

# Promises to the Persecuted

## The Refugee Crisis in Iraq Act of 2008

April 2009

## About Human Rights First

Human Rights First believes that building respect for human rights and the rule of law will help ensure the dignity to which every individual is entitled and will stem tyranny, extremism, intolerance, and violence.

Human Rights First protects people at risk: refugees who flee persecution, victims of crimes against humanity or other mass human rights violations, victims of discrimination, those whose rights are eroded in the name of national security, and human rights advocates who are targeted for defending the rights of others. These groups are often the first victims of societal instability and breakdown; their treatment is a harbinger of wider-scale repression. Human Rights First works to prevent violations against these groups and to seek justice and accountability for violations against them.

Human Rights First is practical and effective. We advocate for change at the highest levels of national and international policymaking. We seek justice through the courts. We raise awareness and understanding through the media. We build coalitions among those with divergent views. And we mobilize people to act.

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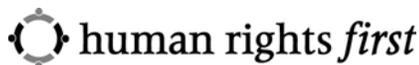
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The primary author on this report was Ruthie Epstein. The researchers were Ruthie Epstein and Amelia Templeton. Other staff members who contributed writing and/or editing include Eleanor Acer, Jessica Chicco, Anwen Hughes, Annie Sovcik, and Tad Stahnke.



### Headquarters

333 Seventh Avenue  
13th Floor  
New York, NY 10001-5108

Tel.: 212.845.5200  
Fax: 212.845.5299

### Washington D.C. Office

100 Maryland Avenue, NE  
Suite 500  
Washington, DC 20002-5625

Tel: 202.547.5692  
Fax: 202.543.5999

[www.humanrightsfirst.org](http://www.humanrightsfirst.org)

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# Introduction

## U.S.-Affiliated Iraqis Have Been Targeted

In the course of the United States' six-year military involvement in Iraq, thousands of Iraqis have worked as translators and in other support roles with the U.S. military, and hundreds have been employed by the U.S. diplomatic mission in Baghdad and by regional embassy offices and provincial reconstruction teams. Many tens of thousands more have worked with contractors on U.S.-funded reconstruction projects.

Iraqis working in support roles with the United States have faced targeted persecution and direct threats from insurgent groups, militias, and terrorist organizations. One Iraqi translator interviewed by Human Rights First noted the first moment he realized that his work with the United States had put him in danger—on a day in October 2003, when he read an announcement in the newspaper from a Sunni insurgent group that declared the group's intention to kill any Iraqis collaborating with the United States, "including translators, drivers, technicians, and engineers." An in-depth examination by George Packer in the March 2007 *New Yorker* reported that kidnapping and murder of Iraqi interpreters was commonplace by 2004.

Iraqis working with nongovernmental organizations (NGOs) and media outlets, and religious minorities, have also been singled out for threats, persecution, and assassination. In 2008, according to the U.S. State Department's Human Rights Report, "Violence against the media, primarily by militia and insurgency groups, was commonplace." A 2007 Feinstein Center study notes that Iraqis interviewed in areas affected by intense military activity tended to regard both foreign and local NGO workers as "spies."<sup>1</sup> The U.S. Commission on International Religious Freedom and the U.S. State Department, along with other groups, have well documented the ongoing dangers faced by Iraq's religious minorities, and the unlikelihood that the situation will improve for them inside Iraq.

### About the Numbers

*The U.S. government has not made a public estimate of the number of U.S.-affiliated Iraqis who may face danger as a result of their work with the United States. The Act required the President to submit a report including this estimate on May 28, 2008; President Bush did not comply with this requirement. In the absence of government data, Human Rights First has arrived at the following estimates: Approximately 146,000 Iraqis have worked with the U.S. government, contractors, NGOs, or media – not including family members. Approximately 4,200 have actually made it to the United States, including some family members, out of at least 20,000 applications. The detailed breakdown of our estimate appears in the Appendix.*

As security in Iraq deteriorated and the power and reach of violent non-state and para-state actors in Iraq increased, it

became impossible for Iraqis associated with the United States to protect themselves. Many of these Iraqis—along with other targeted groups inside Iraq—fled their homes, or left the country altogether seeking safety.<sup>2</sup>

Former U.S. government officials and staff, members of Congress, Iraq war veterans, journalists, and Human Rights First and other refugee advocates argued that the United States had a moral obligation to address the needs of Iraq's refugees, and a particular responsibility to resettle persecuted Iraqis with ties to the United States. The greatest numbers had fled to Syria and Jordan, where protection was limited and unreliable, and they faced high risk of violence if forced to return to Iraq. But under President Bush, the U.S. response to the Iraqi refugee crisis was slow and inadequate. Resettlement in the United States was embarrassingly low—in fiscal year 2006<sup>3</sup>, the year that hundreds of thousands of Iraqis fled the sectarian violence that followed the bombing of the Samarra mosque, the United

States accepted just 202 Iraqis for resettlement. In FY 2007, resettlement of Iraqi refugees increased only to 1,608. The U.S. Embassy in Baghdad began to refer its local employees for resettlement, and a limited special immigrant visa program was created for Iraqi and Afghan translators who had worked with the U.S. government. These efforts were piecemeal, and a more comprehensive change in policy was necessary.

## Congress Enacts a Response: The Refugee Crisis in Iraq Act

Beginning in January 2007, Senator Edward Kennedy (D-MA) led a congressional effort to help Iraqis who had close ties to the United States. Senator Kennedy and Senator Gordon Smith (R-OR) introduced the Refugee Crisis in Iraq Act in June 2007. Human Rights First helped to shine a light on the absence of a serious resettlement effort and the need for action, working closely with others—including Iraq war veterans and Iraqis who had risked their lives working for the U.S. government or U.S. media. Former Ambassador to Iraq Ryan Crocker’s frustration with the extremely slow pace of resettlement for Iraqis, expressed in a sensitive cable that was provided to the Washington Post in September 2007, also proved to be a turning point.<sup>4</sup> The increasing public attention led to the appointment of a senior coordinator at the State Department to handle Iraqi refugee issues, also in September 2007. The legislation proposed by Senators Kennedy and Smith received broad bipartisan support, passed the Senate unanimously that fall, and was signed into law on January 28, 2008, as part of the Department of Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181).

The Refugee Crisis in Iraq Act committed the United States to a more ambitious set of programs to provide routes of escape to the United States for U.S.-affiliated Iraqis facing danger inside Iraq, including:

- Special immigrant visas (SIVs)—for Iraqis who worked for the U.S. government or contractors for a year or more and experienced an ongoing serious threat;
- Direct access to the U.S. refugee admissions program (priority 2 or P2 processing)—for Iraqis who worked for the U.S. government, contractors, or U.S.-based NGOs or media organizations, and their family members, and for persecuted religious or minority groups with close family members in the United States; and

- Processing inside Iraq (in-country processing)—for P2-eligible Iraqis unable to flee the country, in recognition of the tightening restrictions at the Iraqi borders with Syria and Jordan.

In addition to these programs, the Act directs the Secretary of State to create additional P2 priority resettlement categories for groups of special humanitarian concern; permits SIV recipients to access resettlement benefits upon arrival in the United States; requires the posting of embassy refugee coordinators dedicated to the needs of displaced Iraqis in the Middle East; and permits Motions to Reopen for certain Iraqi asylum seekers in the United States.

Iraqis—including U.S.-affiliated Iraqis and minority groups—continue to face targeted persecution and even death, despite the recent decline in generalized violence in most of Iraq’s provinces. These security improvements are by all accounts—including that of Army Gen. David Petraeus, former commander of the Multi-National Forces in Iraq—fragile and reversible. It is also difficult to predict what will happen to the general security situation inside Iraq as the United States draws down its troops over the next year. The Refugee Crisis in Iraq Act remains vitally necessary for thousands of Iraqis seeking safe futures for themselves and their families.

## One Year Later: An Assessment of Implementation

The introduction and passage of Act were key factors influencing the Bush administration’s eventual shift in approach to the Iraqi refugee crisis. After years of effectively ignoring the mass displacement unleashed by the Iraq war, the U.S. government began to establish broader mechanisms to address the situation, and to contribute more significantly to UN appeals to help displaced Iraqis in the Middle East. Today, more than a year after the passage of the Refugee Crisis in Iraq Act, the programs it mandated are in place. Many officials and staff at the State Department’s Bureau of Population, Refugees and Migration, the U.S. Citizenship and Immigration Services, the U.S. Embassy in Iraq, and the International Organization for Migration have worked hard to launch these programs.

The legislation’s effectiveness, though, clearly hinges on how well the programs are working. Given Human Rights First’s role in highlighting the need for this legislation from the beginning, we have closely monitored its implementation. Over the past nine months, we have evaluated the information that is publicly

available on these programs and interviewed government officials, U.S. military veterans, attorneys, journalists, NGO staff, and Iraqis to supplement this information. We have also requested and received some useful data from the Departments of State and Homeland Security. Our research indicates that there are some significant obstacles that are undermining the full and effective implementation of the law. The report that follows details our findings and recommendations, which are described in brief below.

Even as the U.S. military begins to withdraw from Iraq, the obligations of the United States to Iraqis facing serious danger remain. President Obama affirmed these obligations to Iraqi refugees during his campaign, and has reiterated them since he took office. The Obama administration, the new leadership at the Departments of State and Homeland Security, and members of Congress now have the opportunity to provide the attention and support necessary to address the plight of Iraqi refugees—and to ensure that Iraqis who risked their lives to work with United States are not left behind.

Human Rights First's key findings:

- **Low arrival rates:** Only a small percentage of the 15,627 U.S.-affiliated Iraqis who applied directly to the U.S. refugee admissions program and whose U.S. ties have been verified have actually arrived in the United States—less than 9 percent as of April 22, 2009.
- **Low SIV application rates:** The number of Iraqis who have applied to the new SIV program is surprisingly low—just 960 applications have been submitted to the U.S. Citizenship and Immigration Services as of March 20, 2009.
- **Long processing times:** For both refugee and SIV applicants, the entire process—from initial application to arrival in the United States—may take a year or more, far too long for programs that were designed to rescue Iraqis facing danger due to their ties to the United States.
- **Endless delays for security clearance:** The necessary multi-agency security clearance process appears to lack adequate staffing or coordination among agencies, and often leaves Iraqis and other refugees and immigrants languishing in destitution or danger abroad for months or years while their applications wait for approval in Washington.

Human Rights First's key recommendations:

- Increased staffing at Embassy Baghdad and the International Organization for Migration, and increased frequency and staffing of DHS circuit rides to the region, to reduce long processing times; the State Department must allocate the space necessary for these increases;
- A review and improvement of the SIV application procedure to ensure that it is meeting the needs of eligible Iraqis;
- A review and improvement of the staffing of and coordination among agencies involved in the security clearance process to ensure that Iraqis who meet all the clearance standards and other requirements for admission to the United States are not stranded while their requests for resettlement are pending;
- Diplomacy to urge the governments of Syria and Turkey to permit expansion of priority access to the U.S. refugee admissions program to the tens of thousands of vulnerable Iraqi refugees living in those countries, which currently do not permit it; and expansion of priority access to certain vulnerable Iraqi minority groups;
- Improved transparency through submission to Congress of required report from the President (not submitted as required under the previous administration), and provision of complete data on application rates, arrival rates, and processing times on a quarterly basis to Congress; and
- Congressional oversight and funding to ensure adequate staffing of the Act's mandated programs and the necessary post-arrival resettlement assistance for Iraqis and their families in the United States.

## Recommendations

### To the President

- Submit an unclassified report on the status of the SIV program and P2 processing for Iraqi refugees to Congress within 90 days. This report was due on May 28, 2008.<sup>5</sup> It is due annually thereafter through 2013. As required by law, the report should include:
  - assessment of the financial, security, and personnel considerations and resources necessary to support the SIV, P2, and in-country refugee processing programs;
  - number of Iraqis who were or are employed by the U.S. government;
  - number of Iraqis who have applied for SIVs; and
  - in the case of applications pending for longer than 6 months, reasons that visas have not been issued.
- To set benchmarks for needed improvements, it should also report:
  - average length of time required to issue a Security Advisory Opinion for Iraqi refugee and SIV applicants—a key step in security clearance, identified by then-Ambassador Ryan Crocker as a bottleneck in September 2007<sup>6</sup>;
  - average wait time for Iraqi P2 applicants inside Iraq for a DHS refugee status interview, and the reasons for delays; and
  - average wait time for approved SIV applicants for a visa interview at their local consulate.
- Review and take steps to improve the timeliness of the multi-agency security check process for Iraqis and other immigrants and refugees, ensuring that the United States is meeting both its national security needs and its international legal and humanitarian obligations, so that individuals who meet all requirements for admission to the

United States do not wait indefinitely for clearance, including:

- designate staff persons at a single agency to coordinate the check among all agencies to ensure that each agency completes its respective check within a specific number of days;
  - establish a clear procedure and target time frame to resolve potential matches (“hits”) in the Interagency Border Inspection System (IBIS) database and the security databases of DHS, State Department, Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), and other agencies so that applicants with common names do not get stuck in the system; and
  - ensure that the CIA, FBI, and other relevant agencies are adequately staffed to meet the security clearance needs of the SIV, P2, and other immigrant and refugee admissions programs in a timely manner.
- Retain the position of State Department Senior Coordinator for Iraqi Refugee Issues, who has been instrumental in establishing infrastructures for processing U.S.-affiliated Iraqis in the Middle East, to ensure operational continuity and improvement in the SIV, P2, and in-country programs. Also maintain a coordinating and oversight position at DHS to ensure that DHS processes SIV applications and interviews refugee applicants in a timely manner.

## To the State Department

- Review the SIV application process, in cooperation with DHS (see p. 13 for specific areas of concern), and make improvements to ensure that it effectively and efficiently meets the needs of Iraqis who face danger due to their employment with the U.S. government, military, or contractors, while retaining all necessary security safeguards;
- Increase staffing of U.S. Embassies and the International Organization for Migration (IOM) so that they are able to clear all backlogs and process SIV and P2 refugee applications expeditiously, with a goal of SIV and in-country P2 applicants processed and approved applicants on a plane to the United States within four months, and applicants outside Iraq within six months, of verification of U.S. affiliation (a process which itself can take several months or more); and allocate the space necessary to accommodate these increases;
- Create additional P2 resettlement categories for vulnerable groups, as directed by the Act<sup>7</sup>, including:
  - Palestinian refugees from Iraq, starting with those living in the extremely unsafe Al-Waleed camp just inside Iraq, who number about 1,400; and
  - certain Iraqi religious and minority groups—e.g. Mandaeans and LGBT Iraqis, who continue to face life-threatening danger inside Iraq and have little prospect of safe return—including those without close family members in the United States; and
- Press the governments of Syria and Turkey, at senior levels and in consultation with the President, DHS, the UN refugee agency, and international NGOs, to permit the U.S. government to process P2-eligible Iraqis inside Syria and Turkey, so that some of the most vulnerable refugees—tens of thousands of whom are in those countries—can access the U.S. refugee resettlement program directly and thus be resettled more quickly.

## To the Department of Homeland Security

- Increase the frequency and staffing of DHS circuit rides to the Middle East so that Iraqi P2 refugee applicants inside Iraq wait no longer than 30 days following completion of prescreening for refugee interviews.

## To Congress

- Appropriate fiscal year 2010 funding to the State Department's Bureau of Population, Refugees and Migration to ensure that it is able to adequately staff U.S. Embassies and the IOM to clear all backlogs and process SIV and P2 refugee applications expeditiously (see State Department recommendation above for further detail);
- Appropriate fiscal year 2010 funding to the Department of Health and Human Services' Office of Refugee Resettlement of \$949 million—as recommended by the Refugee Council USA—to ensure that resettlement benefits for arriving SIV recipients, Iraqi refugees, and other new refugee populations are adequately funded in the coming year; and
- Ensure transparency on all U.S. agency practices that affect U.S.-affiliated Iraqis, by conducting adequate oversight including:
  - requesting report, required by the Act, from the President within 90 days, as detailed above;
  - requesting complete data on a quarterly basis from the State Department and DHS on application numbers, arrival numbers, and application processing times;
  - requesting the President to submit a review of security clearance procedures to the House and Senate Intelligence Committees, as detailed above; and
  - holding hearings as necessary before the House Foreign Affairs Committee, the Senate Foreign Relations Committee, and the House and Senate Judiciary Committees.

# Direct (P2) Access to the U.S. Refugee Admissions Program

## Background

The Refugee Crisis in Iraq Act designates as refugees of special humanitarian concern Iraqis who work or worked for the U.S. government, contractors, or U.S.-based media or NGOs, their close relatives, and persecuted religious or minority Iraqis with close relatives in the United States.<sup>8</sup> This designation, known as priority 2 or P2, means that these Iraqis are eligible to apply for resettlement without first needing an individual referral from the UN refugee agency (UN High Commissioner for Refugees or UNHCR), a U.S. embassy, or an NGO. Instead, they can directly approach an outpost of the U.S. refugee admissions program to begin the process.

Iraqis who do not belong to the designated P2 groups can still be considered for U.S. resettlement if they are outside Iraq, have registered with UNHCR, have been identified as particularly vulnerable based on a set of 12 criteria, and have been individually referred for U.S. resettlement by UNHCR, or if they are referred by a U.S. embassy or an NGO. UNHCR has referred about 20 percent of registered Iraqi refugees for resettlement in this way—15 percent to the United States and 5 percent to other resettlement countries.

P2 designation does not reduce the legal requirements or security measures faced by refugee applicants—it simply means they skip the initial steps with UNHCR, which can add many months to the process. All refugee applicants are interviewed by DHS officers to determine eligibility for resettlement, including whether they meet the refugee definition, present no known security risk, and are otherwise admissible to the United States under immigration law. Additionally, on May 29, 2007, DHS announced “enhanced security screening procedures” for Iraqi refugee applicants, beyond those screening procedures ordinarily conducted for all refugee groups.<sup>9</sup>

## In-country processing

The Refugee Crisis in Iraq Act also directs that all P2-designated Iraqis still living inside Iraq be permitted to apply to the U.S. refugee admissions program, even though they have not fled their country—normally required under the refugee definition in U.S. and international law.<sup>10</sup> As a result, the United States must set up the infrastructure *inside* Iraq to interview these refugees—rather than requiring them to first leave Iraq (a risky and often dangerous trip), attempt to gain entry into Jordan, Syria, or another country with restricted borders, and then apply from one of these countries while living for months or years in exile.<sup>11</sup>

## Measures of Progress

*Did the Act increase access for U.S.-affiliated Iraqis to the U.S. refugee admissions program? Do all of the groups identified in the Act now have direct access to the U.S. refugee admissions program, including inside Iraq?*

Prior to the enactment of the Refugee Crisis in Iraq Act, the State Department had instituted priority processing for several narrow groups of Iraqis in Jordan and Egypt, as well as limited in-country processing of Embassy Baghdad staff. The groups designated in the Act overlapped and expanded upon those narrow groups.<sup>12</sup> Three weeks after the Act was signed into law, on February 20, 2008, the State Department announced that direct access would be available in Jordan and Egypt for all of the legislated categories except for persecuted religious and minority groups with close relatives in the United States, but including Iraqi beneficiaries of approved I-130 petitions (close relatives of U.S. citizens or U.S. lawful permanent residents).<sup>13</sup> Two and a half months later, on May 7, 2008, the State Department announced that direct access for these same groups would be available inside Iraq as well as Jordan and Egypt.<sup>14</sup> Members of persecuted religious and minority groups with close relatives in the United States do not have explicit P2

access as required under the Act; they can apply directly to the U.S. refugee admissions program only if they are beneficiaries of approved I-130 petitions. A PRM official told Human Rights First that the International Organization for Migration refers Iraqis with ties to the United States to UNHCR if they do not have the documentation required to demonstrate their eligibility for direct access processing.<sup>15</sup>

*Are eligibility requirements and application procedures clear and public?*

The State Department has posted Fact Sheets online that describe the groups eligible to apply directly to the U.S. refugee admissions program in Jordan, Egypt, and Iraq. The announcements instruct eligible Iraqis to initiate the application process by sending an email to the International Organization for Migration (IOM—contracted by the State Department to handle this step among others) in Jordan, Egypt, or Iraq. The websites of the Embassies in Egypt and Iraq both describe the eligibility requirements and application procedures, though the pages are difficult to find. The links regarding P2 access on the website of the Embassy in Jordan do not work; they had not been updated since the incoming presidential administration archived all State Department website pages that were created from 2001 to 2008. (Human Rights First sent an email informing the Embassy of the problem on April 5, 2009, and received a reply, but the broken links had not been repaired by the time this report was issued three weeks later.)

*How many Iraqis have applied directly to the U.S. refugee admissions program through P2 processing? How many Iraqis have had their eligibility for P2 processing verified? How many Iraqis have actually arrived in the United States through P2 processing? How long is it taking to process applications?*

A total of 15,627 Iraqis have been granted P2 “access” to the U.S. refugee admissions program (which means that their U.S.-affiliation has been verified—a step that can take a few days or many months, depending on the cooperation of the principal applicant’s employer—and their applications have entered the processing queue)—1,640 from Egypt, 2,775 from Jordan, and 11,212 from inside Iraq (as of April 22, 2009). A total of 1,398 Iraqis have actually resettled in the United States through P2 access to the U.S. refugee admissions program—219 from Egypt, 626 from Jordan, and 553 directly from Iraq. This means that less than 9 percent of all Iraqis whose P2 eligibility was verified have actually arrived in the United States.

**Iraqi Arrivals in the United States via Direct (P2) Access to U.S. Refugee Admissions Program<sup>16</sup>**

	FY 08	FY 09 as of 4/22/09	Total as of 4/22/09
<b>Iraqis whose P2 eligibility was verified<sup>17</sup></b>	<b>6,044</b>	<b>9,583</b>	<b>15,627</b>
From Iraq	2,739	8,473	11,212
From Jordan	2,111	664	2,775
From Egypt	1,194	446	1,640
<b>P2 arrivals in U.S.</b>	<b>187</b>	<b>1,211</b>	<b>1,398</b>
From Iraq	0	553	553
From Jordan	158	468	626
From Egypt	29	190	219
<b>P2 arrivals in U.S. as % of P2-eligible Iraqis</b>	<b>3.1% total</b> (0% from Iraq, 7.5% from Jordan, 2.4% from Egypt)	<b>12.6% total</b> (6.5% from Iraq, 7% from Jordan, 4.3% from Egypt)	<b>8.9% total</b> (4.9% from Iraq, 22.6% from Jordan, 13.4% from Egypt)

P2 processing in Iraq did not officially begin until May 2008. The large number of applications filed since that time (11,212) indicates that demand is clearly high inside Iraq. Yet the percentage of Iraqis who have actually arrived in the United States from all three countries is quite low. A PRM official noted that the majority of the P2 caseload is inside Iraq, where the processing infrastructure is newest, to explain the low arrivals numbers to Human Rights First.

Processing times are clearly key to understanding the low arrival numbers. Wait times for Iraqis who seek direct access to the U.S. refugee admissions program vary among Jordan, Egypt, and Iraq. The chart below provides the estimated times for each stage, as reported by the government agencies involved. *USCIS declined to provide information on the time required for the name check portion of the security clearance process, stating that the State Department initiates and/or coordinates it.*<sup>18</sup> *PRM declined to provide an average total processing time for P2 refugees, but estimated that the final five steps generally take 6 months or less.* See p. 15 for further discussion of the security clearance process.

## P2 Application Process

	Average Wait Times
Applicant contacts IOM, IOM verifies eligibility <sup>19</sup>	Iraq: Up to one year Jordan: Weeks to one year Egypt: A few weeks
PRM estimates that the next five steps generally take 6 months or less in all three countries.	
IOM does pre-screening interview(s) and prepares case file for DHS Refugee Corps interview <sup>20</sup>	Iraq: 90 days Jordan: 40 days Egypt: 75 days
IOM initiates multi-agency security clearance process <sup>21</sup>	Up to 10 months to completion according to attorneys
DHS Refugee Corps officer interviews applicant and family <sup>22</sup>	Iraq: 60 days according to USCIS official; 6 to 12 months according to attorneys Jordan and Egypt: 30 days
DHS checks fingerprints for applicant and family <sup>23</sup>	2 to 4 weeks (concurrent with other stages in application process)
IOM prepares applicant and family for travel (following security and medical clearance) and they depart <sup>24</sup>	3 to 4 weeks
<b>Total average processing time<sup>25</sup></b>	<b>1 to 2 years in Iraq, at least 9 months in Jordan, according to attorneys</b>

### *Is P2 direct access available in the countries where Iraqis in need are living?*

The State Department has not instituted direct access processing for any P2 categories in Syria or Turkey, where the needs of Iraqi refugees are acute. U.S. officials say that those countries will not permit the U.S. government to process refugees directly without the involvement of the UNHCR.<sup>26</sup> Syria alone hosts hundreds of thousands of Iraqis, many of whom have no expectation to return to their country and struggle to access health care, housing, and food. With disappearing savings, some have turned to child labor and prostitution to survive because they are prohibited from working legally by their host governments. Many thousands of Iraqis are also living

in Turkey. The United States has reportedly started a pilot P2 program inside Lebanon, and 12 Iraqis have been processed.

## Evaluation: Direct Access Outside Iraq

A low percentage of Iraqis who applied for direct access to the U.S. refugee admissions program in Jordan and Egypt have arrived in the United States. The State Department and DHS should investigate and answer the following questions, with a goal to reduce the total processing time for approved P2 applicants outside Iraq to six months—from verification of U.S. affiliation to arrival in the United States.

- Where are the sticking points for the applications of the Iraqis granted P2 access in Jordan and Egypt?
- How long will it take for these applications to move through the system?
- What is the average time required to complete all security checks?

See p. 15 for further discussion of the security clearance process.

The State Department has not fully implemented the provision of the Refugee Crisis in Iraq Act that mandates direct access to the U.S. refugee admissions program for members of persecuted religious and minority groups with close family members in the United States. The State Department's requirement that applicants be beneficiaries of approved I-130s petitions disadvantages those Iraqis who have the required relationship but not the required form. The State Department and DHS should allow alternate documentation for the close family member relationship, and publicize a new description of the P2 eligibility requirements for persecuted religious and minority groups.

The Refugee Crisis in Iraq Act authorizes the Secretary of State to create additional P2 priority categories as necessary for groups of special humanitarian concern. We recommend that the Secretary of State create a new P2 category for religious and minority groups—e.g. for Mandaeans and for LGBT Iraqis, who face significant levels of persecution that shows no signs of abating—that includes those without close family members in the United States. Already, religious minorities comprise 27 percent of all P2 applicants, which indicates a high demand.<sup>27</sup> Religious minorities comprised just 3 percent of the pre-2003 Iraqi population.<sup>28</sup> They are 18 percent of the registered refugee

populations in Syria and Jordan.<sup>29</sup> The State Department and the U.S. Commission on International Religious Freedom, along with other groups, have well documented the ongoing dangers faced by Iraq's minority groups, and the unlikelihood that the situation will improve for them inside Iraq.<sup>30</sup>

The majority of Iraqi refugees live in Syria, and it is there that the need is most significant. Human Rights First urges the Secretary of State to press the government of Syria, at senior levels and in consultation with the President, DHS, UNHCR, and international NGOs, to permit the U.S. government to process P2-eligible Iraqis inside Syria to allow for quicker processing and resettlement. Diplomatic overtures should emphasize that permitting direct access in Syria will ultimately help to ease the strain on Syria that has developed with the arrival of hundreds of thousands of refugees from Iraq. The State Department's Senior Coordinator for Iraqi Refugee Issues has stated that refugee flows from Syria to the United States will surpass those from Jordan in FY 2009.<sup>31</sup> The Secretary of State should make similar arguments to the government of Turkey, where the numbers are lower but the need acute. These steps will help ensure that more of the most vulnerable refugees can be considered for resettlement in the United States.

## Evaluation: Direct Access Inside Iraq

Human Rights First is very concerned about the long processing times for Iraqis inside Iraq who seek direct access to the U.S. refugee admissions program. Eligibility for this access is based on past persecution or fear of future persecution in their own country, so there is a real possibility that they will face danger as they wait for their applications to move through the long queue. According to a PRM official, "We are taking steps to decrease the wait time in Iraq and have authorized expanding our program there but due to the limitations on living/working in Iraq and the sheer number of applicants we won't be able to eliminate the difference in wait times in the near future."<sup>32</sup>

There are real logistical challenges. But as part of his remarks in February laying out a new strategy in Iraq, President Obama affirmed that the United States has "a strategic interest—and a moral responsibility—to act" to address the needs of displaced Iraqis.<sup>33</sup> Among the other ambitious efforts that the U.S. government will undertake inside Iraq over the next 18 months, the State Department must increase the staffing in Iraq for the IOM and Embassy Baghdad, DHS must increase the frequency and staffing of circuit rides, the State Department must allocate space as necessary for these increases, and the White House

must lead an effort to make the security clearance process more efficient, to ensure that P2 applicants whose U.S. affiliation has been verified can be processed and put on a plane to the United States in no more than four months.<sup>34</sup>

Alongside an increase in P2 processing capacity inside Iraq, the State Department and DHS should extend P2 access to the Palestinians who are now stranded at the Al-Waleed and Al-Tanf camps at the Iraq-Syria border, and process them for resettlement to the United States as soon as possible. According to the UNHCR, which helps run the camp, "refugees in Al Walid live under conditions totally unsuited to prolonged human habitation."<sup>35</sup> These Palestinians have been refused entry by all of Iraq's neighbors and have no realistic resettlement options elsewhere.

Finally, as the U.S. plans for a troop drawdown in Iraq, it must consider how a decline in U.S. political and military influence inside Iraq may affect the operations of the in-country resettlement program. The Act directs the Secretary of State to establish in-country processing in Iraq, and does not restrict the location. At present, in-country processing is available solely at the U.S. Embassy in Baghdad, which is located in the international zone. Since the beginning of the war, Iraqis who entered the international zone were anxious for their physical safety, due to both actual and perceived threats. Now that security in the international zone has been transferred from the U.S. military to the Iraqi military, with the effectiveness of Iraqi-led security uncertain, it is possible that Iraqis will once again feel unsafe to approach the Embassy to attend the interviews necessary to obtain refugee (or SIV) status, and they cannot be assured of anonymity when they do approach the Embassy. Further, declining U.S. political and military influence will limit options for establishing P2 processing outside of Baghdad. The U.S. government must be prepared to adapt in-country processing to changing conditions inside Iraq as the troop drawdown moves forward.

## Sec. 1244 Special Immigrant Visa Program

### Background

The Refugee Crisis in Iraq Act created a Special Immigrant Visa (SIV) program for U.S.-affiliated Iraqis that was modeled on a much smaller-scale visa program for Iraqis and Afghans established in 2006. SIVs provided an alternative route to come to the United States for Iraqis who had worked with the United States in Iraq—without it, their primary option was to register with the UNHCR and hope to be referred for resettlement.

The new program, mandated in Section 1244 of the Refugee Crisis in Iraq Act, makes available 5,000 immigrant visas per year for five years to Iraqis who worked for the U.S. government or military—either directly or with a private contractor—for at least a year. To be eligible for the program, Iraqis must also demonstrate they are experiencing or have experienced an ongoing serious threat as a result of their work for the United States.<sup>36</sup> An SIV holder may move to the United States and will receive a green card (lawful permanent residence) shortly thereafter, which means that he or she is fully authorized to work. His or her spouse and children may also move to the United States. A technical fix signed into law on June 3, 2008, clarified that the first fiscal year that the 5,000 SIVs were available would be fiscal year 2008. It also permitted Iraqis who had applied before September 30, 2008, for SIVs under the rules of the older SIV program to access the 5,000 SIVs allotted by the Act for FY 08.

The older program—for Iraqi and Afghan translators who worked with the U.S. government—still exists. It was authorized by Section 1059 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163) and provided for 50 SIVs in FY 06, amended on June 15, 2007 (Public Law 110-36), to 500 SIVs for FY 07 and FY 08. The annual SIV allotment under Sec. 1059 reverted to 50 in FY 09.

### Measures of Progress

*Are eligibility requirements and application procedures clear and public?*

For four months after President Bush signed the Refugee Crisis in Iraq Act into law, the State Department and DHS did not provide instructions on how to apply for visas under the new Sec. 1244 SIV program. They did issue the forms and guidance necessary in May 2008. On July 24, the U.S. Embassy in Baghdad and then-Ambassador Ryan Crocker publicly announced the “launch” of the new SIV program. The Sec. 1244 SIV application steps are detailed on the State Department’s website at

[http://travel.state.gov/visa/immigrants/info/info\\_4172.html](http://travel.state.gov/visa/immigrants/info/info_4172.html). Human Rights First interviews with journalists in Iraq and attorneys who are in direct contact with eligible Iraqis suggest that the distinction between the old Sec. 1059 SIV program and the new Sec. 1244 SIV program may be unclear to many eligible Iraqis and individuals trying to help them.<sup>37</sup>

*Are potential applicants reasonably able to navigate the complex multi-agency SIV application procedure?*

Many immigration application processes are complex, but the SIV application process is particularly so, given the many agencies involved, and the fact that the applicant must gather and submit documentation at four distinct stages in the process. In brief, the steps required:

1. Applicant obtains letter of recommendation from U.S. citizen senior supervisor, writes statement that he is experiencing or has experienced threat due to his employment with the United States, and submits both by email to Chief of Mission (i.e. Embassy Baghdad) with State Department form DS-57 and copy of Iraqi passport;
2. Chief of Mission reviews and verifies documentation and notifies applicant of approval or denial;
3. Approved applicant prepares and submits USCIS form I-360 (the SIV application form) by regular mail to DHS’

Nebraska Service Center with recommendation letter, Chief of Mission approval form, and copy of Iraqi passport with certified English translation;

4. USCIS officer at Nebraska Service Center adjudicates I-360 application and forwards approved application to State Department's National Visa Center (NVC);
5. NVC contacts applicant by email and requests additional documentation, including Family Book (an obscure document held by local governments and unknown to many Iraqis), Iraqi military records, all evidence that applicant worked for or on behalf of U.S. government, police certificate from locality if applicant lived outside Iraq for more than six months after age 16, certified English translation of all documents, two photographs, and two additional forms if applicant wants to receive post-arrival resettlement benefits. At some point after the NVC receives the case file, the Security Advisory Opinion and other security processes are initiated;
6. Applicant gathers NVC-required documentation from Iraqi and other government authorities and submits by email;
7. NVC schedules visa interview at local consulate for applicant after case file is complete;
8. Consular officer at local consulate interviews applicant and family and takes finger scans, and applicant must present original copies of previously submitted documentation plus written evidence that he intends to resign his job to move to the United States within three months;
9. Approved applicant receives visa only *after* he has received security and medical clearance, and only if he has a G-series Iraqi passport; then he arranges travel for himself and his family.

It can be particularly challenging to navigate a U.S. bureaucracy from abroad, without fluent English, and without easy access to the required documentation. Former U.S. employers or contractors may be difficult to contact or uncooperative, the Iraqi government may be unhelpful in providing documentation,

and Iraqis inside Iraq must still contend with an unstable security environment and often limited Internet access. The Iraqi government periodically stops issuing the required G-series Iraqi passport. A small number of attorneys in the U.S. have dedicated thousands of volunteer hours to assist Iraqis who are trying to escape to the United States. SIV applicants who do not have attorneys may face much longer processing times than those with attorneys, because the documentation requirements—even aside from the documentation necessary to demonstrate eligibility for the programs—are multiple and often difficult to meet. One attorney who has assisted dozens of Iraqis reports to Human Rights First that legal representation is “tremendously helpful” to SIV applicants, because the procedure is so complex.<sup>38</sup>

*How many Iraqis have applied? How many Iraqis have received SIVs? How many have pending SIV applications? How many have arrived in the United States? How long is it taking to process applications?*

### Iraqi Special Immigrant Visas Issued

	FY 06	FY 07	FY 08		FY 09 as of 3/20/09		Total as of 3/20/09		TOTALS (Secs. 1059 and 1244)
	Sec. 1059	Sec. 1059	Sec. 1059	Sec. 1244	Sec. 1059	Sec. 1244	Sec. 1059	Sec. 1244	
Applications submitted to USCIS	N/A	N/A	N/A	N/A	N/A	N/A	2,214	960	3,174
Applications approved by USCIS	N/A	N/A	N/A	N/A	N/A	N/A	1,930	793	2,723
SIVs issued (principals) as of 3/31/09	40	434	358	173	17	468	849	641	1,490

960 Iraqis have submitted SIV applications to USCIS for themselves and their families under the new Sec. 1244 program. 793 of those applications—83 percent—have been approved and sent to the National Visa Center (as of 3/20/09). But these approved applicants have not completed the entire process yet. The United States had actually issued only 641 SIVs (not including family members) under Sec. 1244—173 in the final months of FY 08, and 641 in the

## SIV Application Process

	Average wait times
Applicant obtains supervisor recommendation letter, submits to Embassy Baghdad	Days to years, depending on responsiveness of supervisor
Embassy verifies eligibility, notifies applicant <sup>39</sup>	6 to 8 weeks or more
Applicant prepares and submits I-360 form to USCIS	
The next five steps take 3 to 9 months, according to one attorney, who says that the application "goes into a black hole." <sup>40</sup>	
USCIS adjudicates I-360, sends to National Visa Center <sup>41</sup>	30 to 60 days
NVC requests additional documentation from applicant	
Applicant gathers documentation, submits to NVC	Days to months, depending on availability of documentation
NVC initiates security clearance process <sup>42</sup>	Consular Affairs declined to provide average wait time
NVC transfers complete file to local consulate and schedules visa interview <sup>43</sup>	5 to 10 days
Local consular officer interviews applicant and family <sup>44</sup>	NVC and Consular Affairs declined to provide wait time
Applicant can receive visa and depart ONLY with a G-series Iraqi passport. The Iraqi government periodically stops issuing G-series passports, which delays departure indefinitely. Election of refugee benefits can delay departure up to 3 months. <sup>45</sup>	
<b>Total average processing time</b>	<b>PRM and DHS declined to provide data; 1 year or more according to attorneys<sup>46</sup></b>

first half of FY 09.<sup>47</sup> Therefore 152 Iraqis and their families are still waiting for their approved Sec. 1244 applications to make their way through the system.

As a point of comparison: 2,214 Iraqis have submitted SIV applications to USCIS for themselves and their families under the old Sec. 1059 program, which is limited to translators and has lesser evidentiary requirements. 1,930 of those applications—87 percent—have been approved and sent to the National Visa Center (as of 3/20/09). The United States has issued a total of 849 SIVs under Sec. 1059. Therefore 1,081 Iraqis and their families are waiting for their approved Sec. 1059 applications to make their way through the system. Human Rights First does not have data on how many of that total were submitted after October 1, 2008, and are therefore subject to the limit of 50 visas per year for Sec. 1059 SIVs. Iraqis who submitted Sec. 1059 SIV applications *before* October 1 can receive visas from the Sec. 1244 pool of 5,000

per year (they are "rolled over" into the new Sec. 1244 program).

The State Department does not track the number of Iraqi SIV recipients who actually enter the United States, only the number of SIVs issued. DHS tracks the arrivals of all immigrants by class of admission, and makes that information publicly available about 9 months after the end of the fiscal year through the Office of Immigration Statistics, so the FY 08 admissions numbers will not be publicly available until summer 2009.

The processing time for an SIV application—a particularly important measure for this population, who by definition face (or faced) danger—is highly variable. The chart above provides the available estimated times for each stage, as reported by the government agencies involved.

*In response to requests from Human Rights First, the State Department's Bureau of Consular Affairs declined to provide an average wait time for the security clearance, citing the extreme variability by case.<sup>48</sup> DHS also declined to provide the information, saying that the State Department should provide it.<sup>49</sup> See p. 15 for further discussion of the security clearance process.*

*Neither PRM nor DHS could provide a total average processing time for SIV applications. An official at PRM stated that PRM did not have the information because SIV applicants' contact is primarily with Consular Affairs.<sup>50</sup> An official at DHS stated that USCIS did not have the information.<sup>51</sup>*

### *Is the program accessible in the countries where Iraqis in need are living?*

Technically, Iraqis can apply to the SIV program from anywhere in the world; the first steps—Chief of Mission approval, submission of the I-360 application, and submission of identity and supporting documents—take place by email and mail. For Iraqis still in Iraq, the original signature requirement on the I-360 can be a hurdle for those who do not have access to U.S. military mail or FedEx to send the application to USCIS. For Iraqis outside Iraq, it can be challenging to obtain the required recommendation letter and documentation from the Iraqi government.

The final visa interviews take place at the U.S. consulate in the country where the applicant currently lives. Embassy Baghdad did not have the capacity to issue immigrant visas until July 2008. At present, the embassies in Baghdad, Damascus, and Amman are issuing SIVs. An email sent to Human Rights First from a member of the consular staff at the Embassy in Cairo indicated that he or she was unaware of the program, though attorneys have reported to Human Rights First that Cairo has issued SIVs under Sec. 1244. The Embassy in Beirut declined to say whether it issues SIVs, directing Human Rights First to the State Department in Washington, though attorneys have reported to Human Rights First that Beirut has issued SIVs under Sec. 1244. An official from the Bureau of Consular Affairs said that SIVs can be issued from any embassy, but that “nearly all of the cases” are transferring to Baghdad at present.<sup>52</sup> (In FY 07, the Embassy in Amman processed 78 percent of the total number of Iraqi SIV applications under the old Sec. 1059 program—337 out of 432.<sup>53</sup>)

## Evaluation

The USCIS approval rates of SIV applications (83 percent for Sec. 1244 applications and 87 percent for Sec. 1059 applications) indicate that USCIS adjudicators are not duplicating the work of Embassy Baghdad or of the general or flag officer, deferring to their determination of applicants' eligibility for the Sec. 1244 or Sec. 1059 programs, respectively.

The relatively low application numbers under the Sec. 1244 program, however, raise some significant concerns:

- Why is the number of applications for SIVs under Sec. 1244 so much lower than the yearly allotment of the visas?
- Do U.S.-affiliated Iraqis understand the difference between the old Sec. 1059 SIV program and the Sec. 1244 SIV program created by the Act? Do they continue to apply under Sec. 1059, unaware that the number of visas available under Sec. 1059 is much less than the number available under Sec. 1244?
- Are eligible U.S.-affiliated Iraqis choosing to apply for refugee resettlement through P2 priority access and not to the Sec. 1244 SIV program? Why?
- What percentage of SIV applicants has legal representation? It may be that SIV-eligible Iraqis without attorneys choose to apply to the U.S. refugee admissions program directly (via P2 access) because it appears to be less complicated. What percentage of SIV recipients has legal representation? Is the SIV application procedure so complex that applicants without lawyers are at a significant disadvantage?

At the current rate, many thousands of SIVs may go unused. In FY 08, the State Department issued only 4.7 percent of the total number of SIVs available under the Act—60 under Sec. 1059 and 173 under Sec. 1244. (Note that the technical fix allowing the State Department to issue the visas went into effect in June 2008, so these visas were issued over a period of four months, not the entire year.) 4,767 visas rolled over to FY 09. In the first half of FY 09, the State Department issued 9.7 percent of the total available for the year (not counting the rollover)—17 under Sec. 1059 and 468 under Sec. 1244.

The State Department, in cooperation with DHS, should investigate the questions above and improve the SIV application process accordingly, to ensure that it effectively and efficiently meets the needs of U.S.-affiliated Iraqis whom the SIV programs were designed to help. The Departments should also determine why just 60 visas were released in FY 08 to Sec. 1059 SIV applicants, when more than a thousand approved applicants, and their families, are waiting.<sup>54</sup>

Based on interviews with U.S. government officials and with journalists and attorneys working with Iraqis, Human Rights First believes that the U.S. government currently takes a year or more to process Iraqi SIV applications, and that the security clearance process is often the hold-up. The President should review and improve the multi-agency security clearance processes to which Iraqi SIV applicants, and other immigrants and refugees, are subject. See p. 15 for more detailed discussion and recommendations on the security clearance process.

The SIV is the only immigrant visa type in which the applicant may be in immediate danger. This means that the usual lengthy processing times for immigrant visas may effectively force SIV applicants—particularly those still in Iraq—to endure an “ongoing serious threat,” as it is termed in the legislation. Expedient processing is thus especially important for in-country SIV applicants. Therefore, in addition to the steps above, the State Department must take all steps necessary, including increasing staffing at embassies, to ensure that approved SIV applicants are scheduled for consular interviews within 30 days of file completion. The State Department should also meaningfully implement Sec. 1244(e) of the Refugee Crisis in Iraq Act. This provision requires the Secretary of State to make a reasonable effort to provide protection to SIV applicants inside Iraq who face imminent danger. See p. 17 for further discussion.

## Security Checks

The wild card in the process for refugee and SIV applicants from Iraq is the Security Advisory Opinion and other security checks, which at present often create lengthy delays. All refugee applicants are subject to multiple checks as described below. We believe that for SIV applicants the checks are initiated by the National Visa Center, except for the fingerprints, which are taken at the consular visa interview.

1. *Initiated by IOM during initial IOM interviews:* State Department CLASS (Consular Lookout and Support System) check. In the case of a “hit” (a potential match), fingerprints and further inquiry by the DHS interviewer might be necessary to clear the applicant.
2. *Interagency process initiated by IOM and PRM’s Refugee Processing Center before or on day of DHS refugee interview:* Security Advisory Opinion, which involves requesting further information about an applicant from agencies including the CIA and the FBI. In the case of a “hit” (a potential match), further inquiry is necessary to determine whether the applicant is or is not the person in the database and to resolve any other issues. It is unclear what triggers an SAO for an Iraqi refugee applicant. Since September 11, SAOs have been required for a wider range of individuals than before, sometimes based on nationality.<sup>55</sup>
3. *Initiated by DHS on day of DHS refugee interview, generally takes 2 to 4 weeks:* Fingerprint checks to verify that the applicant does not have a criminal history in the United States and poses no known security risk.<sup>56</sup>
4. *Initiating agency and timing unknown:* “Enhanced security screening procedures.” As mentioned above, in May 2007 DHS announced that Iraqi refugee applicants would be subject to security checks beyond those undergone by other refugee groups. It is possible that these procedures include mandatory SAOs for all Iraqi nationals.
5. *Initiated by DHS for arriving refugees just prior to admission, “virtually instantaneous” results:* Additional name checks.<sup>57</sup>

The time required to complete all of these steps is notoriously unpredictable. For some refugee and SIV applicants, the security clearance happens relatively efficiently. But many others who have completed all steps of the application process—including vulnerable women, victims of torture, and individuals who have risked their lives to support the U.S. military—find themselves in a security check limbo. They are informed that their security clearance is pending, and receive no further communication from the U.S. government for 10 months or more. Technically, they can follow up with IOM; several Iraqi refugee applicants with whom Human Rights First is in contact have followed up diligently with IOM on their pending security clearances but received no indication of the length of time it would take to resolve their cases.

Human Rights First urges particular attention to this security check process. The long and often inexplicable delays can prolong the financial and emotional trauma of displacement for them and their families. The President should take steps to improve the multi-agency security check process for Iraqis and other immigrants and refugees so that individuals who are admissible to the United States do not wait indefinitely for clearance. These steps should include:

- Designated staff at a single agency to coordinate the check among all other agencies to ensure that each agency completes its respective check within a specific number of days;
- A clear procedure and target time frame to resolve “hits” (potential matches) in the IBIS database and in the security databases of DHS, the State Department, CIA, FBI, and other agencies so that applicants with common names do not get stuck in the system; and
- Adequate staffing at the CIA, FBI, and other relevant agencies to meet the security clearance needs of the SIV, P2, and other immigrant and refugee admissions programs in a timely manner.

## Resettlement Benefits

The Refugee Crisis in Iraq Act makes Iraqis who received SIVs on or after December 26, 2007, eligible for up to eight months of the benefits and services that are available to refugees, beginning on the date of their admission to the United States.<sup>58</sup> The eight-month clock starts ticking regardless of whether they choose to receive benefits or visit a local resettlement agency. The benefits available under this provision are administered through two distinct agencies. The services provided to refugees are designed to be supplemented by non-federal funds, including state, city, and private money.

The first set of benefits comes through the State Department's Reception and Placement program, and includes a travel loan (repayments begin six months after arrival in the United States), assistance with travel arrangements, and assignment to a local resettlement agency in the United States.<sup>59</sup> The second set of benefits comes through the Department of Health and Human Services' Office of Refugee Resettlement's Cash and Medical Assistance program, and includes additional cash and medical assistance, case management, employment services, and other benefits.<sup>60</sup> Additionally, the Office of Refugee Resettlement has stated that SIV recipients "would appear" to be eligible for other means-tested federal public benefits, including food stamps, Medicaid, and Supplementary Security Income.<sup>61</sup> However, many of these federal benefits are not available to green card holders (lawful permanent residents) until they have been in the United States for five years; SIV recipients receive green cards, and have not been designated as "qualified immigrants" who would be exempt from this restriction.

In the current economic climate, arriving Iraqi refugees and SIV recipients are facing enormous challenges as they establish new lives in the United States. The troubled economy has exacerbated the weaknesses in a system that was already inadequately funded. Many are finding it increasingly difficult to obtain jobs. The private support for resettlement services that has traditionally supplemented government funds has significantly declined. State and city governments face financial problems of their own, so may provide fewer public benefits. Over the past year, resettlement benefits have proved inadequate to mitigate joblessness, poverty, and sometimes homelessness—not to mention jarring cultural and linguistic barriers. Many news reports have highlighted the struggles of individual Iraqis in the United States—some of whom decide to return to Syria, Jordan, or even Iraq out of desperation.

The benefits provided to SIV recipients as required by the Act are certainly helpful, but at present many Iraqi SIV recipients and refugees—and refugees from all over the world—are struggling.

Human Rights First urges Congress to appropriate \$949 million for fiscal year 2010 to the Office of Refugee Resettlement to meet the needs of Iraqis and other new refugee populations next year. We join in the recommendations of the Refugee Council USA:

- \$626 million for refugee and asylee resettlement services;
- \$15 million for assistance to trafficking victims;
- \$20 million for assistance to torture victims; and
- \$268 million for unaccompanied immigrant children.

## Other Requirements of the Act

### Imminent Danger Clause

In general, U.S. immigrant visas are based on family relationship, employment, or other special status that is unrelated to threat. The standard immigrant visa application process is not designed to deal with individuals who face danger, and thus does not place a premium on expediency. The Refugee Crisis in Iraq Act requires that the Secretary of State “make a reasonable effort to provide [an SIV applicant] with protection or the immediate removal from Iraq, if possible, . . . if the Secretary determines after consultation that such alien is in imminent danger.”<sup>62</sup> The requirement means that the U.S. government must provide protection to SIV applicants who, for example, are in hiding in Baghdad because they are still targeted due to their U.S. ties.

The Embassy in Baghdad has reported to Human Rights First that no SIV applicant has “expressed an urgent need to leave Iraq.”<sup>63</sup> We recommend that the Embassy establish a policy to explicitly ask every SIV applicant who has received Chief of Mission approval whether he faces imminent danger—rather than waiting for an applicant to request protection affirmatively—and provide protection or removal from Iraq to the applicant and his family if necessary.

### Embassy Coordinators

The Act requires the Secretary of State to designate a Senior Coordinator for Iraqi Refugees and Internally Displaced Persons at the embassies in Baghdad, Cairo, Amman, Damascus, and Beirut.<sup>64</sup> The State Department filled this position at Embassy Baghdad in May 2008. The State Department has also posted a regional refugee coordinator in Amman.<sup>65</sup> No coordinator whose responsibilities are exclusively related to displaced Iraqis has been appointed in Cairo, Damascus, or Beirut. Implementation of U.S. refugee and SIV policies for Iraqis requires complex coordination that certainly benefits from oversight at senior levels. The State Department should assess whether the two coordinators and their staff have the capacity to address the needs of all displaced Iraqis in Egypt, Jordan, Lebanon, and Syria, which altogether host up to a million Iraqis,<sup>66</sup> along with the 2.5 million Iraqis displaced inside Iraq. If not, then the State Department should increase staffing dedicated to displaced Iraqis at its embassies in the region, and consider posting a coordinator in Damascus, where the need is greatest.

### Motions to Reopen

The Act allows for Motions to Reopen (MTRs) of asylum cases of Iraqis that were denied on or after March 1, 2003, solely or in part due to changed circumstances in Iraq, up until July 28, 2008.<sup>67</sup> Human Rights First interviewed several private attorneys and attorneys at law school clinics with Iraqi asylum-seeker clients whose cases had been denied and were eligible to be reopened under the Act. The majority of MTRs that they filed with the immigration court and the Board of Immigration Appeals were granted.<sup>68</sup> We have not learned of any problems with the implementation of this provision of the Act, though we do not have complete data.

## Conclusion

In November 2007, shortly after former Secretary of State Condoleezza Rice appointed him to oversee the State Department's work on the Iraqi refugee crisis, Ambassador James Foley explained, in response to a press corps question, "We don't have a sort of scientific number as to what that pool might include of Iraqis who were associated directly or indirectly with U.S. and international efforts in Iraq. And we believe it's in the tens of thousands [including family members], but it could be a range."<sup>69</sup>

The numbers are indeed difficult to come by. (See Appendix for Human Rights First's estimates.) Despite this basic lack of information about the need, the U.S. government has forged ahead in implementing the Refugee Crisis in Iraq Act. Ambassador Foley and many staff members at PRM, Embassy Baghdad, IOM, and USCIS have worked very hard to establish processing infrastructures for vulnerable U.S.-affiliated Iraqis amidst significant logistical and security challenges, and under a presidential administration that was reluctant to acknowledge the urgent need. The infrastructures are established, and more than 20,000 U.S.-affiliated Iraqis have made applications to the SIV and U.S. refugee resettlement programs. However, the information we have been able to obtain indicates that processing times are long, and the number of Iraqis who have actually made it to the United States remains quite low. Human Rights First urges the government to implement our recommendations, including to:

- take all necessary steps to decrease the unacceptably long wait times facing P2 refugee applicants inside Iraq;
- evaluate and address the reasons for the low number of Sec. 1244 SIV applications;
- reduce delays in the Security Advisory Opinion and other security check processes;
- engage Syria and Turkey at senior levels to permit P2 processing inside those countries;
- process for resettlement Palestinians from Iraq stranded at the Al-Waleed and Al-Tanf camps at the Iraq-Syria border; and
- adequately fund post-arrival resettlement services for Iraqis and other refugees.

The real information about the effectiveness of the Refugee Crisis in Iraq Act resides with several thousand Iraqis and their families—and sometimes their attorneys—the ones who are attempting to meet all the requirements for processing to come to the United States and rebuild their lives, having fled from untenable danger in their own country. The U.S. government made a promise to them more than a year ago, when this bill became law. Despite the challenges, it must make that promise real.

## Appendix: The Need

Estimating the number of U.S.-affiliated Iraqis is indeed difficult. Dozens of companies have held U.S. contracts since the beginning of the war. Many of those contracts have ended, and many of the companies did not keep complete or accurate personnel records on their Iraqi employees. Additionally, media organizations and NGOs are justifiably concerned about the security of their Iraqi employees and can be reluctant to provide numbers. Finally, the U.S. government itself has not been able to compile its own records of its Iraqi employees working for agencies in the Departments of State and Defense as required by the Act. Based on government documents and multiple interviews with U.S. government officials, NGO staff, and journalists, Human Rights First has put together an estimate of the number of U.S.-affiliated Iraqis who might be eligible to apply for SIVs or direct access to the U.S. refugee admissions program—in the absence of a publicly available estimate from the U.S. government. We have also estimated the number of U.S. affiliated-Iraqis who have made it to the United States to build new lives for themselves and their families.

*Human Rights First estimates that the total number of U.S.-affiliated Iraqis (not including their spouses and children) is approximately 146,000. The breakdown:*

### Number of U.S.-affiliated Iraqis

	Total
U.S. Embassy direct hires	Less than 50 <sup>70</sup>
U.S. government contract employees	142,100 <sup>71</sup>
Employees of U.S.-based media	250 <sup>72</sup>
Employees of U.S.-based NGOs	3,350 <sup>73</sup>
<b>Total</b>	<b>145,750</b>

*Human Rights First estimates that—as of April 2009—the total number of U.S.-affiliated Iraqis who have arrived in the United States (including some spouses and children) since 2003 is approximately 4,200. These Iraqis have come to the U.S. through a range of immigration means, most established separate from the Refugee Crisis in Iraq Act. The breakdown:*

### Number of U.S.-affiliated Iraqi arrivals to the United States

	Principals only	Principals plus spouses and children
UNHCR referrals		928 <sup>74</sup>
Embassy referrals		168-182 <sup>75</sup>
P2 direct access		1,398
SIVs	1,490 <sup>76</sup>	
Significant public benefit parole	200 <sup>77</sup>	
<b>Total</b>		<b>4,184-4,198</b>

## Endnotes

<sup>1</sup> Hasen, Greg. "The ethos-practice gap: perceptions of humanitarianism in Iraq. *International Review of the Red Cross*, 9 (869). March 2008.

<sup>2</sup> Other targeted groups have included artists, journalists, and professionals. The Iraqi Ministry of Human Rights reports that 340 university professors and 446 students were killed between 2005 and 2007, and the Ministry of Displacement and Migration says that at least 30 percent of professors, doctors, pharmacists, and engineers have fled Iraq since 2003. See 2008 State Department Human Rights Report—Iraq, available at <http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119116.htm>.

<sup>3</sup> The U.S. government fiscal year runs from October 1 to September 30.

<sup>4</sup> See Hsu, Spencer and Robin Wright, "Crocker Blasts Refugee Process," *Washington Post*, September 17, 2007, at <http://www.washingtonpost.com/wp-dyn/content/article/2007/09/16/AR2007091601698.html>.

<sup>5</sup> Sec. 1248(b).

<sup>6</sup> At the time, it was taking 30 to 45 days to issue a Security Advisory Opinion, and Ambassador Crocker suggested creating a priority track for all required clearance checks for Iraqi refugees with the goal to reduce the time to 15 days. See Crocker cable, September 2007, available at <http://www.rcusa.org/uploads//pdfs/Crocker%20Cable%202,%209-07.pdf>.

<sup>7</sup> Sec. 1243(b).

<sup>8</sup> More specifically, in Sec. 1243, the Act designates the following P2 groups: 1) Iraqis who were or are employed by the U.S. government in Iraq; 2) Iraqis who were or are employed by U.S.-based media organizations or NGOs; 3) Iraqis who were or are employed by an entity that has received documented U.S. government funding; 4) spouses, children, parents, sons, daughters, and siblings of the three categories above and sons, daughters, and siblings of applicants to the new SIV program; and 5) Iraqis who are members of a religious or minority community that has been designated as a persecuted group and who have close relatives who are citizens or lawful permanent residents in the United States. The Act directs that individuals who are eligible for this priority refugee processing may apply even if they are eligible as well for other immigration options to the United States.

<sup>9</sup> See DHS Press Statement, May 29, 2007, available at [http://www.dhs.gov/xnews/releases/pr\\_1180469448282.shtm](http://www.dhs.gov/xnews/releases/pr_1180469448282.shtm).

<sup>10</sup> The refugee definition in U.S. law includes individuals in their home country when designated by the President (INA 101(a)(42)(B)).

<sup>11</sup> In-country processing is rarely authorized for refugees, who by definition are individuals who have fled from their home country and sought refuge in another. In-country processing should never be treated as a substitute for providing asylum, or as a tool for urging refugees to return to a country where they would face persecution.

<sup>12</sup> On June 28, 2007, the State Department announced P2 access for USG or MNF-I translators in Jordan, as well as for locally employed staff of the CPA or the U.S. Embassy, and their families. These categories of U.S.-affiliated Iraqis are covered in the Refugee Crisis in Iraq Act. On December 21, 2007, the State Department announced an expansion of P2 access to Iraqi beneficiaries of approved I-130 petitions—in other words, close relatives of U.S. citizens or lawful permanent residents—in both Egypt and Jordan. Letters were sent to about 7,000 U.S. petitioners notifying them of this option for their relatives. This P2 category does not exist in the Act; it overlaps with a narrower category of relatives of U.S. citizen or LPR members of persecuted religious or minority groups that the Act designates as a P2 category.

<sup>13</sup> See State Department Fact Sheet, February 20, 2008, archived at <http://2001-2009.state.gov/g/prm/refadm/rls/fs/2008/101235.htm>. A current version dated February 3, 2009, is available at <http://www.state.gov/g/prm/rls/115889.htm>.

<sup>14</sup> See original State Department Fact Sheet, dated May 7, 2008. Updated Fact Sheet, June 9, 2008, archived at <http://2001-2009.state.gov/g/prm/rls/fs/2008/110985.htm>. A current version dated February 3, 2009, is available at <http://www.state.gov/g/prm/rls/115888.htm>.

<sup>15</sup> Telephone interview with PRM staff, April 2009.

<sup>16</sup> Email correspondence with PRM staff, February and April 2009. P2 access for certain Iraqis began in Jordan and Egypt in June 2007, before the Act's mandates took effect. In FY 07 (which ended on September 30, 2007), just one Iraqi's P2 eligibility was verified. No Iraqi arrived in the United States via P2 processing that year.

<sup>17</sup> The State Department says that this group of Iraqis has been "granted access" to the U.S. refugee admissions program via P2, which means simply that their eligibility – i.e. their U.S. affiliation – has been verified, and their files passed on to DHS/USCIS, which then decides, after interviews, whether the applicants meet the refugee criteria and are admissible to the United States under immigration law. We do not use the phrase "granted access" here to avoid confusion.

<sup>18</sup> Email correspondence with USCIS official, April 2009.

<sup>19</sup> Email correspondence with PRM official, February 2009.

<sup>20</sup> Email correspondence with PRM official, February 2009.

<sup>21</sup> Email correspondence with attorneys, April 2009.

- <sup>22</sup> Email correspondence with USCIS official and telephone interviews with attorneys, April 2009.
- <sup>23</sup> Email correspondence with USCIS official, April 2009.
- <sup>24</sup> Email correspondence with IOM official, April 2009. After an approved refugee has cleared medical and security checks and has been assigned to a local resettlement agency in the United States, the case is forwarded to IOM's Movement Units, which takes 3 to 4 weeks to arrange travel in Iraq, Jordan, and Syria.
- <sup>25</sup> Email correspondence and telephone interviews with attorneys and journalists assisting Iraqi refugees, February and April 2009.
- <sup>26</sup> Email correspondence with USCIS official, April 2009, and telephone interview with PRM official, February 2009.
- <sup>27</sup> Email correspondence with PRM staff, February 2009.
- <sup>28</sup> USCIRF, Iraq Report—2008, available at [http://www.uscirf.gov/index.php?option=com\\_content&task=view&id=2331&Itemid=1](http://www.uscirf.gov/index.php?option=com_content&task=view&id=2331&Itemid=1).
- <sup>29</sup> UNHCR Iraq Situation Update—February 2009.
- <sup>30</sup> See USCIRF, Iraq Report—2008, December 16, 2008, available at [http://www.uscirf.gov/index.php?option=com\\_content&task=view&id=2331&Itemid=1](http://www.uscirf.gov/index.php?option=com_content&task=view&id=2331&Itemid=1), and 2008 State Department International Religious Freedom Report on Iraq, available at: <http://www.state.gov/g/drl/rls/irf/2008/108483.htm>.
- <sup>31</sup> State Department Press Briefing, September 12, 2008. Transcript at <http://2001-2009.state.gov/p/nea/rls/rm/109568.htm>.
- <sup>32</sup> Email correspondence with PRM staff, February 2009.
- <sup>33</sup> See "Remarks of President Barack Obama—Responsibly Ending the War in Iraq," Camp Lejeune, North Carolina, February 27, 2009. Available at [http://www.whitehouse.gov/the\\_press\\_office/Remarks-of-President-Barack-Obama-Responsibly-Ending-the-War-in-Iraq/](http://www.whitehouse.gov/the_press_office/Remarks-of-President-Barack-Obama-Responsibly-Ending-the-War-in-Iraq/).
- <sup>34</sup> Human Rights First's recommendation for increased staffing inside Iraq is supported by the June 2008 testimony by the List Project's Kirk Johnson, before the U.S. Helsinki Commission. Of the Embassy staff's in-country work, he said, "Their laudable work on the ground . . . has not been accorded the resources necessary to successfully implement this legislation." His sentiments were echoed by an Iraqi who joined USAID's efforts in Iraq in 2003, later fled to the U.S., and now works at a law firm assisting other U.S.-affiliated Iraqis, who said, also before the Commission, "...despite the heroic work of the refugee coordinators on the ground in Baghdad, they have insufficient staff and resources to process the applications which are sent to them." (See their testimonies before the U.S. Helsinki Commission, June 11, 2008. Transcript at <http://csce.gov>.)
- <sup>35</sup> UNHCR Syria Update February 2009, p. 10.
- <sup>36</sup> Under Sec. 1244, the applicant must also demonstrate faithful and valuable service to the USG through a positive recommendation from his/her senior supervisor. The earlier program—known as the Sec. 1059 program—has slightly different requirements: it is for translators only, there is no "ongoing serious threat" requirement, and applicants must present a letter of recommendation from a general or flag officer (equivalent to a general in the Navy). The Sec. 1244 program is available to a broader class of U.S.-affiliated Iraqis and has additional evidentiary requirements.
- <sup>37</sup> Email correspondence with journalists and attorneys, March 2009.
- <sup>38</sup> Telephone interviews with attorneys, April 2009.
- <sup>39</sup> Email correspondence with Embassy official, March 2009. When an Iraqi SIV applicant requests Chief of Mission approval from Embassy Baghdad, he or she receives an automatic email reply stating that the process will take "6 to 8 weeks or more."
- <sup>40</sup> Telephone interview with attorney, April 2009.
- <sup>41</sup> Email correspondence with USCIS official, March 2009.
- <sup>42</sup> Email correspondence with Consular Affairs official, March 2009.
- <sup>43</sup> Email correspondence with Consular Affairs official, February 2009.
- <sup>44</sup> Email correspondence with Consular Affairs official and phone correspondence with National Visa Center staff, April 2009.
- <sup>45</sup> Telephone interview with attorney who assists dozens of Iraqis, April 2009, who reports that election to refugee benefits can create a considerable delay in travel for an SIV recipient while his case is placed with a resettlement agency in the United States.
- <sup>46</sup> Telephone interviews with attorneys, April 2009.
- <sup>47</sup> Email correspondence with USCIS official, March 2009, Special Immigrant Visa statistics at [http://www.travel.state.gov/visa/frvi/statistics/statistics\\_4396.html](http://www.travel.state.gov/visa/frvi/statistics/statistics_4396.html), and State Department Fact Sheet, September 12, 2008, at <http://merln.ndu.edu/archivepdf/iraq/State/109544.pdf> (original State Department link no longer works).
- <sup>48</sup> Email correspondence with Consular Affairs official, March 2009.
- <sup>49</sup> Email correspondence with USCIS official, April 2009.
- <sup>50</sup> Email correspondence with PRM official, March 2009.
- <sup>51</sup> Email correspondence with officials at PRM, Consular Affairs, and USCIS, February and March 2009.
- <sup>52</sup> Email correspondence and telephone interviews with officials and staff at Embassies and Consular Affairs, February 2009.
- <sup>53</sup> "Status of Iraqi Special Immigrant Visa Programs," Middle East Regional Office, U.S. Department of State and the Broadcasting Board of Governors Office of the Inspector General, Report Number MERO-IQO-08-01, July 2008, p. 7.

<sup>54</sup> According to the Sec. 1059 SIV statistics chart – found at <http://www.travel.state.gov/pdf/SINumbers0409.pdf> - 560 SIVs were issued in FY 08 under Sec. 1059 to both Iraqis and Afghans. The law allows for just 500 visas, so the additional 60 must have been issued under the Sec. 1244 technical fix, which allowed for the Sec. 1244 SIVs to be released to Iraqis who applied under Sec. 1059 before October 1, 2008.

<sup>55</sup> Martin, David A. *The United States Refugee Admissions Program: Reforms for a New Era of Refugee Resettlement*. Migration Policy Institute, 2005: pp. 71-72.

<sup>56</sup> Email correspondence with USCIS official, April 2009.

<sup>57</sup> Email correspondence with USCIS official, April 2009.

<sup>58</sup> For SIV recipients who make their applications from inside the United States, the date of admission is the date of final approval of their I-485 Applications to Register Permanent Status or Adjust Status.

<sup>59</sup> If they wish to access State Department R&P benefits, SIV recipients outside of the United States must indicate their interest on a Resettlement Benefits Election Form that they receive from the National Visa Center. They must do so within 10 days of visa issuance. The local resettlement agency is tasked with meeting the SIV recipient and his/her family at the airport, setting them up in a home, and providing them with basic needs, including housing and food, for the first month after arrival. The agency receives \$425 per person to pay these costs. See Frequently Asked Questions on the SIV Program for Iraqis with USG Affiliations here: <http://www.wrapsnet.org/RPCWRAPS/FAQs/tabid/75/language/en-US/Default.aspx>.

<sup>60</sup> If they wish to access HHS/ORR CMA benefits, SIV recipients must apply through their local resettlement agency once they are in the United States. There are strict deadlines after which they lose their eligibility. The State Department has indicated that ORR benefits may be available even to SIV recipients who have not elected to receive State Department benefits. See Frequently Asked Questions on the SIV Program for Iraqis with USG Affiliations here: <http://www.wrapsnet.org/RPCWRAPS/FAQs/tabid/75/language/en-US/Default.aspx>.

<sup>61</sup> ORR State Letter #08-06 (February 7, 2008) distributed to resettlement agencies: <http://www.rcusa.org/uploads///pdfs/ORR%20State%20Letter.%20Iraqi%208%20Month%20Eligibility.%202-7-08.pdf>

<sup>62</sup> Sec. 1244(e).

<sup>63</sup> Email correspondence with Embassy Baghdad official, March 2009.

<sup>64</sup> Sec. 1245. Senior Coordinator shall be responsible for oversight of refugee resettlement, SIVs, and development and implementation of other Iraqi refugee and IDP policies.

<sup>65</sup> See February 6, 2009, State Department Fact Sheet at <http://www.state.gov/g/prm/rls/117283.htm>.

<sup>66</sup> See Human Rights First, "How to Confront the Iraqi Refugee Crisis," December 2008, for a discussion of the estimated number of Iraqi refugees, at <http://www.humanrightsfirst.org/pdf/081222-iraqi-refug-bluprnt.pdf>.

<sup>67</sup> Sec. 1247.

<sup>68</sup> Specifically, out of a total of 32 MTRs filed by these attorneys, 27 were granted by the IJ or BIA, 2 were denied, and 3 are pending. (Email correspondence with attorneys, October 2008 and January 2009.)

<sup>69</sup> State Department press briefing, November 29, 2007, available at <http://2001-2009.state.gov/g/prm/rls/96035.htm>.

<sup>70</sup> Press briefing with former PRM Assistant Secretary Ellen Sauerbrey, February 14, 2007, available at <http://2001-2009.state.gov/g/rls/rm/80532.htm>.

<sup>71</sup> Includes translators who worked for the U.S. government or military, staff hired to work on USAID and other State Department contracts, staff hired to work on Department of Defense reconstruction efforts, Iraqis working on USAID-sponsored programs, and others. Congressional Budget Office, "Contractors' Support of U.S. Operations in Iraq," August 2008, at <http://www.cbo.gov/ftpdocs/96xx/doc9688/08-12-IraqContractors.pdf>, Table 1, p. 9.

<sup>72</sup> Aggregate estimate of Iraqi staff numbers in Iraq based on Human Rights First correspondence with major U.S.-based media organizations.

<sup>73</sup> Aggregate estimate of Iraqi staff numbers in Iraq based on Human Rights First correspondence with major U.S.-based NGOs.

<sup>74</sup> Approximately 4 percent of UNHCR's total Iraqi referrals to the U.S. refugee admissions program since the beginning of its operation in 2007 have been affiliated with the MNF or CPA. Email correspondence with UNHCR Beirut Regional Hub, February 2, 2009. This estimate assumes that the proportion of U.S.-affiliated Iraqi arrivals in the United States who were referred by UNHCR is also about 4 percent, so  $.04 \times (\text{total Iraqi refugee arrivals from FY 07 through March 2009: } 23,197) = 928$ .

<sup>75</sup> Telephone interview with State Department spokesperson - 98 Embassy direct-hire referrals arrived in the U.S. in FY 07. As of April 30, 2008, 33 cases/84 persons who were Embassy direct-hire referrals had been processed and were expected to travel by the end of the fiscal year. On June 3, 2008, Ambassador Foley said that around 70 Embassy direct-hire referrals were expected to arrive in the United States before the end of the fiscal year. Therefore the projected total is 168 to 182.

<sup>76</sup> Includes Iraqi recipients of Sec. 1059 SIVs for translators only, which was created before the Refugee Crisis in Iraq Act. As noted elsewhere, the State Department does not track the number of SIV admissions.

<sup>77</sup> Telephone interview with an official in the Office of the Secretary of Defense who administers this joint program of the Departments of State and Defense, August 21, 2008. Note that significant public benefit parole is not intended to facilitate permanent immigration to the United States, but rather to provide temporary protection.