



# **Fulfilling America's Promise: Options to make U.S. humanitarian protection pathways viable for at-risk Afghans**

November 2021

## Executive Summary

Tens of thousands of at-risk and U.S.-affiliated Afghans who are eligible for humanitarian protection in the U.S. remain in danger inside Afghanistan or in third countries. Yet, despite [overwhelming popular support](#) to fulfill America's promise to protect these Afghans, the United States is falling tragically short.

In this report, the International Refugee Assistance Project (IRAP), InterAction, and Veterans for American Ideals lay out several options available to the Administration to operationalize viable humanitarian pathways out of Afghanistan and third countries and into the U.S.

This analysis is broken into two sections. First, we identify groups of at-risk Afghans in need of humanitarian protection. These are groups the U.S. government has already stated its commitment to protect. Second, we outline steps the Administration can take to facilitate the safe passage of at-risk Afghans from Afghanistan, into third countries, then onto overseas U.S. facilities, and finally into the United States.

- For **Afghans in Afghanistan**, the U.S. should remotely conduct threshold eligibility screenings for immigration pathways to the U.S., work with international organizations in Afghanistan who can meet in-person with eligible Afghans, and then issue consular appointments in third countries that, with the assistance of the U.S., be used to facilitate entry into a third country.
- For **Afghans in third countries**, the Administration must take immediate steps to effectuate the safe and expeditious transit to overseas U.S. facilities and then to the U.S. through pathways such as the U.S. Refugee Admissions Program (USRAP), the Special Immigrant Visa (SIV) Program, and humanitarian parole.

The U.S. has in the past assisted displaced people fleeing imminent danger from countries where a formal and physical diplomatic presence was not possible. Through a unified and coordinated executive branch response, the Administration can fulfill America's promise of safe passage to those left behind.

## Introduction

More than two months have passed since the collapse of the Afghan government to Taliban forces. While tens of thousands of at-risk and U.S.-affiliated Afghan nationals have made it into the United States, thousands more who are eligible for humanitarian protection in the U.S. remain in danger inside Afghanistan or in third countries with little evidence that the Administration will soon meet the moment with an effective plan. These Afghans have humanitarian pathways to the U.S. because the U.S. itself recognized the obligations it created over the many years of the U.S. mission in Afghanistan and identified this group for protection through various programs.

As we demonstrate in this report, the Administration possesses a wide array of authorities and options to safely and expeditiously provide safe passage for Afghans out of Afghanistan and third countries and into the U.S. These solutions are not unprecedented; the United States has been here before and brought people to safety from locations where conflict and conflagration have prevented an official diplomatic presence.

The options laid out herein may be complex and challenging, but they can be realized through unified and coordinated action. Should the Administration feel like insurmountable barriers exist, it should plainly identify them so that Congressional partners and stakeholders can assist before it is too late for too many Afghans.

## Part One: Identifying at-risk Afghans for safe passage into the United States

The abrupt collapse of the U.S.-backed Afghan government and the hasty evacuation that followed in its aftermath left thousands of Afghans in danger of imminent harm. Among the vulnerable groups in need of safe passage to safety and to whom the U.S. has pledged assistance (in no order of prioritization) are:

- **Thousands of Afghans who were employed by or on behalf of the U.S. government over the 20-year U.S. mission.** This includes those who may be eligible for a Special Immigrant Visa (SIV) but is not limited to them. The Department of State's extremely narrow interpretation of employment "by, or on behalf of, the U.S. government," excludes Afghans who worked for the United States under grants and cooperative agreements and Afghans who worked for U.S.-based non-governmental organizations (NGOs) in Afghanistan. This narrow interpretation will prevent thousands of U.S.-affiliated Afghans from obtaining an SIV, but they are in no less danger for their service to the United States or because they are considered by the Taliban to be affiliated with the United States.

- Afghans who are **family members** of American citizens, lawful permanent residents, SIV applicants, refugees, and asylees are another vulnerable group at imminent risk of violent reprisals from the Taliban and other anti-U.S. forces in Afghanistan. [Public reporting](#) indicates that hundreds of family reunification petitions were pending at the Embassy in Kabul to reunite American citizens and green card holders with family members when the Embassy closed. This includes unaccompanied children stranded in Afghanistan with a parent lawfully in the United States.
- Additionally, there are **vulnerable communities in imminent danger from the Taliban** and other militant groups regardless of any affiliation with the U.S. This includes, among others, democracy activists, human rights defenders, journalists, academics, civil servants (e.g., election workers and judges), women leaders, girls, religious and ethnic minorities, and LGBTQ individuals. Just days ago, Amnesty International [reported](#) the Taliban murdered more than a dozen Hazaras, continuing decades-long violence against that community. The Taliban and other violent militants have made it clear that these communities remain a target.

While some members of these groups were evacuated and eventually paroled into the United States, many more were left behind in Afghanistan and cannot escape the country on their own. They remain at imminent risk of violence and persecution from both the Taliban and ISIS-K. Furthermore, **many managed to escape into, but now languish in, [third countries](#) with no clarity as to what will happen to them and their families.**

While the logistical and policy implications of each individual's situation are different, the obligation of the U.S. government to them and their families is the same. These individuals include thousands who:

- were evacuated out of Hamid Karzai International Airport (HKIA) via flights facilitated by the U.S. Department of Defense but operated by foreign governments and private charters who stepped in to augment U.S. evacuation capacity;
- have been waiting in U.S. military facilities all around the world since mid-to-late August after being evacuated out of HKIA via flights operated by the U.S. military; or
- crossed land borders into neighboring countries and remained there or in other nearby countries.

***The U.S. military and diplomatic presence in Afghanistan may have ended in August, but the U.S. government's obligations did not, and the Biden Administration must provide pathways to safety for these communities.***

## Part Two: Facilitating the safe passage of at-risk Afghans to the United States

While U.S. law provides for several protection pathways into the U.S., as currently constructed, each generally requires Afghans to first undertake the perilous journey out of Afghanistan. This is simply not a viable option for most Afghans. Thus, the U.S. must facilitate the safe passage of at-risk Afghans to the United States. The lack of an embassy or consulate in Afghanistan does not relieve the U.S. of this responsibility.

### **A. Processing in Afghanistan without Consular Capacity**

The United States has proven repeatedly that it is capable of continuing to process and resettle at-risk foreign nationals, even those in countries under hostile regimes where maintaining a physical consular presence is challenging or impossible, such as in Cuba and Syria. For example, the U.S. has previously worked with the Austrian government to help resettle Iranian religious minorities in the absence of an embassy or consulate in Iran. While the Taliban takeover of Afghanistan makes in-country immigration processing difficult, the U.S. must adapt to these circumstances, as it has during other periods, to ensure that eligible Afghans can receive protection in the U.S. To do so, we suggest the following:

#### **In-country Screening**

- To the extent the Administration takes the position that current immigration processes may not be able to be completed through finality (i.e., boarding a flight destined for the U.S.) in Afghanistan, the U.S. should take steps to **establish a screening process for at-risk Afghans in Afghanistan that would facilitate their entry into a third country so that they can then complete processing in a third country.**
- Afghans who submit new applications to access immigration pathways, and those with pending applications, should be considered for this in-country screening process. In agreeing or requesting to participate in this screening, applicants would need to consent to the sharing of certain personally identifiable information with the necessary U.S. partner entities (as described below).
- U.S. adjudicators reviewing immigration applications of Afghans in Afghanistan must first carry out all possible processing, including vetting, that can be completed using the contents of the application, existing records, and other known information without meeting with the applicant in person.
- At the end of this stage, immigration officials must make a **threshold determination as to whether the applicant may be eligible for the underlying benefit.** If so, the case will be forwarded to partner entities for identity verification

(described below). For example, an adjudicator reviewing a humanitarian parole application can, based on a review of the file, determine that urgent humanitarian reasons exist to justify an authorization of parole. SIV applications can meet this threshold after receiving Chief of Mission (COM) and U.S. Citizenship and Immigration Services (USCIS) Form I-360 approval. Approved family reunification petitions will meet the threshold. Refugee referrals, particularly those made through the Afghan P2 Refugee Program, can be verified for potential eligibility by reviewing the employer referral and other facts known to the adjudicator.

## Identity Verification

- After an applicant's threshold eligibility for a protection pathway is confirmed, the applicant will need to **verify their identity and possession of an Afghan passport or *tazkira* (a national identification card) and potentially submit biometrics that can be used to facilitate travel to a third country** for further processing by the United States. To carry out these functions in the absence of a U.S. physical presence in Afghanistan, the U.S. should leverage international organizations, such as the International Organization for Migration (IOM), the UN Refugee Agency (UNHCR), and the International Committee of the Red Cross (ICRC), as well as the diplomatic resources of select countries present in Afghanistan, if possible. Specifically, the U.S. should share case information of screened-in Afghans with partner entities in Afghanistan, who will meet in person with each applicant to complete this step.
- The U.S. should also work with these partner entities to **allow for alternate methods of evidencing identity** for cases where the Afghan is not in possession of a current Afghan passport or *tazkira* and where obtaining one would put their lives in danger, similar to how the UNHCR will issue [identity documentation](#) in extraordinary circumstances. Many at-risk Afghans did not have passports issued by the previous government, find it unsafe to seek "official" documentation from the Taliban, have passports that expired, or had their documents destroyed during the American withdrawal and Taliban takeover.
- The U.S. must expend significant diplomatic efforts to encourage, incentivize, or demand that international organizations take on these additional responsibilities and that the Taliban allow these entities to operate free from undue interference.

## Facilitating Travel to Third Countries

- Even where the U.S. government does not require a passport for immigration processing, transit countries generally will require individuals requesting entry into their territory to have a passport. The U.S. government must **issue guidance clarifying that obtaining a passport from the Taliban and payments for other**

**basic governmental services (such as utilities and taxes) and transit will not trigger a ground of inadmissibility.**

- After the U.S. has completed a threshold screening and a partner entity in Afghanistan has met in person with the applicant to verify identity and obtain biometrics, the U.S. should coordinate with the Afghan national to schedule an appointment at a U.S. embassy or consulate in a third country. **Evidence of this consular appointment will be used to facilitate travel** to a third country.
- For those Afghans who the U.S. will issue visas without additional in-person processing at a U.S. embassy or consulate, the U.S. should expand the use of electronic visas or e-visas to facilitate transit into a third country and onward travel.
- To ensure safe passage out of Afghanistan, the U.S. must conduct persistent, serious, high-level **diplomacy with neighboring and other third countries, de facto authorities** (i.e., Islamic Emirate of Afghanistan, Taliban), allies, and other actors to ensure that airport and land border access is available for a time sufficient to allow for immigration processing to those who have a U.S. consular appointment and an Afghan passport, *tazkira*, or other partner-entity-issued identity documentation.

## **B. Humanitarian Pathways for Afghans in Third Countries**

In exchange for allowing certain at-risk Afghans to transit into third countries, the U.S. must make and stand by assurances that the overwhelming majority of those Afghans will be quickly transported out of the country. This should be as little as 30 to 90 days. **The longer that Afghans wait, the more likely that those third countries will close their airports and borders.** In most cases, with current staffing and resources, immigration processing cannot be completed within a sufficiently short period of time to assuage these third-country concerns.

Thus, the third countries to which the U.S. facilitates travel should be those that will allow the U.S. to surge resources to maintain a sufficient presence of civilian and/or military personnel to conduct medical and COVID-19 screening, security vetting, immigration processing, and the operation of evacuation flights to the U.S. or U.S. overseas facilities. And as Afghans await processing in third countries, the U.S. should **issue documentation** so that authorities are aware that they are a priority for U.S. evacuation efforts and will not stay for an indeterminate period of time. Options for increasing transit from a third country to the U.S. through *refugee processing*, *consular processing*, and *humanitarian parole* are detailed below.

The U.S. should take steps to expedite family reunification processing for Afghan families separated due to the chaotic U.S. withdrawal. This includes prioritizing and resolving long-

standing backlogs in Forms I-130 (petitions for relatives) and I-730 (refugee/asylee relative petitions), as well as reuniting, for example, children or spouses who were unable to be evacuated alongside other family members prior to August 31, 2021.

## Refugee Processing

Many of the at-risk Afghans in third countries will be eligible for U.S. refugee resettlement. For this to be a realistic option, the U.S. must devote the necessary resources and personnel to ensure timely processing, especially for the thousands of Afghans who fear persecution on account of their U.S. ties and have been referred to the Priority 2 (P-2) refugee program for U.S.-affiliated Afghans.

Included in this surge of resources for at-risk Afghans referred to the refugee program must be an **immediate investment in the Resettlement Support Centers (RSCs)**, especially those charged with the Middle East and North Africa (MENA), Eurasia, and South Asia, with a particular emphasis on Pakistan due to the lengthy land border with Afghanistan. Moreover, RSC Eurasia's experience with Lautenberg parolees should be leveraged to provide expedited screening and processing.

To expedite cases once RSCs have made them ready for an interview, **USCIS refugee officers should be located onsite or near new and expanded RSC locations and overseas U.S. government facilities** to provide refugee eligibility determinations. These refugees can then be flown to U.S. military or other government facilities to await security vetting and then be admitted into the U.S. as refugees. In establishing this mechanism, the U.S. should review lessons learned from a similar expedited refugee program for Kosovars in 1999. In that example, U.S. refugee adjudicators interviewed potential evacuees in Macedonian camps before they were flown to Fort Dix, New Jersey, to wait for the completion of security vetting.

Further steps should be taken to **improve the refugee process** for Afghan refugees. This includes implementing guidance that provides flexibility and accommodations for the lack of physical documentation Afghan refugees may have, especially if identity or professional affiliation can be evidenced through other methods. Also, for the P-2 program, the U.S. should implement a common referral form and one central U.S. clearinghouse for incoming referrals. Referring organizations should not have to navigate differing referral processes for different federal agencies. Finally, in addition to increasing RSC capacity, the U.S. should invest in the full-time staff and resources at the Departments of State and Homeland Security. This should include the provision of services and physical space by the State Department for USCIS staff and adjudication functions.

While working to avoid lengthy backlogs, the **U.S. should also seek to expand or clarify eligibility for the P-2 refugee program** to reflect the realities on the ground. For example,

the Administration should consider expanding eligible family relationships to include parents, siblings, and their immediate families. This is particularly needed for female-headed households or where women are sole wage-earners. The U.S. should also clarify that existing guidelines permit continued processing of cases for surviving eligible family members of deceased principal applicants. Finally, the U.S. should consider expanding the program to allow those who worked on sub-grants, sub-cooperative agreements, and sub-contracts of USG-funded efforts to be eligible for the program.

Furthermore, consistent with the President's recent [Report to Congress on Proposed Refugee Admissions for FY2022](#) (FY22 Report to Congress), the State Department should launch a **private sponsorship pilot program for refugees in early 2022**. Such a program would build on the recently announced [Sponsor Circle Program for Afghans](#) and expand U.S. refugee resettlement capacity by allowing U.S.-based organizations or groups to identify an Afghan refugee outside Afghanistan and refer them to the new Priority 4 (P-4) privately sponsored refugees category described in the FY22 Report to Congress. This could include former employees, extended family members, friends, etc. Sponsors would then provide the financial and logistical support to welcome them to the United States.

## **Consular Processing**

**The U.S. must increase consular capacity and allow for immigrant visa processing at all U.S. embassies** in countries hosting at-risk Afghans. For the latter, the State Department should use its existing procedures to designate a sufficient number of specific consular posts for Afghan immigrant visa applications, as it has done for applicants of other ["homeless nationalities," which it defines as](#) individuals from "a country in which the United States has no consular representation or in which the political or security situation [precludes in-country consular staff from processing visas]." Such arrangements currently exist for Cubans, Eritreans, Iranians, Libyans, Somalis, South Sudanese, Syrians, Venezuelans, and Yemenis. Afghan nationals fall squarely within this definition, and the U.S. should **urgently identify posts that can process their visa applications even while they remain physically present in Afghanistan**. Creating a virtual embassy, akin to the [U.S. virtual embassy in Iran](#), could also allow the U.S. to carry out some of the processing tasks previously performed at Embassy Kabul.

Increased consular capacity should be used to facilitate humanitarian parole requests adjudicated by USCIS, make refugee referrals to USRAP, conduct post-COM SIV interviews, as well as interviews and issuance of travel documents to beneficiaries of family reunification petitions, and assist in the visa processing of other Afghans, such as those who were selected in the diversity visa lottery.

## **Special Immigrant Visa Processing**

The Administration must continue expediting the processing of Special Immigrant Visas and streamline an application process that has long been bottlenecked by bureaucratic and procedural inefficiencies. Those long-standing and unlawful systemic delays resulted in **tens of thousands of SIV-eligible Afghans being left behind** after the U.S. evacuation. Thus, all relevant government staff should be reminded of the Congressional mandate that Departments of State and Homeland Security adjudicate SIV applications within nine months.

All SIV processing steps prior to the consular interview (i.e., Chief of Mission approval, USCIS approval of Form I-360) can and should continue regardless of the applicant's location. Moreover, the U.S. must conduct **proactive outreach to Afghan SIV applicants** to facilitate the expeditious transfer of case files to consular posts in third-country locations, so that visa interviews can be scheduled as soon as possible. This transfer should be driven by where the applicant can travel and not other external factors.

Other steps the U.S. should take include:

- Ensuring that the possibility of deferring medical exams and issuing e-visas for certain final-stage SIV applicants authorized under [recent legislation](#) is applied to Afghan SIV applicants, regardless of location - not just those in Afghanistan, as the statutory language contains no such limitation.
- Streamlining communications with SIV-eligible Afghans and ensuring that they receive clear and current guidance from the Department of State. This includes **providing accurate guidance on all U.S. government web pages** and better training for National Visa Center (NVC) staff on the urgent need for quick and appropriate responses to emails. It also includes providing a point of contact at the Department of State for people who had pending visa applications in Kabul.
- Increasing USCIS staffing to address new delays and backlogs in receipting and adjudicating Form I-360 petitions, which USCIS uses to classify applicants as special immigrants, as well as increasing NVC staffing to address delays in receipting and forwarding new SIV applications. New delays in these steps together add months to an already-delayed process.
- Increasing staffing of public-private SIV employment verification efforts, such as Project Rabbit, to first address delays in verification processes and then expand the process to contracts with other agencies like USAID and to allow for affirmative outreach to contractors.

## **Humanitarian Parole**

While parole is not a permanent immigration status, it allows individuals 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 notably during Operation New Life at the end of the Vietnam War.

A vacuum of viable options for the ongoing evacuation of at-risk Afghans has led to an unprecedented surge in filings of individual humanitarian parole applications with USCIS. USCIS is now facing tens of thousands of pending requests - with the U.S. government rendering itself unable to adjudicate any applications for Afghans in Afghanistan because the current process requires an in-country component.

Until a screening mechanism (as described above) is in place such that Afghans with grantable humanitarian parole applications can have their transit to a third country facilitated by the United States, USCIS should **transparently communicate with the public** on the efficacy of humanitarian parole applications for Afghans in Afghanistan. Countless Afghans have placed hope and invested limited resources without any acknowledgment from USCIS on the possibility of success.

Furthermore, USCIS should **not collect fees** from humanitarian parole applications if it is not adjudicating any applications for Afghans in Afghanistan. USCIS should also broadly grant fee waiver applications for humanitarian parole applicants. Lastly, USCIS should modify [regulations](#) and policy to de-emphasize the need for a financial sponsor, akin to how the agency processes humanitarian parole requests made by federal agencies.

The [statute](#) allows parole for refugees where there are “**compelling reasons** in the public interest” that require it. Given the situation in Afghanistan, USCIS must issue guidance to adjudicators that limit or restrict a finding that an at-risk Afghan does not present the requisite compelling reasons. This interpretation of compelling reasons, to allow for parole in cases of civil conflict and targeted harm, is consistent with the [latest publicly available USCIS training documentation](#) for humanitarian parole adjudicators.

While humanitarian parole is determined on a case-by-case basis, designated or categorical parole programs use pre-set criteria to give groups expedited access and processing. Thus, **USCIS should commit to the creation of a designated humanitarian parole program** to guide and expedite the review of parole petitions for at-risk Afghans. Such a parole program could allow USCIS to more evenly distribute workload between directorates (shifting some responsibilities away from the International and Refugee Affairs Division, for example) and focus more resources on cases that need more individualized attention. For example, there are already tens of thousands of parole applications for Afghans in the backlog and only a handful of individuals available to adjudicate them.

- At a minimum, this new parole program should include Afghans, regardless of location, who are beneficiaries of approved immigration petitions, and those with COM approval in their pending SIV applications (while continuing to expedite the post-COM process per the recommendations above). This program should also include certain Afghans who were referred to USRAP, including those referred through the [Priority 2 \(P-2\) designation for Afghan nationals](#) for whom compelling reasons exist to expedite their flight from Afghanistan or a third country before refugee processing can be completed.

With equal urgency, the U.S. must take immediate steps to use U.S. Customs and Border Protection's parole authority to **parole the thousands of Afghans who were evacuated** from Afghanistan on flights facilitated by the U.S. government out of HKIA but **operated by foreign governments and private charters**. These efforts were often spearheaded by veterans, members of Congress, U.S.-based organizations, and other allies. These actors stepped in to bridge a gap in U.S. government capacity to bring thousands of U.S.-affiliated Afghans to immediate safety. However, because these Afghans were not flown to U.S. overseas military facilities, they continue to languish in third countries without prospects for emigration to the U.S. in the near future. In addition to the trauma inflicted on these Afghans, the present scenario harmfully encourages third countries to restrict access to future at-risk Afghans and potentially return those who are not being expeditiously processed out by the United States.

- To carry this out, the U.S. should conduct a threshold screening facilitated by U.S. embassies in third countries. It should then **move these evacuated Afghans to U.S. overseas government facilities to the spaces vacated by thousands of Afghans who were paroled into the United States**.

### **C. Transit of Afghans to and off U.S. Overseas Government Facilities**

In cases where the immigration processing for Afghans whose transit into a third country was facilitated by the U.S. will take longer than assurances provided to those third countries, the U.S. should transport these Afghans to U.S. overseas government facilities to continue security vetting and immigration processing outside the third country. Additional considerations include:

- The Administration must activate sufficient overseas capacity, including medical screening, at military bases and other government facilities and should take all effort to ensure that the duration of an Afghan's stay on an overseas facility is minimized. Afghans and their legal representatives should be provided regular status updates and sufficient information to understand the cause for any delay. Moreover, Afghans should not be transferred to facilities without explanation or to any facility not operated by the U.S. government. All overseas facilities housing Afghans should allow for broad access to service providers, legal representatives,

press, Congressional staff, and others, to ensure that conditions at the facilities are adequate.

- While Afghans await processing at overseas facilities, immigration processing must continue. For example, for refugee cases, the tasks traditionally carried out by RSCs and USCIS Refugee Officers should continue in an expedited fashion while Afghan applicants are at the facility. Or for example, Afghans who have had Chief of Mission and USCIS approval of their SIV case could have their visa interview at the overseas facility. To do so, the U.S. must allow for a combination of remote services and onsite consular and refugee processing.

## **Conclusion**

Many of these recommendations require close cooperation among multiple federal agencies, principally the Departments of State and Homeland Security, yet existing efforts to expedite overseas processing are often siloed within individual offices. To facilitate greater inter-agency coordination and more expeditiously and consistently communicate with Congressional partners and stakeholders in line with the options herein outlined, we urge the Administration to **establish a unified coordinating group for overseas processing operations for Afghans.**

While the U.S. military mission in Afghanistan may have ended two months ago, the U.S. government's obligations to provide pathways to safety for at-risk Afghans did not. Thousands were left behind and are acutely vulnerable. This situation undoubtedly presents a complicated web of logistical issues, but the Administration has a wide variety of tools and legal authorities more than sufficient to accomplish the task while fulfilling its other humanitarian obligations. The purpose of this paper is not to advocate any specific configuration of policies, but to elucidate the available options, even if they may require time to implement. The U.S. government has used combinations of these policies in the past, and the Administration must make every effort to employ them to bring at-risk Afghans to safety in the United States.