

Standing Up for Our Afghan Allies

The History, Challenges and Future of the
Afghan Special Immigrant Visa Program





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Dear Colleagues, Fellow Americans and Afghan Allies,

One year ago, the United States completed its nearly two-decade long war in Afghanistan. Many brave individuals sacrificed greatly in pursuit of a democratic and safe Afghanistan. Too many made the ultimate sacrifice. They were U.S. service members, diplomats, aid workers and civilians. They were also Afghans—Afghan men and women who were desperately fighting for a better future for their children and country. The Afghan Special Immigrant Visa (SIV) program was established in 2009 to support those Afghans who aided the U.S. mission, and provide them with a new start in the U.S.

Few issues have garnered such enduring bipartisan support over the last decade as providing for our Afghan allies. It is why the program has spanned three presidential administrations. It is why we have been able to continually authorize a program we thought would be redundant in five years. And it is why the Senate and House of Representatives repeatedly worked together to ensure the continuation of this important program.

The SIV program created a pathway to safety for our wartime partners in Afghanistan, and it was a promise to those same individuals

– you have stood with us, now we will stand with you. My former colleague John McCain said it best. “We have a responsibility to honor the promises we made to the Afghan men and women who risked their lives and those of their families to assist American forces...it would be unconscionable to abandon these brave individuals who are now in danger for their service to the United States’ mission in Afghanistan.”

Our promise is not yet fulfilled, but it can be. And it must be.

I compiled this report as an examination of the SIV program, including how it evolved into the program we have today. I also offer recommendations for the continued support of our wartime partners, including a future, permanent SIV program. We must get this right. We owe it to all Americans who sacrificed over the twenty years of the war in Afghanistan. And we owe it to the countless Afghans who risked their lives and the lives of their families to advance the U.S. mission and in service of a better future for their country.



Senator Jeanne Shaheen



Sunrise over the city of Kabul

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SECTION I: SUMMARY

The war in Afghanistan spanned two decades and changed how we think about the United States' role in the world. The U.S.-led mission evolved over the course of 20 years, but its impact was clear: Afghans elected their own government and adopted a constitution that enshrined women's rights and established a free press. We saw decreased rates of maternal mortality and increased educational opportunities for all, especially girls. It was a democracy hard-won and never taken for granted. Many served and sacrificed in pursuit of a better country for Afghans and the defense of the United States' national security. More than 20,500 American service members

were wounded and more than 2,400 killed in Afghanistan.¹ Alongside U.S. and allied troops, diplomats and aid workers were supported by Afghans, whose work for the mission was integral. These men and women, Sunnis and Shias, Pashtun, Tajik and Hazara all risked their lives and the lives of their families in support of the U.S. mission in Afghanistan.

Unlike American and NATO service members and diplomats, there was no escaping the danger for those Afghans who worked to advance the U.S. government's mission. In their communities and villages, the Taliban labeled our Afghan allies as traitors and targeted them and their families. Between 2014 and 2019, the

¹ "Costs of War." Brown University. Watson Institute for International and Public Affairs.

organization No One Left Behind cataloged over 300 cases of Afghan interpreters or their family members – many SIV applicants but all SIV eligible – who were killed by the Taliban, its affiliates or other extremist groups.² Their crime was working with the U.S., and they were executed for it.

Shortly after, U.S. forces entered Afghanistan on October 7, 2001 the need to protect our Afghan allies was clear. Congress took several steps to provide for their safety, culminating in the 2009 passage of the Afghan Allies Protection Act. This law established the Special Immigrant Visa (SIV) program for Afghan allies as a means of protecting Afghans who repeatedly put themselves in danger in support of the U.S. and NATO missions in Afghanistan. It created a pathway to safety for those most at-risk while advancing U.S. national security.

In the 13 years since the program was established, more than 18,000 Afghans and their families have come to the U.S. and resettled in communities across the country.³ But the SIV process has not been an easy one to navigate for eligible Afghans, many of whom wait years for their applications to be approved.

This report draws on the reports of several investigations into the SIV program. In June 2020, the Office of the Inspector General (OIG) at the Department of State reported on five obstacles to more effective implementation of the SIV program, as required by Congress in the fiscal year (FY) 2020 National Defense Authorization Act (NDAA).⁴

In reviewing reports from the OIG, Departments of State and Homeland Security and legal and advocacy organizations – including the work of the International Refugee Assistance Project (IRAP) – several areas have been identified where Congress or the executive branch must take action to improve the process for applicants and reduce the bureaucratic burden on the U.S. government.⁵

The Department of State OIG Report found that several factors constrained the program from its inception and contributed to a process that burdens those it is meant to help. Issues stemming from statute include the annual authorization of visas, the requirement to demonstrate a “serious and ongoing threat,” and requirements for providing proof of employment. Legislative limitations created uncertainty within the departments and agencies tasked with executing the program and contributed to confusion and difficulties for applicants.

Since its inception in 2009, the SIV program has also faced significant hurdles through inconsistent implementation by the executive branch across successive administrations. These include inadequate staffing, issues at the National Visa Center (NVC), lack of coordinating officials within relevant departments, implementation of the Chief of Mission process, communication to applicants of denials and the adjudication of appeals, and protection of applicants. Implementation

² September 19, 2020. “Over 300 Afghan Translators and Family Killed While Serving the U.S.” Real Clear Defense. https://www.realcleardefense.com/articles/2020/09/19/over_300_afghan_translators_and_family_killed_while_serving_the_us_577997.html

³ (2022 Q1). Status of the Afghan Special Immigrant Visa Program [Review of Status of the Afghan Special Immigrant Visa Program]. Department of State and Department of Homeland Security. <https://travel.state.gov/content/dam/visas/SIVs/Afghan-Public-Quarterly-Report-Q1-January-2022.pdf>

⁴ *National Defense Authorization Act for Fiscal Year 2020*. Sec. 1215.

⁵ This report focuses on the Afghan Special Immigrant Visa Program as authorized by the Afghan Allies Protection Act of 2009. This excludes Sec. 1059 visas (FY 2006 NDAA) and the Iraqi visa program (Refugee Crisis in Iraq Act of 2007). It also does not address employment-based, fourth preference (EB-4) immigration, sometimes referred to as special immigrant visas.

constraints unnecessarily delayed the process for applicants and added bureaucratic hurdles and challenges for applicants and staff.

To address these findings, this report makes recommendations across three thematic areas where Congress and the Executive must work together to fulfill our promises to our Afghan allies and provide for the safety of those who risked their lives and the lives of their families in support of U.S. policy and national security.

REPORT RECOMMENDATIONS

- Create institutional capabilities to facilitate the Afghan SIV Program and build the foundation for future special immigration programs.
- Streamline application processes to alleviate the burden on applicants and foster best practices for governance and oversight.
- Provide for the future safety of those who risked their lives and the lives of their families in support of U.S. policy and national security.



The military mission in Afghanistan is over. But our humanitarian mission must continue to quickly, efficiently and responsibly provide for those Afghans who stood by us for 20 years.



SECTION 2: LEGISLATIVE HISTORY AND PROGRAM PROCESSES

THE U.S. WAR IN AFGHANISTAN AND THREATS TO AFGHANS

Following the terrorist attacks on the United States on September 11, 2001, the U.S. launched *Operation Enduring Freedom* on October 7, 2001. The U.S.-led operations in Afghanistan were assisted by locally employed staff (LES) who worked with the U.S. military and diplomatic missions to support operations in Afghanistan. In the months and years that followed, in addition to the considerable U.S. personnel who required support from Afghans, it quickly became apparent that those who chose to work with the U.S. and its allies against the Taliban were significant targets of retribution. Extremist groups such

as the Taliban considered these individuals to be traitors and their lives were threatened in the field as well as at home. Unlike U.S. military and diplomatic personnel who returned to the United States after their tours, Afghans who chose to work side-by-side with Americans were targeted in their homes and communities. Congress, outside groups and veterans, especially those who served and returned from Afghanistan and developed close links with their Afghan allies, called on the U.S. government to act to provide an avenue to safety for this specific group of individuals.

A pathway to support these individuals was identified through the Immigration and Nationality Act (INA). Within the INA, there is a provision for permanent employment-based immigration to the U.S. under the category known as special immigrant visas (SIVs). SIVs are a broad category of immigrant classifications, which Congress has the authority to expand.⁶ In the 2006 NDAA, Congress established a permanent SIV program for Iraqi and Afghan translators. The program provides for 50 visas per year.

This initial program demonstrated the United States' commitment to its wartime partners; however, it failed to protect the thousands of Afghans who worked with the U.S. in a variety of capacities, in addition to translators.

On March 11, 2009, President Barack Obama signed into law the Omnibus Appropriations Act (P.L. 111-8), which included the Afghan Allies Protection Act

of 2009 (AAPA). This provision established special immigrant status – followed by legal permanent resident status – for certain Afghans who were employed “by or on behalf of the United States Government in Afghanistan on or after October 7, 2001,” had provided at least one year of “faithful and valuable service” to the U.S. and had “experienced or [were] experiencing an ongoing serious threat as a consequence” of their employment.⁷ The program was authorized through FY 2013 and was capped at 1,500 visas per year from FY 2009 to FY 2013. These visas expired if they were not issued, and most were not issued. While the 2006 NDAA-issued program was limited to linguists, the AAPA provided for expanded eligibility and included individuals who worked for the U.S. Department of State, U.S. Agency for International Development (USAID) and in various capacities within the Department of Defense.

LEGISLATIVE CHANGES TO THE AFGHAN SIV PROGRAM

Eligibility and the process by which applications are adjudicated has changed since 2009, in large part because of the evolving mission in Afghanistan, the United States' expectations of its duration and the need to better protect our Afghan allies. Furthermore, because of the limited timeframe of the initial program, Congress has been required to extend AAPA

authorization each fiscal year and provide needed visas for the program's use. This has resulted in delays in providing additional visas and created uncertainty in a program that is intended to provide security to vulnerable Afghans.

The Congressional Research Service (CRS) provides an overview of the evolution of the Afghan SIV program through legislative

⁶ Bruno, A. (n.d.). (rep.). *Iraqi and Afghan Special Immigrant Visa Programs*. Retrieved from <https://crsreports.congress.gov/product/pdf/R/R43725/17>.

⁷ The Omnibus Appropriations Act of 2009, H.R. 1105, 111th Congress (2009) <https://www.congress.gov/bill/111th-congress/house-bill/1105/text>

action, following the initial codification of the AAPA, which is carried out primarily through annual defense and spending authorizations.⁸

- **2014:** The FY 2014 Consolidated Appropriations Act⁹ provided for the granting of special immigrant status to up to 3,000 applicants for FY 2014 and the ability to carry forward any unused visas for FY 2014 through the end of FY 2015 for individuals who met the one-year employment requirement mandated in the FY 2009 Omnibus Appropriations Act¹⁰ by December 31, 2014.
 - » The Emergency Afghan Allies Extension Act of 2014,¹¹ which was signed into law in August 2014, provided for an additional 1,000 visas to be allocated for Afghan special immigrant status by December 31, 2014.¹²
- **2015:** The FY 2015 NDAA¹³ provided for an additional 4,000 principal applicant visas from the date of enactment (December 19, 2014) through September 30, 2016. For purposes of obtaining special immigrant status under the new provision, the law set the termination date for the required one-year employment period on September 30, 2015, the application deadline on December 31, 2015, and the expiration date for the visa issuance authority on March 31, 2017.

- **2016:** The FY 2016 NDAA¹⁴ increased the number of additional SIVs available for issuance from 4,000 to 7,000 after December 19, 2014, and provided that these visas would remain available until used. Furthermore, the bill modified the employment requirements for eligibility, increasing the requirement from one year to not less than two years of qualifying employment after September 30, 2015.
- **2017:** The FY 2017 NDAA¹⁵ increased the number of additional SIVs to 8,500 and extended both the employment eligibility period and the application deadline to December 31, 2020. At the same time, it placed restrictions on qualifying employment to Afghans employed in Afghanistan (1) to serve as interpreters and translators, particularly while traveling away from U.S. embassies and consulates with personnel of the Department of State or USAID, or traveling off base with U.S. military personnel; or (2) to perform sensitive activities for the U.S. government in Afghanistan.
 - » The FY 2017 Consolidated Appropriations Act¹⁶ increased the number of additional visas available under the Afghan SIV program from 8,500 to 11,000.

8 Bruno, A. (n.d.). (rep.). *Iraqi and Afghan Special Immigrant Visa Programs*. Retrieved from <https://crsreports.congress.gov/product/pdf/R/R43725/17>.

9 Consolidated Appropriations Act of 2014, Pub. L. No. 113-76, 128 Stat. 516 (2014). Retrieved from <https://www.congress.gov/bill/113th-congress/house-bill/3547/all-info>

10 Omnibus Appropriations Act of 2009, Pub. L. No. 111-8 123 Stat. 807 (2009). Retrieved from <https://www.congress.gov/bill/111th-congress/house-bill/1105>

11 To provide additional visas for the Afghan Special Immigrant Visa Program, and for other purposes, Pub. L. No. 113-160 128 Stat. 1853 (2014). Retrieved from <https://www.congress.gov/113/plaws/publ160/PLAW-113publ160.pdf>

12 To provide additional visas for the Afghan Special Immigrant Visa Program, and for other purposes, Pub. L. No. 113-160 128 Stat. 1853 (2014). Retrieved from <https://www.congress.gov/113/plaws/publ160/PLAW-113publ160.pdf>

13 Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291 128 Stat. 3552 (2015). Retrieved from <https://www.congress.gov/113/plaws/publ291/PLAW-113publ291.pdf>

14 National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92 129 Stat. 1046 (2015). Retrieved from <https://www.congress.gov/114/plaws/publ92/PLAW-114publ92.pdf>

15 National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328 130 Stat. 249 (2016). Retrieved from <https://www.congress.gov/114/plaws/publ328/PLAW-114publ328.pdf>

16 Consolidated Appropriations Act of 2017, Pub. L. No. 115-31 131 Stat. 718 (2017). Retrieved from <https://www.congress.gov/bill/115th-congress/house-bill/244/text>

- **2018:** The FY 2018 NDAA¹⁷ provided 3,500 additional visas under this program. The employment termination date and the application deadline remained unchanged at December 31, 2020.
- **2019:** The FY 2019 Consolidated Appropriations Act¹⁸ made an additional 4,000 visas available under the Afghan SIV program. It left the employment termination date and the application deadline at December 31, 2020.
 - » This law also made the funding for the additional visas conditional on the Secretary of State developing a system for prioritizing the processing of Afghan SIV applications and submitting specified reports, including a report on processing improvements that was required under the NDAA for FY 2019.¹⁹
- **2020:** The FY 2020 NDAA²⁰ authorized an additional 4,000 visas and amended the program's statutory numerical limitation language to provide that the total number of principal aliens who could be granted special immigrant status after December 19, 2014, could not exceed 22,500. It also extended the employment termination date and application deadline to December 31, 2021.
 - » In addition, this act modified the program eligibility criteria by eliminating

certain employment requirements that had been added by the FY 2017 NDAA. As noted previously, in the case of applications filed after December 23, 2016, the FY 2017 NDAA limited eligibility based on U.S. government employment to Afghans who were employed as interpreters and translators or to perform sensitive activities. The FY 2020 NDAA restored the more general requirement of employment by, or on behalf of, the U.S. government. It did not change the eligibility requirements applicable to employment for the International Security Assistance Force (ISAF).

- » The FY 2020 NDAA also included a new reporting requirement related to the Iraqi and Afghan SIV programs. It directed the Inspector General of the Department of State to submit a report to Congress that “evaluate[s] the obstacles to effective protection of Afghan and Iraqi allies through the special immigrant visa programs” and suggests improvements for future programs.
- **2021:** The FY 2021 Consolidated Appropriations Act, enacted on December 27, 2020, raised the visa cap from 22,500 to 26,500, an increase of 4,000 visas.²¹

17 National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91 131 Stat. 1649 (2017). Retrieved from <https://www.congress.gov/bills/115/congress/house-bill/2810/titles>

18 Consolidated Appropriations Act of 2019, Pub. L. No 116-6 133 Stat. 391 (2019). Retrieved from <https://www.congress.gov/116/plaws/publ6/PLAW-116publ6.pdf>

19 John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 H.R. 5515-393 (2018). Retrieved from <https://www.congress.gov/116/plaws/publ6/PLAW-116publ6.pdf>

20 National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92 133 Stat. 1631 (2019). Retrieved from <https://www.congress.gov/116/plaws/publ92/PLAW-116publ92.pdf>

21 Consolidated Appropriations Act of 2021, Pub. L. No 116-260 134 Stat. 1750 (2020). Retrieved from <https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf>

- » Of note, the FY 2021 NDAA included language to replace the 22,500 figure with 22,620, an increase of only 120 visas. The State Department said that it considered the Consolidated Appropriations Act provision to be the prevailing cap, since at the time the NDAA was enacted, the reference to ‘22,500’ was no longer in statute.²² Both bills extended the employment termination date and application deadline to December 31, 2022.²³
- » The Emergency Security Supplemental Appropriations Act of 2021²⁴ provided for 8,000 additional visas (for a new cap of 34,500), the largest one-time increase since the start of the program. The language signed into law reflected the Afghan Allies Protection Act of 2021.²⁵ The bill also provided authority for the Departments of State and Homeland Security to waive the medical examination requirement, which was intended to remove an expensive roadblock for many Afghans once they had completed the process but had yet to have their visas issued. It also restored the original one year employment requirement for program eligibility and expanded eligibility for individuals who served with the ISAF, which, as referenced above, was limited by the FY 2017 NDAA to only those serving in a “sensitive and trusted” capacity.

The evolving legislative changes to the program – and successive administrations’ incomplete implementation of the changes – contributed to a process that has been difficult to navigate. For example, changing eligibility has been difficult to convey to newly-eligible or, conversely, applicants no longer eligible to apply. However, the continued reauthorization of the AAPA and increased visa cap reflects the bipartisan consensus on the importance of the program to support those Afghans who served alongside U.S. and allied troops.

PRE-JULY 30, 2021 APPLICATION AND APPROVAL PROCESS

As established and amended in the AAPA and implemented by consecutive administrations until 2021, the SIV application and approval process consisted of fourteen steps for the

applicant or the Departments of State and Homeland Security to complete. Prior to the Taliban takeover of Afghanistan in August 2021, these fell into four main categories: Chief of

²² The Department of State has not issued public guidance on this determination. The Congressional Research Service reports email correspondence with the Bureau of Consular Affairs to CRS asserting this view. It is also reflected in the numerical limitations set out in Sec.602(b)(3)(F) and in the Joint Department of State and Department of Homeland Security Quarterly Reports which show an increase in remaining visas authorized but unissued from 2020 Q4 (July 1, 2020 to September 31, 2020 – before the NDAA and appropriations act were signed into law) of 7,140 to 10,993 remaining visas in the 2021 Q1 report (October 1, 2020 to December 31, 2020). This increase reflects the view that the Consolidated Appropriations Act of 2021 took precedence over the FY 2021 NDAA.

²³ William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283 134 Stat. 3919 (2021). Retrieved from <https://www.congress.gov/116/plaws/publ283/PLAW-116publ283.pdf>

²⁴ Emergency Security Supplemental Appropriations Act of 2021, Pub. L. No. 117-31 135 Stat. 315 (2021). Retrieved from <https://www.congress.gov/117/plaws/publ31/PLAW-117publ31.pdf>

²⁵ <https://www.congress.gov/bill/117th-congress/senate-bill/2032>

Mission approval; Form I-360 adjudication; visa interview; and visa issuance.

In its June 2020 report, the International Refugee Assistance Program (IRAP) notes that the process was significantly more onerous and involved than the fourteen steps imply. From U.S. government-issued statements and IRAP's litigation, the process prior to July 30, 2021 included the following steps:

1. Applicant submits to the National Visa Center (NVC) a Chief of Mission application package, which includes the following:
 - Verification of employment in Afghanistan
 - A letter of recommendation from a U.S. citizen supervisor
 - The DS-157 Supplemental Nonimmigrant Visa Application form
 - Proof of identity (either a passport or the Afghan national identity card with an English translation)
 - A signed and dated statement of threats received as a consequence of employment
 - Any additional evidence of employment, including employee badges
 - Biographic data
2. The National Visa Center reviews the applicant's documents to determine that the application is fully completed.
3. National Visa Center sends completed package to the Afghan Special Immigrant Visa (ASIV) Unit for Chief of Mission's (or designee's) decision.
4. ASIV Unit reviews applicant packages – verifying history and length of employment and legitimacy of the letter

of recommendation – and send to Chief of Mission with a recommendation for approval or denial.

5. National Visa Center receives the applicant's Chief of Mission decision. If approved, the National Visa Center sends an approval letter to the applicant. If denied, the applicant has a statutory right to appeal within 120 days or reapply as a new applicant.

Notably, government reports indicate that many appeals of COM denials result in the denials being overturned and applicants approved. In 2017, the success rate of denial appeals was 66 percent.

6. After the applicant receives Chief of Mission approval from the ASIV Unit, the National Visa Center notifies the applicant to file Form I-360, "Petition for Amerasian, Widow(er), or Special Immigrant," which is required for the applicant to become a Lawful Permanent Resident (LPR), with the U.S. Citizenship and Immigration and Services (USCIS).
 - At this stage, the applicant also submits documentation for a "derivative" spouse or child, unmarried and under the age of 21, who are also applying under the applicant's SIV.
7. USCIS adjudicates the petition and, if approved, sends the completed applicant package to the National Visa Center.
8. The National Visa Center instructs the applicant to provide the necessary documents for a visa application.
9. Applicant submits requested documentation to the National Visa Center.
10. National Visa Center reviews documents for completeness.

11. National Visa Center schedules an interview with the applicant to take place at the U.S. embassy in Afghanistan.
12. The applicant and any necessary family members are interviewed by a State Department Consular Officer.
13. The applicant's case undergoes administrative processing, the stage at which additional interagency background checks are conducted. This may include requesting additional documentation, conducting additional interviews and other security checks.
14. When administrative processing is complete, the applicant is instructed to obtain a medical

examination for all family members at the expense of the applicant. The visa is issued to the applicant and derivative family members, and they are able to schedule their own travel to the U.S. or through a third party (such as the International Organization for Migration, or IOM).

As part of FY 2014 program modifications, Congress included a requirement that these government-controlled stages be completed within nine months, unless the Department of State identifies high-risk applicants who require additional scrutiny to satisfy national security requirements. Since the nine-month requirement was instituted, there is clear evidence that this requirement is not consistently met.

POST-JULY 30, 2021 APPLICATION AND APPROVAL PROCESS

As noted above, on July 30, 2021, the Emergency Security Supplemental Appropriations Act of 2021 was signed into law. This included several provisions designed to expand the eligibility for the program and alleviate some of the application and adjudication burdens that prolonged the application process. Sixteen days after President Biden signed the bill into law, the Taliban seized Kabul and overthrew the government of President Ashraf Ghani. The resulting three-week evacuation of U.S. diplomatic and military personnel, U.S. citizens, legal permanent residents and vulnerable Afghans was one of the largest airlifts in U.S. history. State Department employees serving at the U.S. Embassy in Kabul and Department of Defense personnel stationed in Afghanistan supported the evacuation until they themselves were on the last planes out.

The end of the United States' military mission in Afghanistan and the evacuation of the U.S. embassy in Kabul necessitated additional changes to the SIV program. Since 2021, the Biden administration has implemented several additional reforms to streamline the process and limit the burden on applicants and the State Department. These changes include:

- Launching Operation Allies Refuge to bring some SIV applicants to the United States for completion of their process;
- Utilizing *Project Rabbit*, the Department of Defense's employee database, to confirm eligible employment of Defense employees and contractors;
- Eliminating the Form I-360 Petition for Special Immigrant Status, filed through the Department of Homeland Security's U.S.

- Citizenship and Immigration Services (USCIS), for many but not all applicants;
- Elimination of the signed and dated statement of ongoing personal threat – with the Taliban takeover and reprisal violence against Afghan allies, this is now considered

to be met once the individual proves they worked for the U.S. government or allied forces; and

- Elimination of ASIV Unit's screening of applications ahead of COM approval.

CURRENT SIV PROCESS

Following the Taliban takeover of Afghanistan, the SIV process has changed to accommodate the situation on the ground. In theory, this means that once an SIV applicant has Chief of Mission approval, the individual and their qualifying family members are eligible for a relocation flight out of Afghanistan. COM continues to process applications and approve additional applications. The applicant and family members travel to a pre-determined third country, referred to as “lily pads.” Upon arrival at a lily pad, the applicant completes any additional process and submits documentation for a “derivative” spouse or child, unmarried and under the age of 21, who are also applying under the applicant’s SIV. A Consular Officer interviews the applicant, as well as any derivative family members applying under the SIV applicant. The applicant’s case undergoes administrative processing, which may include requesting additional documentation, conducting additional interviews and interagency security checks. When administrative processing is complete, the applicant is administered a medical examination. The visa is issued to the applicant and derivative family members, and they are scheduled for onward travel to the U.S.

In practice, the process appears to be much less straightforward. Most applicants are still being processed while they wait in Afghanistan. Applicants have reported long waits for interviews and decisions on their applications. Additionally, as of publication, COM approval is insufficient for evacuation. The U.S. government encourages applicants to continue the process and all required visa paperwork.²⁶

As previously stated, an SIV is a pathway to U.S. citizenship. An individual who enters the United States on an SIV, or an SIV applicant who adjusts their status within the United States, becomes a U.S. lawful permanent resident (LPR). Unlike Afghans brought to the United States without eligibility for an existing legal pathway, SIV applicants and their eligible family members have a pathway to LPR status and may not need to adjust status at the end of the period for humanitarian parole, the mechanism through which many Afghans evacuated in August 2021 were brought into the United States. Once an Afghan SIV applicant has LPR status, they are eligible for citizenship under the parameters of the Immigration and Nationality Act.

As of August 9, 2022, there were 90,392 applicants in the pipeline with 10,400 of those

²⁶ #AfghanEvac. “Department of State Flight Manifest Eligibility.” <https://afghanevac.org/infographics/#flighteligibility>



individuals post-COM approval and the majority still in Afghanistan.²⁷ The Department of State continues to process these applications and is working to get people through the pipeline and to safety in fulfillment of the U.S. promise.

Throughout the duration of the program, the need to protect our Afghan allies has been a moral and national security imperative. In a 2021 letter to President Joe Biden, a bipartisan group of Senators described the purpose of the program and its value to Afghans and Americans alike:

“Not only have these Afghans supported the military and diplomatic efforts of the United States, they have saved the lives of U.S. service members and diplomatic personnel. Because of this work and their association to the United States, they

have faced threats to their lives and the lives of their families. The Special Immigrant Visa program was established to provide a well-vetted pathway to safety for these Afghans and allows the U.S. to fulfill its commitment to those who put themselves at risk.”²⁸

In 2016, former U.S. Senator John McCain expressed deep concern about the fate of Afghans who worked with the U.S. government and the need for Congressional action to support those individuals, stating, “Any expert on Iraq or Afghanistan will tell you they’re the number one target. They’re the number one target for terrorists because they cooperated with the United States.”²⁹

²⁷ U.S. Department of State Briefing to Congress, July 20, 2022.

²⁸ <https://www.shaheen.senate.gov/news/press/shaheen-ernst-lead-bipartisan-letter-to-president-in-support-of-afghan-siv-program>

²⁹ <https://rollcall.com/2016/05/20/mccain-to-shame-senators-over-afghan-iraqi-visas/>



SECTION 3: FINDINGS

Upon taking office on January 20, 2021, President Joe Biden inherited an Afghan Special Immigrant Visa (SIV) program that has been neglected under previous administrations. The average processing time for SIV applicants has steadily increased since 2014, when reporting on the timeline was initially required. The program has been systematically undercut by a lack of buy-in from the executive departments responsible for its implementation. The long-term difficulties faced by the Afghan SIV program reflect the larger issues that have hindered the program.

Since its inception, the SIV program has been slowed by bureaucratic bottlenecks and lengthy delays. It has been further undercut by the need for an annual authorization of visas since 2014, which has given opponents of the program a yearly opportunity to add additional constraints to the application process, resulting in superfluous burdens on applicants. This included changing the qualification requirement

for eligible employment from one year to two years in 2016 and a 2019 requirement for the prioritization of applicants based on employment – a system which the Department of State continues to implement today, pushing some applicants to the back of the line.³⁰

Slow and incomplete implementation of the program has resulted in a prolonged application process and confusion for applicants. Insufficient staffing, the lack of designated coordinators within the relevant departments and delays in responding to legislative changes in the program have resulted in many applicants waiting several years for visa approvals. Since its beginning, the SIV program never garnered the necessary institutional support of the executive branch departments responsible for its functioning.

This section examines the issues facing the Afghan SIV program through two lenses: those that stem from statute and those that are the result of the implementation of the program by the executive branch.

³⁰ The prioritization scheme, as developed by the Department of State (1) Interpreters and Translators; (2) U.S. Government Direct Hire Employees; (3) Contractors with U.S. Government Installation Badges; (4) Implementing Partners, including Afghan third-party contractors or subcontractors employed on behalf of U.S. Government entities, such as the U.S. Agency for International Development and the Department's Bureau of International Narcotics and Law Enforcement, implementing instructions in the field in Afghanistan; and (5) All Other Applicants such as Afghan U.S. Government contractors, logistics or transportation service providers and companies contracted by the U.S. Government to provide services to Afghan National Army or Afghan National Police installations. Prioritization was established by Congress in the fiscal year 2019 Consolidated Appropriations Act but not renewed in subsequent legislation. Because appropriations apply for the fiscal year in which they are allocated, this prioritization scheme does not carry the force of law after fiscal year 2019, but the Department of State has nonetheless imposed this scheme on an ongoing basis.

LEGISLATIVE ISSUES

The Afghan Allies Protection Act of 2009 established a category within the Immigration and Nationality Act (INA) for Afghans who worked “by, or on behalf of the United States Government” to be eligible for special immigrant status. This bill sought to fulfill the United States’ moral obligations, commitments and national security priorities to stand by our wartime partners and allies, as they stood by the U.S. on the ground in Afghanistan. In doing so, the Act created a program of limited duration with the necessary security components to safely and expeditiously bring our Afghan allies to the U.S. while preserving our national security. Through its initial establishment and subsequent legislative changes, several issues have resulted in limitations and delays that have adversely affect our partners and require Congressional action.

I. Annual Authorization

As detailed in the previous section of this report, the program was initially authorized from 2009 through 2013 with a provision extending the availability of visas through 2014 if any remained authorized but unissued. Since 2014, Congress has had to take action to provide additional visas to the SIV program and extend its authorization. The need for continuous authorizations of visas has limited the Department of State’s ability to plan and has caused confusion around the number of visas available for issuance in any given year. In its 2020 report, the Department of State’s Office of the Inspector General (OIG) found that “uncertainty of visa availability has

affected the Department’s ability to process visas.”³¹ In addition, obstruction in Congress by opponents of the program resulted in legislative delays that led to halts in visa processing in 2014 and 2017. For individuals who face immediate and specific threats to their lives and the lives of their families – as all Afghan SIV applicants do – such a delay is a matter of life and death.

In its 2020 report, the OIG concluded that “likely future applicant volume should be considered when authorizing visas to effectively reduce visa uncertainty, thereby improving the efficiency of Afghan SIV processing.”³² This is particularly important in reviewing the circumstances that resulted in the Department of State’s halts in processing applications in 2014 and 2017. In both cases, Congress was delayed in authorizing additional visas. However the Department of State, in anticipation of running out of visas, started suspending the program before the visas ran out. This resulted in numerous delays and added to the wait times for applicants.

II. Serious and Ongoing Threat

From its inception, the Afghan SIV program required that an applicant “has experienced or is experiencing an ongoing serious threat as a consequence of the alien’s employment.”³³ As documented by the International Refugee Assistance Project’s 2020 report, initial implementation of this clause resulted in many applicants, who met this requirement due to specific and credible threats from the Taliban, being denied

31 (2020). Review of the Afghan Special Immigrant Visa Program [Review of Review of the Afghan Special Immigrant Visa Program]. Office of the Inspector General, United States Department of State - Middle East Region Operations (p.10).

32 (2020). Review of the Afghan Special Immigrant Visa Program (p.14).

33 Afghan Allies Protection Act Sec. 602(b)(2)(A)(iv)

for insufficient proof of such threats.³⁴ In response, Congress established guidelines for acceptable documentation of serious and ongoing threats to SIV applicants' safety, as well as that of their families, including "a credible sworn statement depicting dangerous country conditions, together with official evidence of such country conditions."³⁵ This change gave applicants the opportunity to demonstrate that they met the qualifications of experiencing an ongoing threat and limited the number of denials.

Following the U.S. withdrawal from Afghanistan in August 2021, reprisal attacks on Afghans who worked in support of the U.S. mission in Afghanistan rose significantly.³⁶ As such, the Biden administration determined that verification of the applicant's employment is sufficient proof of the threat the applicants face. The National Security Council (NSC) noted that the removal of the applicant's verification of employment does not negatively impact national security, as the same screening and vetting processes continues to be conducted.³⁷

III. Documentation of Employment

Since the establishment of the program, SIV applicants and U.S. service members, diplomats and aid workers who worked alongside them have reported that SIV applicants have faced significant difficulties meeting the program requirements for

demonstrating employment and providing a letter of recommendation. According to the Afghan Allies Protection Act, a principal applicant must be able to prove that they—

"(iii) provided faithful and valuable service to an entity or organization described in clause (ii), which is documented in a positive recommendation or evaluation, subject to subparagraph (D), from the employee's senior supervisor or the person currently occupying that position, or a more senior person, if the employee's senior supervisor has left the employer or has left Afghanistan";

While the statute requires one document – a letter of recommendation – the Department of State's implementation of the law has required three documents: a human resources (HR) letter from the applicant's employer, a letter of recommendation and, where applicable, a demonstration of a qualifying contract with the U.S. government.³⁸ These requirements place the responsibility on the applicant to (1) maintain documentation of their employment with the U.S. government – which, if discovered by the Taliban, poses a direct risk to their lives; (2) retain or regain contact with the U.S. government or contracting employees who can provide a letter of recommendation, despite any length of time that may have passed since the qualifying employment; and (3) navigate relationships with uncooperative employers who may be unwilling to supply a HR letter or who have not maintained

34 "Recommendations on the Reform of the Special Immigrant Visa Program for U.S. Wartime Partners." International Refugee Assistance Project, June 2020 (p.30-21).

35 Afghan Allies Protection Act Sec. 602(b)(2)(E)

36 Press, T. A. (2022, January 31). U.N. says over 100 ex-Afghan officials have been slain since the Taliban's takeover. NPR. <https://www.npr.org/2022/01/31/1077003325/united-nations-afghanistan-taliban-takeover-extrajudicial-killings>

37 Conveyed through communications between the NSC and Congress.

38 "Recommendations on the Reform of the Special Immigrant Visa Program for U.S. Wartime Partners." International Refugee Assistance Project, June 2020 (p.22-23).

employee records, which they are not required to do by law.

For those individuals directly employed by the Department of Defense or through a third-party defense contractor, the Departments of State and Defense have worked together to utilize an employment database known as *Project Rabbit*. *Project Rabbit* is a database established and maintained by the Pentagon to facilitate employment verification for individuals employed through the Department of Defense. In a September 28, 2021 letter to U.S. Senator Tammy Duckworth, Under Secretary of Defense for Policy Colin Kahl said that *Project Rabbit* “replaces the need for companies to write employment verification letters and letters of recommendation for each of their Afghan employees who have applied for an SIV.”³⁹ However, the potentially helpful database has not been utilized to its fullest extent to alleviate the burden on applicants. Applicants are routinely unable to contact the contracting company with whom they completed qualifying service. Some companies are no longer in existence while other companies refuse to provide the necessary documentation.⁴⁰ A recent applicant requested that their

employment be verified through *Project Rabbit* because they were unable to contact their employing company and therefore unable to provide the necessary documentation. Despite the availability of *Project Rabbit* to the NVC staff reviewing the application, the individual was informed that applicants still must supply documentation letters. Because *Project Rabbit* was being used as a verification of letters rather than a replacement, the individual unable to secure those letters was left with no path forward despite their qualifying service to the U.S. government. In response, the individual was told that the letters must be supplied by the applicant, leaving no path forward for this person, despite their qualifying service to the U.S. government.⁴¹

Instead of acting as a replacement to the onerous documentation requirements, it appears that *Project Rabbit* is solely utilized to verify such documentation. COM's refusal of applications that do not have separate employment documentation instead of allowing for employment to be fully verified through *Project Rabbit* hurts our wartime partners and further burdens a system already facing significant backlogs.

IMPLEMENTATION CONSTRAINTS

Since its inception in 2009, the SIV program has faced significant hurdles through inconsistent implementation by the executive branch across successive administrations. In many cases, these implementation challenges do not require action from Congress. Rather, they require the

Departments of State, Homeland Security, and Defense as well as vetting partners to continually review their processes and address bottlenecks and shortcomings. There are several areas where implementation of the program has had a severe impact on applicants.

39 Sept. 28, 2021. <https://www.duckworth.senate.gov/imo/media/doc/21.09.28%20-%20DOD%20Response%20to%20Senator%20Duckworth%20Letter%20to%20State%20and%20DOD%20-%20Afghan%20SIV%20Program%20Employment%20Verification%20Alternatives.pdf>

40 (2020). *Recommendations on the reform of the Special Immigrant Visa Program for U.S. Wartime Partners*. (p.22)

41 In a briefing with congressional staff, the Department of State confirmed that *Project Rabbit* is used as a tool for the NVC to quickly confirm the veracity of employment documentation provided by the applicant. It is not used as a replacement for such documentation.

I. Inadequate Staffing

The SIV program is hindered by shortages in the staffing necessary to process applications at nearly all levels. In its 2020 report, the Department of State OIG found that staffing for departments and agencies responsible for processing SIV applications remained constant between FY 2016 and the beginning of 2020 while the backlog of pending applications increased.⁴² While applications surged, there was no internal audit to determine if staffing was adequate to address existing demands. The OIG also cites the lack of a coordinating official at all relevant agencies.

Additional staffing is needed to address shortages and bottlenecks. The Biden administration has taken steps to increase staff to the NVC and COM, but applicants continue to wait too long to receive responses to inquiries with the NVC and processing through COM.

- In the Congressionally-mandated Joint Department of State and Department of Homeland Security FY 2021 Quarter 2 report, the first report reflecting the beginning of the Biden administration, the Department of State reported the addition of five temporary duty personnel and its ongoing recruitment of additional temporary duty personnel to help process applications.⁴³
- The FY 2021 Quarter 3 report noted the addition of one temporary duty personnel, ten contract personnel – including two

permanent and eight temporary – and 18 additional personnel on short term assignments.⁴⁴ U.S. Embassy in Kabul also reported additional staff dedicated to SIV processing during this period, which extended from April 1, 2021 to June 30, 2021.

- The FY 2021 Quarter 4 report (July 1, 2021 to September 30, 2021) reflected the time period just 45 days before the Taliban takeover of Afghanistan in August 2021.⁴⁵ In this time and before the evacuation of the U.S. Embassy Kabul, COM acquired one additional civil service staff member and received 12 personnel with short-term assignments to the Chief of Mission unit.
- In FY 2022 Quarter 2 (January 1, 2022, to March 31, 2022), the State Department increased the SIV-dedicated staff at the NVC in Portsmouth, New Hampshire. The NVC is primarily funded by revenue generated from all visa applications but *not* SIV applications, which law prohibits. However, because it is self-funded through visa fees, the COVID-19 pandemic limited revenue, resulting in cuts to the contract employee workforce. Despite acts by Congress to bolster via processing operations, the Biden administration inherited an understaffed NVC.

Staffing at the NVC is further complicated by the heavy reliance on contract employees employed by a third party. As the 2020 OIG's report notes, "domestically, the National Visa Center relies almost entirely on contractors

42 (2020). *Review of the Afghan Special Immigrant Visa Program*. (p.14-15).

43 (2021 Q2). Status of the Afghan Special Immigrant Visa Program [Review of Status of the Afghan Special Immigrant Visa Program]. Department of State and Department of Homeland Security. <https://travel.state.gov/content/dam/visas/SIVs/Afghan-Public-Quarterly-Report-Q2-April-2021-Final.pdf>

44 (2021 Q3). Status of the Afghan Special Immigrant Visa Program [Review of Status of the Afghan Special Immigrant Visa Program]. Department of State and Department of Homeland Security. <https://travel.state.gov/content/dam/visas/SIVs/Afghan-Public-Quarterly-Report-Q3-July-2021.pdf>

45 (2021 Q4). Status of the Afghan Special Immigrant Visa Program [Review of Status of the Afghan Special Immigrant Visa Program]. Department of State and Department of Homeland Security. <https://travel.state.gov/content/dam/visas/SIVs/Afghan-Public-Quarterly-Report-Q4-October-2021.pdf>

to communicate with the applicants about their status and compile their required documents for processing.”⁴⁶ In 2020, the staffing firm LDRM took over the contract for the NVC. LDRM is responsible for providing the necessary staff to meet the operational needs of the NVC. The contractor-based staffing model allows for flexibility of the Center’s operations to match revenue generated by visa processing but it limits the Department of State’s ability to surge staffing during a period of unexpectedly high demand such as the beginning of the COVID-19 pandemic and the U.S. withdrawal from Afghanistan.

II. National Visa Center

A key part of the SIV process is the NVC, which is at the core of the SIV process and is responsible for creating and processing SIV applications. Unlike other immigrant visa applications, the SIV process begins at the NVC. Individuals interested in applying for an SIV must submit a COM application packet to the NVC. The NVC reviews the package for completeness before sending the submission to the COM, who approves or denies the application. Once an applicant receives COM approval, the NVC facilitates the creation of an SIV application. When a case is documentarily complete, with all necessary forms completed and fees paid, the NVC schedules an interview at a U.S. Embassy. Throughout the process, the NVC plays a vital role in the administration of the Afghan SIV program and communication with applicants.

Immediately following the Taliban takeover of Afghanistan on August 15, 2021, the SIV team at the NVC received 30,000 emails per day, a significant increase from the previous 200 daily emails. This high volume continued for roughly a month.⁴⁷ This created a significant backlog of emails for the NVC’s SIV team to process. They were further hindered by broader COVID-19-induced reductions in staff and the initial lack of a central point of contact for Afghans in distress during the U.S. withdrawal. Following the establishment of a task force and the Coordinator for Afghan Relocation Efforts (CARE), the burden on the NVC was lessened but the backlog remained. As of August 2022, the NVC was still opening emails for pre-COM applicants from October 2021.⁴⁸ For comparison, as of August 8, 2022, the NVC was processing intake for non-SIV cases received on July 26, 2022, an acceptable lag of one to two weeks.⁴⁹ There are also individuals who submitted applications to the NVC in August 2021 who have not yet received confirmation of receipt of their applications, nor had a case number assigned to their case. This suggests that there are unopened or possibly lost applications that the NVC has been unable to process.

Delayed responses to SIV applicant emails did not occur as a consequence of the August 2021 withdrawal from Afghanistan but were exacerbated by the sudden U.S. departure and closure of the Embassy. In its 2020 report, the Department of State OIG notes that, as of February 2020, “SIV applicant emails had not been opened in the approximately 30 days after they were received. These included

46 (2020). Review of the Afghan Special Immigrant Visa Program [Review of Review of the Afghan Special Immigrant Visa Program]. Office of the Inspector General, United States Department of State - Middle East Region Operations (p.15).

47 Congressional briefing with the Department of State, the contracting agency and leadership at the National Visa Center, November 10, 2021.

48 As determined from casework for the Office of Senator Jeanne Shaheen and correspondence with the National Visa Center. A more recent report to Congress indicated that progress had been made in opening emails to the NVC but, as of publishing, the process that lead to this progress is unclear and more must be done to alleviate the backlog of unopened emails at the NVC.

49 According to an analysis of NVC timeframes on Travel.state.gov.

the applicants' initial emails to begin an application as well as emails including existing applicants' supporting documentation."

These response rates are for email correspondence only and do not take into account the actual processing of applications. Periodically, the NVC will respond to the initial email with a request for additional materials or follow-up from the applicant. When an applicant sends the requested information to the NVC, their message is placed at the back of the pre-COM email backlog. They must then wait an unspecified period of time for their application materials to be reviewed. This intake and response delay has the potential to significantly delay COM approval times. Because the U.S. government is only evacuating from Afghanistan those SIV applicants who are interview ready and thus have COM approval, additional delays to COM approval are a grave concern.⁵⁰

III. SIV Coordinators

The National Defense Authorization Act (NDAA) for FY 2014 (P.L. 113-66) included two provisions that direct the appointment of coordinating officials. The first of these provisions (Sec. 1217(h)) states that the Secretaries of State, Defense and Homeland Security "shall each designate a senior coordinating official, with sufficient expertise, authority and resources, to carry out the duties described in paragraph (2), with regard to the issuance of special immigrant visas under this subtitle⁵¹ and the Afghan Allies Protection Act of 2009 (8 U.S.C. 1101 note)," as well as the following:

(2) DUTIES.—Each senior coordinating official designated under paragraph (1) shall—

(A) develop proposals to improve the efficiency and effectiveness of the process for issuing special immigrant visas under this subtitle and the Afghan Allies Protection Act of 2009;

(B) coordinate and monitor the implementation of such proposals;

(C) include such proposals in the report required by subsection (f) and in each quarterly report required by subsection (g); and

(D) implement appropriate actions as authorized by law to carry out the improvements described in the report required by subsection (f).

The FY 2014 NDAA (Sec. 1219) also contained language on an Afghan SIV Coordinator:

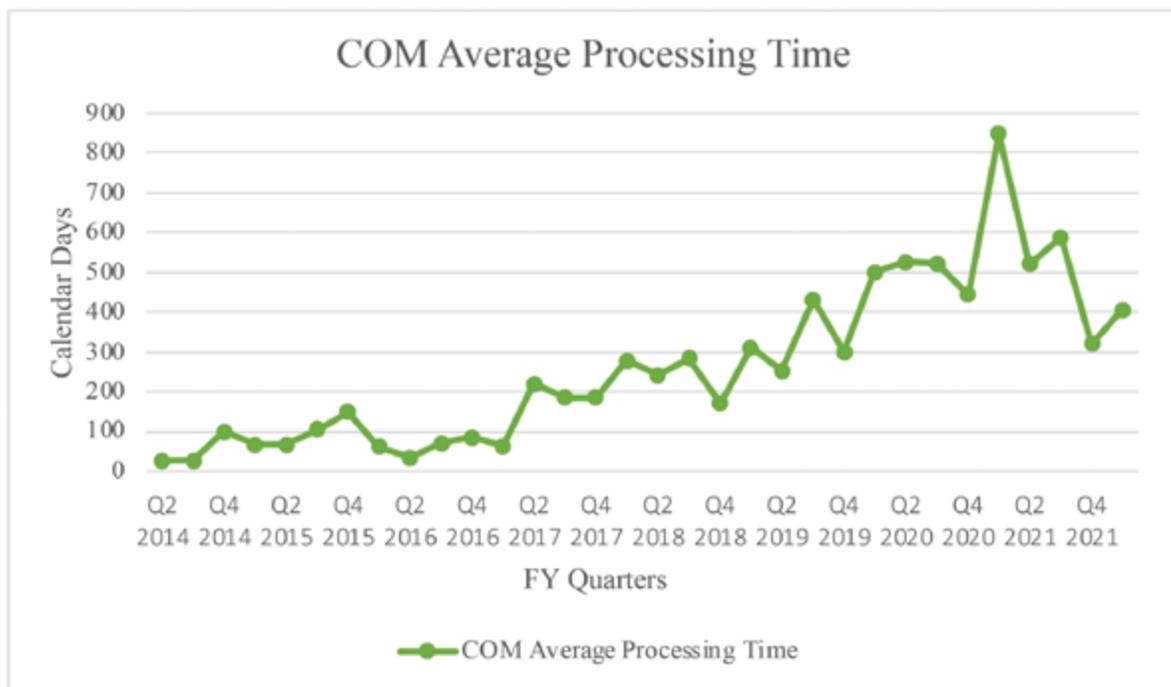
(II) AFGHAN SPECIAL IMMIGRANT VISA COORDINATOR.—The Secretary of State shall designate, in the Embassy of the United States in Kabul, Afghanistan, an Afghan Special Immigrant Visa Coordinator responsible for overseeing the efficiency and integrity of the processing of special immigrant visas under this section, who shall be given—

(aa) sufficiently high security clearance to review information supporting Chief of Mission denials if an appeal of a denial is filed;

(bb) responsibility for ensuring that an applicant described in subclause (I)

⁵⁰ While not the purview of this report, the technological capabilities of the NVC have had a clear impact on the Center's ability to triage and respond to inquiries. In communications with Congress, the NVC has indicated that it did not have the digital infrastructure needed to sort through the large number of emails they received in August 2021. Rather than a processing system, the NVC has used Microsoft Outlook to handle incoming emails.

⁵¹ The Subtitle referred to is the 1244 Iraqi SIV program



receives the information described in subclause (l)(aa); and

(cc) responsibility for ensuring that every applicant is provided a reasonable opportunity to provide additional information, clarify existing information, or explain any unfavorable information pursuant to clause (l)(bb).

In practice, the distinction between these roles has been obscured and possibly misunderstood. The Department of State OIG’s 2020 report mentions in a footnote that “in commenting on a draft of this report, the Undersecretary for Management stated that the Senior Coordinating Official and the SIV Coordinator are two distinct roles (see Appendix B); however, during fieldwork, no Department officials informed OIG of this distinction.”⁵² Appointing and empowering the

Senior Coordinators is crucial to the success of the interagency process.

Furthermore, an Afghan SIV Coordinator under the Chief of Mission would allow for better coordination of the COM process, where significant delays remain.⁵³

An SIV Coordinator facilitates the communication between the NVC and COM as well as with the applicants. In the absence of an Afghan SIV Coordinator, applicants receive generic form responses to inquiries that do not address their questions or concerns and there is no accountability for the steady increase in average processing time at COM.

IV. Implementation of the Chief of Mission Process

Following the U.S. military withdrawal from Afghanistan, U.S. Embassy Kabul suspended

52 (2020). Review of the Afghan Special Immigrant Visa Program [Review of Review of the Afghan Special Immigrant Visa Program]. Office of the Inspector General, United States Department of State - Middle East Region Operations (p.14).

53 In the FY 2022 Q2 Joint Department of State/Department of Homeland Security Report to Congress on the Status of the Afghan Special Immigrant Visa Program, the average processing time (in calendar days) for U.S. government-controlled steps of the COM application stage accounted for 342 of the 587 total days in the processes adjudicated by the U.S. government.

its operations. For purposes of reviewing applications, the Chief of Mission has moved to the Harry S Truman Federal Building in Washington, D.C. From there, the COM process continues to approve applications. However, the other duties of U.S. Embassy Kabul – chiefly, the interview of SIV applicants – must be carried out by other posts outside of the United States. The Department of State is not automatically transferring cases to a designated embassy or consulate, as it did when U.S. Embassy Kyiv was closed due to violence from the unprovoked Russian invasion of Ukraine in February 2022. Instead, Afghans must request that their petition be transferred to a new post.

As a result, cases ready for the next steps have an “in Kabul,” status that prevents them from being processed at other embassies and consulates. As a consequence, additional processing with action from the applicant is delayed. These applicants also may or may not know that they must move their petition to a new post to advance their application. Furthermore, Congress has received conflicting information from NVC liaisons and Department of State officials about transferring SIV cases from Kabul.⁵⁴ While the NVC indicated that applicants can transfer their cases to a new Embassy, even if they are still based in Afghanistan, the Department of State strongly discouraged this practice and advised individuals to move their application to a new post only once they are able to travel to that location.

The following case study of this situation illustrates the pitfalls of this process for

applicants. An SIV applicant was interviewed in July 2021 and subsequently had a baby that needed to be added to the SIV case.⁵⁵ Because only a post can process this routine request and the case has not been automatically referred to a new post, it remains in the jurisdiction of an embassy that no longer exists, and no post has jurisdiction over the case and the baby cannot be added to the petition. If this situation is not resolved for this applicant, it will adversely impact the individual and could mean that the baby is unable to get a visa through the SIV application of its parent.

Designating a default post for all SIV applicants⁵⁶ would reduce the possibility that no action is taken on a case because no one is responsible for its processing. It would also allow some steps – such as providing additional documents or adding babies and spouses to the petition – to take place before they leave Afghanistan. This change would mitigate risks associated with travelling to a new country to advance their visa application process. It would also allow applicants to make informed decisions and better understand the status of their application.

V. **Communication of Denials and Adjudication of Appeals**

The Afghan Allies Protection Act includes specific protections for individuals whose applications have been denied. This is intended to both protect the applicant and alleviate unnecessary administrative burden on the process.

(ii) REVIEW PROCESS FOR DENIAL BY CHIEF OF MISSION.— (I) IN GENERAL.—

⁵⁴ Indicated through responses to casework inquiries from the Coordinator for Afghan Relocation Efforts (CARE) Team and the NVC.

⁵⁵ Casework reported to the Office of Senator Jeanne Shaheen by IRAP

⁵⁶ The same COM issue also faces Afghans applying for other visas.

An applicant who has been denied Chief of Mission approval shall—

(aa) receive a written decision that provides, to the maximum extent feasible, information describing the basis for the denial, including the facts and inferences underlying the individual determination; and

(bb) be provided not more than one written appeal per denial or revocation—

(AA) that shall be submitted not more than 120 days after the date that the applicant receives such decision in writing or thereafter at the discretion of the Secretary of State; and

(BB) that may request reopening of such decision and provide additional information, clarify existing information, or explain any unfavorable information.⁵⁷

Given its role in determining program eligibility, COM approval is the stage in the process at which most denials occur. Many applicants receive limited information for the reason of their denial which subsequently limits their ability to appeal. Furthermore, applicants have only 120 days after the applicant receives the denial in writing to submit an appeal. Prior to July 30, 2021, the Department of State only allowed one appeal per application, even in situations where an appeal is denied for reasons not made known to the applicant in the initial denial. The Emergency Supplemental Appropriations Act (P.L.117-31) improved the appeals process to allow for one appeal for each new reason for denial. Not only does this

provision prevent applicants from reapplying and going through what is often a years-long process, but it limits the burden on the Department of State to process additional applications and address the backlog of applicants.

Despite the July 30, 2021 change in the appeals process, many applicants continue to see refusals of appeals after the initial appeal and second denial. This has either delayed implementation of a statute that has been in place for over a year or it is evidence of inconsistent application of the appeals process policy.

VI. Support for the Protection of Applicants

Fundamental to the SIV program is the understanding that individuals who chose to work with or in support of the U.S. mission in Afghanistan put themselves at risk of retaliation. Because of this, the Afghan Allies Protection Act provides for the following regarding the protection of Afghans who have applied for Special Immigrant status:

(6) PROTECTION OF ALIENS.—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 subparagraph (A), (B), or (C) of paragraph (2) who is seeking special immigrant status under this subsection protection or to immediately remove such alien from Afghanistan, if possible, if the Secretary determines, after consultation, that such alien is in imminent danger.⁵⁸

⁵⁷ Afghan Allies Protection Act, Sec. 602 (b)(2)(D)(i)

⁵⁸ Afghan Allies Protection Act, Sec. 602 (b)(6)

As previously noted, the Biden administration has taken important steps to evacuate at-risk individuals who remain in Afghanistan, including both SIV holders and applicants who have COM approval. Unfortunately, this process has been slow and is heavily dependent upon cooperation between the Taliban authorities, the government of Qatar – as the U.S. protecting power in Afghanistan and facilitator of ongoing U.S.-organized relocation flights – and the Department of State, as well as other countries such as Pakistan. In the absence of a reliable and immediate pathway to safety, applicants face increased threats from the Taliban which all too frequently result in injury and death.



SECTION 4: RECOMMENDATIONS

In order to best support the Afghans who served alongside the U.S. and to maintain U.S. national security priorities, this report identifies three broad objectives, which address separate but interrelated ways that the U.S. government can synchronize and prioritize support for the Afghan SIV program and those it is intended to serve.

- Create institutional capabilities to facilitate the Afghan SIV Program and build the foundation for future special immigration programs.
- Streamline application processes to alleviate the burden on applicants and foster best practices for governance and oversight.
- Provide for the future safety of those who risked their lives and the lives of their families in support of U.S. policy and national security.

To address these objectives, this report makes 10 recommendations for improvements across the branches of government.

I. Develop a Strategy for the Efficient Processing of Current and Future SIVs

As of August 9, 2022, there were 90,392 principal applicants in the SIV pipeline, at least 10,000 of whom were post-Chief of Mission at the time of this writing. In the most recent quarterly report available, the Department of State reports that it issued 272 principal visas from January 1, 2022 to March 31, 2022. The Biden administration has continued to make necessary changes to facilitate this process but the rate of new applicants exacerbates the existing challenge. To help guide the process and seek longer-term support of the program, the Department of State, in coordination with the Departments of Defense and Homeland Security, should develop a strategy to process SIV applications going forward. Such a strategy should include:

1. A review of current staffing levels and needs across all interagency officials engaged in the SIV process;
2. An analysis of the expected COM approvals and denials of those in the pipeline in order to project the expected number of visas needed over the next several years;
3. A plan for collecting disaggregated data on those applying to the program and those issued visas;

4. An assessment of whether adequate guidelines exist for reconsidering or reopening applications in appropriate circumstances and consistent with applicable law;
5. An assessment of the procedures across the SIV application process, including at the National Visa Center and the effectiveness of communication between the NVC and applicants, and areas to improve efficiencies in these processes and procedures; and
6. Consultation with Congress, legal groups and advocacy groups engaged in supporting Afghan SIV applicants and holders.

II. Annual Authorization of Visas

The Afghan Allies Protection Act of 2009 authorized 1,500 visas per year for fiscal years 2009 through 2013. For all subsequent years since 2013, varying amounts of additional visas required authorization in addition to annual extensions of the duration of the authorization of the program and eligibility of individuals to apply. This created uncertainty for applicants and twice halted the processing of visas.⁵⁹ The Department of State's Office of the Inspector General (OIG) notes in its June 2020 report that "uncertainty of visa availability has affected the Department's ability to process visas," and that "the Department is unable to conduct long-term planning because of the uncertainty of visa availability."⁶⁰

59 (2020). Review of the Afghan Special Immigrant Visa Program [Review of Review of the Afghan Special Immigrant Visa Program]. Office of the Inspector General, United States Department of State - Middle East Region Operations (p.10-14).

60 (2020). Review of the Afghan Special Immigrant Visa Program. (p.10)

Many parts of the Afghan Allies Protection Act of 2021 were signed into law as part of the Emergency Supplemental Appropriations Act (P.L.117-31), including an increase of 20,000 visas to better provide for the future of the Afghan SIV program. This number was determined based on the available (authorized but unissued) visas and the number of applicants in the pipeline at that time, with expected denials taken into consideration. However, annual requests for fiscal year budgets from the Executive branch continually include 4,000 visas or the monetary equivalent. By the Executive branch's own analysis, this number of visas is insufficient, and results in a piecemeal approach to a program that requires stability and clear buy-in from Congress.

Congress should authorize an initial one-time increase in the cap of 20,000 visas and extend the duration of the program and eligibility to apply through 2028 in order to eliminate the immediate need for annual authorizations.

III. Clarify Roles, Appoint and Integrate Senior Coordinating Officials and an Afghan Special Immigrant Visa Coordinator⁶¹

The FY 2014 NDAA provides for two levels of coordinating officials to further facilitate the SIV program's operations. Clarification of roles and responsibilities is necessary to the whole-of-government implementation of the program. The Senior Coordinating Officials for the Secretaries of State, Defense and Homeland Security are intended to oversee the SIV program and ensure its efficient operation. While the process for adjudicating

applications is now completely overseen by the Department of State following the July 18, 2022 announcement of the end of the requirement of the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant status, the Departments of Defense and Homeland Security continue to play important roles in determining eligibility and resettlement of SIV applicants and holders.

As outlined in the findings section, the Afghan SIV Coordinator role provided for in the FY 2014 NDAA appears to be specifically envisioned to facilitate the COM process and assist applicants by reviewing COM denials/appeals, ensuring COM-denied applicants are properly informed about the reasons for the denial (as required by statute) and ensuring that their appeals are fairly adjudicated. This position can be viewed as the "COM Monitor" within the Senior Coordinating Officials' operational purview.

To ensure staff are efficiently utilized, these roles must be clearly defined and filled to properly coordinate the whole-of-government support for the SIV program. Officials should be fully integrated into the Administration's planning on SIVs, including the Office of the Coordinator for Afghan Relocation Efforts. If the Department of State determines that the Afghan Special Immigrant Visa Coordinator is no longer needed, the Department should inform Congress so that it may be struck from statute.

⁶¹ Recommendation included in the June 2020 Department of State OIG Report: (2020). Review of the Afghan Special Immigrant Visa Program [Review of Review of the Afghan Special Immigrant Visa Program]. Office of the Inspector General, United States Department of State - Middle East Region Operations (p.16-18).

IV. Continue to Address Staffing Limitations

In its 2020 report, the Department of State's Office of the Inspector General found that the Afghan SIV program is largely understaffed, which contributed to a prolonged waiting time for applicants.⁶² As noted in the findings section of this report, the Biden administration has taken significant steps to address the staffing shortages imposed under the previous administration and exacerbated by the COVID-19 pandemic. The targeted deployment of additional personnel resources may help alleviate the burden on the National Visa Center (NVC), Chief of Mission team and other agencies.

The NVC has been persistently understaffed since the start of the COVID-19 pandemic. As previously noted, the NVC was 25 percent understaffed in October 2021. The Secretary of State must prioritize full staffing to support the operations of the NVC. A staffing strategy should be created to target the key causes of understaffing across the process, including at the NVC. This strategy should encompass the long waits for clearance resulting in applicants pursuing other employment opportunities; limited support for management resulting in increased turnover of key roles, and notable differences in office support for contract workers and Department of State employees.

To assist with implementing such a strategy, Congress should be prepared to authorize additional appropriations for the support of all

needed staff at the NVC, Chief of Mission, and elsewhere as identified.

V. Clarification of Employment Eligibility

As established in the Afghan Allies Protection Act of 2009, Afghans are eligible for the program if they meet a number of criteria, the first of which is employment "by, or on behalf of, the United States Government." The Department of State has ignored Congressional intent in implementing this language over successive administrations to mean that an applicant must have been employed either by a U.S. government entity or a contractor or subcontractor. Such a narrow interpretation of the law challenges the eligibility of many Afghans who worked for Government-funded democracy projects and who have done so in direct opposition to the Taliban in villages and communities across Afghanistan. Moreover, while the policy allows for contractors of for-profit companies to retain eligibility, it does not extend the same support for those who implement U.S. policy through grants or cooperative agreements. Notably, Afghan women are more likely to be employed through these types of relationships rather than through the definition of "by, or on behalf of the United States government" as the Department of State has interpreted it, thus creating a gendered distinction between those who are eligible and not eligible.⁶³

The Department of State should utilize the full authority granted to it in the Afghan Allies

⁶² Recommendation included in the June 2020 Department of State OIG Report: (2020). Review of the Afghan Special Immigrant Visa Program [Review of the Afghan Special Immigrant Visa Program]. Office of the Inspector General, United States Department of State - Middle East Region Operations (p.15-16; 19-20).

⁶³ Initial gender-disaggregated reporting from 2022 indicates that six percent of SIV applicants were women. According to Department of State briefing with members of Congress, 14 percent of SIV applicants are women as of August 3. Casework that this office has handled as well as other engagements indicates that more women have sought other pathways to the U.S. including the Priority 1 and Priority 2 programs designed to supplement the SIV program for those ineligible based on the Department of State's interpretation of statute.

Protection Act of 2009 to extend SIV eligibility to those employed through U.S. grants and cooperative agreements. Should the Biden administration choose to abdicate its authority to correct a long-standing oversight, Congress should provide for explicit legal authority to expand SIV eligibility to those employed through grants or cooperative agreements.

VI. Flexible Consular Processing

When the final flight took off from Hamid Karzai International Airport on July 30, 2021, operations at U.S. Embassy Kabul were suspended and visa services, including SIV interviews, were no longer available to Afghans. This poses a challenge to applicants who remain in Afghanistan and are ready for their SIV interviews.

According to the Department of State's website for Afghan SIVs, applicants can request to have their applications transferred to another U.S. embassy or consulate outside of Afghanistan for further processing. However, there is no single designated diplomatic post where cases are automatically transferred. This means that Afghans must proactively request their applications be transferred to a new country, otherwise their cases will be without a designated post in the absence of a U.S. diplomatic mission in Afghanistan. Afghan visa applicants (for special immigrant visas but also for other cases) should be designated a specific post abroad where all cases are automatically transferred, as has happened for the people of Ukraine. While the Department of State has argued the current policy provides

flexibility for Afghan applicants, it has resulted in additional and complicated process burdens on individuals and families already fleeing violence.

Afghan SIV applications pending with Embassy Kabul should be immediately transferred to a designated post and *simultaneously*, Afghans should be allowed to move their applications to the post that best fits their needs.

COM application denials also contribute to delayed processing for applicants and an increased backlog for the Department of State to adjudicate. COM must fully implement the provision in the Emergency Supplemental Appropriations Act (P.L.117-31) that provides for one appeal per reason for denial. Further, COM denials should contain all details necessary in order to allow applicants the best chance at a successful appeal.

VII. Facilitating Relocations of those in "Imminent Danger"

As noted in Section 3, underlying statute requires that the Secretary of State "shall make a reasonable effort to provide... protection or to immediately remove such alien from Afghanistan" should they be in imminent danger.⁶⁴ In the 13-year history of the Afghan SIV program, this provision has been underutilized and Afghans have suffered reprisal killings and violence without support from the U.S. government. If the State Department has determined that qualifying employment is sufficient to demonstrate a serious and ongoing threat then it should also

⁶⁴ (Original text) The Omnibus Appropriations Act of 2009, H.R. 1105, 111th Congress (2009) <https://www.congress.gov/bill/111th-congress/house-bill/1105/text> (Current Statute) Omnibus Appropriations Act, 2009, no. H.R.1105. <https://www.govinfo.gov/content/pkg/COMPS-13206/pdf/COMPS-13206.pdf>

be sufficient for the extension of protection. Support for individuals in such dangerous situations is not without precedent. On April 21, 2022, the Biden administration announced the *United for Ukraine* program to provide a safe and legal means for Ukrainians at risk of violence due to Russia's unprovoked war in Ukraine to come to the United States. This important program demonstrates the ability of an administration to unilaterally support at-risk individuals. The administration must extend the same protections to Afghans.

VIII. Continue Steps to Mitigate Onerous Documentation

The Biden administration has taken several steps to reduce complexity of the documentation required from SIV applicants. The announcement on July 19, 2022, that applicants would no longer be required to submit the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant status is a welcome step to limit the bureaucratic burden on applicants. The Form I-360 is largely duplicative of the COM process. Combining the two steps coalesces the process with the Department of State and, according to administration calculations, eliminates one month of processing time for applicants.

Additional action by Congress and the Departments of State and Defense are necessary to alleviate the burden of the documentation of employment requirements. Congress should take immediate action to clarify statute on the documentation needed to demonstrate qualifying employment. Simultaneously, the Department of State should limit the documents needed to demonstrate employment and work with the

Department of Defense to utilize *Project Rabbit* for employment verification.

Additional steps by the Department of State should complement other legislative actions to reduce the bureaucratic burden on applicants and create a streamlined program that best utilizes government resources.

IX. Transparency

Congress and the executive branch are partners in the protection of our Afghan allies, the fulfillment of our moral commitments and the advancement of our national security priorities. Congress – as well as legal advocates, civil society groups and the applicants themselves – must have full insight into how the program is functioning in order to expeditiously address emerging problems and bottlenecks. To this end, accurate, timely and public reporting is necessary to the proper oversight of these programs. Since 2014, Congress has required quarterly reports on the status of the program and steps taken to implement improvements. These reports have routinely been delayed by several months. Reports prepared by the administration should be timely and should accurately convey the required data. In addition, Congress should provide clarification of reporting requirements by amending existing statute.

While outside the scope of this report, it should be noted that reporting on the permanent 1059 program is largely nonexistent. This is the permanent program for Afghan and Iraqi translators which provides 50 visas for eligible applicants per year. Because of the lack of reporting on this program, it is unclear how many individuals arrive per year through this program, what

kind of backlog exists, and how this program impacts the Afghan SIV program, including duplicate applicants. The executive branch should provide reports to Congress on the status of the 1059 program. If these reports are not forthcoming, Congress should take action to require such reports in order to better facilitate oversight of the program.

X. Establishment of a Permanent Program

While the Afghan SIV program has required continuous refinement to improve processing and enhance oversight in the years since its creation, it has also yielded an immeasurable benefit to our military, diplomatic and intelligence personnel. The program created a promise of a safe pathway for those that dedicated themselves to working on behalf of U.S. interests. The cooperation between local personnel and U.S. personnel on the ground in Afghanistan exemplified the success of the SIV promise. This cooperation was essential to conducting and sustaining operations in Afghanistan and should serve as an essential reminder of the importance of securing the assistance of local forces when U.S. personnel are operating in a particular country. However, the Afghan SIV program was not designed nor expected to be a long-term fix to a long-term problem. The initial five-year authorization of the program indicates the short-term intent of the original bill. As such, there should be established a permanent SIV program, structured on the following priorities:

1. Geographic and Partner Force Flexibility:

The U.S. benefits from a forward-deployed diplomatic and national security presence to advance our interests and respond to

international events. Artificially constraining an SIV program to a geographic area and applying a narrow definition of an eligible partner or with a strict focus on the nature of their work (e.g. security forces) arbitrarily limits the impact of a permanent program on the diverse missions that may benefit from such a program. The permanent SIV program should reflect the evolving and unpredictable nature of global events and the range of partner forces that the U.S. cooperates with by giving certain officials the authority to designate and revoke eligibility for the program based on geographic and national security needs, the composition of our partner forces and the nature of their work.

2. Streamlined Processing: Past SIV and U.S. Refugee Admissions Program (USRAP) Direct Access Programs have involved slow and circuitous applicant processing driven by systemic bureaucratic hurdles. Applicants have been forced to navigate an extraordinarily complex SIV process with little to no help, required to meet challenging requirements that ignore the unique circumstances they are frequently faced with, and left to wait indeterminate periods of time while their application moves through and across U.S. agencies. The permanent program should take expedient action to streamline the application process with a goal of significantly speeding up adjudication, minimizing the burden on applicants and clarifying the entire process to provide greater visibility on petition status for both applicants and advocates.

3. Clear Delineation of Roles and Responsibilities Across the Interagency:

As part of efforts to streamline the application process and reduce bureaucracy, the permanent SIV program must also ensure that the various steps in the SIV process are assigned to the appropriate lead agency. Further, the relevant federal agencies should ensure that an individual is clearly designated as the agency point of contact, responsible for coordinating SIV matters across the interagency. This would build on requirements included in the FY 2014 NDAA to establish relevant coordinators at both the Department of State and the Department of Defense.

4. Data Collection and Retention

Requirements: A frequent challenge for Afghan SIV program applicants are the required letters of support and proof of employment with U.S. agencies or U.S.-affiliated contracting companies. By the time applicants reach the point in their SIV process where they furnish this information, frequently their former employers have closed down and supervisors are no longer reachable. Further complicating this issue for applicants has historically been their limited access to reliable technology to not only contemporaneously record these documents, but also to do the further research required in situations where past verifiers are not readily accessible. Therefore, the permanent SIV program should ensure that the relevant federal agencies appropriately delineate responsibilities for data collection and retention pertaining to partner forces and, as appropriate, ensure that U.S.-affiliated

contracting companies are obligated to collect and maintain the information required to process future SIV.

5. Enhanced Transparency and Oversight:

Over the past 13 years of the Afghan SIV program, a persistent challenge for applicants, advocates and the American public has been a lack of transparency and oversight of the program. Despite numerous efforts to improve transparency into the SIV program, critical information regarding the administration of the program and applicant trends remains, at times, unclear. That opacity degrades trust in the program and the process for applicants, advocates and oversight bodies. The permanent SIV program must take the lessons learned from the Afghan SIV program and incorporate comprehensive transparency and oversight mechanisms into its foundation. In addition to recurring, comprehensive reports to Congress, the administrators of the program should maintain a public-facing webpage with periodic reports on applicant figures, trends, processing information and other relevant information required by applicants and advocates. Finally, the Department of State OIG should review the program following new designations of eligible groups to ensure that it is meeting the congressionally-directed reporting requirements and to evaluate the efficacy of the procedures and process for carrying out the statute.

6. Resourcing: One of the preeminent challenges with the Afghan SIV program has been that it was not implemented by the executive branch as a short-

term program, not a permanent one. Many of the challenges detailed in this report arose or were exacerbated by the impermanence with which the Afghan SIV program has been treated. We must not replicate those mistakes in the future. As part of the creation of the permanent SIV program, the Administration must conduct an assessment of the required resourcing to effectively and efficiently administer such a program. While further refinements and additional resourcing may be identified after the initial creation of the permanent program, the Federal agencies should arrive at the development of those requirements through a deliberative process that reflects the needs of a long-term program.



SECTION 5: CONCLUSION

“I started working for the U.S. Military as an interpreter in June 2007, when I was 18 years old. I worked as a linguist guarding the entrance of my base on a daily basis. I had to assess risks from potential [IEDs], suicide bombers and other threats. Doing this job, I was seen by many locals who opposed my work for the Americans. Because of this, my family and I faced significant threats from enemy infiltrators when my identity became known.

When I was home I could not leave my family’s house to attend weddings or funerals because the insurgents in the area remembered me and were trying to find me. My family could not leave our home after dusk because it was not safe. In 2012, I started receiving phone calls from unknown numbers with threats—often from people who had lots of details about my past. My family was living in fear.

My commanding officer asked if I wanted to go to America. I laughed because I did not think it was possible. I came to the United States with my wife, and after a couple of years we had our first child. My family is safe and my child has many opportunities in her life because we made it to the United States.”

This is the story of Ali,⁶⁵ who worked with the U.S. Army for seven years. His service exposed him to death threats and retaliation but through the SIV program, he and his family found safety in the United States. Ali's story is not unique but it is important. Ali's story puts a human face behind the numbers of cases stuck in unnecessary bureaucratic processes. The Afghan SIV program is the fulfillment of a commitment to those who stood with the U.S., regardless of the danger.

In October 2021, OIG announced that it would undertake a new review of the SIV program with the objectives of assessing:

- The number of SIV applications received and their processing times;
- The adjustments made to the SIV process between 2018 and 2021;
- The status of recommendations made by the OIG in its previous reports;
- The status of SIV recipients in the United States, Afghanistan and elsewhere; and
- The totality of OIG reporting on the SIV Program.

This investigation is a welcome development and its findings should be closely considered, as should the determinations and recommendations of civil society and legal organizations working with the U.S. government to improve the program and assist Afghan allies. Continued review of the SIV program is an important part of ensuring its effectiveness.

Though the war is over, the United States government must continue its support for our wartime partners. To do this, both Congress and the current and future administrations need to work together and fulfill their responsibilities to the program and uphold our commitment to the Afghans who utilize it. Congress must act immediately to improve the program. At the same time, many obstacles stem from consecutive administrations' narrow interpretations of statute. As such, the Biden administration must continue to take the administrative steps necessary to permanently fix the program's past limitations.

We owe it to Afghans like Ali to get this right.

⁶⁵ IRAP has provided the story of Ali, a client who has approved the release of this information. His name has been changed to protect his anonymity.



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