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**New York City Bar Association Statement – August 18, 2021**

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## **At-Risk Afghan Nationals Must Be Given Safe Passage City Bar Offers Recommendations for Helping Individuals as Well as Vulnerable Groups Including Women and Girls**

The New York City Bar Association urges the Biden Administration, NATO Allies, and the United Nations to take all necessary measures to secure the safe passage of Afghan nationals who are at grave risk of harm from Afghanistan, to expedite the visa screening and approval process, and to continue to advocate for the rights of women and girls in Afghanistan.

### **I. EXECUTIVE SUMMARY**

The New York City Bar Association calls upon the United Nations, the United States and NATO allies to immediately secure safe passage, exit and transit for Afghan nationals who face an imminent and grave risk of harm because of their employment with or support to the United Nations Assistance Mission to Afghanistan (UNAMA);<sup>1</sup> the U.S. Embassy and U.S. military; NATO allies; Foreign diplomatic missions; recognized International Non-Governmental Organizations (INGOs); and international media organizations. We further call upon the United Nations<sup>2</sup> and the international community to expedite refugee and asylum processing for other vulnerable Afghans and to suspend the forced repatriation of Afghans, including those who have had their asylum applications rejected, until the political situation stabilizes. Finally, we urge the United States, its allies, and the United Nations to continue to advocate for the human rights of all persons in Afghanistan, including women and girls and other vulnerable groups.

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<sup>1</sup> See <https://unama.unmissions.org> (all websites last visited Aug. 16, 2021).

<sup>2</sup> States have the primary responsibility to conduct Refugee Status Determination (RSD), however, UNHCR may conduct RSD under its mandate when a state is not a party to the 1951 Refugee Convention and/or does not have a fair and efficient national asylum procedure in place. See <https://www.unhcr.org/en-us/refugee-status-determination.html>.

## II. BACKGROUND

On August 15th, 2021, the Taliban entered the city of Kabul. The sitting President of Afghanistan fled the country and the officially recognized Government of Afghanistan immediately collapsed, leaving the Taliban in control of the entire country including Kabul except for diplomatic missions and Hamid Karzai International Airport. The entire world watched in shock as Afghans mobbed the airport, some so desperate to flee that they clung to the wheels of a military transport plane as it ascended, falling to their deaths.

Following President Biden's recent decision to order more than 6,000 U.S. troops deployed to Hamid Karzai International Airport in Kabul, the situation at the airport, including air traffic control, operations, and security, appears to have stabilized. Yet, the security situation throughout the rest of Kabul and Afghanistan is tenuous with uncertain implications for Afghan civilians—especially women and girls. The Taliban are reported to have established internal security checkpoints throughout Kabul and Afghanistan's provinces.

Thousands of Afghans who bravely served the United States and the NATO coalition are caught in a highly bureaucratic visa application process for “Special Immigrant Visas” (SIV).<sup>3</sup> Many others have not yet begun this complicated process.<sup>4</sup> Meanwhile, there are tens of thousands of other vulnerable Afghans who may qualify for U.N. refugee status, among them female lawyers and judges, other former officials,<sup>5</sup> journalists,<sup>6</sup> NGO staff and members of religious and sexual minorities.

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<sup>3</sup> The Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021, as enacted on December 27, 2020, authorized 4,000 additional SIVs for Afghan principal applicants, for a total of 26,500 visas allocated since December 19, 2014. The Department of State's authority to issue Special Immigrant Visas (SIVs) to Afghan nationals under section 602(b) of the Afghan Allies Protection Act of 2009, as amended, will continue until all visa numbers allocated under the Act are issued. On July 29, 2021, the U.S. Senate voted 98-0 and the House voted 416-11 to advance an emergency supplemental appropriations act (HR 3237), which contains several positive reforms to the Afghan SIV program. Among its provisions, HR 3237 approved an additional 8,000 SIVs, thereby increasing the total number to 34,500 (with INGOs estimating that roughly 18,000 of those remained available). HR 3237 also allows for postponement of medical exams so that SIVs can be issued ahead of evacuation; expands protections for surviving spouses; improves the SIV appeals process; and other procedural improvements to streamline the application and appeals process. For a general discussion of HR 3237 see, “Summary of Afghan Special Immigrant Visa provisions in HR 3237” (July 30, 2021), International Refugee Assistance Project. Available at <https://refugeerights.org/wp-content/uploads/2021/07/Summary-of-Afghan-Special-Immigrant-Visa-provisions-in-HR-3237.pdf>.

<sup>4</sup> The SIV application and approval process requires an applicant to submit numerous documents and forms. The steps of the SIV application are published on the U.S. Department of State's website, available at <https://travel.state.gov/content/travel/en/us-visas/immigrate/special-immig-visa-afghans-employed-us-gov.html#step1>.

<sup>5</sup> This includes, for example, dozens of former staff members of the Afghan Independent Human Rights Commission (AIHRC) (many of whom are women) who conducted AIHRC-led investigations of abuse of women and girls and other human rights violations in Afghanistan's provinces.

<sup>6</sup> See generally, e.g., Help Afghan Journalists, Interpreters, and Support Staff Who Worked with U.S. News Organizations: Letter to Congress, New York City Bar Association, July 30, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/help-afghan-journalists-interpreters-and-support-staff>.

Afghans who worked for the United States and its allies, as well as the United Nations and NGOs, face significant risks of swift and merciless retribution at the hands of the Taliban. These individuals need access to viable means of processing, exit and transport. While the Biden Administration has announced plans to evacuate SIV applicants from Afghanistan to U.S. military bases in the United States,<sup>7</sup> it has yet to make clear exactly how these same individuals and their families can travel to Hamid Karzai International Airport without grave risks to their safety.

It is no longer reasonable to expect vulnerable Afghans to appear for in-person interviews at the U.S. Consulate (that has been relocated to Kabul International Airport - a military zone) or other diplomatic missions. Persons who are required to appear in person for consular interviews do so at great risk (i.e., when traveling to and upon exit from military bases and consular facilities).

Judges, among others in the Afghan legal profession, are particularly vulnerable to retaliation at the hands of the Taliban. In recent years, the Taliban waged a campaign of deadly violence specifically targeting judges and other representatives of the Afghan justice system.<sup>8</sup> In early August 2021, two men were murdered by the Taliban when it was discovered that they were judges.<sup>9</sup> In a brazen attack in January of this year, two women judges working at the Afghan Supreme Court were assassinated, and a third was injured, as they made their way to work on the busy streets of Kabul, in broad daylight.<sup>10</sup>

Women judges and lawyers are at even greater risk simply because they are women. As summarized by the U.N. Special Rapporteur on the Independence of Judges and Lawyers, “women judges represent what the Taliban does not want women to do or to be.”<sup>11</sup> In light of the clear risks to these women, it is paramount that the United States and the international community ensure their safety.

### III. RECOMMENDATIONS

The New York City Bar Association respectfully urges the following actions:

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<sup>7</sup> Remarks by President Biden on Afghanistan, Aug. 16, 2021, available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/16/remarks-by-president-biden-on-afghanistan/>.

<sup>8</sup> See generally, e.g., Statement of New York City Bar Association Condemning Continuing Assassinations of Prosecutors, Judges, and Court Staff in Afghanistan, New York City Bar Association, April 7, 2020 (condemning seven deadly attacks on Afghan judges, prosecutors, and court staff in the four months between mid-October 2019 and mid-February 2020), <https://www.nycbar.org/media-listing/media/detail/city-bar-condemns-assassinations-of-prosecutors-judges-and-court-staff-in-afghanistan>.

<sup>9</sup> See Interview with Afghan Judge Tayeba Parsa (Kabul Court of Appeal) for Romanian Judges’ Forum Review, Revista Forumul Judecatorilor, Aug. 16, 2021 (explaining that “[f]or the Taliban, simply being a government judge is enough reason to be killed without trial”), <http://www.forumuljudecatorilor.ro/index.php/archives/4498>.

<sup>10</sup> See, e.g., Gunmen kill two female Supreme Court judges in Afghanistan: police, Reuters, Jan. 17, 2021, <https://www.reuters.com/article/us-afghanistan-attack-judges/gunmen-kill-two-female-supreme-court-judges-in-afghanistan-police-idUSKBN29M076>; Afghanistan conflict: Female judges shot dead in Kabul, BBC News, Jan. 17, 2021, <https://www.bbc.com/news/world-asia-55693972>.

<sup>11</sup> See, e.g., Diego Garcia-Sayan, @UNIndepJudges, Aug. 15, 2021, <https://twitter.com/UNIndepJudges/status/1426950094771802115>.

- The United States, its allies, and the United Nations should undertake all possible measures necessary, which may include the temporary redeployment of military personnel, to secure the safety of these individuals and their families, including minimizing their visibility and exposure to harm, while continuing to satisfy the statutory requirements of vetting, documentation, and security. This includes the medical and background checks required for visas and transport.
- The United States, its allies, and the United Nations should broker safe zones/corridors and establish secure alternate processing sites throughout Kabul for these individuals and their families. U.S. capacity to transport Afghan allies out of harm's way could be increased by authorizing charter aircraft, under U.S. military protection, to assist. Logistics for such a program could be quickly organized in partnership with the International Organization for Migration (IOM), which manages a protection program in Afghanistan. We further encourage all countries to open their land borders and airports to Afghan refugees.
- The U.N., the United States and NATO allies should permit consular and refugee interviews to be conducted virtually whenever possible, as well as issue e-visas to applicants and their immediate family members in advance of their evacuation from Afghanistan.<sup>12</sup> If in-person interviews are still required prior to evacuation, we encourage the United States and its allies to consider permitting a head of household to appear on behalf of a family, instead of requiring all family members (i.e., a wife and children) to accompany the head of household to the consular interview--especially given the heightened risk to women and girls in Afghanistan.
- The United States and NATO allies should postpone or waive required medical examinations for visa applicants until after applicants have been safely evacuated from Afghanistan.
- The Department of State, U.S. Consulate Kabul should undertake measures to pro-actively enhance email and telephone communication with all current and prospective SIV applicants to inform them of the visa application process and provide updates on the status of their own individual cases.
- President Biden should authorize the Secretary of State to deputize other officers of government and members of the military to act as temporary U.S. Consular officers to assist in the effort to process SIV visas and communicate with SIV applicants and prospective applicants.

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<sup>12</sup> Many Afghan professionals have access to webcams, smart phones and scanners or have a neighbor or friend who does. As of 17 August 2021, the internet and telecommunications in Kabul still remained in service.

- The United States Congress should expand the SIV program if necessary to authorize additional SIVs for vulnerable Afghans.<sup>13</sup> We urge President Biden to issue such Executive Orders as required to bring these laws fully into immediate effect; to streamline the application and approval process; and to protect vulnerable Afghans from harm.
- The Secretary for Homeland Security should immediately designate any at-risk Afghan nationals who cannot benefit from the SIV program as eligible for Temporary Protected Status<sup>14</sup>, with special consideration given to women leaders, judges, lawyers, journalists, members of civil society and others, including leading academics who are at heightened risk.
- President Biden should protect all at-risk Afghan nationals, who do not otherwise fall into an eligible category to grant them a Deferred Enforced Departure.<sup>15</sup>
- The United States, its allies, and the United Nations should continue to advocate for the human rights of all persons in Afghanistan, including women and girls and other vulnerable groups. Furthermore, we urge the United Nations and the United Nations Security Council to take all necessary measures to ensure that an Afghan-led national reconciliation process can lead to the establishment of a new government that is “united, inclusive, and representative – including with the full, equal and meaningful participation of women,” in accordance with the recently issued statement by the United Nations Security Council.<sup>16</sup>
- The Taliban must respect the principles enshrined in the U.N. Charter and Universal Declaration of Human Rights and to respect the rights of women and girls and other vulnerable groups.

#### **About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world. [www.nycbar.org](http://www.nycbar.org)*

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<sup>13</sup> *Supra* note 3, citing International Refugee Assistance Project.

<sup>14</sup> U.S. Citizenship and Immigration Services, Temporary Protected Status, <https://www.uscis.gov/humanitarian/temporary-protected-status>.

<sup>15</sup> U.S. Citizenship and Immigration Services, Deferred Enforced Departure, <https://www.uscis.gov/humanitarian/deferred-enforced-departure>.

<sup>16</sup> Security Council Press Statement on Afghanistan, Aug. 16, 2021, <https://www.un.org/press/en/2021/sc14604.doc.htm>.