



## A Question of Honor:

The Ongoing Importance of the Afghan Special Immigrant  
Visa Program

*March 2017*



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## I. Executive Summary

The Afghan Special Immigrant Visa (SIV) program was established in the Afghan Allies Protection Act of 2009 in response to the extreme danger that Afghan employees of the U.S. government in Afghanistan face as a result of their work.

Prominent leaders of the U.S. military have expressed strong support for the program and warned of dire consequences to the U.S. mission in Afghanistan—and the ability of the United States to obtain assistance in future missions—if local employees are abandoned without a path to safety. The program also has strong bipartisan congressional support.

As of this report's writing in March 2017, visa interviews were suspended for lack of visas. All Afghan applicants must undergo extensive processing, which lasts for months or even years. In some cases, these long periods are exacerbated by processing glitches or erroneous denials and leave Afghans in danger while they wait for a visa. Applicants' long delays, spent waiting in danger, are extended even further by Congress's failure to provide visas for those who complete this rigorous screening process.

Afghan allies have provided mission-essential service to U.S. troops, diplomats, and other government personnel. Congress must act to authorize sufficient visas to allow all eligible applicants to reach safety. It must act quickly to allow the U.S. Department of State to issue visas without interrupting processing for applicants, who remain in danger from hostile forces while they wait for a life-saving visa.

## II. The Afghan Special Immigrant Visa Program

Congress established the Afghan SIV program in the Afghan Allies Protection Act of 2009.<sup>1</sup> The program offers a visa, followed by legal permanent residence status in the United States,<sup>2</sup> to individuals who demonstrate that:

- they are a national of Afghanistan;
- they were employed for at least two years in designated capacities by the U.S. government or a closely associated entity, as demonstrated by human resources records;<sup>3</sup>

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<sup>1</sup> Afghan Allies Protection Act of 2009, Section 602(b). Richard Lardner, "Top General Urges Lawmakers to Preserve Afghan Visa Program," Military.com, May 25, 2016, <http://www.military.com/daily-news/2016/05/25/top-general-urges-lawmakers-preserve-afghan-visa-program.html>.

<sup>2</sup> It should also be noted that recent immigration-focused executive orders released in January through March 2017 do not, at least as of this writing, affect the State Department's ability to process and issue visas, or the ability of applicants to travel using their visas.

<sup>3</sup> Prior to Nov. 25, 2015, applicants were required to demonstrate one year of service. See Afghan Allies Protection Act of 2009 as amended through NDAA for FY 2015, Section 1227. This period was raised to two years in the National Defense Authorization Act (NDAA) for Fiscal Year 2016, Section 1216. Eligibility restrictions were further increased in the NDAA for Fiscal Year 2017, Section 1214, limiting eligibility further based on the kind of work performed.

- they provided faithful and valuable service to the United States, as demonstrated by a personal recommendation from a U.S. citizen supervisor;
- they have faced a serious, ongoing threat as a result of their employment.<sup>4</sup>

Applicants are also screened via extensive background checks, which make up by far the longest step in the screening process, as outlined in the following Appendix.<sup>5</sup>

### III. The Importance of the SIV Program for U.S. National Security

Since 2002, the U.S. Government has employed tens of thousands of Afghan allies to serve alongside U.S. troops, diplomats, and other government employees. As Gen. John Nicholson and Former Ambassador Ryan Crocker have noted, in addition to linguists, other employees such as firefighters, construction workers, and Embassy staff are crucial to the U.S. military operations in Afghanistan.<sup>6</sup> As these leaders of the U.S. mission in Afghanistan state, Afghan employees performing seemingly low-skilled tasks, such as construction, maintenance, or security guards, provide mission-essential support to U.S. government personnel, perform their jobs with loyalty and care, and face immediate threats due to their work.

Regardless of the form that their service took, U.S.-affiliated Afghans are at significant risk of being killed in Afghanistan at the hands of the Taliban and other terrorist groups. The Taliban despises Afghan employees of the U.S. government, including military translators, military contractors, USAID staff, and Embassy Kabul staff, as they consider them traitors and infidels.

The security situation in Afghanistan is deteriorating despite coalition efforts,<sup>7</sup> with Gen. Nicholson recently estimating that roughly a third of the country is either contested or under Taliban control.<sup>8</sup> This leaves U.S.-affiliated allies vulnerable to attack. Newspapers

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<sup>4</sup> Ibid at Section 602(b)(2)(A).

<sup>5</sup> Joint Department of State/Department of Homeland Security Report: Status of the Afghan Special Immigrant Visa Program, Oct. 2016, <https://travel.state.gov/content/dam/visas/SIVs/Report%20of%20the%20Afghan%20SIV%20Program%20-%20October%202016.pdf> (reporting that, on average, Afghan SIVs are in “administrative processing,” or security checks for 189 days, of 434 days of government processing).

<sup>6</sup> Richard Lardner, “Top General Urges Lawmakers to Preserve Afghan Visa Program,” Military.com, May 25, 2016, <http://www.military.com/daily-news/2016/05/25/top-general-urges-lawmakers-preserve-afghan-visa-program.html> (“Afghan civilians who assisted the American-led coalition as interpreters, firefighters and construction workers are in danger of being harmed or killed by the Taliban”); Ryan Crocker, “Don’t let the U.S. abandon thousands of Afghans who worked for us,” Washington Post, May 12, 2016, [https://www.washingtonpost.com/posteverything/wp/2016/05/12/dont-let-the-u-s-abandon-thousands-of-afghans-who-worked-for-us/?utm\\_term=.38e2ae64fca3](https://www.washingtonpost.com/posteverything/wp/2016/05/12/dont-let-the-u-s-abandon-thousands-of-afghans-who-worked-for-us/?utm_term=.38e2ae64fca3) (“When deciding whom to kill, the Taliban do not make such distinctions in service — nor should we when determining whom to save.”).

<sup>7</sup> Daniel Depetris, “Afghanistan: It’s Only Getting Worse,” Defense One, Aug. 09, 2016, <http://www.defenseone.com/ideas/2016/08/afghanistan-its-only-getting-worse/130615/>.

<sup>8</sup> Department of Defense, “Resolute Support Commander Briefs Reporters,” Sep. 23, 2016,

have documented dozens of cases in which U.S.-affiliated Afghans were threatened and attacked.<sup>9</sup> Moreover, numerous veterans and veteran's organizations have expressed grave concerns for the safety of Afghan allies.<sup>10</sup> Senator John McCain bluntly summarized the stakes for individual applicants if additional visas are not authorized: "People are going to die."<sup>11</sup>

*The first time the Taliban tried to kill him, Sulaiman was driving to his base when his truck was hit by a rocket, knocking him down a cliff.*

*The insurgents knew his vehicle, its license plate number and, most important, his occupation: a high-value combat interpreter for United States Special Operations troops in Afghanistan.*

*Now, the backlog is growing. As the American pullout hits full pace and bases across the country are shut down, hundreds of Afghans have suddenly found themselves without jobs, leaving them without military protection despite the continued risk of attack by the Taliban.*

"Afghan Interpreters for the U.S. Are Left Stranded and at Risk," *New York Times*, April 14, 2013.

In response to these circumstances, Congress created the Afghan Special Immigrant Visa (SIV) program in 2009 to provide visas to Afghans who worked with U.S. forces and diplomats and who suffer serious threats because of that affiliation. This followed the passage of a similar program for Iraqis who worked with the U.S. government in Iraq. At the time, then-Congressman Mike Pence commented, "I think there is nothing more important than the United States of America saying to people in Iraq or anywhere in the world, if you stand by us, we will stand by you."<sup>12</sup>

The Afghan SIV program continues to have near-universal support from key military leaders, including General John Nicholson, General David Petraeus, and General Stanley McChrystal. General Nicholson noted that "[f]ailure to adequately demonstrate a shared understanding of their sacrifices and honor our commitment to any Afghan who supports could have grave consequences for these individuals and bolster the propaganda [of] our

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<https://www.defense.gov/Video/videoid/484589>.

<sup>9</sup> See, e.g., Azam Ahmed, "Afghan Interpreters for the U.S. Are Left Stranded and at Risk," *New York Times*, Apr. 14, 2013, <http://www.nytimes.com/2013/04/15/world/asia/american-visa-delays-put-safety-out-of-afghan-interpreters-reach.html> (noting that "at least a few people are said to be killed each month" and noting three assassinations and another assassination attempt of Afghan allies).

<sup>10</sup> See, e.g., Amanda Winkler, "Is the US Abandoning Afghan Interpreters to Certain Death?" Jul. 22, 2014, <http://reason.com/reasontv/2014/07/22/us-abandoning-its-afghan-allies> (quoting U.S. Rep. and veteran Adam Kinzinger saying, "If we completely pull out of Afghanistan and we don't bring these interpreters back . . . they're going to be killed. Their families are being killed too. Their houses are being burned down.").

<sup>11</sup> Emmarie Huetteman, "'They Will Kill Us': Afghan Translators Plead for Delayed U.S. Visas," *New York Times*, Aug. 9, 2016, <http://www.nytimes.com/2016/08/10/us/politics/afghan-translators-military-visas.html>.

<sup>12</sup> Hearing, Subcommittee on the Middle East and South Asia, House Committee on Foreign Affairs, "Iraqi Volunteers, Iraqi Refugees: What Is America's Obligation?" Mar. 26, 2007, 110-46, <http://archives.republicans.foreignaffairs.house.gov/110/34477.pdf>.

enemies.”<sup>13</sup> A spokesman for the U.S. command in Afghanistan, Brig. Gen. Charles H. Cleveland agreed, warning Congress that a failure to extend the SIV program would “give[] the enemy some propaganda to say, ‘Hey, these people really aren’t committed to you . . .’ It’s our credibility that is on the line.”<sup>14</sup> In other words, failing to honor our commitments would constitute a tactical, counterinsurgency failure; the friends and family members of the betrayed will have no reason to support the United States in the future, and every reason to actively oppose us.

Veterans also note that the failure to protect current allies could jeopardize future missions: Marine veteran Joe Jenkins said, “I do not think we can turn our back on our allies like that, especially concerning American interests in the future. How will we hold allies in the future?”<sup>15</sup> The United States will undoubtedly need interpreters and other local nationals for future conflicts, just as we did in Vietnam; abandoning our current allies all but ensures a lack of future ones.

#### IV. The Current Legislative Status of the Afghan SIV Program

Congress must allocate additional SIVs on an *ad hoc* basis; unlike other programs, visas are not available for anyone who qualifies or on an annually replenishing basis. This makes access to the program subject to the will of Congress to stand with our allies and veterans. Since establishing the Afghan SIV program in the Afghan Allies Protection Act of 2009, Congress has legislated seven times to extend the program, implement reforms, and authorize additional visas.<sup>16</sup>

The SIV program has strong support in Congress, including from Senators John McCain and Jeanne Shaheen and Representatives Kinzinger, Blumenauer, and Moulton. A symbolic Senate vote in July 2016 on the SIV program yielded an 84-12 vote in support, demonstrating broad bipartisan support for the program.<sup>17</sup>

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<sup>13</sup> Richard Lardner, “Top General Urges Lawmakers to Preserve Afghan Visa Program,” *Military.com*, May 25, 2016, <http://www.military.com/daily-news/2016/05/25/top-general-urges-lawmakers-preserve-afghan-visa-program.html>.

<sup>14</sup> Emmarie Huetteman, “‘They Will Kill Us’: Afghan Translators Plead for Delayed U.S. Visas,” *New York Times*, Aug. 9, 2016, <http://www.nytimes.com/2016/08/10/us/politics/afghan-translators-military-visas.html>.

<sup>15</sup> Jacqueline Klimas, “Marine vet urges Congress to act on visas for Afghan interpreters,” *Washington Examiner*, Jun. 20, 2016, <http://www.washingtonexaminer.com/marine-vet-urges-congress-to-act-on-visas-for-afghan-interpreters/article/2594385>.

<sup>16</sup> U.S. Department of State, “Special Immigrant Visas for Afghans - Who Were Employed by/on Behalf of the U.S. Government,” <https://travel.state.gov/content/visas/en/immigrate/afghans-work-for-us.html>.

<sup>17</sup> Leo Shane III, “Senate Presses for a Fix on Afghan Visas Problem,” July 14, 2016, <http://www.militarytimes.com/story/military/2016/07/14/ndaa-afghan-visas-fix-attempt/87082748/>.

At the end of 2016, 13,000 Afghans had submitted an application to the program, and roughly 1,600 visas remained.<sup>18</sup> Facing a shortfall of more than 10,000 visas, Congress allocated only 1,500 additional visas for fiscal year 2017.<sup>19</sup> In recent years, DOS has accelerated its processing, issuing well over 3,000 visas in fiscal year 2016. Members of Congress, military leaders, and advocacy groups predicted that Afghan applicants, despite their sacrifice and the danger they are exposed to due to their work, and despite meeting all eligibility criteria for the SIV program, would be stranded if Congress failed to allocate additional visas.

As of March 1, 2017, this is precisely what happened; the embassy in Kabul has ceased processing SIV applications unless and until Congress authorizes additional visas.<sup>20</sup> This means that, even assuming that Congress does allocate sufficient visas, those who are eventually approved will face significant delays due to the current shortage. When DOS faced another shortage of visas in 2014, then-Secretary of State Kerry warned that exhausting visas, even short-term, “leaves us in danger of stranding hundreds of deserving Afghans until a new batch of visas is approved . . . [i]t will be dangerous for applicants – and damaging to our national credibility the next time we have to rely on local knowledge.”<sup>21</sup>

Worse still, the cessation of visa processing came on the heels of the news that 2,500 U.S. troops will be sent to Kuwait for possible missions in Syria.<sup>22</sup> As Jenkins noted in the previous section, our betrayal of our Afghan allies sends a clear message to those we might hope will work with us in Syria. Potential local allies are unlikely to risk their lives on our behalf in light of the U.S. Government’s inability to keep its promises to its Afghan allies.

## V. Countering Opposition to the SIV Program

Despite the warnings of military leaders and bipartisan support, a handful of members of Congress have balked at authorizing sufficient visas, often purporting to have concerns over the cost or the possibility of fraud.<sup>23</sup> However, the United States retains over 8,000

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<sup>18</sup> See Abigail Hauslohner & Karoun Demirjian, “Afghan Visa Program Extended Despite Pushback from Immigration Foes,” Washington Post, Dec. 2, 2016, [https://www.washingtonpost.com/news/powerpost/wp/2016/12/02/afghan-visa-program-extended-despite-pushback-from-immigration-foes/?utm\\_term=.71be9f43c020](https://www.washingtonpost.com/news/powerpost/wp/2016/12/02/afghan-visa-program-extended-despite-pushback-from-immigration-foes/?utm_term=.71be9f43c020) (noting that with 13,000 applicants, only 3,100 visas remained, including the newly allocated visas).

<sup>19</sup> NDAA for FY 2017, Section 1214.

<sup>20</sup> Fahim Abed & Rod Nordland, “Afghans Who Worked for U.S. Are Told Not to Apply for Visas, Advocates Say,” New York Times, Mar. 10, 2017, <https://www.nytimes.com/2017/03/10/world/asia/afghanistan-visa-program-united-states.html>.

<sup>21</sup> John F. Kerry, “From John Kerry: We need more visas, now, for our Afghan allies,” June 2, 2014, <http://www.latimes.com/opinion/op-ed/la-oe-0602-kerry-afghan-withdrawal-20140603-story.html>.

<sup>22</sup> Charlsy Panzino & Andrew deGrandpre, “The U.S. is sending 2,500 troops to Kuwait, ready to step up the fight in Syria and Iraq,” Army Times, Mar. 9, 2017, <https://www.armytimes.com/articles/82nd-airborne-syria-iraq-kuwait-islamic-state>.

<sup>23</sup> Hauslohner & Demairjian.

personnel in Afghanistan<sup>24</sup> and relies heavily on local nationals for interpretation and other services. Not only does imperiling the program discourage our Afghan allies from working with us, thereby negatively impacting mission readiness, it also places currently serving American troops at risk. Whether there are 100,000 or 100 American diplomats and troops in Afghanistan, they will need interpretation and other services that only Afghans can provide. There is no monetary cost too high to ensure the protection and success of our troops.

One former Senator argued that the SIV program may admit Afghans who are not “deserving of acceptance.”<sup>25</sup> This argument, that not all applicants are deserving, is an odd one: the fourteen-step SIV application process<sup>26</sup> exists precisely to determine who is deserving and who is not. SIV recipients are receiving visas based on their employment *because their employment puts their lives in danger*. Indeed, as part of the SIV application, Afghans must demonstrate that they have experienced an ongoing, serious threat as a result of their service to the United States.<sup>27</sup> Additionally, an applicant must submit extensive documentation, including letters of recommendation from U.S. supervisors. Many have been denied for lack of proof of “faithful and valuable service” to the United States or for lack of evidence that they served the minimum period of employment required by Congress.<sup>28</sup> Those who complete all processing steps and who are awarded SIVs are done so because the system has judged them deserving; those who apply without the requisite service are rejected.

Finally, Rep. Bob Goodlatte, one of a handful of opponents of the program, stated his belief that “[t]here must be reasonable limits on these programs. . . . Currently there are thousands of unused visas that have been set aside for Afghans who have helped the United States during the war. If these visas run out, Congress will be able to revisit this issue to determine if more should be allocated.”<sup>29</sup> The State Department, the Department of Defense, congressional champions, and advocacy groups all warned loudly and publicly that the “thousands of unused visas” would be issued within months to individuals who had completed all processing steps. The typical vehicle to authorize additional visas—the National Defense Authorization Act—will not appear on the congressional agenda for months. This delay adds months, at the minimum, to the time that loyal Afghan allies will remain in danger waiting for their visas to be approved.

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<sup>24</sup> Mark Landler, “Obama Says He Will Keep More Troops in Afghanistan Than Planned,” New York Times, Jul. 06, 2016, [http://www.nytimes.com/2016/07/07/world/asia/obama-afghanistan-troops.html?\\_r=0](http://www.nytimes.com/2016/07/07/world/asia/obama-afghanistan-troops.html?_r=0).

<sup>25</sup> Abigail Hauslohner & Karoun Demirjian.

<sup>26</sup> U.S. Department of State, “Special Immigrant Visas for Afghans - Who Were Employed by/on Behalf of the U.S. Government,” <https://travel.state.gov/content/visas/en/immigrate/afghans-work-for-us.html>.

<sup>27</sup> Afghan Allies Protection Act of 2009, Section 602(b).

<sup>28</sup> See, e.g., Katherine Lonsdorf and Patrick Martin, “Thousands of Afghan Interpreters Wait for Visas as Congress Squabbles,” US News and World Report, Jul. 7, 2016, <http://www.usnews.com/news/articles/2016-07-07/thousands-of-afghan-interpreters-wait-for-visas-as-congress-squabbles> (describing an individual who, after translating for three years, was terminated for tardiness to an assignment, and noting that “[j]ob terminations or missing documents are often enough to sideline an SIV application”).

<sup>29</sup> Abigail Hauslohner & Karoun Demirjian.



*Zar Mohammad Stanikzai remembers the promise made to him when he became a translator supporting the United States military in 2012: Help us, and we will keep you safe. Four years later, his fear of Taliban reprisals has made him a prisoner in his Afghan home, he said, and he is still waiting for the Americans to honor their commitment.*

“‘They Will Kill Us’: Afghan Translators Plead for Delayed U.S. Visas,” *New York Times*, Aug. 9, 2016.

## VI. Insufficient Visas Endanger SIV Applicants Facing Long Processing Delays

Due to long delays in SIV processing, many Afghan allies who served alongside troops and who submitted applications to the SIV program years ago are still waiting for approval to travel to safety. Having waited for years, these individuals now face the possibility that they will never receive a visa if the current pool of visas is exhausted before their extended processing is completed. Additional visas must be allocated so that these long-pending applicants are not abandoned due to delays outside of their control.

The Afghan SIV program was not established until 2009, after eight years of significant U.S. Government presence in Afghanistan.<sup>30</sup> That means that several thousand allies were already at risk and in need of a path to safety at the moment when the SIV program was established.

The years immediately following the program’s creation, DOS failed almost completely to process and issue visas; in fiscal year 2010, DOS issued seven visas, and in 2011, it issued three.<sup>31</sup> It was not until 2014 that DOS began processing SIV applications in an expeditious manner, and by that time, thousands of authorized visas had expired, wasted by bureaucratic inaction.

At the time, Secretary of State John Kerry reported that:

Delays in processing applications and lack of transparency in making decisions created problems. Bluntly stated, the process wasn't keeping up with the demand. A full-scale State Department review revealed statistics and anecdotes that highlighted unconscionably long processing times for applicants, including on background checks conducted by other U.S. agencies. Some

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<sup>30</sup> The SIV SI program, established in the National Defense Authorization Act of 2006, Section 1059, was designed as a permanent program providing 50 visas a year for Afghan and Iraqi translators with recommendations from high-level U.S. officials. The Afghan SIV program, also called the 1244 program, was established in the Afghan Allies Protection Act of 2009 (§ 602 of the Omnibus Appropriations Act, 2009; Public Law 111-8 of March 10, 2009).

<sup>31</sup> U.S. Department of State, SQ Number Use, accessed Dec. 13, 2016, [https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/SIV/SQNumbers\\_0916.pdf](https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/SIV/SQNumbers_0916.pdf).

deserving people were simply falling through the cracks. This was unacceptable to me and to the president.<sup>32</sup>

The International Refugee Assistance Project (IRAP) estimates that because of these delays, at least 6,500 visas for Afghan applicants expired between fiscal years 2009 and 2013.<sup>33</sup> Thus, Congress's subsequent visa allocations the following two years essentially reauthorized visas that Congress had already approved but that the DOS had allowed to expire.

Congress intervened, requiring that SIV applications shall be "processed so that all steps under the control of the respective departments incidental to the issuance of [SIVs], including required screenings and background checks, should be completed not later than 9 months after the date on which an eligible alien submits all required materials to complete an application for such visa."<sup>34</sup>

Since 2014, DOS has taken serious steps to significantly improve its processing times, but applicants still face long delays before they can reach safety. Before an Afghan ally can even apply for the first step of the SIV program, they must have already completed two years of faithful and valuable service in a position of qualifying employment.<sup>35</sup> Average processing has, at every point since the program started, far exceeded Congress's ceiling of 9 months of processing time. As of April 2014, the average case processing time was 287 business days, or roughly 401 calendar days, for government-controlled steps.<sup>36</sup> From April 2014 to April 2016, processing times averaged 434 calendar days.<sup>37</sup> Even those extended processing times "do not factor in applicant-controlled steps. Overall processing times are greater than U.S. government processing times."<sup>38</sup>

These are average case times; many cases take far longer. One group of Afghan and Iraqi SIV applicants (and IRAP clients) waited for more than three years from the time that they applied without receiving a final response regarding their SIV application. Three had

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<sup>32</sup> John F. Kerry, "From John Kerry: We Need More Visas, Now, for our Afghan Allies," Jun. 2, 2014, <http://www.latimes.com/opinion/op-ed/la-oe-0602-kerry-afghan-withdrawal-20140603-story.html>.

<sup>33</sup> Compare Afghan Allies Protection Act of 2009, Section 602(b)(3) (authorizing 1,500 visas per year) with U.S. Department of State, SQ Number Use, accessed Dec. 13, 2016, [https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/SIV/SQNumbers\\_0916.pdf](https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/SIV/SQNumbers_0916.pdf) (showing actual visa authorization).

<sup>34</sup> Afghan Allies Protection Act of 2009, Section 602(b)(4)(A); *Nine Iraqi Allies Under Serious Threat Because of Their Faithful Serv. to the United States v. Kerry*, 168 F. Supp. 3d 268, 274 (D.D.C. 2016).

<sup>35</sup> Afghan Allies Protection Act of 2009, Section 602(b)(2)(A)(ii). The minimum period of employment was one year for applicants who applied prior to Sep. 30, 2015. *Ibid.*

<sup>36</sup> Joint Department of State/Department of Homeland Security Report: The Implementation of Processing Improvements for Afghan Special Immigrant Visa (SIV) Program, Apr. 2014, [https://travel.state.gov/content/dam/visas/Afghan\\_SIVs\\_public%20report\\_\(05%2001%2014\).pdf](https://travel.state.gov/content/dam/visas/Afghan_SIVs_public%20report_(05%2001%2014).pdf).

<sup>37</sup> Joint Department of State/Department of Homeland Security Report: The Implementation of Processing Improvements for Afghan Special Immigrant Visa (SIV) Program, Jan. 2017, [https://travel.state.gov/content/dam/visas/SIVs/Afghan%20SIV%20public%20report\\_Jan%202017.pdf](https://travel.state.gov/content/dam/visas/SIVs/Afghan%20SIV%20public%20report_Jan%202017.pdf).

<sup>38</sup> *Ibid.*

waited for more than five years.<sup>39</sup> Only after filing a lawsuit in U.S. federal court did these allies receive a response to their application.<sup>40</sup>

As applicants wait for their visas to be processed, as noted above, they continue to live in serious danger. Those who have faced exceptional waits face the prospect that, as they wait, currently allocated visas will be issued before their cases are fully processed. Congress should ensure that all eligible applicants in the current backlog receive visas, including those who would suffer gross injustice after years of waiting if further visas are not allocated.

*Farid had been an interpreter for the U.S. military for . . . four years in Helmand, an area that is recognized as one of the most dangerous in Afghanistan. He accompanied Americans on numerous patrols, braving gunfire and the constant threat of IEDs.*

*Now, back in Kabul, Farid is still under constant threat. The Taliban has a history of targeting interpreters who work for the United States, and many Afghan civilians also see them as traitors.*

*In 2012, Farid applied to the Special Immigrant Visa program . . . He is still waiting for a decision. The 14-step application process includes multiple interviews, recommendation letters and a multitude of forms and documents. As of April of this year, the State Department estimates the average processing time for Afghan special immigrant visas is 270 days, but a backlog has caused the wait time to be much longer. In Farid's case, it's been over four years.*

*. . . "I feel disappointed, because they're not going to give me the visa anymore," Farid said. "If the Taliban don't capture me, I might die in a suicide attack."*

*"Thousands of Afghan Interpreters Wait for Visas as Congress Squabbles," US News and World Report, July 7, 2016.*

## VII. Processing Errors as Additional Obstacles

Many applications have also faced serious processing errors that have led to unreasonable delays and even denials of eligible applicants. As with extended processing times, these errors mean that, if Congress fails to allocate visas to allow DOS to continue to issue visas, individuals who applied years ago will be abandoned.

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<sup>39</sup> Complaint at para. 179, *Nine Iraqi Allies under Serious Threat because of their Faithful Service to the United States v. Kerry*, 168 F. Supp. 3d 268, 274 (D.D.C. 2016) (No. 1:15-cv-00300-GK).

<sup>40</sup> See *ibid*; International Refugee Assistance Project, Press Release: U.S. Government Agrees to Act on Cases of Iraqi and Afghan Allies Suing Over Failure to Act on Visa Applications, Mar. 21, 2016, <https://refugeerights.org/press-release-u-s-government-agrees-to-act-on-cases-of-iraqi-and-afghan-allies-suing-over-failure-to-act-on-visa-applications/>.

These errors have been particularly harmful during the Chief of Mission (COM) approval stage, through which all Afghan SIV applicants must verify their qualifying service for the U.S. government or a related entity. Applicants must submit a wide range of documents to receive approval, and some applicants face repeated issues receiving a thorough and legitimate assessment.<sup>41</sup>

Some clients receive official responses wrongly indicating that their applications were incomplete, or worse, had never been received. In several cases, staff at the National Visa Center (NVC), which processes the applications, ignored submitted contracts and letters of recommendation. In several cases, NVC asserted that an applicant's employment did not make them eligible for the SIV program, but a simple FOIA request verified the applicant's eligibility.

These applicants frequently have to submit appeals to the Chief of Mission before they receive approval and can proceed with their applications, resulting in drastically increased processing times. Each day that passes increases the likelihood that applicants are found out and attacked by the militias that persecute them.<sup>42</sup>

As a consequence, some SIV applicants have been stuck in the application process for years, often in hiding and separated from their families or in exile from Afghanistan.<sup>43</sup> Without additional visas, individuals who provided years of service and who applied many years ago will be unable to obtain visas due to delays caused through no fault of their own. It is therefore imperative that Congress allocate sufficient visas for all eligible applicants.

## VIII. Conclusion

Thousands of U.S. troops, diplomats, and other government personnel have relied on Afghan nationals for a variety of crucial services, including interpretation, translation, advice on political and cultural affairs, construction, supplies, maintenance, and security. Many U.S. citizens, particularly veterans, credit Afghan allies with saving their lives.

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<sup>41</sup> The examples in this section are based on IRAP's experience providing *pro bono* legal representation and legal advice to hundreds of Afghans applying for the SIV program. In the interests of client safety and privacy, client names are not provided.

<sup>42</sup> Azam Ahmed, "Afghan Interpreters for the U.S. Are Left Stranded and at Risk," Apr. 14, 2013, <http://www.nytimes.com/2013/04/15/world/asia/american-visa-delays-put-safety-out-of-afghan-interpreters-reach.html> (quoting a U.S. military supervisor assisting his Afghan interpreter in his SIV application to say, "If this takes too long, if there is an error somewhere, he's compromised and his family is compromised . . . We kind of feel like we're watching the clock wind down right now.").

<sup>43</sup> Julius Motal, "The translators promised visas but made into refugees by the US Army," Quartz, Jun. 20, 2016, <http://qz.com/702668/afghan-translators-for-the-us-army-who-were-promised-visas-but-never-got-them/>.

In turn, these local nationals have been met with threats against their lives from forces hostile to the U.S. mission in Afghanistan. Some have been killed, some have lost family members, and many have been forced to relocate or go into hiding because of their service.

The Special Immigrant Visa program provides a simple solution: individuals who can prove their service, who are recommended by their U.S. citizen supervisors, and who are under serious threat, can relocate to the United States. Failure to provide a path to safety will jeopardize the safety of U.S. government personnel in Afghanistan, as some mission-essential local nationals will be unable or unwilling to continue their service without a promise of assistance should they come under threat. In the long-term, failure to protect U.S. allies will harm U.S. credibility abroad and impede government personnel's ability to procure local assistance in the future.

Despite the importance of this program, applicants must rely on Congress to authorize sufficient visas on an ad hoc basis. Currently, more than 10,000 applicants are stranded until Congress allocates additional visas. Some applied years ago, but face long delays or serious errors in processing through no fault of their own. Congress must allocate visas, and do so immediately, to prevent a temporary or long-term pause in DOS' processing of these applications for allies who are seeking safe haven from those who would do them harm because of their faithful service to the United States.

## **Security Checks for Special Immigrant Visa Applicants**

### **April 2016**

Special Immigrant Visa applicants receive extensive vetting and rigorous security screening. Even before being hired for qualifying work, U.S.-affiliated employees are screened and vetted. The SIV application and systematic security screening process takes between 18-24 months, and often longer. During that time, Afghan allies of the U.S. live in significant danger because of their faithful service to the U.S. mission in Iraq. Below is a step-by-step overview of the process.

#### **Phase 1**

First, all applicants who work with the United States and NATO missions in Afghanistan receive security screening prior to the start of their employment; these screenings apply to individuals working alongside U.S. military, U.S. diplomats, or other positions.<sup>44</sup> Throughout their employment, military translators undergo regular intelligence screenings.<sup>45</sup>

#### **Phase 2**

After two years of employment by or on behalf of the United States, an Afghan can start the SIV process by applying for Chief of Mission (COM) approval. At this stage, applicants must submit:

1. A human resources letter proving eligible employment and containing information about employment status and the reason for separation if no longer employed,
2. A statement of ongoing threats,
3. A letter from the applicant's U.S. citizen supervisor verifying that the applicant has provided faithful and valuable service, that the applicant is not a threat to the safety and national security of the United States, and that the applicant is at risk because of his or her work for the United States.

The Chief of Mission independently verifies employment records and supervisor letters, and if the applicant was terminated for a security violation, the applicant will not receive Chief of Mission approval and is disqualified from the SIV program.

#### **Phase 3**

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<sup>44</sup> For just a few of the relevant policies and laws, see JCC Iraq/Afghanistan, "Unique Requirements for Theater Business Clearance," 952.225-0001(b)(2), Feb. 11, 2010 (requiring that all contractors have security, background, and medical checks completed before beginning employment); Army Reg. 190-56 (setting procedures for selection and training of contractor Army security personnel); Homeland Security Presidential Directive 12 (requiring background screening requirements to issue access credentials); NDAA for FY 2008, Section 862, as amended by NDAA for FY 2009, Section 853 (mandating that the Department of Defense issue regulations mandating training and recruiting procedures for private security contractors); Omnibus Diplomatic Security and Antiterrorism Act of 1986, Pub. L. No. 99-399 (1986), Sections 403 and 404 (directing the Secretary of State to strengthen security procedures for private contractors involved in diplomatic construction).

<sup>45</sup> See Bethany Matta, "Afghan Interpreters Demand Promised US Visas," Al Jazeera, Oct. 1, 2014, <http://america.aljazeera.com/articles/2014/10/1/afghan-translatorsprotest.html>.

If approval is granted, applicants must resubmit documents and a petition for a visa to USCIS.

#### **Phase 4**

Applicants, including any qualifying spouse or minor, unmarried children, must then submit comprehensive biodata, background on past employment and extended family, and identification documents including birth certificates, civil documents, police certificates, and passports.

#### **Phase 5**

Once all documents are received, applicants are scheduled for interviews with a U.S. consular official to verify each applicant's identity, eligibility, and admissibility under U.S. immigration law.<sup>46</sup>

#### **Phase 6**

Each applicant then undergoes the enhanced security screening that refugees applying for resettlement receive. This includes biometric scans and IDENT screenings, Security Advisory Opinions, Inter-Agency Checks, and vetting with agencies including the FBI, CIA, National Counter-Terrorism Center, Department of Defense, and others.<sup>47</sup>

Only when an individual has been cleared by each of these agencies is an individual cleared for travel, a process that takes the average applicant 189 business days.

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<sup>46</sup> See U.S. Dept. of State, Special Immigrant Visas for Afghans - Who Were Employed by/on Behalf of the U.S. Government, <https://travel.state.gov/content/visas/en/immigrate/afghans-work-for-us.html>.

<sup>47</sup> Barbara Strack, Written testimony, House Comm. on Homeland Security, Subcommittee on Counterterrorism and Intelligence Hearing "Terrorist Exploitation of Refugee Programs," Dec. 4, 2012, <https://www.dhs.gov/news/2012/12/04/written-testimony-uscis-house-homeland-security-subcommittee-counterterrorism-and>.