

**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

Hon. _____

Class Action

HABEAS CORPUS CLASS ACTION PETITION

INTRODUCTION

1. Petitioners are Iraqi nationals who have resided in the United States, in many cases for decades. They now face imminent removal to Iraq, and the very real probability of persecution, torture or death.

2. Although most were ordered removed to Iraq years ago (some for overstaying visas, others based on criminal convictions for which they long ago completed any sentences), the government released them under orders of supervision. Thus, until recently, Petitioners were living peaceably in the community, reporting regularly to Immigration and Customs Enforcement (“ICE”), and complying with their other conditions of release.

3. This changed suddenly on June 11, 2017, when, with no warning, ICE began arresting and detaining Petitioners on the grounds that Iraq has now agreed to take them back. ICE then transferred most of them to a detention center in Youngstown, Ohio, far from their families and their retained counsel.

4. On information and belief, approximately 100 Iraqi nationals who previously resided in Michigan are now detained in Youngstown, Ohio, and face imminent removal to Iraq, a country which they left years ago and which is listed on the U.S. State Department’s Travel Advisory as a country which U.S. citizens should avoid because it is too dangerous. *See Iraq Travel Warning*, U.S. Dep’t of State (last updated June 14, 2007),

<https://travel.state.gov/content/passports/en/alertswarnings/iraq-travel-warning.html>.

5. U.S. law prohibits the removal of individuals to countries where they would face a likelihood of persecution or torture. Yet despite the clear danger that many of these individuals face in Iraq, ICE is attempting to deport them based on outstanding removal orders that do not take account of intervening changed circumstances which should entitle them to protection. For example, many of the Petitioners are Chaldean Christians, who are widely recognized as targets of brutal persecution in Iraq. Indeed, the persecution is so extreme that over the last few years attorneys representing ICE in Michigan immigration courts have consented to the grant of protection to Chaldeans. Nonetheless, Chaldeans whose order of removal was entered years ago are now facing removal to Iraq as if nothing has changed, and without any inquiry into the dangers they would currently face.

6. Petitioners, Christian and Muslim alike, cannot be removed to Iraq without being afforded a process to determine whether, based on current conditions and circumstances, the danger they would face entitles them to protection from removal. Specifically, Petitioners ask this Court to issue an order preventing their removal to Iraq – and the removal of those similarly situated – until they are provided with some process to determine if they are entitled to protection in light of changed country conditions.

7. In addition, Petitioners, on behalf of themselves and those similarly situated, challenge ICE's policy of transferring them from their home states to detention in Ohio – a practice that has interfered with existing counsel relationships and made it impossible for those Petitioners without existing counsel to take advantage of the large numbers of Michigan attorneys who have come forward to offer their services pro bono.

8. Finally, Petitioners, on behalf of themselves and those similarly situated, challenge their detention, which bears no reasonable relationship to any legitimate purpose. Because they cannot be lawfully removed until they have had an opportunity to renew their requests for protection, their detention is not necessary to effectuate their imminent removal. Nor is their detention justified on the grounds of danger. Prior to their arrest by ICE, all Petitioners had been peaceably living in the community and complying with their orders of supervision. Petitioners ask this Court to order their immediate release, absent an individualized determination that they pose a danger or flight risk that requires their detention.

JURISDICTION

9. This case arises under the United States Constitution; the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*; the regulations implementing the INA's asylum provisions; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), Dec. 10,

1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85., the Foreign Affairs Reform and Restructuring Act of 1998 (“FARRA”), 8 U.S.C. § 1231 note, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*

10. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241 *et seq.*, and Art. I § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may also exercise jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1361 (mandamus statute), 5 U.S.C. § 701 *et seq.* (Administrative Procedures Act); Art. III of the United States Constitution; Amendment V to the United States Constitution; and the common law. This Court may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

11. Venue lies in the Eastern District of Michigan, the judicial district in which the ICE Field Office Director is located. *See Roman v. Ashcroft*, 340 F.3d 314, 319-21 (6th Cir. 2003).

PARTIES

12. Petitioner **Usama Jamil “Sam” Hamama** is a 54-year old Iraqi national who lawfully entered the United States in 1974 as a refugee when he was four years old. He and his family reside in West Bloomfield, Michigan. Petitioner Hamama is married and has four U.S. citizen children, ages 11, 15, 17, and 19.

Although he has been subject to an order of removal to Iraq since 1994, he was released to the community under an order of supervision, with which he has fully complied. On June 11, 2017, without warning, ICE came to his home and arrested him in front of his wife and children. ICE then transferred him to the St. Clair County Jail where he awaits imminent removal to Iraq. Twenty-eight years ago, Mr. Hamama was convicted for felonious assault, possession of felony firearm, and carrying a pistol in a motor vehicle, for which he served a two year sentence. He has had no convictions since that time. Mr. Hamama fears removal to Iraq, especially because his status as a Chaldean makes him a target for violence and persecution. He wishes to continue his ongoing efforts to seek relief from removal.

13. Petitioner **Jihan Asker** is a 41-year old Iraqi national who has lived in the United States since the age of five, most of this time near Warren, Michigan. She has three children ages 23, 22, and 15, all of whom are U.S. citizens. Although she has been subject to a final order of removal to Iraq since 1986, she was released on an order of supervision and has been living in the community complying with this order. 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. Ms. Asker is a beneficiary of an approved I-130 Petition filed by her USC daughter. As a result, she is eligible to seek lawful permanent residency in the US. In 2003, Ms. Asker was

convicted of a misdemeanor fraud charge and sentenced to six months' probation. Upon completing probation, a judgment of acquittal/dismissal was entered. She has not reoffended since. Ms. Asker fears removal to Iraq, especially because her status as a Chaldean makes her a target for violence and persecution. She wishes to continue her ongoing efforts to seek relief from removal.

14. Petitioner **Moayad Jalal Barash** is a 47 year old Iraqi national who has lived in the United States since at least 1979, most of this time near Warren, Michigan. He has four U.S. citizen children, aged 21, 20, 18, and 7. His seven year old daughter is disabled. On information and belief Mr. Barash has been subject to a final removal order to Iraq for close to twenty years, and was living in the community pursuant to an order of supervision, with which he was complying. On June 11, 2017, without warning, ICE arrested him, and transferred him to a detention center in Youngstown, Ohio, where he faces imminent removal to Iraq. While still a teenager, he was convicted and served time for drug charges and for possession of a concealed weapon. Since serving his sentences, he has been involved in the church and the sole breadwinner and source of support for his family. Mr. Barash fears removal to Iraq, especially since his status as a Christian makes him a target for violence and persecution. His family is contacting counsel to assist him in obtaining relief from removal but he has not yet met with an immigration attorney since his arrest and detention.

15. Petitioner **Atheer Ali** is a 40-year-old Iraqi national who has lived in the United States since around 1992. He has a 12 year old daughter who is in the seventh grade. His family left Iraq for the United States when he was a child and he has lived in Michigan since. Mr. Ali is a Christian and has a tattoo of a cross on his shoulder. On information and belief, Mr. Ali has been subject to an order of removal to Iraq since 2004, but was living in the community pursuant to an order of supervision, with which he was complying. On June 11, 2017, without warning, Mr. Ali was arrested by ICE and transferred to a detention center in Youngstown, Ohio, to await removal to Iraq. Mr. Ali's criminal history includes a felony conviction for breaking and entering in 1996 and misdemeanor convictions for possession of marijuana in 2009 and 2014. He was never sentenced to prison time. Mr. Ali fears removal to Iraq, especially because his visible status as a Christian, he will be a target for violence and persecution. In addition, he shares the same name as his father, a former General in the Iraqi Army, and fears targeting as a member of his father's family. He has an attorney to assist him in pursuing relief from removal.

16. Petitioner **Habil Nissan** is a 36-year old Iraqi national who lawfully entered the United States in 1997 as a refugee at the age of 16 years old. Mr. Nissan resides in Sterling Heights, Michigan with his girlfriend and two U.S. citizen daughters, ages 9 and 10. Mr. Nissan plead guilty to misdemeanor

destruction of property and two misdemeanor and assault charges in 2005, and sentenced to twelve months of probation. The case was later dismissed and closed. Although Mr. Nissan has been subject to an order of removal to Iraq since 2007, he 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. He fears removal to Iraq, especially because his status as a Catholic makes him a target for violence and persecution. He is trying to find counsel to assist him in seeking relief from removal.

17. Petitioner **Sami Ismael Al-Issawi** is an Iraqi national. He currently resides in Michigan with his wife and three children, all of whom are U.S. citizens. Although he has been subject to an order of removal to Iraq since September 2013, shortly thereafter ICE released him to the community with an order of supervision, with which he has fully complied. On June 11, 2017, without warning, ICE came to Mr. Al-Issawi's home and arrested him. ICE then transferred him to a detention center in Youngstown, Ohio where he awaits imminent removal to Iraq. In January 1998, Mr. Al-Issawi was convicted of aggravated assault and sentenced to a term of over one year. With the assistance of counsel, this sentence was later reduced to 360 days. Mr. Al-Issawi has not reoffended since that time. Mr. Al-Issawi fears removal to Iraq, especially because his status as a Shiite Muslim makes him a

target for violence and persecution. He is trying to find counsel to assist him in seeking relief from removal.

18. Petitioner **Ali Al-Dilaimi** is a 38-year old Iraqi national who entered the United States in 1998 as a refugee when he was nineteen years old. He resides with his wife, U.S. citizen child, and U.S. citizen step child in Conneaut, Ohio. Although he has been subject to an order of removal to Iraq since 2004, ICE released him to the community under an order of supervision, which he has fully complied with for the past thirteen years. On June 11, 2017, without warning, ICE came to his home and arrested him. Thereafter he was transferred to a detention center in Youngstown, Ohio where he awaits imminent removal to Iraq. Seventeen years ago Mr. Al-Dilami was convicted for assault and sentenced to one year, of which he served five months. He has not reoffended since and the conviction was later expunged. Mr. Al-Dilami fears removal to Iraq, especially because his status as a Shi'i Muslim makes him a target for violence and persecution. He is looking for counsel to assist him in seeking relief from removal.

19. Respondent **Rebecca Adducci** is the Field Office Director for the Detroit District of ICE and is sued in her official capacity. The Field Office Director has responsibility for and authority over the detention and removal of noncitizens in Michigan, and is their custodian, for purposes of habeas corpus. *See Roman*, 340 F.3d at 319-321.

LEGAL FRAMEWORK

20. Consistent with U.S. obligations under the Refugee Act and the Convention Against Torture (“CAT”), the immigration statute (the Immigration and Nationality Act, or the “INA”) prohibits the U.S. government from removing a noncitizen to a country where he or she is more likely than not to face persecution or torture.

21. Specifically, 8 U.S.C. § 1231(b)(3), “Restriction on Removal to a country where alien’s life or freedom would be threatened,” codifies the non-refoulement obligation of the Refugee Act. The provision is a *mandatory* prohibition on removing noncitizens to a country where their life or freedom would be threatened on the grounds of race, religion, nationality, membership in a particular social group or political opinion. Apart from certain specified exceptions, any individual who can demonstrate that it is more likely than not that he or she will be persecuted on one of the five protected grounds, is entitled to this statutorily mandated protection. *See INS v. Stevic*, 467 U.S. 407 (1984) (holding that alien is entitled to relief from deportation if he is more likely than not to face persecution on one of the specified grounds following his deportation).

22. The other prohibition on removal tracks the Convention Against Torture’s prohibition on removal of noncitizens to countries where they would face torture. *See* 8 C.F.R. §§ 208.16 –18 (implementing the Convention Against

Torture’s provisions with regard to withholding of removal); Foreign Affairs Reform and Restructuring Act (“FARRA”), Pub. L. No. 105-277, Div. G., Title XXII, § 2242, 112 Stat. 2681-822 (Oct. 21, 1998) (codified as Note to 8 U.S.C. § 1231); U.N. Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, ¶ 1, opened for signature Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85.

23. Under the CAT, an individual may not be removed if “it is more likely than not that [the individual] would be tortured if removed to the proposed country of removal.” 8 C.F.R. § 208.16(c)(2); torture may be “inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” 8 C.F.R. § 208.18(a)(1). The regulations provide for both withholding of removal under CAT and “deferral of removal.” Whereas withholding of removal is subject to the same exceptions as apply to 8 U.S.C. § 1231(b)(3), deferral of removal contains no exceptions for people with “particularly serious crimes.” *Compare* 8 C.F.R. § 208.16(d)(3) *with* 8 C.F.R. § 208.17.

24. Petitioners are also potentially eligible for asylum. *See* 8 U.S.C. § 1158. Asylum is a discretionary form of relief from persecution that is available to noncitizens who can demonstrate that they have a “well-founded fear of persecution on account of race, religion, nationality, membership in a particular

social group, or political opinion.” 8 U.S.C. § 1101(a)(42). To prevail on an asylum claim, the applicant must establish that there is at least a 10% chance that he or she will be persecuted on account of one of these enumerated grounds. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 439-40 (1987).

25. Noncitizens who have been ordered removed have the statutory right to file motions to reopen their cases, which are governed by certain time and numerical requirements. *See* 8 U.S.C. § 1229a(c)(7). But the statute grants special solicitude for noncitizens who are seeking relief from persecution. If the noncitizen is seeking asylum, withholding, or protection under CAT based “on changed country conditions arising in the . . . country to which removal has been ordered,” the statute permits the noncitizen to file a motion to reopen at any time. *Id.*, § 1229a(c)(7)(C)(ii); see also 8 C.F.R. § 1003.2(c)(3)(ii).

26. The exception to the numerical and time limits provides a critical safety valve for bona fide refugees who would otherwise be deported from the United States in violation of U.S. international treaty obligations of non-refoulement. *See Salim v. Lynch*, 831 F.3d 1133, 1137 (9th Cir. 2016) (“Judicial review of a motion to reopen serves as a ‘safety valve’ in the asylum process. . . . Such oversight ‘ensure[s] that the BIA lives by its rules and at least considers new information’ bearing on applicants’ need for and right to relief.” (citing *Pilica v. Ashcroft*, 388 F.3d 941, 948 (6th Cir. 2004))).

27. In addition, the Due Process Clause and the INA grant Petitioners the right to counsel to challenge their removal, and to a fair proceeding before they are removed from the country. 8 U.S.C. § 1362; *Leslie v. Attorney General*, 611 F.3d 171, 181 (3d Cir. 2010) (holding that the Fifth Amendment and immigration statute affords a noncitizen right to counsel of her own choice); *Amadou v. INS*, 226 F.3d 724, 726-27 (6th Cir. 2000) (noting that noncitizens have “due process right to a full and fair hearing”).

28. Both ICE’s due process obligations and the INA abridge the government’s discretion to transfer detainees, if transfer interferes with detainees’ access to counsel. *See Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 565-66 (9th Cir. 1990) (affirming injunction enjoining INS from transferring detainees in manner that interfered with existing attorney-client relationships). Such transfers are unlawful when they interfere with detainees’ constitutional, statutory, and regulatory rights to seek relief from persecution and obtain counsel of their choosing. *See Louis v. Meissner*, 530 F. Supp. 924, 927 (S.D. Fla. 1981) (finding INS had thwarted detainees’ statutory and regulatory rights to representation in exclusion proceedings by transferring them to remote areas lacking counsel and interpreters); *see also Rios-Berrios v. INS*, 776 F.3d 859, 863 (9th Cir. 1985) (holding that noncitizen’s transfer, combined with “unexplained haste in beginning deportation proceedings,” his incarceration, inability to speak English, and lack of

friends, deprived him of due process).

FACTS

ICE Abruptly Changes Its Policy with Respect to Release of Iraqis with Final Removal Orders, Without Notice to Those Affected.

29. For many years, even when ICE has obtained final orders of removal against Iraqi nationals, ICE has not actually carried out removals. Instead, ICE has had a policy and practice of releasing Iraqi nationals with final removal orders under orders of supervision. This approach had at least two rationales: First, Iraq generally declined to issue travel documents allowing repatriation. Second, in at least some instances, ICE acknowledged that humanitarian considerations weighed against removal, given the danger posed by removal to Iraq.

30. As a result of the deal that the current administration made with Iraq to remove it from the list of countries that were subject to a travel ban, Iraq recently agreed to issue travel documents for a large number of U.S. deportees.

31. On or about June 11, 2017, ICE began arresting Iraqi nationals in Michigan who had previously been released on orders of supervision. The change in policy came as a shock to the community. Until then, Iraqis with final orders had been living at large, sometimes for decades, with few restrictions apart from regular reporting requirements. Law abiding individuals who have been fully compliant with their conditions of supervision suddenly found themselves arrested and transferred several hours away to a detention center in Youngstown, Ohio.

During the course of just a few days, more than 100 Iraqi nationals were arrested and detained, for the purpose of effectuating their removal back to Iraq.

32. Many of the Iraqis scheduled for deportation are from the country's Chaldean ethno-religious Christian minority, whose persecution in Iraq has been well documented. For example, in 2015 the Sixth Circuit held, on the basis of country-conditions evidence, that "status as a Christian alone entitles [a non-immigrant alien] to withholding of removal, given that there is 'a clear probability' that he would be subject to future persecution if returned to contemporary Iraq." *Yousif v. Lynch*, 796 F.3d 622, 628 (6th Cir. 2015). And conditions for Christians have gotten even worse in the subsequent two years.

33. Yet despite the clear danger they face if removed to Iraq, ICE has defended its decision to remove them, and other Iraqi nationals, by trying to paint them as dangers to the community. Asked for comment about the arrests, ICE described these arrests as "part of ICE's efforts to process the backlog of these individuals, the agency recently arrested a number of Iraqi nationals, all of whom had criminal convictions for crimes" Kyung Lah et al., *ICE Arrests In Metro Detroit Terrify Iraqi Christians*, CNN (June 12, 2017), <http://www.cnn.com/2017/06/12/politics/detroit-ice-iraqi-christians/index.html>. In fact, many of the Iraqis who have been detained and are threatened with imminent removal were convicted of relatively minor crimes. And many of their crimes

were from years ago. Abigail Hauslohner, *Dozens of Iraqi Nationals Swept Up In Immigration Raids In Michigan, Tennessee*, WASH. POST (June 12, 2017), https://www.washingtonpost.com/national/dozens-of-iraqi-nationals-swept-up-in-immigration-raids-in-michigan-tennessee/2017/06/12/58e0524a-4f97-11e7-be25-3a519335381c_story.html?

Individuals With Old Removal Orders Have Multiple Bases for Reopening their Cases, Including Changed Country Conditions in Iraq That Put Them at Risk of Persecution or Torture if Removed.

34. Petitioners have multiple bases for reopening their removal cases, ranging from changed country conditions in Iraq, to changes in the law which affect the classification of their convictions so that they no longer render the individual statutorily ineligible for protection. With respect to changed country conditions, many of the Petitioners' removal orders predate the significant deterioration in Iraq following the government's destabilization and the rise of the so-called Islamic State. This is true for all the detainees – Chaldean and non-Chaldean, Christian and Muslim. Members of the Chaldean Christian ethno-religious minority, who form a large percentage of the Iraqis targeted in the recent raids, are particularly vulnerable to religious persecution in light of recent ethno-political violence.

35. The change in country conditions with respect to Chaldeans is starkly reflected in the change in how their applications for protection have fared in the

immigration court. Until recently, these applications were routinely denied. Now they are almost invariably granted. The Detroit Office of Chief Counsel for 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 is at or very near 100%, for applicants not statutorily barred from relief.

36. Other grounds for reopening removal orders to seek protection from removal include intervening appellate and Supreme Court decisions which shift what crimes are considered disqualifying aggravated felonies. For example, when the Supreme Court decided *Moncrieff v. Holder*, 133 S.Ct. 1678 (2013), convictions for sharing small quantities of marijuana were no longer aggravated felonies. Thus, individuals who were previously improperly classified by immigration judges could file motions to reopen to apply for asylum based on the intervening authority.

**Obstacles to Access to Counsel Created by ICE's Transfer
of Petitioners to Youngstown, Ohio**

37. The vast majority of the Iraqi detainees were transferred out of Michigan soon after being arrested, and are being held over 230 miles from Detroit in Youngstown, Ohio. Others have been transferred to detention centers in Calhoun and St. Clair Counties, Michigan, approximately 100 miles and 60 miles from Detroit, respectively. Because the facility in Youngstown where most detainees are being held is over 230 miles from their community and local

networks in Metro Detroit, their detention in Ohio has effectively disrupted their ability to access pre-existing counsel.

38. The distance has made it difficult for Detroit-based attorneys with pre-existing attorney client relationships to communicate, consult with, or aid their clients.

39. For those detainees who lack pre-existing counsel, the transfer to Ohio has severely impeded their ability to access counsel by physically removing the detainees from the network of local attorneys in their home community, the Metro Detroit area, who have volunteered to provide pro bono representation.

40. Detainees' transfer away from Metro Detroit also hinders their ability to file motions to reopen by imposing additional burdens on their ability to obtain documents in support of such motions, and limiting Detroit-based attorneys' access to detainees. Filing motions to reopen requires substantial time and resources, and will be extremely difficult for detainees who lack assistance of counsel. Those who have retained counsel still face additional hurdles in filing motions to reopen, because attorneys need to visit and interview clients to drafts pleadings, all of which is hindered due to their clients' transfer far away.

CLASS ALLEGATIONS

41. Plaintiffs incorporate by reference the foregoing paragraphs as if fully alleged herein.

42. Plaintiffs bring this class action on behalf of themselves and all others similarly situated for the purpose of asserting claims alleged in this Petition on a common basis.

43. The proposed class is defined under Rules 23(b)(2) and 23(b)3 as: all Iraqi nationals within the jurisdiction of the Detroit ICE Field Office, with final orders of removal, who have been, or will be, arrested and detained by ICE as a result of Iraq's recent decision to issue travel documents to facilitate U.S. removals.

44. There are more than 100 members of the proposed class. The total number of class members is such that joinder of the claims of all class members would be impracticable.

45. Plaintiffs' claims are typical of the claims of the proposed class, and Plaintiffs will fairly and adequately protect the interests of the proposed class. Plaintiffs have no relevant conflicts of interest with other members of the proposed class and have retained competent counsel experienced in class action and immigration law.

46. There are multiple questions of law and fact common to the members of the proposed class. These common questions include, but are not limited to, the following:

47. Whether Petitioners and the proposed class can be removed without

providing them an opportunity to demonstrate their qualifications for relief from persecution or torture based on changed country conditions in Iraq;

48. Whether 8 U.S.C. § 1158, 8 U.S.C. § 1231(b)(3), and the Convention Against Torture impose a mandatory obligation to consider Petitioners' individualized requests for relief from persecution or torture;

49. Whether Respondents violated Petitioners' constitutional, statutory, and regulatory right to counsel of their own choosing by transferring them far from their existing counsel, and preventing them from securing counsel; and

50. Whether Respondents violated Petitioners' constitutional, statutory, and regulatory right to a fair removal hearing by preventing them from seeking reopening based on changed country conditions in Iraq.

CAUSES OF ACTION

COUNT ONE PROHIBITION ON REMOVAL TO COUNTRY WHERE INDIVIDUAL WOULD FACE PERSECUTION OR TORTURE

51. Petitioners reallege the foregoing paragraphs as if set forth fully herein.

52. Pursuant to the INA, and to ensure compliance with international treaties for which it is a signatory, the U.S. government is prohibited from removing noncitizens to countries where they are more likely than not to face persecution or torture.

53. The prohibition on removal is mandatory for anyone who satisfies the

eligibility criteria set forth in the statute and regulations. In addition, where country conditions change after an individual has been ordered removed, the INA specifically provides for motions to reopen a removal order in order to renew one's claims for protection in light of new facts.

54. Petitioners, who are facing removal to Iraq based on old removal orders, face persecution and/or torture if removed to that country in light of changed circumstances since their cases were first considered.

COUNT TWO
PROHIBITION ON REMOVAL TO COUNTRY WHERE INDIVIDUAL
WOULD FACE PERSECUTION OR TORTURE WITHOUT DUE
PROCESS GUARANTEED BY CONSTITUTION

55. Petitioners reallege the foregoing paragraphs as if set forth fully herein.

56. As persons who are protected by the Due Process Clause, Petitioners have a right to a fair proceeding before they are removed from the country.

57. Because the danger to Petitioners in Iraq is based on changed country circumstances, they have not received their core procedural entitlement—they have not had an opportunity to have their claims heard at a meaningful time and in a meaningful manner, that is, with respect to current conditions, not the conditions that existed at the time their removal order was first issued. Removing the petitioners without giving them this opportunity violates the Fifth Amendment's Due Process Clause.

**COUNT THREE
PROHIBITION ON TRANSFER OF IMMIGRATION DETAINEES AWAY
FROM COUNSEL**

58. Petitioners reallege the foregoing paragraphs as if set forth fully herein.

59. In addition to their Due Process Clause rights, pursuant to statute, Petitioners have a right to counsel, at no expense to the government, to challenge their removal from the county. 8 U.S.C. § 1362.

60. ICE's decision to transfer Petitioners who reside in Michigan more than 230 miles away to a detention center in Ohio, is interfering with their statutory right to counsel and their due process right to a fair hearing.

**COUNT FOUR
UNLAWFUL DETENTION**

61. Petitioners reallege the foregoing paragraphs as if set forth fully herein.

62. Petitioners' detention violates due process unless it bears a reasonable relationship to the government's purposes – effectuating removal and protecting against danger. *See Zadvydas v. Davis*, 533 U.S. 678 (2001); *Rosales-Garcia v. Holland*, 322 F.3d 386 (6th Cir. 2003).

63. The government's detention of Petitioners bears no reasonable relationship to either purpose. At a minimum, Petitioners must be afforded individualized determinations to assess whether their continued detention is

justified.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that the Court grant the following relief:

- A. That it assume jurisdiction over this matter;
- B. That it issue a temporary stay of Petitioners' removal to Iraq until this action is decided;
- C. That it order the government to provide Petitioners' counsel with A files for all class members;
- D. That it enjoin the government from removing Petitioners to Iraq without first providing them with an opportunity to establish that, in light of current conditions and the likelihood that they would suffer persecution or torture if removed to Iraq, they are entitled to protection against such removal;
- E. That, at a minimum, it enjoin the government from removing Petitioners to Iraq until they have been given sufficient time and access to attorneys to enable them to file motions to reopen their removal orders and seek stays of removal from the immigration court;
- F. That it enjoin the government from transferring Petitioners to detention centers far from where they are apprehended, such as Youngstown, Ohio, and that it order the government to transfer all detainees currently held in Youngstown, Ohio, back to their home states where they were apprehended;
- G. That it order the government to release all Petitioners from detention absent an individualized determination by an impartial adjudicator that their detention is justified based on danger or flight risk, which cannot be sufficiently addressed by alternative conditions of release and/or supervision;
- H. That it award reasonable attorneys' fees and costs to Petitioners; and
- I. That it grant such other further relief as is just and equitable.

Date: June 15, 2017

Respectfully submitted,

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