

17-2171

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Usama Jamil Hamama, et al.,
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.

From the United States District Court
for the Eastern District of Michigan
No. 2:17-cv-11910

**BRIEF OF MEMBERS OF CONGRESS AS
AMICI CURIAE IN SUPPORT OF
PETITIONERS-APPELLEES**

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STATEMENT OF AMICI CURIAE¹

The amici are five elected Members of the United States Congress representing approximately 3.5 million constituents in the State of Michigan. Sander Levin represents the Ninth Congressional District; John Moolenaar represents the Fourth Congressional District; Dan Kildee represents the Fifth Congressional District; Debbie Dingell represents the Twelfth Congressional District; and Brenda Lawrence represents the Fourteenth Congressional District.

As Members of the Legislative Branch, the amici are concerned about the Executive Branch's treatment of detained Iraqi nationals who have deep ties to Michigan communities where they have lived and worked for many years. The amici write especially to voice their concern about the negative impact that the Executive's actions are having on Michigan communities, about the apparent disregard for due process, and about the danger that threatens these Iraqi nationals if they are removed from the United States.

The parties have consented to the filing of this brief.

¹ No person other than the amici curiae or their counsel authored or contributed money to the preparation or filing of this brief.

ARGUMENT

1. **The government’s actions are harming Americans and American communities.**

Last June, ICE agents—suddenly, and without warning—arrested, detained, and attempted to deport over one hundred Iraqi nationals residing in the metropolitan Detroit area. The detainees are mostly Chaldean Christians who fled Iraq decades ago out of an undisputed and reasonable fear of persecution and death. They came to the U.S. as refugees, but over the years have become integral members of the metro-Detroit community. They married U.S. citizens and started families, bought homes, and opened businesses.² These are individuals who contribute to the nation in the greatest of American traditions. Sixty-one percent of Chaldean Americans own at least one business, and 39 percent own two or more.³ An estimated 9 of 10 food stores in Detroit are owned by Chaldeans.⁴ In fact, the Chaldean community “contributes almost \$11 billion annually in the state of

² See Anne Runkle, *Rally Planned Wednesday in Support of Iraqi Chaldeans Facing Deportation*, Oakland Press (June 19, 2017), <http://www.theoaklandpress.com/general-news/20170619/rally-planned-wednesday-in-support-of-iraqi-chaldeans-facing-deportation> (“They have families, they have businesses, they have homes. They contribute greatly to our community.”).

³ See Chaldean Am. Chamber of Commerce, *Community Overview*, <http://www.chaldeanchamber.com/community-overview>.

⁴ *Ibid.*

Michigan.”⁵ It therefore should come as no surprise that ICE’s actions have “stunned” and caused “chaos” in the metro-Detroit community.⁶

The impact is felt by the community at large, among both Chaldeans and non-Chaldeans alike. In addition, there is the devastating impact on the individuals themselves who are detained under threat of deportation, and on their families. To aid the Court in understanding the depth and scope of the humanitarian costs of ICE’s actions, the amici Members of Congress offer the following brief descriptions of just a few of the individuals who have been swept up in this case, and the harm that they are suffering:

Petitioner Usama “Sam” Hamama, 54, arrived in the U.S. at the age of 11 and has called the metro-Detroit community his

⁵ See Dana Afana, *Iraq Deportations ‘Not Like Sending Canadians Back to Canada,’ Says Chaldean Leader*, M Live, http://www.mlive.com/news/detroit/index.ssf/2017/07/iraqi_deportations.html.

⁶ See Vivian Yee, *After Backing Trump, Christians Who Fled Iraq Fall Into His Dragnet*, N.Y. Times (July 4, 2017), www.nytimes.com/2017/07/04/us/iraqi-christians-deport.html?_r=1; Matt Hadro, *Immigration Arrests Stun Detroit’s Chaldean Catholics*, Crux (June 14, 2017), <https://cruxnow.com/church-in-the-usa/2017/06/14/immigration-arrests-stun-detroits-chaldean-catholics> (“As a community, we’re all suffering seeing the loss of our loved ones... And now with them leaving, it’s causing chaos within our community, within our families, within our Church.”).

home for over four decades.⁷ He has a wife and four children, all of whom are U.S. citizens residing in West Bloomfield.⁸ Mr. Hamama is a pillar of—and has invested in—the community, as a small business owner employing over 40 people in his three local supermarkets.⁹ If he is deported, “[Mr. Hamama’s] family would lose its primary breadwinner and health insurance.”¹⁰ Upon learning of his detention, his daughter said, “I can’t function without him. Not having him home, not knowing how he’s feeling, not knowing if he’s taking the right medication, it’s been so unnerving.”¹¹

Petitioner Moayad Jalal Barash, 47, arrived in the U.S. at the age of seven, and likewise has called the metro-Detroit

⁷ See Second Amended Habeas Corpus Class Action Petition and Class Action Complaint, *Hamama v Adducci*, No. 2:17-cv-11910 (E.D. Mich. Oct. 13, 2017) (hereinafter “Complaint”), at ¶ 22.

⁸ *Ibid.*

⁹ See Yee, *supra*, Note 6; see also VvB, *Chaldean Catholics and Iraqi Kurds face deportation*, *Economist* (July 24, 2017), <https://www.economist.com/blogs/democracyinamerica/2017/07/lim-its-christian-brotherhood>.

¹⁰ Abigail Hauslohner, *Dozens of Iraqi nationals swept up in immigration raids in Michigan, Tennessee*, *Wash. Post* (June 12, 2017), https://www.washingtonpost.com/national/dozens-of-iraqi-nationals-swept-up-in-immigration-raids-in-michigan-tennessee/2017/06/12/58e0524a-4f97-11e7-be25-3a519335381c_story.html?utm_term=.4abd15130ef4.

¹¹ *Chaldeans Rally In Detroit To Halt Deportations, Free Detainees*, *CBS Detroit* (June 16, 2017), <http://detroit.cbslocal.com/2017/06/16/chaldeans-protest-deportations/>.

community his home for four decades.¹² He too has a wife and four children, all of whom are U.S. citizens residing in Warren.¹³ Mr. Barash “has been involved in the church and [is] the sole breadwinner and source of support for his family.”¹⁴

Petitioner Jihan Asker, 42, arrived in the U.S. at the age of five, and has called the metro-Detroit community home for over three decades.¹⁵ She has three children, all of whom are U.S. citizens, and all of her family resides in the metro-Detroit community.¹⁶ In response to ICE’s actions, one of her daughters has pleaded for her return, saying, “I love my mother so much and life isn’t even life without her.”¹⁷

¹² See Complaint at ¶ 29.

¹³ *Ibid.*

¹⁴ *Ibid.*; see also *US judge in Michigan blocks deportation of 100 Iraqis*, Al Jazeera (June 22, 2017), <http://www.aljazeera.com/news/2017/06/judge-michigan-blocks-deportation-100-iraqis-170623002441541.html>; Kyung Lah, *ICE arrests in metro Detroit area terrify Iraqi Christians*, CNN (June 12, 2017), <http://www.cnn.com/2017/06/12/politics/detroit-ice-iraqi-christians/index.html>.

¹⁵ See Complaint at ¶ 28.

¹⁶ *Ibid.*; see also Christine Ferretti, *ACLU sues feds to stop Chaldean deportations*, Detroit News (June 15, 2017), <http://www.detroitnews.com/story/news/local/detroit-city/2017/06/15/aclu-lawsuit-chaldeans/102895284/>.

¹⁷ *Detroit Deportations: Daughter of Jihan Asker pleads for mother's return*, WXYZ Detroit, <https://www.wxyz.com/news/local-news/investigations/faces-of-deportation/detroit-deportations-jihan-asker-misdemeanor-fraud-case-2003>.

Petitioner Adel Shaba, 67, arrived in the U.S. at the age of 29, and has called the metro-Detroit community home for nearly four decades.¹⁸ He has a wife, who is a lawful permanent resident; and he has five children and six grandchildren, all of whom are U.S. citizens.¹⁹ Now retired, Mr. Shaba worked in sales for many years, first at a used car lot and then at a pizzeria—and he now has “a laundry list of diagnosed health issues, including diabetes, high blood pressure, anxiety, and peripheral artery disease, which leaves him with little feeling in his legs, so he walks with a cane.”²⁰

Ghassan Kassab, 55, arrived in the U.S. at the age of five and has called the metro-Detroit community home for nearly five decades. After spending the past 23 years working for the same landscaping company, Mr. Kassab recently became a bone-marrow donor to his 38-year old niece, Marvit Bahoura of Warren. Ms. Bahoura has a debilitating autoimmune disorder and is very concerned about Mr. Kassab’s potential deportation,

¹⁸ See Complaint at ¶ 25.

¹⁹ *Ibid.*

²⁰ See Chris Gelardi, *When ICE Came for the Chaldeans*, Slate (Sept. 4, 2017), <http://www.slate.com/news-and-politics/2018/02/will-house-democrats-accept-a-budget-deal-without-a-daca-fix.html>; see also Daniel Meloy, *Chaldeans plead for mercy for family, friends facing deportation*, Michigan Catholic (June 30, 2017), <http://www.themichigancatholic.org/2017/06/chaldeans-plead-mercy-family-friends-facing-deportation/>.

because bone marrow matches are rare and it is likely she will need additional transplants.²¹ “What am I going to do if he’s not here to provide it for me?” Ms. Bahoura said. “He’s the only match.”²²

Hadeel Khalasawi, 43, arrived in the U.S. at the age of three and has called the metro-Detroit community home for four decades. He lives in Shelby Township with his wife and three children, all of whom are U.S. citizens. Mr. Khalasawi owns the Kabob and More restaurant in Hazel Park, which he and his wife Sumar manage together.²³

Oday “Eddie” Hesano, 43, arrived in the U.S. at the age of two and has called the metro-Detroit community home for over four decades. “He has for years worked seven days a week at Barrels of Wine, a party store on Walled Lake often simply called

²¹ See *Metro Detroit Man Facing Deportation Is Sole Donor Match For Sick Niece*, CBS Detroit (June 30, 2017), <http://detroit.cbslocal.com/2017/06/30/metro-detroit-man-facing-deportation-is-sole-donor-match-for-sick-niece/>.

²² *Ibid.*; see also Melissa Etehad, *Detroit judge halts deportations of Iraqi immigrants nationwide*, L.A. Times (June 26, 2017), <http://www.latimes.com/nation/la-na-us-iraq-deportations-20170626-story.html>.

²³ See Aaron Baskerville, *Metro Detroit family worries father may be deported, await judge's ruling*, WXYZ Detroit, www.wxyz.com/news/region/oakland-county/local-family-worries-father-may-be-deported-as-they-await-judges-ruling; see also Daniel Allott, *Iraqi Christians to Trump: Don't forget us*, Wash. Examiner, <http://2020.washingtonexaminer.com/macomb-county/iraqi-christians-to-trump-dont-forget-us/>.

Eddie's by customers," and he has become an integral member of the community, fundraising for Walled Lake's fireworks displays and always helping those in need. Eddie is loved by customers and friends alike, a number of whom recently gathered at a local restaurant after learning of his detention.²⁴ Wearing matching shirts honoring Eddie, these citizens exclaimed that his detention has been "an atrocity for our community." "[W]e don't want to lose someone that we truly love. He has just been a huge part of our lives."²⁵

Finally, Haydar Butris, 38, arrived in the U.S. at the age of 13 and has called the metro-Detroit community home for 25 years. He and his three children, all U.S. citizens, are residents of Sterling Heights and—like so many others caught up in ICE's sweep—are active and productive members of the community.²⁶

²⁴ See Kim Russell, *Walled Lake businessman came to US at 2 1/2, now faces deportation to Iraq*, WXYZ Detroit, <https://www.wxyz.com/news/region/oakland-county/popular-walled-lake-businessman-detained-by-ice-fights-deportation>.

²⁵ *Ibid.*; see also Brian Johnston, *Walled Lake man detained by ICE, facing deportation*, Oakland Press (June 28, 2017), <http://www.theoaklandpress.com/general-news/20170628/walled-lake-man-detained-by-ice-facing-deportation> ("Those who know 'Eddie' told WXYZ he was a fixture in the community").

²⁶ See Niraj Warikoo, *Families of Iraqi immigrants detained by ICE wonder if they'll see loved ones again*, Detroit Free Press, <https://www.freep.com/story/news/2017/06/12/ice-iraqi-immigrants-detroit-criminal/389365001/>.

These Iraqi nationals and their families and communities are suffering great harm as a result of ICE's actions. And they face even greater harm if they are removed from the United States.

2. The Iraqi nationals must be afforded procedural protections.

The detained Iraqi nationals should be afforded the opportunity to address changed circumstances through motions to reopen. The government's desire to remove these Iraqi nationals hastily does not outweigh their due process interests in having a thorough and fair proceeding.

The Supreme Court has long recognized the importance of due process in immigration proceedings. See, *e.g.*, *Galvan v. Press*, 347 U.S. 522, 531 (1954) ("In enforcement of policies pertaining to the entry of aliens and their right to remain here, the Executive Branch must respect the procedural safeguards of due process."). And for over a century lower courts have recognized that the Fifth Amendment does not distinguish between citizens and aliens; it applies whether an alien's presence in the U.S. is lawful, unlawful, temporary, or permanent. See, *e.g.*, *Jafarzadeh v. Duke*, No. 16-1385, 2017 WL 3972465, at *11 (D.D.C. Sept. 7, 2017); *In re Yamasaka*, 95 F. 652, 655 (D. Wash. 1899).

Moreover, while the Supreme Court has recognized that “[t]he establishment of prompt efficacious procedures to achieve legitimate [government] ends is a proper [government] interest,” it has also declared that our Constitution “recognizes higher values than speed and efficiency.” *Stanley v. Illinois*, 405 U.S. 645, 656 (1972). Indeed, the Supreme Court has declared that the Due Process Clause “in particular” was designed “to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials.” *Ibid.* Put another way, prioritizing efficiency and efficacy over thoroughness and humaneness, by enabling the Executive Branch to remove immigrants and refugees without providing them an opportunity to challenge that removal, would be a breach and a betrayal of our constitutional values.

As one court put it: we ought not to be like those countries we “revile as unjust,” where individuals “may be taken without notice” and “sent away”—and “woe be the day that we become that country under a fiction that [our] laws allow it.” *Ragbir v. Sessions*, No. 18-cv-236, 2018 WL 623557, at *1 (S.D.N.Y. Jan. 29, 2018). We have learned from past experience that, when courts enable the Executive to execute orders without due process, it can be a “far more subtle blow to liberty” than the

orders themselves. See *Korematsu v. United States*, 323 U.S. 214, 245–246 (1944) (Jackson, J., dissenting).

Here, the petitioners seek an opportunity to file motions to reopen their proceedings, to present new evidence in challenging their removal to show that current conditions in Iraq place them in danger of persecution and harm. Courts have recognized that motions to reopen are an “important safeguard” that ensures the “proper and lawful disposition of immigration proceedings.” *Devitri v. Cronen*, No. 17-11842-PBS, 2017 WL 5707528, at *4 (D. Mass. Nov. 27, 2017). Plaintiffs must have a full and fair opportunity to present their claims in motions to reopen and be afforded individual merits hearings in which they can provide testimony and documentary evidence with representation by counsel. See *Yiquang He v. Mukasey*, 299 Fed. Appx. 62, 63 (2d Cir. 2008). To deny Plaintiffs this opportunity is to deny them the process to which they are entitled under the Fifth Amendment. See *Baeza-Castro v. Holder*, 539 Fed. Appx. 833, 835 (9th Cir. 2013) (holding that because plaintiff was deprived of the opportunity to present argument in a timely motion to reopen, he was therefore prejudiced.).

This Court has held that, based on country conditions, the status of Christian alone entitles a non-immigrant alien to withholding of removal, given that there is a “clear probability

that he would be subject to future persecution if returned to contemporary Iraq.” *Yousig v. Lynch*, 796 F.3d 622, 628 (6th Cir. 2015). As the district court found in its opinion and order regarding jurisdiction, sending the petitioners back to Iraq would expose them to a “substantiated risk of death, torture, or other grave persecution before their legal claims can be tested in a court.” The first basis for this imminent threat to their physical safety is severe persecution for their religious beliefs. Many of the petitioners are from the Chaldean Christian community, which has been targeted by ISIS forces in Iraq. The magnitude of this risk is demonstrated by a U.S. Department of State finding of genocide in Iraq, based on religious persecution by elements of ISIS operating within Iraq. See U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., International Religious Freedom Report (2016) (Iraq).

Another risk to their safety is the petitioners’ long association with and connection to the United States, which makes them targets of anti-American sentiment. The State Department has issued repeated warnings—including one on January 10, 2018—to avoid travel to Iraq because of the high risk of violence and threats from anti-U.S. sectarian militias. U.S. Dep’t of State, *Travel Advisory, IRAQ* (Jan. 10, 2018), <https://travel.state.gov/content/travel/en/international->

[travel/International-Travel-Country-Information-](#)

[Pages/Iraq.html](#). To the extent that many petitioners came to the U.S. as children, and therefore identify much more with its culture, customs and language than those in Iraq, this threat is further heightened.

A third risk to the petitioners' safety in Iraq relates to the agreement said to have been reached between the United States and Iraqi governments, concerning a change in Iraqi policy to allow the acceptance of American deportees. It remains highly unclear whether that agreement is in writing or merely oral, what notes may exist regarding it, and whether any provisions exist for where deportees might go in the absence of any family or traditional Chaldean villages. The United States government has refused requests from Members of Congress for information, providing only cursory, pro forma responses. See *Michigan Lawmakers Send Letter on Deportation Orders for Chaldean American Immigrants*, <https://levin.house.gov/press-release/michigan-lawmakers-send-letter-deportation-orders-chaldean-american-immigrants> (June 14, 2017); *Levin Again Calls on ICE to Provide Information on Chaldeans and Other Iraqis Slated for Deportation*, <https://levin.house.gov/press-release/levin-again-calls-ice-provide-information-chaldeans-and-other-iraqis-slated> (June 16, 2017); *Levin Submits FOIA to DHS*

for Information on Chaldean-American Deportees,
<https://levin.house.gov/press-release/levin-submits-foia-dhs-information-chaldean-american-deportees> (June 28, 2017).

“[T]he Fifth Amendment’s liberty and due process guarantees are North Stars that must guide [the Court’s] actions.” *Ragbir*, 2018 WL 623557, at *2. “[I]f due process means anything at all, it means that we must look at the totality of circumstances and determine whether we have dealt fairly when we are depriving a person of the most essential aspects of life, liberty, and family.” *Ibid.* The Court should not allow these petitioners to be torn from their lives—from their families and communities—based on old removal orders and without notice or an opportunity to be heard. We, as a nation, are better than that. And our Constitution requires more than that.

CONCLUSION

For the reasons provided, the amici Members of Congress respectfully urge the Court to rule for the petitioners.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief contains 3,221 words and therefore complies with the requirements of Rule 29(a)(5).

s/ Jason P. Steed
Jason P. Steed

CERTIFICATE OF SERVICE

I certify that I electronically filed this brief using the Court's CM/ECF system, on February 12, 2018. All participants in the case will be served through the CM/ECF system.

s/ Jason P. Steed
Jason P. Steed