EXHIBIT 1

CHRONOLOGY

BEFORE 2017

1. For many years, Iraq had declined to accept repatriation of Iraqi nationals ordered removed from the United States. This declination was not uniform: a few dozen individuals were removed each year. Ex. 1-1, ICE-0270499.[1] Iraq would accept only its nationals who had unexpired passports issued in 2007 or later. Ex. 1-2, ICE-298502.

2. More generally, Iraq has had a strong policy against forced repatriations. As summarized in ICE briefing documents, "In November 2011, the GoI's [Government of Iraq's] Ministry of Foreign Affairs directed consular officials to not issue passports or TDs [travel documents] to Iraqi nationals who did not wish to return to Iraq. In August 2012, as a result of that mandate, 10 countries (Australia, Belgium, Canada, Denmark, France, The Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) established the 'Brussels Group,' to discuss Iraqi repatriation concerns and to identify strategies to elicit better cooperation from the GoI." Ex. 1-2, ICE-298503.

3. At some point in 2016, the State Department prepared a summary of prior meetings with Iraq which led nowhere. The U.S. Embassy in Baghdad wrote:

> Since February 2014, the Department of State and Immigration and Customs Enforcement have met an additional seven times with officials of the Iraqi government, both in Washington, DC and Baghdad, to follow-up on the issue (March 31, 2015; April 1**,** 2015; July 2015; January 10, 2016; January 29, 2016; May 12, 2016; and June 13, 2016, respectively). During the meeting of January 29, the Iraqi Ambassador in Washington, DC assured U.S. government officials that Iraqi Consulates would interview Iraqi detainees with criminal records to begin the process of issuing travel documents. Iraqi Consulates in Detroit and Washington, DC have begun these interviews. Unfortunately, the Consulate in Los Angeles has yet to allow a single interview due to lack of identity documents.

   Ex. 1-3, ICE-0269781-82. *See also* Ex. 1-4, ICE-0298714 (more on the January 29, 2016 meeting). Notwithstanding prior assurances of cooperation from the Ambassador, this document shows that only some of the consulates (Detroit and Washington) would meet with Iraqi nationals whose deportation ICE sought. Ex. 1-3, ICE-0269781-82. Another summary, this one prepared as a briefing memo for then-ICE Director Sara Saldaña and ICE Assistant Director Marlen Piñeiro, explains still more about the January 29, 2016 meeting: it states that there was "an agreement to accept criminal deportees' return to Iraq." Ex. 1-2, ICE-0298501. Yet as of October 2016, this purported agreement had not yielded any travel documents; Iraq continued to adhere to "the forced return and fear claim policy that hinders TD issuance." *Id.* "The Iraqi Embassy has stated during multiple meeting[s] that there is a policy of not issuing documents on subjects who do not want to return. Iraq has also mentioned refusing to issue a TD on anyone who claimed fear regardless of the fear claim being resolved and the subject

[1] In this and other exhibits, Petitioners' counsel have highlighted the referenced text in yellow.

being removable." *Id.* ICE-0298501-02. Over the years, the U.S. responded with "multiple demarches." *Id.* ICE-0298504. (A demarche is a formal diplomatic complaint.)

4. When Iraqi officials *did* conduct travel-document interviews of Iraqi nationals, Iraq used a form (the "GOI form") seeking the would-be-deportee's consent to removal. A version of the form known to be used in 2016 and 2017[2] is attached as Exhibit 1-5, ICE-0295793 and Exhibit 1-6, ICE-0267486. *See* Ex. 3, Attieh Decl., Exs. C-K. As an ICE officer explained in a declaration to this Court, "The GOI travel document application forms have been in use by the GOI for many years now. These forms have been a regular part of the travel document procurement process . . . ." ECF 311-3, PgID.7481-82, Maddox Decl. ¶14. The 2016 version is in Arabic. *Id.* at PgID.7490. Certified translations of the 2016-2017 versions of the form are attached at Exhibit 3, Exhibit C to K. It reads (emphasis added):

> Dear Honorable Consul,
> Subject: Limited-Validity Passport
> I, an Iraqi citizen ( ), would like to request a limited-validity passport issued to me [to travel] to Iraq and this is for personal circumstances and **my desire to return voluntarily to Iraq,** with the knowledge that I don't hold a passport to return to to [sic] the homeland.

5. The point of this form was evidently to ascertain whether an individual was or was not willing to be repatriated, in order to implement the Iraqi policy against involuntary repatriations.

6. In short, Iraq has long had an express policy against involuntary repatriations, and against repatriation of individuals who expressed fear for their safety in Iraq. Between 2011 and 2017, Iraq did not accept forced repatriation of its nationals. For a history of this policy against forced returns, and repeated, unavailing opposition to it by the U.S. government, see Ex. 1-2, ICE-298502-04.

7. This was the state of play as of December 2016. That very month, the Iraqi Consulate in Detroit declined to issue a travel document for one class member, stating:

> With reference to your letter dated on October 11, 2016 and in the light of the interview that [was] conducted by the Iraqi consulate with above mentioned individual on November 15, 2016, kindly be advised that the Consulate General of the Republic of Iraq in Detroit is unable to issue travel document for him due to lack of his proper Iraqi documents which are necessary and required to process his application, . . . also [he] stated that he is unwilling to voluntary repatriated to Iraq, therefore and according to our regulations we will not be able to start any application for him at this time. Ex. 1-8, ICE-0269762.

[2] As explained in Ex. 3, Attieh Decl. 5, signed copies of this form disclosed by ICE are dated between March 21, 2016 and November 4, 2017.

JANUARY – APRIL 2017

8. On January 27, 2017, President Trump issued Executive Order 13769 barring admission into the United States of nationals of seven countries, including Iraq. 82 Fed. Reg. 8977. A flurry of diplomatic contacts ensued, in Iraq rather than with Iraqi diplomats in the United States. As ICE described it in briefing materials prepared in July 2017, "Due to the lack of cooperation from the Iraq Embassy, Washington, D.C. on this issue, ERO and the Department of State developed a strategy to request approval for final order cases directly from Baghdad." Ex. 1-9, ICE-0269073. During those negotiations, the U.S. government told Iraqi officials in January 2017 "that accepting this flight would be an encouraging sign of progress on an issue that could help remove Iraq from sanctions in future Executive Orders." Ex. 1-10, ICE-0297786.

9. The above negotiations resulted in an agreement to accept a small charter plane with Iraqi deportees: "In February 2017, ERO received confirmation from the U.S. Embassy in Baghdad that Iraqi officials have approved the acceptance of a Special High Risk Charter flight containing eight Iraqi detainees." Ex. 1-1, ICE-0270496. The Trump Administration in turn quickly rewarded the concession by taking Iraq off the Travel Ban country list. The President signed the second version of that ban, Executive Order 13780, 82 Fed. Reg. 13209, on March 6, 2017. On a press call to announce the new Order, a "senior DHS official" stated "Iraq is no longer one of those countries [covered by the order] because we have received firm commitments from the government of Iraq over the last several weeks since the first executive order was issued about increased cooperation in terms of information sharing and other related activity. . . . Iraq has agreed to the timely return in [sic] repatriation of its nationals who are subject to final orders of removal." Ex. 1-11, ICE-0296207-08.

10. However, contemporaneous records show that in private, ICE was clear that "[a]t this point ERO [did] not have a repeatable process in place regarding the removal of Iraqi nationals with final orders." Ex. 1-12, ICE-0271069. So negotiations continued. A State Department cable dated March 12, 2017, described discussions conducted after Iraq agreed to accept the first charter plane (in February, *see* ¶9 supra), though before it actually took off (in April, *see* ¶17, *infra*). Ex. 1-13, ICE-0271130. The result was an "Iraq Inter-ministerial Committee on Deportations," composed 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)." *Id.*, ICE-0271131.

11. The March 12, 2017 cable also focused on identity documents. It stated, "In response to the DCG's [U.S. Deputy General Consul's] offer for the United States to provide where permissible evidence of Iraqi citizenship derived from U.S. information systems, [Foreign Affairs Minister Dr. Kadhim] Al-Rikabi said the GoI would accept such evidence in lieu of passports and national identification cards." *Id.*

12. The March 12, 2017 cable contained no discussion of involuntary repatriations. *Id.*, ICE-0271130-32. The cable stated that "the Committee was prepared to direct the Iraqi Embassy and Consulates to provide travel documents for each of the 1400 deportees," taking four steps: "consular access, Iraqi citizenship verification, deportation court order review, and travel document issuance." *Id.*, ICE-0271130-31.

13. This new development was described by senior ICE official John Schultz as a "possible huge breakthrough." *Id.*, ICE-0271129. He testified that he considered the cable a "Statement of Cooperation," that set the terms of subsequent dealings between ICE and Iraq. See Ex. 4, Schultz Dep. at 47, 79-80, 98-99, 116-117.

14. The March 12 cable stated that Iraq will issue travel documents for repatriations; it did not refer to repatriations without travel documents, using flight manifests or other methods. Ex. 1-13, ICE-0271130-32. *See also* Ex. 1-54, ICE's Response to Interrogatory Nos. 1-7; Ex. 1-55, ICE's Response to Interrogatory Nos. 1-5; Ex. 1-56, DHS's Response to Interrogatory Nos. 1-7.

15. In the meantime, planning proceeded for the first, small charter flight in April 2017. As described in March 2017 by the Baghdad-posted Deputy Consul General for the State Department, the process for the flight did not include ordinary travel documents:

> With regard to travel documents, the GoI agreed to have previously-reviewed plane manifests replace the need for travel documents for Iraqis for whom the USG can provide some evidence of Iraqi citizenship, i.e., valid or expired passports or national identification cards, or other Iraqi citizenship documentation. This was the 'Haiti model' we previously discussed with DHS. *Id.*, ICE-0271129.

16. A litigation declaration later portrayed this approach as typical of charter flights. ERO Unit Chief Michael Bernacke stated: "The government of Iraq agreed to accept these removals via charter mission. As a charter mission, rather than a removal conducted via commercial airline flight, formal travel documents are not required. Instead, ICE submits a proposed manifest for the charter flight to Iraqi officials for approval." ECF 184-2, PgID.5071, Bernacke Decl., ¶ 6. In fact, the no-travel-document approach was extremely unusual: Mr. Bernacke testified that of the 43 countries whose travel document acquisition process he supervises, not even one uses a manifest-only process. Ex. 5, Bernacke Dep. at 100.

17. In the end, the no-travel-document approach was not used. Ex. 4, Schultz Dep. at 46-48 ("that manifest idea . . . never came to fruition"). Instead, individuals on the April 2017 plane obtained one-way laissez-passers. Ex. 6, ICE's Response to Interrogatory Nos. 6 and 7 (see entry for H. A., AXXX-XXX-621).

18. When the April 2017 plane landed in Iraq, its passengers were interrogated by the Iraqi intelligence service. Ex. 1-10, ICE-0297786 (describing the April repatriations: "The Airport authority had been superseded by the Iraqi Intelligence Service (INIS) who would receive the deportees . . . ."). *See also* Ex. 1-14, ICE-0297798 (Iraqi [redacted]."").

JUNE 2017: ARRESTS AND A FAILED FLIGHT

19. Because of the April charter flight and the meeting memorialized in the State Department's March 2017 cable, ICE reclassified Iraq from "uncooperative" to "at risk of noncompliance (ARON)" in May 2017. Ex. 1-15, ICE-0270938-40.

20. ICE scheduled its next flight for June 2017. From the beginning, however, its prospects were clouded by debate between Iraqi consular officials in the U.S. and foreign ministry officials in Baghdad. As Supervisory Detention and Deportation Officer Chris George described it, "We are essentially going over the Consulates and Embassy's heads and going right to the Ministry of Foreign Affairs in Baghdad and presenting our TD requests there, and they are forcing the Embassy/Consulate to accept them." Ex. 1-16, ICE-0271766. In the end, Iraq declined to allow the flight to proceed. ICE's contemporaneous documents make the timeline clear:

    a. May 15, 2017: "[O]peration to begin removing non-detained Iraqi final order cases" begins with the first arrests of Iraqi nationals. Ex. 1-17, ICE-0269197.

    b. May 16, 2017: "64 non-detained cases submitted to the DOS [Department of State] for TD presentation" to the Iraqi inter-agency committee. *Id.*

    c. May 17, 2017: "List of 26 detained final order cases sent to DOS for presentation to the Iraqi MFA." *Id.*

    d. May 22, 2017: "149 additional non-detained cases submitted to the DOS for TD presentation." *Id.*

    e. May 25, 2017: "DOS submitted all 240 presentations to the Iraqi MFA along with a Dipnote [diplomatic note[3]] for the upcoming June charter." Ex. 1-9, ICE-0269074.

    f. May 30, 2017: "ICE established June 28, 2017, as the removal date for the charter." Ex. 1-17, ICE-0269197.

    g. June 6, 2017: "40 add-on cases submitted to DOS for the June charter." *Id.*

    h. June 7, 2017: The Iraqi embassy declines to approve forced repatriations. In response to a request for two dozen travel documents, each for a class member in this case (*see* Ex. 2, Schlanger Decl., ¶¶18-19), it writes to ICE: "With reference to your request for travel documents for the aliens whose names are listed in the attachment, kindly be advised the Embassy of the Republic of Iraq in Washington D.C. is unable to issue such travel documents . . . . The applicant . . . should express orally and in writing his willingness to return to Iraq voluntarily in order to be issued a travel document." Ex. 1-18, ICE-0298492 to 93. In response to this "blanket denial," ICE Deputy Assistant Director Schultz reaches out for a progress report on 33 additional travel document requests, *id.* at ICE-0298490, but none of these are granted either. *See* Ex. 6, ICE's Response to Interrogatory Nos. 6 and 7; Ex. 2, Schlanger Decl. ¶22. (ICE later

[3] A diplomatic note, or dipnote, is a formal written communication between countries.

suggested that the meaning of the blanket-denial letter was—implicitly—to instruct ICE to submit these individuals' travel document presentations to the Foreign Ministry, rather than the Embassy, *see* Ex. 4, Schultz Dep. at 219-221, 232-234. But as ICE staff knew, ICE had *already* submitted the presentations to the Foreign Ministry, via the U.S. Department of State; each of the named individuals had been on the list of Department of State submissions made in prior weeks. Ex. 1-18, ICE-0298490 ("Also all these cases were sent to Brigid [at the U.S. embassy in Baghdad] as well."); Ex. 2, Schlanger Decl., at ¶¶20-21 (comparing names on June 7 letter to Ex. 6, ICE's Responses to Interrogatory Nos. 6 and 7.)

i. June 9, 2017: Intra-ICE communication: "At this point we have more aliens in custody than we have seats on the plane, only 75 can go, 15 alternates identified, total cases ready is at 90. 17 cases identified for the future July charter due to field arrests." Ex. 1-17, ICE-0269197.

j. June 11-12, 2017: ICE arrests nearly about 100 Iraqi nationals, nationwide, bringing the total in detention to over 200. Of 230 Iraqi nationals arrested prior to June 22, 130 had been the subject of travel documents previously submitted to Iraq (via the U.S. Embassy in Baghdad); 68 had been designated for the June 28 plane, and at least eight of them were on the June 7 "blanke[t] denial" list from the Iraqi embassy. Ex. 1-18, ICE-0298490; Ex. 2, Schlanger Decl. ¶25.

k. June 12, 2017: Iraq denies any agreement. ICE emails the Department of State:

> [H]ave you heard anything regarding Iraq backing out of the charter missions? DAD [Deputy Assistant Director] Schultz is answering a message regarding the Ministry of Foreign Affairs allegedly stating that there is no agreement with the US Government.

Ex. 1-19, ICE-0269475. State Department confirms: "The MFA wrote yesterday and said that the flight 'decision' is with 'top Iraqi officials.' Our front office was briefed and we are engaging to push the issue." *Id.*

l. June 13, 2017: The State Department engages Iraq. The State Department informs ICE: "We talked to Brigid's [Brigid Weiler, the U.S. deputy consul general] primary POC in the Ministry of Foreign Affairs, reminding him of our dipnote [diplomatic note] of May which noted the June flight, and letting him know another note with more names was on its way. We reminded him that the Prime Minister had promised our Ambassador that deportations would resume. His response was that

with such a large number this time there were important identity and logistical issues to arrange, and the best he could offer was a meeting at MFA [Ministry of Foreign Affairs] next week with all the Iraqi players. He was very concerned that anyone deported is truly an Iraqi. He offered several times that delaying this flight would give them more room." Ex. 1-20, ICE-0269421.

m. June 15, 2017: Petitioners—at this point, Iraqi nationals with final orders of removal arrested by ICE in the Detroit Area of Responsibility (that is, Michigan and Ohio)—file this lawsuit, and seek an emergency stay of removal. ECF 1, 11.

n. June 18, 2017: Higher-level negotiations do not resolve the issue. Iraqi Ambassador Yasseen expresses concerns about the appropriateness of the deportations, asking U.S. Ambassador to Iraq Douglas Silliman: "What happens to someone who may have committed a crime, fulfilled the sentence, been released and has since perhaps married and has Amcit [American citizen] children and/or spouse? Is there any allowance for this?" Ex. 1-20, ICE-0269418.

o. June 18, 2017: U.S. diplomats recognize that Iraq has concerns about allowing the repatriation of individuals with old orders. Baghdad Consul General Scott Riedmann emails several ICE officials: "I think it better to keep the groups mixed to avoid someone in the GOI deciding entire flights should not be received because the passengers all received final orders more than 10 years ago, for example." Ex. 1-21, ICE-0269538.

p. June 19, 2017: ICE officials meet with Iraqi Ambassador Yasseen, without evident progress. Ex. 1-22, Interrogatory 12, ICE Supplemental Response.

q. June 20, 2017: ICE learns that the Iraqi Prime Minister is not going to approve the June charter flight. Ex. 1-23, DHSHamama0000100. The same day there is a meeting between ICE and embassy staff. Ex. 1-22, Interrogatory 12, ICE Supplemental Response.

r. June 21, 2017: ICE receives direct notification that Iraq will not accept the June charter flight. Ex. 1-24, ICE-0297771.

s. June 22, 2017: Efforts to pressure Iraq continue. DHS Deputy Assistant Secretary Matt King notes at 2:53 pm that "ICE and Embassy have been going hard at it." Ex. 1-23, DHSHamama000103.

At 6:37 pm, the Court grants a temporary restraining order staying the Detroit Field Office's removal of petitioners. ECF 32. ICE's ability to deport other Iraqi nationals is unconstrained by the court order. The majority of the individuals intended for the June flight are *not* covered by the Court order. ICE disclosures of 76

noncitizens intended for the June flight, and their detention records, show that 52 of the 76 had no disclosed immigration detention history in Ohio or Michigan. Ex. 2, Schlanger Decl. ¶29; Ex. 6, ICE's Response to Interrogatory Nos. 6 and 7.

t. June 23, 2017: Acting ICE Director Thomas Homan and DHS Deputy Assistant Secretary Matt King called Iraq Ambassador Yasseen and "pressed him to ensure that the flight land as scheduled." Ex. 1-25, DHSHamama000001. The Ambassador "expressed that this flight is problematic (almost impossible) as scheduled. Additionally, the Ambassador noted that in Iraq, the multi-agency coordination to facilitate deportations takes longer than what the U.S. expects." Ex. 1-23, DHSHamama000097. As summarized in subsequent DHS briefings, he "indicated he was limited in his ability to persuade Baghdad to allow the flight to land, highlighting Iraqi bureaucratic 'clumsiness' and the *eid al-fitr* holiday that fell during the time the flight was scheduled to land (celebrated in Iraq this year from June 25 to June 29)." Ex. 1-25, DHSHamama00001.

u. June 26, 2017: At 12:10 pm following up on the June 23, 2017 phone call, Iraqi Ambassador Yasseen states conclusively in an email to ICE Director Homan and others, that the flight will not proceed:

> I forwarded the information to Baghdad and I heard from them this morning. . . . The US embassy had informed the Foreign Ministry that the batch of returnees would arrive on June 29. That date was determined by the US embassy and other US agencies without consultation with the Iraqi agencies involved. As things stand, we will not be able to receive the returnees on the date mentioned (time too short to guarantee receipt of PM's clearance or to arrange for the logistics required for such a large number of returnees). On this issue, our working group met in Baghdad with the U.S. Consul and his deputy or assistant and explained these issues, the Consul in turn promised to delay the trip until after receipt of the PM's clearances on a later date to be agreed to by both sides."

Ex. 1-26, DHSHamama0000115. The Ambassador specified, as well, that Iraq would not allow "enforced repatriations," writing that Iraq would only admit individuals convicted of a crime "different from illegal entry into the USA as these fall into the category of asylum seekers and their removal could be considered an enforced repatriation." *Id.*

At 8:57 pm, the Court expands the June 22 TRO to cover a nationwide class, scheduled to expire July 10, 2017. ECF 43.

v. June 28, 2017: In response to Iraq's refusal to allow the planned charter flight to proceed, ICE Assistant Director, Marlen Piñeiro (Mr. Schultz's boss) reports to DHS that ICE has "exhausted all [its] efforts at [its] level" and ICE has not "even been able to get a new tentative date for the flight." Ex. 1-27, DHSHamama0000116.

21. In short, the cancellation of the June 2017 charter flight occurred because Iraq declined to allow that flight to land. Ex. 1-1, ICE-0270496; Ex. 1-9, ICE-0269074; Ex. 1-24, ICE0297771; Ex. 1-59, DHSHamama000059.

SUMMER 2017: THE ABSENCE OF A "DURABLE SOLUTION" AND IRAQ REASSERTS ITS POLICY AGAINST FORCED REPATRIATIONS

22. The Court's nationwide order was, at the start, provisional. The June 26, 2017 TRO stated that it would last only for 14 days—that is, until July 10. ECF 43. On July 6, the TRO was extended until July 24, ECF 61. On July 24, the Court granted the preliminary injunction that remains in effect. ECF 87.

23. Before the preliminary injunction issued, ICE continued to seek Iraq's acquiescence to a charter plane to replace the one that Iraq rejected in June. This did not succeed. Iraq continued to assert its concerns with forced repatriations and also about the safety of deportees. (*See* Ex. 1-28, ICE-0296142 (describing Iraqi "argument that Iraqi Chaldeans would necessarily face persecution upon return to Iraq").) Over the subsequent month, the United States was unable to obtain a firm commitment for a replacement flight. The timeline is:

a. July 5, 2017: The Iraqi Ministry of Foreign Affairs informs the U.S. embassy in Baghdad that "the PMs [Prime Minister's] office gave them the go-ahead on deportations." However, Consul General Scott Riedmann explained to ICE that the issue was far from resolved. While he was "cautiously optimistic" about the prospects of a "durable solution," he wrote that "[t]he Iraqi Embassy in Washington is the next piece of the puzzle." Ex. 1-29, ICE-0268969.

b. July 6, 2018: In the afternoon, Department of State Iraq Desk Director Peter Shea meets with Iraqi Ambassador Yasseen, "aim[ing] for a July 13 flight if the court injunction is removed." *Id.*, ICE-0268966. Yaseen "is awaiting new instructions from Baghdad, including to clarify if the embassy may issue travel docs to all removal cases, or only those who had been convicted of felonies and have served their sentences." *Id.* Absent "new instructions," "right now he feels he can only issue docs to" "those with prior felonies." *Id.*, ICE-0268964. The Ambassador also pushes back on the date. *Id.*, ICE-0268966.

At 6:12 pm, the *Hamama* TRO is extended until July 24. ECF 61.

c. July 7, 2017: ICE presses ahead, requesting internal authorization to conduct a "charter removal mission." Ex. 1-30, ICE-0268974. The request is for a flight on July 25, 2017, the day after the TRO is set to expire. *Id.*, ICE-02689875; ECF 61.

d. July 11, 2017: U.S. Ambassador to Iraq Douglas Silliman meets with ICE officials (including Deputy Assistant Director Schultz, who describes the meeting in an email), discussing the need for continued diplomatic pressure on Iraq to accept repatriations. Ex. 1-29, ICE-0268963.

e. July 13-17, 2017: Baghdad Consul General Scott Riedmann and other State Department officials in Baghdad conduct multiple meetings with Iraqi officials, who discuss the proposed charter passenger list. The Iraqi officials raise several issues. First, they express concern that individuals whose asylum claims were rejected in the U.S. "are at risk if returned to Iraq." Ex. 1-31, ICE-297638. They "explain[] that [they] are under pressure from Parliament about some deportees returning who claimed asylum and have other immigration violations." *Id.*, ICE-0297636. For this reason, Iraqi officials are reluctant to accept the return of individuals who have no criminal convictions. *Id.* ICE had included several such people on its list of intended deportees. *Id.*

"The Dep Foreign Minister . . . agreed again to instruct the Embassy to start issuing travel docs and to resume flights," *Id.*, but Consul General Riedmann emails ICE's John Schultz on July 18: "Just be warned: the NS [national security—that is, non-criminal] cases might cause the Iraqis to balk and cancel last minute. I'd hate to see you lose another charter." *Id.*, ICE-297633; *see also* Ex. 1-32, ICE-297588.

f. July 17, 2017: "While he has not received updated instructions, [Ambassador] Yaseen [sic] told [Iraq Desk Director Peter Shea] he is inclined to send his team to [the relevant ICE facility] anyway before July 24." Ex. 1-33, ICE-0271020.

g. July 18, 2017: Iraqi consular officials conduct 80 interviews of Iraqi nationals at the ICE facility. An ICE officer, Chris George, was "present for every interview." At each one, consular officials asked "who said they didn't want to travel v. those who were willing." Mr. George noted "about 1/3 of detainees interviewed were telling us that they just wanted to go back, they didn't want to fight their case anymore, and were tired of being detained and said they wanted to go." That was in English, however: "when speaking to the Consulate in Arabic I can't be sure if they said something different." The

interviews were part of a travel document (not a manifest-only) process. Ex. 1-34, ICE-0271034-35.

24. Frustrated by its inability to accomplish removals, ICE begins the path towards visa sanctions against Iraq. The timeline is:

a. July 19, 2017: The background and proposed path forward is described at length in an internal memo titled "Removal Efforts and Challenges: Iraq." Ex. 1-24, ICE-0297770 to ICE-0297772. It states:

> U.S. Immigration and Customs Enforcement (ICE) considers Iraq to be among the most recalcitrant countries [with respect to repatriations]. Despite expending significant resources and exhausting other available means to obtain cooperation, ICE has been unsuccessful in securing cooperation from the Government of Iraq in the acceptance of its nationals subject to final orders of removal and has determined that implementing visa sanctions pursuant to section 243(d) of the Immigration and Nationality Act (INA) is the only remaining avenue available to secure cooperation. . . .
>
> ICE and the U.S. Department of State (State) have collaborated to engage Iraq and have pursued graduated measures . . . . These and other diplomatic efforts, as described below, have failed to yield substantive progress regarding the removal of Iraqi nationals.
>
> ICE believes that it has exhausted all means at its disposal to secure cooperation from the Government of Iraq, consistent with its international obligation to promptly facilitate the return of its nationals. A tool unavailable to ICE, but vested in the Secretary of Homeland Security, is visa sanctions under section 243(d) of the Immigration and Nationality Act. . . .

b. July 20, 2017: ICE officials responsible for obtaining travel documents initiate the visa sanction process, and send a "Section 243(d) package" up their chain of command. Ex. 4, Schultz Dep. at 189-194; Ex. 1-35, ICE-0271028, Schultz Dep. Ex. 22; Ex. 1-36, ICE-296029-34. The package contains several memos in draft: a "formal letter S1 to S1

Invoke Visa Sanctions Iraq"[4]; a "Memo D1 to S1 Invoke Visa Sanctions";[5] a "Memo EAD to D1 Invoke Visa Sanctions Iraq"[6]; and a "White Paper Invoke Visa Sanctions Iraq."[7] Ex. 1-35, Schultz Dep. Ex. 22; Ex. 1-36, ICE-296029-34. This is the same day Respondents filed its opposition to a stay of removal. ECF 81.

c. July 24, 2017: No travel documents have been issued as of this date. Ex. 6, ICE's Response to Interrogatory Nos. 6 and 7; Ex. 4, Schultz Dep. at 189. The Court grants a nationwide preliminary injunction staying class member removal to Iraq. ECF 87.

d. July 26, 2017: In an email to Deputy Assistant Director Schultz, ICE's Deputy Director's Deputy Chief of Staff, describing a State Department and ICE meeting the day before—the day after the preliminary injunction issues—states, regarding Iraq's willingness to issue travel documents, "[t]here was no defined way forward as to Iraq and the current TD issuance problems we're facing." He also relays Iraq's concerns about persecution of returnees. Ex. 1-28, ICE-0296142.

e. July 29, 2017: Almanhal Alsafi, Iraq's Consul General in Detroit is quoted in the media rejecting the idea of forcible repatriations: "We will not accept any detainee going back involuntarily." Ex. 1-37.[8]

f. Aug. 4, 2017: ICE staff continue to consider Iraq uncooperative, and to urge visa sanctions. Deputy Assistant Director John Schultz instructs his staff to finalize a sanctions package by August 16, 2017. Ex. 1-38, ICE-0270929.

[4] S1 means "Secretary," so this indicates a draft Secretary of Homeland Security to Secretary of State letter.

[5] This indicates a memo from ICE's Director (D1) to the DHS Secretary (S1). See also Ex. 1-36, ICE-0296031.

[6] This indicates a draft memo from the Executive Associate Director—that is, the head of ICE's Enforcement and Removal Operations, the ICE branch responsible for deportations and detention—to D1, ICE's Director. See Ex. 1-36, ICE-0296029.

[7] This white paper appears to be the quoted memo on "Removal Efforts and Challenges: Iraq" Ex.1-24, ICE-029770-74.

[8] Namo Abdulla, *Families in America still fear return to Iraq, despite a halt in deportation* (July 29, 2017), http://www.rudaw.net/english/world/290720171.

SEPTEMBER TO DECEMBER, 2017: A HANDFUL OF VOLUNTEERS ARE REPATRIATED

25. The Court's stay of removal prevented most class member repatriations during this period.[9] But efforts to obtain travel documents continued. Various officials believed "we [are] approach[ing] the end of the court injunction for Iraqis." Ex. 1-39, ICE-0295965. Accordingly, the issue of travel document issuance was evidently live for Iraq, which nonetheless declined to issue any travel documents based on the prior submissions. Ex. 6, ICE's Response to Interrogatory Nos. 6 and 7. The impending opportunity created by the expected close of the preliminary injunction did not elicit any further progress from Iraq. On October 2, an ICE official explained, "The [Iraqi] consulate is awaiting authorization from the prime minister's office to issue the requested travel documents." Ex. 1-39, ICE-0295965.

26. The district court preliminary injunction/stay of removal did not apply to Iraqis with removal orders first entered after June 24, 2017, who are not included in the class definition. ECF 87. Nonetheless, ICE did not obtain travel documents for such non-class members. Rather, it appears that the only Iraqi travel documents obtained during this period were for class members who expressly volunteered for removal, informing the U.S. government that they were willing to be repatriated. Ex. 6, ICE's Response to Interrogatory Nos. 6 and 7; ECF 104, 114, 119; Ex. 2, Schlanger Decl. ¶¶43-44.

DECEMBER AND JANUARY 2018: IRAQ HOLDS TO THE POLICY AGAINST FORCED REPATRIATIONS

27. A major U.S./Iraq meeting was held on December 5, 2017, "in which a variety of issues, including the repatriation of Iraqi Nationals, was discussed." Ex. 1-40, DHS Response to Interrogatory No. 12. Participants included a team of at least seven DHS officials, led by Assistant Secretary for International Affairs (and retired Ambassador) James Nealon; the State Department delegation included at least two individuals; and Iraq had six officials present, led by Deputy Foreign Minister Nazar Issa Abdulahadi Al-Khairullah, Ambassador Ahmed Kamal Hasan Al-Kamaly, and Ambassador Fareed Mustafa Kamil Yasseen. Ex. 1-40, DHS's Supplemental Response to Interrogatory No. 12.

28. A summary of that meeting sent to ICE Deputy Assistant Director Schultz, stated "it would be difficult for the Iraqi Government to accept individuals whose asylum claims have failed." Ex. 1-42, ICE-0296787. Mr. Schultz' response to this and several other points was: "Those bullet points are troubling." *Id.*, ICE-0296786.

29. Handwritten notes about the meeting by a DHS participant also noted Iraq's "difficult[y] accepting individuals where asylum claims failed." Ex. 1-41, DHSHamama-000051 (handwritten notes of Alexander Kisselburg).

[9] ICE kept most class members in detention, but did release a small number. For example, an ICE document explains of one class member that "[o]n 8/17/2017, subject was served an order of supervision due to the inability to remove to Iraq because of the injunction by the federal judge preventing the removal of Iraqi nationals." Ex. 1-57, ICE-0295998.

30. The Iraqi Deputy Foreign Minister suggested a follow-up meeting at the embassy, which was duly held January 9, 2018,[10] led by ICE Deputy Assistant Director John Schultz, with at least four other DHS and ICE officials, three State Department officials, and five Iraqi officials including, again, Deputy Foreign Minister Nazar Al-Khairullah. Ex. 1-40, DHS's Supplemental Response to Interrogatory No. 12; Ex. 1-22, Interrogatory 12, ICE Supplemental Response. An email a week earlier by Department of State Iraq Desk Political Unit Chief Derek Hoffmann relating to *Hamama* class members pursuing prompt removal similarly noted, "Iraqis are ready to move on the voluntary deportees now." Ex. 1-43, DHS Hamama000066. No agreement on involuntary deportees was noted. At that meeting, a difference of opinion on forced repatriations emerged among the Iraqi diplomats present. Contemporaneous notes by Alexendar Kisselburg, a State Department participant, evidence the Iraqi debate. Ex. 1-41, DHSHamama000052. While one Iraqi official—the Deputy Chief of Mission—expressed his view that the GOI form was not obligatory, and that Iraq "will issue travel documents [in] any case," his colleagues disagreed. At least one Iraqi attendee expresses a view that involuntary repatriations are legally barred—that there is no problem if detainees were "willing to go back" but there *is* a problem if this is not the case. Therefore, an Iraqi participant suggests development of an MOU (Memorandum of Understanding) between ICE and the Iraqi Ministry of Justice—demonstrating that the obstacle is seen as a legal rather than diplomatic one. *Id.*

31. The handwritten notes just referenced (Ex. 1-41, DHSHamama000052) read (emphasis added):

> *DCM [Deputy Chief of Mission]:*
> - *clear instructions from Ministry to cooperate with DHS in removals*
> - *Wants to expedite removals*
> - *Wants to interview all returnees, at least through telephone*
> - *Need history (crim. history) for removals; needs their {illegible}*
>
> *Ahmed (legal)*
> - *no problem if finished sentence, willing to go back, have proof of citizenship*
> - ***must sign self-declaration** . . .*
>
> *DCM*
> - *form is not obligatory*
> - *will issue travel document in any case . . .*
>
> *DCM*
> - *need instructions from Baghdad regarding the 1300 (*[illegible]*) to issue travel documents*
> - ***Embassy can only issue TDs for voluntary deportees***
>
> *Wathiq[11] suggests an **MOU b/w ICE and MOJ*** [Ministry of Justice] *re. removals*

[10] The handwritten notes on this meeting mistakenly date it January 9, 2017, but see Ex. 1-1, ICE 270495, for the correct year.

[11] Wathiq Ibrahim Mohammed Al Hammam was the First Secretary for the Embassy of Iraq in Washington, D.C. Ex. 1-40, DHS' Response to Interrogatory No. 12.

32. In its answer to Interrogatory 1, provided June 19, 2018, Ex. 1-44, 1-57, DHS's description of this meeting omitted the dissensus that was evident to its own personnel:

> As of January 9, 2018, DHS understood that the Government of Iraq: (1) would cooperate with DHS regarding removals and wanted to expedite removals; (2) needed criminal history for removal of criminal aliens; (3) needed proof of Iraqi citizenship; (4) would not require Iraqi Nationals to sign a form; and (5) that the Embassy can issue travel documents for voluntary removals, but Baghdad will approve travel documents required for other Iraqi Nationals.

IRAQ PERSISTS IN SEEKING WRITTEN ACQUIESCENCE TO REMOVAL BY DETAINEES

33. ICE made it clear at the January 9 meeting that it disapproved of the GOI form seeking agreement from noncitizens to their own deportation. As Unit Chief Bernacke stated, "We told [Iraq] that it was a violation of the International Civil Aviation Organization's Annex 9 protocols on travel document issuance, that an alien doesn't expressly have to submit themselves to deportation voluntarily; they could be deported by a foreign government, you know, even if it was against their will, and we expressed that sentiment to them." Ex. 5, Bernacke Dep. at 85-86. But despite U.S. "consternation," *id.* at 116, later in January the embassy again provided ICE a "voluntary removal declaration" in Arabic for its nationals to sign. Ex. 1-48, ICE-0270850-53. When ICE translated the document, it discovered that the form continued to seek non-citizen agreement to deportation. Accordingly ICE declined to give it to the interviewees. *Id.*, Ex. 1-45, ICE-0270696; Ex. 5, Bernacke Dep. at 114-116. That was a change by the U.S.: an ICE officer noted, "We already have documents posted with that language on our site," prompting ICE official Bernacke to instruct: "Also, the voluntary declaration stating the aliens voluntarily remit themselves to be removed needs to be pulled from the intranet." Ex. 1-48, ICE-0270852. The form had been used for years.[12] ECF 311-3, PgID.7481-82, Maddox Decl. ¶14.

34. The result of the January 9 meeting was not agreement by Iraq to take involuntary deportees, but rather several scheduled consular interviews which occurred in late January. Ex. 1-45,

[12] The form itself, ECF 311-3, PgID.7489-90, has already been described (see ¶4, *supra*). At some point after 2016 the form was altered immaterially, to strike the Arabic for "to return to the homeland." Ex. 3, Attieh Decl. 11. In addition, at some point, an English version was included along with the Arabic version. The two differ in some key respects, but both clearly reference the signatory's "desire to return voluntarily to Iraq." The certified translation of the Arabic letter is set out above, see ¶4. The English version states, in full (with emphasis added):

> Dear Honorable Consul,
> Subject: Passport
> I the Iraqi citizen ( ) would like to request the issue of a passport allowing me to enter Iraq due to my particular situation and **my desire to return voluntarily to Iraq**.

I would like to inform you that I have an old Iraqi passport that is not valid with the number ().

ICE-0270693. Some but not all were of class members who had volunteered for prompt removal and had the district court stay of removal lifted. The result was a handful of travel documents and several denials. Four of the interviewees "notified the consulate that he does not want to return." *Id.*; *see also* Ex. 6, ICE's Response to Interrogatory Nos. 6 and 7. Iraq did not issue travel documents for these four nationals. Ex. 1-45, ICE-0270693. One of the interviewees who told the consulate he did not want to return—SAS, AXXX-XXX-637—was not a class member. Although this Court's stay precluded removal for class members, for Mr. AS, there was no such obstacle. Yet while the *Hamama* class members continued to be detained, the non-class member was released on the ground that there was no significant likelihood of his removal in the reasonably foreseeable future. Ex. 2, Schlanger Decl. ¶¶43-44.

35. Notwithstanding DHS's later-asserted "understanding" that "Baghdad will approve travel documents required for . . . Iraqi Nationals" whose repatriation was involuntary, Ex. 1-44, Response to Interrogatory No. 1, no travel documents were issued for those four detainees, nor are any follow-up requests to Baghdad noted in ICE's disclosures of all travel document requests for these four interviewees. Ex. 6, ICE's Response to Interrogatory Nos. 6 and 7.

MARCH 2018: IRAQ FORMALLY RESTATES ITS POLICY AGAINST FORCED REPATRIATIONS

36. In March 2018, the Iraqi government official with jurisdiction over migration issues, the head of Iraq's Ministry of Migration and Displacement (MoMD), issued a formal letter to the Foreign Affairs Minister, stating: the "policy of our ministry, since it was established," to "refuse the principle of forced return of Iraqis abroad or any other nationals, because it conflicts with humanitarian laws and principles." Ex. 1-46; Ex. 7, Lopez Decl.; Ex. 8, Smith Decl. ¶¶21-26. MoMD requested that all embassies be notified of this policy: "Kindly inform all our missions to coordinate with those countries to reduce this serious phenomenon that affects Iraqis abroad." *Id.*

37. Iraq's Ministry of Foreign Affairs duly distributed a "circular" attaching the MoMD letter, and restating its language, instructing "all our political and consular missions abroad" to "[k]indly take notice and the necessary action to coordinate with those countries to reduce this serious phenomenon that affects Iraqis abroad." Ex. 1-46; Ex. 7, Lopez Decl., p. 5.

MAY 2018-JULY 2018: THE ALLEGED "BAGHDAD" SOLUTION

38. Throughout March and April 2018, ICE submitted travel document requests to the Iraqi embassy, without any progress being made. Ex. 4, Schultz Dep. at 58-60. To nudge Iraq into scheduling interviews, ICE officials had to ramp up political pressure and meet with more senior Iraqi staff—the Deputy Chief of Mission as well as consular staff. Ex. 5, Bernacke Dep. at 69. This led to a new round of consular interviews which was broader, and covered more class members. In late May 2018, ICE transferred about 40 Iraqi nationals—the large majority of them class members—to Stewart Detention Center, in Lumpkin, Georgia. Consular interviews were conducted on May 23, 2018. ECF 311-3, PgID.7478, Maddox Decl. at ¶6. At those interviews, each detainee was presented the longstanding Iraqi form, in

Arabic and English, that asked him to affirm his "desire to return voluntarily to Iraq." *See* ECF 307-2, PgID.7325-27, Gilbert Decl. ¶¶5-18; ECF 311-3, PgID.7489-90

39. ICE and the consular officials exerted considerable pressure on the detainees to sign the GOI form. First, detainees were threatened with prosecution if they did not sign. *See* ECF 307-13, PgID.7382, Al-Zubeidy Decl. ¶8 (told that if did not sign, he would be criminally prosecuted and spend the rest of his life in prison); ECF 307-14, PgID.7386-87, Odish Decl. ¶¶6-10 (when he refused to sign the consular letter, an ICE officer summoned him the next day, telling him that he had a "second opportunity to sign" the letter and that if he did not, he would be prosecuted for failure to comply with orders); ECF 307-6, PgID.7345-6, Andrade Decl. ¶¶5-7 (A.A.O, XXX-XXX-985 told by ICE officer that he would be criminally charged and serve time in prison if he did not sign). Other detainees heard about these threats second-hand, and found them both plausible and frightening. *See* ECF 307-8, PgID.7357-58, Arthur Decl. ¶9-10 ("Many of my fellow Iraqis told me that they signed the form because ICE told them that if they did not, they could be prosecuted for failure to cooperate and sentenced to five years in prison . . ."; ECF 307-2, PgID.7327, Gilbert Decl. ¶17 (because class members have been subject to orders of supervision, they are familiar with the general obligation to apply for travel papers and cooperate with removal procedures). Before this Court, ICE later disavowed this threat of prosecution, acknowledging that individuals cannot be required under 8 U.S.C. §1253(a)(1)(B) to express a desire for repatriation; *see* ECF 307, PgID.7300; June 18, 2018 Hrg. Tran. at 58-59. But by that time, 33 individuals had signed the voluntary-return form. *See* ECF 311-3, PgID.7479-81, Maddox Decl. ¶¶8, 11.

40. Second, both ICE officers and Iraqi consular staff told class members that they would be detained indefinitely, or for many years, unless they agreed to sign. For example, class members Zaia Darmo and Ahmed Tayyeh each reported that an Iraqi official told him that if he did not sign, he "would be in jail for the rest of his life" (Darmo) and "would stay in jail forever" (Tayyeh); each—fearing indefinite detention—signed the form even though they do not desire to return to Iraq. ECF 307-11, PgID.7373, Darmo Decl. ¶¶12-15; ECF 307-10, PgID.7368-69, Tayyeh Decl. ¶¶6, 9. Class member Aziz Kattoula, who told consular officials, when asked, that he did not want to go to Iraq and did not want to sign, was later told by an American official who said he was from Washington D.C. that the government would eventually deport him, and that he "would be sitting in jail until they did." ECF 307-9, PgID.7364-65, Kattoula Decl. ¶22. Other detainees were similarly threatened with years of detention unless they signed. ECF 307-11, PgID.7373, Darmo Decl. ¶¶12-15; ECF 307-10, PgID.7368-69, Tayyeh Decl. ¶¶6, 9; ECF 307-9, PgID.7364, Kattoula Decl. ¶22; ECF 307-7, PgID.7353-54, Kitaba-Gaviglio Decl. ¶¶6, 14-19; ECF 307-6, PgID.7346, Andrade Decl. ¶7; ECF 307-18, PgID.7357-58, Arthur Decl. ¶¶9-10 ("Many of my fellow Iraqis told me that they signed the form . . . because ICE told them if they did not sign, they would definitely be kept in detention until the U.S. government could send them back."). *See also* ECF 307-7, PgID.7353, Kitaba-Gaviglio Decl. ¶10 (class member K.P., AXXX-XXX-207, told that if he did not sign the form, he could be jailed for 5-10 years).

41. On June 8, 2018, Iraq issued travel documents—one-way laissez-passers—for those detainees who signed the form. Ex. 1-58. At least six detainees refused to sign the GOI form, four of them class members. Ex. 2, Schlanger Decl. ¶39. According to the Detention Officer who managed the process at Stewart, "the GOI indicated that further approval from Baghdad

was required to issue those travel documents." ECF 311-3, PgID.7480, Maddox Decl. ¶11(b). As of June 15, 2018, ICE's declarant was not able to state that Iraq has committed to issuing the documents—he stated merely that the "requests . . . are pending" and that "ICE continues to engage with the GOI to have these additional travel documents issued." *Id.* PgID.7481, ¶13.

42. That same day, ICE staff met with embassy staff to press the argument that travel documents should issue for the six detainees who had refused to sign. ICE also "again request[ed] that the Consulate Section of the Embassy of Iraq no longer require Iraqi Nationals to sign the declaration form wherein they state their desire to return to Iraq." Ex. 1-47. For some weeks, there was no resolution; as of June 22, 2018, Deputy Assistant Director John Schultz planned a personal trip to Iraq, to attempt to obtain Iraqi cooperation. Ex. 4, Schultz Dep. at 35-37. When that trip fell apart, Mr. Schultz spoke on the phone numerous times with Iraq's Deputy Chief of Mission. *Id.* at 65. The U.S delivered a formal diplomatic note (a "dipnote") to Iraq urging issuance of travel documents. *Id.* at 92-95. And on July 2, 2018, Mr. Schultz, along with several other ICE and State Department officials, met with the Iraqi Ambassador and his staff to exert additional pressure—a meeting that Mr. Schultz testified the Department of State may have considered a "demarche" (a formal diplomatic complaint). *Id.* at 92-93. That meeting yielded a bit more refinement to the process: individuals who would not agree to sign the "volunteer" form would have their records sent to Baghdad, with some information about their removal proceedings and criminal history. *Id.* at 37-43. Officials in Baghdad will then "make the determination regarding the travel document." *Id.* at 43.

43. After all these diplomatic contacts, and after individuated review by Iraqi officials in Iraq, on July 13, 2018, Iraq issued travel documents for the six individuals who had declined to sign the Iraqi form. Ex. 5. Bernacke Dep. at 119-120.

THE PRESENT: ICE IS UNLIKELY TO ACCOMPLISH INVOLUNTARY REPATRIATIONS IN THE REASONABLY FORESEEABLE FUTURE

44. None of these six detainees has yet been removed. Ex. 2, Schlanger Decl. ¶40. Even for individuals who have agreed to removal and for whom Iraq has issued travel documents, ICE's removal capabilities are limited. ICE has disclosed that Iraq has issued 47 travel documents to class members since the beginning of this case. Ex. 6; Ex. 2, Schlanger Decl. ¶¶31-41 (table D, column d; Table E, columns b & c). And (not counting one individual removed prior to entry of the preliminary injunction) there have been 37 repatriatable class members (class members for whom the Court has lifted the stay of removal). But as of August 23, there have been only 18 class member removals, one in violation of the Court's stay of removal. Ex. 2, Schlanger Decl. ¶8. That is, even for willing repatriates where there is no legal impediment to removal, it can take many months to obtain the travel documents, and many more months to actually accomplish the removal after travel documents are issued.

45. In December 2017, Mr. Bernacke submitted a declaration that stated that ICE had recently obtained three travel documents for class members who had waived the protection of the stay of removal, and expected to get travel documents for an additional ten similar individuals "in the very near future." ECF 184-2, PgID.5072-73, Bernacke Decl. ¶11. In the event, as of August, eight months later, only three additional travel documents had been obtained, and

only four of them have been removed so far—eight months after the declaration. Ex. 6, ICE's Response to Interrogatory Nos. 6 and 7; Ex. 2, Schlanger Decl. ¶¶45-46.

46. In addition, Iraq has refused to issue travel documents for individuals whose Iraqi citizenship Iraq questions. ECF 311-3, PgID.7480-81, Maddox Decl. ¶¶11, 12. ICE has continued those individuals in detention, despite Iraq's explicit refusal to accept them. Ex. 2, Schlanger Decl. ¶40 Mr. Bernacke testified that ICE takes many more steps prior to considering a non-citizen for release: conducting further investigation, and trying more times to persuade both Iraq and other countries: "Essentially, we take a second bite at the apple with any country that we think the alien may have some indicia of citizenship or connection to. We'll also seek third country removal options, as well." Ex. 5, Bernacke Dep. at 75-76; see *id*. at 73-76, 141-42.

47. The process for subsequent applications is ongoing. On June 28, consular interviews were conducted for an additional 10 class members, and on July 19, for another 6. Iraq continues to confirm whether each detainee is volunteering for repatriation. Of these 16 detainees, 7 informed the consular officials they were willing to be repatriated; 9 objected to removal. Ex. 1-51.

48. Avoiding forced repatriations is very important to many power centers in Iraq. Ex. 8, Smith Decl. ¶¶14-19, 30-32, 35-38. On July 10, 2018, Iraq's Ambassador to Finland explained that Iraq would, going forward, enforce its policy against forced repatriations. Ex. 1-49; Ex. 8, Smith Decl. ¶33.[13] He was quoted in media reports as stating, "We will accept those returning of their own free will and those guilty of crimes, but we oppose forced repatriations." *Id.* Similarly, on August 12, 2018, Iraq's ambassador to Sweden told the Swedish government's Coordinator of Migration and Refugees Affairs that the Iraqi government "refuses" forcible repatriations. Ex. 1-50.[14]

49. On July 31, 2018, the Minister of Migration and Displacement re-asserted MoMD's policy against forced removals, sending a letter to the Ministry of Foreign Affairs:

> We have received information indicating that some countries which host Iraqi nationals intend to forcibly return them, particularly, the EU [European Union] and the USA.
>
> Since this issue contravenes the policy of the State and international law and norms, please ensure that all our embassies and consulates in the countries that host Iraqi nationals are ensuring they are not subject to deporation or forced return.

[13] *See* Forced deportations of Iraqi asylum seekers on hold (July 10, 2018), https://yle.fi/uutiset/osasto/news/forced_deportations_of_iraqi_asylum_seekers_on_hold/10297477.

[14] *See* Iraqi Ministry of Foreign Affiars, Iraq's Ambassador to Sweden Discusses Voluntary Repatriation of Refugees with Immigration Coordinator (Aug. 12, 2018), http://www.mofa.gov.iq/en/news/28136/iraq-s-ambassador-to-sweden-discusses-voluntary-repatriation-of-refugees-with-immigration-coordinator.

Ex. 1-52, 1-53; Ex. 8, Smith Decl. ¶¶27-29. The Minister also instructed the Iraqi Ministry of the Interior and the Iraqi Ministry of Transport to "take the necessary actions to ensure forcibly returned nationals are not taken in." Ex. 1-52, 1-53; Ex. 8, Smith Decl. ¶29.

50. Given several opportunities to explain the current state of Iraq's repatriations, Mr. Schultz testified that neither the Iraqi Ambassador nor any other Iraqi official has stated that Iraq has a policy of issuing travel documents for involuntary deportees. Mr. Schultz was asked whether in repeated recent discussions with Iraq's Washington Deputy Chief of Mission: "Did he indicate to you Baghdad's position on whether or not travel documents would be issued for Iraqi nationals who have not indicated they desire to return to Iraq?" He answered: "No." Ex. 4, Schultz Dep. at 66. He was asked again, more generally: "At any point since June 1, 2017, has Baghdad indicated what its policy is about accepting Iraqi nationals who desire not to return to Iraq?" He answered: "Not that I recall." *Id.* And again, he was asked, "Did an Iraqi official state, 'We will issue travel documents for any individual that says they do not want to go back." He answered, "They did not make that statement." *Id.* at 239.

51. Likewise, Mr. Bernacke has testified that Iraqi officials have not told him "that they would no longer ask Iraqi nationals if they desired to go back to Iraq." Ex. 5, Bernacke Dep. at 79-81. Similarly, Iraqi officials have not told him "that if an individual expresses they don't want to go back to Iraq, they will still issue travel documents." *Id.* at 89-90. And no Iraqi official has explicitly stated—to him or anyone else to his knowledge—that Iraq "will permit the entry [into Iraq] of detained Iraqi nationals once . . . the injunction in this litigation is lifted." *Id*. at 102-04.

52. Of the 16 class members whose consular interviews were conducted on June 28 and July 19—eight and six weeks ago, respectively—Iraq has not issued any travel documents. Ex. 2, Schlanger Decl. ¶41; Ex. 1-51; ECF 316 ¶H, PgID.7577-78 (ordering disclosure of travel documents within 24 hours of ICE's receipt of them).

53. Iraq has a long-standing policy against involuntary repatriations. Ex. 8, Smith Decl. ¶¶14, 34, 39. Involuntary repatriations would cause significant controversy in the Iraqi govenrment. *Id.* ¶¶40-43. Currently, there is uncertainty if Iraq would reconsider its policy under the next administration, which is still in the process of being formed. *Id.* ¶¶ 44-47.

EXHIBIT 2

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

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

FIFTH DECLARATION OF MARGO SCHLANGER

I, Margo Schlanger, hereby make this declaration based upon my own personal knowledge; if called to testify, I could and would do so competently as follows:

Qualifications and Sources of Information

1. My qualifications and background are fully set out in my first declaration in this case, dated November 6, 2017, ECF 138-2, PgID3402 ¶¶2-4. As it says, I am the Wade H. and Dores M. McCree Collegiate Professor of Law at the University of Michigan Law School, and counsel for all Petitioners/Plaintiffs. I have since been designated class counsel, as well. ECF 191, PgID5360 ¶1(d).

2. This declaration is based primarily on: the Respondents' court-ordered disclosures; the Respondents' answers to Petitioners' discovery requests (both interrogatories and requests for production); the Department of Justice Executive Office for Immigration Review (EOIR) 1-800 immigration case hotline; and the U.S. Immigration and Customs Enforcement (ICE) online detainee lookup system. All sources are referenced where used. Responses to Petitioners' requests for production of documents are referred to by the Bates Stamp numbers assigned by Respondents. ICE's responses are denoted ICE-[number]; DHS's responses are denoted DHSHamama[number].

3. By this Court's order, Respondents were required to respond to Petitioners' most recent discovery requests, "including production of documents," by August 20, 2018. ECF 366. On that date, however, Respondents did not produce any of the requested documents and declined to answer all but one interrogatory. They have not produced any additional documents in the days since. In addition, they have not updated the prior interrogatory responses since service of those responses on March 23, 2018.

4. Under this Court's orders, Respondents disclose information on class member detention location and immigration case progress every two weeks. The most recent disclosure was due August 22, and was provided partially on August 22 and August 23. ICE detention location data was disclosed August 23, and covers individuals in detention as of August 20. EOIR case procedure information was disclosed August 22 and is as of that date. Any stipulations to lift the stay of removal for a class member that occurred on or after August 27 are not included in this declaration. There is one class member, TJ, AXXX-XXX-230, whose detention status is unclear. He is not listed in ICE's detention disclosure, and his information is not available using ICE's online detainee locator. Respondents' counsel reports that ICE will check, but believes he is, in fact, in detention. I have omitted him below because I am not sure if (or where) he is detained.

5. Except when otherwise noted, this declaration is based on information about the (uncertified) primary class, which includes all Iraqi nationals in the United States who had final orders of removal at any point between March 1, 2017 and June 24, 2017 and who have been, or will be, detained for removal by U.S. Immigration and Customs Enforcement. ECF 191, PgID5347-48. When I refer to the *Zadvydas* subclass, I am using the definition certified by this Court: "All Primary Class Members, who are currently or will be detained in ICE custody, and who do not have an open individual habeas petition seeking release from detention." ECF 191, PgID5348. Based on monitoring of PACER entries using the names of class members, I am aware of nine detained members of the primary class who are not members of the subclass because they have open individual habeas petitions.

Arrests, the Timing of Detention, and Time Remaining

6. Discovery in this case reveals that Respondents started planning for a mass removal of Iraqi nationals in spring 2017, after eight removals by charter plane in April 2017. The first arrests in anticipation of that mass removal were made May 15, 2017. Ex. 1-17, ICE-0269197. (Other Iraqis were apparently in detention at that time, as well.) In an internal document created in May 2017, ICE reported 29 Iraqi

nationals with final removal orders in detention. Ex.1-15, ICE-0270940. In the course of May and the first 10 days of June, at least 84 were arrested, and as of June 10, 2017, ICE had at least 107 Iraqi nationals with final removal orders in detention. (The number of arrests does not sum to the number in detention because a few people got out.)

7. The weekend of June 11, 2017, ICE conducted mass arrests; about 100 class members entered detention that weekend, mostly arrested by ICE's Detroit field office. Over the next weeks, many more class members were detained, and by August 21, 2017, there were over 290 class members detained. New detentions then slowed; only about 40 class members have been newly detained since August 21. All told, there are about 340 class members who have been detained in the course of this litigation.

8. Since June 11, 2017, most of the class members have gotten out of detention. At least 152 have been released on bond, nearly all as a result of this Court's prolonged detention order dated January 2, ECF 191. At least 24 more have been released because they won their immigration cases. 17 were removed after individually waiving this Court's stay of removal.[1] One was removed in violation of this Court's order. ECF 371. At least 14 were released by ICE without immigration court involvement, 11 on orders of supervision or under formal alternatives to detention requirements. At least one of these was based on a finding that there was no significant likelihood of removal in the reasonably foreseeable future. (The ICE document that lists this individual states: "On 8/17/2017, subject was served an order of supervision due to the inability to remove to Iraq because of the injunction by the federal judge preventing the removal of Iraqi nationals." Ex. 1-57, ICE-0295998.) One or two of the non-immigration court releases were for medical reasons. For another 6 releases, the reason and circumstances of release are unknown.

9. If the Court of Appeals were to reverse this Court's January 2 preliminary injunction, many of the class members released on bond would be subject to re-detention under 8 U.S.C. § 1226(c). In a prior declaration, I set out the available information about how many class members with open immigration cases are considered by ICE to meet the criteria in §1226(c), and estimated that "approximately 90% of the class member detainees who remain in detention after their MTRs are granted but before resolution of their cases are being held under the

[1] In addition, this Court approved one individual's waiver of the stay of removal, ECF 85, even before entering the July 24 preliminary injunction.

purported authority of 8 U.S.C. § 1226(c).” ECF 174-3, PgID4917. That estimate addressed the class members *then* in detention, including those who later got out on bond based on this Court’s order.

10. There are 110 *Zadvydas* subclass members remaining in detention as of August 20. See Table A for their time in detention. Column a in Table A and also in Table B (below) includes all subclass members; column b is the subset who are currently not covered by this Court’s stay of removal, because they have waived its protection.[2] (That is, the numbers in column a include all those in column b.) I picked October 1, 2018 as the cutoff date in Table A, row 4 because that is approximately when Petitioners’ motion will be fully briefed, barring extensions. See L.R. 7.1(e). As the Table shows, by that date (assuming nobody is released or removed) there will be 106 *Zadvydas* subclass members whose detention has reached six months in duration. Only 4 subclass members will have been detained less than 6 months.

Table A: Class Members’ Detained Dates

	a. All *Zadvydas* subclass members	b. Prompt Removal Stipulation Entered
1. Before June 11, 2017	38	6
2. June 11 to Aug. 30, 2017 (over 1 year in detention, as of **9/1/2018**)	51	5
3. Sept. 1, 2017 to Feb. 28, 2018 (over 6 months in detention, as of **9/1/2018**)	9	3
4. March 1, 2018 to March 31, 2018 (will hit 6 months or more by **10/1/2018**)	8	0
5. 5/1/2018 to present	4	0
TOTAL	**110**	**14**

Detention Authority and Bond

11. The posture of the *Zadvydas* subclass members’ cases varies. Table B sets out the data. The first set of rows, labeled 1 and 1.a through 1.d, sets out the bond results for the subclass members. The second and third sets of rows—labeled 2 and

[2] I omit subclass member Wisam Ibrahim from the stipulation tally, since his prior attempted waiver is contested. See ECF 356.

2.a through 2.d and 3 and 3.a through 3.d—divide the subclass by detention authority.[3]

Table B: Class Member Procedural Posture

	a. All *Zadvydas* subclass members	b. Prompt Removal Stipulation Entered
1. TOTAL	**110**	**14**
a. Ineligible for *Hamama* bond hearing[4]	8	6
b. No bond hearing/result yet	16	
c. Bond denied	79	8
d. Bond granted but still in detention[5]	7	
2. Post-Order (§1231) Total	**55**	**14**
a. Still time to file an MTR under ECF 87, or MTR in adjudication	17	
b. Time to file MTR has expired,[6] or lost MTR, or inapplicable due to stipulation	22	10
c. Reopened, but then lost on the merits or	17	4

[3] Note: whether 1231 or 1226 applies in particular procedural postures is a complex question and the frequent subject of dispute. The chart is based on my understanding of what ICE considers the applicable detention authority under Sixth Circuit law. The one exception to that is for cases that are fully adjudicated in the BIA. Under *Bejjani v. INS*, 271 F.3d 670, 689 (6th Cir. 2001), abrogated on other grounds by *Fernandez–Vargas v. Gonzales*, 548 U.S. 30 (2006), 8 U.S.C. §1226, not §1231, is the detention authority for individuals who have lost on the merits in the BIA, filed a petition for review (PFR) in the court of appeals, and obtained a stay of removal. PFR case documents are largely unavailable using PACER, so I do not have reliable information about them. Accordingly, just for purposes of this chart, I classify cases as "post-order" once the merits are fully adjudicated in the BIA, without regard to PFR litigation.

[4] One subclass member is ineligible for bond because he is classified by ICE as an "arriving alien" and is therefore not covered by the language of the Court's detention preliminary injunction, see ECF 265. The others have had stipulations entered lifting the stay of removal. See ECF 203, PgID5459. (Wisam Ibrahim is tallied in column a but *not* in column b because the stipulation he agreed to has prevented his bond hearing, but that stipulation is currently contested. ECF 356.)

[5] One of these individuals was redetained in circumstances not yet clear to me; the others were apparently unable to post bond.

[6] Some of these individuals may have good cause for delay in their motions to reopen; in any event, it remains available to them to file such a motion.

	a. All *Zadvydas* subclass members	b. Prompt Removal Stipulation Entered
waived the merits challenge.		
3. Pre-Order (§1225 and §1226) Total	**55**	**0**
a. Won merits before IJ, pending appeal	2	
b. Lost merits before IJ, pending BIA appeal	23	
c. Merits pending before IJ	30	

12. As Table B shows, the class members in detention are currently evenly split between pre-order and post-order postures. Nearly all of them began detention post-order, but then those who won their motions to reopen shifted to pre-order detention. Some of that group then shifted back to post-order detention when they gave up or lost their cases (row 2.c). Those who remain pre-order have either won or lost before the immigration judge (IJ) and appeal is pending, or their case is still pending before an IJ. (Those who won final relief/protection in their cases are no longer in detention.)

13. Given the variation in posture, it's hard to know how long the open cases will take to resolve. Different immigration courts are deciding these cases at different speeds. But based on the EOIR disclosures for the subclass, we do know that the Board of Immigration Appeals (BIA) has taken between two months and a year to decide motions to reopen for the current detainees (who, as detainees, are supposed to receive speedier BIA adjudication), with an average of about 6 months. The BIA has taken between 4 months and a year on appeals of IJ denials of MTRs. And the cases *pending* in the BIA on appeal from MTR denials have been there up to 8 months already. Merits cases can be expected to take longer—it takes time for the merits record to be transferred to the BIA, for example. A detainee who loses his IJ motion to reopen, wins a BIA appeal, loses his merits case on remand, and takes another BIA appeal, can expect that administrative adjudication to take well over a year *after* the immigration judge denies the motion. I set out more information on MTR adjudication time in my declaration dated November 6, filed in this case as ECF 138-2, ¶¶25-27, PgID3407-3408; and Petitioners summarized information on estimated time for adjudication in their motion for a preliminary injunction on detention issues, ECF 138, PgID3373-3375.

Detention Locations and Conditions

14. As of ICE's August 23, 2018 detention location disclosure, the 110 *Zadvydas* subclass members were incarcerated in 33 different detention facilities. Each detention facility that houses more than 2 subclass members is set out in its own row of Table C, and the others are summed in the last two rows.

Table C: *Zadvydas* Subclass Detention Locations

Facility	Number
Calhoun Co* (Battle Creek, MI)	29
Northeast Oh. Correct. (Youngstown, OH)	16
Chippewa Co. Jail* (Sault Ste. Marie, MI)	6
Farmville Detention Center (Farmville, VA)	5
Lasalle ICE Processing Center (Jena, LA)	5
St. Clair Co. Jail* (Port Huron, MI)	5
Denver Contract Det. Fac. (Aurora, CO)	4
Pine Prairie ICE Processing Center (Pine Prairie, LA)	4
Houston Contract Detention Fac. (Houston, TX)	3
Otay Mesa Detention Center* (San Diego, CA)	3
York Co.* (York, PA)	3
Other—7 immigration detention facilities	9
Other—15 jails*	18

* Facility is a jail that also houses criminal defendants and/or convicts.

15. In Table C, an asterisk (*) marks the facilities that are jails, rather than specialized immigration detention centers. All told, most of the subclass member detainees—64 of the 110—are held in jails. The largest number are in the Calhoun County jail, where they are housed alongside pretrial criminal detainees and sentenced prisoners.

May and early June 2017 Travel Documents Requests

16. I have analyzed the data provided by Respondents relating to about 280 travel document presentations ICE submitted to Iraq in May and June, 2017. The data is from Ex. 6, ICE's response to Petitioner Hamama's Interrogatories 6 and 7 ("Interrogatory 6/7 Response") and includes the names and A-numbers of each of the individuals covered by this phase of ICE's deportation efforts, and the date(s) ICE sought travel documents for them. It lists 234 travel document presentations made on May 25, 2017, and another 40 on June 6, 2017, for a total of 274. ICE also produced other documents that state that there were either 239 or 240 in May, and 40 in June 6, for a total of 279 or 280:

- May 16, 2017: "64 non-detained cases submitted to the DOS [U.S. Department of State] for TD presentation" to the Iraqi inter-agency committee. Ex. 1-15, ICE-0269197.

- May 17, 2017: "List of 26 detained final order cases sent to DOS for presentation to the Iraqi MFA." *Id.*

- May 22, 2017: "149 additional non-detained cases submitted to the DOS for TD presentation." *Id*. [Note: 64+26+149 = 239]

- May 25, 2017: "DOS submitted all 240 presentations to the Iraqi MFA [Ministry of Foreign Affairs] along with a Dipnote [diplomatic note] for the upcoming June charter." *Id*.

- June 6, 2017: "40 add-on cases submitted to DOS for the June charter." *Id*.

17. As the quotations above show, the May 16 and May 22 cases were non-detained cases—that is, that the individuals in question were not in detention at the time when ICE sought the travel documents for them. The May 17 cases and June 6 "add-on cases" were detained cases. The June 6 cases were apparently chosen based on the covered individuals' recent arrests. *Id.* ("As the field continued to make arrests of non-detained Iraqi nationals, RIO [Removal and International Operations] noticed a trend in which there were cases arrested that were not included on the original list of 240 cases submitted to the MFA [Iraq Ministry of Foreign Affairs] for approval. RIO asks DOS [Department of State] if we still can submit more cases . . . DOS agrees to allow RIO to submit more cases but needs them ASAP.").

18. Among ICE's other discovery disclosures are a letter from the Iraqi Embassy to ICE, dated June 7, 2017. The letter was contemporaneously described by an ICE officer as a "blanket denial" of the travel document requests for 24 individuals. Ex. 1-18, ICE-0298490. Accompanying the blanket denial, the Iraqi Embassy wrote ICE: "With reference to your request for travel documents for the aliens whose names are listed in the attachment, kindly be advised the Embassy of the Republic of Iraq in Washington D.C. is unable to issue such travel documents . . . . The applicant should express orally and in writing his willingness to return to Iraq voluntarily in order to be issued a travel document."*Id.* at ICE-0298493.

19. Three of these 24 individuals are named Petitioners in this lawsuit: Usama Hamama, Jihan Asker, and Sami Al-Issawi. I checked the names and A-numbers of the other individuals against ICE's biweekly disclosures, and confirmed that each of the 24 affected individuals was, indeed, a class member. Of the 24 listed, 11 have not (so far) been detained during the course of this litigation. One was actually in detention even before ICE received the June 7 denial, seven more were arrested on July 11 or 12, and another four over the next month (i.e., during late June or July 2017). (The remaining individual was arrested later.) Four are still detained. Those released were released on bond, nearly all after more than six months of detention and pursuant to this Court's detention preliminary injunction,

ECF 191. Notwithstanding Iraq's June 2017 refusal of travel documents, not one was released on the grounds that his or her removal was not significantly likely in the reasonably foreseeable future.

20. In July 2018, Petitioners deposed John Schultz, the ICE Deputy Assistant Director responsible for obtaining travel documents for Iraqis. He testified that this June 7, 2017 denial letter was not, in fact a denial—instead, he said, this letter was the Iraqi Embassy's implicit instruction to ICE to send the travel document requests to the Iraqi foreign ministry. Mr. Schultz speculated that for these 24 individuals, ICE had made travel document requests not to the foreign ministry, in Baghdad, but to Iraq's embassy, in Washington DC. He testified that he "can only surmise from this letter that Julius [the Unit Chief Mr. Schultz supervised] sent those cases to the Iraq Embassy in Washington, DC," but admitted, "I do not know for sure." He also admitted that it was possible that "what the embassy is saying here has been directed by Baghdad." Ex. 4, Schultz Dep. at 147-152.

21. ICE's response to Petitioners' interrogatories seeking information about travel document/repatriation requests (ICE Interrogatory 6/7 Response) states, "From March 2017 to November 2017, ICE sent travel document requests directly to the Department of State (DOS) in Baghdad. DOS submitted the requests to the Government of Iraq in Baghdad." My analysis of the ICE disclosures further demonstrates that in fact the travel document requests in question had indeed been submitted to the foreign ministry, via the Department of State. Prompted by Mr. Schultz's testimony, I compared the individuals named in the June 7, 2017 blanket denial letter, using their names and A-numbers, to the list of travel document presentations submitted via the Department of State to the Iraqi foreign ministry. Each of the 24 individuals named in the June 7, 2017 letter was listed in ICE's Interrogatory 6/7 Response as the subject of a travel document presentation on May 25, 2017—the travel document presentations described above as "submitted to the DOS [U.S. Department of State] for TD presentation" in Baghdad.

22. ICE's Interrogatory 6/7 Response also shows that ICE did not receive any travel documents from any of the approximately 280 requests made May 25 or June 6. Of these individuals, only 18 have since received travel documents, based on subsequent resubmissions, as of nearly 18 months after the initial requests.

The Cancelled June and July Planes and the Possibility of Removals in June

23. Documents disclosed in this case demonstrate that ICE hoped to deport a large number of individuals using a charter flight to Iraq in late June 2017. ICE officials designated individual Iraqi nationals for inclusion on that flight—creating

a list of approximately 75 proposed passengers, all class members. ICE has disclosed the names and A-numbers of these individuals. Using names and A-numbers, I compared the June flight list to the list of ICE's approximately 280 travel document presentations from May 25 and June 6, 2017; everyone on the June charter flight list was the subject of a travel document presentation, via the State Department, on May 25 or June 6.

24. My analysis, explained in paragraphs ¶¶25-29 shows that up until the night of June 26, 2017, there were many Iraqi nationals in ICE custody—including many for whom ICE had requested travel documents and many from the June charter list—who were not covered by this Court's first temporary restraining order, and hence could have been removed, had Iraq been willing to accept their return.

25. Early in this litigation, pursuant to Court order, see ECF 87, PgID2356, ICE disclosed the detention histories from March 6, 2017 to July 28, 2017 for class members still in detention as of July 28, 2017. (Respondents did not disclose a list of absolutely all the arrests made in June; the disclosure was limited to those still in detention as of July 28.) There were 276 such individuals, of whom 230 were arrested before June 22, when the Court entered the first temporary restraining order. Of the 230 listed arrests before June 22, ICE had sought travel documents for 130 in the May 25 or June 6 travel document presentations, and had designated 68 of them for the June flight.

26. Petitioners filed this lawsuit on June 15, 2017, seeking to represent a class of "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." ECF 1, PgID20. On June 22, 2017, at 6:37 p.m., the Court agreed to the requested temporary restraining order blocking deportation of Iraqi nationals "within the jurisdiction of the Detroit ICE Field Office. . . , including those detained in Michigan and transferred outside of Michigan to other detention locations." ECF 32, PgID502. (I know the time of the order because it was electronically distributed to counsel.)

27. On June 26, 2017, at 8:57 p.m. (again, I know the time because of electronic distribution from the court), the Court expanded the temporary restraining order to cover a nationwide class: "all Iraqi nationals in the United States 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. removal." ECF 43, PgID676.

28. Thus up until the night of June 26, ICE's ability to deport Iraqis *not* "within the jurisdiction of the Detroit ICE Field Office" was unconstrained by this litigation. ICE's Detroit Field Office has jurisdiction over all of Michigan and Ohio; ICE refers to this area as the Detroit Area of Responsibility or AOR. See https://www.ice.gov/contact/ero. In order to see how many Iraqi nationals whom ICE had in custody at that time (and hence available to be removed) were outside the Detroit Field Office's jurisdiction, I cross-referenced the arrested individuals and their disclosed detention records. I flagged each individual who had been detained prior to June 26 for any period of time in either Ohio or Michigan. Individuals who were *not* detained in Ohio or Michigan were not covered by the first temporary restraining order, and remained amenable to deportation—if Iraq had provided travel documents and permission for ICE's hoped-for charter flight.

29. Of the 274 individuals listed as covered by the May 25 and June 6 travel document presentations, 194 had not, by July 24, been for any period of time in Michigan or Ohio. Of the 230 individuals listed as arrested prior to June 22, 2017, 97 were not detained for any period of time in Michigan or Ohio. And of the 76 individuals listed as intended passengers of the hoped-for June charter flight, 52 were not detained for any period of time in Michigan or Ohio. ICE could have deported any or all of these individuals without violating the June 22, 2017 temporary restraining order. But as already stated, ICE's Interrogatory 6/7 Response shows that Iraq did not grant travel documents for any of these individuals in June 2017—or, for that matter, in July 2017.

30. According to ICE's Interrogatory 6/7 Response, on June 20, 2017, ICE resubmitted travel document requests for 89 class members, each previously the subject of a travel document presentation on May 25 or June 6. The Response notes that Iraq conducted 74 interviews of the listed individuals in July 2017, but that it did not grant any travel documents.

Other Consular Interviews and Travel Document Grants and Denials

31. After the three rounds of travel document presentations just described (May 25, June 6, and June 20)—none of which led to any issuance of travel documents—ICE has submitted travel document requests in several more clusters. These first few of these are spelled out in ICE's Interrogatory 6/7 Response, and are summarized in Table D.

32. As Table D shows, for 13 requests made December to February 2018, ICE notes that the Iraqi embassy responded on March 20, 2018 with a "Verbal Agreement from Iraq Embassy in U.S. to Issue TD for upcoming removal." Of

these 13 individuals, ten have been removed as of Respondents' most recent data disclosure on August 22, five months after that assurance is said to have been received. However, in May 2018, ICE also went back to the Iraqi embassy and obtained consular interviews for three of the 13 individuals (including one of the ten actually removed), so the "verbal agreement" was evidently not definitive.

33. All told, Table D shows ICE submitted 67 travel document presentations from September 2017 through March 2018 listed in its Interrogatory 6/7 Response; these were for 60 individual class members (there were several repeats).

34. As the table shows in the rows for requests made October 2017 and January 2018, in late January 2018 there were four consular interviews in which Iraq encountered detainees who were unwilling to acquiesce in their own removal. These were of SAS, AXXX-XXX-637 (who was not a class member, because of the date of his removal order); AK, AXXX-XXX-016 (also not a class member, although that became known only later, see ECF 212, 223, 232); GA, AXXX-XXX-821, and MAB, AXXX-XXX-307. ICE's Interrogatory 6/7 Response—which includes all travel document submissions, including many resubmissions—has no entry indicating that ICE or the embassy responded to those January 2018 denials by submitting the travel document presentations to the Iraqi Ministry of Foreign Affairs. Mr. AS, the non-class member, was released on a post-order custody review. See ¶44, *infra*. The other three, all class members or believed to be class members, remained—and to this day, remain—in detention.

Table D: Travel Document Requests and Responses

a. Request date	b. # of requests	c. # Approved, NON-Volunteer (Date)	d. # Approved, Volunteer (Date)	e. # Declined: Reason (Date)	f. # Other: No outcome (Date)
Sept. 2017	1	0	1 (12/2017)	0	
Oct. 2017	5	0	2 (11/21, 11/28)	2: withdrew request for removal (10/19/2018) 1: Embassy notified ICE that he did not want to return (1/25/2018)	
Nov. 2017	4	0	2 (1/3/2018)	1: withdrew request for removal (11/14/2017)	1: Embassy "stated that request will be processed") (3/20/2018)
Dec. 2017	6	0	2: Verbal agreement to issue (3/20/2018)	3: withdrew request for removal (varied dates)	1: Embassy "stated that request will be processed") (3/20/2018)
Jan. 2018	9	0	5: Verbal agreement from embassy to issue (3/20/2018)	3: Embassy notified ICE that he did not want to return (1/24 & 1/25/2018)	1: Interviewed (1/25/2018)
Feb. 2018	7	0	6: Verbal agreement from embassy to issue (3/20/2018)	0	1: Embassy "stated request will be processed" (3/20/2018)
Mar. 2018	35	0	0	0	35: Embassy "stated request will be processed" (3/20/2018)
TOTAL*	**60**	**0**	**17**	**9**	**34**

***** The total is not a sum of the rows because it eliminates multiple submissions for the same individuals.

35. After this court's entry on July 24, 2017 of the preliminary injunction staying removal, and prior to March 20, 2018, ICE's travel document presentations to Iraq were largely, though not exclusively, for detainees who had expressed some desire to waive the protection of this Court's stay of removal. In some of these cases, once these detainees discussed their situations with counsel, pursuant to this Court's order, ECF 110, it became clear that they had not understood the issues or they changed their mind. Therefore no "prompt removal" stipulation was submitted to the Court and the stay of removal remained in place.

36. Beginning with the large round of travel document presentations submitted March 20, 2018, ICE's Interrogatory 6/7 Response demonstrates that ICE's approach changed. (Under this Court's order, most class members' motions to reopen were due in February 2018.) Of the 35 travel document requests submitted March 20, 2018, 22 of them were for class members who had either not submitted a motion to reopen by the deadline or not appealed an immigration judge's denial of their motion. However, for the other 13, ICE sought travel documents for individuals who were still fighting their immigration cases; while their removal orders were technically "final," they had live prospects for reviving those cases. Eleven had motions to reopen still pending. (Five of them have since won reopening, and several are still pending.) One additional class member had not yet hit his motion to reopen deadline under ECF 87; he did soon file a motion to reopen, which he won. And the final class member of this group of 13 actually had, a few days before, already won reopening, and so did not have an extant removal order at all.

37. As far as can be ascertained from ICE's disclosures, all the travel documents issued after April 2017 and prior to June 2018 seem to have been for individuals who both waived this Court's stay of removal *and* who informed Iraq's consular officials that they were willing to be removed to Iraq. Numerous times, Iraq denied travel documents after an interview in which a detainee declined to agree to his own removal.

38. Most recently, Iraqi officials have conducted three rounds of interviews; these are tallied in Table E. On May 23, 2018, Iraqi consular officials conducted 33 interviews of class members at the Stewart Detention Center in Lumpkin, Georgia. (According to a declaration by James Maddox, ECF 311-3, Iraqi officials conducted a total of 42 consular interviews. Some were of non-class members.) As with the March 20, 2018 travel document submissions, these most recent interviews included numerous individuals who were not amenable to deportation under this Court's stay of removal; five with pending motions to reopen, and seven whose motions to reopen were not yet due. Similarly, when ICE arranged for 10

consular interviews in Farmville, Virginia on June 28, 2018, and 6 more in York, Pennsylvania on July 19, 2018, of these 16 individuals two had pending motions to reopen, and six had not yet reached the deadline for filing such a motion.

Table E: Consular Interviews Since May 2018

a. # of interviews (Location, Date)	b. # Approved, NON-"Volunteer" (Date)	c. # Approved, "Volunteer"* (Date)	d. # Declined: Reason (Date)	e. # Other: Outcome (Date)
33 Stewart, 5/23/2018	4 (7/10/2018)	26 (6/8/2018)	2: Embassy stated they are not Iraqi (6/8/2018)	1: More info. requested (6/8/2018)
10 Farmville, 6/28/2018				10: No decision
6 York, 7/19/2018				6: No decision
TOTAL	**4**	**26**	**2**	**17**

***** The word "volunteer" in this column means only that the individual in question signed Iraq's form that stated he was "return[ing] voluntarily" to Iraq. *See* Ex. 3 at Exhibits A-K for examples of the form. Petitioners have brought to the Court's attention numerous examples of coercion inducing detainees to sign although they do *not* wish to return to Iraq, ECF 307, and the Court responded by instituting some helpful safeguards. ECF 370.

39. For 23 of the total 49 individuals who have participated in the three sets of consular interviews from May to July 2018, ICE had previously requested travel documents, requests that are included in Table D columns e and f. According to an ICE declaration, on June 8, the Iraqi embassy issued one-way laissez-passers for 26 of them—all individuals interviewed on May 23, at Stewart, who signed the Iraqi form acquiescing to removal. The embassy denied two, requested more information for one, and sent six of the files—those for detainees who declined to sign the acquiescence form—to Iraq for consideration by the Ministry of Foreign Affairs. Maddox Dec., ECF 311-3, PgID7480. Of those six detainees, four are subclass members.

40. Respondents eventually disclosed that travel documents were issued on July 10 for the six detainees who had not signed the GOI form and whose files were sent to Baghdad. They are:

- Sabeeh Alsaad, AXXX-XXX-798
- AO, AXXX-XXX-985 (non class member)
- RAA, AXXX-XXX- 968 (non class member)

- AK, AXXX-XXX-689
- ODD, AXXX-XXX-561
- KP, AXXX-XXX-207

The first three listed individuals are unprotected by this Court's stay of removal, and are therefore available to be deported whenever ICE is able to do so.[7] Yet as of August 27, 2018, ICE's online detainee locator shows all still in detention. Likewise, the three individuals whom Iraqi officials declined to accept for other reasons—because they were not Iraqi, or because more information was needed—are also still in detention.

41. ICE is required by ECF 316 to disclose any additional travel documents obtained for other class members. There have been no travel documents issued since July 10, although two months have passed since the 10 interviews in Farmville.

Removal difficulties unrelated to this Court's stay of removal.

42. There is a great deal of evidence that ICE faces tremendous obstacles to effectuating removals to Iraq, which cause long delays and often make removals impossible. These are wholly separate from this Court's stay of removal. As discussed above, ICE frequently cannot obtain travel documents. But even when it *does* obtain travel documents, the task of arranging flights is very challenging and may not, in the end, succeed. The succeeding paragraphs provide detail.

Non-class members

43. Respondents have not provided full information about Iraqi nationals who are not class members, and therefore not protected by this Court's stay of removal. But it is clear that ICE has been unable to remove at least some—and possibly all—such individuals who have not agreed to their own removal when interviewed by Iraqi officials.

44. The discovery in this case covers one such individual, SAS, AXXX-XXX-637.[8] In its response to Hamama Interrogatory 6 and 7, ICE provided the

[7] This court lifted the stay of removal for Mr. Alsaad under the prompt removal process. ECF 252.

[8] There is also a great deal of information about Mr. AS available from an article published in The Intercept. *See* Ryan Devereaux, An Iraqi Family Sought

information that it had requested a travel document for Mr. AS on Oct. 3, 2017, and that the Iraqi embassy conducted a consular interview on Jan. 25, 2018, but that the request was denied because, the Embassy informed ICE, "he did not want to return." Mr. AS had not been in any prior ICE disclosures. By calling EOIR's 1-800 number, I was able to confirm that based on his removal order date, he is not a class member. And by periodically checking ICE's online detainee locator, I determined that he was released from detention at some point in the spring. I was able to obtain a copy of his order of supervision, which lists his final removal order date as August 26, 2017, and states, "Because the agency has not effected your deportation or removal during the period prescribed by law, it is ordered that you be placed under supervision and permitted to be at large under the following conditions . . . ." It is dated February 20, 2018—so it was executed just two days before Mr. AS reached the 180th day of post-final-order detention. The order of supervision thus indicates that Mr. AS was released from immigration detention because Iraq declined to accept his repatriation—because he was unwilling to return. His release was the result of a 180-day Post-Order Custody Review.

Class members who waive the protection of the stay of removal

45. Respondents have asserted in declarations that ICE can promptly effect removal where there is no judicial limitation (i.e. for those who have requested removal and for whom the court has then lifted the stay). For example, on December 22, 2017, ICE official Michael Bernacke wrote in a declaration "ICE has also submitted 10 additional travel document requests for putative class members who have voluntarily opted out and is awaiting approval of travel documents for these individuals. ICE expects to receive travel documents for all requested individuals in the very near future." ECF 184-2, PgID5073, ¶11.

46. My analysis of the length of time it takes for ICE to effectuate removal for class members who have waived the protection of the stay shows that they spend substantial time in detention even after the stay has lifted. ICE's response to Hamama Interrogatories 6/7 has ten entries that correspond to Mr. Bernacke's description in the declaration cited above—class members for whom ICE sought travel documents before December 22, 2018, but had not heard a response by that date. Of these, by three months later (when the interrogatory responses were

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Asylum in the U.S., Thinking the Worst Was Over. Then Their American Nightmare Began, at https://theintercept.com/2018/03/18/safaa-al-shakarchi-asylum-detention-ice/ (Mar. 18, 2018).

produced), only two of the ten had actually received travel documents. Travel documents have since issued for one additional individual who was, indeed removed. And it is possible that for one additional individual, Iraq's March "verbal agreement," shown in Table D, column d above, can actually be relied upon as likely to result in travel documents. For the other six, ICE's disclosure states that one was denied (because the individual did not want to return to Iraq) and three withdrawn (for the same reason). For the final two, Iraqi officials had made no promises by March 20 that travel documents would in fact issue; they stated merely that "the request will be processed." Only four of these individuals have been removed.

47. This Court has ordered a process by which individuals can waive the protection of the stay of removal. As of August 26, 2018, the Court has approved such waivers for 33; for 4 others, Petitioners stipulated to the lifting of the stay because the individuals had agreed that they were not seeking to further litigate their immigration cases class members.[9] Only 17 of them have actually been removed. Based on ICE's court-ordered disclosures, we are able to determine when those removals took place within a week or two. For three, removal occurred a month or less after the Court lifted the stay of removal; for seven, removal took between one and three months after the stay was lifted; for three, removal took three to five months; and for three, removal took over five months after the stay was lifted.

48. Of the 37 class members who have had the stay of removal lifted for them (in many cases, foregoing challenge to their removal orders), 20 remain in detention. For many, travel documents have not yet issued. They have been waiting ever since the Court lifted the stay, some for as long as 8 months. Table F sets them out by name, with the date their stay was lifted, the docket number of the relevant order, and the days elapsed since then (as of August 26, 2018).

49. The very long length of time these individuals have waited, unable to get out of detention, cannot be attributed to the Court's stay of removal because Table F shows only time accrued after that stay was lifted.

[9] This tally omits Wisam Ibrahim, whose attempted waiver is contested. *See* ECF 356. It also omits Hussein Alrudaini, whose stipulated order, ECF 85, was entered prior to the July 24 preliminary injunction and prior to the Court's approval of the general process, and who I understand possessed an unexpired Iraqi passport.

50. As Table F shows, it can take months for ICE to obtain travel documents even for willing repatriates, even after the stay has lifted. In addition, Table F demonstrates that even *after* travel documents are issued, difficulties can arise that can add months to a class member's detention. See, e.g., Ex. 9, Declaration of Perla Gonzalez (describing clearance difficulties for class member Nouzat Hanna that are delaying his repatriation for at least two months); Ex. 4, Schultz Dep. at 46, 174-175 (describing commercial flight scheduling difficulties caused by "country clearances and then notification time periods and transiting issues").

Table F: Class Members without A Stay of Removal

Name	Stay Lifted Date	ECF #	Travel document obtained date	Days since stay lifted.
Dhahir Al Salman	12/18/2017	181	6/8/2018	251
Omar Al Talaqani	12/18/2017	182	6/8/2018	251
Safaa Abdulaziz Al Maliki	2/16/2018	233	6/8/2018	191
Aqil Al Muntafiji	3/7/2018	253	6/8/2018	172
Sabeeh Abed Jasim Alsaad	3/7/2018	252	7/10/2018	172
Muslem Al Rubaiai	4/13/2018	271	6/8/2018	135
Saed Al Zamely	4/13/2018	270	6/8/2018	135
Abdulrazaq Al Shimari	5/10/2018	283	Not issued	108
Aziz Al Darraji	5/24/2018	291	Not issued	94
Ahmad Mirza	5/31/2018	294	6/8/2018	87
Wamidh Al Idani	6/6/2018	300	Unknown	81
Hani Al Bazoni	6/8/2018	303	Not issued	79
Jomaa Al Essa	6/14/2018	309	Not issued	73
Sarkoun Ablahid	6/19/2018	314	Not issued	68
Salar Omar Karim	7/10/2018	332	6/8/2018	47
Mohammed Al Khafaji	7/19/2018	346	Unknown	38
Revan Shawkat Mansoor	7/23/2018	349	6/8/2018	34
Nouzat Hanna	7/30/2018	352	6/8/2018	27
Khalid Al-Asakir	8/7/2018	361	6/8/2018	19
Sarmad Israil	8/22/2018	369	Not issued	4

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury under the laws of the United States that the above statements are true and correct to the best of my knowledge, information, and belief. Sworn in Washtenaw County, Michigan.

Date: August 28, 2018

Margo Schlanger