

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

USAMA JAMIL HAMAMA, et al.,

Plaintiffs/Petitioners,

v.

REBECCA ADDUCCI, et al.,

Defendants/Respondents.

Case No. 2:17-cv-11910
Hon. Mark A. Goldsmith
Mag. David R. Grand

Class Action

DECLARATION OF DANIEL SMITH

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

QUALIFICATIONS:

1. I am a researcher specializing in Iraq who has been living primarily in the Iraqi cities of Baghdad, Sulaimaniya, and Erbil (where I now live) since 2007.

2. From 2010 to 2013, I worked for Human Rights Watch, for which I took part in or led multiple investigations into human rights abuses in Iraq and contributed to multiple public reports, including as primary author, including topics such as torture, arbitrary and secret detention, violence against and arrest of peaceful demonstrators, mass executions, failure to enforce legislation banning female genital mutilation, and destruction caused by Iran in populated areas of North Iraq.

3. From 2009 to 2013, I was a research consultant for the International Crisis Group (ICG), contributing to several major reports on Iraq by conducting dozens of interviews with all levels of politicians, security officials, party officials, tribal leaders, and religious figures, as well as collecting and organizing ongoing current events, legislation, and Supreme Court decisions.

4. In 2012, I began working as a consultant, advocate and field protection coordinator for emergency cases, focusing on targeted LGBT youth, for the International Refugee Assistance Project (IRAP), a U.S.-based legal assistance and resettlement organization.

5. For over a decade, I have contributed to, or been interviewed by, multiple news publications on Iraq-related issues. I have given several public presentations on Iraq, including as the featured panel member at a roundtable discussion at the Council on Foreign Relations. I have also been a participant on multiple discussion panels in Iraq, on topics including general human rights in Iraq, human trafficking, women's rights, freedom of speech, personal status laws, and proposed draft legislation. For the September 25, 2017 independence referendum, I was credentialed as an international election observer by the Kurdish Regional Government's (KRG) Independent High Elections and Referendum Commission.

6. Relationships with Iraqi government officials at all levels are critical for me to be effective in my work, including obtaining information about current Iraqi government policies. Iraq is a society where personal relationships are very important, and I have accordingly cultivated relationships with government officials whom I can call upon as needed. My general approach is one of maintaining contact with a variety of governmental and non-government actors to try to keep my knowledge as nuanced and up to date as possible. Because the situation in Iraq can change very quickly, background expertise about the country is often insufficient. Rather, current and sustained contacts are essential to understanding the political situation. The fact that I live in Iraq facilitates my ability to develop and maintain such contacts.

7. I keep in regular contact with numerous key figures in Iraqi politics, security forces, lawyers, judges, and others. Some mid-level politicians with whom I've had a close working relationship for over a decade have sometimes risen to high level positions, such as Speaker of Parliament and Vice-President. I am familiar with the respective responsibilities of various Iraqi government ministries, both in terms of their official responsibilities and in terms of how things are handled in practice. I have a good understanding of the relationships between key political players in Iraq.

8. I also have close relationships with multiple Iraqi human rights organizations focusing on arrest, detention and torture practices of Iraqi security

forces, women's rights, freedom of expression, minority rights, and various violent manifestations of Iraqi sectarianism.

9. In addition, as part of my research and advocacy efforts over the years, I have kept regular contact with various international organizations, including the United Nations (UN), the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), and the International Committee of the Red Cross (ICRC). I also met regularly with multiple officers of the US Department of State at the US Embassy in Baghdad, and assisted in the drafting of the Iraq section of the 2011 and 2012 Country Reports on Human Rights Practices by confirming various human rights abuses with political officers authoring the reports.

10. Since 2013, I have submitted reports on Iraq country conditions in over 20 immigration court proceedings in the United States and Canada. Sometimes I have appeared as a fact witness; other times I have been qualified and provided testimony as an area expert. In addition, it my understanding that declarations I have drafted about Iraqi country conditions have been widely used by *Hamama* class members to support both their motions to reopen and merits cases. I also previously submitted a declaration in this case, ECF 84-6, which outlines the dangers facing the *Hamama* class members if they are returned to Iraq.

11. In connection with its representation of the putative primary class and certified subclasses in *Hamama v. Adducci*, the American Civil Liberties of Michigan (ACLU) has retained me to conduct various on-the-ground research projects in Iraq. I am now paid by the hour for my work on this matter, although I have in the past worked on this case *pro bono*. This payment is in no way contingent on the substance of my opinions or analysis.

12. A c.v. outlining my qualifications more fully is attached.

IRAQ HAS LONG OPPOSED INVOLUNTARY REPATRIATIONS

13. As a result of continued political turmoil in Iraq, large numbers of Iraqis have fled the country for decades, but this has spiked in the years since the 2003 regime change and the intense violence that has followed. There are large diaspora communities not just in the United States, but also in Europe and throughout the Middle East, among other regions. Many of these individuals left Iraq years ago as refugees or asylees, and have long since integrated into their new homelands. Those that left Iraq before 2003 are utterly unfamiliar with the drastic

changes in everyday life that have occurred since. Multiple Iraqis I have interviewed who left before 2003 and returned from the U. S. years later have had extreme difficulty reintegrating and have often faced suspicion as a result, leading to violence, arrest, extended detention, and being targeted by armed militias as a result.

14. The Iraqi government has long opposed involuntary repatriation of Iraqi nationals, for principled, practical, and political reasons.

15. First, many Iraqi government officials oppose forcible repatriations on humanitarian grounds. There are many reasons for this, including the fact that so many Iraqis, including the political leadership, have families abroad. Another reason is that, over the past 15 years, it has become a prominent issue after multiple previous state efforts to pressure or coerce repatriated Iraqis or internally displaced persons (IDPs) to their areas of origin when the areas were extremely unsafe, or when the effort was perceived as part of a program of state-sanctioned forced displacement or ethnic cleansing. As a result of repeated national and international criticism of this, it is a familiar issue. To avoid strong negative reactions from the press or the populace, Iraqi officials and agencies routinely stress in public statements that any returns, internal or external, must be voluntary.

16. Second, as a practical matter, forcible repatriations are extremely challenging for Iraq, as is consistently reported by international organizations responsible for much of the coordination of the management and protection of displaced Iraqis such as UNHCR¹ and the International Organization for Migration (IOM), among others.

¹ A UNHCR report clarifying the agency's position on Iraqi returns, states:

In the current circumstances, with large-scale internal displacement, a serious humanitarian crisis, mounting intercommunal tensions, access/residency restrictions in virtually all parts of the country and increasing pressure exercised on IDPs [internally displaced persons] to prematurely return to their areas of origin following the retaking of these areas from ISIS, UNHCR does not consider it appropriate for States to deny persons from Iraq international protection on the basis of the applicability of an internal flight or relocation alternative. An internal flight or relocation alternative would only be available in the exceptional circumstances where an individual can legally access and remain in the proposed area of relocation, would not be exposed to a new risk of serious harm there, and has close family links in the proposed area, with the family willing and able to support the individual. In light of the difficult humanitarian conditions in many parts of the country, especially in areas hosting large numbers of IDPs, family members

17. The Iraqi government has shown an inability to return and reintegrate nearly two million remaining internally displaced persons (IDPs) and effectively replace their missing identity or other civil documentation.² This is the case for populations who have never left Iraq, for whom there is no stigma as a result of being perceived as overly Americanized, and who are not known or suspected to have committed serious crimes abroad. When the Iraqi government does not have the capacity to facilitate the reintegration and issuance of crucial identity documents even for women and children among populations one would expect to be a high priority, there is no indication that there would be sufficient capacity, nor motivation, to do so with members of the *Hamama* class.

18. These concerns are heightened when those returning speak little or no Arabic (or another language spoken in the area they are from or would be returned to), do not know the culture, and have few or no family connections in Iraq – a society where family connections are critical to functioning effectively in society.

19. Finally, because many countries other than the United States also would like to repatriate Iraqi nationals, Iraq government officials who have long opposed forced returns or the return of Iraqis without valid Iraqi identification, and

who are themselves in a situation of internal displacement would generally not be considered as being able to provide such support.

It should be noted that although the threat from ISIS described in other parts of this report has changed since publication, all the factors and conditions described in these portions remain current. The report continues:

Returnees must undergo security screening and obtain approval to return from various local actors in return areas, including the military force controlling the area, local authorities and tribes. In some areas, returns have been delayed by local actors who assert that the areas first need to be fully secured and demined and services re-established. However, returns have reportedly also been prevented on the basis of discriminatory criteria, including on account of IDPs' ethnic/religious profile and/or perceived political opinion.

UNHCR, UNHCR Position on Returns to Iraq, (Nov. 14, 2016), available at <http://www.refworld.org/pdfid/58299e694.pdf>.

² The latest figures released by UNHCR put the number of IDPs at 1,953,984, 11% of whom are still missing civil documentation. See UNHCR, Iraq Protection Update - July 2018, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/20180820%20Iraq%20Protection%20Update%20-%20July%202018.pdf>.

have acted to block them, are necessarily concerned about setting a precedent for repatriations from one country that would lead to large numbers of repatriations from other countries as well.

IRAQ'S CURRENT POSITION CONTINUES TO BE ONE OF OPPOSING INVOLUNTARY REPATRIATIONS.

20. It is my understanding that U.S. government officials have represented to the Court that Iraq's longstanding policy opposing involuntary removals has changed, and that there is now no barrier on the Iraqi side to deporting the approximately 1400 Iraqi nationals in the U.S. who have or had final orders. That is not the case. There are several recent Iraqi government documents reaffirming Iraq's opposition to involuntary repatriations.

21. On March 8, 2018, the Iraqi Ministry of Migration and Displacement sent a letter regarding "forced return of Iraqi refugees" to the Iraqi Ministry of Foreign Affairs. The letter is signed by Dr. Jassim Mohamed Mohamed Ali [al-Jaff], the Iraqi Minister of Migration and Displacement. The Ministry of Migration and Displacement has jurisdiction over relevant policies of repatriation and resettlement.³ A copy of the letter in Arabic is attached as Exhibit A, and a certified translation as Exhibit B.

22. The letter states:

Based on the principle of protecting and caring for Iraqis abroad and in accordance with the human rights international laws and resolutions of, principles of the International Community and policy of our ministry, since it was established, we refuse the principle of forced return of Iraqis abroad or any other nationals, because it conflicts with humanitarian laws and principles.

³ As stated in section 2 of the 2004 order establishing the Ministry of Migration and Displacement (MOMD), "The MOMD shall be responsible for all matters pertaining to Iraqi refugees and displaced persons, including but not limited to matters associated with their repatriation, relocation, resettlement, and reintegration." It continues: "The MOMD shall develop policies and implement repatriation, relocation, resettlement, and reintegration programs as are needed to give effect to this Order." CPA Order Number 50, Jan. 10, 2004, available at https://govinfo.library.unt.edu/cpa-iraq/regulations/20040112_CPAORD50_MODM.pdf.

23. The letter further notes that, as an alternative solution, individuals can be allowed to return voluntarily. The letter requests the assistance of the Iraqi Foreign Ministry to inform Iraqi missions abroad.

24. On March 25, 2018, the Iraqi Ministry of Foreign Affairs sent a copy of the Ministry of Migration and Displacement's letter to Iraq missions and consulates abroad, along with a cover letter signed by Dr. Ahmed Nayef Rashid Al Dulaimi, the Head of the Consular Department.

25. The Ministry of Foreign Affairs cover letter summarizes the contents of the Ministry of Migration and Displacement's letter, and instructs the missions and consulates to "[k]indly take notice and the necessary action to coordinate with those countries to reduce this serious phenomenon that affects Iraqis abroad." This consular cable implicitly acknowledges the lead policymaking role of the Ministry of Migration and Displacement in this area.

26. When I first received a copy of these two letters from the *Hamama* class counsel, I verified their authenticity by contacting Director General of the Ministry's Information Directorate and Assistant to the Minister, Iman N. Hendi. Ms. Hendi not only confirmed that the letters are authentic, but reiterated that the government of Iraq remains opposed to involuntary repatriations.

27. On August 1, 2018, Ms. Hendi emailed me a copy of an additional letter from that ministry to the Ministry of Foreign Affairs, dated July 29, 2018. The letter is likewise signed by Dr. Jassim Mohamed Mohamed Ali, Minister of Migration and Displacement. On August 8, Ms. Hendi provided me an embossed, official copy which I sent to Class Counsel in the United States.⁴ A copy of that letter is attached as Exhibit C. A certified translation of the letter is attached as Exhibit D. Exhibit E is a copy of the email I received from Ms. Hendi on August 1st to which the letter was attached.

28. The July 29th Ministry of Migration and Displacement letter states:

We have received information indicating that some countries which host Iraqi nationals intend to forcibly return them, particularly, the EU countries and the USA. Since this issue

⁴ The *Hamama* Class Counsel have the official copy, and can provide it to the Court for review if desired.

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 deportation or forced return.

29. In addition to being sent to the Iraqi Ministry of Foreign Affairs, the letter is copied to the Iraqi Ministry of the Interior and the Iraqi Ministry of Transportation, so that they may “take the necessary actions to ensure forcibly returned nationals are not taken in.” The fact that the letter is copied to those ministries is significant, as the Ministry of the Interior (the police) has jurisdiction over immigration procedures at all airports and borders, and the Ministry of Transportation has jurisdiction over all airlines or aircraft flying to or from Iraqi airports. The inclusion of those ministries, who were not included on the first letter, seems clearly intended to ensure that those ministries participate in efforts to prevent forcible repatriations.

30. A statement which was first posted on the Ministry of Migration and Displacement’s official website in January 2018, and remains posted there, reads, “The government’s policy is clear and consistent with regard to the subject of the return of asylum seekers from abroad, stressing the importance of encouraging the voluntary return of asylum seekers from abroad and the refusal of forcible returns from those countries.”⁵

31. After the British government threatened to return multiple Iraqis involuntarily for repatriation, the Iraqi Parliament passed a resolution on May 3, 2017 to, in the words of the MP from the Legal Committee who introduced it, “demand that the government and the Ministry of Foreign Affairs take measures to block the forcible return of Iraqi refugees who do not volunteer to do so.”⁶

32. Iraqi government officials have also repeatedly made statements to the media reiterating Iraq’s opposition to and refusal of involuntary repatriations, such as an article in AI-Monitor from January 2018 that quotes the Minister of

⁵ The statement continued, “The ministry is continuing to coordinate with all European countries and through United Nations organizations for the purpose of returning Iraqis who want to return to the country voluntarily and refused to return them forcibly.” MOMD, (Jan. 14, 2018), available at <https://momd.gov.iq/Posts/Article?id=7024>.

⁶ A lawmaker collects signatures to issue a resolution preventing the forcible return of Iraqi refugees, ALSUMARIA (May 3, 2017), available at <https://www.alsumaria.tv/news/202767/#>.

Displacement and Migration as saying, “The chief of mission of the International Organization for Migration said in a meeting that the organization would look into a coordination mechanism with EU countries to prevent any forced return of Iraqi emigrants,” and his Deputy Minister Jasser al-Attiyya as saying, “The Iraqi government rejects forced returns, as we have understandings with some European countries concerning how necessary it is not to take any measures concerning forced returns.” In the same article, the Head of the Iraqi Parliament’s Foreign Relations Committee, Abdul Bari Zebari, “called upon the Iraqi government to not accept any negotiations with the European Union concerning forcibly returning Iraqi immigrants, as he suggests that returning them should be voluntary, not compulsory.”⁷

33. When the government of Finland threatened to return Iraqis against their will in spite of the Iraqi government’s policy, Iraq’s Ambassador to Finland Matheel al-Sabdi said Iraq “unequivocally” would not allow it, saying, “The Iraqi authorities, first of all, they [planeload of deportees] will not have permission to fly from Finland to Baghdad and get permission to land.” “Secondly, if they put them on commercial flights they [deported asylum seekers] will not be accepted at Baghdad International Airport.”⁸ When the government of Finland attempted to do this anyway earlier this summer, Iraq refused to accept deportees who had arrived in Baghdad from Finland. Iraq sent the deportees back to Helsinki on at least two separate occasions because they were not returning voluntarily and had no passports, even though they had been issued temporary one-way Finish travel documents.⁹

⁷ Mustafa Saadoun, Baghdad objects to European plans to forcibly repatriate Iraqis, AI-MONITOR (Jan. 26, 2018), available at <http://english.ankawa.com/?p=20171>.

⁸ Enrique Tessieri, Iraq will not accept forced deportations from Finland, MIGRANT TALES (Jan. 16, 2018), available at <http://www.migranttales.net/ambassador-matheel-dhayif-al-sabti-iraq-will-not-accept-forced-deportations-from-finland/>.

⁹ An article from June 2018 reads, “‘The Iraqi police refused to accept them because they said that they were not returning voluntarily and that they had no passports,’ Yusuf explained. Finnish police confirmed the events described by Yusuf, but declined to offer any further comment on the issue.” Iraq bounces deportees over travel documents, SPUTNIK (June 19, 2018), available at <https://sputniknews.com/europe/201806191065540858-finland-iraq-deportation/>.

34. Iraq's policy of refusing involuntary repatriations is not new; it is the longstanding policy of the government of Iraq.¹⁰

35. It is my understanding that American officials have represented to the Court that they will be able to obtain travel documents from the Iraqi Ministry of Foreign Affairs for class members, regardless of whether class members desire to return to Iraq. While the Ministry of Foreign Affairs is the Iraqi government ministry that is most likely to be the target of direct pressure from the U.S. State Department and other U.S. authorities regarding the repatriations, and while this pressure could lead to a small number of Iraqi travel documents being issued in specific cases, in my professional opinion it is unlikely that the Iraqi government as a whole will abandon its longstanding policy, and therefore unlikely that large scale involuntary deportations can be accomplished.

36. When inquiring into this subject over the last several weeks with officials from both the Iraqi Embassy in Washington and the Ministry of Foreign Affairs in Baghdad, I was repeatedly told that it was "a sensitive issue." Officials from the Ministry of Foreign Affairs told me that there was a substantial amount of pressure from the U.S. government to accept forced returns, against their policy. For this reason, they said they were hesitant to publicly state that they would not cooperate with U.S., in order to avoid negative diplomatic consequences, but instead would just continue to state that forced returns were against Iraqi policy. I was told by more than one Iraqi official that the government's position had not and would not change.

37. On Aug. 14, 2018, I spoke to Ahmed Mahgroub, a spokesperson for Iraq's Ministry of Foreign Affairs, who said, "Iraqi embassies all over the world can facilitate only the voluntary return of Iraqis, and can issue a travel document to return, for those who wish to return. That document is only valid on the single trip, to return to Iraq."

38. As of March 25, 2018, the Ministry of Foreign Affairs was reaffirming Iraq's long-standing position against involuntary repatriations by sharing the Ministry of Migration and Displacement letter with consular and

¹⁰ A 2012 article reads, "Baghdad bans forced return of deportees and threatens to fine airlines that carry failed asylum seekers." Owen Bowcott, THE GUARDIAN (July 2, 2012), available at <https://www.theguardian.com/world/2012/jul/02/iraq-parliament-deported-nationals-europe>.

embassy staff. I do not know if Ministry of Foreign Affairs has also shared the July 2018 Ministry of Migration and Displacement letter.

39. On August 27, 2018, I met with Dr. Hoshyar Zebari, who spent over a decade as Iraq's Minister of Foreign Affairs (2003-2014), served as Deputy Prime Minister in 2014, and then Finance Minister until 2016. He told me:

“We want our people back to build up our country and contribute to Iraq, but the violence and terrorism and bad governance make it not a conducive atmosphere for many people to return safely, so our policy was always against allowing them to be forced to come back. This never changed.”

“Our position in the Iraqi government has always been that we were against forced repatriations. This was a standard point of discussion with other countries. When I was at the Ministry (of Foreign Affairs), I confronted this issue with many European countries because there was a lot of pressure in those countries to return Iraqis. Immigration became an election issue in many countries, like it is in the U.S. now, so they were pressuring us.”

“It was a standard point of discussion, and we always said we will not accept any forced repatriations. Some countries tried to just send them on a plane sometimes, but we had to refuse them. When they [returnees] did not have Iraqi identification, we could not even know who they were. There were even cases where the person they attempted to send were not Iraqi.”

“Sweden, Denmark, some Nordic countries tried to send Iraqis against their will, and we told them, ‘We will accept only voluntary repatriations. It is up to you to make it more attractive for them to return by working with NGOs to create programs that fund and assist their return,’ something like that. We signed a memorandum of understanding with some countries to do this for Iraqis who were either not granted asylum or who the country was trying to send back for any other reason, but it needed to be voluntary. The Swedish government and Germany sent some back who agreed to return after programs from the countries with some funding by them and with programs with NGOs in Iraq. It took a lot of planning to implement it and we are talking small numbers - dozens, not hundreds. Even with this soft approach, there was uproar in the government - a lot in the parliament - that Iraqis were being pressured to return against their will.”

Dr. Zebari added that should any Iraqis be forced to return to Iraq, public reaction against these forced returns would be intensified because of reports in the Iraqi news media that U.S. Immigration and Customs Enforcement (ICE) has been violating court orders prohibiting coercion of the detainees. ¹¹

He continued:

“I instructed our embassies in those countries to issue documents - laissez-passer documents are what we call them - that allows them to travel to Iraq and then it [the laissez-passer document] is cancelled. I think it was the Swedes, the Danes, the Germans, the British, and some others, but it was always only voluntary repatriation. They were never to issue them to Iraqis being forced to return.”

“Even with pressure from America, the Ministry [of Foreign Affairs] should state their position clearly, as we did before. They have a responsibility to do this, but the Ministry is dysfunctional now, especially in this time of governmental formation.” ¹²

40. Even if the Ministry of Foreign Affairs, under pressure from the United States, agrees to issue a small number of travel documents for some Iraqi nationals there no indication that the Ministry of the Interior or Ministry of Transportation will allow, much less facilitate in, involuntary repatriations.

41. What is clear is that because the issue of involuntary removals is very fraught, even if the Ministry of Foreign Affairs would – under pressure from the United States – wish to allow some number of involuntary removals, other

¹¹ Some Iraqi media have published reports in Arabic describing Hamama class members being threatened, placed in solitary confinement, or otherwise coerced in the Calhoun County Jail as part of efforts to convince them to drop out of the class or sign statements that they volunteer to return to Iraq. فضيحة! عراقيون في السجون الامريكية يعاملون بشكل عنصري وغير آدمي ترجمة #خولة_الموسوي (English translation of title: Scandal! Iraqis In US Prisons Treated in Racist and Inhuman Way) IRAQNEWSPAPER.NET (Aug.24, 2018), available at <https://iraqnewspaper.net/ar/%D9%81%D8%B6%D9%8A%D8%AD%D8%A9%D8%B9%D8%B1%D8%A7%D9%82%D9%8A%D9%88%D9%86-%D9%81%D9%8A-%D8%A7%D9%84%D8%B3%D8%AC%D9%88%D9%86-%D8%A7%D9%84%D8%A7%D9%85%D8%B1%D9%8A%D9%83%D9%8A%D8%A9-%D9%8A%D8%B9%D8%A7/>.

¹² See paragraphs 45-46 for an explanation of the relevance of government formation.

ministries, the Iraqi parliament, and other Iraqi officials will fiercely oppose such efforts. The greater the number of removals, the greater the resistance there will be.

42. Even a small number of removals of unwilling repatriates would be the source of significant controversy in the Iraqi government and would draw substantial attention to these cases, including the likely profiling in the media of certain repatriated individuals already at risk, or whose criminal convictions would be made public, increasing that risk.

43. If such repatriations occur at all, it will be a very laborious and time-consuming process, subject to great uncertainty based on competing political pressures and shifting political fortunes of Iraqi government officials who might support limited involuntary repatriations (in response to U.S. government pressure) and those who oppose them.

44. There is no reason to believe that Iraq's next administration would reconsider this policy. The political coalitions that got the most votes during the recent election are both led by anti-American militia leaders, Muqtada al-Sadr and Hadi al-Amiri, the latter who receives direct support from Iran's Islamic Revolutionary Guards Corps. Not only do their increased influence add to the severity of the danger to Iraqis strongly associated with America¹³, but they will be even less likely to break their policy under U.S. pressure than caretaker Prime Minister Haider al-Abadi, seen as pro-American. Even if Abadi is able to retain his position through current post-election negotiation, there will be added pressure to not appear to be subjugated by the U.S.

45. Even if there were some suggestion, which there is not, that the next Iraqi administration would somehow be more amenable to changing their policy, the next government, and therefore the next functioning administration, is also not likely to be formed any time soon. The process of government formation, which under the Iraqi Constitution can last up to 90 days, began on Aug. 19, 2018, as Iraq's Federal Supreme Court finally ratified the results of Iraq's disputed May 12 national election. If the nominated prime minister is not successful at forming a

¹³ In mid-August, the US Department of State issued a travel advisory its highest threat level, 4, which read, "Numerous terrorist and insurgent groups are active in Iraq and regularly attack both Iraqi security forces and civilians. Anti-U.S. sectarian militias may also threaten U.S. citizens and Western companies throughout Iraq." US DEPARTMENT OF STATE (Aug, 18, 2018), available at <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/iraq-travel-advisory.html>.

cabinet within 90 days, an extra 45 days is allowed for a second nomination and attempt to form a government, and this could repeat again. While this process of negotiation plays out, it is extremely unlikely that Prime Minister Abadi, or any other Iraqi politician, would take the risk of changing the policy of forced repatriation and being perceived as weak, or as America's "man in Baghdad," especially given Tehran's increased influence in Iraq.

46. In my conversation with former Minister of Foreign Affairs, Dr. Hoshiyar Zebari, he addressed this issue, and explained:

"Before the government is formed, no minister can make an important decision on a sensitive issue like this, so we are talking about three months if it goes well. Even [Prime Minister] Abadi's position is tenuous. Nobody can make an unpopular decision like this now... And we know that [current Minister of Foreign Affairs Ibrahim] al-Jaafari isn't coming back as the next minister, and a new minister can't begin with this unpopular decision."

47. In sum, the ability of the United States to repatriate groups of Iraqi nationals who do not desire to return, much less a large number of them, is highly uncertain, and in my professional opinion unlikely to occur in the foreseeable future.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge, information, and belief.

Executed this 27th day of August, 2018, in Erbil, Iraq.



Daniel Smith
Erbil, Iraq