



International Refugee
Assistance Project

The State Department Has a Legal Obligation to Protect Special Immigrant Visa Applicants

When Congress created the Special Immigrant Visa (“SIV”) program for Afghans in 2009, it envisioned that the State Department would take affirmative action to protect SIV applicants if they faced imminent danger while awaiting the processing of their visas. Specifically, the Afghan Allies Protection Act of 2009 (“AAPA”) requires that:

“The Secretary of State, in consultation with the heads of other appropriate Federal agencies, **shall make a reasonable effort to provide an alien** described [in this section] who is seeking special immigrant status [...] **protection or to immediately remove such alien from Afghanistan**, if possible, if the Secretary determines, after consultation, that such alien is in imminent danger.”¹

There has never been a more important or urgent time for the State Department to fulfill its statutory duty. More than 18,000 SIV applicants remain in Afghanistan, mired in years-long SIV processing delays that have already been declared unlawful.² These individuals are indisputably in danger, given the upcoming withdrawal of U.S. troops. Significant public reporting has shown that, as violence in Afghanistan continues to increase, individuals who worked with the U.S. government, activists, journalists, and aid workers are being specifically targeted. In the first part of this year alone, at least three Afghan interpreters who served the U.S. and its allies have been murdered by the Taliban, including one individual who applied for an SIV in 2010 and, more than a decade later, was still waiting when he was murdered.³ Indeed, the State Department has recognized the imminent danger these individuals face: on April 27, 2021, Mission Afghanistan moved to an “Ordered Departure” status for non-emergency personnel due to the increasing levels of violence.⁴

The State Department must make efforts to protect this vulnerable population—including implementing the evacuation and parole options that IRAP has recommended⁵—that extend beyond simply expediting the processing of their applications.

¹ Afghan Allies Protection Act of 2009 (“AAPA”), Pub. L. 111-8, 123 Stat. 807 (2009), codified at 8 U.S.C. § 1101 (note), § 602(b)(6) (emphasis added).

² See *Afghan and Iraqi Allies Under Serious Threat Because of Their Faithful Service to the United States v. Pompeo*, No. 18-cv-01388, 2019 WL 4575565 (Sept. 20, 2019).

³ See Monica Campbell, *The World* (Mar. 17, 2021), <https://www.pri.org/stories/2021-03-17/afghan-interpreters-languish-visa-limbo-us-coalitions-return-home-0>.

⁴ See Jennifer Hansler and Michael Conte, “US orders drawdown of government employees from Afghanistan embassy”, *CNN* (April 27, 2021), <https://www.cnn.com/2021/04/27/politics/embassy-kabul-ordered-departure-april-2021/index.html>

⁵ IRAP, *Recommendations for Immediate U.S. Government Actions to Protect Afghan Civilians* (April 2021), <https://refugeerights.org/wp-content/uploads/2021/04/Humanitarian-Protection-of-Afghan-Civilians.pdf>.