

The Humanitarian Crisis in Afghanistan: Overview of Gibson Dunn's Recent Efforts

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Since the collapse of the Afghan government and the Taliban's takeover of Kabul more than three weeks ago, tens of thousands of Afghans, along with U.S. citizens and U.S. permanent residents, have desperately tried to flee the country and the Taliban's oppressive rule. This humanitarian crisis continued to worsen as the emergency evacuation operation ran up against the deadline of U.S. withdrawal on August 31, 2021. Some of the most vulnerable Afghans at risk of imminent harm from the Taliban include those who previously supported the U.S. military or government, promoted democracy in Afghanistan, or worked on behalf of women's rights, as well as members of ethnic and religious minorities. As of today, thousands of Afghans continue to search for safe pathways out of the country.

Over the past few weeks, Gibson Dunn sprang into action to help individuals at heightened risk of Taliban reprisals evacuate to safety. **Section I** of this report briefly summarizes some of the events on the ground in Afghanistan, with a particular focus on the humanitarian crisis that has resulted from recent developments. **Section II** highlights the Firm's efforts, which are still ongoing and evolving to meet the rapidly changing situation in Afghanistan and across the globe. Understanding that many families are in urgent need of short-term evacuation from Afghanistan as well as long-term immigration relief, our teams are taking a holistic approach that focuses both on helping at-risk individuals pursue pathways to enter the United States as expeditiously as possible and on identifying ways they can obtain lawful immigration status in the United States on a permanent basis. Additional information detailing several avenues of legal relief—humanitarian parole, Special Immigrant Visas ("SIVs"), refugee resettlement, and asylum—can be found in **Section III** of this report. If you are interested in learning more about these efforts or how to get involved, please reach out to Katie Marquart, Partner & Pro Bono Chair.

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I. Overview of the Current Situation in Afghanistan

The United States completed its military withdrawal ahead of its August 31 deadline, which had been set pursuant to an agreement with the Taliban signed in February 2020. Since the evacuation operation began on August 14, more than 123,000 people, most of them Afghans, have been evacuated, according to the U.S. government. But thousands more have been left behind, including Afghan interpreters and others who worked directly alongside U.S. military and government officials. In acknowledging that it did not get everyone out of the country that it wanted to, the United States has promised to find other ways for individuals to leave Afghanistan that do not require a U.S. military presence.

Even before the withdrawal of troops, the Taliban made it more difficult for civilians to flee the country and find safe harbor by erecting checkpoints and controlling access to Hamid Karzai International Airport and Afghanistan's land borders. Those who were able to reach the airport faced additional dangers of being crushed by crowds, abused by the Taliban, and targeted by terrorist attacks like the August 26 ISIS-K suicide attack that

killed nearly 200 people.

With U.S. and allied forces now gone, the road to safety has gotten even more challenging. Despite this, thousands of people are continuing to search for pathways to safety. Gibson Dunn will not stop working on behalf of these families. Rather, we will pursue all legal avenues to ensure that Afghans eligible to travel to another country will be not be turned away.

II. Gibson Dunn's Efforts on Behalf of Affected Families

More than 100 Gibson Dunn attorneys and staff are working on the cases of dozens of families—well over 200 people—seeking refuge in the United States to escape the Taliban regime. These families, like many others, face a heightened risk of persecution, physical violence, and even death because of their collaboration with the U.S. military or government, their work to promote the Afghan government and civil society, or their public support for causes seen as antithetical to the Taliban's rule.

These families' stories are incredibly compelling. Several were interpreters for the U.S. military, including for Gibson Dunn associates who previously served in the U.S. military, while others were members of the Afghan military and Afghan National Police working alongside U.S. forces in hostile regions. Others are women and children whose husbands and fathers already immigrated to the United States on SIVs to begin building a home for their families. Some are pregnant or have infants and small children. Some are being targeted because they were journalists, open critics of the Taliban, or female professionals. Many of our clients already have faced threats and physical abuse at the hands of the Taliban, while others are being actively hunted by the Taliban. Although many of these families initially wished to remain in Afghanistan to help rebuild their home country, recent developments made them face the difficult reality that they had to leave.

The danger these families face cannot be overstated. A handful of families were able to safely escape before the American withdrawal, but many remain in hiding. Some families have abandoned their houses and are now homeless with limited, dwindling resources—and no way of supporting themselves given their need to stay hidden and evade the Taliban's attention. Many are afraid the internet will be cut at any time, leaving them without any lifeline outside the country. Most can only communicate at certain times of the day, when there is less risk the Taliban will find them and search their phones for U.S. phone numbers or English messages. All are afraid the Taliban will find them and their families before they can escape.

In light of the severe risks and the urgency of these families' need to travel to the United States, we have advocated for our clients using every avenue at our disposal. We have called on members of Congress, the State Department, the Department of Defense, and the Department of Homeland Security, as well as former government officials, to seek their help and insight. We gathered intelligence from teams on the ground to notify our clients of critical information in real time. While the United States remained in Afghanistan, we were also able to connect our clients inside the airport with U.S.-sponsored non-governmental organizations ("NGOs") coordinating flights to ensure they were placed on manifests when possible.

Although the current situation is dire, we continue to fight for those who remain in Afghanistan until they can find their way to safety. This includes helping our corporate clients whose employees and representatives in Afghanistan similarly have found themselves in need of immediate assistance to escape persecution and leave the country. We have provided round-the-clock assistance to help our corporate clients navigate legal challenges in carrying out emergency on-the-ground actions related to their evacuation efforts and measures to ensure employee safety.

Our pro bono efforts thus far have largely focused on filing humanitarian parole applications to help families at risk of Taliban reprisals enter the United States on a

temporary basis. Although our current focus is on helping these families reach safety outside Afghanistan, we also hope to assist with their long-term immigration cases upon arrival in the United States. Many of these families are eligible for SIVs or other priority visas and currently are awaiting resolution of their applications. The rest intend to apply for asylum upon their arrival in the United States. In the short term, however, we believe humanitarian parole remains the best chance for many of these families to gain authorization to travel to the United States.

III. Avenues of Legal Relief in the United States for Afghans Fleeing the Taliban

As we look ahead to what is to come, Gibson Dunn is eager to help provide access to the various forms of legal relief available to help these brave families. Although many logistical and safety challenges will persist, we are committed to doing what we can to help these courageous families navigate the legal pathways to obtaining temporary or permanent safe harbor in the United States or in other countries around the world. To date, most of our efforts have focused on resettlement into the United States. For that reason, we focus here on those avenues, which include: humanitarian parole for individuals facing urgent humanitarian needs; SIVs for those who worked for U.S. forces in Afghanistan; refugee admission under the P-1, P-2, and P-3 programs for certain Afghans who remain outside the United States; and asylum for those who arrive in the United States and are unable to return to Afghanistan.

A. Humanitarian Parole

Humanitarian parole is an option for temporary resettlement in the United States based on urgent humanitarian or significant public benefit needs. Under INA § 212(d)(5), the Secretary of Homeland Security “may, in his or her discretion, parole into the United States temporarily . . . on a case by case basis, for urgent humanitarian reasons or significant public benefit, any alien applying for admission to the United States.” Although it is typically an extraordinary measure, humanitarian parole may be the most direct pathway for many Afghans to enter the United States, given the current situation in Afghanistan.

Because individuals can seek humanitarian parole for “urgent humanitarian reasons or significant public benefit,” it is available to Afghan nationals who would not otherwise qualify for entry via SIV or the U.S. Refugee Admissions Program (“USRAP”), discussed below. For example, humanitarian parole is an important option for those who worked for the Afghan government, collaborated with U.S. forces without meeting the stringent SIV employment requirements, or otherwise are in danger due to their beliefs or minority status. It also might be a more expeditious option for those who may qualify for SIV or USRAP resettlement, but who face such urgent danger that they cannot wait to be processed through those more traditional pathways. To reduce the processing time, applicants can request “expedited processing” in urgent, life-threatening situations. Given the exponential increase in the number of humanitarian parole applications filed in recent weeks, however, it is difficult to predict how long it will take to adjudicate these applications.

Afghans facing persecution by the Taliban can apply for humanitarian parole for themselves, without depending on a referral or support from an employer or other entity. Alternately, individuals in the United States, including SIV holders, can submit a petition for humanitarian parole on behalf of Afghans currently outside the United States. In either case, a financial sponsor with lawful immigration status in the United States must submit an affidavit agreeing to sponsor the parolee(s) upon arrival in the United States. If approved, parolees are permitted to enter the United States for a specified period of time (typically one year). Once in the United States, parolees can apply for asylum or obtain permanent residence through other lawful means.

B. Special Immigrant Visa

Recognizing the danger our Afghan allies faced due to their work with U.S. forces, Congress created the SIV programs in 2006 and 2009 to allow certain Afghans to resettle in the United States as legal permanent residents with access to resettlement assistance and other benefits. Afghan nationals who were employed by or on behalf of the U.S. government in Afghanistan, or those who served as interpreters or translators for U.S. military personnel or under Chief of Mission Authority at the U.S. Embassy in Baghdad or Kabul, may be eligible for SIVs. However, the SIV application process often takes many years—time that many Afghan allies no longer have.

There are two SIV programs for which Afghan allies, including their spouses and children under age 21, might be eligible. *First*, a limited number of SIVs is available under Section 1059. To qualify, an Afghan must have worked directly with U.S. forces or the Chief of Mission authority as a translator/interpreter for at least one year and must obtain a favorable recommendation from a General or Flag Officer in their chain of command or at the embassy where they worked. *Second*, and more commonly, Afghans can apply for SIVs under Section 602(b) if they (1) were employed for at least one year by the U.S. government, a U.S. government contractor, or the International Security Assistance Force working with U.S. forces; (2) provided faithful and valuable service; and (3) face an ongoing serious threat because of their qualifying work.

C. The U.S. Refugee Admissions Program

Afghan nationals also may enter the United States through USRAP, which provides an opportunity for permanent resettlement in the United States to various classes of refugees. As a general rule, individuals seeking resettlement as refugees must be outside the United States and go through processing in a third country, rather than within their country of nationality.

- **P-1 Refugees:** The first of three categories under USRAP, Priority 1, is for individuals who have been referred by an Embassy, a designated NGO, or the United Nations High Commissioner for Refugees (“UNHCR”), due to the applicant’s circumstances and need for resettlement. Typically, P-1 refugees are referred to the United States by UNHCR.
- **P-2 Refugees:** Priority 2 designations are given to individuals the Department of State determines to be part of a group of “special concern” due to their circumstances and need for resettlement. In August 2021, the Department of State announced that certain Afghan nationals and their family members who are at risk due to their affiliation with the United States may be eligible for refugee resettlement under the P-2 program. Eligible individuals could include Afghans who (1) did not meet the minimum time-in-service for an SIV but who otherwise would be eligible for an SIV; (2) worked for a U.S. government-funded program or project supported through a U.S. government grant; or (3) were employed by U.S.-based media organizations or NGOs in Afghanistan. Spouses and children of any age, whether married or unmarried, also can resettle in the United States with someone who has been given a P-2 designation. Although many Afghans might be eligible for resettlement under the P-2 program, there are two significant challenges. First, Afghans seeking refugee resettlement under the P-2 program must be referred by their employer; they cannot apply for themselves. Second, the State Department has not yet explained how or where processing, which includes interviews and security checks, will occur.
- **P-3 Refugees:** The third refugee designation, Priority 3, provides an opportunity for permanent resettlement for Afghan refugees outside Afghanistan who have immediate family members (i.e., spouses, parents, and children) who already have been admitted to the United States. The family member in the United States must file within five years of the date when they were admitted as a refugee or special immigrant, or granted asylum.

D. Asylum

In addition to these more extraordinary pathways, Afghans also may pursue more traditional avenues of immigration relief in the United States, such as family-based visas and asylum. Asylum, in particular, likely will be the next step for many Afghans who enter the United States via humanitarian parole. Like other immigrants, Afghans can apply for asylum if they fear persecution based on race, religion, nationality, political opinion, or membership in a particular social group. They can do so upon entry in the United States or within one year of entering the country.

IV. Conclusion

We understand that there is a long road ahead, and that the process of reaching physical safety is just beginning for many individuals and families facing the threat of violence from the Taliban. We will continue to fight for short- and long-term immigration solutions on behalf of these brave individuals and families, using every avenue at our disposal. Gibson Dunn also is engaging in broader efforts to assist these individuals and families as they resettle in countries across the globe. We hope these efforts, together with the work of so many other organizations that have pulled together to help evacuate and resettle vulnerable Afghans, will remind our Afghan allies that they are not forgotten, and that they have many advocates fighting for them.

Gibson Dunn lawyers are available to assist in addressing any questions you may have about these developments. Please contact the Gibson Dunn lawyer with whom you usually work or the following:

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