

No. 18-1233

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

USAMA JAMIL HAMAMA, et al.,
ON BEHALF OF THEMSELVES AND ALL THOSE SIMILARLY SITUATED,
Petitioners–Appellees,

v.

THOMAS HOMAN,
DEPUTY DIRECTOR AND SENIOR OFFICIAL PERFORMING THE DUTIES OF THE
DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, et al.,
Respondents–Appellants

On Appeal from the United States District Court for the
Eastern District of Michigan, Case No. 2:17-CV-11910
Before the Honorable Mark A. Goldsmith

**BRIEF FOR THE CHALDEAN COMMUNITY FOUNDATION
AS AMICUS CURIAE SUPPORTING APPELLEES**

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April 19, 2018

CERTIFICATION

I hereby certify that I have made personal contact with attorneys for Petitioners-Appellees and Respondents-Appellants, requesting concurrence in the filing of this Motion. Both parties concurred in the Chaldean Community Foundation's filing of this amicus brief.

Dated: April 19, 2018

/s/ Gabriel E. Bedoya _____
Gabriel E. Bedoya

ISSUES PRESENTED

1. Whether Petitioners' Continued Detention Constitutes Irreparable Harm.

The CCF answers "Yes."

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STATEMENT OF INTEREST OF AMICUS CURIAE

The Chaldean Community Foundation (“CCF”) is a nonprofit organization based in Southeast Michigan, dedicated to addressing the needs of the Chaldean-American community. The CCF provides refugees with acculturation training, mental health services, healthcare and disability assistance, language courses, immigration and naturalization services, career assistance, scholarship programs, and auto loan programs. In 2015, the CCF served more than 18,000 individuals, approximately 85% of whom are Chaldean. In 2016, the CCF provided services to more than 22,000 individuals, while, in 2017, the CCF served 26,000 individuals.

In January 2018, the U.S. Department of State issued a four-tier travel advisory for foreign travel and placed Iraq in “Level 4: Do not travel.” Citing the high risk of violence, the Department of State identified numerous terrorist and insurgent groups that regularly attack civilians. While the instability in Iraq threatens many religious and ethnic minorities, Chaldeans are at particular and heightened risk of violence. Based on its work with Iraqi refugees, the CCF therefore has a unique perspective regarding the irreparable harm suffered by Petitioners and their families.

I. INTRODUCTION

On June 11, 2017, U.S. Immigration and Customs Enforcement (“ICE”) began arresting and detaining hundreds of Iraqi nationals, including well over 100 in the Detroit metropolitan area—most of whom are Chaldeans—in preparation for deportation. At the time the district court considered whether to issue the injunction on appeal, most had been in detention for seven months, removed from their communities and barred from ensuring their families’ physical, emotional, and financial security. On November 7, 2017, Petitioners filed a Motion for Preliminary Injunction on Detention Issues before the United States District Court for the Eastern District of Michigan and identified Respondents’ refusal to release them from detention as causing irreparable harm to Petitioners and their families. Petitioners explained that their continued detention “harm[ed] their physical and mental health, financial stability, family relationships, and ability to fight their immigration cases . . . [s]imply put, to languish in jail, removed from a life built over years, is the very definition of irreparable harm.” (RE 138 at 34, Pg ID # 3394.)

On January 2, 2018, the District Court granted in part Petitioners’ Motion for Preliminary Injunction. (RE 191, Pg ID # 5318-5362.) The District Court found that, while Petitioners waited for hearings before the U.S. Immigration Court to raise their claims of persecution, torture, and possible death if removed to Iraq, they were “deprived of the intimacy of their families, the fellowship of their communities, and

the economic opportunity to provide for themselves and their loved ones.” (*Id.* at 1, Pg ID # 5318.) Because Petitioners may be detained for years, “as the immigration court proceedings and subsequent appeals wind their way to a conclusion,” the District Court ruled that Petitioners “be allowed to return to their productive lives by being placed on bond, while the legal process continues, unless the Government can show that they are unreasonable risks of flight or danger to the community.” *Id.*

On March 30, 2018, Respondents appealed the District Court’s ruling and requested that this Court vacate the preliminary injunction. Yet, just as they did before the District Court, Respondents failed to acknowledge the irreparable harm that they have imposed on Petitioners and their families. Respondents however cannot deny the damage that detention has imposed on Petitioners and their families, documented in great detail in the exhibits submitted to the District Court. (RE 170-2, Pg ID # 4537-4565; RE 170-3, Pg ID # 4566-4801.)

In order to prevent Petitioners and their families from suffering additional harm, the Court should affirm the preliminary injunction.

II. LEGAL STANDARD

Preliminary injunctions are governed by a four-factor test that examines: (1) likelihood of success on the merits, (2) *irreparable harm in the absence of relief*, (3) the balance of equities, and (4) the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008) (emphasis added). These are “factors to be balanced,

not prerequisites that must be met. Accordingly, the degree of likelihood of success required may depend on the strength of the other factors.” *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985).

When reviewing an order for preliminary injunction, this Court adheres to a “highly deferential” standard, through which it does not decide *de novo* whether it would have granted a preliminary injunction. *Leary v. Daeschner*, 228 F.3d 729, 739 (6th Cir. 2000). Instead, the Court only determines whether the District Court applied the correct legal standard. *See Hamilton’s Bogarts, Inc. v. Michigan*, 501 F.3d 644, 649 (6th Cir. 2007).

III. ARGUMENT

The harm Petitioners and their families have suffered as a result of their detention is obvious and grievous. Indeed, detention’s grave restrictions on liberty threaten Petitioners’ physical and mental health, financial stability, family relationships, and ability to fight their immigration cases. These are irreparable harms. *See United States v. Bogle*, 855 F.2d 707, 710-11 (11th Cir. 1998) (the “unnecessary deprivation of liberty clearly constitutes irreparable harm”); *Miller v. Stovall*, 641 F. Supp. 2d 657, 670 (E.D. Mich. 2009) (unlawful imprisonment “constitutes irreparable harm”); *Ward v. Wolfenbarger*, 340 F.Supp.2d 773, 778 (E.D. Mich.2004) (“petitioner would suffer irreparable harm each day that he would remain imprisoned in violation of the U.S. Constitution”). *See also* Federal Practice

& Procedure, § 2948.1 (2d ed. 1995) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”). Indeed, even one additional night in detention constitutes harm that cannot be later undone. *Bogle*, 855 F.2d at 710-711.

Petitioners and their families have suffered and are continuing to suffer irreparable harm. Petitioners’ detention is undeniably causing them and their families to suffer physical, emotional, and financial harms. To best describe the irreparable harm endured, the CCF compiled personal accounts from Petitioners and their families (Ex. A, RE 170-2, Pg ID # 4537-4565), along with correspondence from additional Iraqi nationals held in detention (Ex. B, RE 170-3, Pg ID # 4566-4801), for the Court’s review.¹

As the personal accounts make clear, detention has removed Petitioners from their families, their employment, and their communities—leaving an absence that cannot be filled. Although Petitioners are impacted by the physical, mental, and emotional restrictions while kept in detention, they suffer most at the impact on their families. Indeed, most Petitioners serve as the sole breadwinner, and, while kept in detention, they fear the financial security of their relatives—and for good reason.

¹ The CCF redacted Exhibits A and B to remove all A-Numbers, as well as home addresses and telephone numbers. The CCF will provide the Court with un-redacted copies upon request.

Petitioners' families have severely struggled to ensure that bills are paid. Some families have lost their homes, while others have depended on the generosity of strangers to satisfy their financial obligations.

In addition to their financial insecurity, detention has imposed physical and emotional harm on Petitioners and their families. Health problems have developed or significantly worsened. One family has suffered a miscarriage of twins. Petitioners also fear for the security of their families, as they remain detained and unable to protect their spouses and children. Their children describe a sense of numbness, which they feel at all times now that their emotional support is gone. And, while some children struggle to remain focused in school, others have developed substance abuse problems as a way to cope with their anxiety.

In short, since Petitioners have been detained, they and their families have suffered irreparably. The CCF respectfully requests that the Court review the personal accounts attached in Exhibits A and B to CCF's Memorandum in Support of Petitioners/Plaintiff's Motion for a Preliminary Injunction on Detention Issues to fully understand the irreparable harm caused by Petitioners' continued detention. (See RE 170; 170-2; 170-3)

IV. CONCLUSION

For the foregoing reasons, the CCF respectfully requests that this Court grant Petitioner's Motion for Preliminary Injunction.

Dated: April 19, 2018

Respectfully Submitted,

/s Gabriel E. Bedoya

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served on the attorneys of record in this matter by e-filing on April 19, 2018.

The statement above is true to the best of my knowledge, information and belief.

/s/ Gabriel E. Bedoya _____
Gabriel E. Bedoya

CERTIFICATE OF COMPLIANCE

I certify that the Brief for the Chaldean Community Foundation as Amicus Curiae Supporting Appellees contains 1,284 words, excluding portions exempted by Fed. R. App. P. 32(f). Further, I certify that the brief complies with the type size and typeface requirements of Fed. R. App. P. 32(a)(5) and (6): the document was prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, 14-point typeface.

Dated: April 19, 2018

/s/ Gabriel E. Bedoya

Gabriel E. Bedoya