

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I**

Hawaii, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

CIVIL ACTION NO. 1:17-CV-00050-DKW-KSC

**DECLARATION OF REBECCA HELLER,
DIRECTOR OF THE INTERNATIONAL
REFUGEE ASSISTANCE PROJECT**

DECLARATION OF REBECCA HELLER

I, Rebecca Heller, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Director and co-founder of the International Refugee Assistance Project (“IRAP”), a project of the Urban Justice Center, Inc. I have been with IRAP since August 2008.
2. As IRAP’s Director, I oversee all of IRAP’s operations and activities, including programming and development. I am in constant, regular communication with my staff who provide legal representation to vulnerable individuals and consult with pro bono attorneys and law students working on IRAP cases. I also represent a number of refugee and visa cases myself, consult with numerous attorneys working on related cases, monitor field conditions on the ground in the Middle East/North Africa Region, liaise with the U.S. government and the United Nations around refugee and visa processing issues, and coordinate partnerships with numerous NGOs working with and advocating for refugees and immigrants in the U.S. and abroad.

3. Throughout my eight and a half years working on Middle East refugee issues, I have overseen, consulted on and/or represented thousands of cases. I also teach a seminar on refugee law and practice at Yale Law School. Founded in 2008, IRAP's mission is to provide and facilitate free legal services for vulnerable populations around the world, including refugees, who seek to escape persecution and find safety in the United States and other Western countries. IRAP has a staff of over 25 individuals based in offices in New York, Lebanon, and Jordan. IRAP works with 29 law school chapters and over 75 firms to provide pro bono assistance to persecuted individuals around the world. IRAP relies on the volunteer and pro bono assistance to meet the needs of its client base.
4. IRAP lawyers provide legal assistance to refugees and other immigrants to the United States throughout the resettlement process. IRAP also assists many individuals (including refugees, asylees, Lawful Permanent Residents and U.S. Citizens) inside the United States who need assistance filing family reunification petitions for family members overseas. IRAP has provided legal counseling and assistance to nearly 20,000 individuals.
5. Since its inception, IRAP has helped to resettle over 3,200 individuals from 55 countries of origin, with the majority resettled to the United States.
6. IRAP's client base includes refugees from Iraq, Afghanistan, Egypt, Eritrea, Ethiopia, Iran, Jordan, Kuwait, Libya, Pakistan, Palestine, Somalia, Sudan, Syria, Turkey, and Yemen. Of IRAP's current 606 open cases, 421 families are from one of the six countries or are refugees from other countries and targeted in the new Executive Order.

7. Many of IRAP's clients have been referred to the US for resettlement by UNHCR. UNHCR only refers the most vulnerable refugees for resettlement, such as unaccompanied minors, women-at-risk, and individuals with urgent medical or protection concerns. Less than 1% of refugees worldwide are referred for resettlement by UNHCR. If UNHCR refers an individual to USRAP, they are likely extremely vulnerable and have strong, pre-vetted refugee claims. Further, once UNHCR refers a refugee to USRAP, it precludes them from referring the refugee to another country until the USRAP process is completed.
8. IRAP works with some of the most vulnerable individuals in the world, including US.-affiliated refugees, LGBTI refugees, women who have survived trafficking, sexual and gender-based violence, and children with emergency medical needs.
9. As the refugee resettlement process is quite intricate, some background on the various programs will help explain the importance of recognizing the attorney-client relationship between a refugee and a legal services provider as well as how many refugees have a de facto bona fide relationship with a person or entity in the United States.

The U.S government's interpretation of the Supreme Court decision contradicts the basic mechanics of the U.S. Refugee Admissions Program, as all refugees must eventually form a direct relationship to a U.S. entity in order to be resettled to the United States.

10. Refugees are resettled to the United States through three "priority" streams, which are different ways to access the U.S. Refugee Admissions Program ("USRAP"). Though the names of these categories are "Priority 1," "Priority 2," and "Priority 3" (or P-1, P-2, and P-3), these names do not indicate the order of priority.

11. Priority 1 (P-1) referrals are individuals who are referred based on particular, individual needs. These cases may be referred to the U.S. Refugee Assistance Program (“USRAP”) by the United Nations High Commissioner for Refugees (“UNHCR”), or, in much smaller numbers, by a U.S. Embassy or a qualified NGO. Although not required, some refugees referred by UNHCR have close family members in the United States, including grandparents, aunts, uncles, and cousins.
12. Refugees who access USRAP via a U.S. Embassy are often personally known to the embassy. State Department guidance in the Foreign Affairs Manual gives examples of these individuals such as prominent members of a political opposition or religious minority, well-known journalists, or LGBTI individuals. Similarly, NGOs which refer refugees to USRAP must have been trained by the Departments of State and Homeland Security and work with the State Department’s regional refugee coordinator to make the referral.
13. One of IRAP’s P-1 clients is a transgender Sudanese activist who fled to Egypt as a result of severe persecution because of her LGBTI work. She became known to the U.S. Embassy in Sudan which referred her to the State Department and she was given access to USRAP. She has been now waiting in limbo for a USCIS interview to be scheduled and remains in danger in Cairo where transgender individuals are routinely harassed, assaulted, and persecuted.

By definition, refugees in the Central American Minors Program, the Lautenberg religious minorities program, and the Direct Access Program for U.S.-affiliated Iraqis and Syrians must have a direct relationship with a U.S. person or entity to access USRAP.

14. Priority 2 (P-2) referrals are individuals who are eligible for resettlement based on a State Department determination that they belong to a group of “special humanitarian concern” to the United States. Several P-2 groups exist including Refugee Processing for Religious Minorities in the Former Soviet Union and in Iran (known as the Lautenberg Amendment), the Central American Minors Program, and the Direct Access Program for U.S.-affiliated Iraqis and Syrians. All of these P-2 categories require a direct U.S. tie in order to access the U.S. refugee resettlement program.
15. The P-2 group for religious minorities in the Former Soviet Union and in Iran (authorized by the Lautenberg Amendment), requires a U.S.-based resettlement agency to initiate the application for the refugee, thereby immediately establishing a direct relationship between a U.S. entity and the refugee. Religious minorities in the Former Soviet Union include Jews, Evangelical Christians, Ukrainian Orthodox, and Catholics. A spouse, parent, child, sibling, or grandparent can initiate the application through the resettlement agency by filing an Affidavit of Relationship. Those same categories of family members are eligible to apply for refugee status. Religious minorities in Iran include Christians, Jews, Mandeans, Baha’is, and Zoroastrians, and a U.S. relative or friend may initiate the application.
16. Another P-2 group, the Central American Minors (“CAM”) program, exists for refugee children from El Salvador, Guatemala, and Honduras who have parents lawfully in the United States. The program was founded to give children an alternative to the dangerous journey that some children had attempted without authorization. The purpose of the program is to reunite families in a safe manner. The

program requires the minors to demonstrate a relationship to their parents via DNA testing and filing an Affidavit of Relationship.

17. One of the larger P-2 groups is known as the Direct Access Program for U.S.-affiliated Iraqis and Syrians (“DAP”). The Direct Access Program allows Iraqis and Syrians who have a U.S. tie, either by family or employment, to come to the United States through the refugee program.
18. In 2008, the bipartisan Refugee Crisis in Iraq Act was signed into law, allowing six categories of Iraqis to access USRAP based on work for the US government or a US-based entity or family connections with individuals in the United States. In order to access USRAP through employment, Iraqis must have either worked as an interpreter for the U.S. Government or Multi-National Forces in Iraq, been employed by the U.S. government in Iraq, been employed by a U.S. funded organization or entity, or been employed by a U.S.-based media organization or NGO. Before being interviewed by USCIS, the State Department must verify the employment relationship through contracts, HR letters, badges of employment, and letters of recommendation from U.S. supervisors.
19. Both Iraqi and Syrian nationals with an approved I-130 petition are also eligible for the DAP. This program allows participants to obtain travel documents before their visa priority date would otherwise become current, thereby allowing them to join their families sooner in the United States. Both groups, in all circumstances, will satisfy the bona fide relationship test because the program requires a direct relationship with a U.S. entity or family member to access the program. At least 50,000 individuals are waiting for interviews in the Iraqi program; we estimate that

60,000 total individuals may be waiting for admission under the Iraqi and Syrian DAP.

20. Our P-2 refugee clients face extreme danger while they wait to be processed. For example, one of our clients completed his pre-screening interview on June 12, 2017 and is awaiting his USCIS interview. As he waits, he hides in his apartment in Baghdad, Iraq, with his wife and children. If they leave their apartment, they are in danger of being killed by radical Shiite militia known as the Mahdi Army. The Mahdi Army already killed one of his brothers and has tortured another because of the family's behalf of the U.S. government. They are intent on killing IRAP's client as well and is only means of true safety is resettlement to the United States.

21. Another P-2 IRAP client is a 36-year-old Syrian refugee who fled to Yemen and then Saudi Arabia with her husband and two young children. Her sister is a U.S. Citizen, living in the United States, who filed an I-130 petition for her to come to the United States. The petition has been proved the client has accessed USRAP through DAP. She cannot return to Syria, where she was persecuted for her religion. Her and her family's lives continue to be in grave danger in Saudi Arabia, where she lives near the Yemeni border and is exposed to frequent rocket attacks and ongoing military conflict.

Refugees in family reunification programs clearly demonstrate their bona fide relationship to a U.S. person because the U.S.-based relative is required to access USRAP.

22. Priority 3 (P-3) referrals are individuals with close relatives—parents, children, and spouses—recently admitted to the United States as a refugee or asylee and require DNA testing to access USRAP. P-3 submissions have four procedural requirements:

(1) affidavit of relationship (AOR); (2) minimum age; (3) five-year filing; and (4) DNA testing. To initiate a P-3 case, a local resettlement agency must submit an Affidavit of Relationship (“AOR”) on behalf of the P-3 applicant. In order to complete the form, the principal relative must upload current digital photographs of all family members, derivatives, and add-ons. Once completed, the local agency will submit the AOR to a Refugee Processing Center, which will then refer it to USCIS for case creation, processing, and adjudication. P-3 applications require DNA relationship testing between the principal relative and their biological parents or biological children. The principal relative bears the initial costs of DNA testing. We estimate that 2,000 individuals are awaiting admission in the P-3 program.

23. Alternatively, an individual who has been granted asylum or refugee status in the United States and who was also the principal applicant for his or her family may petition to have his or her spouse and/or unmarried child(ren) under the age of 21 “follow-to-join” him or her in the United States. A Form I-730 Refugee/Asylee Relative Petition must be filed for each qualifying family member within two years of the principal applicant’s admission as a refugee or grant of asylum.

The U.S. Refugee Admissions Program requires that all refugees have a direct relationship to a U.S. entity in order to be resettled.

24. Refugees who do not have a family member in the U.S. or a relationship with a U.S. entity prior to their referral to USRAP, will necessarily develop a relationship with a U.S. entity at some point in the processing. Two particular points in processing may lead to such a relationship.

25. First, once a refugee has completed multiple interviews assessing their eligibility for refugee status, his or her name is submitted to any one of the nine non-profit agencies that contract with the U.S. government to provide resettlement (specifically reception and placement services) and integration services. These voluntary resettlement agencies, called “volags,” receive names of refugees cleared for travel, and then provide “assurances,” or a guarantee that they will provide their services to that individual when they arrive. Assurances typically happen close to the last stages of the resettlement process, which is the arrival notice. As of June 26, 2017, there were 26,353 assured (but not arrived) individuals in the USRAP pipeline. Some, but not all, of the services volags provide include picking refugees up at the airport, providing them with culturally appropriate meals, securing them with long-term housing, accessing benefits and healthcare, and providing job training.
26. These assurances constitute a direct tie to a U.S. entity. However, the government has indicated that they will not resettle all currently assured refugees after July 6, 2017, despite their direct relationships with U.S. entities. There are assured refugees booked for travel to the United States through July 27, 2017, and resettlement agencies across the United States have been preparing tirelessly for their arrival.
27. Second, an individual may have legal representation from a U.S.-based organization; IRAP is the primary organization that provides legal representation to refugees in the USRAP.
28. Furthermore, many P-1 refugees who do have close family ties in the United States would not qualify for resettlement under the government’s current interpretation of a “bona fide relationship” under the Supreme Court decision.

29. For example, a Ukrainian refugee who is currently scheduled for travel to the United States after July 6, 2017, would no longer be allowed to enter the United States because her the closest family member she has in the United States is her grandmother.
30. As a result of the government's current interpretation of the Supreme Court's decision, many refugees—those who lack any of the family relationships that the government currently recognizes—would have their applications delayed by months or years. These long delays could result from the 120-ban because security and medical checks only line up for a short window, after which the applicant must restart the security check process. Additionally, with a lowered refugee cap of 50,000, there are fewer resettlement slots available this fiscal year, adding to the delays in resettlement. See Ex. ____). Yet all of these clients have a strong relationship with IRAP itself.

Representation by legal service providers, such as IRAP, constitute an attorney-client relationship and qualify as a bona fide relationship between a refugee and a U.S. person or entity.

31. Because of the complexity of the refugee resettlement process, IRAP lawyers and *pro bono* legal teams work closely with their clients to bring them to safety. The representation that IRAP provides is intensive and includes multiple forms of assistance. For example, IRAP has offices in Amman, Jordan and Beirut, Lebanon which are staffed with U.S.-barred attorneys where they regularly meet with refugee clients, prep them for and accompany them to interviews, and assist them with psychosocial, educational, and medical referrals to local partner organizations. IRAP

also has case workers on staff, such as individuals trained in social work, who provide non-legal support to our clients.

32. The intake and screening process itself establishes a strong relationship between the organization and the client. This process can take several weeks to months, with IRAP attorneys or volunteers spending hours each day interviewing a client, establishing the facts underpinning his or her application, and preparing a declaration and application on the basis of those facts.
33. After an intensive and exhaustive intake process, IRAP may take on a refugee's case for representation after signing a formal representation agreement. These cases frequently require two to three years of representation, if not longer. IRAP attorneys assist refugees through the process by conducting extensive fact finding to corroborate their clients' claims, drafting legal submissions before UNHCR and the U.S. government advocating for their client's case, and preparing their clients for the adjudication interviews which can last for hours. Additionally, IRAP attorneys monitor their clients' medical and protection needs and will request the relevant agency to expedite processing if there is urgency in the case. For P-2 DAP employment cases, IRAP attorneys will assist with verifying the client's affiliation with the U.S. government, a U.S.-funded NGO, or a U.S. media organization. For P-2 DAP family cases, IRAP attorneys assist the U.S.-based family member with filing a Form I-130 to USCIS and then continues representing the refugee client once they access USRAP.
34. If an application is denied by UNHCR, IRAP staff will assist clients by submitting an appeal. If the U.S. government denies a client refugee status, IRAP attorneys prepare

a Request for Review (“RFR”) on behalf of the client and also file Freedom of Information Act (“FOIA”) requests to supplement their RFR. They conduct further client interviews to prepare supplemental declarations, draft the request itself, and help the client prepare for the interview.

35. Moreover, IRAP attorneys have provided guidance and advice to their refugee clients entering the United States and have filed habeas petitions for clients who have been unlawfully detained trying to enter the United States.

36. During this process, IRAP also provides other forms of practical assistance. For example, IRAP has worked with partner organizations to provided safe housing for clients whose lives are in immediate danger while they await the outcomes of USRAP. IRAP has also worked with psychologists and psychiatrists to provide counseling and evaluations to refugees who have suffered from severe persecution and trauma and are in need of mental health treatment.

The U.S. government’s interpretation of the Supreme Court decision reflects a fundamental misunderstanding of USRAP and an attempt to dismantle a lifeline for persecuted individuals.

The government’s actions continue to take a toll on IRAP’s clients and resources.

37. The government’s interpretation of the injunction will also continue the significant backlog in the USRAP that resulted from the first Executive Order, delaying the processing of many of IRAP’s clients’ cases. This delay will force IRAP to exhaust more of its resources, as the average lifespan of a case now grows significantly. IRAP has a legal department composed of staff attorneys who advise and provide consultation to its network of pro bono legal volunteers on their casework. Because of delays in processing, IRAP’s attorneys must spend significantly more time on each

case, providing guidance about alternative routes to safety and possible exemptions. In addition to IRAP's staff attorneys' existing and ongoing responsibilities, they must now also draft and review additional submissions to State and to the Department of Homeland Security ("DHS"), such as waiver requests for admission to the United States for their clients, which will be reviewed by a case-by-case basis under the new Executive Order. Further, IRAP's field staff must largely give up their work on refugee case processing and focus primarily on ensuring the local safety of refugees who thought their lives would be saved for resettlement, and who are now caught in life-threatening limbo.

38. As a result of the government's narrow interpretation, IRAP attorneys must also counsel their own clients about the changes in law as well as pursue other resettlement options for them, even though many were already being processed in the U.S. Refugee Admissions Program ("USRAP"). The first Executive Order has already wasted significant resources (typically hundreds of hours of legal representation over the course of many years navigating USRAP), forcing IRAP and our clients to make the Hobson's choice between starting the process over with another country, attempting to shelter in place in spite of life-threatening circumstances, or undertaking dangerous journeys to reach safety across other borders.

39. I am deeply concerned by the U.S. government's interpretation of the Supreme Court decision. In addition to many refugees in USRAP accessing the program through a bona fide relationship to a U.S. person or entity, all refugees develop a bona fide relationship to a U.S.-based entity once a resettlement agency assures their reception

and placement in the United States. Thus, to deny refugees in USRAP admission to the United States based on a lack of bona fide ties is contrary to the functioning of the refugee resettlement program.

40. Moreover, I believe that the government's actions reflect an attempt to dismantle USRAP. For example, in June 2017, I learned of denials of 50 Somali refugee cases out of Kenya even though USCIS had not yet interviewed any of those families. In other words, they were denied before a U.S. immigration officer even looked at their case. Having worked with refugees for nearly a decade, I have never seen this type of denial en masse before, and I fear that the government is seeking to block entire nationalities from coming to the United States through USRAP.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: June 30, 2017

A handwritten signature in black ink, appearing to read 'Rebecca Heller', with a long horizontal line extending to the right.

Rebecca Heller