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I thank the Commission Co-Chairs for inviting me today in my capacity as Professor of the Practice of Law at Vanderbilt University Law School, and as someone who has personally witnessed the suffering and sacrifice of our Iraqi allies when we failed to help provide for their safety. As a West Point graduate who served in uniform more than two decades, it is a privilege to be here to share my perspectives. I strongly believe that our nation has both a moral obligation and a military necessity to assist the civilians who have risked all that they hold dear to help America's military forces. Congress must act swiftly to prevent an impending human tragedy.

Today's hearing comes at a critical time. One consequence of America's counterinsurgency strategy in Iraq has been to allow many Americans to "turn the page" or even to mentally "close the book" on our involvement there. But for thousands of Iraqis who worked alongside coalition forces to help that strategy succeed, much is yet to be written. In light of the long history of withdrawals chronicled in The List Project's Report, *Tragedy on the Horizon*, and of recent events in which U.S.-affiliated Iraqis have been singled out for murder, our failure to plan for their safety and protection in the months to come will almost certainly result in bloodshed and suffering for our Iraqi friends and allies. Further suffering by our Iraqi allies is foreseeable but not inevitable, and I thank the Helsinki Commission and your staff for being among the American lawmakers concerned enough about this impending tragedy to demand an immediate, public discussion of our strategy moving forward. Your leadership on this issue represents a beacon of hope for so many Iraqis who've sacrificed so much, and I hope that it will lead to unified and swift Congressional.

Respectfully, I do not believe our distinguished co-chairmen convened this hearing merely to highlight the challenges faced by those courageous citizens of Iraq who have risked their lives, and those of their families, to assist coalition efforts on the ground. As almost any

American who has served in Iraq could attest to you, the sacrifices of the Iraqis have been deeply moving. The commitment of those Iraqis who have served alongside Americans is legendary, and there are many anecdotal accounts of American lives saved through their courage. Rather, I believe we are here today to examine whether the United States' response has been worthy of the valor displayed by our Iraqi allies, people who in many cases jeopardize their safety to ensure ours, people who share our vision for a democratic and peaceful Iraq. In that spirit, I submit that as the United States implements the glide path towards drawing down our forces in Iraq, we must view the protection of our Iraqi friends and allies as a moral and strategic imperative. Ensuring their safety must not be an inconvenient afterthought; it is a vital part of our success, and theirs, as we reduce our presence in the region.

If there is one thing I hope that legislators will take away from my testimony today, it is this:

A successful strategy for identifying and protecting U.S.-affiliated Iraqis must include a robust interagency process that fully integrates all stakeholders—most importantly, the Department of Defense. The failure to include sound and systematic planning to assist the relocation of Iraqi refugees as an important element in the planned and phased withdrawal from Iraq may very well have strategic consequences. To be clear: Our government must work together so things don't fall apart.

At the close of my testimony today, I will offer four concrete recommendations for how Congress can put us on the path toward achieving this vital goal.

I. The Urgency of Our Obligation

The threat to our Iraqi allies is as grave as it is imminent. Just within the past few days, we have seen media reports of coordinated terrorist attacks that killed dozens of U.S.-linked

Iraqis in Baghdad.¹ These attacks were apparently aimed at Iraqis who served as members of the Awakening movement, an organization composed largely of former Sunni insurgents who, in exchange for a regular paycheck from the U.S. military, decided to stop fighting U.S. forces and instead take on Al Qaeda in Iraq. Several hours later on July 18, 2010, another attack killed four Awakening members in Al Qaim, a city in Anbar Province.

We've also seen an alarming report² of an Iraqi translator for the U.S. military who, after being threatened by his family³ for working with the American military, was murdered by his own son. After confessing to shooting his father "six or seven times", the son coldly stated his motive in no uncertain terms: "*Everybody hated him because he worked for the Americans.*"⁴

These targeted reprisals demonstrate in no uncertain terms that terrorist groups and other elements within the Iraqi population remain intent on killing U.S.-affiliated Iraqis, and are capable of doing so. Those who served alongside our forces and advised them through the hot days and the uncertainty of shifting alliances face a distinct danger. We minimize or ignore it at their peril. And ours.

In a strategic sense, it was the efforts of our Iraqi brethren who helped to turn the tide as the surge succeeded. The surge represented not only an infusion of personnel, but a refocused strategic effort that centered on the will of the Iraqi people to help each other as a society move towards a future of prosperity. The Iraqis who assisted coalition forces formed an irreplaceable aspect of our operational effectiveness and ultimate success as we accomplished our missions.

¹ WASHINGTON POST, *48 Killed in Suicide Bombings targeting members of Iraq's Awakening Councils*, Ernesto Londono, Jul. 19, 2010. Available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/18/AR2010071800825.html>.

² NEW YORK TIMES, *Iraq's Conflict, Reflected in Family Tragedy*, Tim Arango, Jul. 19, 2010. Available at http://www.nytimes.com/2010/07/20/world/middleeast/20samarra.html?_r=1.

³ One text message from a nephew reportedly read, "You are in my village and I can get you. And I will stomp on your head with my feet like an insect."

⁴ *Id.*

The precept that we never leave a fallen comrade is a key cornerstone of the Warrior Ethos, and actually incorporated into the U.S. Army Soldier's Creed. By extension, our duty to assist our Iraqi friends and allies transcends tactical importance to touch on our fundamental values. The signers of our Declaration of Independence ended that historic document with the explicit assurance that they pledged their lives, their fortunes, and their sacred honor to the pursuit of its principles. The courageous Iraqis, who rose to help America's military restore the hope of an Iraqi society built on fundamental freedoms and respect for human rights took no less noble a gesture.

I should hasten to add that for me, the urgency of the threat to our Iraqi allies, and the dangers they face as a result, are not mere abstractions. Apart from my duties on the faculty of Vanderbilt University Law School, I served as the International Law Advisor to the Iraqi High Tribunal. The book that I co-authored with my good friend and colleague Professor Michael Scharf is the definitive account of the trial of Saddam Hussein, entitled *Enemy of the State: The Trial and Execution of Saddam Hussein*. Its dedication reads as follows: "to Riyadh and John and all those who have sacrificed at the altar of freedom and human dignity." Neither Riyadh nor John are fictitious individuals, but we identified them specifically because they are exemplars for so many others who have sacrificed and died in pursuit of principle and the accomplishment of the mission

Riyadh was the most esteemed translator for the initial training sessions for Iraqi judges preparing to preside over the trials of defeated Ba'athist leaders whose will was law in Saddam's Iraq. He was a gregarious, portly, middle-aged Iraqi man with a bushy mustache who spoke English with a very pleasing British accent -- and we became fast friends. He grew up in Basra and developed the beautiful flowing accent because he learned to speak English from audio tapes made in the United Kingdom. He told me that he wanted to be able to help when the Americans came back one day to free Iraq. Riyadh was a sounding board and mentor for Americans who struggle to complete complex jobs in the midst of an often confusing cultural overlay. He was warned that he might be killed, but insisted on continuing to serve. Rather than changing his clothes as he came and went from work with American forces, he wore his professional clothing

to set an example of moral courage for the younger Iraqis who looked to him for leadership. On my second trip to Iraq to assist with the preparation of the Anfal genocide case, just a few days before he was murdered, he pulled me aside and warned me in strident terms: “Newton” he said, “it is much worse now than before. Be very careful please.”

Riyadh was murdered on his doorstep literally as he was leaving for work to serve alongside our forces.

Riyadh’s courage and sacrifice were an example for all those who knew him, and his friends collected a substantial sum of money for his widow and children. The book is dedicated to him and those like him along with the Americans who have sacrificed to represent the tremendous dedication to duty and personal courage he demonstrated. If time permitted, we could give you dozens of similar examples. It is in memory of Riyadh and all those Iraqis like him who’ve paid the ultimate sacrifice for their country and ours that I urge you to take immediate action to protect our Iraqi allies.

II. Specific Recommendations

In my professional experience, I have had the opportunity to look at the problems the Commission is confronting today from a variety of perspectives. As an academic who has taught at West Point and the Judge Advocate General’s School and Center, I’ve thought and written about the technical legal questions that arise regarding the interface of statutory regimes and the implementation of domestic and international law. In other words, the key question comes down to what *can* we do or, what *must* we do, legislatively speaking, to assist Iraqi refugees. As an operational lawyer who regularly advised American commanders on a range of issues, and in particular who served in the mountains of Northern Iraq assisting Kurdish civilians fleeing from Saddam during Operation Provide Comfort and returned to help with the Iraqi High Tribunal as its important work began, the primary question was what *should* we do as we work within the means provided to us by Congress. Lastly, from my service as both an operational lawyer and the Senior Advisor to the Ambassador-at-Large for War Crimes in the U.S. Department of State,

we confronted the pragmatic issues of *how* the United States implements its obligations in the context of interagency relationships and the mandates of funding lines of authority.

My experience leads me to recommend four concrete steps that Members of the Commission should work towards as you confront this vital issue with your colleagues in the Congress and as legislation for the future is shaped. One thing is clear – much greater integration of effort and mutual support between the Departments of State, Defense, and Homeland Security are needed to eliminate inefficiencies and delays in protecting our Iraqi allies. No single agency can, or should, attempt to handle the whole of the problem alone.

1. The Senate should pass the Hastings Amendment without delay.

As a first priority, the substance of the Hastings Amendment should become the law of the land as soon as practicable. In light of the strategic importance of avoiding another Vietnam-style refugee crisis, time yet remains to develop practical plans for supporting our Iraqi colleagues and ensuring their safety and that of their families. We are at present withdrawing from Iraq– not evacuating. The United States has strong interests, both from a practical and military perspective, in avoiding the disaster that was Vietnam’s evacuation. At present, despite laudable logistical efforts in almost all other respects of the withdrawal, the compartmentalization of the refugee issue – and particularly as it relates to our U.S.-affiliated Iraqi employees – has left us in a hauntingly similar position to the one we witnessed in 1975.

2. Empower the Department of Defense to capitalize on efficiencies.

The Hastings Amendment represents a necessary first step in securing the future of our Iraqi allies by mandating the Department of Defense to prepare a comprehensive report detailing the Iraqis who received United States Government funding and cross-referencing those individuals against applications for resettlement or special immigrant visas. However, in addition, Congress should create a statutory obligation for the Secretary of Defense to designate a specific focal point within the Department for planning and implementation of refugee assistance on behalf of those who have served with U.S. forces. Gathering the relevant information about the identity and immigration status accomplishes little in the intermediate term

if there is no mechanism developed for facilitating entry of those who are the most danger as the withdrawal accelerates.

At a minimum, such an official designation would assist Iraqis in locating the Americans who can help prepare sworn statements documenting the scope of their service in order to complete the administrative and legal labyrinth needed to lawfully enter the United States. An Iraqi left behind in Fallujah for example, may well have lost contact with the servicemen and women who can attest to his service. A designated administrative focal point would serve as the reservoir for relevant expertise in DoD which in turn could be pushed out as needed to combatant commanders or deployed Task Forces in the future to support ongoing operations. Conversely, the single organizational point of contact within the Department of Defense would be perfectly placed to serve as the liaison between the Department and other agencies as the need or circumstances dictate.

3. Empower the interagency team to replicate successful models of past protection and resettlement.

The interagency coordination described above is not fanciful, nor is it farfetched given the right political will and a clear mission mandate. Operation Pacific Haven lasted 218 days beginning on September 16, 1996. Iraqi Kurds were brought to Guam, and provided shelter, food, clothing, medical care and assimilation classes to help them adjust to a new way of life in the United States. This joint effort included more than 1,600 individuals, including military members from all services and U.S. interagency professionals from around the globe. As the members know, the refugee process includes a series of background checks, medical examinations and the designation of sponsors which routinely takes up to two years for a single individual. Rather than following the normal lengthy process, due to a streamlined procedure and the high priority given this program U.S. officials averaged between 90 and 120 days in the screening, adjudication and resettlement activities for those Kurdish families.

It is also notable in passing, given the strong support available through the LIST project and other local efforts, that ultimate success of Pacific Haven also hinged on the strong support

by the local community. According to the Joint Task Force Plans officer, military families stationed on Guam and the local community poured out goodwill in the form of donations totaling well over 40,000 volunteer hours and valued at \$650,000 in needed materials -- primarily clothing, household items, toiletries and toys. "The cooperation between U.S. military, federal and local government, and non-government organizations and the community ensured the mission's success," said Maj. Gen. John Dallager, Joint Task Force commander at the time. "Our success will undoubtedly be a role model for future humanitarian efforts."

I am proud to point out that Vanderbilt University has the largest ongoing effort to assist Iraqi refugees of any institution associated with the LIST Project. According to a March 2010 GAO report, Tennessee has welcomed the tenth largest population of refugees and Special Immigrant Visas in the United States. Our network in the Nashville area numbers more than two hundred people [including the Iraqis who work to help each other] and more than 2,500 hours of volunteer service were undertaken in the past year by students, faculty, and local citizens.

It is especially telling and heartwarming to watch the eagerness and commitment that the military veterans who are part of our student body inject into the efforts to assist Iraqis who have resettled in the area. American servicemen and women who have fought in Iraq recognize how critical the work of Iraqis was to their mission, and they regularly contact The List Project to ask for help getting their Iraqi colleagues to the United States. They express their frustration with the slow, bewildering refugee/immigration process and the inadequate resources we have devoted to protecting our Iraqi allies. The needs of Iraqi refugees that are successful in reaching the United States are ongoing and intense, but only represent one piece of what should be a broader and integrated program to help them and their families arrive safely. If we consider Vietnam as an eventual (if haphazard and delayed) success in refugee protection and resettlement, this would be the United States' first failure on this score in almost sixty years.

4. Appropriate modest discretionary funds to fill gaps as the drawdown moves forward.

Finally, Congress should implement two separate lines of funding to support refugee operations under the auspices of the Department of Defense. Commanders in the field should have a readily available and flexible tool similar to that developed under the Commander's Emergency Response Program (CERP). Just as CERP funds provided an agile and responsive tool for commanders to achieve targeted and cost-effective solutions at the time and place they were most needed, so too should a new program be funded to permit commanders to assist translators and interpreters swiftly with low cost immediate needs. As a corollary, the focal point office within the Department of Defense structure should have funding and statutory authority to meet emergency needs, such as emergency tickets or shelter, or some block of funding upon available to refugees arriving with minimal possessions from the area of operations. The success of Operation Pacific Haven was achieved at a cost in the vicinity of \$10 million, but streamlined funding that goes directly to endangered refugees and their families can provide far more immediate assistance in a far more cost effective manner.

V. The Strategic Consequences of Inaction

Congress must act swiftly to prevent an impending human tragedy. This hearing is an important step in that direction. America's modern counterinsurgency doctrine cannot be implemented in a vacuum, and the thousands of U.S.-affiliated staff who will be endangered if we fail to plan for their well-being or to effectively implement those plans represent an important source of political and human capital.

At present, U.S.-affiliated Iraqis may constitute the single largest repository of direct knowledge, experience, and understanding of U.S. war-fighting in any foreign population in the world. For the past several years, they've ridden in our vehicles, gone out on our foot patrols, and served as our voice in the Surge strategy to the Iraqi population. With a bitter counterinsurgency raging just two borders over, allowing this repository of information about U.S. tactics and strategy to fall victim to reprisals and exploitation by the various hostile elements in the region who seek to undermine U.S. policy and interests would represent a strategic myopia. Allowing them to be slaughtered after withdrawal will send a powerful signal to the rest of the world – including those in Afghanistan – that it doesn't pay to stand with the

U.S. From the narrow perspective of the future of Iraq, we should not permit the same people who have been fighting with us to be tortured, coerced, or exploited into fighting against us in the future. Those who work with the United States in Iraq are today perhaps our most steadfast and staunch allies in that country, if not the Arab world, and they have key insights that can assist our counterinsurgency operations as well as helping to prepare forces flowing into Afghanistan. Offering a principled, effective, and thorough protection and resettlement plan will reinforce the goodwill we've created at a minimal cost to the United States. Yet it will pay dividends for generations to come, just as our moral intervention in favor of Vietnamese, Cambodian, and Laotian refugees has.

This brief window of opportunity represents a fortuity in which our strategic self-interest aligns with our moral duties. I implore you not to let it slip away. The moral duty of our nation is to stand by those who stood by our men and women in uniform, and in the strategic sense a focused and revitalized national effort on behalf of our Iraqi allies will predictably save American lives. I thank you each again for taking time from your busy schedules to attend this session and to work with your colleagues to protect our interests. I am honored to know so many wonderful Iraqis, and privileged to share their needs with you today. I welcome your questions and am amenable to providing any further assistance the Commission might require in the future.