REBECCA ADDUCCI**, et al.,<br><br>Respondents and Defendants. | Case No. 2:17-cv-11910<br><br>Hon. Mark A. Goldsmith<br>Mag. David R. Grand<br><br>Class Action |

**DECLARATION OF NORA YOUKHANA**

**DECLARATION OF NORA YOUKHANA**

I, Nora Youkhana, hereby declare:

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

1. I am a licensed attorney practicing law in the State of Michigan. I am employed with Fieger, Fieger, Kenney & Harrington, PC in Southfield, Michigan where I dedicate my practice to social justice and injury law.
2. I attended Wayne State University where I received a bachelor's degree in Communication Studies and a Juris Doctor degree.
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 is operating out of KEYS Grace Academy, 27321 Hampden Street, Madison Heights, Michigan 48071.
4. On June 11, 2017, ICE picked up and detained more than 100 Iraqi immigrants living in the Metro-Detroit area. From that day on, CODE and volunteers have recruited and organized lawyers from the Metro-Detroit area to provide pro bono assistance. The goal has been to find representation for all those detained on June 11 and any further Iraqis with final orders of removal who will be detained.
5. In the 48 hours since the raids, we have been able to assemble a list of at least 24 attorneys and organizations willing to help on a pro bono basis. Organizations include the National Immigrant Rights Center and the law firm of Jaffe, Raitt, Heuer & Weiss, PC.
6. We have been in contact with detainees' families to identify who was apprehended and gather the basic information necessary for volunteer lawyers.

7. Both the distance between our lawyers and the detainees and the potential of removal at any time raise the concern that people will be sent back to Iraq, where they fear persecution and torture, before a lawyer can help them raise these claims or, in some cases, even meet with them.
8. The majority of the lawyers in our network are located in the Metro Detroit area.
9. The vast majority of the Iraqi detainees were transferred out of Michigan soon after being arrested and are being held in Youngstown, Ohio. Others are located in Calhoun and St. Clair Counties.
10. Because Youngstown is over 200 miles away, most volunteer attorneys have not yet been able to visit and consult with detainees, even where they have been able to establish a lawyer-client relationship.
11. To my knowledge, approximately 40% of those detained have not yet met or been contacted by attorneys affiliated with CODE. From speaking to family members of detained Iraqis, I know that some still have no legal representation at all at this time.
12. Out of the remainder of detainees, some had pre-existing attorney client relationships with CODE-affiliated attorneys. However, their transfer to Ohio has made it difficult for even these willing attorneys to communicate with, consult with, or aid their clients as they are located in the Metro Detroit area.
13. Our goal is to file motions to reopen for those who have been apprehended. Iraqis who have lived in the United States for years or, in some cases, decades face a real threat of persecution or torture if returned to Iraq. Others who have been detained may have other grounds for relief that can only be discovered and raised with the help of an attorney.

14. In a few cases, attorneys have been able to file motions to reopen. The majority of these motions were filed on behalf of Iraqi detainees who immigrated to the United States from Iraq.

15. For volunteer attorneys and attorneys with new clients, filing these motions to reopen require substantial time and resources. Attorneys must be able to visit clients, interview them, gather documents, and draft pleadings.

16. Even gathering necessary documents can be time consuming. For example, many families will not have copies of the necessary immigration court and other records, especially where the immigration case ended years ago and the detentions were so sudden. In order to know what forms of relief clients have and even to file a motion to reopen, lawyers will need copies of the files. Getting these files can take several days and sometimes weeks.

17. Volunteers are actively attempting to make the time in addition to their normal caseloads. In some cases, this includes driving to Youngstown in evenings, meeting with clients late at night before returning to Detroit, and meeting with family members late into the night.

18. I am concerned that despite the dedication of our legal community, many of the Iraqi detainees who have been picked up will be deported before they get the help they need. Even if the Iraqi detainees were not transferred to Ohio, we would still need additional lawyers to provide representation to the unrepresented. And given the situation now, even those lawyers with pre-existing relationships with detainees may not have adequate time to protect their clients.

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

Executed June 14, 2017 in Southfield, MI.

**Nora Youkhana**

# EXHIBIT C

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

**USAMA JAMIL HAMAMA,** et al.,

Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910

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

Class Action

**DECLARATION OF AMEER SALMAN**

**DECLARATION OF AMEER SALMAN**

I, Ameer Salman, hereby declare:

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

1. I am Atheer Ali's brother.
2. Atheer Ali a 40 year old Iraqi national who has lived in the United States since around 1992. Since coming to the United Sates he has lived in Michigan. He currently lives in Shelby Township, MI.
3. Atheer Ali has a 12 year old daughter who is in the seventh grade, [redacted].
4. On June 11, 2017, Mr. Ali was arrested and transferred to a detention center in Youngstown, Ohio.
5. If he is sent to Iraq, Atheer Ali fears he will be persecuted for at least two different reasons.
6. First, he is a Christian. Our father was Muslim, but converted, and so my brother is Christian as well. As a Christian, he will face persecution in Iraq. He will be known to be Christian because he has a tattoo of cross on his shoulder.
7. Second, [redacted]
8. To my knowledge, Atheer Ali has had a final order of removal since 2004. Since that time, he has been living under supervision. He has complied fully with the orders of his supervision.
9. Mr. Ali has a criminal history. In 1996, he was convicted of a felony charge of breaking and entering. In 2009 and 2014, he was convicted of misdemeanor convictions for possession of marijuana in 2009 and 2014. He was never sentenced to prison time.

10. Mr. Ali has a lawyer who is representing him in his immigration proceedings.

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

Executed June 15, 2017 in Sterling Heights, MI.

Ameer Salman

# EXHIBIT D

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

**USAMA JAMIL HAMAMA,** et al.,

Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910

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

Class Action

**DECLARATION OF ALBERT VALK**

# DECLARATION OF ALBERT VALK

I, Albert Valk hereby declare:

1. I am an attorney in good standing licensed to practice in the State of Michigan. Within the last few days, I was retained by the family of Jihan Asker to seek relief in her immigration case after she was detained by ICE.
2. Jihan Asker is an Iraqi national who has lived in the United States since the age of five, most of this time near Warren, Michigan. She was born on September 21, 1975 and is 41 years old now. She has three children ages 23, 22, and 15, all of whom are US citizens in addition to her mother and sister.
3. Ms. Asker has been subject to a final order of removal to Iraq since 1986 when she was ten years old. She has been under an order of supervision since 2008 and for the past nine years, has been living in the community complying with this Order.
4. On approximately June 11, 2017, without warning, ICE arrested her and transferred her to a detention center in Calhoun County, Michigan, where she awaits imminent removal to Iraq. That same day, Ms. Asker was scheduled to enter the hospital [redacted] Her relatives told me that she is currently suffering from excruciating pain as being in the detention center she cannot leave for surgery or get timely medical attention.
5. Ms. Asker is a beneficiary of the approved I-130 Petition filed by her USC daughter, which classified her as an immediate relative. As a result, Ms. Asker is eligible to seek lawful permanent residency in the US.
6. The documentation brought by relatives also revealed that Ms. Asker is a beneficiary of an I-360 Self-Petition as [redacted] of a U.S. citizen, approved in 1999.

7. Ms. Asker fears removal to Iraq, especially because her status as a Chaldean makes her a target for violence and persecution. Her family was able to retain a lawyer for her immigration proceedings.

8. To the best of my knowledge, Ms. Asker's only encounter with law was fourteen years ago in 2003. Ms. Asker pleaded under advisement to a 93-day misdemeanor fraud charge and ordered to six months' probation. After probation ended on January 28, 2004, a judgment of acquittal/dismissal was entered. She has not reoffended since.

9. Ms. Asker fears persecution and torture if returned to Iraq and wishes to seek relief from removal.

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

Executed June 16, 2017 in Bloomfield Township, Michigan.

____________________________

ALBERT VALK

# EXHIBIT E

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

**USAMA JAMIL HAMAMA,** et al.,

Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910

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

Class Action

**DECLARATION OF SILVANA NISSAN**

**DECLARATION OF SILVANA NISSAN**

I, SILVANA NISSAN, hereby declare:

1. I am the sister of Habil Nissan.
2. My brother Habil Nissan is an Iraqi national who lawfully entered the United States in 1997 as a refugee at the age of 16 years old. Habil is currently 36 years old and resides in Sterling Heights, Michigan with his family.
3. Habil has two U.S. citizen daughters, ages 9 and 10, who reside with their mother.
4. In 2007, Habil received an order of removal but, nevertheless, was released to the community under an order of supervision, with which he was complying. On or about June 11, 2017, without warning, he was arrested by ICE and immediately transferred to the detention center in Youngstown, Ohio where he awaits imminent removal to Iraq.
5. In 2005, Habil plead guilty to a misdemeanor destruction of property charge, and two misdemeanor assault charges. Habil was ordered to twelve months of probation. The case was later dismissed and closed.
6. As a Catholic, Habil fears persecution and torture if returned to Iraq. Habil and his family are trying to find counsel to assist him in seeking relief from removal.
7. [redacted]d [redacted].

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

Executed June 15, 2017 in Sterling Heights, Michigan.

SILVANA NISSAN

# EXHIBIT F

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

**USAMA JAMIL HAMAMA,** et al.,

Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910

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

Class Action

**DECLARATION OF EMAN JAJONIE-DAMA**

**DECLARATION OF EMAN H. JAJONIE-DAMAN**

I, EMAN H. JAJONIE-DAMAN hereby declare:

1. I am an attorney in good standing licensed to practice law in the State of Michigan and federal court since 1992.
2. I am also a part-time magistrate at the 46th District Court in Southfield, Michigan since February 2008.
3. I graduated from the University of Detroit Law School. I have been practicing immigration and nationality law exclusively for the past 15 years.
4. During my practice, I have filed hundreds of applications for relief under the Convention Against Torture ("CAT") on behalf of Iraqi Chaldean Christian individuals. Most of the submitted applications were granted.
5. On June 9, 2017, the Board of Immigration Appeals granted two motions to reopen cases for my clients. The grants will enable my clients to seek the protection of deferral of removal under CAT. These two individuals are Iraqi Chaldean Christians (see attached orders).
6. Since the ICE raid and detainment of numerous Iraqi Christians in Metro Detroit on June 12, 2017, I have been contacted by over 50 families asking me to file emergency motions to stay the detainees' imminent deportation.
7. I have found it nearly impossible to meet with my detained clients because they were all transferred to Youngstown, Ohio approximately 4 hours away from the Metro Detroit Area where I practice and where their families reside.
8. It is very difficult for me to continue the client-attorney communication when I am unable to see my clients to obtain necessary information and

documentation for their representation. Further, many attorneys, including myself, have found it difficult to call into the detention center in Ohio to speak to their clients. We have to wait until detainees are given time to make calls home and when they do, they are granted only a few minutes to relay information.

9. The detained Iraqi Christians face imminent death if sent back to Iraq, a country which is war torn and riddled with militias who have been and continue to target the Christian population.

10. In my experience before Immigration Judges in Detroit and the Board of Immigration Appeals, a motion to reopen to request relief under CAT is a viable solution for detainees with limited alternative means for relief.

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

Executed June 15, 2017 in Warren, Michigan.

EMAN H. JAJONIE-DAMAN

# EXHIBIT G

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

| | |
|---|---|
| **USAMA JAMIL HAMAMA,** et al.,<br><br>Petitioners and Plaintiffs,<br><br>v.<br><br>**REBECCA ADDUCCI**, et al.,<br><br>Respondents and Defendants. | Case No. 2:17-cv-11910<br><br>Hon. Mark A. Goldsmith<br>Mag. David R. Grand<br><br>Class Action |

**DECLARATION OF WILLIAM SWOR**

**DECLARATION OF WILLIAM SWOR**

I, WILLIAM SWOR hereby declare:

1. I am an attorney in good standing licensed to practice in the State of Michigan. I was retained by Usama Jamil Hamama to handle his immigration case and pending Application for Pardon to the Michigan Department of Corrections.
2. Mr. Hamama is an Iraqi national who lawfully entered the United States in 1974 as a refugee. He and his family now reside in West Bloomfield, Michigan. Until his conviction, he was a lawful permanent resident in the US.
3. Mr. Hamama is 54 years old. He is married and has four USC children, ages 11, 15, 17, and 19.
4. Although he has been subject to an order of removal to Iraq since October 4, 1994, Mr. Hamama was released to the community without an order of supervision. Seventeen years later, he was temporarily detained and released under an order of supervision. He has been under an order of supervision, in complete compliance, since December 2011.
5. Mr. Hamama recently retained a lawyer to attempt to address his immigration issues and filed an appearance on his behalf. On June 11, 2017, without notice to his attorney, ICE came to his home and arrested him in front of his wife and children. ICE transferred Mr. Hamama to the St. Claire County Jail where he awaits imminent removal to Iraq.
6. Mr. Hamama fears removal to Iraq, especially because his status as a Chaldean makes him a target for violence and persecution.
7. Twenty-eight years ago, Mr. Hamama was involved in a road rage incident which resulted in convictions for felonious assault, possession of felony firearm, and carrying a

pistol in a motor vehicle, for which he served a two year sentence. At the time of his conviction, these offenses did not support a petition for removal. They only became grounds for removal two years after his conviction when Congress amended the Immigration and Nationality Act.

8. Mr. Hamama and his family suffered substantial emotional and financial difficulties as a result of his convictions. He has not reoffended in over twenty-eight years. Mr. Hamama has always supported civic and social activities – volunteering his time and resources to the Rotary Club of Farmington, baseball and bowling teams, the City of Harper Woods' fundraiser for a K9, and Gleaners Food Bank, among others. He has received numerous awards for his charitable work including an Appreciation Award from the United States Air Force and an Award for Supporting Children's Special Olympics Program.

9. Mr. Hamama fears persecution and torture if returned to Iraq and wishes to continue his ongoing efforts to seek relief from removal.

10. Mr. Hamama has severe health problems, [redacted] and is concerned with the unavailability of necessary medicines and medical services in Iraq.

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

Executed June 15, 2017 in Detroit, MI.

WILLIAM SWOR

# EXHIBIT H

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

**USAMA JAMIL HAMAMA,** et al.,

Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910

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

Class Action

**DECLARATION OF CYNTHIA BARASH**

**DECLARATION OF CYNTHIA BARASH**

I, Cynthia Barash, hereby declare:

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

1. I am the daughter of Moayad Jalal Barash.
2. I am eighteen years old.
3. Moayad Jalal Barash is 47 years old. He is from Iraqi and has lived in the United States since around 1979 when he was 8 years old.
4. He has spent most of his life in Michigan. On June 11, 2017, he was arrested from our home in Warren, Michigan. He was taken to a jail in Youngstown, Ohio.
5. Mr. Barash is married and has four U.S. Citizen children, aged 21, 20, 18 and 7 years old. [redacted] In addition, our cousin lives with us and my dad takes care of him also.
6. Mr. Barash is the only one of my parents who works. He is also involved in church activities.
7. Because my dad was picked up so suddenly, and because he is being held so far away, we have had trouble speaking to him and getting information.
8. For example, I'm not sure where he has kept his immigration documents.
9. I've been trying to get accurate information to help him. We have been trying to find representation for him and very recently (the night of June 14) spoke to a lawyer, but I don't know when that lawyer will be able to visit my dad or even talk to him.
10. Mr. Barash and our family are Christian, and if he is sent to Iraq he is worried that he will be persecuted.

11. [redacted]

12. My dad was ordered removed back to Iraq more than two decades ago. But he has been living in the United States since and was on an order of supervision. He had to check in with immigration every six months, which he did.

13. I do not know what my family will do without my dad. Even having him taken away for this short time is difficult. Not being able to talk to him or visit him makes it even more difficult.

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

Executed June 15, 2017 in Detroit, MI.

**Cynthia Barash**

# EXHIBIT I

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

| | |
|---|---|
| **USAMA JAMIL HAMAMA,**<br>**ATHEER FAWOZI ALI,**<br>**ALI AL-DILAMI,**<br>**HABIL NISSAN,**<br>**JIHAN ASKER,**<br>**MOAYAD JALAL BARASH,**<br>**SAMI ISMAEL AL-ISSAWI**, on behalf of themselves and all those similarly situated,<br><br>Petitioners,<br><br>v.<br><br>**REBECCA ADDUCCI**, Director of the Detroit District of Immigration and Customs Enforcement,<br><br>Respondent. | Case No. 2:17-cv-11910-MAG-DRG<br><br>Hon. Mark A. Goldsmith<br>Mag. David R. Grand<br><br>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 declaration is made at the request of the American Civil Liberties Union, following reports that significant numbers of Iraqis living in the United States, including Chaldean Christians, 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 as it relates to minorities and other vulnerable populations, and in particular to explain how this situation has changed since 2014.

7. Iraq is extremely dangerous for civilians, and minorities in particular face high risks of attack. This has been the case since the conflicts following the 2003 invasion of Iraq, but the situation has recently become much worse, following the rise of the so-called Islamic State (ISIS) and its occupation of large swathes of Iraqi territory in 2014, and the launch of a military campaign by government-affiliated forces to retake those territories from ISIS control. Iraq consistently features within the top six most dangerous countries in the world for minorities according to MRG's *Peoples under Threat* ranking, which highlights countries most at risk of genocide and mass killing.

8. In the years following 2003 minorities, including Christians, Yezidis, Turkmen, Sabean-Mandaeans and others, were subject to bombings, large-scale displacement, assassinations, kidnappings, torture, threats and attacks on their businesses and places of worship. Iraqi Christians (including Chaldeans, Assyrians – sometimes collectively referred to as Chaldo-Assyrians – Syriacs and Armenians) who had worked for foreign companies or multi-national forces were particularly singled out for attack, but the Christian community as a whole was viewed with suspicion because of its perceived religious ties with the West. As a result of the violence, Iraq witnessed a mass exodus of Christians during this period, with UNHCR reporting in 2011 that Christians made up more than half of new refugees in Lebanon and Turkey, despite that fact that they formed only three percent of the population in Iraq. The size of the Christian community in Iraq, which was estimated at 1.4 million prior to 2003, was reduced to 350,000 as of early 2014. Many Christians who remained in Iraq were displaced from Baghdad and other large cities to the Ninewa plains in northern Iraq, the historic homeland of the Chaldo-Assyrian community.

9. In June 2014, ISIS took control of the Iraq's second largest city, Mosul, in Ninewa governorate, prompting the exodus of at least 500,000 civilians. Attacks on Christians and damage to churches were reported. After ISIS issued an ultimatum calling on Christians to pay a protection tax, convert to Islam, or be killed, almost all of Mosul's Christian residents fled, mostly to the Ninewa Plains or Iraqi Kurdistan. Christian homes were marked with 'N' (for Nazarene, or Christian) and expropriated by ISIS.

10. In August 2014, ISIS swept into Sinjar and the Ninewa Plains, uprooting entire minority populations in the process. The group destroyed or desecrated numerous churches, mosques, shrines, monasteries, and other sites of immense historic and cultural importance. The group also carried out large-scale killings and abductions of civilians who were not able to flee. Among the worst-affected groups was the

Yezidi community, of which thousands were either killed or abducted and subject to sexual slavery and other serious violations. It is estimated that several hundred Christian women were abducted by ISIS and subject to rape and other violations, although their situation is not well known internationally.

11. The number of Iraqis displaced as a result of the ongoing conflict is over 3 million. The majority are living as internally displaced persons (IDPs) in central and southern Iraq or the Kurdistan Region. Due to overcrowding and long waiting lists in IDP camps, many IDPs have been forced to live in informal settlements. Living conditions vary widely for IDPs, with those living in informal settlements more likely to suffer from lack of access to humanitarian assistance, basic services, and healthcare. Many IDPs are traumatized by their exposure to acts of violence and in need of psychosocial support in addition to basic medical care. Women who have been victims of sexual violence are particularly vulnerable. Meanwhile, the ongoing military offensive in Mosul continues to displace thousands of civilians, exacerbating the humanitarian crisis.

12. Despite the fact that large areas of territory have now been recovered from ISIS control, current conditions render return of IDPs to these areas unfeasible. The security situation is the Ninewa Plains is in flux, as retaken territories are patrolled by a diverse array of militia groups with competing aims and loyalties. Sporadic confrontations have been reported and there is little reassurance that further conflict will not break out. Many areas are also heavily contaminated with explosive remnants of war (ERDs) or Improvised Explosive Devices (IEDs).

13. Areas retaken from ISIS are also characterized by widespread destruction of private property as well as infrastructure and public services. Many homes have been completely looted, whether by ISIS, the Iraqi army, the Pershmerga, the Popular Mobilization Front, or other militia groups. Other homes were burnt or blown up as ISIS retreated. Christian farms and businesses have also been expropriated, looted, or destroyed, eliminating future sources of income. Moreover, the lack of basic services such as electricity and water makes return to these areas untenable at present. In Sinjar, the Kurdish authorities have imposed a blockade, preventing even the movement of food and medical supplies into the area.

14. There is also no consensus as to the future status of retaken areas, many of which have been disputed between the Iraqi Federal Government and the Kurdish Regional Government since 2003. There are indications that suggest that both governments may be preventing the return of displaced persons to retaken areas in the absence of a political settlement. Complicated and constantly changing entry procedures at checkpoints have prevented IDPs from travelling to their homes to assess the possibility or return, and rendered them unable to bring in much-needed supplies and materials for reconstruction. Even more worryingly, there are reports

that the various parties to the conflict have destroyed entire villages in an attempt to discourage returns.

15. While Christians and other minorities face particular protection issues, the current situation in Iraq is extremely precarious for civilians in general. Parties on all sides of the conflict are responsible for widespread violations of human rights and international humanitarian law. Even in areas firmly under the control of the Iraqi Federal Government, car bombings and suicide attacks are a regular feature of everyday life. The climate of impunity in Iraq means that perpetrators of violence, whether acting as individuals or in association with armed groups, are rarely held accountable. Popular Mobilization Forces, including powerful Shi'a militias sponsored by neighbouring Iran, have been recognized officially by the Iraqi Government but face numerous credible allegations of enforced disappearances, torture and killing of civilians.

16. Women in particular suffer from the effects of impunity due to the high levels of violence they face not only from armed actors, but also from members of their own families in 'honour crimes'. Against the backdrop of an ongoing economic and political crisis, the government has shown itself either unable or unwilling to provide protection or an adequate level of humanitarian assistance to many Iraqis affected by the conflict.

17. Due to the severity of the human rights situation in Iraq and the poor prospects of significant improvement in the near future, emigration remains a recourse for many Iraqis, especially minorities. MRG has repeatedly warned that ethnic and religious minorities are at risk of extinction in Iraq due to the continued presence of factors that push them towards emigration.

18. 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 under the laws of the United States and the District of Columbia that the foregoing is true and correct.

Executed this 14th day of June, 2017 at London, United Kingdom.

Mark Lattimer

# EXHIBIT J

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

| | |
|---|---|
| **USAMA JAMIL HAMAMA,** et al.,<br><br>Petitioners and Plaintiffs,<br><br>v.<br><br>**REBECCA ADDUCCI**, et al.,<br><br>Respondents and Defendants. | Case No. 2:17-cv-11910<br><br>Hon. Mark A. Goldsmith<br>Mag. David R. Grand<br><br>Class Action |

**DECLARATION OF NADINE YOUSIF**

**DECLARATION OF NADINE YOUSIF**

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 K

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE EASTERN DISTRICT OF MICHIGAN**

**SOUTHERN DIVISION**

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| **USAMA JAMIL HAMAMA,**<br>**ATHEER FAWOZI ALI,**<br>**ALI AL-DILAMI,**<br>**HABIL NISSAN,**<br>**JIHAN ASKER,**<br>**MOAYAD JALAL BARASH,**<br>**SAMI ISMAEL AL-ISSAWI**, on behalf of themselves and all those similarly situated,<br><br>Petitioners,<br><br>v.<br><br>**REBECCA ADDUCCI**, Director of the Detroit District of Immigration and Customs Enforcement,<br><br>Respondent. | Case No. 2:17-cv-11910-MAG-DRG<br><br>Hon. Mark A. Goldsmith<br>U.S. District Judge<br><br>Hon. David R. Grand<br>U.S. Magistrate Judge<br><br>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 asa 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

Susan E. Reed

# EXHIBIT L

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

| | |
|---|---|
| **USAMA JAMIL HAMAMA,** et al.,<br><br>Petitioners and Plaintiffs,<br><br>v.<br><br>**REBECCA ADDUCCI**, et al.,<br><br>Respondents and Defendants. | Case No. 2:17-cv-11910<br><br>Hon. Mark A. Goldsmith<br>Mag. David R. Grand<br><br>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 or their work or the identify 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.

Mark Lattimer

# EXHIBIT M

**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.

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[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.l; *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/UNAMIReport1May31October2015.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.

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[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

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[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]

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[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.

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[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 Peschmerga 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 itnare 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-

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[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.htmlThe

[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-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

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[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 Sabaean-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]

<u>Dangers Facing Women in Iraq</u>

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

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[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.

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[44] U.S. Department of State, Iraq 2016 Human Rights Report, 6-26 (2016).
[45] *See* The Middle Ease 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

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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

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[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.

# EXHIBIT N

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

| | |
|---|---|
| **USAMA JAMIL HAMAMA,** et al.,<br><br>Petitioners and Plaintiffs,<br><br>v.<br><br>**REBECCA ADDUCCI**, et al.,<br><br>Respondents and Defendants. | Case No. 2:17-cv-11910<br><br>Hon. Mark A. Goldsmith<br>Mag. David R. Grand<br><br>Class Action |

**DECLARATION OF R. ANDREW FREE**

# DECLARATION OF R. ANDREW FREE

I, R. Andrew Free, hereby declare:

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

1. I am an attorney licensed to practice in Tennessee. My private practice is based in Nashville, Tennessee. Our firm focuses our practice on immigration law, civil rights, workplace justice and government accountability litigation.

2. I am a 2010 graduate of Vanderbilt University Law School, where I founded The List Project at Vanderbilt, a student-led group focused on assisting with the legal and resettlement needs of Iraqi allies in association with The List Project to Resettle Iraqi Allies. I was selected by the faculty to receive the Bennett Douglas Bell Memorial Prize in large part due to this work. As a student and in my subsequent law practice, I have represented former Iraqi government officials seeking refuge in the United States, religious refugees from Iraq, organizations seeking to protect and resettle Iraqi nationals, Iraqi refugees, and Special Immigrant Visa ("SIV") applicants. In my volunteer work, I have assisted in the resettlement, orientation, and job training of dozens of Iraqi families to the Middle Tennessee area.

3. I am a member in good standing of the American Immigration Lawyers Association, where I previously served on the Federal Litigation Steering

Committee, and the National Immigration Project of the National Lawyers Guild, for which I have served as a continuing legal education presenter. I have served as Chair of the ABA Committee on the Rights of Immigrants within the Individual Rights and Responsibilities Section, as Chair of the Legal Advisory Board of Dignidad Obrera/Worker's Dignity, as a Board Member of Tennessee Justice for Our Neighbors.

4. Nashville, Tennessee is said to be home to the largest population of Kurds outside of Kurdistan. The vast majority of Nashville's Kurds count Iraq as their country of nationality. There have been at least three waves of Kurdish resettlement to the Nashville area, dating back to the early 1990s. Through my law practice and civic engagement, I have had extensive involvement in Nashville's Kurdish community. Over the past several years, I have regularly advised Kurdish community leaders and organizers on matters relating to immigration, civil rights, and public policy.

5. In the early morning hours of June 7, 2017, I learned from a Kurdish community leader that several Kurdish men had been arrested and detained by federal immigration authorities. In the days that followed, we discovered through community engagement, direct interviews, meetings with the American Muslim Advisory Council, the Islamic Center of Tennessee, and the Salahadeen Center, and confidential client consultations, that U.S. Immigration and Customs

Enforcement ("ICE") agents targeted roughly thirty (30) Iraqi men living in the Nashville area. ICE agents arrested at least twelve (12) of these men between June 5 and June 16, 2017. I am aware of the names and/or alien registration numbers of each of these men. As of today, I represent six (6) of these men on a pro- or low-bono basis. I am also in regular contact with attorneys and organizations in Nashville who represent or have been consulted by several of the other detainees.

6. Based on the facts available to me, including public statements from ICE, it appears that each person targeted or arrested by the agency has a final order of removal to Iraq. Because Iraq was not issuing travel documents that would facilitate repatriation until March of this year, none of those targeted or arrested had been removed from the United States. Instead, each person was checking in regularly (either yearly or semi-yearly), at the local ICE office. As far as I am aware, none of the twelve men ICE agents arrested was wanted for any crime or had any serious criminal matter open or pending. The majority of the twelve individuals arrested—and indeed, the majority of the thirty individuals targeted—have removal orders that are nearly a decade old.

7. In the days following ICE's aggressive enforcement activities targeting Iraqis and U.S. citizens of Iraqi heritage in Nashville, fear and panic gripped the Kurdish community. *See* Exhibit A, June 13, 2017 Letter from Nashville Mayor Megan Barry to Joshua Jack, Community Relations Officer U.S.

Immigration and Customs Enforcement New Orleans Field Office. At the same time, a broad coalition of attorney and non-attorney support formed to provide resources and protection for targeted individuals and their families. A host of non-profit and private actors have worked closely with representatives of the Kurdish community to facilitate legal representation, know-your-rights presentations, advocacy, and support. There are currently networks that include dozens of lawyers and law students in Nashville and elsewhere standing ready to assist affected individuals and families with their legal needs.

8. After their arrest and several hours of processing at the ICE Enforcement and Removal Operations ("ERO") office at 501 Brick Church Park Drive in Nashville, ICE transferred each person to a Davidson County (TN) jail facility in Nashville. From there, after roughly 72-96 hours, ICE transferred each person to the Dekalb County Jail in Fort Payne, Alabama, where they remained for several days. ICE then transferred each arrestee to the LaSalle Detention Facility in Jena, Louisiana, which is a seventeen (17)-hour round-trip drive from Nashville. Several days ago ICE then transferred at least four detainees from the LaSalle Detention Facility to The GEO Group, Inc.'s Alexandria, Louisiana airport facility. On or about June 22, 2017, ICE transferred at least of four of the men who were arrested in Nashville—including three of my clients—were flown from Alexandria to Dallas, Texas and then to the Florence Service Processing Center in Florence,

Arizona. Florence, Arizona is 1600 miles from Nashville, and a twenty-four (24) hour one-way drive.

9. ICE's unannounced, sudden, and somewhat unpredictable movements of arrestees—including those who have legal representation—have made harnessing the pro- and low-bono legal resources we have assembled exceedingly difficult. Effectively communicating with a client we cannot locate is nearly impossible. For many individuals who need to file motions to reopen their removal proceedings based on changed country conditions and motions for stay of removal pending resolution of the motion to reopen, the limitations on communication with counsel posed by these transfers has made it impossible to prepare their filings.

10. Compounding the difficulty of locating, communicating with, and ensuring competent representation for Nashville's Iraqi arrestees is the pattern we have documented of ICE agents engaging in coercive practices to speed up the deportation process. At least three of my clients have reported ICE officers engaging in coercive tactics against Iraqi detainees. One such tactic involves threats of criminal prosecution for failing cooperate in removal whenever detainees assert their right to counsel and announce their intention to seek relief under the Convention Against Torture (CAT). When I pointed out to a Deportation Officer who engaged in these actions that my client is represented by counsel and pursuing immigration relief, the officer repeated the threat of prosecution to me.

Accordingly, on June 19, 2017, the National Immigrant Justice Center and I sent a cease-and-desist letter to the New Orleans Field Office Director demanding that he put an end to these practices. *See* Exhibit B – June 19, 2017 Cease and Desist Letter to Scott Sutterfield, ICE New Orleans Field Office Director (attached).

11. Another coercive ICE tactic deportation officials are reportedly using is to falsely inform detainees that they have no legal recourse, and that no lawyers can help them. Finally, I was informed by a client on June 22, 2017 that immigration officials in Arizona forcibly applied detainees' fingerprints to travel documents when those detainees refused to do so of their own volition.

12. Upon learning of the arrests and detentions of Iraqis in Nashville, my office immediately began preparing a form habeas corpus petition to be filed in the U.S. District Court for the Middle District of Tennessee. Unfortunately, because of limitations on communication, visitation, and information regarding who was arrested and when, we were unable to finalize and file any of those petitions prior to individuals' transfer from Nashville to Ft. Payne, Alabama. Our office has also contemplated habeas litigation in the Western District of Louisiana once detainees arrive in the LaSalle Detention Facility. However, several of the detainees for whom we contemplated such litigation were transferred to a detention facility in Alexandria, Louisiana, and, most recently, to Florence, Arizona. These serial transfers farther away from family, community, and legal resources, which have

occurred without warning, have impeded due process and made habeas filings extremely difficult to prepare and submit. *See, e.g.*, Exhibit B – June 22, 2017 Letter from Representative Jim Cooper (D-TN) to His Excellency Fareed Yaseen, Ambassador of Iraq.

13. All of the targeted Iraqis I have consulted or agreed to represent have colorable claims to immigration relief. Based on my legal experience and interactions with Nashville's Kurdish population, it is my belief and understanding that international organizations and U.S. immigration courts continue to recognize Iraqi Kurds as refugees and resettle them to the United States. For example, last week I consulted with a member of a Kurdish family who were resettled to the Nashville area from Iraq in November 2015. It is my understanding that Iraqi Kurds are particularly at risk for persecution and torture because of the Iraqi government's ongoing tension with semi-autonomous Kurdish regional authorities and because of ISIL's extensive penetration into and destruction of Kurdish areas of Iraq. Similarly, a number of the individuals I have consulted with either worked for American troops or contractors in Iraq, or have family who did so. These individuals are at significant risk of persecution, torture, and death in Iraq.

14. I represent Abdulkuder Hashem Al-Shimmary. Mr. Al-Shimmary is an Iraqi Kurd who first entered the United States as a refugee on or around September 22, 1994. He was convicted of one count of statutory rape of a 17-year

old in violation of Tennessee Code Annotated § 39-13-506 on September 26, 1996. He was ordered removed by an Immigration Judge on January 7, 1999. The Board of Immigration Appeals dismissed his appeal of the Immigration Judge's decision on March 12, 2002, and denying his motion to reopen the proceeding to seek CAT relief as untimely on July 30, 2002. Mr. Al-Shimmary has been on an Order of Supervision for over 15 years. In that time, he has gotten married and had three (3) U.S.-citizen children—two sons, ages 8 and 11, and a daughter, age 10. Mr. Al-Shimmary successfully petitioned for removal from the Tennessee sex offender registry in 2016. ICE arrested Mr. Al-Shimmary on or around June 12, 2017. Because of the U.S. Supreme Court's decision in *Equivel-Quintana v. Sessions*, Mr. Al-Shimmary is no longer removable from the United States. Accordingly, I filed a Motion to Reconsider with the Board of Immigration Appeals on Mr. Al-Shimmary's behalf on June 15, 2017, along with an emergency motion to stay his removal. The Board has not yet decided our Stay request. Unlike many of the other men arrested, Mr. Al-Shimmary's family had a pre-existing relationship with community-based organizations that allowed her to locate and secure legal representation quickly.

15. I represent Qassim Hashem Al Saedy. Mr. Al Saedy first entered the United States as a refugee in or around September 1996. He is the father a 16 year-old U.S. Citizen son. He was charged with assault and battery on two occasions –

once in 1998, and a second time in 2002. The 1998 charged was dismissed. The 2002 charge, which arose out of a domestic dispute between Mr. Al Saedy's U.S. Citizen wife, [redacted], resulted in a conviction. ICE transferred Mr. Al Saedy to Oakdale, Louisiana, where he received a removal order on September 23, 2003. Mr. Al Saedy did not appeal the order. Instead, he was released on an Order of Supervision. He checked in diligently with ICE for the next fourteen years, up to and including March of 2017. On June 12, 2017, ICE arrested Mr. Al Saedy in Nashville, Tennessee. He was subsequently transferred to Alabama, and then to Louisiana, where he remains.

## ATTESTATION

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge and understanding

Sworn this 23 day of June, 2017 by R. Andrew Free

R. Andrew Free

# EXHIBIT O

**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,**
**ABDULKUDER HASHEM AL-SHIMMARY,**
**QASSIM HASHEM AL-SAEDY, and**
**ABBAS ODA MANSHAD AL-SOKAINI,** on behalf of themselves and all those similarly situated,

Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, Director of the Detroit District of Immigration and Customs Enforcement,
**THOMAS HOMAN**, Acting Difrector of U.S. Immigration and Customs Enforcement, and
**JOHN KELLY,** Secretary of the U.S. Department of Homeland Security, in their official capacities,

Respondents and Defendants.

Case No. 2:17-cv-11910

Hon. Mark A. Goldsmith

Mag. David R. Grand

Class Action

## DECLARATION OF MARÍA MARTÍNEZ SÁNCHEZ

María Martínez Sánchez, under penalty of perjury, states as follows:

1. I am an attorney licensed in the State of New Mexico and I am employed by the American Civil Liberties Union of New Mexico (ACLU-NM). I work under the supervision of ACLU-NM Legal Director Eliza Bechtold. The ACLU's mission is to protect, defend, and extend the civil rights and civil liberties of all people in New Mexico through litigation, education, and advocacy. Most of my work for the ACLU Legal Department is done on behalf of the American Civil Liberties Union Foundation of New Mexico, a 501(c)(3) corporation that carries out the ACLU's litigation and public education programs. In this declaration, I refer to the two organizations collectively as "ACLU."

2. As a staff attorney in the ACLU's Legal Department, my job includes reviewing and investigating requests for legal assistance, writing advocacy letters, participating in the ACLU's litigation with the ACLU Legal Director and volunteer cooperating attorneys who agree to take on cases pro bono for the ACLU, and educating the public about civil rights and civil liberties and the protections and guarantees of the constitutions of the United States and the State of New Mexico.

3. As part of my job with the ACLU, I am currently involved in investigations of the enforcement, detention, and removal activities of Immigration and Customs Enforcement (ICE).

4. With my colleagues, I have contemplated filing a habeas class action for Iraqi nationals who have lived for many years in the United States and who were recently arrested by ICE in New Mexico.

5. Because ICE is transferring the Iraqi nationals who had lived for many years here in New Mexico away from New Mexico to detention centers in other states—in some cases to multiple detention centers in multiple states—I have no assurance that if I prepare pleadings here in New Mexico that I will be able to file the pleadings before my clients are transferred.

6. ICE has transferred Iraqi nationals arrested in New Mexico to detention centers in multiple jurisdictions, such as Texas and Arizona, where I am not barred.

7. Without this Court's intervention, there is a substantial risk that my client, Abbas Oda Manshad Al-Sokaini, will face imminent removal to Iraq, and the very real probability of persecution, torture, or death.

8. For that reason, I request that the Court grant the relief sought in the Complaint.

Date: June 23, 2017

Signed:

María Martínez Sánchez

Staff Attorney

ACLU of New Mexico

1410 Coal Ave. SW

Albuquerque, NM 87104

# EXHIBIT P

**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**,
**ABDULKUDER HASHEM AL-SHIMMARY,**
**QASSIM HASHEM AL-SAEDY, and**
**ABBAS ODA MANSHAD AL-SOKAINI,** on behalf of themselves and all those similarly situated,

Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, Director of the Detroit District of Immigration and Customs Enforcement,
**THOMAS HOMAN**, Acting Director of U.S. Immigration and Customs Enforcement, and
**JOHN KELLY,** Secretary of the U.S. Department of Homeland Security, in their official capacities,

Respondents and Defendants.

Case No. 2:17-cv-11910

Hon. Mark A. Goldsmith

Mag. David R. Grand

Class Action

**DECLARATION OF BRENDA SISNEROS**

Brenda Sisneros, under penalty of perjury, states as follows:

1. I am the spouse of Abbas Oda Manshad Al-Sokaini ("Abbas"), a 52-year-old Iraqi national.
2. Abbas has lived in the United States since 1996, in Albuquerque, New Mexico.
3. I am a United States citizen.
4. Abbas has three stepchildren, eleven grandchildren, and five great-grandchildren, all of whom are U.S. citizens.
5. On information and belief, Abbas has been subject to a final removal order to Iraq since October 21, 2003, and he was living in the community pursuant to an order of supervision, with which he was complying.
6. On June 20, 2017, without warning, ICE arrested Abbas, and transferred him to a detention center in El Paso, Texas, where he faces imminent removal to Iraq.
7. On information and belief, when Abbas was a young man, he was charged with a drug crime and was placed on supervision, but he was never sentenced to any period of incarceration.
8. Since then, although Abbas still identifies as a Muslim based on his upbringing, he has been involved in the Uptown Church in Albuquerque, New Mexico, a Baptist congregation.

9. Abbas is the primary breadwinner for our family, working as a home healthcare provider and as an Uber and Lyft driver.

10. Abbas is our family's backbone and his home healthcare clients describe him as their family.

11. Abbas fears removal to Iraq.

12. My family and I are contacting counsel to assist Abbas in obtaining relief from removal, but Abbas has not yet met with an immigration attorney since his arrest and detention.

Date: June 22, 2017

Signed:

Brenda Sisneros

Brenda Sisneros

# EXHIBIT Q

**UNITED STATES DEPARTMENT OF JUSTICE**
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**
**IMMIGRATION COURT**
**OAKDALE, LOUISIANA**

| | | |
|---|---|---|
| In the Matter of: | ) | |
| | ) | |
| Qassim Hashim Al-Saedy | ) | File No: A [redacted] |
| | ) | |
| In removal proceedings | ) | |

Declaration of Cheryl Lane

I, Cheryl Lane, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge, recollection, and understanding:

1. My name is Cheryl Lynne Lane. I have lived with Qassim Al-Saedy for 18 years. We were married from 1999 to 2002. I am the mother of Qassim's U.S. citizen son. Our son is about to begin his senior year of high school.
2. Before fleeing Iraq and securing refugee status in the United States, Qassim was tortured by the Iraqi military for 6 months. They accused him of stealing guns and tortured him to get a confession out of him. He never confessed because he did not steal the guns. After 6 months with no confession, they released him. Afterwards, the Iraqi military found his brothers and tortured them, trying to get more information on Qassim.
3. Qassim came to the U.S. as a refugee in 1996.
4. In 1998, Qassim pleaded guilty to Assault, Bodily Injury in Davidson County, Tennessee. In 2002, Qassim pleaded guilty to Domestic Assault, Bodily Injury in Davidson County, Tennessee. Following his convictions, he was detained by ICE in Oakdale, Louisiana.

5. An immigration judge entered an order of removal in his case in September of 2003. However, Iraq wasn't issuing travel documents, so he was never physically deported. He has stayed in the United States since then.
6. Qassim has checked in with ICE regularly since 2013.
7. Qassim is a very hard worker. He went to truck driving school and worked as a dump-truck driver.
8. Qassim loves being in the United States and has been very supportive of the U.S. government. He worked in Georgia [redacted] because he was too afraid to return to the violence in Iraq.
9. Qassim has told me repeatedly about threats he receives on Facebook and YouTube from people in Iraq.
10. He sees posts by people in Iraq and will respond by criticizing ISIS and the militias. Several times, people have commented back, threatening him with death if he is ever in Iraq. He is particularly afraid of the Mahdi militia.
11. Qassim is a good person with a really big heart. He supports his siblings by sending them money when they need it. My brother is disabled, and Qassim mows his yard for him. He is always willing to help others.

Signed this 21st day of June, 2017 by ______________ 06/21/17

Cheryl Lane

# EXHIBIT R

**UNITED STATES DEPARTMENT OF JUSTICE**
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW IMMIGRATION COURT**
**OAKDALE, LOUISIANA**

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| | | |
|---|---|---|
| In the Matter of: | ) | |
| | ) | |
| Abdulkuder Hashem Alshimmary | ) | File No: A [redacted] |
| | ) | |
| In removal proceedings | ) | |

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Declaration of Kellita Rivera

I, Kellita Rivera Valera, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge, recollection, and understanding:

1. My name is Kellita Rivera Valera, I have lived with Abdulkuder for 14 years. We were married in May 12, 2006. I am the mother of our three U. S. Citizen children. [redacted] is 11, [redacted] is 10, and our youngest [redacted] is 8 years old.
2. Before fleeing Iraq and living in a refugee camp for 5 years before securing refugee status in the United States, Abdulkuder was tortured by the Iraq military. During his attempt to escape the Iraqi militia, he was wounded with shrapnel in his arm and leg.
3. Abdulkuder came to the U.S. as a refugee in 1994.
4. In 1996, Abdulkuder pleaded guilty to Statutory Rape in Davidson County, Tennessee. Following his convictions, He was detained by ICE in Oakdale, Louisiana.
5. An immigration Judge entered an order of removal in his case in January 7, 1999. However, Iraq wasn't issuing travel documents, so he was never physically deported. He was stayed in the United States since then.
6. Abdulkuder has checked in with ICE regularly since 2009.
7. Abdulkuder is the main financial supporter for our family. He works as a mechanic.
8. Abdulkader considers the United States his home and he is supportive of the government of the United States.
9. Abdulkuder actively participates with his community and mosque.
10. His family in Iraq, continues to receive threats. His two brothers and father were incarcerated in order to get information and since they refused they were executed.

11. He is a peaceful who doesn't want to be involved in conflict. He is a counselor. He is helpful. He steps in to stop abuse. He is a family man who loves his kids. Everything he does, he does for his family.

Signed this 22nd day of June 2017 by K. R. 06/22/2017
Kellita Rivera Valera

## Certificate of Translation

I, Leslie Catherine Carrillo, declare under penalty of perjury that I am competent to translate between Spanish into English, and certify that the attached translation of DECLARATION OF KELLITA RIVERA VALERA is true and accurate to the best of my abilities.

Cathy Carrillo 06/22/17

Leslie Catherine Carrillo
P.O. Box 90568
Nashville, TN 37209
cathy@immigrantcivilrights.com
615-594-8290

Date

# EXHIBIT S

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

**USAMA JAMIL HAMAMA,** et al.,

Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910

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

Class Action

**DECLARATION OF BONSITU KITABA-GAVIGLIO**

# DECLARATION OF BONSITU KITABA-GAVIGLIO

I, Bonsitu Kitaba-Gaviglio, hereby declare:

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

1. I am a licensed attorney practicing law in the State of Michigan. I am also licensed to practice before the Sixth Circuit Court of Appeals and the Eastern and Western Districts of Michigan. I graduated from Wayne State University Law School in 2014.

2. I am currently employed as a staff attorney by the American Civil Liberties Union of Michigan (the "ACLU") which is headquartered in Detroit, Michigan. Prior to my current position, I was a commercial litigation attorney at Dykema Gossett PLLC.

3. I, along with others, represent Usama Jamil Hamama, Atheer Fawozi Ali, Ali Al-Dilaimi, Habil Nissan, Jihan Asker, Moayad Jalal Barash, Sami Ismael Al-Issawi, Abdulkuder Hashem Al-Shimmary, Qassim Hashem Al-Saedy, and Abbas Oda Manshad Al-Sokaini (the "Class Representatives") in *Hamama et al. v. Adducci et al.*, 2:17-cv-11910-MAG-DRG filed on June 15, 2017 in the U.S. District Court for the Eastern District of Michigan.

4. Petitioners' Habeas Corpus Class Action Petition ("Habeas Petition") (ECF 1) and Motion for a Temporary Restraining Order and/or a Stay of Removal ("TRO Motion") (ECF 11) were filed on June 15, 2017, a mere four days after U.S. Immigration and Customs Enforcement ("ICE") began arresting and detaining Iraqi nationals in Michigan on the grounds that Iraq agreed to take them back. ICE immediately transferred most of them to Northeast Ohio Correctional Center in Youngstown, Ohio, far from their families and retained counsel.

**Detainee statistical information**

5. On Friday, July 14, 2017, ICE provided Petitioners' counsel with information on 234 Iraqi national detainees. That information reveals that as of July 1, 2017, 234 Iraqi nationals were being held by ICE in the following facilities:

| Facility | City | State | Detainees |
|---|---|---|---|
| CCA NORTHEAST OH CORRECTS | Youngstown | OH | 101 |
| CCA, FLORENCE CORRECTIONAL CTR. | Florence | AZ | 67 |
| OTAY MESA DETENTION CENTER | San Diego | CA | 9 |
| JENA/LASALLE DETENTION FACILITY | Jena | LA | 7 |
| ST. CLAIR COUNTY JAIL | Port Huron | MI | 6 |
| ICA - FARMVILLE | Farmville | VA | 5 |
| CALHOUN CO., BATTLE CR,MI | Battle Creek | MI | 4 |
| EL PASO SPC | El Paso | TX | 4 |
| YORK COUNTY JAIL, PA | York | PA | 3 |
| DENVER CONTRACT DET. FAC. | Aurora | CO | 2 |
| CONTRA COSTA CO JAIL/WEST | Richmond | CA | 2 |
| HOUSTON CONTRACT DET.FAC. | Houston | TX | 2 |
| PULASKI COUNTY JAIL | Ullin | IL | 2 |
| CHIPPEWA CO., SSM | Sault St Marie | MI | 2 |

| | | | |
|---|---|---|---|
| FRANKLIN HOUSE OF CORRECTIONS | Greenfield | MA | 2 |
| DODGE COUNTY JAIL, JUNEAU | Juneau | WI | 1 |
| GEAUGA COUNTY JAIL | Chardon | OH | 1 |
| BAKER COUNTY SHERIFF DEPT. | MacClenny | FL | 1 |
| BUFFALO SPC | Batavia | NY | 1 |
| PINE PRAIRIE CORRECTIONAL CENTER | Pine Prairie | LA | 1 |
| HALL COUNTY SHERIFF | Grand Island | NE | 1 |
| NORTHWEST DET. CENTER | Tacoma | WA | 1 |
| KROME NORTH SPC | Miami | FL | 1 |
| MORGAN COUNTY SHERIFF'S DEPT | Versailles | MO | 1 |
| KANKAKEE COUNTY JAIL | Kankakee | IL | 1 |
| PRAIRIELAND DETENTION CENTER | Alvarado | TX | 1 |
| PLYMOUTH COUNTY H.O.C. | Plymouth | MA | 1 |
| ALEXANDRIA STAGING FACILITY | Alexandria | LA | 1 |
| SUFFOLK HOC SBAY | Boston | MA | 1 |
| IRWIN COUNTY DETENTION CENTER | Ocilla | GA | 1 |
| FLORENCE STAGING FACILITY | Florence | AZ | 1 |
| **TOTALS** **31 Facilities** | | | **234** |

6. For each detainee in the disclosure list, the litigation team members called the electronic phone system established by the Executive Office for Immigration Review (EOIR). For all but 11, the caller was able to retrieve the year of the detainee's removal order and the city of the relevant immigration court.

7. According to the EOIR phone system, the removal orders of the detained class members (apart from the 11 for whom information is unavailable) are distributed as follows:

| Year of final removal order | Number of class members |
|---|---|
| 1986 | 1 |
| 1989 | 1 |
| 1993 | 2 |
| 1994 | 1 |
| 1995 | 1 |
| 1996 | 4 |
| 1997 | 5 |
| 1998 | 1 |
| 1999 | 6 |
| 2000 | 7 |
| 2001 | 7 |
| 2002 | 8 |
| 2003 | 23 |
| 2004 | 18 |

| Year of final removal order | Number of class members |
|---|---|
| 2005 | 13 |
| 2006 | 16 |
| 2007 | 7 |
| 2008 | 9 |
| 2009 | 9 |
| 2010 | 8 |
| 2011 | 23 |
| 2012 | 16 |
| 2013 | 9 |
| 2014 | 10 |
| 2015 | 8 |
| 2016 | 5 |
| 2017 | 5 |

8. Calculating percentages from this table, over 50% of the detainees received final orders of removal over a decade ago, in 2006 or earlier. That means their date of entry into the United States must have been earlier yet. Over 83% of them received final orders of removal in 2012 or earlier.

9. Also using information from that system, we were able to determine that out of 221 detainees, only 47 were detained in the same state as their immigration court. (13 detainees were missing information needed for this comparison.) That means that 79% of them are detained in a different state than the immigration court that issued their final order.

**Clarifications and corrections to information in prior declarations.**

10. As the Habeas Petition and TRO Motion were being drafted, I along with co-counsel collected information about the Class Representatives from their families and immigration counsel here in Michigan. I was unable to speak to the detainees directly at that time.

11. Families and attorneys of the Class Representatives drafted declarations based on their personal knowledge. On June 15, 2017 and June 16, 2017, Petitioners submitted six declarations describing relevant facts about the Class Representatives as exhibits to the TRO Motion. (Motion for TRO, ECF 11-4, 11-5, 11-6, 11-8, 11-9, 14). Subsequently on June 24, 2017, Petitioners filed a First Amended Habeas Corpus Class Action Petition and Class Action Complaint naming three additional Class Representatives. (ECF 35). Petitioners attached two declarations describing relevant facts about the new Class Representatives to the Emergency Motion to Expand Order Staying Removal to Protect Nationwide Class of Iraqi Nationals Facing Imminent Removal to Iraq, filed on the same day. (ECF 36-2, 36-4).

12. Several days after these emergency pleadings were filed, I completed an online search to verify the criminal history information for the Class Representatives on Michigan's iChat service and Lexis Nexis' Public Records Service. Both services however, caution that the records may contain errors and should not be relied upon as definitively accurate. In addition, I have been able to meet with some, but not all, of the named Petitioners.

13. My search revealed a few immaterial corrections to the filed declarations, which include:

    a. Moayad Barash's 18-year-old daughter Cynthia Barash declared (ECF 11-9) that her father was convicted of criminal charges in the 1980s or early 1990s including a drug charge. To provide further clarification, a criminal background search revealed that Mr. Barash was also convicted for carrying a dangerous weapon with unlawful intent and for a habitual offender offense in 1991.

    b. Ameer Salman's declaration (ECF 11-4) on behalf of Atheer Fawozi Ali declared that in 1996, Mr. Ali was convicted of a felony charge of breaking and entering. A criminal background search revealed that in 1998, Mr. Ali was convicted of receiving and concealing stolen property in excess of $100 and potentially two habitual offender charges.

    c. Habil Nissan's sister Silvana Nissan declared (ECF 11-6) that Mr. Nissan's 2005 case was dismissed and closed. Mr. Nissan confirmed that the case was not dismissed.

    d. Andrew Free's declaration about his client Qassim Hashem Al Saedy declared (ECF 36-2) that in 1998 and 2002, Mr. Al Saedy was charged with assault and battery and that the 1998 charge was dismissed. To clarify, my search revealed that Mr. Al Saedy was convicted of assault on those two occasions and neither charge was dismissed.

e. Abbas Oda Manshad Al-Sokaini's wife Brenda Sisneros declared (ECF 36-4) based on her knowledge, her husband was convicted of a drug crime. A criminal history search revealed that Mr. Al-Sokaini was convicted of two drug crimes in 2000.

14. The above clarifications are offered not because the prior declarants intentionally misled the Court, but because additional research, unavailable in the hurry to file emergency pleadings, has made the additional information available. I have no reason to believe that any prior declarant was anything other than honest about their recollection of criminal history information.

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

Executed July 16, 2017 in Ann Arbor, Michigan.

BONSITU KITABA-GAVIGLIO

# EXHIBIT T

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

| | | |
|---|---|---|
| USAMA JAMIL HAMAMA, et al., | : | |
| v. | : | Case No. 2:17-cv-11910 |
| | : | Hon. Mark A. Goldsmith |
| REBECCA ADDUCCI, et al. | : | Mag. David R. Grand |
| | : | Class Action |

DECLARATION OF WILLIAM B. PEARD

I, William B. Peard, make this statement under the penalties of perjury of the laws of the United States and if called to testify I could and would do so competently based upon my personal knowledge as follows:

1. I currently hold the position of Staff Attorney with the nonprofit law firm ACLU Foundation of Arizona (ACLU of Arizona).

2. I have been employed by the ACLU of Arizona since May 1, 2017. Prior to my current position, I worked as a staff attorney for a nonprofit legal aid organization in Springfield, Massachusetts, where I provided pro bono immigration representation to indigent immigrants.

3. I currently work and reside in Tucson, Arizona.

4. Beginning on Friday, June 30, 2017, I began making visits to the Florence Correctional Center (FCC) located in Florence, Arizona with the goal of meeting with immigration detainees who belong to the class in Hamama v. Adducci, 2: 17-cv-11910-MAG-DRG (E.D. Mich.).

5. FCC is a large facility with several hundred beds. It houses both immigration detainees who are under the custody of ICE and criminal detainees who are under the custody of the U.S. Marshal Service.

6. FCC is located in the town of Florence, Arizona. Florence is located approximately 30 miles from the nearest interstate highway, 63 miles from downtown Phoenix, and 80

miles from downtown Tucson. Florence is surrounded by miles of desert landscape and cotton fields in all directions, and there are no other sizeable towns in the region.

7. In my experience, a one-way trip to FCC from my workplace in Tucson is 1 hour and 20 minutes in good traffic.

8. According to an online search that I conducted on July 9, 2017 using the State Bar of Arizona "Find a Lawyer" online search tool, there are 84 Arizona licensed attorneys with Florence addresses. Because the Pinal County seat is located in Florence, a significant number of these 84 lawyers are county employees. Thus, the pool of private attorneys located in or around Florence who may be able and willing to assist with pro bono immigration representation is quite small.

9. Based on my knowledge and understanding, it is necessary to look to attorneys based in Phoenix or Tucson in order to recruit volunteers able and willing to assist with indigent immigration detainees housed in Florence. This sometimes proves difficult because of the distance to Florence.

10. Based on my several one-on-one conversations with immigration detainees at FCC since June 30, I believe that there are approximately 80 individuals currently housed at FCC who are under the belief that ICE intends to remove them to Iraq. Many of these 80 individuals were born in Iraq and are certainly Iraqi nationals. Others, however, were not born in Iraq, and their nationality is unclear. I will refer to both groups together as the Hamama class members.

11. This is based on my understanding from talking with FCC guards and with detainees that there are approximately 40 detainees housed in each "pod" of the prison and that there are two pods currently occupied by Hamama class members. This approximation is also consistent with the numbers of detainees that my colleagues and I have visited face-toface and the numbers of detainees that we believe we've yet to see.

12. Since June 30, 2017, I have traveled from Tucson to Florence on six occasions with the express purpose of visiting the Hamama class members. Additionally, my ACLU of Arizona colleague Kathryn Huddleston has traveled from Phoenix to Florence twice and my ACLU of Arizona colleague Brenda Munoz Furnish has traveled from Phoenix to Florence once during the week of July 3, 2017. Additionally, pro bono attorneys from the private law firm Perkins Coie LLP agreed to assist the ACLU of Arizona and have made two visits from Phoenix to Florence during the week of July 3.

13. In total, I estimate that since June 30, attorneys from the ACLU of Arizona and Perkins Coie LLP have devoted approximately 48 hours conducting one-on-one interviews of Hamama class members. This estimate is based upon my personal observations, as I worked alongside all of the colleagues mentioned in the above paragraph at all times beginning on June 30.

14. The above estimate does not include additional time spent driving, coordinating, and organizing our notes back in the office. Additionally, this does not include time spent by attorneys employed by the Florence Immigrant and Refugee Rights Project, who have also been working during the past two weeks to assess possible immigration claims of Hamama class members.

15. In total, attorneys with the ACLU of Arizona and Perkins Coie LLP have interviewed approximately 30 Hamama class members. These one-on-one interviews have been conducted in order to assess each detainee's possible immigration legal options and connecting them with an appropriate attorney if they do not already have one.

16. In order to thoroughly assess each detainee's possible forms of individual immigration relief, it is necessary to spend the appropriate time delving into various aspects of the detainee's life history. I have learned since June 30 that when it comes to interviewing this group of individuals who are Iraqi or who believe they are slated for removal to Iraq, one should not make assumptions about basic facts that we — as immigration attorneys — may be accustomed to making in other cases. For example, I have learned that an attorney should not assume that a detainee's citizenship is Iraq even if that individual was told by an ICE official that the U.S. government intends to remove him to Iraq. I have gotten into the habit of asking detailed questions related to a detainee's citizenship, place of birth, citizenship of the parents, etc. This is because even when a detainee tells me that ICE wants to remove him to Iraq, oftentimes that detainee was not born in Iraq. These additional lines of questioning require additional attorney time — time that one may not be accustomed to with other immigration cases.

17. Because the ACLU of Arizona has limited resources, our goal is to collect the relevant information from each Hamama class member housed at FCC with a view to working with the nationwide group of advocacy organizations and pro bono lawyers who are trying to connect each unrepresented individual with an attorney. Because in many cases the outside attorney will be working on apro bono basis, the ACLU of Arizona seeks to provide that attorney with as much relevant detail as possible in order to make his or her experience as smooth as possible. In order to do so, the attorneys in Arizona endeavor to spend adequate time during each interview.

18. Having personally interviewed approximately 12 Hamama class members, it is my personal experience that these detainees housed at FCC are finding it difficult to locate an individual immigration attorney to work on their case.

19. With the exception of one or two individuals, all of the approximately 30 detainees that my colleagues and I have met with are from states other than Arizona. For example, I have yet to speak with a Hamama class member at FCC who has received a personal visitor at the prison from among his family or personal friends. The lack of proximity to family and community makes it more difficult to connect with possible lawyers.

20. While a large number of the Florence-based Hamama class members call Michigan home, the group is rather geographically diverse. My colleagues and I have met with

detainees in Florence who have permanent residences in Virginia, Montana, Georgia, Nevada, Idaho, New Mexico, and Kansas, among other states.

21. This geographic variety adds complexity to the task of connecting detainees with attorneys because we must seek out possible counsel in a large number of places. It is preferable to locate an attorney in the home state, as the relevant documents such as criminal records, immigration court records, and letters from family will also be found in the home state. In many cases, a detainee can only seek to re-open his removal case in the Immigration Court where he first received his final order of removal. Most often, in my experience, that Immigration Court is located in the detainee's home state.

22. It is also useful and perhaps necessary—for counsel to be able to interview their clients in person, both to conduct a full discussion of the case and to get the client's necessary signature on various releases and filings. Finding a lawyer who can both appear in the relevant Immigration Court and interview someone in Florence, Arizona is an extremely difficult task.

23. Detainees' efforts to seek out individual counsel have additionally been frustrated by frequent re-location from one immigration detention center to another during the past six weeks. For example, I have spoken with at least five detainees in Florence who spent periods of time in three different detention centers prior to being re-located to Florence. In many cases, for example, a detainee will have been arrested in Michigan, housed in two locations within Michigan, subsequently transferred to Ohio, then Louisiana, then finally Arizona.

24. Based on my conversations with the detainees and with the FCC guards since June 30, it is my understanding that no other attorneys have visited the Hamama class members in Florence aside from the attorneys I describe within this declaration.

25. Additionally, the detainees' efforts to locate attorneys by phone has proven somewhat challenging. Based on my conversations with detainees and with FCC guards, it is my understanding that the phone system in at least one of the pods in which Hamama class members are housed was out of service for several days during the last week of June 2017. Based on my conversations with one of the FCC guards, it is my understanding that the prison decided to change phone service providers due to ongoing phone problems with the original provider. It is my understanding that the switchover took place during the week of July 3 and that phones are now functional.

26. Even when the prison phones are fully functional, an inmate at FCC can only use the phone if he has money on a prison phone account or where the recipient of the call is able to accept the call collect. This requires that the inmate's friend or family member deposit money onto their prison account.

27. Since June 30, I have handed out my personal cell phone number to at least a dozen detainees. I have received phone calls from family members, with whom the detainees

shared my number. In some instances, the family members indicated to me that they were calling me rather than the detainee calling me due to the high cost of making phone calls.

28. On one occasion, a detainee called me directly from FCC. The automated phone system instructed me on how to accept the call. I was initially pleased to learn from the automated voice that the system permitted one free "complimentary" call and that future calls would charge. I connected with the detainee and we spoke for 30 seconds before the system cut us off and instructed me to create a pay account to talk further.

29. Although ICE has internal regulations permitting ICE detainees to make free phone calls to attorneys, it appears that this regulation is either not being implemented at FCC or the FCC guards are not ensuring that detainees are aware of this right and necessary processes.

30. It is my understanding from talking with FCC guards and detainees that there is no internet access at the facility and that detainees are not permitted to have personal smart phones or devices.

31. Even our own experiences as attorneys at the FCC facility has proven challenging. For example, the facility does not allow attorneys to enter with smart phones or portable printers. Sometimes, for example, a detainee will have a relevant document to share with us. We are unable to scan or take a smart phone photo of the document. We then have to leave the facility and either take a photo of the document in the parking lot of the facility or drive the document to a nearby office where we can borrow the use of a scanner. I say "borrow" the use of a scanner because the nearest ACLU office is 60 miles from Florence.

32. The same is true if we need to prepare a document on a word processor for the detainee to sign. We cannot print within the facility, and so we must print elsewhere and later return to the facility in order for the detainee to sign. All of these small details add time to our interview process.

I declare under penalty of perjury, pursuant to 28 U.S.C. 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 12th day of July, 2017 in Tucson, Arizona.

William Peard

William Peard
Staff Attorney, ACLU of Arizona

# EXHIBIT U

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

**USAMA JAMIL HAMAMA,** et al.,

Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910

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

Class Action

## DECLARATION OF RUBY KAUR

## DECLARATION OF IMMIGRATION ATTORNEY RUBY KAUR

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

1. I am an immigration attorney, licensed to practice in the state of Michigan.

2. On June 15th, I was retained to represent two Iraqi nationals with final orders of removal. Both are currently detained in an ICE detention center, the Northeast Ohio Correctional Facility, in Youngstown, Ohio.

3. Youngstown, Ohio is approximately 4 hours drive from Detroit, Michigan, where my home and office are.

4. It has been very difficult over this past month to get in touch with these clients. They they have only extremely limited access to the phone at the facility, and therefore understandably use that limited time to call their families . Therefore, I have been able to get information about their cases only relayed through the families. But the families most of the time do not have complete information.

5. In addition, I need criminal history information in order to assess their immigration situation and pursue appropriate relief and protection. But their convictions happened so long ago that the clients cannot clearly recall their cases or the information related to them.

   Seeking to get the information their cases need, I have attempted to visit my clients twice, in order to discuss their cases with them and prepare motions to reopen. This weekend, on July 15th, or July 16th I will be driving down to Youngstown, Ohio to visit them.

7. On June 22nd, and June 23rd I attempted to visit my clients in detention in Youngstown. On June 22nd, first I called the facility to ensure the attorney hours. I spoke with a staff employee who was responsible for scheduling visits; that person firmly stated that attorney visits would be allowed would be until 2 p.m. that afternoon. I reached the facility at approximately 12:30 p.m, but was denied a visit by the guards. I requested to see the captain who also denied my clients their chance to visit with me. She also explained that this was because the ICE detainees were being counted. After explaining that I had driven for four hours to get there, I requested to do the visits later that same day once the "count" process was finished. The captain denied that request as well, stating that the detainees would be transferred to the U.S. Marshals location of the facility, and that side does not allow visits. The captain, however, did assure me that I would be allowed to visit with my clients the next day, June 23rd. The facility's scheduling representative was standing next to the captain, and confirmed that I

would be allowed to conduct an attorney visit at 10:30 a.m. the following day, June 23rd.

8. In reliance on this promise, I stayed overnight in Ohio and went back to the detention facility the following day. But after I arrived at the facility, I was told that due to a shortage of staff, I would not be allowed to see my clients. The guard told me that if I came back at 3 p.m., I could "try" to see my clients then.

9. I was unable to stay the rest of Sunday in Youngtown, and therefore did not get to see my clients. After staying for another hour, I decided to drive back to Michigan, and visit them another weekend. Since then I have not yet been able to get back there, and of course there is no guarantee that if I did again drive the 230 miles, that I would be allowed to see my clients.

10. For one of my clients, who had been in hospital due to his health conditions in Youngstown, Ohio, I was unable to file a motion to reopen for him. However, following my visit (granted that I am not denied visitation) this weekend on July 15th or July 16th, I will file the motion with the Immigration Court.

11. In order to file a motion to reopen, I have therefore been forced to work with the bare minimum of information, which makes it very difficult to represent the client properly. On the other hand, preventing the imminent deportation of my clients to Iraq, a country where they face a grave risk of persecution and even torture, means that I am forced to make do with the information I have.

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

Executed on July 13, 2017 in Bloomfield Hills, Michigan.

________________________

Ruby Kaur

# EXHIBIT V

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

**USAMA JAMIL HAMAMA,** et al.,

Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910

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

Class Action

**DECLARATION OF RANDY SAMONA**

# DECLARATION OF IMMMIGRATION ATTORNEY RANDY SAMONA

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

1. I am an immigration attorney, currently the principal of the Law Office of Randy Samona, P.C., in the city of Sterling Heights, Michigan.

2. I am currently representing several individuals who have been the subjects of an area-wide sweep of a targeted effort by U.S. Immigration and Customs Enforcement ("ICE") to detain these individuals and ultimately deport them to Iraq.

3. Each of the above-mentioned individuals' immigration status is such that they are currently on a "final order of supervision" after having been ordered removed or deported by any immigration judge at a prior removal or deportation hearing. In some of these cases, the Board of Immigration Appeals ("BIA") has affirmed the immigration judge's order.

4. I have assisted each of the individuals with the filing of a Motion to Reopen Proceedings and an Emergency Motion to Stay Removal either with the Immigration Court or the Board of Immigration Appeals, depending on which entity last adjudicated the case.

5. It has been difficult to adequately represent several of these persons due to the very tight time constraints and unavailability of each of their A-files (immigration records).

6. With regards to some of these individuals, I do not have basic information related to the basis for their removal or deportation orders, such as the underlying factual allegations and removal charges. Without knowing the alleged statute of conviction and/or the nature of the removal charge (for example, whether the government charged it as an aggravated felony or crime involving moral turpitude), it is impossible to ascertain whether the individual was lawfully ordered removed.

7. I have made requests under the Freedom of Information Act to the Executive Office of Immigration Review for copies of the A-files for my clients, but, due to agency processing delays of those requests, the files are not yet available.

8. Without the record of proceedings, it is nearly impossible to ascertain whether there is an argument that some of my clients were improperly denied relief or protection from removal. In addition, based on changed circumstances since the

conclusion of proceedings, some of these individuals may be eligible for certain forms of relief, however, it has been difficult to adequately assess these cases without having access to these individuals' A-files.

9. Several of my clients are currently detained and are being held at the Northeast Ohio Correctional Center in Youngstown Ohio, which is approximately 277 miles away and a 4 hour and 40-minute drive from my law office in Sterling Heights, Michigan.

10. Each of my clients that are detained at the Northeast Ohio Correctional Center is a resident of either Oakland or Macomb County in Michigan and lives within a close-proximity to my law office.

11. It is impractical for me to make routine trips to the Northeast Ohio Correctional Center to meet with these clients, which would consume almost 10 hours per day in driving time and additional resources.

12. Many of the detainees at the Northeast Ohio Correctional Center have had limited access to the telephones. I have found that my telephone conversations with my clients have been limited to 10 minutes at a time. Even during that time, they are barely able to communicate due to the excessive noise at the facility. Further, it has been difficult to schedule times where I could expect to receive phone calls from each of my clients, which has added to the difficulties that I am already facing with each of these cases.

13. These individuals may be eligible for certain forms of relief with the immigration court. Now that their deportations are imminent, they should be afforded the opportunity to have their cases adequately assessed to determine if they are eligible for relief or protection from removal which would permit them to remain in the United States instead of facing the harsh consequences that would likely ensue upon their deportation to Iraq.

14. With regards to the Emergency Motions to Stay Removal that have been filed with either the Immigration Courts or the Board of Immigration Appeals, the follow-up process has proven to be difficult and provides little assurances and safeguards.

15. Based on my knowledge and experience, the Board of Immigration Appeals will not adjudicate a non-automatic Motion to Stay Removal unless and until the motion for a stay has been filed in conjunction with a motion to reopen or reconsider and the BIA has confirmed with ICE that an individual's removal has been scheduled and a removal date is set. Based on my knowledge and experience, I believe that immigration judges similarly only adjudicate discretionary stay requests filed in conjunction with a motion. Significantly, the mere filing of an emergency stay request does not obligate ICE to halt a deportation. Rather, either the IJ or the BIA must actually grant the stay motion

before ICE has a legal obligation to halt a deportation.

16. An emergency stay request with the BIA may be submitted only when an individual is in physical custody and is facing imminent removal. Accordingly, an individual not in ICE's custody must surrender to ICE's custody, pursuant to a request by ICE, before an emergency stay will be considered by the BIA. As such, those members of the ACLU class who are non-detained are in an extremely vulnerable position: they cannot ask for stays from the BIA unless and until they are detained and, yet, the BIA will not adjudicate any stay motion unless and until they are both detained and have filed an emergency motion in conjunction with a motion to reopen.

17. An emergency Motion to Stay should contain the individual's full name, A-number, scheduled removal date, a brief description of the circumstances, the ICE deportation officer's name and phone number, and the state of the ICE field office.

18. Once a detainee has filed a Motion to Stay, if his attorney is successful at reaching the BIA, staff from the BIA Emergency Stay Unit should contact the ICE deportation officer in effort to confirm the scheduled removal date for an individual. If no removal date is scheduled, the BIA will typically not rule on the Emergency Motion to Stay Removal.

19. It is often difficult to get a hold of the ICE deportation officers and I have found that it may take the BIA staff many attempts to call these officers, before they successfully confirm an impending removal date. Sometimes even for a detainee who *has* such a date, BIA staff never manage to reach the relevant ICE officer, so that the detainee may be removed without any consideration on the requested stay.

20. Based on my knowledge and experience, ICE will not share impending removal dates with detainees and their families. So even if an uncounseled detainee were equipped to file a motion for a stay, he or she would have no way to know when such a motion would be adjudicated.

21. Even when detainees have immigration counsel, based on my knowledge and experience, ICE deportation officers will not share with an attorney the information related to scheduled removal dates for individuals in ICE's custody. An officer might tell an attorney that removal date is imminent without giving specifics, often leaving the attorney with a matter or hours or a few days, at best, to file an emergency Motion to Stay and try to ensure that BIA staff succeed in confirming the removal date so that the BIA will actually adjudicate the motion before ICE executes the deportation.

22. Based on my knowledge and experience, if a removal date is *not* pending when BIA staff call, but removal is subsequently scheduled, there is no mechanism by

which ICE notifies the BIA of that change in circumstances, which would render a pending application for a stay in need of consideration.

23. I believe that it can easily happen that a detainee's removal is effectuated without the BIA ever considering a pending motion to stay, because the BIA never finds out that the removal is imminent.

24. If the IJ or BIA denies a Motion to Stay, ICE can easily deport the individual before he or she is able to take their case to the next level of the appeals process.

25. In the course of my career, I have filed many Motions to Reopen. In recent years, I have found that for a detained applicant, it typically takes the Immigration Court approximately 1-3 months to rule on such a motion; similarly, it usually takes the BIA about the same amount of time. Sometimes, in emergency situations, an Immigration Judge or the BIA may adjudicate the motion faster.

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

Executed on July 13, 2017 in Macomb County, Michigan.

______________________
Randy Samona

# EXHIBIT W

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

**USAMA JAMIL HAMAMA,** et al.,

Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910

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

Class Action

**DECLARATION OF CLAUDIA VALENZUELA**

**DECLARATION OF CLAUDIA VALENZUELA**

I, Claudia Valenzuela, declare as follows:

1. I am presently an attorney employed by the National Immigrant Justice Center (NIJC), program of Heartland Alliance. NIJC is a Chicago-based, non-profit organization that provides assistance to thousands of refugees, asylum-seekers and immigrants annually, including those facing removal while in Department of Homeland Security (DHS) custody. I have been an attorney with NIJC since 2003 and am licensed to practice law in the State of Illinois.

2. Since 2003, I have worked with NIJC's Detention Project, working with a team of attorneys and paralegals to provide legal information and representation to individuals in DHS custody.

3. In the wake of widespread apprehensions in the Michigan area and nationally, NIJC has been leading the coordination efforts to help Iraqi nationals recently taken into DHS custody obtain representation in their immigration cases, working with various partners around the country to advance this goal.

4. In leading the coordination efforts, I am familiar with what these efforts entail. Further, given my years of experience working with individuals in immigration custody, I am familiar with the obstacles this population faces in securing legal representation in their immigration cases.

5. The first step in this effort was conducted by CODE Legal Aid, a small non-profit legal services organization in the Detroit metro area that I understand focuses on Chaldean and immigrant communities there. CODE's staff began to collect information on who had been arrested by ICE in Detroit, and worked to line up many of the Detroit-area Iraqi nationals with counsel.

6. Next, the International Refugee Assistance Project, law students at the University of Michigan, and staff at the Catholic Legal Immigration Network (CLINIC) assembled two web-based questionnaires, one for families of Iraqi nationals facing deportation, and one for lawyers willing to work on immigration cases. In addition, they put together resources for those lawyers—documents on country conditions, pleadings, and the like.

7. With CODE's initial list, and the inputs from the questionnaires, we have so far been able to account for approximately 140 of the 232 detained Iraqi nationals in DHS custody.

8. Most individuals we have been able to locate are detained at the Florence Processing Center in Florence, Arizona and at the Northeast Ohio Correctional Center in Youngstown, Ohio. We have also located smaller or sporadic numbers of individuals throughout the country: including at Calhoun County Jail in Battle Creek, Michigan; LaSalle Detention Center in Jena, Louisiana; Kankakee County Jail in Kankakee, Illinois and El Paso Processing Center in El Paso, Texas.

Along with these various organizations, we are currently in the process of ascertaining whether these individuals are represented by counsel and for those who are not, making efforts to secure counsel for them.

10. One important area of work is to secure *pro bono* counsel for individuals who cannot afford to retain private counsel. NIJC was able to travel to Youngstown, Ohio with a team of 8 *pro bono* attorneys to meet with approximately 12 individuals identified at the facility in need of *pro bono* counsel. Similarly, another partner organization, the Florence Immigrant & Refugee Rights Project (FIRRP), will be working with a team of *pro bono* attorneys traveling to Florence, Arizona on Monday, July 17, to assist individuals in their immigration cases, both to support attorneys who cannot travel to meet with clients, as well as to identify individuals in need of *pro bono* counsel. The American Immigration Council (AIC) is further collaborating with the Association of Pro Bono Counsel (APBCO) to solicit *pro bono* representation from law firms around the country.

11. We will continue to work to obtain counsel, both for the uncounseled detainees in the group of 140 we have already begun to work on and for the additional 92, once *Hamama* class counsel can reach out to them and ascertain if they are in need of assistance.

12. Finding lawyers who have the resources and knowledge required to represent this group of clients is challenging. Lawyers must be able to travel to a detention facility to interview an individual in order to assess whether the attorney can accept the case, as well as to assess potential remedies. The facilities at which the Iraqi nationals are held do not facilitate attorney-client calls, so attorneys must be willing to travel, in many cases, long distances.

13. Further, in order to accurately assess an individual's procedural immigration history, an attorney is well-advised to review an individual's immigration court file, as well as the "A-file," that is, the individual's immigration record created and maintained by the DHS. In almost all of the cases for the individuals we have encountered thus far, their removal orders are from several years ago, thus, files are not immediately available from the immigration courts. Separately, DHS does not make A-files readily available to an individual. Instead, where individuals seek immigration court records from many years ago or the A-file, they must file Freedom of Information Act (FOIA) requests with both the immigration court and the DHS. Immigration court files must be retrieved from storage. This can take several weeks. In NIJC's collective experience, FOIA requests to DHS for A-files can take up to a year or longer.

14. Because of their final removal orders, all individuals will need to file motions to reopen, which have various procedural requirements, including the submission of an affidavit and the relevant application for the immigration relief sought. In addition to not having ready access to immigration court or A-files, another challenge for the attorneys we are working with is preparing affidavits or completing applications for clients that are not easily or immediately accessible. Some of the most involved efforts at present have been heavily focused on coordinating volunteers near the facilities where individuals are detained in providing support to attorneys in remote locations.

15. After detained individuals are linked to counsel, we are also facilitating mentoring of lawyers with less experience in immigration proceedings. The cases of the Iraqi nationals are complex cases. As an initial matter, although almost all of the individuals we encounter have been convicted of criminal offenses that served as the basis of removal initially. However, immigration law is constantly evolving on the question of whether criminal offenses trigger removal or preclude immigration relief. Because of the changing legal landscape in this arena, a conviction that may have triggered immigration consequences years ago may not have the same effect today. This analysis is complex and requires access to an individual's record of conviction. Because none of the individuals detained thus far had notice that they would be detained, they did not have criminal records secured. Part of our present effort, therefore, is to try to obtain criminal records to assess potential immigration relief.

16. Further, all of the Iraqi nationals we have encountered thus far, as noted by various Iraq country expert declarations submitted in this litigation, have meritorious claims for deferral of removal under the Convention Against Torture (CAT), 8 C.F.R. § 1208.17.

17. Given the urgency and the grievous harm that individuals face if removed, attorneys must be prepared to quickly gather whatever documents are in the possession of the detained individuals, family members or otherwise publicly available, analyze what little documents they can obtain, and make filings at much quicker rates than is otherwise advisable given the complexity of these cases, potentially sacrificing effectiveness to exigency.

I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

Claudia Valenzuela

Claudia Valenzuela

7/14/2017

Date

# EXHIBIT X

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

**USAMA JAMIL HAMAMA,** et al.,

Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910

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

Class Action

**DECLARATION OF CONSTANTIN JALAL MARKOS**

# DECLARATION OF CONSTANTIN JALAL MARKOS

**A#** [redacted]

I, Constantin Jalal Markos, hereby declare:

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

1. My name is Constantin Jalal Markos. From what I understand about my early life, I was born in Greece on December 24, 1980.

2. My family is from the Chaldean Catholic ethnic and religious minority.

3. I speak English fluently and a little bit of the Chaldean language, which is called Aramaic. I can speak only a few words in Arabic, but I wouldn't understand it if someone begins speaking Arabic to me.

4. Although I don't consider myself to be an Iraqi national, my understanding is that my parents were born in Iraq.

5. I first learned that the U.S. government intended to treat me as an Iraqi national when I was first fighting my deportation case in 2003 or 2004, when I was an adult. At that time, all the talk was that I could sign a voluntary deportation to Iraq. In May 2017, I learned through an ICE agent while I was housed at an immigration detention facility in Youngstown, Ohio that the U.S. Government still considers me to be an Iraqi national.

6. I traveled to the United States in 1981 when I was about one year old. From what I understand about my early life, my family and I arrived to the U.S. as refugees from Greece. I came to the U.S. along with my sister, my mother, and my father.

7. I believe that my family and I obtained our Green Cards when I was a young child, although I was always under the impression that I was a U.S. citizen. For example, I thought I was a U.S. Citizen because many of my cousins I knew growing up were U.S. citizens. Also, my mother became a U.S. Citizen many years ago and I was under the impression that I may have gotten the same status through her.

8. My family and I settled in Michigan when I was a baby and I have lived in Michigan ever since.

9. All of my known family members live in the United States and are U.S. Citizens. My mother and father are both U.S. Citizens who live in Michigan. My sister who came to

the United States with me as a child is now a U.S. Citizen living in Michigan. My younger brother was born in the U.S. and is a U.S. Citizen. All of my aunts and uncles and cousins are U.S. Citizens and live in the U.S. I don't have any family in Iraq.

10. I have two U.S. Citizen daughters who live in Michigan, aged 10 and 15. My wife is also a U.S. Citizen.

11. When I was about 25 years old I received a state conviction in Michigan for possession of marijuana with the intent to distribute. This was more than ten years ago. To my knowledge, that is the only criminal conviction I have ever gotten.

12. I don't believe that my criminal defense attorney asked me if I was a U.S. citizen before I made the decision to plea to the crime. The truth is that I believed I was a U.S. citizen at that time in my life.

13. After serving my time in Macomb County, Michigan jail several years ago, I was told by the guards that I needed to stay for a few extra days because I had what they called a "USBP hold". I didn't know what that meant. I soon learned that USBP stands for U.S. Border Patrol. This was the first time in my life that I realized I may not be a U.S. citizen. I was in complete shock.

14. I ended up in ICE custody and I was placed in removal proceedings. I hired an immigration attorney at that time and my understanding is that my attorney filed for asylum for me. I ended up with an order of removal during that process, but I'm not clear on the details.

15. After leaving immigration detention several years ago, I was placed on an ICE order of supervision. I was on the order of supervision for many years. For a period of time, I was told to report every three months, then every six months, and then eventually once per year. I always complied with my order of supervision during all these years.

16. In March or April of 2017 I moved houses in Michigan. I knew that under the rules of my ICE order of supervision it was my responsibility to inform ICE of my new address. On or around May 24, 2017, my aunt took me to the ICE office so that I could report my new address. When the ICE agent called me to the back of the office to meet with me, I learned that I was being detained. There was no warning. I didn't have time to say goodbye to my daughters or my wife. ICE didn't even let me speak with my aunt, who had taken me to the ICE office and was in the waiting room.

17. At first, I was held in a facility in Monroe County, Michigan for several days. There were five of us in Monroe County whom the government was trying to deport to Iraq.

18. From Michigan, they transferred the five of us to a facility in Youngstown, Ohio. I was in Youngstown for about three weeks, where our small group of five joined what seemed

like hundreds of other detainees. The other detainees in Youngstown also told me that the government was trying to deport them to Iraq.

19. From Ohio, ICE transferred a large group of us to Louisiana by airplane. I was in Louisiana for only about 24 hours. From Louisiana, myself and others from the Youngstown group were boarded onto a second plane that landed in Laredo, Texas. I believe that we landed in Laredo only so that ICE could let off a certain number of Mexicans who were on the plane with us. Still on the same ICE plane, we took off again and landed in El Paso, Texas. Again, ICE let off a certain number of Mexicans. Then from El Paso, the same plane took off a third time and landed in Arizona. I have been housed in Florence, Arizona for about 2.5 weeks.

20. Here in the Florence detention facility, it's very difficult to communicate with the outside world. The phone service is very expensive. It costs us between 21 cents and 25 cents per minute to make outside calls to family or friends. That is compared with the immigration detention facility in Youngstown, Ohio, where it was 6 or 7 cents per minute. Here in Florence, we can never receive calls. We can only make outgoing calls.

21. If we make a collect call to the outside, the calls are limited to only 15 minutes per call. This is true even if the person we're calling has all the money in the world to pay for more time.

22. Here in the Florence facility, I believe that they recently changed over the phone system. In order to use the phones in the detention facility, each detainee must have a unique PIN number. During the switchover, the guards provided us each with new PIN numbers. During that whole process, many of us could not use the new PINs for a period of days. For me, I was without phone access from a Thursday through Tuesday – about 5 days. During that time, I was unable to speak with family or with anyone else on the outside.

23. We're completely in the dark here in the Florence facility. There is no internet access. No email access.

24. If a detainee has a phone number written down in his personal property, for example, a detainee must submit a written request form to ICE. It could take a day or two, and then ICE officials will arrange to transport the detainee to another facility a few miles down the road so that the detainee can access his personal property in the ICE storage room. All that just to get a phone number that you might have written down in your personal notebook.

25. No one from the facility has ever explained to me whether there are special procedures for us to be able to speak with attorneys on the outside. For example, no one from the facility has ever explained to me that I might have the right to make outgoing free calls to my attorney. Here in Florence, the general picture is that if you don't ask, you don't receive. That's how it is.

26. About one week after I was initially detained in May 2017, I spoke with my mother by phone and she told me that she had found an immigration lawyer for me in Michigan. I am not yet sure what my attorney has done in my immigration case, and I haven't yet had the opportunity to speak with him.

27. So far, all of my communication with my attorney has been through my family members as intermediaries. As I described above, I was not previously aware that I could speak with my attorney on a special attorney telephone line from here at Florence. I just learned of that procedure through the ACLU of Arizona attorney who helped take down this statement. For that reason, I have asked my family to relay certain information to my attorney when I speak with my family during our brief telephone calls.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Executed this 13th day of July, 2017 in Florence, Arizona.

Constantin Jalal Markos

# EXHIBIT Y

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

| | |
|---|---|
| **USAMA JAMIL HAMAMA,** et al.,<br><br>Petitioners and Plaintiffs,<br><br>v.<br><br>**REBECCA ADDUCCI**, et al.,<br><br>Respondents and Defendants. | Case No. 2:17-cv-11910<br><br>Hon. Mark A. Goldsmith<br>Mag. David R. Grand<br><br>Class Action |

**DECLARATION OF TRINA A. REALMUTO**

# DECLARATION OF TRINA A. REALMUTO

I, Trina A. Realmuto, declare under penalty of perjury as follows:

1. I am an attorney licensed to practice law before the courts of the States of New York and California, the United States District Courts for the Southern and Eastern Districts of New York and the Northern, Southern, Eastern and Central Districts of California, the District of Vermont, the District of Connecticut, as well as the United States Courts of Appeals for the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits and the U.S. Supreme Court.

2. I was admitted to the New York and California bars in 1998 and 1999, respectively. I have practiced immigration law since that time, first as an associate attorney at the law firm of Van Der Hout & Brigagliano (now Van Der Hout, Brigagliano & Nightingale LLP), later as an attorney consultant to the American Immigration Law Foundation (now the American Immigration Council) and, since 2009, as a Staff Attorney and now Litigation Director for the National Immigration Project of the National Lawyers Guild (NIPNLG).

3. NIPNLG is a national non-profit membership organization that provides legal and technical support to attorneys, immigrant communities, and other advocates seeking to advance the rights of noncitizens. As part of my responsibilities with NIPNLG and the American Immigration Council, I routinely mentor attorneys on immigration issues. With respect to stay-related issues, I estimate that I have consulted with, and provided advice to at least 120 attorneys. I am also a co-author of a practice advisory entitled, *Seeking a Judicial Stay of Removal in the Court of Appeals*, which is available on the NIPNLG and other websites.

4. I make this declaration in support of the Petitioners in *Hamama v. Adducci*, the above captioned case, to explain the work that is required for a competent and ethical motion to reopen an immigration case and to explain why the system available for seeking and obtaining an emergency stays of removal from an immigration judge (IJ) or the Board of Immigration Appeals (BIA or Board) is not reliable and does not ensure that meritorious stay motions will be heard and adjudicated while a motion to reopen is pending. There are many ways in which immigration court and BIA stay practice can and does go wrong.

### *Difficulties with Expeditiously Preparing Motions to Reopen*

5. When someone is the subject of a final removal order but has a viable claim that their removal order is unlawful or that they are now eligible for immigration relief or protection, the most common method for adjudication of that claim is to file a motion to reopen with either the immigration court or the BIA, depending on the procedural history of the case. The motion must include "the appropriate application for relief and all supporting documentation." 8 C.F.R. § 1003.2(c)(1).

6. Investigating the viability of a claim for reopening can be a complicated endeavor. An immigration attorney who did not represent the noncitizen in the removal proceeding has an ethical obligation to ensure that any motion filed is not frivolous. Compliance with this obligation generally is contingent upon obtaining the complete record of proceedings and new

and previously unavailable evidence, both of which are necessary to permit a full review of a claim.

7. Attorneys have an ethical obligation to fully and competently assess the merits of a claim before seeking reopening on behalf of existing clients. Model Rule 1.1 entitled "Competence" mandates "competent representation" which "requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Model Rules of Prof'l Conduct R. 1.1 (2015). Comment 5 to that rule elaborates on this requirement, stating:

> Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. . . .

Model Rules of Prof'l Conduct R. 1.1 cmt. 5 (2015). In immigration cases, "what is at stake" is the person's ability to vacate a removal order and reopen proceedings, which often is the difference between permanent exile from the United States and living in the country with family and friends. In this case, the stakes are even higher; Iraqi nationals risk grievous harm, including death, if they are removed.

8. The process for an attorney to comply with ethical and regulatory obligations in preparing motions to reopen is time-consuming for at least two reasons. First, where counsel did not represent the person previously, counsel needs to obtain the complete record of proceedings to understand what transpired in the removal proceeding and to assess the viability of a claim for reopening. Second, by statute and regulations, motions to reopen require substantial new evidence, which takes time to gather and assemble. *See generally* 8 U.S.C. § 1229a(c)(7)(B); 8 C.F.R. § 1003.2(c)(1).

9. New counsel will need to obtain both written and audio files concerning the individual's case. This includes at a minimum both the A-File (the comprehensive file of a person's immigration history kept by the Department of Homeland Security) and the Record of Proceedings (the immigration court file kept by the Executive Office for Immigration Review, which consists of the immigration courts and the BIA). The A-File is accessed by a Freedom of Information Act (FOIA), 5 U.S.C. § 552, request to the U.S. Citizenship and Immigration Service (USCIS). However, if a person has had any interaction with U.S. Customs and Border Protection, it is advisable to also file a FOIA request with CBP to obtain records from that agency's file. The Record of Proceedings is accessed by a FOIA request to EOIR. If the person previously filed an appeal to the BIA, the Record of Proceedings should contain the transcript of the prior proceedings. However, if the person did not previously appeal to the BIA, an audio tape may be available or the attorney can try to arrange to listen to the audio tape of the prior proceeding at the immigration court that heard the case. Even if the person had counsel, incompetent or predatory prior counsel often will not or cannot provide the appropriate information. It is the individual agency processing the FOIA request that controls how long it will take to produce the requested records. At present, USCIS has a backlog of over 35,000

FOIA requests and generally takes several months to produce an A-file. In my experience, EOIR requests can take several weeks to months as well. Records that are older can take longer than others.

10. The A-file and the Record of Proceedings serve a different purpose. The A-file contains the paperwork documenting the individual's immigration history. For example, it can contain the paperwork related to a person's first entry on a visa, previously filed asylum applications, and previous statements to immigration officers. It is imperative to review the A-file to fully understand the person's immigration status, to adequately assess relief options, and to find support for potential factual or legal errors in the proceeding. The Record of Proceedings consists of the trial court and appeal records. Without the Record of Proceedings, it is impossible to know whether: (1) a client was properly informed of his or her rights, including the rights to counsel, to contest the charges of alienage and removability, to present and cross-examine evidence, to seek relief or protection from removal, and the right to appeal; (2) the removal hearing was conducted in a fair and impartial manner by the immigration judge; (3) prior counsel was effective (or not); (4) any previously submitted evidence was improperly overlooked or discounted; (5) the client knowingly, intelligently, and voluntarily waived any of his or her rights; and (6) the factual and legal bases underlying the client's removal order and/or denial of relief or protection were correct. Review of both the A-file and complete Record of Proceedings is absolutely critical to ascertaining whether there is a viable basis for a motion to reopen. After receiving the FOIA results, counsel must carefully review these records. She must then consult with her client and often perform additional research and investigation, particular in cases involving changed country conditions.

11. In addition, researching and collecting substantial new evidence to support a motion to reopen, particularly evidence to support a motion based on changed country conditions, can take significant time and effort both by the attorney and by the noncitizen and/or his or her family. The reopening statute requires that motions "shall be supported by affidavits or other evidentiary material." 8 U.S.C. § 1229a(c)(7)(B). The implementing regulations further mandate that the evidence is "material and was not available and could not have been discovered or presented at the former hearing," as well as either evidence that the immigration judge did not "fully explain[]" the opportunity to apply for relief at the prior hearing or evidence that relief is now available due to "circumstances that have arisen subsequent to the hearing." 8 C.F.R. § 1003.2(c)(1).

12. Every case is different, but it would not be unreasonable for obtaining and reviewing a client's record to require between 10-20 hours of work, even before research and writing can begin. For example, in one of my cases, the A-file was 1,000 pages and the Record of Proceedings was over 600 pages and included an audio file. In my opinion, it is reasonable to estimate that after the A-file and Record of Proceedings is obtained, a lawyer with an active removal docket may take somewhere between 6 - 12 weeks to adequately prepare and file a motion to reopen, including preparation of the underlying application for relief. Counsel who are handling a higher volume of cases may require more time. Additional time also would be needed in circumstances where it is difficult for the attorney and client to communicate, for example, if the client is detained far from the attorney, or is not proficient in English.

***Difficulties Related to Emergency Stay Motions***

13. If a person with a final order of removal faces the prospect of imminent removal, and has a viable basis for a motion to reopen or motion to reconsider, the necessary motion may be accompanied by an emergency stay motion. Significantly, as set forth in the Board of Immigration Appeals Practice Manual, the BIA will not consider a motion for a discretionary and/or emergency stay unless it is accompanied by an appeal, a motion to reopen, or a motion to reconsider. In my experience, most adjudicators are more inclined to grant a stay if there is a possibility that the appeal or motion ultimately will succeed. Thus, I routinely advise attorneys to file substantive motions in conjunction with stay requests, which, as discussed above, is extremely hard to do when either removal is imminent or the attorney never represented the person before and does not have any of the records.

14. Filing an emergency stay motion does not obligate ICE to halt a deportation. Rather, either an IJ or the BIA actually must grant the stay motion before ICE has a legal obligation to halt a deportation. In addition, according to the Board of Immigration Appeals Practice Manual, an emergency stay motion may be submitted only when an individual is in physical custody and is facing imminent removal. As such, an individual who is not in ICE's custody must surrender to ICE's custody before the BIA will consider an emergency stay motion.

15. Notably, neither the Board of Immigration Appeals nor the immigration court has promulgated any standard for granting a stay of removal, by precedential opinion, practice manual, or other method. The lack of any such standard has caused great confusion among the immigration bar, leaving attorneys to guess what factors may warrant granting a stay.

16. A case I handled as counsel for a man fearing persecution and torture in his country of origin well illustrates some of the practical obstacles faced by attorneys seeking emergency stays of removal in conjunction with the filing of a motion to reopen before the BIA. After filing a motion to reopen and emergency stay request, I called the Emergency Stay Coordinator at the BIA, who first informed me that I would have to wait 24-48 hours for the BIA to docket the stay motion and instructed me to call the BIA back with the deportation officer's name and telephone number once the motion had been docketed. After the overnight courier company confirmed that the BIA had received the motion, I called the BIA back. I learned that the stay motion was not yet docketed and that it could take a while for the motion to reopen and stay request to make its way from the BIA mailroom to the office where it would be docketed. Nevertheless, I provided the BIA staff person with the deportation officer's information. The following week, I called the BIA again and was told that:

(a) the BIA did not have the deportation officer's contact information and that the BIA staff would not have been allowed to take such information before the motion was docketed (contrary to what the same unit told me the week before);

(b) BIA staff would call the deportation officer to find out if DHS has travel documents and if removal is imminent;

(c) if the BIA did not reach the deportation officer and/or he did not call them back (after how much time she did not say), the then the "stay unit" would assume removal is imminent and would ask a Board member to rule;

(d) if the deportation officer informs the BIA that ICE does not have travel documents, the BIA staff will *ask* the deportation officer to inform the BIA when they get them and to share the expected deportation date; and

(e) if ICE does not have travel documents, the BIA stay unit will not ask a Board member to rule on the emergency stay motion because "the Board only rules if deportation is imminent."

17. After hearing this, I asked the woman from the BIA stay unit whether deportation officers were under any obligation to advise the BIA when ICE obtains travel documents or has scheduled a deportation. Her answer was that every deportation officer is different. I explained that none of this information about the need to provide officer contact information or the BIA's adjudication process is in the Board of Immigration Appeals Practice Manual and it would be helpful for attorneys to have this information. The response I received was again that every deportation is different and that the best way to get information is by calling the BIA. Nearly one month after I filed the emergency stay request and motion to reopen and after several follow up calls to the BIA stay unit, the BIA finally granted the emergency stay motion.

18. My experience with seeking a stay from the BIA in the aforementioned case is consistent with the experiences of many of the attorneys with whom I have consulted and advised on stay-related issues. Practitioners are overwhelmingly concerned that their clients may be deported before the BIA, or an IJ, has had an opportunity to review the merits of a stay request, much less the underlying motion to reopen. Much of this concern stems from the fact that whether the BIA will adjudicate a stay motion prior to deportation relies entirely on the deportation officer's discretionary act of communicating to the BIA the actual date and time of deportation (and any change to the date and time of deportation).

19. To make matters worse, ICE officers routinely refuse, purportedly for security reasons, to provide attorneys with any details regarding the date and time of even imminent deportations. Thus, while the IJ/BIA and ICE all are privy to this critical information, the noncitizen at risk of deportation and his/her attorney are left in the dark. Even if a pro se detainee were somehow able to prepare a motion to reopen and emergency motion for a stay, he or she would have no way to know when the IJ or BIA would adjudicate the stay motion.

20. Sometimes, ICE officers will tell an attorney that the deportation date is "imminent" or "soon" without giving any further information. In this situation, the attorney frequently has only a few days—or even a few hours—to file an emergency stay motion (in conjunction with a pending or yet-to-be filed motion to reopen) *and* try to ensure that BIA staff succeed in obtaining confirmation of the deportation date so that the BIA will actually adjudicate the motion before ICE executes the deportation.

21. I am aware of the details of at least two cases where ICE affirmatively informed the BIA of particular deportation dates but subsequently—unbeknownst to the BIA, and without providing the BIA any notice—moved up the dates of deportation and carried out the removal. In those cases, ICE either affirmatively misrepresented the deportation dates or neglected to

inform the BIA of the new deportation date. In at least one of the cases, the BIA adjudicated, and granted, the person's stay request too late; the deportation already had taken place. These cases illustrate that there is no formal mechanism by which ICE is required to notify the BIA of a change in deportation date and, therefore, no way to ensure that the BIA has a meaningful opportunity to adjudicate the stay motion before deportation.

22. I believe the problem just identified is widespread. As far as I am aware, ICE has no legal obligation to provide and/or update the BIA or an IJ with notice of the date and time of a deportation to ensure that a stay motion is timely adjudicated. This lack of any obligation combined with ICE's refusal to provide noncitizens or their attorneys with a deportation date has contributed to, and I believe will continue to contribute to, the execution of removal orders before the BIA or an IJ has had an opportunity to review and adjudicate the stay motion.

23. Based on my communications with other attorneys, I believe that attorneys seeking emergency stays of removal from immigration judges face some of the same procedural obstacles as those faced by attorneys seeking emergency stays before the BIA. These include delays in receipt of the stay motion and reluctance to rule on a stay motion until the IJ is satisfied that deportation is imminent. In addition, where a person seeks an emergency stay from an immigration court in conjunction with a motion, the timing for adjudication of the stay motion is entirely dependent on the schedule of that particular immigration judge (as opposed to any number of BIA judges who might adjudicate the stay motion). For example, if a stay motion is filed at 9:00am and deportation is scheduled for 10:00am, the immigration judge may be conducting a hearing in court and, therefore, unaware, unable, or perhaps unwilling to timely adjudicate the emergency stay motion prior to the deportation.

24. Securing an emergency stay is challenging and time-consuming even for experienced immigration attorneys. Securing an emergency stay without counsel is even more difficult. The vast majority of noncitizens in removal proceedings are unfamiliar with the intricacies of immigration law or even basic legal process. Without competent counsel to advise of the possibility of filing an emergency stay motion in conjunction with a motion to reopen, most pro se noncitizens will be unaware of this procedure. Even if they were aware, they must articulate legal arguments and produce new and compelling evidence. These individuals may have little or no formal education and/or face a language barrier that makes this task even more daunting. Noncitizens who are detained face additional obstacles attendant to their detention.

25. In short, neither the immigration courts nor the BIA have reliable or sufficient procedures to ensure individualized assessment of the appropriateness of an emergency stay that would provide an opportunity for reasoned decision-making about whether individuals who have filed motions to reopen should or should not face removal while those motions are pending. Whether a person is able to obtain a stay of removal pending a motion to reopen is at least in part a function of luck.

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 14th day of July, 2017, at Boston, Massachusetts.

Trina A. Realmuto
Declarant

# EXHIBIT Z

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

**USAMA JAMIL HAMAMA,** et al.,

Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910

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

Class Action

**DECLARATION OF HILLARY J. SCHOLTEN**

## Declaration of Hillary J. Scholten

I, Hillary Jeanne Scholten, declare under penalty of perjury as follows:

1. My name is Hillary Scholten. I am an attorney, admitted to the Maryland bar in June 2012. My application for admission by waiver to the Michigan bar is currently pending.

2. I am currently a Staff Attorney at the Michigan Immigrant Rights Center ("MIRC") in Grand Rapids, MI. Prior to joining MIRC in July 2017, I was an Attorney Advisor at the Board of Immigration Appeals ("BIA") in Washington, DC for 4 years. There, I provided legal advice to Board Members on the adjudication of appeals from decisions of Immigration Judges across the country, and across a wide range of issues, but including appeals of motions to reopen before the Immigration Judge (8 C.F.R. 1003.23) and motions to reopen before the BIA (8 C.F.R. § 1003.2), as well as the immigration consequences of criminal convictions.

3. Prior to working at the BIA I served as a legal clerk in the Immigration Unit at the United States Court of Appeals for the Second Circuit, where I provided legal analysis on petitions for review of immigration decisions, including and especially, motions to reopen based on changed country conditions.

4. For five years prior to and during law school I worked as a BIA Accredited Representative, assisting immigrants with a wide range of immigration legal needs, including the filing of motions to reopen based on changed country conditions.

*Difficulties in requiring expedited filings of motions to reopen:*

5. Based on my experience, I recommend that individuals in the named class be provided 6 months from the time they have received their A-files to file a motion to reopen their removal proceedings prior to being removed from the United States, for the following reasons.

6. Individuals in immigration proceedings are not afforded counsel as they are in criminal proceedings. Thus, individuals must obtain counsel on their own time and expense, many while facing the additional obstacles of detention. If they are unable to find counsel, they will have to navigate foreign and complex immigration laws pro se.

7. Even once an individual obtains a copy of his or her A-file and other records of prior proceedings, those files will only contain documents related to the prior proceedings. Here, the motions to reopen are based on *changed* country conditions that have happened in Iraq since the time of the last adjudication.

Therefore, additional documents will need to be obtained and new legal analysis addressing that question will need to be performed.

8. Additionally, attorneys filing motions to reopen will need, in many case, to review the individuals' criminal convictions in light of the significant changes in the law concerning the application of the categorical and modified categorical approaches, which are used to discern whether certain convictions constitute an aggravated felony, a disqualifying offense for asylum, and withholding of removal (as part of the particularly serious crime analysis). *See, e.g.*, 8 U.S.C. § 1231(b)(3)(B); *Mathis v. United States*, 136 S. Ct. 2243 (2016); *Matter of Chairez*, 27 I&N Dec. 21 (BIA 2017).

9. Finally, establishing a fear of future persecution or torture in Iraq to prevail on the motions to reopen will require individuals to obtain proof that they have such a fear. This will include gathering evidence that could come from overseas. Overseas evidence requires translation (typically 1-2 weeks) and authentication (an additional 1-2 weeks depending on the manner of authentication).

*Providing time to submit quality motions to reopen serves the interest of judicial efficiency:*

10. As an attorney advising on the adjudications of appeals and petitions for review at the BIA and Second Circuit, respectively, I can attest to the essential nature of a complete record in these cases to enable judicial review.

11. Protection under the Convention Against Torture is a mandatory form of relief; meaning, the Attorney General cannot remove someone to a country where they would face torture. *See e.g.*, 8 C.F.R. § 1208.18. While the burden of proof is on the non-citizen to establish eligibility under these provisions, the burden of the decision lies with the courts. Many of these cases will present incredibly close calls on highly complex areas of law, with dire consequences if a mistake is made, i.e. an individual being returned to a country where they could be killed.

12. An adjudicator, especially on appeal, will not readily deny a claim and send someone back to a life-threatening situation where a question remains about his or her eligibility for relief. Rather, in all likelihood, that record would be remanded for further fact-finding, or set for supplemental briefing, or oral argument. Allowing individuals, together with their counsel, adequate time to prepare a thorough motion at this stage of proceedings will enable future adjudicators to most efficiently do their job as well.

*Conclusion:*

13. Based on all of the above, 6 months is a reasonable time for an individual to find an attorney, have the attorney provide sufficient legal analysis of the individual's eligibility for relief, gather the necessary documents to establish changed country conditions, and have those documents translated and authenticated. The 6 month estimate assumes that the individual has already obtained his or her A-file.

14. Allowing sufficient time to prepare quality motions to reopen that adequately

address both the consequences of an individual's criminal conviction as well as the country condition will alleviate the burden on adjudicators at the immigration courts, the BIA, and judicial courts of review.

15. Additionally, given scope of work that needs to be accomplished to file a motion to reopen, individuals should be afforded an extension of that time if good cause is shown.

I declare under penalty of perjury that the foregoing is true and correct. Executed this fifteenth day of July, 2017, Grand Rapids, Michigan.

Hillary Scholten
Declarant

# EXHIBIT AA

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

**USAMA JAMIL HAMAMA,** et al.,

Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910

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

Class Action

**SECOND DECLARATION OF RUSSELL ABRUTYN**

**SECOND DECLARATION OF RUSSELL ABRUTYN**

I, RUSSELL ABRUTYN hereby declare:

1. I have been licensed to practice law in Michigan since 2002 and Washington State since 1999. I am also licensed to practice before the Second, Sixth, and Ninth Circuit Courts of Appeals, the Eastern and Western Districts of Michigan, and the Eastern and Western Districts of Washington. I graduated from the University of Michigan Law School in 1999.
2. My practice is focused exclusively on immigration law. I am a member of the American Immigration Lawyers Association (AILA) and the Secretary of the Michigan chapter. I also serve on the Detroit Immigration Court Liaison Committee. Since my involvement with AILA, I have received the President's Commendation, Sam Williamson Mentor of the Year, and Jack Wasserman Excellence in Litigation awards.
3. The only way to obtain a copy of a noncitizen's Immigration Court file (also called the Record of Proceedings) is to submit a Freedom of Information Act (FOIA) to the Executive Office for Immigration Review (EOIR). That record contains information relevant to prior immigration court proceedings and appeals.
4. To obtain an A file, which contains a record of a noncitizen's immigration history and includes documents from different agencies, the noncitizen must submit a FOIA request to the U.S. Citizenship and Immigration Services (USCIS).
5. I have filed hundreds of FOIA requests with USCIS and EOIR, including dozens over the last year.

6. EOIR takes approximately 1-3 months to respond to a FOIA request. Local Immigration Courts will allow inspection of the court file, at least when the court is not conducting master calendar hearings (pretrials), which is about ½ the time. It will provide copies of up to ten pages of documents but most court files contain hundreds of pages of documents. For closed cases and those on appeal, the files are not stored onsite and instead have to be ordered. Courts generally do not have the space and time to permit attorneys to conduct an in-depth review of the EOIR file.
7. USCIS takes much long to respond to FOIA requests. According to their website, they take 113 business days. https://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/foia-request-status-check-average-processing-times/check-status-foia-request. This is about 22 weeks.
8. This time reflects the amount of time it takes USCIS to prepare the FOIA response. There is additional time involved in placing that file on a CD-ROM and mailing it to the requestor.
9. The USCIS will expedite FOIA requests for individuals with pending cases in Immigration Court if those individuals have been scheduled for a hearing. Otherwise, it will not expedite the requests. For example, those who want to or who have filed motions to reopen with the Immigration Court are not placed in the expedited track because they have not been scheduled for a hearing.
10. Through FOIA, USCIS will only release the documents it is responsible for maintaining. Because USCIS is not involved in the Immigration Court process, it will often not release documents related to that process. Instead, upon preparation of its

FOIA response, it forwards the FOIA request to Immigration and Customs Enforcement (ICE).

11. ICE will then release the documents it is responsible for, including documents relating to the Immigration Court process. I am unaware of any standard processing times for this but in my experience, it can often take 1-3 months to receive this file after receiving the USCIS FOIA file, though it can take longer.

12. ICE's FOIA file does not contain a complete copy of the Immigration Court file. ICE will redact information, including documents that a noncitizen submitted to the Immigration Court. Possibly to save time, it will provide an exhibit list but not the actual exhibits. This is not a substitute for the EOIR's Record of Proceedings because ICE redacts the file and generally does not provide all of the exhibits, briefs, decisions, and notices.

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

Executed July 15, 2017, in Royal Oak, Michigan.

Russell Abrutyn

RUSSELL ABRUTYN

# EXHIBIT BB

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

USAMA J. HAMAMA, et al,

Petitioners and Plaintiffs,

-v- Case No. 17-cv-11910

REBECCA ADDUCCI, et al,

Respondents and Defendants.
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IN-PERSON STATUS CONFERENCE

BEFORE THE HONORABLE MARK A. GOLDSMITH

Detroit, Michigan, Thursday, July 13th, 2017.

APPEARANCES:

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Official Court Reporter
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EXHIBITS

Detroit, Michigan.
Thursday, July 13th, 2017.
At or about 1:38 p.m.

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THE CLERK OF THE COURT: Please rise. The United States District Court for the Eastern District of Michigan is now in session, the Honorable Mark Goldsmith presiding. You maybe seated. The Court calls case number 17-11910, Hamama versus Adducci. Counsel, please state your appearances for the record.

MS. SCHLANGER: Margo Schlanger for the petitioners, your Honor.

MS. AUCKERMAN: Miriam Auckerman for the petitioners.

MR. STEINBERG: Michael J. Steinberg for the petitioners.

MS. SCOTT: Kimberly Scott for the petitioners.

MS. RICHARDS: Wendolyn Richards for the petitioners.

MS. YOUHKANA: Nora Youhkana on behalf of the petitioners.

MR. SWOR: William Swor on behalf of the petitioners.

MR. SILVIS: William Silvis, the Department of Justice on behalf of respondents.

THE COURT: Okay. Good afternoon, everyone. All right, we are conducting a conference in this case following the Court's ruling on jurisdiction and I asked for the

THE COURT: Thank you. Mr. Silvis? I'm told 39 might be a summons so maybe we have the numbers wrong. You'll have to check that. All right. Mr. Silvis, go ahead.

MR. SILVIS: Thank you, your Honor. I think the Court had earlier identified our, the government's position or understanding on the PI scheduling and the order. Our position would be that at the 24th, the TRO becomes an appealable as a PI, so what the government has done is proposed in its letter to the Court the dates that, you know, a reasonable schedule by which if the plaintiffs filed their PI motion and we responded a week letter, the Court would have an opportunity albeit over the weekend or that Monday to consider the motion for preliminary injunction. You know, whether the Court has authority beyond that date to continue to entertain the PI, I think that's a different, but at that point we could appeal if that was a determination that was made.

THE COURT: So is the government just opposed to consenting to the extension of the period for the few weeks that the petitioners are proposing for this initial limited discovery and a little lengthier briefing period? Is the government just opposed to extending the stay?

MR. SILVIS: Yes.

THE COURT: Okay. Now in terms of the discovery, what exactly is it that the government's prepared to turn over and what time table? I want to be clear because I understand there's already been some perhaps gathering of information, you might be in a position to turn something over on an immediate basis and something that might be coming down the Pike a little bit later.

MR. SILVIS: Correct and if I'll allow me a preliminary just statement on that, I think initially on discovery or initial objection was just based on jurisdiction because we didn't have a lot of time. I think the request for expedited discovery was filed like on the 28th and we, before the weekend and they were asking for discovery the following Monday, so initially we put together saying look, there's no jurisdiction, the Court has to determine that. Given more time we probably would have added some additional objections.

That said, I think really with the discovery, I think the concern is that and I think the Court's touched on this with its earlier questions is how does it relate really to the motion for preliminary injunction. Most of the information that would go to the CAT claim, CAT is something that can't really be granted by this Court. It's relief that has to go through the procedure that Congress created for determining these claims. We would agree that the government couldn't remove someone with a colorable CAT claim, but that claim is determined in a whole different proceeding, a whole proceeding that Congress put together through the immigration courts and the PFR process and the people in case have already had access to that process. So bringing that and trying in some way to say we're going to in a preliminary injunction brief the merits of a CAT claim, I don't see how the Court's going to be able to go through, say that the Court got criminal history or information about removal orders, how that would in any way determine, be an issue that this Court could decide on a preliminary basis and it's certainly not going to be --

THE COURT: So it's the government's view then I shouldn't even be getting into whether the petitioners have a good claim, may have a good claim. You're saying that that's just not anything that I should be taking into account in assessing whether they're entitled to a preliminary injunction?

MR. SILVIS: Correct your Honor and frankly I think it would be extremely difficult to do. You'd have to do it on a case-by-case basis. That's a case-by-case determination and I don't see, I mean, the system has been set up so that the immigration courts do this for an individual person. They have an appeal to the BIA if they want to exercise that and the PFR and for this Court at this point, other than being precluded by doing it from statute, you'd be sitting there trying to decide in an individual case on a preliminary basis that someone has a claim or they don't.

I think there's been some mention, too, about the length how hold some of these removal orders are and one

# EXHIBIT CC

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

**USAMA JAMIL HAMAMA,** et al.,

Petitioners and Plaintiffs,

v.

**REBECCA ADDUCCI**, et al.,

Respondents and Defendants.

Case No. 2:17-cv-11910

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

Class Action

**DECLARATION OF BRIANNA AL-DILAIMI**

**DECLARATION OF BRIANNA AL-DILAIMI**

I, BRIANNA AL-DILAIMI hereby declare:

1. I am Brianna Al-Dilaimi, I am 36 years old, and a U.S. citizen. I am married to Ali Al-Dilaimi.
2. My husband is an Iraqi national who entered the United States in 1998 as a refugee when he was nineteen years old. We currently reside in Conneaut, Ohio with our three-year old child and 18-year old step-child. Both our children are U.S. citizens.
3. My husband was born on [redacted] and is now 38 years old. We have been married for sixteen years.
4. Although he has been subject to an order of removal to Iraq since May 21, 2004, ICE released him to the community after seven months of detention with an order of supervision. He has been complying with that order for the past thirteen years, living in the community and regularly reporting to an immigration officer.
5. On June 11, 2017, without warning, ICE came to his home and arrested him. My husband suffered [redacted] my husband was transferred to a detention center in Youngstown, Ohio where he awaits imminent removal to Iraq.

6. Seventeen years ago, my husband was involved in the assault of a man who had previously attacked him. He was sentenced to one year, of which he served five months. His refugee visa was revoked because of this. My husband has not reoffended since. In 2008, he filed paperwork to expunge his criminal record. His records have since been expunged of this prior conviction.

7. [redacted] since 2005 and cannot work. He is currently not receiving his medication while in detention and, if deported, he will have difficulty receiving proper medical treatment.

8. My husband fears removal to Iraq, especially because his status as Shia Muslim makes him a target for violence and persecution. He wishes to seek relief from removal.

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

Executed June 15, 2017, in Michigan.

BAlDilaimi

BRIANNA AL-DILAIMI

**CERTIFICATE OF SERVICE**

I hereby certify that on June 16, 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 Jennifer L. Newby, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants:

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