



PRACTICE GUIDE:

PREPARING FOR THE ARRIVAL OF AFGHAN & IRAQI SPECIAL IMMIGRANT VISA CLIENTS

The International Refugee Assistance Project (IRAP) provides free legal help to refugees and displaced people. IRAP is not part of the U.S. government or IOM. This guide provides general information about SIV holders arriving in the United States. It is not meant as legal advice for individual applications.

This information was revised in April 2019. Requirements may change.

IRAP developed this guide because in the past few years several SIV holders have been detained at the airport when they arrived to the United States. We believe it is important for SIV recipients to prepare for this possibility.

STEP 1: PREPARE PAPERWORK

As soon as possible after the client's travel itinerary is set, you should decide who will be available to monitor the client's arrival and begin preparations.

1. If you are not available to monitor the client's arrival, identify another attorney who will be available by phone during the 3-5 hours after the client's arrival to the port of entry into the United States. Ideally, this attorney would also be able to go in person to the port of entry airport if necessary or to a detention facility if the client is detained pending a credible fear interview.
2. Prepare a new G-28: The attorneys who are monitoring the client's arrival should prepare a G-28. Even if you already have a G-28 for the SIV application, you should prepare a new G-28 that specifically enters an appearance before CBP for "airport detention."
3. Prepare a Port-of-Entry Letter: A Port-of-Entry Letter is a letter from you that the client will carry with them. It explains that the client is represented and seeks access to counsel, explains what a SIV is, asserts fear of returning to their country, and requests release. The letter may also request an

interpreter for the client if the client has difficulty communicating in English. A template is attached as Exhibit A.

STEP 2: ADVISE CLIENT OF ARRIVAL PROCEDURES AND DEVELOP PLANS

As soon as possible after the client's travel itinerary is set, you should have a conversation with the client explaining what they can expect upon arrival to the United States and develop contingency plans. You should let your client know that the risk of detention is low, but it is best to be prepared for the possibility.

Develop a communication plan

It is critical that you and the client have a plan for getting in touch as soon as possible upon arrival so that you will know whether the client has been detained or not.

1. Client's contact information: Will the client have a working cell phone upon arrival? Does the airport have free or paid WiFi that can be used? Could the client obtain a SIM card that will work in the U.S.?

Client's contact information upon arrival in the U.S.:

2. Other points of contact: Will there be someone meeting the client at the airport, and if so will the person be at the airport that is the first port of entry or at the airport of final destination? You should ask the client to connect you to this person prior to departure.

Name:

Relationship:

Contact information:

Explain arrival procedures and the possibility of detention

The client should know what to expect at the port of entry and understand the significance and consequences of claiming fear of return to their country. The client should also be advised not to open the packet of travel documents that they will be receiving from the Embassy.

1. Explain the airport's arrival procedures and the client's rights using "SIVs: Know Your Rights at the Airport." The Know-Your-Rights document is attached as Exhibit B.
2. Explain to the client that if it appears that they will be deported, they have the right to seek asylum. Explain also that the government has tried to have SIV holders waive their rights in this process before and advise them not to sign any documents without consulting you. To claim asylum, instruct the client to express fear of returning to their home country and to present the Port-of-Entry letter and the G-28 to the officer.

Obtain informed consent for advocacy

In the event of detention, political and media advocacy can be very helpful for securing release. You should counsel clients on the benefits of these forms of advocacy while discussing any risks to their safety from publicity. After the conversation you should document and confirm the scope of the informed consent in writing.

1. Counsel client on the benefit of reaching out to supportive elected officials in the case of detention to advocate for their release or to obtain more information.
 - Does the client consent to having you reach out to elected officials to advocate for their release or to obtain more information?

Yes / No

- Are there any limitations on the information that you can disclose to the elected officials?

Notes:

2. Counsel client on the benefit of media advocacy in case of detention but warn them that the client's name, image, and situation might become widely available on the Internet.

- Does the client consent to having you share information with the media in order to advocate for their release?

Yes / No

- Are there any limitations on the information that you can disclose to the media? (Note that information about family, work history, and photographs may make the story more effective for media advocacy).

Notes:

3. Explain that it can be very effective to have family members and others (former co-workers, supervisors, or friends) in the United States help with the advocacy. Explain that they should get in touch with those individuals now and connect you with them to make sure they can be on call in case of detention.

- Contact information for individuals in the United States who can help with advocacy:

Name:

Relationship:

Contact information:

Consent to discuss information:

Obtain informed consent for legal action

Explain to the client that if the client is detained and there is a risk that the government will try to deport the client, it might be in the client's best interest to have you file an emergency lawsuit in the form of a habeas petition. This emergency lawsuit will argue that the detention is unlawful and request immediate relief in the form of staying deportation from the country and allowing you to talk to the client. After the conversation, document and confirm the scope of the informed consent in writing.

1. Explain the U.S. legal system to the extent necessary and counsel client on the benefit of filing a habeas petition in these circumstances. Explain that attorneys have filed petitions of this type with courts in the past few years, though the area of the law is still developing. You will likely have to work with other co-counsel in order to quickly file the habeas petition, especially if you are not admitted in the federal court where your client is entering the United States.

- Does the client consent to having you file a habeas petition if the client is detained, there is a risk that the client will be deported, and you cannot access the client despite best efforts but you determine that it is in the client's best interest to file the petition?

Yes / No

- Does the client consent to have you co-counsel with other lawyers and share the client's information confidentially with them in order to file the habeas petition?

Yes / No

2. Explain that filings in federal court are publicly accessible, which means that the client's name and situation will be public unless you take additional steps to protect anonymity and file a motion to proceed anonymously. You cannot guarantee anonymity in court filings, since the court ultimately decides the question of anonymity.

- Does the client consent to having their name and situation publicly revealed in court filings?

Yes / No

- If not, why not? Ask follow-up questions to cover the factors that courts in the jurisdiction of the airport of port of entry will consider in deciding whether to allow a case to proceed anonymously.

Notes:

- Does the client still consent to having the habeas petition filed with a motion to proceed anonymously, even though you cannot guarantee that the court will grant anonymity?

Yes / No

3. Explain that since the attorney will not be in touch with the client when the habeas petition has to be filed, the petition will be filed on behalf of “next friend.”

- Does the client have someone who could serve as “next friend”? Ask follow-up questions to cover the factors that courts in the jurisdiction of the airport of port of entry will consider in determining whether someone could be next friend. Depending on the jurisdiction, the next friend may be a family member, a close friend, or the legal organization working on the client’s case. Ask the client to reach out to the potential “next friend” now to make sure they can be on call in case of detention.

Name:

Relationship:

Contact information:

Consent to discuss information:

4. In order to file the habeas petition, you will need to know basic information about the case. Collect the following information to the extent it is not known already.

Name as it appears on passport:

DOB:

Nationality/ies:

Type of visa (including whether it is issued under the Afghan Allies Protection Act of 2009, the Refugee Crisis in Iraq Act of 2007, or the National Defense Authorization Act for Fiscal Year 2006 (Section 1059):

Date visa process initiated:

Date visa granted:

Names of all individuals on the case and their relationship to client:

Current address:

Address of intended destination in the United States:

Brief description of the client's case, including the employment that led to the issuance of the visa and dates of employment:

Past persecution and risks of harm if returned to home country:

Ties to the United States, including family members and former colleagues who are willing to help with their resettlement:

Anything unusual or red flags from the visa process (such as revocations and re-issuance):

Any disabilities that would make it difficult for the client to navigate detention at the airport and that could serve as a basis to argue for access to counsel:

STEP 3: PREPARE FOR TRAVEL

Right before travel, communicate with the client and remind them of the plans that are in place for their arrival.

1. Emphasize to the client the importance of getting in touch with their point of contact as soon as possible – when they have landed (to the extent possible) and as soon as they have cleared immigration and customs. Cell phone use is usually not allowed in the immigration and customs areas.
2. Remind the client to carry the following documents in their carry-on:
 - Passport and other travel documents – MAKE SURE YOUR CLIENT DOES NOT OPEN THE TRAVEL PACKET THAT THEY RECEIVED AT THE EMBASSY.
 - Contact information for the point of contact
 - SIV: Know Your Rights
 - Port-of-Entry letter
 - G28
 - Copies of the SIV application and any supporting evidence for claim of fear of return to the country.
3. Confirm that you, or the client's point of contact in the United States, have the following on hand:
 - Client's flight itinerary, including through to the final destination
 - A plan for getting in touch with client, including contact information for the client or for the person who will meet the client at the airport
 - G28
 - Port-of-Entry letter
 - Copies of the client's passport, visa, and any other travel documents
 - Copies of the SIV application and documentation submitted to the U.S. government as part of the SIV application

4. Collect contact information in case of emergency:
 - CBP Port Director at the airport that is the client's port of entry into the United States
 - Local U.S. Attorneys' Office with jurisdiction over the airport
 - Clerk's office for the federal district court with jurisdiction over the airport, including after-hours numbers and procedures
 - Congress members for the jurisdiction of the airport and the client's final destination

STEP 4: ARRIVAL

If all goes well, the client arrives without encountering any issues and calls the point of contact as soon as they have the chance to do so. If the point of contact has not heard from the client within approximately 3 hours after landing, you should begin outreach to CBP.

1. Contact CBP if it appears that the client has been detained. Tell them that you represent the client, that your client has a fear of return to their home country and should not be deported, and that you request access to your client. Ask for confirmation that they will not deport the client. Ask for the name of the person that you speak to, the title, the time of the call, and the content of the call. After the call, email CBP to confirm that you spoke on the phone with them, memorialize the contents of the conversation including the invocation of fear of return to the home country, and attach the signed G-28.
2. If you cannot obtain confirmation from CBP that the client will not be deported, begin to contact parties in order to set up for advocacy and litigation:
 - Contact the client's family members and others who are available for advocacy and litigation
 - Contact the media
 - Contact congressional offices
3. Prepare to file the habeas petition and emergency papers
 - Contact the person who had agreed to be next-friend in case of litigation
 - Draft the habeas petition; emergency motion for stay of removal and access to client, memorandum of law in support of the emergency motion, attorney declaration in support of emergency

motion with exhibits, and proposed order (depending on jurisdiction); and if necessary, motion to proceed under a pseudonym. Make sure to check local rules and case law.

- Contact a lawyer who is barred in the jurisdiction of the airport who is available to file an emergency habeas petition. The following airports have listservs of lawyers who may be available for emergency detentions:

Chicago: 1 872-333-2737 or <https://tapus.org/register/>

DC: legalhelp@dullesjustice.org

JFK: JFKneedalawyer@gmail.com

Los Angeles: lax@publiccounsel.org

San Francisco: airports@one-justice.org

4. File the habeas petition and emergency papers

- File the papers following the rules in the jurisdiction. You may need to let the clerk or the on-duty judge know that you need emergency relief.
- Notify the local US Attorneys' Office that you've filed the papers and courtesy email them the copies of all papers. You should also separately follow obligations to serve the filing and summons to each defendant per the Federal Rules of Civil Procedure and file return of summons with the Court.
- Make sure you are available for an immediate court conference regarding the petition.

EXHIBIT A: TEMPLATE SIV PORT OF ENTRY LETTER

LETTERHEAD

RE: Rights of Special Immigrant Visa Holders

Dear Officer:

I, the undersigned, write to you on behalf of my client, **CLIENT NAME**,¹ who is seeking admission to the United States on a Special Immigrant Visa ("SIV"). The U.S. State Department issued the visa to my client because they provided a crucial service to the U.S. by working on behalf of the **U.S. government and/or NATO**, experienced ongoing serious threats in their home country as a consequence of their service, and do not pose a security threat to the United States.² By applying for and receiving the SIV, my client has expressed fear of persecution in their home country. Therefore, **you cannot deport my client or their family from the United States without referring them to a credible fear interview.**³

My client hereby requests the following:

- **Referral to a credible fear interview.** My client fears persecution in their home country as documented in their SIV application and intends to apply for asylum if you do not admit them to the United States under the SIV. They will not withdraw their SIV application without first consulting me.
- **Release on parole under INA 212(d)(5).** The approval of my client's SIV application by the State Department demonstrates that they do not pose a security or flight risk, that it would be of significant public benefit to allow parole, and that there are urgent humanitarian reasons for parole.
- **Access to counsel.** My client seeks request that they be given the opportunity to contact me so that I can advise them on the situation.

Please also note **[insert information about client's needs, including any language and medical needs]**.

Respectfully,

[Signature block]

Attachment: Signed G-28

¹ [If applicable:] **CLIENT NAME** is traveling with his family members, **NAMES**, who are his beneficiaries on the SIV application. The requests in this letter apply equally to **CLIENT NAME**'s family members.

² See Afghan Allies Protection Act of 2009; Refugee Crisis in Iraq Act of 2007; National Defense Authorization Act for Fiscal Year 2006.

³ INA, §235(b)(1)(A)(ii) (prohibiting the officer from removing individuals who "indicate[] either an intention to apply for asylum under section 208 or a fear of persecution") (emphasis added).

EXHIBIT B:



KNOW YOUR RIGHTS:

Afghan & Iraqi Special Immigrant Visa (SIV) Holders Arriving to the United States With Attorney Representation

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Preparing for Your Trip

- Come up with a plan for contacting your lawyer as soon as possible after you land in the United States so that at least one person will know if you are detained at the airport.
- Keep these documents with you in your carry-on luggage and not in your checked baggage:
 - Your passport and travel documents. DO NOT OPEN THE PACKET OF TRAVEL DOCUMENTS THAT YOU RECEIVE FROM THE U.S. EMBASSY.
 - Documents from your SIV application
 - The contact information for your lawyer
 - This know-your-rights document

Before Reaching Immigration Inspection

When you first land in the United States, try to get in touch with your lawyer if it is possible. If you cannot send a message because you do not yet have phone service, try connecting to the airport's WiFi to send an email or a text. Once you reach the

immigration and customs area, you will generally not be allowed to use your cell phone.

Going through Immigration Inspection

After getting off the plane, you will get in line for the primary inspection point. At the primary inspection point, give the officer your travel documents and the unopened packet of documents that you received from the Embassy. ANSWER QUESTIONS TRUTHFULLY.

You will be fingerprinted and photographed. The United States claims the right to inspect all property you bring in to determine whether you should be allowed into the country. This means that officers might look at the files, videos, or photos that are stored on your electronic devices like cell phones and laptops.

Most SIV holders are able to enter the United States after this screening, but it is possible that officers will decide to take you to secondary inspection for more questions. If you are taken to secondary inspection, you will be brought to another room. You have the right to access food, water, a space for prayer, and the bathroom while you are waiting. You should tell the officers if you need access to medications. If you are waiting in secondary screening for over two hours, ask to be allowed to call your lawyer.

You have the right to request an interpreter if you have difficulty communicating in English.

Claiming Asylum If It Appears That You Will Be Denied Entry

It is important for you to know that you have the right to apply for asylum in the United States if it appears that the officers will deny you entry.

Claiming asylum means claiming that you meet the definition of a refugee after you have arrived in the United States. A refugee is someone who has a fear of persecution or has suffered past persecution due to race, religion, nationality, membership in a particular social group, or political opinion. Because you experienced serious threats or persecution because of your work with the United

States, you are likely to meet the definition of a refugee. If you are traveling with your family members, you can include your spouse and children on your asylum application.

If it appears likely that you will be denied entry and you want to stay in the United States to claim asylum, tell the officer that you have a lawyer, give the officer a copy of the port-of-entry letter that your lawyer has provided you, and take the following steps:

1. Ask the officer to parole you into the United States. Parole is temporary entry into the United States. Tell the officer you should be paroled in because:
 - You have been approved for admission to the United States as a SIV holder with lawful permanent resident status,
 - You were employed by the United States in Iraq or Afghanistan,
 - You have shown that you would be at serious risk of threats and persecution in Iraq or Afghanistan because of your service to and affiliation with the United States,
 - You have passed through the security and medical screening processes for a SIV,
 - (And if true:) You have family members already living in the United States with whom you want to be reunited.
2. Tell the CBP officer that you are afraid of returning to Iraq or Afghanistan, as shown in your SIV application. Tell the officer that you have a right to a “credible fear interview” where you can show that you have a significant possibility of eligibility for asylum.

DO NOT SIGN ANY DOCUMENTS THAT YOU DO NOT UNDERSTAND. In the past, SIV holders have been asked to sign documents withdrawing their SIV application. If you want to stay in the United States, do not sign any documents withdrawing your application.

3. Once you have expressed a fear of returning to Iraq or Afghanistan, you cannot be deported from the country. You will be either held at the airport or taken to another detention facility until the credible fear interview takes place. Reach out to your lawyer at this point if you have not already.

4. Use the waiting period before the credible fear interview to talk to the lawyer and prepare for the interview. In the interview, you will be asked questions about your SIV application, so make sure to review your SIV application materials.
5. The credible fear interview may be in-person or it may happen over the phone. You have the right to bring your lawyer with you to your in-person interview or to have the attorney participate on the phone in your telephonic interview.
6. Once you pass the credible fear interview, you can apply for asylum before an immigration judge. While you apply for asylum, you may continue to be held in detention. You could ask for release from detention through parole. Under the current policy, people who have passed the credible fear interview may be released on parole if they establish their identity, that they will come to their immigration hearings, and that they are not a danger to the community.

Most SIV holders are admitted to the country after inspection and will not have to claim asylum. Please contact your lawyer as soon as you can so that they know whether you have cleared inspection or if you are being detained.