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Of

Immigrant ARC

House Foreign Affairs Committee

“During and After the Fall of Kabul:
Examining the Administration’s Emergency Evacuation from Afghanistan”

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Introduction

Dear Chairman McCaul, Ranking Minority Member Meeks, and Committee Members,

Thank you for the opportunity to testify today. I am an immigration attorney with nearly twenty years of experience representing immigrants and working on advancing policy solutions to bring about meaningful systems change. Currently, I am the Executive Director of Immigrant ARC, a coalition of legal service providers in New York State, and a Visiting Senior Fellow on Immigration with the Truman Center for National Policy. As the leader of a woman-founded and women-led organization, as the mother of a young girl, and as someone who has had the privilege to work alongside many Afghan women in the last two years, I am deeply honored to provide this testimony on International Women's Day - a day that most women and girls in Afghanistan will spend out of public view and in the dark.

I first became involved in Afghanistan-related work in January, 2021 when I, along with a few members of the Truman National Security Project as well as Human Rights First, released a report making recommendations for changes to the Special Immigrant Visa (SIV) process. When the timeline for withdrawal from Afghanistan was announced in April 2021, we quickly pivoted to pushing for our Afghan allies to be included in plans to remove US military personnel from Afghanistan. We asked for the US to withdraw with dignity - simply put, to honor the promise we made to those who risked their lives supporting our troops. The coalition of groups working on these efforts, which included veterans organizations, faith-based groups, Afghan American community and other civil society organizations, resettlement agencies, and immigration advocates, became known as the Evacuation Our Allies (EOA) coalition. EOA is still active today and includes over 75 organizations and 350+ individuals in nearly every state in America. In August 2021 after the fall of Kabul, I also joined a coalition of veterans and a cross-section of America called #AfghanEvac, which was working on what became known as the Non-Combatant Evacuation Operation (NEO) and today leads the ongoing civil society relationship with the Department of State, the Department of Defense, and the National Security Council. I currently am on the leadership committees of both coalitions.

The events of August 15, 2021 will forever be seen as a turning point in American history. That day has also forever changed the course of history for nearly 40 million Afghans, many of whom stood with America for decades and placed their trust, hope, and safety in the hands of their American allies. I remain in awe of the efforts my fellow Americans, led by countless veterans and active duty military, but also frontline civilians and local leaders, made to save tens of thousands of lives. And I am forever inspired by their continued dedication to a mission that has not ended and will not end until we have honored the pledge we made to Afghans who worked alongside us, building the Afghanistan we promised them and which they knew was possible.

As a long-time immigration attorney and advocate, however, I know that the tragedies that unfolded on that fateful day in August and the countless others that continue to befall Afghans today would have been lessened by a functioning system of government, a system that has been broken for far too long, and over the course of far too many decades and successive White House Administrations and Congresses. The lack of data, real-time answers, inter-agency cooperation, and of available

pathways to get allies out of harm's way are not new problems. Indeed, I have been confronting them my whole career.

I am grateful for the opportunity today to talk about solutions, so that we may never experience what we experienced - and continue to live through - since the fall of Kabul.

Background

For over six months before the fall of Kabul and the NEO, advocates and veterans groups had been working with increasing urgency to convince the Biden Administration to help our allies reach safety. We formed unlikely partnerships and leveraged our military, policy, and legal expertise to identify solutions that would allow us to meaningfully carry out this purpose. From the onset of our work, we identified a lack of inter-agency communication and our immigration laws' inability to quickly provide protection to large groups of people at risk as the two biggest challenges ahead of us. On the former, we advocated for the creation of an inter-agency task force, modeled after the lessons learned from our withdrawal from the war in Vietnam. On the latter we pushed for better processing of SIVs and more generous uses of our humanitarian grounds of protection and refugee admission system.

While we were unsuccessful in implementing these changes ahead of the collapse of the Afghan government on August 15th, an event we predicted well in advance, we did lay the groundwork for what became an unprecedented, civilian-led, collaborative, all-of-society effort to respond to the coming crisis. I do not believe the NEO could have happened had we not already opened up lines of communications across multiple sectors of civil society, making slow inroads with Executive departments that were, at the time, still mostly rebuilding and re-prioritizing after the Presidential transition. Once the NEO was in full force, we were able to open up the channels of communication with government agencies, and though it took time, we now have models for inter-agency cooperation and public-private partnerships that will serve us in a myriad of beneficial ways in the future.

As an immigration attorney, I can tell you that what I have experienced in trying to help Afghans has been unprecedented in my decades-long career. It has been a devastating reminder of how hopelessly broken our immigration system is and the impact that this dysfunction has on real people – those who are seeking relief and refuge and those who are helping them, like my colleagues in EOA and AfghanEvac. My colleagues and I often commiserate over the fact that never in our careers have we felt each case required so much effort, so much individual advocacy, and with so little ripple effects. As one example, a prominent women's rights activist was able to escape Afghanistan hours before the fall of Kabul. From Pakistan, she contacted a journalist she knew and, through a string of connections (including high-level diplomatic officials), she reached EOA's Operations Center – an informational resource for Afghans looking for safe passage, their families and advocates, and other civil society organizations. For the next several weeks, we worked with immigration lawyers, academic partners, U.S. and Pakistani government officials, and media representatives to obtain a visa for her to reach safety in the United States. She arrived here safely three months after the NEO. As we sit here in this hearing, women like her are being disappeared, tortured, and sometimes even worse, by the Taliban. This is just one example of a case that required a team of over a dozen people to help with one visa application.

Today, I continue to meet on a weekly basis with Afghans trying to help get legal status in the United States and help their families abroad. Over and over again, I have to explain why there are simply no options to get them and their loved ones to safety. The facts differ somewhat from case to case, but the legal realities never do. The deadends are always the same. The despair I hear is unrelenting. And what I experience is just a fraction of what my colleagues who still practice law on a daily basis are encountering. All of us who have been involved in this work continue to get weekly, sometimes daily, messages via email, messaging apps, or social media from both Afghans and advocates begging for our help and at times begging for their lives. I have lost count of how many conversations people have started with me saying “I couldn’t think of anything to do to help, but I wanted to try one last thing so I’m calling you,” believing my connections and involvement in the early days have led me to know about options not obvious to anyone else.

The repercussions on our foreign policy, our national security, and our domestic growth will be felt for years to come. But we have known this for far too long. Advocates on both sides of the aisle have decried our broken immigration system for far too long. Overseas, immigration policy has created distrust of US commitments to respond to migration crises, diminished American soft power, and impaired the United States’ ability to recruit critical partners to security initiatives. This is particularly true after what happened in Afghanistan, which has called into question our ability - and our desire - to protect local partners. The immigration policy choices we make also affect our economic security by ensuring continued growth and global competitiveness

Now is no longer the time to look back - we must look to solutions for the future, so that none of us ever experience this again.

Recommendations

Pass the Afghan Adjustment Act

Afghans who we have all – including many of you in this hearing – worked to evacuate to safety in the United States are now resettled and though there are challenges many of them are thriving. This is home and they deserve to have the peace of mind that can only come with permanent status in their new home.

By passing the [Afghan Adjustment Act](#) (AAA), members of Congress can provide meaningful support for our Afghan allies who are already in the United States and those who remain in Afghanistan. The Act would meet the moral obligations to Afghans who were brought to safety through our evacuation, and who served alongside the U.S. mission and championed democratic values during the America’ longest military engagement in the country’s history. It would also go a long way in acknowledging and helping to heal the very real moral injury our policies and our mismanagement of this crisis have had on our veterans.

This legislation would:

- **Support Afghan allies already in the United States** by creating a pathway to permanent residence—giving priority to SIV-eligible and P1 applicants—all while ensuring national security protections through biometrics and widely accepted and relied-upon vetting requirements, as well as bars for certain crimes and terrorism-related concerns

- **Support Afghans outside the U.S.** by addressing critical gaps in the SIV program to allow more of our allies Afghans who worked closest with the U.S. mission and to whom we have promised a pathway to safety in the United States to achieve that safety. The Act, for example, would expand eligibility to groups including members of the Afghan National Army Special Operations Command, the Afghan Air Force, the Female Tactical Teams of Afghanistan, and the Special Mission Wing of Afghanistan, as well as certain Afghan family members of U.S. service people and veterans
- **Ensure ongoing oversight and long-term support of relocation efforts** by establishing an Interagency Task Force responsible for creating and implementing a strategy to continue the relocation and resettlement of eligible Afghan partners from Afghanistan over the next ten years and requiring the U.S. Department of State to respond to congressional inquiries related to SIV applications or U.S. Refugee Admissions Program (USRAP) referrals

The broad swath of civil society that has been deeply and meaningfully involved in evacuation efforts since before the NEO – national security experts, refugee resettlement agencies, Afghan Americans, faith leaders, veterans groups, attorneys, and local communities representing a broad spectrum of political and social views – have all called for a bi-partisan Afghan Adjustment Act.

Increase Interagency Coordination

One of the main failures of the United States government was the inability to functionally coordinate across agencies ahead of the 2021 withdrawal. Too many agencies, including the Department of Defense, the Department of State, the Department of Homeland Security, and the National Security Council, had overlapping jurisdictions and no clear mandates, allowing government officials to pass the buck or assume that the very problems they were charged with addressing were for someone else to handle. The results, as I have already said, have been catastrophic.

In our six-months [assessment](#) of the post-NEO resettlement efforts, the EOA coalition repeated its calls for an inter-agency task force (IATF). While the beginnings of such efforts have been implemented, including with the resettlement branch housed across the Department of State and the Department of Homeland Security, much more needs to be done.

There is precedent for this type of mechanism in US history. When the US evacuated 140,000 Vietnamese, the Ford Administration designated an IATF that included elements from 18 federal departments and agencies, 14 voluntary agencies (resettlement agencies), 10 state and local agencies. The Clinton Administration did it twice in the 1990s with Kurds and Kosovars. These examples highlight how the government can quickly organize capabilities and resources from disparate departments and agencies under one leader with presidential authority. An IATF is a temporary entity with authorities and appropriations for a specific mission. It should appeal to proponents of smaller government as the IATF dissolves after mission completion.

An IATF is the most efficient way to effectively marshal government expertise and resources. Its structure allows for departments and agencies to send senior leadership with the authority to commit resources to manage a crisis as it unfolds. That allows the White House and Congress to set the stage for the IATF to manage the crisis without having to run it from inside the National Security

Council (NSC), something that got the Reagan Administration in trouble during Iran-Contra. The IATF has oversight from Congress and the NSC, allowing for transparency and accountability while also mobilizing the public support in veteran communities and nonprofits to marshal sponsors and receive families. Another key role the IATF leadership plays is working with Congress to ensure adequate appropriations are allocated to fund the effort.

This mechanism would have greatly helped the administration manage the humanitarian crisis caused by the NEO. However the White House refused to create this mechanism on their own accord, and Congress must use its Article 1 authority to mandate a body like this going forward. In the years and months since the evacuation, much of this infrastructure has been created ad hoc and in various departments. Congress needs to ensure that the Executive Branch coordinates these independent teams into one unified line of effort.

Codify the CARE team and Continue Relocations

While an interagency effort to coordinate and implement Afghan relocation strategy is critical, so too is ensuring that the Executive branch has all of the tools at its disposal to carry out those relocations. The State Department is currently working to ensure relocations are happening, however there is no guarantee that this process will continue beyond this administration. Congress should work on legislation to codify the coordination of relocation efforts with civil society groups and ensure that the work that has been done so far to save so many lives is part of a lasting American policy.

Over the last year and a half, civil society groups have been working alongside committed partners in the State Department to identify at-risk Afghans and provide them a path to relocation and safety. The Coordinator for Afghan Relocation Efforts (CARE) at the State Department meets regularly with experts and advocacy organizations to ensure that the most vulnerable people are being prioritized for relocations and that efficiencies within the process can be maximized. The CARE Team, while housed within the Department of State and initiated by cooperation between the US Government and the AfghanEvac coalition, provides a model for public-private partnerships that reflected the population that was being assisted and worked, and continues to work, directly, with the groups on the ground. This model should be codified to allow for civil society's engagement and responses in future conflicts in a way that is meaningful and supportive of government efforts.

But this process could be stopped as priorities shift and a new administration could easily shutter this effort. We must ensure that future generations of advocates, affected communities, and those in government have the ability to use resources like the CARE team to ensure America honors its promise.

Improve the SIV System

Improvements to the Special Immigrant Visa program will not only provide avenues to honor the promise we made to our Afghan allies, but will be an important foundation and road map for how we support U.S. allies and collaborators in future conflicts. This is a program that bi-partisan majorities in Congress have supported and one that Congress must commit to continuing to oversee

and improve. Congress also has a duty and a right to ensure that the Executive Branch does its job in carrying out its mandate under the program.

In order to continue standing by our Afghan partners and allies, Congress should address the limitations of the current SIV program by making the SIV program permanent and streamlining the process through:

- **Authorizing enough visas to account for the entire eligible population:** Initial design flaws have allowed political pressure to derail individual applications. While most U.S. visa programs provide an annual allotment or make visas available for everyone who qualifies, the statute that established the SIV program allocated a limited number of visas for a limited number of years. This in turn created a backlog of thousands of applicants without any supply of visas, and created a process where the Afghan SIV process relies on Congress to allocate visas on an *ad hoc* basis. This unpredictability means there are years where the program runs out of visas and years where visa authorization numbers drop dramatically. Congress should authorize enough visas to account for the entire SIV eligible population, extend the program beyond the next fiscal year, and design a permanent SIV pathway to ensure more consistency.
- **Adjudicating applications within 9 months as required by law:** While Congress passed legislation in 2013 mandating that Afghan SIV applications be processed within 9 months, we continue to see timelines that well exceed this – in their own reporting, the Department of State shares that *average* processing time total for the steps which they control [is nearly 17 months](#) (521 days).
- **Provide flexible consular processing and invest in diplomatic and logistical capital to solve procedural issues:** We have seen innovations in processing for humanitarian pathways in crisis situations such as the Russian invasion of Ukraine and the Uniting 4 Ukraine program that followed. The U.S. government has many tools at its disposal to overcome the obstacles to providing humanitarian protections for Afghans, but so far has fallen short of implementing them. The lack of consular processing, for instance, has been cited as an insurmountable hurdle in Afghanistan but programs like the Lautenberg-Spector program for Iranian religious minorities and the Uniting 4 Ukraine program both function without in-country consular processing.
- **Require DOS to catalog and search USG contracts, similar to DOD's use of Project Rabbit. Take the administrative burden off applicants in danger:** requiring applicants to provide contract, supervisor, and HR information to which the U.S. government already has access is a needless and massive bottleneck to SIV applicants. The Department of Defense and its partners made great strides in solving this problem for some applicants by implementing Project Rabbit, but that success has not been formalized and utilized across the federal government.
- **Create a permanent, lasting, and functional SIV Program:** Our allies deserve to know that America has their backs regardless of where they served American forces. This permanent program must streamline processing that creates unnecessary delays and bottlenecks. There must be stronger enforcement mechanisms to ensure Executive Agencies meet statutory processing times. Efficiencies in the current process must be improved like simplifying proof of employment verification. Finally, it must apply to geographies beyond Iraq and Afghanistan, so that local nationals who do the same work in other locations would be eligible (Syria, Africa, Yemen, but also future conflicts. By fixing the bureaucratic process that leads to long wait-times and application holdups, America can go a long way to honor our promise and ensure that an SIV backlog that contributed to the evacuation never happens again.

Dedicate Resources to Protecting Current and Future Allies

Time and time again, we see the need for stakeholders inside the United States government to proactively look out for the interests of allies who serve alongside American forces. Afghanistan is the latest example of a pattern we see repeated – with the Kurds in the 1990s and the South Vietnamese in the mid-20th century – where the U.S. government relies heavily on local partners during conflict but falls short on protecting these collaborators after the military engagement ends. These partners greatly assist and bond closely with their counterparts in American ground forces, but lack a central voice within the government to make sure their lives are protected and their contributions honored after retrograde operations.

We look to Congress to create an Ombudsman for Allies, a high-ranking U.S. official with the authority and responsibility to serve the interests and protection of wartime allies so that this never happens again. The ombudsman would ensure that our policy matches our values in regards to our Afghan allies, and others who we collaborate closely with in the field. They would be responsible for addressing when SIV program delays extend beyond their mandated processing time, and would have a forward looking approach to ensure that a means to safely evacuate allies is incorporated into all future U.S. military withdrawals. As we anticipate these future conflicts, it is imperative that other nations trust that they can collaborate with the U.S. in good faith. The Ombudsman would be another layer of confidence for foreign partners to work with the U.S. military.

Create Better Pathways

The US Refugee System, administered by the State Department, and the humanitarian pathways handled by the Department of Homeland Security are both chronically underfunded and demonstrably unable to meet existing and ever-growing needs. These deficiencies came to an inflection point when helping Afghans who did not understand the limitations of the P1/P2 refugee referral programs that were announced, and others who filed thousands of applications for humanitarian parole that US Citizenship and Immigration Services (USCIS) did not have the ability to adjudicate.

On USRAP, Congress must robustly invest in the U.S. refugee resettlement program so it can be rebuilt even stronger and better than before – both as a commitment to our Afghan allies, and to those we work with internationally in years to come. After significant investments in the last year to support Afghan and Ukrainian arrivals, we need bold leadership in securing the necessary investments to stabilize the overseas and domestic infrastructure and ensure we can help Afghans, and all refugee nationalities, integrate and thrive in their new communities. Congress and the administration should take note of the expedited refugee processing model in Doha at Camp As Saliyah, support and fund government's work with civil society, look to investigate the benefits and challenges of this model, and explore ways to expand this capacity for Afghans and other vulnerable populations.

For humanitarian parole, in the months that followed the NEO, USCIS has innovated its parole processes, creating multiple parole programs for other nationalities that do not require individualized proof of harm, fees, or inaccessible processing requirements. The processes USCIS has rolled out for other nationalities have been largely digitized, and quickly granted travel

authorizations. For Afghans, we encourage the administration to create a plan for returning the filing fees collected from this vulnerable population and those who seek to help them find safety. These same innovations could be used to create a more accessible program for Afghans, as well as to quickly move vulnerable populations in urgent need of refuge.

Any use of parole should be accompanied by meaningful Congressional work on immigration reform that would allow a wider variety of pathways to the United States. Many Afghans could not leave, or chose not to leave, because our restrictive laws would not have permitted them to bring family members with them. Many others came through the NEO to save their lives, hoping that once here they would find avenues for family and friends left behind, in danger because of their associations with Afghans who helped the US. More worked with the US in a variety of capacities - academia, civil society, judiciary - but do not qualify for the refugee programs based on technicalities. Most existing visa categories require sponsorship by US-based institutions, none of which these thousands of Afghans can access. Our outdated-immigration laws failed Afghans, as they continue to fail US partners around the world. This is an opportunity to shine a spotlight on the true cost of our broken system, and to advance meaningful fixes that include broader pathways to the US.

Conclusion

We saw an unprecedented civil society movement come together to honor the promise the U.S. made to Afghan allies who fought alongside us in our nation's longest war – a movement that is still active and passionate about fulfilling this vow today. While warning signs from these stakeholders were not enough to stave off the fall of Kabul and a chaotic evacuation operation, the events of August 2021 did not occur in a vacuum. Years of bureaucratic delays, governmental inaction, divisive political rhetoric, and limited immigration pathways all contributed to a humanitarian crisis that unfolded in the days, weeks and months leading up to the NEO.

We have seen through these efforts the tremendous value civil society can add – in providing guidance on future threats, in quickly responding to crisis situations, and in directly saving lives. While we work to continue to understand what went wrong to not repeat the mistakes of the past, it's imperative that we look forward and seize the opportunity to do right by our allies now. We can build on the foundation of public private partnership we saw during and after the NEO to better serve the Afghans that worked most closely with us and to provide a roadmap for future crises.

Supporting the Afghans that worked shoulder to shoulder with the United States is too important to continue to wrap in partisanship and rancor. This Congress has an opportunity to do right by our allies, and it must.