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Assistance Project

## **Protecting At-Risk Afghans After the U.S. Military Withdrawal**

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As the United States commenced its military withdrawal from Afghanistan, the decision was made not to evacuate Afghans at risk, despite the [repeated recommendations](#) of IRAP and a broad coalition of civil society organizations and assurances from the President himself. At the eleventh hour, hastily-prepared and ill-executed plans led to the evacuation of tens of thousands of Afghans. Many more were left behind.

Those who were evacuated, escaped on their own, or will do so in the future face a tangled web of backlogged, bureaucratic, and punitive legal processes that will likely lead to more broken promises. **In order to avoid further calamity, the Biden Administration and Congress must take immediate action, as outlined in this paper, to ensure that at-risk Afghans do not languish for years in legal limbo.**

The Administration recently tasked the U.S. Department of Homeland Security (DHS) as the coordinating federal agency charged with resettling vulnerable Afghans. To be successful, DHS must lead with a level of efficiency, transparency, and accountability that has been sorely lacking during the evacuation efforts - from guiding White House decision-making to strategic Congressional outreach, from setting clear roles and benchmarks for the other federal agencies to working hand-in-hand with Afghan Americans and others in civil society.

### **Recommendations for the Biden Administration**

#### **Evacuation**

The United States has a moral and legal obligation to continue to **evacuate Afghan allies who were left behind**, and the conclusion of the military withdrawal must not end efforts to evacuate. The U.S. government must take the lead in negotiating and carrying out the logistics of the post-withdrawal evacuation and should not rely on an informal patchwork of private-sector volunteers and advocates.

To carry this out, the U.S. government must work with the Afghan government to allow at-risk Afghans, Americans, and other foreign nationals to safely fly out of the country - from Kabul, but also from regional locations. The United States should also work with the Afghan government and international non-governmental organizations to warrant safe passage by land to third countries. At the same time, the United States should work with third countries to allow access for those who are able to leave Afghanistan overland and transit of evacuees that the United States is able to fly out.



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## Parole

Afghans who were evacuated out of Afghanistan to third countries (either by U.S. military or private means) should be **paroled into the United States by U.S. Customs and Border Protection** (CBP) as soon as possible but within a maximum of 30 days, to the extent that their pending visa applications cannot be adjudicated before then. While parole is not a permanent immigration status, it allows people to enter the U.S. on a case-by-case basis for urgent humanitarian reasons or significant public benefit. There is a long and successful precedent for paroling in vulnerable foreign nationals during and subsequent to U.S. military withdrawals, most famously during Operation New Life at the end of the Vietnam War.

If DHS does not use CBP parole authority for all evacuated Afghans, those at-risk Afghans, already having suffered the trauma of the evacuation, could languish in unknown conditions in third countries for years because existing immigration processes take years, are riddled with errors, and are often too complex to successfully navigate without access to counsel.

The U.S. Citizenship and Immigration Services (USCIS) should also commit to the creation of a **parole program** to guide and expedite the review of parole petitions for at-risk Afghans. Similar to programs that have been used in the past for Cuban and Haitian nationals during times of emergency, this program would cover at-risk Afghans who were not evacuated and who may be in Afghanistan or in another third country. At a minimum, this should include Afghans with Chief of Mission (COM) approval in their pending Special Immigrant Visa (SIV) applications and approved family-based immigration petitions.

## Expedited Domestic and International Processing

Displaced Afghans are in a myriad of different immigration postures. Some will have pending SIV applications, others will have (qualifying or non-qualifying I-130 petitioner) family in the United States, and still others will have been referred to the U.S. Refugee Admissions Program (USRAP). Those who arrive in the United States may have to submit applications for employment authorization documents, adjustment of status, re-parole, family-based petitions, applications for asylum, fee waivers, and more. It is also important to understand that many Afghans were forced to destroy important documents ahead of the Taliban advance, or had their documents destroyed by militants or the U.S. government. All processing should take this into account while ensuring that no application is pending for more than 12 months from when the applicant was displaced.

For efficient processing that prioritizes the needs of the community, **USCIS must commit to expedited and dedicated processing specifically for this population.** Most people are unable to navigate the byzantine U.S. immigration bureaucracy, especially without legal counsel. The risk of falling through the cracks is too high, and most were put in this position because of actions



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taken by the United States in the first place. USCIS should provide fee waivers for family-based applications, parole applications and extensions, and work authorization applications for Afghan nationals.

The Biden Administration should also **streamline processing of Special Immigrant Visas (SIVs)**. The Afghan SIV program has long been dragged down by bureaucratic and procedural inefficiencies despite IRAP's ongoing lawsuit challenging systemic delays, and tens of thousands of SIV-eligible Afghans were unable to escape the country before the U.S. withdrawal as a result. The United States should expedite SIV processing such that applications for SIV applicants in third countries are adjudicated in 30 days or else the applicant is paroled by CBP into the United States. To the extent necessary to continue processing, the U.S. government should also conduct proactive outreach to Afghan SIV applicants to facilitate the expeditious transfer of case files to the third country location where the applicants find themselves.

The Administration should pay **specific attention to separated Afghan families**. Family reunification immigration processes have been mired in delays for years, and family members stuck in Afghanistan are at heightened risk because of their U.S.-based family's affiliation with the U.S. government. In addition to expediting the immigration process, the United States must also expand the capacity of U.S. embassies in neighboring countries to process immigration visas.

The Biden Administration should also **immediately operationalize robust USRAP processing** in countries hosting large numbers of Afghan refugees, especially for U.S.-affiliated Afghans referred through the Priority 1 or Priority 2 (P-2) channels. While the security situation in Afghanistan will make refugee processing from within Afghanistan difficult, the Administration should set up a Resettlement Support Center in at least one nearby country, make P-2 refugee processing available in more locations, direct additional referrals from the United Nations High Commissioner for Refugees (UNHCR), surge capacity for refugee interviews, and address processing backlogs and delays, particularly at the security vetting stage. Remote interviews should be expansively used to allow applicants to avoid delays.

These commitments must be in addition to the promises the Biden Administration has already made to rebuild the refugee program and expedite the SIV process. Without these additional steps, at-risk Afghans, including SIV-eligible Afghans and U.S.-affiliated Afghan refugees, will languish for years in poor conditions in third countries. While third countries may open their borders to facilitate transit to the United States, if at-risk Afghans are stuck in those countries for months or years, those countries will react by closing their borders.



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## **Recommendations for Congress**

### **Access to Refugee Reception and Placement**

Afghans paroled into the U.S. are not automatically eligible for refugee resettlement benefits. The unplanned nature of the evacuation and the wide variety of immigration statuses of evacuees have created an unacceptable risk of arriving Afghans falling through the cracks of the immigration system. Congress should immediately pass legislation to guarantee refugee reception and placement benefits to Afghan parolees, the same benefits to which SIV applicants would have been entitled had the government processed their visa applications in time, and ensure sufficient funds are made available for this purpose.

### **Afghan Adjustment Act**

While there exist administrative options to protect Afghan evacuees from removal, such as Temporary Protected Status (TPS), they are inadequate to meet the long-term needs of evacuees. Afghan evacuees should not have a cloud of legal uncertainty hanging over them as they seek to rebuild their lives in the United States. The most sensible approach would be for Congress to pass “adjustment” legislation creating a pathway to legal status for at-risk Afghans in the United States.

Given the chaos of the last several weeks, many individuals are unsure of their legal status or no longer have documents that will allow them to prove their eligibility. Many individuals lost documents proving their U.S.-affiliated employment or family while fleeing, burned documents because of the danger that proof would impose, or their documents were burned at the U.S. embassy in Kabul during the hasty evacuation.

An “Afghan Adjustment Act” would also spare an already backlogged U.S. immigration system untold millions of man-hours by avoiding an otherwise inevitable flood of work authorization requests, parole renewal requests, and asylum claims from Afghan entrants. It should include fee waivers to ensure that Afghan partners are able to access permanent legal status.

## **Conclusion**

The quick collapse of the Afghan government, combined with chaotic evacuation, has created an urgent need for administrative and legislative action to address the variety of problems at-risk Afghan evacuees face, even after they are able to flee or be evacuated. Whether they escaped on U.S. government evacuation flights, private charters, or by their own means, these individuals have undergone tremendous trauma and should not be further traumatized by an unequipped U.S. immigration system. The promise the United States made to these Afghan allies will not be fulfilled until they are safe in the United States and on a pathway to citizenship in their new home.