

IMMIGRATION **JUSTICE** CAMPAIGN



human rights *first*



Afghan Asylum Claims

Speakers

- Shala Gafary, Human Rights First
- Brigitte Hamadey, International Rescue Committee
- Jocelyn Dyer, Immigration Justice Campaign

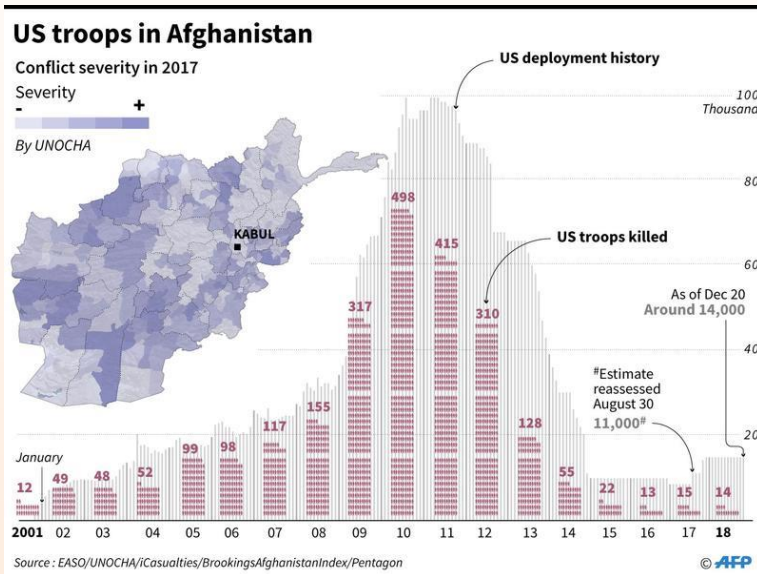
Agenda

- Overview of the Afghan refugee crisis
- On the Ground Update from Refugee Resettlement Organization
- Asylum Eligibility & Preparing the Application
- Affirmative Asylum Process for Afghans
- Special flags/issues in Afghan Cases
- Q&A

How it all started

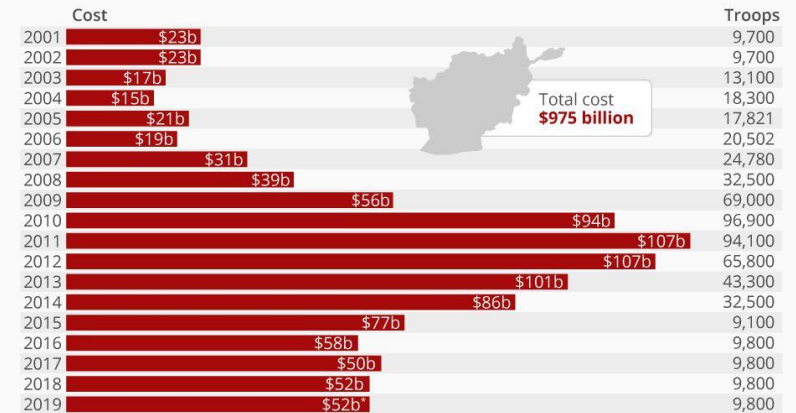


American military presence in Afghanistan



Afghanistan: America's Trillion Dollar War

Cost of the Afghanistan conflict and troops deployed from 2001 to 2019



* Estimation
© StatistaCharts Source: The Balance

Forbes statista

August 15, 2021 - fall of Kabul to the Taliban



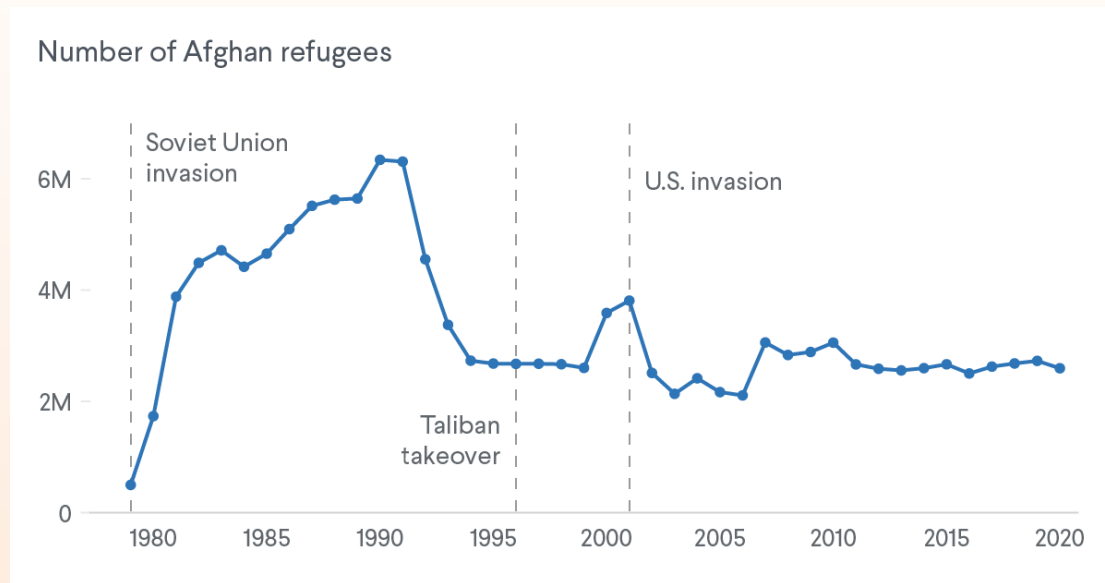
- February 2020 - Trump Administration and the Taliban signed a peace agreement agreeing to full US withdrawal by May 2021 - “Doha Agreement”
- Biden unilaterally announced he would push back to a September 11, 2021 withdrawal date - Taliban launched a city-by-city offensive in the months leading up to withdrawal
- Last US troops left on August 31, 2021

Evacuations out of Afghanistan



- About 76,000 Afghans were evacuated to the US since August 2021
- Evacuation flights are expected to continue until September 2022, target of 2,000/month
- Processed abroad at “Lily Pads” in Germany, Qatar, Kosovo, etc and brought to “Safe Havens”
- Admitted under OAR/OAW (“Operation Allies Refuge/Welcome”) Parole Status – valid 2 years
- Resettlement to destination city
- Special Immigrant Visa (SIV) or Asylum claims

5 decades of refugees



Who are the Taliban?



- First emerged in the early 1990s in western Pakistan following Soviet-Afghan war in *madrasahs*, financed by Gulf benefactors and Pakistan
- Elements of Pashtun tribalism + extremist, violent Sunni Islam (of the Deobandi movement in India) + Wahhabi (literalism/puritanical) Islam of Saudi
- Heartland is the south of Afghanistan; Kandahar is capital of this territory. Goal of a Pashtunistan united between Pakistan + Afghanistan

Complete fusing of political and religious - head is Amir ul-Mu'minin - leader of the faithful

What do the Taliban believe?

Strict interpretation of sharia law

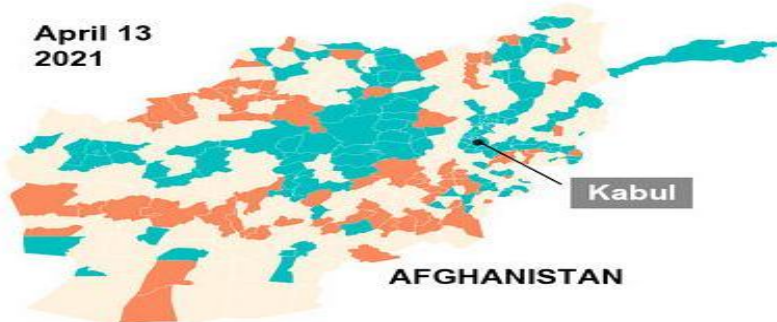


- Public executions of murders and adulterers; amputations for theft
- Men required to grow beards
- Women forbidden from driving/riding bicycles, publicly beautifying themselves, must wear full burqa, cannot leave home without *mahram*, girls past puberty prevented from going to school
- Previously, had banned TV, music, cinema. No education apart from religious education
- Attacks on different interpretations of Islam + foreign troops + collaborators to be an extension of *jihād* - they often call themselves mujahideen

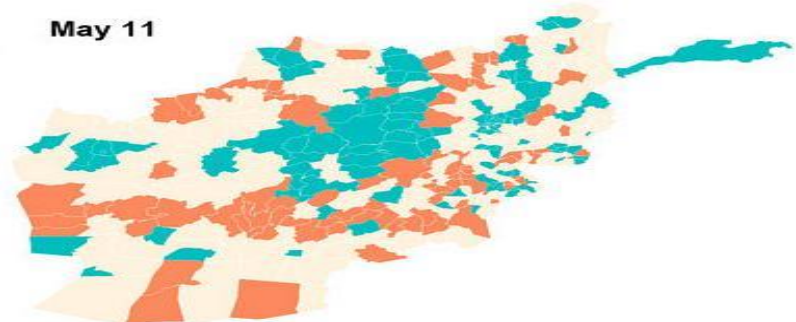
Claim to establish peace and institute a pure sharia law

Taliban gains in Afghanistan

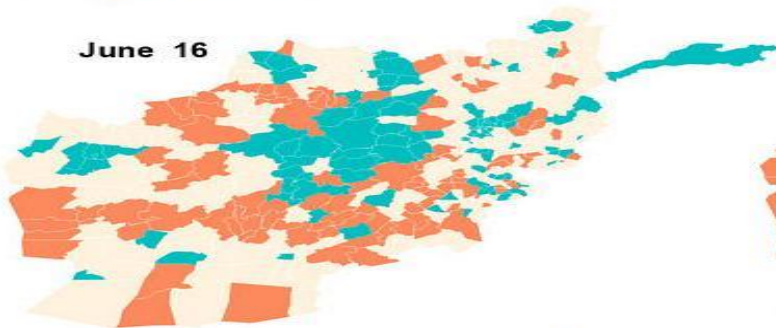
April 13
2021



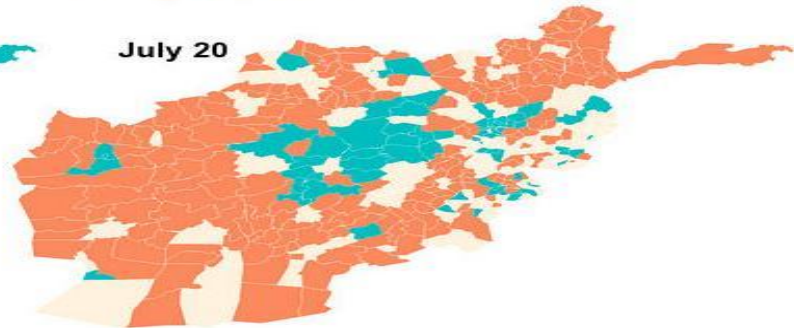
May 11



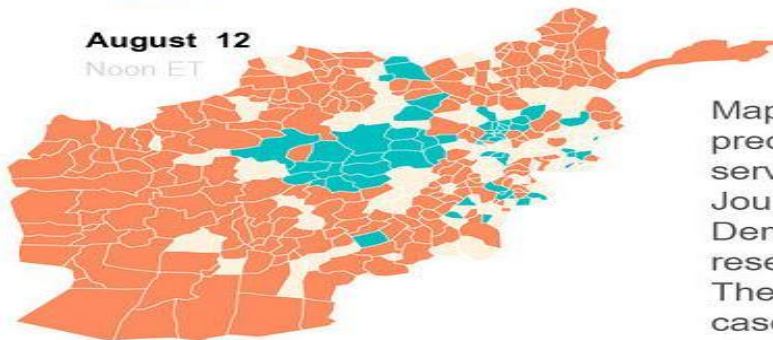
June 16



July 20



August 12
Noon ET



- Taliban control
- Government
- Contested
- Not known

Map shows districts where the Taliban are predominantly in control of security and public services. The data is compiled by the Long War Journal of the Foundation for the Defense of Democracies, a Washington-based research institute focusing on national security. The data cannot be verified independently in all cases, but is largely in line with reporting by The Associated Press.

Source: Long War Journal

AP

On the Ground Update from the International Rescue Committee

1. Resettlement Agency capacity undermined/reduced under previous administration
2. Resettling high-volume of parolees without permanent legal status is new territory for IRC
3. IRC legal services and gaps in legal services
4. Need for legal community to assist Afghans with asylum and other legal services

Asylum Eligibility

INA 101(a)(42)(A)

- (42) The term "refugee" means:
- (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion

Asylum elements

- Outside country of origin/nationality
- Persecution
- By gov't or individuals gov't unable or unwilling to control
- “On account of” applicant’s
 - Race
 - Religion
 - Nationality
 - Political opinion
 - Membership in a particular social group

What is “persecution”?

- Look to case law - not defined in statute
- “A threat to life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive*” or to overcome a characteristic of the victim.
- Must be considered cumulatively

*

Matter of Acosta, 19 I&N Dec. 211, 222 (BIA 1985)

Past persecution

- Establishment of past persecution creates rebuttable presumption of future persecution
- Burden shifts to gov't to show (by preponderance of evidence) that:
 - Country conditions have changed OR
 - Applicant can relocate to another part of the country and thus avoid persecution

“Well-founded” fear

- Must demonstrate “reasonable possibility” of persecution. One in ten possibility.*
- **Subjective**
 - Applicant has fear of return
- **Objective**
 - Any reasonable person in similar situation would be afraid

**INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987)

Protected grounds

- Race - ethnic, tribal, linguistic groups
- Religion - religious belief, perceived violations of religion, lack of religious belief
- Nationality - citizenship, but also ethnic, tribal, linguistic groups
- Political opinion - political activity broadly defined, of applicant or family member

Membership in a particular social group

- Group has “common, immutable characteristic” that members “either cannot change, or should not be required to change.”
Matter of Acosta, 19 I&N Dec. 211 (BIA 1985)
- Particularity
- Social visibility/distinction
- Look to case law

Common Afghan Claims

- Particular Social Group: Afghan government-affiliated
 - Afghan National Army
 - National Directorate of Security (Afghan Intelligence)
 - Afghan National Police
 - Afghan Air Force
- Particular Social Group: US/NATO affiliated
 - Interpreter or employee of the US Military (may also be SIV eligible)
 - (Sub)contractor to US Military (may also be SIV eligible)
 - US Embassy Staff
 - Employee of US-funded nonprofit organization
- Political Opinion: Anti-Taliban, Pro-US/NATO, Feminism, Secularism - Actual or Imputed
- Gender-based claims
- Family Members of above PSGs
- Race: Hazara
- Religion: Shia Islam, Ismaili, Secular – Actual or Imputed

A lot of INTERSECTIONALITY

Afghan government-affiliated employees



- Taliban seized biometrics machines left behind by US forces
- Initially, Taliban promised amnesty...
- More than 100 former members of the Afghan government killed since August 15, 2021 - 2/3 by extrajudicial killings. More who have been disappeared
- Checkpoints for vehicles and persons on foot, home searches
- Door to door searches have detained government affiliation and female activists. States claim to look for criminals

women particularly at risk



- Women's rights activists
- Educators
- Athletes
- Ob-gyns and other female doctors
- Judges, lawyers, prosecutors
- Politicians

Bars to asylum

- One year filing deadline
- “Firm resettlement”
- Previously denied asylum application
- Terrorism/“material support” to terrorists
- Persecutors
- Conviction of certain crimes
 - “particularly serious crime”
 - “aggravated felony”
 - Serious non-political crime outside U.S.

Preparing the Asylum Application

What to submit

- Asylum application: I-589
- G-28
- Client affidavit
- Supporting evidence
 - Country conditions
 - Client-specific
 - Expert affidavit(s), possibly
- Annotated index
- Short “letter brief”

Client affidavit

- Establish **eligibility**
- **CREDIBILITY** is key
- **Details!** - just the right ones
- Tell a **story**

Country conditions

- Why: evidence of objective reasons for fear
- What:
 - U.S. Dept of State annual Human Rights report for your client's country
 - Other human rights reports (Human Rights Watch, Amnesty International, e.g.)
 - Expert affidavit, possibly

Client-specific evidence

- In theory, client testimony alone could be enough to meet burden of proof, BUT
- Corroboration of asylum eligibility elements can be required “unless applicant does not have the evidence and cannot reasonably obtain the evidence.” INA § 208(b)(1)(B)(iii)

Client-specific evidence

- Evidence of client's identity
- What types of evidence to show?
 - Membership in opposition political party
 - Religious affiliation
 - Ethnic group
 - Past torture, beatings
 - Incarceration

Expert affidavits

- Country conditions expert
- Psychological evaluation
- Medical evaluation

Affirmative Process

- File I-589 and supporting evidence with USCIS
- Interviews must be held within 45 days of filing
- Interviews conducted at Asylum Office

Special Issues in Afghan Cases

Common issues found among documents

Afghanistan-Specific Issues

- Use Islamic Solar Calendar (only other country is Iran), dates are difficult to convert
- No Birth Certificates - instead *Tazkera* (National Identity Document), which can be issued at any point in the person's life
 - Traditional *tazkera* doesn't have a specific date of birth
 - Traditional *tazkera* doesn't have a space for last name
 - Neither include mother's name
- Multiple wives - only first marriage is valid

Documentary Issues

- Missing *Tazkera* (National Identity Document), Marriage, Death or Divorce Certificates
- Incorrect DOBs, sometimes relating to *Tazkera* issues
- Inconsistent names on documents, some have only first name and some full name
- Multiple A#s - the 241# is permanent, the other temporary
- Estimated about 30% of USG documents for Afghans have errors

[illegible]

Electronic *tazkera* (national identity document)

- front and back are not the same!

- The front and back are NOT identical
- Dari/Pashto side:
 - Father's name
 - Grandfather's name
 - Current location & Main residence
 - Religion - for all Muslims its "Islam," not "Sunni" or "Shia"
 - Ethnic Group
- English side:
 - DOB in Gregorian Calendar (may not know their own DOB)
 - Date of Issue in Afghan Calendar
 - Gender
 - Signature



Missing Afghan Tazkera, Marriage/Death/divorce Certificate

Where there is no primary evidence of an event, secondary evidence is acceptable. This includes photos, school records, medical records, and/or at least two notarized affidavits of persons having direct, personal knowledge of the event, containing:

1. Full name and address of the affiant;
2. Date and place of birth of the affiant;
3. Relationship between the affidavit and the parties to the petition;
4. Full information regarding the event; for example, the date and place of the birth of the child (including both parents' names), the date and place of the marriage, divorce, death, etc.; and
5. Complete details concerning how the affiant acquired knowledge of the event

The affiant should also include a copy of his/her photo ID. Greater weight is given to affidavits signed by US citizens or legal permanent residents.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY
UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES

In the Matter of:

LAST NAME, First Name
(DOB: MM/DD/YYYY)

A: 241-111-222

Petitioner.

DECLARATION OF XXX

I, XXX, declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. My name is XXX. I was born on XXX in Mazar-i-Sharif, Afghanistan. I currently reside at XXX. I am a citizen of the United States. I am making this declaration in support of YYY's Form I-485, Application to Register Permanent Residence. In support of this declaration, attached, please find a copy of U.S. Passport as proof of my citizenship.
2. In Afghanistan, I was a neighbor of YYY's family. I was born and grew up in that home and our families were close friends, as we belonged to the same ethnic group, AAA, and therefore were linguistically and culturally separate from the rest of the people in Afghanistan. Because women and girls were generally forbidden from public places in Afghanistan, a practice which unfortunately still continues until today, as girls we built close friendships and spent much time together in either of our homes.
3. As such, I was present during the birth of all of the children of YYY's family who were all born after me. Because all children at that time were born at home, my family and I received immediate news when a child was born in their family, as we did for other families in the area whom we were close to.
4. I was physically present in our neighboring home on the day that YYY was born. As is custom, my family and I visited them shortly the birth to congratulate them. In this way, I saw YYY in the first days of their lives.
5. I therefore ask that you approve YYY's Form I-485, Application to Register Permanent Residence so that they can legally remain in the U.S. and permanently escape the horrors of the Taliban regime in Afghanistan.

This document was read back to me in Dari, a language in which I am fluent.

XXXX

Date

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Multiple wives

[USCIS Guidance](#) regarding Polygamous Marriages states USCIS: “will only consider the first marriage of a polygamous marriage valid for immigration purposes.” Accordingly

- 1. First wife in the US:** All that is needed is the Marriage Certificate
- 2. Second or later wife in the US:** must first divorce the first wife and remarry later wife. If the first wife is in the US, this is possible. But where the first wife is in Afghanistan, its impossible. Second or later wife must apply for asylum separately.

Question: Second spouse not in the US and children from second wife not in the US. How to add to the asylum/SIV application the children? How does a second wife come to the U.S.?

Absent an evacuation, father should file family-based petition for children. Children can then petition for their mother.

How to get involved

The Welcome Legal Alliance has partnered with We the Action to launch the [Welcome Legal Alliance Portal](#) which features pro bono projects in need of volunteers to serve thousands of Afghan clients.

All projects include training and mentorship to support volunteers with all levels of experience in immigration law.

Visit the [We the Action site](#) to view opportunities and get updates when we add more. Pick one of two options to register:

- [Create a Firm/Company Account](#)
- [Sign up as an individual volunteer](#)

E-mail PALA@humanrightfirst.org for more information



Justice Campaign Sign Up

- Reach out to your head of Pro Bono if you're at a firm
- Reach out to us: probonocoordinator@immcouncil.org
- [Create an account](#) on our website and fill out our [volunteer application form](#)

■ Questions?