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Afghanistan's Humanitarian Crisis: Providing Unbiased, Effective Legal Representation to Afghan Refugees

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Background on Humanitarian Crisis

The Humanitarian Crisis in Afghanistan

Developments After the U.S. Withdrawal

Since the collapse of the Afghan government and the Taliban's takeover of Kabul in August 2021, tens of thousands of Afghans, including U.S. citizens and permanent residents, have desperately tried to flee the country and the Taliban's oppressive rule.

- Since the evacuation operation began on August 14, over 123,000 people were evacuated, according to the U.S. government.
- However, thousands of Afghans were still left behind, including Afghan interpreters and other who worked directly alongside the U.S. military and government officials.
- During the evacuation, the Taliban made it increasingly difficult and dangerous for civilians to flee the country and find safe harbor by:
 - Erecting checkpoints on major roads
 - Controlling access to Hamid Karzai International Airport
 - Controlling Afghanistan's land borders
- Additional threats faced by Afghans included being targeted by terrorist attacks from ISIS-K, such as the August 26 attack that killed nearly 200 people.



The Humanitarian Crisis in Afghanistan

Developments Since August 2021 – Current Situation in Afghanistan

The Taliban's policies are upending the lives of Afghans; restricting women's freedom of movement, imposing compulsory dress codes, denying or limiting access to education and employment, and restricting rights to peaceful assembly. Economic sanctions have also led to lack of access to food and basic items like medical care.

The New York Times

Afghan Refugees Find a Harsh and Unfriendly Border in Turkey

The New York Times

Afghan Women Who Once Presided Over Abuse Cases Now Fear for Their Lives



ALJAZEERA

'Betrayed': The Afghan interpreters abandoned by the US

- In desperation, many Afghans trekked over 1,400 miles through Iran to reach Turkey or Europe in hopes of seeking asylum.
- Those who made it to Turkey faced rejection and deportation back to Afghanistan, or were met with violence as xenophobia continues to rise in the region.
- Thousands of Afghans who sought to escape Taliban rule remain left behind, many whom fear their previous involvement with the U.S. and nonprofits leaves them vulnerable to the threat of the Taliban.
- As employment opportunities for women and former affiliates of the U.S. have declined, many families face increasingly dire economic situations, relying on a single income or no income at all.

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Elimination of Bias in Trauma-Informed Lawyering

Trauma-Informed Lawyering

Brief Introduction to Trauma

- Many of our pro bono clients, particularly refugees, have suffered severe or repeated traumas.
- Clients who experience traumas may react to attorneys in ways that are difficult to understand, and have particular difficulty trusting and opening up.

Trauma-Informed Lawyering

- Aims to place the realities of your client's trauma at the forefront of how you engage with them
- Requires adjustment of your typical approach, informed by the client's specific trauma experiences
- Focuses on minimizing re-traumatization as much as possible

Trauma-Informed Lawyering

Trauma's Effect on Client Interactions

Flooding

- Remembering one traumatic event brings up all related traumatic events
- Client may not be able to tell a linear story or determine where in the timeline certain events happened
- More prevalent in cases of repeated or on-going trauma

Minimization

- Clients minimize the importance or intensity of traumatic experiences
- Attempt to minimize the emotional impact to themselves
- Survival mechanism to get through the interview

Other Common Reactions

- **Physical** – nightmares, sweating, anxiety, headaches, memory loss, defensiveness, difficulty trusting, aggression, dissociation.

Trauma-Informed Lawyering

Building Trust With Your Client

Collaboration

Minimize Power Differential

Transparency, Honesty, and Open
Communication

Safety – Physical, Emotional, and
Psychological

Sensitivity to Client's Story and
Triggers

Respect and Dignity

Create a Comfortable Environment

Trauma-Informed Lawyering

Discussing Sensitive Topics or Traumatic Events

Use Open Ended Questions

- Allow clients to tell their stories in the way they experienced.
- Explain why the information is important to the case.
- Avoid the urge to interrupt clients to ask clarifying questions.

Use A Strength-Based Perspective

- Remind clients that they survived and found help, and what they are doing takes strength and courage.
- Show compassion, but avoid treating clients as if they are fragile.

Monitor Your Own Reactions

- Do not express feelings or expressions of disgust or horror.
- Do not convey a sense that you can't handle the hard parts of their story.

Trauma-Informed Lawyering

Experiencing Vicarious Trauma

Take Time to Decompress

- Identify what helps your mind and body relax, and incorporate that into your routine.
- Meditation, running, Netflix

Self-Care is Critical

- Make sure to get enough sleep, food, and exercise
- Pay attention to sleep habits, and reach out if lack of sleep is related to work trauma.

Establish Clear Boundaries

- Do not be afraid to set appropriate boundaries with your clients.
- We are not trained social workers or therapists, and should not take on that responsibility.
- Instead, help your clients contact the public interest agency to get them the help they need.

Culturally Sensitive Lawyering

*“Culturally responsive lawyering acknowledges that **culture and law** exist in a mutually constitutive relationship and employs both transformative legal analysis and intercultural sensibility to meet the ethical requirements of competent lawyering.”*



1. Explore how similarities / differences with the client might influence your relationship and fact gathering
2. Consider similarities / differences between the lawyer and the law vs. the client and the law (including cultural dimensions)
3. Identify alternative explanations for observed phenomena before acting upon conclusions
4. Reflect on communication before, during and in between client encounters
5. Reflect on problematic moments to identify factors that likely led to a cross-cultural mishap

Culturally Sensitive Lawyering – Communication

Interpreters

If your client is more comfortable with a language other than English, you should always use an interpreter.

Practical Tips on Working With Interpreters

- Avoid using a family member to interpret if possible
- Maintain eye-contact with client, not interpreter
- Explain the role of the attorney vs. the role of the interpreter
- Encourage accurate interpretations, and try not to reframe or engage in side conversation with client
- Allow interpreters to look up terms if they cannot provide an accurate explanation
- Consider providing interpreters information in advance to familiarize themselves with technical or legal terms
- These tips also apply to deaf clients when using an ASL interpreter

Application of Trauma-Informed Lawyering: *Avenues of Legal Relief for Afghan Refugees in the United States*

Humanitarian
Parole

Special
Immigrant
Visas

USRAP

Asylum

Humanitarian Parole – Overview



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.**”

Option for temporary resettlement in the United States based on urgent humanitarian or significant public benefit needs

May be the most direct pathway for many Afghans to enter the United States, given the current situation in Afghanistan

Can request “expedited processing” in urgent, life-threatening situations

Humanitarian Parole – Requirements and Eligibility

- **“Urgent humanitarian reasons or significant public benefit”**
 - Important option for those who worked with Afghan government, collaborated with U.S. forces, or otherwise in danger due to beliefs or minority status
- **Application**
 - Do not need referral or support from an employer or other entity
 - Individuals in the US (including SIV holders) can submit petition on behalf of Afghans currently outside the US
- **Financial Sponsor**
 - Lawful immigration status in the US
 - Must submit affidavit agreeing to sponsor parolee upon arrival in U.S.

Special Immigrant Visa – Overview

Recognizing the danger our Afghan allies faced due to their work with U.S. forces, Congress created SIV Programs in 2006 and 2009.

The programs allows certain Afghans to resettle in the United States as legal permanent residents.

However, the SIV application process often takes many years – time that many Afghan allies no longer have.



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.

Special Immigrant Visa – Requirements and Eligibility

- **Section 1059 Program – 2006 (narrow eligibility)**

- Applicant must have worked directly with U.S. forces as a translator/interpreter for at least one year.
- Applicant must obtain a favorable recommendation from a General or Flag Officer in their chain of command or the Embassy where they worked.

- **Section 602(b) – 2009 (broader eligibility)**

- Applicant must have been employed for at least one year by the U.S. government, contractor, or International Security Assistance Force;
- Applicant must have provided faithful and valuable service;
- Applicant must be facing an ongoing serious threat because of their qualifying work.

U.S. Refugee Admissions Program (USRAP) – Overview



Refugee Priority Classifications

P-1 Refugees – Individuals Referred by Embassies or NGO's.

P-2 Refugees – Individuals part of a group designated by the State Department as a “special concern.”

P-3 Refugees – Provides Afghans who have immediate family members in the United States the opportunity for resettlement.

Provides an opportunity for permanent resettlement in the United States to various classes of refugees.

Individuals seeking resettlement as refugees generally must be outside the United States.

Refugees are generally processed in a third country, rather than the country of their nationality, or the United States.

Priority 2 Refugee Designation – Requirements and Eligibility

- **August 2021 – State Department determined that certain Afghan Nationals are part of a group of “special concern” if:**
 - They did not meet the minimum service time requirement for an SIV, but were otherwise eligible for an SIV; or
 - They worked for a U.S. government- funded program or project; or
 - They were employed by a U.S.-based media organization or NGO in Afghanistan.
- **Additional Requirements and Challenges**
 - The Afghan national must be referred by their employer; they cannot apply for themselves.
 - The State Department has not yet explained how processing will work.

Asylum – Overview

Afghans can apply for asylum if they fear persecution based on race, religion, nationality, political opinion, or membership in a particular social group.



Asylum is likely the next step for many Afghans who enter the U.S. via humanitarian parole. They can apply for asylum upon entry into the U.S. or within one year of entering the country.

Overview of Gibson Dunn's Efforts & Lessons Learned

Pro Bono Representation of Refugees

Advocacy

Evacuation Efforts

New York Times

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U.S. Resettlement Process and Benefits for Afghan Arrivals



Parole Requirements

Every applicant approved as a humanitarian parolee must undergo a series of processing, screening, and vetting, both before and after arrival in the United States.

- **U.S. Customs and Border Protection:**

Medical screenings and vaccination requirements.

- **Intelligence, law enforcement and counterterrorism professionals:**

Biometric and biographic screenings.

- **COVID-19 protocols:**

Testing upon arrival to the airport and option to receive COVID-19 and other vaccinations at various U.S. government-run sites or a designated Department of Defense facility (free of charge).

Parole Accommodations

Once tested, Afghan parolees are welcomed onto U.S. military bases, where they have the option to receive services through the U.S. government's Afghan Placement and Assistance program.



Afghan parolees receive temporary housing facilities on military bases until they are resettled into the local community. As of December 2021, the Department of Defense was providing housing for 34,000 Afghan Refugees at 7 installations:

1. Marine Corps Base Quantico, Virginia
2. Fort Pickett, Virginia
3. Holloman Air Force Base, New Mexico
4. Fort McCoy, Wisconsin
5. Fort Bliss, Texas
6. Joint Base McGuire-Dix-Lakehurst, New Jersey
7. and Camp Atterbury, Indiana

Health Insurance and Other Health Benefits

- While on base, parolees receive health coverage provided by the Office of Refugee Resettlement.
- After leaving the base, almost all refugees will be eligible for health insurance through:
 - i. Medicaid
 - ii. Children's Health Insurance Program
 - iii. Health Insurance Marketplace
 - iv. Refugee Medical Assistance Program
- Available under Section 2502 of the Extending Government Funding and Delivery Emergency Assistance Act, which extends health insurance to Afghans paroled into the U.S. on or after July 31, 2021 and expands on eligibility for resettlement assistance, entitlement programs, and other benefits available (until the later of March 31, 2023 or term of parole).

Resettlement Agencies

- Parolees are connected to a local resettlement agency that will help the parolee fully integrate into a local community.
- Geographical preference is a factor, but housing shortages in certain locations may require resettlement elsewhere.
- Connecting to an agency and resettling is quite lengthy – recent report estimated more than a month.
- Government hopes to complete efforts by February 15, 2022.



Resettlement Agency and Other Benefits

Although available benefits vary by location, typical benefits offered through resettlement agencies:

Housing and Clothing

Cultural Orientation

Counseling

English Language
Training

Job Skills Training

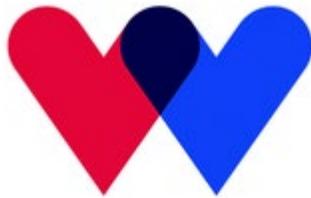
Job Placement

Resettlement agencies can also assist parolees in signing up for Supplemental Security Income and the Refugee Cash Assistance Program through the Office of Refugee Resettlement.

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Promoting Access to Justice for Afghan Refugees

Welcome.US



Gibson Dunn also has played an active role in ***Welcome.US***, a new national effort (non-partisan and not-for-profit) to empower individuals, nonprofits, businesses, and others to welcome and support Afghan refugees arriving in the United States.

More than 250 front-line and local organizations, leaders and business have already joined the Welcome.US community

Honorary Co-Chairs:

- President Barack Obama
- Michelle Obama
- President George W. Bush
- Laura Bush
- President Bill Clinton
- Secretary Hilary Clinton

Welcome Legal Alliance

a Welcome.US initiative

Gibson Dunn and co-leaders of the Alliance are:

- Recruiting lawyers, law firms and legal teams to pledge pro bono resources to on-the-ground organizations facilitating legal services.
- Increasing the pro bono and in-kind immigration work lawyers, law firms and legal teams are already undertaking
- Sourcing Dari and Pashto speaking lawyers, paralegals and legal assistants to help provide translation services
- Coordinating a working group to triage legal needs as they arise, to ensure availability of pro bono legal services particularly in underserved locations

If you are interested in joining this effort, please reach out to
WelcomeLegalAlliance@gibsondunn.com



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human rights first



Welcome.US

Welcome Legal Alliance

Organizations and law firms committed to joining the Alliance, include:

- The International Refugee Assistance Project
- Kids in Need of Defense
- Parts Equality Center
- Tahirih Justice Center
- We the Action

Speakers – Thank You!



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For information on Gibson Dunn's efforts to combat the humanitarian crisis in Afghanistan, please visit:

<https://www.gibsondunn.com/the-humanitarian-crisis-in-afghanistan-overview-of-gibson-dunns-recent-efforts/>

<https://www.gibsondunn.com/the-humanitarian-crisis-in-afghanistan-update-overview-of-gibson-dunns-recent-efforts/>