

**PETITION FOR PROTECTION
UNDER THE AFGHAN ALLIES PROTECTION ACT § 602(b)(6) FOR**

Afghan Ally [REDACTED]

Case numbers: [REDACTED]

**SUBMITTED TO
THE UNITED STATES DEPARTMENT OF STATE**

By: The International Refugee Assistance Project

August 18, 2021

Contact Information:

Julie Kornfeld, (516) 838-1974, jkornfeld@refugeerights.org
Mariko Hirose, (516) 701-4620, mhirose@refugeerights.org
International Refugee Assistance Project
One Battery Park Plaza, 4th floor
New York, New York 10004

[REDACTED]

We at the International Refugee Assistance Project (IRAP) represent [REDACTED], an Afghan national currently in Afghanistan who is seeking special immigrant status under the Afghan Allies Protection Act of 2009 (“AAPA”), as amended. As described below, [REDACTED], his spouse [REDACTED], and his four children [REDACTED] are in imminent danger because of [REDACTED] affiliation with the United States; accordingly, **we respectfully request that you immediately remove [REDACTED] and his family from Afghanistan, or otherwise provide them with protection, as required by federal law.**

In support of this petition, please find attached the following:

- Ex. 1: A copy of the threat statement. [REDACTED]
- Ex. 2: Scans of Afghan Passport Biographical Pages and National ID Documents¹

- Principal: [REDACTED]
- Spouse: [REDACTED]
- Child: [REDACTED]
- Child: [REDACTED]
- Child: [REDACTED]
- Child: [REDACTED]

[REDACTED]

I. The Petitioner, [REDACTED]

[REDACTED] has been seeking special immigrant status through the Afghan special immigrant visa program for over seven (7) years. The [REDACTED] of a man who was murdered by the Taliban, [REDACTED] worked on behalf of the U.S.-led mission in Afghanistan for many years—first, as an interpreter [REDACTED] and later [REDACTED]. Despite his evident eligibility for a

¹ *N.b.*, Some previously submitted documentation included incorrect birthdates for some of [REDACTED] children. These are the correct birthdates.

special immigrant visa, he and his family remain in imminent danger in Afghanistan because of the government’s egregious delays, erroneous denials, and—to date—failure to provide protection.

██████████ first sought chief of mission (“COM”) approval for a special immigrant visa in June 2014. He had received, and continues to receive, numerous death threats because of his work on behalf of the U.S. government. Indeed, he has been forced to move from place to place for years to escape retaliation.

██████████ efforts to obtain a special immigrant visa have been thwarted by multiple clearly erroneous COM adjudications. For example, in 2016, after unlawful delays in reaching its decision, the government denied his application for failure to meet a two-year service requirement that had recently been enacted. ██████████ In fact, under the law in place when he applied and that still governed his application under a grandfather clause, only one year of service was required. His appeal was then denied on a new and separate erroneous ground, with the government asserting that the HR representative at his employer could not verify his employment documents; however, COM failed to contact the HR representative, making the stated reason for the denial impossible. Later, in November 2020, the government denied a new application—by then reflecting well over two years of service—for failure to show “sensitive and trusted” employment on behalf of the U.S. government. ██████████

██████████ Not only was this determination plainly incorrect as a factual matter given the nature of his work, it was also clearly erroneous as a legal one: Congress had eliminated the requirement of “sensitive and trusted” employment for those working on behalf of the U.S. government nearly one year prior.² Notwithstanding COM’s clear legal error, ██████████ appeal to COM has been pending without a decision for months.

██████████ and his family are now in Kabul, ██████████ and his family fear for their lives and are seeking to leave the country through whatever means they can.

II. The Secretary’s Protection Obligations Under the Afghan Allies Protection Act

In the AAPA, Congress created special immigrant visas (“SIV”) for Afghan nationals whose lives are in danger because of their service to the United States during our military mission in Afghanistan. In providing that visa route, Congress also determined that Afghans applying for SIVs should be protected while they remain in their home country; the AAPA thus directs the Secretary of State, in consultation with other agency heads, to make “reasonable effort[s]” to provide protection to Afghans seeking special immigrant status (and their families) who are in imminent danger, “or to immediately remove [them] from Afghanistan, if possible.” AAPA, § 602(b)(6).

² International Refugee Assistance Project, *Recommendations on the Reform of the Special Immigrant Visa Program for U.S. Wartime Partners* (June 2020), at 42, refugeerights.org/wp-content/uploads/2020/12/IRAP_SIV_Report_2020.pdf (citing the State Department’s continued implementation of a nonexistent sensitive and trusted requirement, including errors in online application instructions and the foreign affairs manual).

In recognition of this congressional directive, the moral imperative underlying it, and the imminent danger faced by special immigrant visa applicants as the U.S. military withdraws from Afghanistan, the State Department recently began coordinating “Operation Allies Refuge” to evacuate some Afghan SIV applicants who are at the final stages of visa processing.³ Under Operation Allies Refuge, a limited number of applicants and their families are being removed from Afghanistan and taken to the United States or to a third country to await the completion of their visa processing in safety.

Unfortunately, ██████████ and his family were left out of Operation Allies Refuge. Although they applied for special immigrant status in 2014, and notwithstanding the congressional directive that Afghan SIV processing should generally take no more than nine months,⁴ they are not yet at the latter stages of processing required for inclusion in Operation Allies Refuge. For several reasons, we ask that they not be left behind.

First, the congressional mandate to protect or evacuate Afghan special immigrant applicants in danger plainly applies to applicants like ██████████ and his derivative relatives, and no less than to those at later stages of processing. Like them, ██████████ and his family members are covered applicants seeking special immigrant status.

Similarly, the moral imperative to protect those Afghans who have risked their lives to work alongside the United States in Afghanistan is in no way based on particular visa processing stages.⁵ The Afghan SIV process in particular has long been plagued by inadequate resources, opaque processes, arbitrary denials, and unlawful delays.⁶ Grafting evacuation eligibility onto

³ See, e.g., Statement of President Joe Biden on the Arrival of the First Flight of Operation Allies Refuge (July 30, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/30/statement-of-president-joe-biden-on-the-arrival-of-the-first-flight-of-operation-allies-refuge/>.

⁴ AAPA, § 602(b)(4)(A)-(B); see generally *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 (D.D.C. Sept. 20, 2019) (granting injunctive relief to a certified class of Afghan SIV applicants, represented by IRAP, for the unlawful delays in the administration of that program).

⁵ See, e.g., *Interview: Secretary Antony J. Blinken On CNN's State of the Union with Dana Bash*, U.S. DEPARTMENT OF STATE (June 13, 2021), <https://www.state.gov/secretary-antony-j-blinken-on-cnns-state-of-the-union-with-dana-bash/> (Statement of Secretary Blinken) (“We’re determined to make good on our obligation to those who helped us, who put their lives on the line, put their families’ lives on the line working with our military, working with our diplomats. . . . We want to make sure that anyone who has helped us we are making good on our obligation to help them.”); *The Fiscal Year 2022 National Defense Authorization Budget Request from the Department of Defense: Hearing Before the H. Armed Servs. Comm.*, 117th Congress (June 23, 2021), available at <https://armedservices.house.gov/hearings?ID=AEFE8C4B-54FF-463C-89C5-0F218774D7B0> (hereinafter “June 2021 H. Armed Servs. Comm. Hearing”) (Statement of Gen. Mark A. Milley, the Chairman of the Joint Chiefs of Staff) (“I consider it a moral imperative to take care of those that have served along our side.”).

⁶ See generally Office of Inspector General, U.S. DEPARTMENT OF STATE, *Review of the Afghan Special Immigrant Visa Program* (June 2020), www.stateoig.gov/system/files/aud-mero-20-35.pdf; International Refugee Assistance Project, *Recommendations on the Reform of the Special Immigrant Visa Program for U.S. Wartime Partners* (June 2020), refugeerights.org/wp-content/uploads/2020/12/IRAP_SIV_Report_2020.pdf; see also John S. McCain National Defense Authorization Act Fiscal Year 2019, H. Rep. 115-874, at 980 (2018) (Conf. Rep.) (“The conferees are concerned by reports that the SIV application process continues to suffer from inadequate interagency

stages of processing only aggravates and amplifies the years-long neglect of the Afghan SIV program, and makes life-saving evacuation needlessly dependent on the vagaries of the visa processing bureaucracy.

And to be clear, ██████████ and his family face imminent danger: the grave threat from the Taliban, which has swiftly retaken the country save the airport in Kabul. As the country has fallen to Taliban control, news outlets have reported widespread revenge killings of civilians, like ██████████ and his family, associated with foreign governments.⁷ This reality is well known to the U.S. government, which has advised SIV applicants like ██████████ and his family to shelter in place while the U.S. military works to evacuate U.S. citizens.

Removing ██████████ and his family from Afghanistan is also plainly possible, as demonstrated by the ongoing evacuation of American citizens, notwithstanding the Taliban's gains. Even before that, Operation Allies Refuge demonstrated the feasibility of evacuating our Afghan allies to safety while their visa processing concludes, and senior military officials have stated publicly, including in sworn testimony to Congress, that the United States could evacuate far more Afghans than just those SIV applicants at the latter stages of processing.⁸

coordination which has resulted in undue delay, needless stress on applicants, and a sizable drop in SIV admissions this year.”).

⁷ See *With the Taliban in Control, Uncertainty and Fear Grip Afghanistan*, N.Y. Times, Aug. 16, 2021, www.nytimes.com/live/2021/08/16/world/taliban-afghanistan-news/with-the-taliban-in-control-uncertainty-and-fear-grip-afghanistan (describing “reports that fighters were searching for people they consider collaborators of the Americans and the fallen government”); Christina Goldbaum & Najim Rahim, *A Week Into Taliban Rule, One City’s Glimpse of What the Future May Hold*, N.Y. Times, Aug. 15, 2021, www.nytimes.com/2021/08/15/world/asia/afghanistan-taliban-kunduz.html (quoting a Taliban-appointed mayor as asserting “our jihad is against . . . those who defend the occupiers” and noting Taliban intolerance of women workers); Michelle Nichols, *U.S. Says Afghan War Has Entered ‘Deadlier and More Destructive Phase,’* Reuters, Aug. 6, 2021, www.reuters.com/world/asia-pacific/un-says-afghan-war-has-entered-deadlier-more-destructive-phase-2021-08-06/ (reporting over 1,000 civilians killed in the past month); *Taliban Accused of ‘Massacring Civilians’ in Afghan Border Town*, Al Jazeera, Aug 2, 2021, www.aljazeera.com/news/2021/8/2/taliban-accused-of-massacring-civilians-in-afghan-border-town (citing reports from UK and US embassies of dozens of revenge killings of civilians).

⁸ *Press Conference: President Biden on Afghanistan Withdrawal* (July 8, 2021), available at www.c-span.org/video/?513249-1/president-biden-us-military-operations-afghanistan-end-september (“[O]ur message to [our Afghan allies] is clear: There is a home for you in the United States if you so choose, and we will stand with you just as you stood with us. . . . [W]e can guarantee their safety, if they wish to leave, by taking them to third countries [to complete processing]” (emphasis added)); June 2021 H. Armed Servs. Comm. Hearing, *supra* note 3 (Statement of Gen. Mark A. Milley, the Chairman of the Joint Chiefs of Staff) (“We have the military capability to do whatever’s directed by the President of United States with respect to our allies and those that have worked with us. . . . We are prepared to execute whatever we are directed.”); *id.* (Statement of Secretary of Defense Lloyd J. Austin III) (“[W]e stand ready to provide resources to accelerate this [evacuation] if it’s possible, and it is possible”); *Hearing to Receive Testimony on the Transition of All United States and Coalition Forces From Afghanistan and Its Implications: Hearing Before the S. Armed Servs. Comm.*, 117th Congress (May 20, 2021), available at https://www.armed-services.senate.gov/imo/media/doc/21-41_05-20-2021.pdf (Statement of David Helvey, Acting Assistant Secretary of Defense for Indo-Pacific Security Affairs) (“We do have a moral obligation to help those that have helped us over the past 20 years, and we are working intensely . . . to identify those mechanisms and the resources required to provide that type of assistance [given to our allies when the United States left Vietnam] This is an important thing that we should do. And if the security conditions deteriorate and if we are given an order to take other means and other mechanisms, we would have the ability to do that.”).

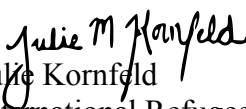
President Biden recently promised that “those who helped us are not going to be left behind.”⁹ With the recent fall of Afghanistan’s provincial and central governments to the Taliban, however, it is clear that failing to act now to evacuate Afghans who assisted the United States will be a deeply consequential betrayal of our Afghan allies and our obligations to them.

* * * * *

For the foregoing reasons, we respectfully request that you provide for the protection or immediate evacuation from Afghanistan of [REDACTED] and his family. *See* AAPA, § 602(b)(6). Consistent with the Administrative Procedure Act, we expect a response “within a reasonable time,” 5 U.S.C. § 555(b), which, given the exigencies, we believe to be immediately.

Please do not hesitate to get in touch should you have any questions or need additional information. Thank you for your consideration of this request.

Sincerely,


Julie Kornfeld
International Refugee Assistance
Project
jkornfeld@refugeerights.org
(516) 838-1974

Mariko Hirose
International Refugee Assistance
Project
mhirose@refugeerights.org
(516) 701-4620

⁹ Press Conference, President Joseph Biden (June 24, 2021), www.c-span.org/video/?c4967837/user-clip-biden-afghan-evacuation. *See also id.* (“They are welcome here, just like anyone else who risked their lives to help us.”).