

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

USAMA J. HAMAMA, et al.,
Petitioners and Plaintiffs,

v.

REBECCA ADDUCCI, et al.,
Respondents and Defendants.

Case No. 17-cv-11910

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

Class Action

**PETITIONERS/PLAINTIFFS’ SUPPLEMENTAL MEMO REGARDING
DEFENDANTS/RESPONDENTS’ MEMORANDUM IN SUPPORT OF
GOVERNMENT PRIVILEGE CLAIMS**

Respondents have asserted that they are entitled to withhold the names of ICE officers and foreign government officials who participated in meetings regarding the implementation of removals to Iraq, information that is responsive to Petitioners’ Interrogatory 12. *See* ECF 265, Resp. Privilege Memo; ECF 277, Resp. Reply. They claim that disclosure of the names “could cause risk to national security,” make the individuals “targets of harassing or coercive inquiries for unauthorized access to information,” hinder its “ability to conduct removal operations,” and chill relations with the Iraqi government officials leading to a “detrimental effect on the [Respondents’] ability to . . . effectuate removals to Iraq.” ECF 277, Pg.ID# 6649-6651; *see also* ECF 264, Pg.ID# 6431-6432. These “concerns” are nothing more than pure speculation that have proven to be unfounded – since making these arguments, the U.S. government has publicly

disclosed the names of 2 *Iraqi government officials involved in determining if Iraqi nationals will be repatriated*. The government's self-disclosure of these names outside of this litigation bolsters Petitioners' arguments as to why the law enforcement privilege is inapplicable and the information sought is critical to Petitioners' ability to conduct discovery on their *Zadvydas* claim. See ECF 269.

Subsequent to the filing of Petitioners' memo, Petitioners became aware that Immigration and Customs Enforcement (ICE) responded to a Freedom of Information Act request submitted by former Senator Carl Levin on behalf of the Chaldean Community Foundation. See Ex. 1, FOIA Request. The request sought records "relating to any and all agreements (including the agreement themselves) relative to repatriation, removal, or deportation of Iraqi nationals residing in the United States to the Republic of Iraq or elsewhere." *Id.* ICE responded to the FOIA request indicating that it possessed 52 pages of responsive records. Ex. 2, ICE Cover Letter Responding to FOIA. The documents provided to the Chaldean Community Foundation through FOIA have not been provided by Respondents to the Petitioners in discovery.¹

Of particular relevance to Respondents' privilege assertions is an unclassified memo that ICE provided in response to the Foundation's FOIA request. That memo is dated March 12, 2017, summarizes a meeting between the

¹ This Court's January 2, 2018 order, ECF 191, comprised the bulk of the 52 pages.

U.S. Embassy and the Iraqi Ministry of Foreign Affairs, has the subject line, “Iraq Inter-ministerial Committee on Deportations Outlines Deportations Facilitations,” and describes the negotiations taking place at that time. Ex. 3, March Memo. The memo begins by noting that Dr. Kahim Al-Rikabi, of the Iraqi Ministry of Foreign Affairs, met with the Deputy Consul General and the Assistant Legal Attaché. *Id.* The memo then goes on to repeatedly discuss what Dr. Al-Rikabi communicated about the Government of Iraq’s position at that time. *Id.* The memo also discloses the name of a second Iraqi government official – Deputy Foreign Minister Khairallah – working with the Inter-ministerial Committee and overseeing the review of deportation notices. *Id.*

ICE redacted other information in the FOIA response, claiming that FOIA’s law enforcement and personal privacy exemptions apply – exemptions which are broader than the law enforcement privilege claimed in the FOIA-released memo. The fact that ICE did not redact the names of Dr. Al-Rikabi or Deputy Foreign Minister Khairallah, but provided exactly the sort of information sought in Interrogatory 12, fatally undermines its argument that it should not be required to provide such information in discovery in this case. If the government can provide such information in response to the public in response to a FOIA request, it can surely do so in response to discovery under a protective order.

Respectfully submitted,

Michael J. Steinberg (P43085)
Kary L. Moss (P49759)
Bonsitu A. Kitaba (P78822)
Miriam J. Aukerman (P63165)
ACLU FUND OF MICHIGAN
2966 Woodward Avenue
Detroit, Michigan 48201
(313) 578-6814
msteinberg@aclumich.org

/s/Kimberly L. Scott
Kimberly L. Scott (P69706)
Wendolyn W. Richards (P67776)
Cooperating Attorneys, ACLU Fund
of Michigan
MILLER, CANFIELD, PADDOCK
& STONE, PLC
101 N. Main St., 7th Floor
Ann Arbor, MI 48104
(734) 668-7696
scott@millercanfield.com

Nora Youkhana (P80067)
Nadine Yousif (P80421)
Cooperating Attorneys, ACLU Fund
of Michigan
CODE LEGAL AID INC.
27321 Hampden St.
Madison Heights, MI 48071
(248) 894-6197
norayoukhana@gmail.com

Judy Rabinovitz (NY Bar JR-1214)
Lee Gelernt (NY Bar LG-8511)
ACLU FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2618
jrabinovitz@aclu.org

Margo Schlanger (P82345)
Cooperating Attorney, ACLU Fund
of Michigan
625 South State Street
Ann Arbor, Michigan 48109
734-615-2618
margo.schlanger@gmail.com

Susan E. Reed (P66950)
MICHIGAN IMMIGRANT RIGHTS
CENTER
3030 S. 9th St. Suite 1B
Kalamazoo, MI 49009
(269) 492-7196, Ext. 535
Susanree@michiganimmigrant.org

Lara Finkbeiner (NY Bar 5197165)
Mark Doss (NY Bar 5277462)
INTERNATIONAL REFUGEE
ASSISTANCE PROJECT
Urban Justice Center
40 Rector St., 9th Floor
New York, NY 10006
(646) 602-5600
lfinkbeiner@refugeerights.org

María Martínez Sánchez (NM
Bar126375)
ACLU OF NEW MEXICO
1410 Coal Ave. SW
Albuquerque, NM 87102
msanchez@aclu-nm.org

Attorneys for All Petitioners and Plaintiffs

William W. Swor (P21215)
WILLIAM W. SWOR
& ASSOCIATES
1120 Ford Building
615 Griswold Street
Detroit, MI 48226
wwswor@sworlaw.com

Attorney for Petitioner/Plaintiff Usama Hamama

Dated: May 30, 2018

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2018, I electronically filed the foregoing papers with the Clerk of the Court using the ECF system which will send notification of such filing to all ECF filers of record.

By: /s/Kimberly L. Scott

Kimberly L. Scott (P69706)

Cooperating Attorneys, ACLU Fund of Michigan

MILLER, CANFIELD, PADDOCK

& STONE, PLC

101 N. Main St., 7th Floor

Ann Arbor, MI 48104

(734) 668-7696

scott@millercanfield.com

EXHIBIT 1

HONIGMAN

Honigman Miller Schwartz and Cohn LLP
Attorneys and Counselors

Carl M. Levin

(313) 465-7720
Fax: (313) 465-7721
clevin@honigman.com

October 16, 2017

Dr. James V.M.L. Holzer
Deputy Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655

Re: FOIA Request for Documents

Dear Mr. Holzer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I hereby request that your office produce, within 20 business days, the following records:

All paper records and electronically stored information including, but not limited to, email, official statements, notes, announcements, memoranda, and records of oral communications or discussions, relating to any and all agreements (including the agreements themselves) relative to the repatriation, removal, or deportation of Iraqi nationals residing in the United States to the Republic of Iraq or elsewhere.

I submit this request on behalf of my client, the Chaldean Community Foundation (the “CCF”). The CCF is a nonprofit organization based in Southeast Michigan and dedicated to addressing the needs of Chaldean-American community. The CCF continues to advocate on behalf of the hundreds of Iraqi-Americans currently being detained indefinitely and awaiting deportation to Iraq.

Additionally, I ask for an expedited response to this request based on the imminent and grave threat to the health and safety of the detainees upon their removal to an as-yet-unspecified area of Iraq. Iraq today faces upheaval and violence, with battle lines drawn on religious and ethnic grounds.¹ Recent years have seen the sectarian fault lines reopened,² increasing ethnic, religious, and political violence, and the introduction of the terrorist organization, the Islamic

¹ See generally Kenneth Katzman & Carla E. Hummud, Cong. Research Serv., RS21968, Iraq: Politics and Governance (2016).

² *Id.* at 7.

HONIGMAN

October 16, 2017

Page 2

State of Iraq and the Levant (“ISIL”).³ Iraqi Christians (comprising most of the detainees) are often targeted for violence.⁴ Indeed, as recently as June 14, 2017, the U.S. Department of State warned against all travel to Iraq, citing the “high risk of kidnapping and terrorist violence.”⁵

The U.S. Department of State’s Human Rights Report lists numerous human rights violations occurring in Iraq, including

unlawful killings; torture and other cruel punishments; poor conditions in prison facilities; denial of fair public trials; arbitrary arrest; arbitrary interference with privacy and home; limits on freedoms of speech, assembly, and association due to sectarianism and extremist threats; lack of protection of stateless persons; wide-scale governmental corruption; human trafficking; and limited exercise of labor rights.⁶

As a result of the constant threat of persecution, more than three quarters of Iraq’s approximately 1.5 million Christians have fled their homes, with more than 30,000 moving to Michigan. The rise of ISIL has exacerbated inter-community tensions and violence, and ISIL itself has carried out waves of violence against Christians and other religious groups.⁷

In light of the grave danger that awaits the detainees in Iraq, it is imperative that the information regarding the U.S. government’s repatriation of Iraqi nations be provided pursuant to

³ *Id.* at 22. For example, while Saddam Hussein empowered Iraq’s Sunni population, the Prime Minister elected in 2005, Nuri Kamal al-Maliki, favored the Shi’a population. This reversal “created division and distrust in Iraq and helped contribute to the rise of extremist groups such as ISIS.”

⁴ *Id.* at 33.

⁵ United States Department of State, *Iraq Travel Warning* (June 14, 2017), <https://travel.state.gov/content/passports/en/alertswarnings/iraq-travel-warning.html>.

⁶ United States Department of State, *Iraq 2015 Human Rights Report* (2015), <https://www.state.gov/documents/organization/253137.pdf>.

⁷ See generally Amnesty International, *Banished and Dispossessed: Forced Displacement and Deliberate Destruction in Northern Iraq* (2016), https://www.amnestyusa.org/files/banished_and_dispossessed_-_forced_displacement_and_deliberate_destruction_in_northern_iraq.pdf (hereinafter, Amnesty International, *Banished and Dispossessed*); Amnesty International, *Ethnic Cleansing on a Historic Scale: Islamic State’s Systematic Targeting of Minorities in Northern Iraq* (2014), https://www.es.amnesty.org/uploads/media/Iraq_ethnic_cleansing_final_formatted.pdf (hereinafter, Amnesty International, *Ethnic Cleansing on a Historic Scale*).

HONIGMAN

October 16, 2017

Page 3

this request. Further, this request should be given expedited treatment so as to provide the detainees with the details of the U.S. government's agreement to deport Iraqi nationals to Iraq, including the specific area of Iraq where the detainees will be sent.

The alleged agreement has been cited by our government as the reason Iraqi Americans who for decades have lived here peacefully and productively are now being rounded up for deportation. Surely they, their families, and the public are entitled to see any agreement so directly affecting their lives.

Last, I request a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), because disclosure of requested information is in the public interest.

Please contact me by phone or email if you require additional information.

Very truly yours,

Senator Carl M. Levin (Retired)
HONIGMAN MILLER SCHWARTZ AND COHN LLP

CC: Chaldean Community Foundation

EXHIBIT 2

Office of Information Governance and Privacy

U.S. Department of Homeland Security
500 12th St., SW
Washington, D.C. 20536



**U.S. Immigration
and Customs
Enforcement**

March 26, 2018

Carl Levin
Honigman Miller Schwartz and Cohn LLP
2290 First National Building
660 Woodward Avenue
Detroit, MI 48226-3506

RE: ICE FOIA Case Number 2018-ICFO-20116

Dear Mr. Levin:

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated October 23, 2017. You have requested copies of the following records:

all paper records and electronically stored information including, but not limited to, email, official statements, notes, announcements, memoranda, and records of oral communications or discussions, relating to any and all agreements (including the agreements themselves) relative to the repatriation, removal, or deportation of Iraqi nationals residing in the United States to the Republic of Iraq or elsewhere.

ICE has considered your request under the FOIA, 5 U.S.C. § 552.

A search of the ICE Office of Enforcement and Removal Operations (ERO) for records responsive to your request produced 52 pages that are responsive to your request. After review of those documents, I have determined that 48 pages will be released in their entirety. Portions of 4 pages will be withheld pursuant to Exemptions (b)(6) and (b)(7)(C) of the FOIA as described below.

ICE has applied Exemptions (b)(6) and (b)(7)(C) to protect from disclosure names and identification numbers of law enforcement personnel.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. The types of documents and/or information that we have withheld may consist of social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a

Page 2 of 3

third party that are considered personal. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8, to:

U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., Mail Stop 5900
Washington, D.C. 20536-5900

Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

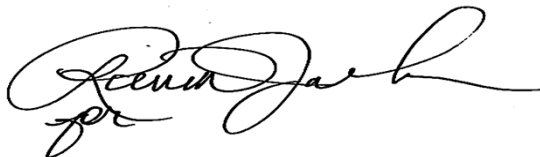
Provisions of FOIA allow DHS to charge for processing fees, up to \$25, unless you seek a waiver of fees. In this instance, because the cost is below the \$25 minimum, there is no charge.

If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office and refer to FOIA case number **2018-ICFO-20116**. You may send an e-mail to ice-foia@ice.dhs.gov, call toll free (866) 633-1182, or you may contact our FOIA Public Liaison, Fernando Pineiro, in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College

Page 3 of 3

Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in black ink, appearing to read "Catrina M. Pavlik-Keenan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Catrina M. Pavlik-Keenan
FOIA Officer

Enclosure(s): 52 page(s)

EXHIBIT 3

From: SMART Core
Sent: Sunday, March 12, 2017 12:22 PM

(b)(6);(b)(7)(C)

Subject: Iraq Inter-ministerial Committee on Deportations Outlines Deportations Facilitation

UNCLASSIFIED

SBU



Info Office: P, Special_Assistant

MRN: 17 BAGHDAD 278
Date/DTG: Mar 12, 2017 / 121621Z MAR 17
From: AMEMBASSY BAGHDAD
Action: WASHDC, SECSTATE ROUTINE
E.O.: 13526
TAGS: PGOV, PREL, CVIS, IQ, DHS, FBI
Captions: SENSITIVE
Reference: 17 BAGHDAD 66
Pass Line: PASS TO: (b)(6);(b)(7)(C)
DHS: (b)(6);(b)(7)(C)

Subject: Iraq Inter-ministerial Committee on Deportations Outlines Deportations Facilitation

1. (SBU) Summary: Dr. Kadhim Al-Rikabi, Ministry of Foreign Affairs, met with the Deputy Consul General (DCG) and Assistant Legal Attaché March 7 to discuss the initial steps outlined by the Iraq Inter-ministerial Committee on Deportations to commence the return of over 1400 Iraqi nationals ordered deported from the United States. Al-Rikabi said the Committee had identified four necessary steps for Iraq to facilitate the deportations: consular access, Iraqi citizenship verification, deportation court order review, and travel document issuance. Al-Rikabi said the deportations are a high priority for the Prime Minister and Foreign Minister, and the Committee was prepared to finalize within 30 days the removal of the first group of deportees. Al-Rikabi also said the GoI would share with the United States any derogatory information that surfaced in the inter-ministerial deportation documentation review. End Summary.

2. (SBU) **Al-Rikabi** said the newly-formed Iraq Inter-ministerial Committee on Deportations is comprised of representatives from the Prime Minister's Office, the Ministry of Foreign Affairs (MFA), the Ministry of Justice (MoJ), and the Ministry of the Interior (MoI). He said the structure of the Committee is designed to ensure the appropriate GoI ministries review the deportation notices thoroughly and quickly under the auspices of **Deputy Foreign Minister Khairallah** (reftel).

3. (SBU) Consular Access: **Al-Rikabi** said the Committee was prepared to direct officials from the Embassy of Iraq in Washington, DC and the consulates in Los Angeles, CA and Detroit, MI to meet individually with each of the approximately 1400 Iraqi nationals ordered deported from the United States, prior to facilitating their deportation. After a discussion of the workload implications for the Embassy and consulate officials, the time needed to coordinate and carry out the visits across the United States, and the additional logistical burden this would place on the Department of Homeland Security, **Al-Rikabi** agreed, provided DHS is amenable (see below action request), to consider the consular access request met by having an Iraqi official meet briefly with groups of deportees at the point of embarkation from the United States.

4. (SBU) Citizenship Verification: **Al-Rikabi** said once a deportation notification and accompanying documents were received by the MFA, the Ministry of Interior would review and verify the evidence of citizenship provided by the United States. **Al-Rikabi** noted that for cases where a deportee's travel documents could not be provided by the United States, the GoI was concerned that among the 1400 might be nationals of neighboring countries who were in possession of false Iraqi citizenship documents. In response to the DCG's offer for the United States to provide where permissible evidence of Iraqi citizenship derived from U.S. information systems, **Al-Rikabi** said the GoI would accept such evidence in lieu of passports and national identification cards.

5. (SBU) Deportation Order Review: **Al-Rikabi** said the Ministry of Justice (MoJ) would review each deportation court order in tandem with the citizenship verification review process. He stated the MoJ and MoI would also ascertain whether the deportees were subject to any pending criminal charges or convictions in Iraq.

6. (SBU) Travel Document Issuance: **Al-Rikabi** said the Committee was prepared to direct the Iraqi Embassy and Consulates to provide travel documents for each of the 1400 deportees. The DCG noted DHS had previously provided copies of passports and identification cards to the Embassy and consulates for the purpose of obtaining travel documents, but to no avail. **Al-Rikabi** agreed the process would be streamlined if the need for travel documents was minimized by excluding deportees who had some evidence of citizenship documents or secondary information confirming their citizenship.

7. (SBU) Information Sharing: **Al-Rikabi** said the GoI would welcome detailed histories of the deportees' criminal behavior in the United States. He said the GoI would use the citizenship verification process to determine whether the deportees had pending criminal charges or convictions in Iraq. In response to the DCG's noting that information sharing, in addition to the deportations, met two of the three areas of enhanced Iraq-U.S. areas of cooperation per the March 6 Executive Order Protecting the Nation From Foreign Terrorist Entry Into the United States, **Al-Rikabi** agreed to have the GoI share with the United States any derogatory information that surfaced during the GoI reviews.

8. (SBU) Action request for CA/VO and NEA/I: Please raise with DHS the request for DHS approval for Iraqi officials to meet with Iraqi deportees at the points of embarkation in order to meet the GoI's consular access request.

Signature:	(b)(6);(b)(7)(C)
Drafted By:	BAGHDAD (b)(6);(b)(7)(C) (Baghdad)
Cleared By:	DOJ (b)(6);(b)(7)(C) (Baghdad)
	POL (b)(6);(b)(7)(C) (Baghdad)
Approved By:	Executive Office (b)(6);(b)(7)(C) (Baghdad)
Released By:	BAGHDAD (b)(6);(b)(7)(C) (Baghdad)
Info:	BASRAH, AMCONSUL ROUTINE; ERBIL, AMCONSUL ROUTINE
Action Post:	NONE
Dissemination Rule:	DIS_P, DIS_SPECIAL_ASSISTANT

UNCLASSIFIED