November 21, 2022

The Honorable Alejandro Mayorkas
Secretary of the Department of Homeland Security
2707 Martin Luther King Jr Ave., SE
Washington, D.C. 20528

RE: Continuity of temporary protection and work authorization for Afghans paroled pursuant to Operation Allies Refuge and Operation Allies Welcome

Dear Secretary Mayorkas:

The 156 undersigned organizations write to urge you to extend temporary protection from deportation and work authorization for Afghans who were brought to the United States through Operational Allies Refuge (OAR) and Operation Allies Welcome (OAW) -- in addition to Afghan arrivals who may be paroled into the United States after October 1, 2022. We are deeply concerned about vulnerable Afghans experiencing gaps in their immigration “status” and employment authorization, particularly in light of the significant backlogs in immigration-related processing at the U.S. Citizenship and Immigration Services (USCIS).

We urge you to extend temporary protection and work authorization for Afghans paroled into the U.S. by:

● transferring authority from Customs and Border Protection (CBP) to USCIS for purposes of re-parole applications for OAR and OAW arrivals;
● creating a streamlined, equitable, and efficient process for Afghan parolees to request re-parole and obtain an automatic extension of work authorization;
● reducing the processing backlog for Temporary Protected Status (TPS) applications, expanding TPS protections, and improve processing times for both TPS and work authorization applications; and
● considering additional options for temporary protection that ensure continuity in eligibility for and access to federal, state, and local benefits.

I. Extension of temporary protection and work authorization for Afghans paroled into the U.S.

Background

According to Department of Homeland Security (DHS) data,¹ nearly ninety percent of the 88,000 Afghans who were brought to the United States through OAW were allowed to enter temporarily via parole. Those who were granted parole and were processed at military bases or “Safe Havens” were also offered assistance in applying for work authorization (Form I-765) which, if granted, would correspond to the validity of the parole. While some Afghan evacuees were initially issued

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a one-year term of parole, those who entered after August 25, 2021 should have been granted parole for two years, and their I-94 Arrival Records should reflect a designation of OAR or OAW.

The vast majority of Afghans who arrived via OAR or OAW parole are now within a year of their parole and work authorization end validity dates. Since entering the United States, Afghan evacuees have found long-term housing, enrolled in school and English classes, secured jobs, and are contributing to their families and communities both here and abroad. Survey data from mid-September 2022 indicates that 98 percent of OAW surveyed clients are in long-term housing, 60 percent of employable Afghans are employed, and 62 percent have accessed legal support. Veterans, Afghan Americans, federal, state, and local governments, faith-based and community groups, and individual citizens have significantly invested in welcoming our new Afghan neighbors.

As of October 2022, less than 23 percent of Afghan evacuees are currently on a potential path to permanent residence in the United States. According to a recent CBS report, 17,400 Afghan evacuees have filed applications for asylum or Afghan Special Immigrant Visa (SIV) status. The majority of these applications remain pending with USCIS. While Congress has required USCIS to prioritize asylum application processing for Afghans under Section 2502(c) of the Extending Government Funding and Delivering Emergency Assistance Act, Afghans evacuate face significant barriers in applying for asylum. These barriers include struggling to understand the process and requirements, limited access to pro and low bono counsel due to capacity and logistical constraints, difficulties in aiding case preparation due to mental health issues and the impact of traumatic events, and lack of persecution-related evidence due to loss or destruction of vital documentation during the evacuation. Although there has been an unprecedented federal investment in legal services for Afghan OAW clients, most funding has supported referrals, as opposed to full legal representation, and there are many vacant positions with an insufficient stock of competent attorneys who can take on these cases.

USCIS is already struggling to manage the volume of OAW asylum cases in its pipeline, which would only worsen if tens of thousands of Afghan arrivals were pressured to file cases before August 2023. As of October 21, 2022, USCIS reported it has received more than 9,500 OAW asylum cases, with more than 6,000 interviews scheduled, and USCIS has repeatedly raised the

2 The one-year, DT parole should have been updated by Customs and Border Protection.
4 This is an increase from 96 percent as of June 2022.
5 This is an increase from 51 percent as of June 2022.
6 This is an increase from 50 percent as of June 2022.
7 Please note that survey data for the month of September will be available in early November 2022.
8 For example, Massachusetts invested $12 million to support Afghan arrivals with a plan to make permanent a line item in the state budget for all refugee services; Oregon invested $18 million for Afghan resettlement in the state; Virginia invested $2 million for resettlement agencies to support refugees and immigrants. New institutional partners and community partners formally worked with resettlement agencies to augment capacity, many of whom provided 100 percent of core services. These substantial strides toward stability and integration are precarious as Afghans face an uncertain future in the United States; lack of continuity in work authorization or lawful immigration status jeopardizes these strides and undermines integration efforts.
front-log delays in managing the receipt of these cases. There are reports of asylum interview notices not arriving before applicants’ scheduled interview dates, leading clients to miss interviews and attorneys calling USCIS to find out their interview is just a few days away. Balancing equities with meeting the 45-day statutory mandate against the requirement to give 3 weeks' notice for an interview remains a persistent challenge.

Acknowledging the tremendous barriers that newly arrived Afghans would face in obtaining lawful permanent residence and in keeping with historic precedent in resettling wartime allies, members of Congress introduced the bipartisan Afghan Adjustment Act H.R. 8685/S.4787 in August 2022. While we continue to urge Congress to swiftly pass this legislation as part of any must-pass bill (such as the FY23 omnibus funding package or the upcoming NDAA), there remains sustained (though we hope surmountable) resistance to provide lasting protection to Afghans, irrespective of the significant vetting and associated provisions included in the bipartisan bill text. There are no guarantees that Congress will include any adjustment language in a future bill.

A. Transfer authority from Customs and Border Protection (CBP) to USCIS for purposes of re-parole applications for OAR and OAW arrivals

Afghans who entered the United States via OAW or OAR parole were processed by CBP and issued parole on a case-by-case basis by CBP officers pursuant to DHS’s parole authorities enumerated in the Immigration and Nationality Act (INA). Specifically, the INA provides DHS with the discretionary authority to “parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States.”11

With respect to extending parole validity or re-parole, a Memorandum of Agreement between DHS component agencies (USCIS, CBP, and Immigration and Customs Enforcement, or ICE),12 hereinafter “DHS MOA,” outlines the authority and process by which an agency may adjudicate requests:

Except as provided in the paragraph below, if a bureau has previously adjudicated and granted parole to an individual, the issuing bureau should, in the interest of efficiency, adjudicate requests for re-parole, unless (1) the circumstances or intent of the parole have changed such that additional factors render the bureau inappropriate to adjudicate the new application, or (2) another bureau agrees to assume a particular caseload in the interest of expediency or settled local practice. (emphasis added).

According to the DHS MOA, Afghans seeking an extension of their parole grant would need to request re-parole from CBP. Per CBP protocols, such re-parole requests would typically be presented at a deferred inspection site. Most of these sites are located at certain airports and CBP processes require people seeking deferred inspection assistance to appear in person for one on one meetings. CBP generally does not have the resources to assist so many re-parole applicants applying all at the same time as most Afghans expire around the same time. The feasibility and logistical challenges of arranging for tens of thousands of Afghans who have now resettled in

11 INA §212(d)(5), 8 U.S.C. §1182(d)(5)
communities across the United States, many of whom do not yet speak English proficiently or
own cars, make the mass re-parole of OAR/OAW evacuees by CBP inappropriate.

Already, resettlement agencies have reported multiple instances of OAW clients with I-94 errors
and other fixes that CBP has required in-person appointments at deferred inspection sites to
address; however, resettlement sites report significant challenges in scheduling appointments at
defered inspection sites, no one picking up the phone at deferred inspection sites, and being
turned away if clients show up without an appointment. This is compounded by the long-distance
tavel to physically get to a deferred inspection site, the restrictive hours of operation, and the
need for resettlement staff to accompany clients to these appointments. Indeed, resettlement
agencies have repeatedly asked CBP to create a remote process to address I-94 issues without
necessitating an in-person appointment at a deferred inspection site. Thus, we recommend
that CBP transfer the entire caseload of OAR/OAW parole cases to USCIS, which
should establish a streamlined and efficient process for adjudicating re-parole requests.

B. Create a streamlined, equitable, and efficient process for Afghan parolees to
request re-parole and obtain an automatic extension of work authorization

Afghans present in the United States pursuant to OAR or OAW parole need more time to secure
their footing in the United States and the immigration system, to seek mental health support and
cope with the wounds of trauma, and to secure evidence for and prepare their legal claims. Also,
the immigration legal services community needs more time to build the capacity to serve our new
neighbors. Further, USCIS, which is currently plagued by significant front-logs and backlogs,
would benefit from having well-prepared and documented applications filed over a period of time
rather than a rushed application because of an impending deadline. It is for these reasons that we
urge DHS to establish a streamlined, equitable, and efficient system for re-parole
and automatic extensions of work authorization for Afghans who arrived via
OAR/OAW.

For the OAW arrivals who had to transition from one-year parole to two-year parole, DHS also
recently announced that if an OAW arrival received an EAD with only one year of work
authorization, the clients will be issued a Form I-797C starting August 2022, Notice of Action
indicating that the Department is extending the individual’s EAD to align with the parole period
shown on their I-94 (i.e., two years). This automatic extension for work authorization should be
considered for OAW arrivals who seek re-parole, as well.

USCIS has proven through its Uniting for Ukraine (U4U) parole program13 that it can efficiently
vet and process tens of thousands of parole applications in a short timeframe. We urge USCIS to
apply the innovation of U4U to adjudicate the re-parole requests of Afghans paroled into the
country. Such a process should be streamlined to ensure there is an efficient case-by-case
decision. The application for re-parole should be made available online, accessible in English,
Dari, and Pashto, and should facilitate the automatic extension of work authorization.

The FY 2022 Continuing Resolution in September 2021 authorized Afghans arriving with
humanitarian parole to receive the same services as refugees (admitted under Section 207 of the
INA), including ORR assistance, reception and placement, and other entitlement programs like
food assistance. ORR services include services like healthcare, emergency housing, English
language classes, job training, and case management. Eligible Afghans are those paroled into the

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13 U.S. Citizen and Immigration Services (USCIS), “Uniting for Ukraine,” accessed October 28, 2022,
United States between July 31, 2021 and September 30, 2022; those paroled into the United States after September 30, 2022; and, either the spouse or child of such a parolee or the parent or legal guardian of an unaccompanied child paroled during that period. The legislation permits eligible Afghan parolees to receive resettlement benefits until March 31, 2023, or the term of parole granted, whichever is later. Such parolees would not be precluded from pursuing other immigration benefits. We strongly recommend that the administration issues guidance, in collaboration with DHS, as well as the Office of Refugee Resettlement (ORR) within the U.S. Department of Health and Human Services (HHS), clarifying that Afghans who are re-paroled remain eligible for federal resettlement benefits.

C. Reduce the processing backlog for Temporary Protected Status (TPS) applications and improve processing times for both TPS and work authorization applications

DHS Secretary Mayorkas announced the designation of Afghanistan for Temporary Protected Status (TPS) on March 16, 2022.\(^\text{14}\) The program officially opened for applications on May 20, 2022.\(^\text{15}\) Afghans residing in the United States prior to the fall of the Afghan government and more recently arrived Afghans are registering for TPS to ensure their ability to remain in the United States with lawful status. If granted, they will have protection from deportation and may apply for work authorization through the TPS initial designation period of November 20, 2023. Further, Afghan TPS holders may be eligible for extensions of TPS and work authorization, if the DHS Secretary determines country conditions warrant an extension.\(^\text{16}\) Based on data provided by USCIS, approximately 2,200 Afghans who arrived via OAR/OAW parole have applied for TPS.

There is a concerted effort among immigration legal services providers to assist Afghan clients with registering for TPS - many of whom have prioritized TPS application processing over longer-term benefits in the short term. This effort is generally based upon an educated calculation that country conditions in Afghanistan will merit an extension of TPS for Afghanistan in 2023. Specific considerations include exceptions to the one-year filing deadline for asylum applications, USCIS processing times for respective applications, length of access to public benefits,\(^\text{17}\) and the need for continuity to lawfully reside and work in the United States. The latter factor is particularly acute for Afghans who may be eligible for SIV status, are at the first phase of the SIV process (pre-COM), and intend to apply for an adjustment of status to lawful permanent residence when the COM approval is granted. It is critically important for these SIV applicants to avoid accrual of unlawful presence and unauthorized work in the United States that may occur due to lapses in status.

According to publicly available USCIS data, the agency is facing a staggering backlog in processing TPS applications (Form I-821) and associated work permit applications (Form I-765).\(^\text{18}\) USCIS processing time information indicates initial TPS registration applications are taking

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\(^{16}\) Pursuant to 8 U.S.C. § 1254a, the DHS Secretary shall make a decision on whether to extend a TPS designation 60 days prior to the expiration. For Afghanistan, the DHS Secretary must make a determination by Sept. 21, 2023.

\(^{17}\) OAW arrivals are eligible for resettlement services through March 31, 2023 or the duration of their parole, whichever is longer.

approximately 12.5 months to process. Since the registration period opened in May, approximately 2,200 Afghans on OAR/OAW parole have applied for TPS. In the absence of clear guidance from DHS regarding re-parole, Afghans who wish to extend the temporary protection from deportation and maintain work authorization are working quickly to submit TPS applications that must be quickly processed to secure their protection and the seamless continuity of vital benefits. We recognize and affirm the Department’s establishment of a “streamlined process” for humanitarian parolees applying for work authorization under the c(11) category. **It is imperative that USCIS explore other efforts to streamline EAD processing for other categories (TPS applicants, asylum seekers, and others, across nationalities). We further urge USCIS to take the necessary steps to streamline the TPS application process by automatically waiving fees (Forms I-821 and I-765) and dedicated resources to reduce backlogs and improve case processing times.**

**D. Consider additional options for temporary protection that ensure continuity in eligibility for and access to federal, state, and local benefits**

In addition to improving the TPS process and reducing processing backlogs, the administration should ensure that TPS protections for Afghans are maximized through timely consultation and review for redesignation and extension. Extensions of TPS should be granted to the maximum amount allowed by law - 18 months - and associated Federal Register Notices should be published quickly. The administration should also immediately explore options to extend TPS protections for Afghans who were on Lily Pads by March 15, 2022 and subsequently entered the U.S. on OAR/OAW parole, their presence at the lily pad shall be construed as being physically present and continuously residing in the U.S. for the purposes of TPS eligibility.

The Biden administration has another tool in its humanitarian protection toolbox that may offer similar benefits as parole and TPS while reducing the administrative burdens on Afghans, their legal services providers, and USCIS -- Deferred Enforced Departure (DED). Unlike parole and TPS, which are statutorily based and delegated to DHS, the president has the sole authority to issue DED. Specifically, DED authority is derived from the president’s constitutional power to conduct foreign relations. Thus, DED is highly discretionary and can be terminated when presidential administrations change. While this is a significant drawback to consider, DED implementation is less burdensome (no application is required) and the eligibility requirements are set by the president’s directive, offering significant flexibility.

**II. Conclusion**

Afghans who arrived via OAR/OAW parole urgently require guidance and solutions concerning how to maintain their current protection from deportation and work authorization as they seek firmer footing in the United States and pathways for lawful permanent residence. DHS should use its established parole authorities to create a streamlined and efficient re-parole process. In parallel, DHS should work to reduce burdens on Afghans seeking alternative temporary protections, like TPS. Please contact Jill Marie Bussey at jbussey@lirs.org and Meredith Owen at mowen@cwsglobal.org with any questions or to schedule an engagement to discuss.

cc: Curtis Ried, Chief of Staff, National Security Council
    Troy Miller, Acting Commissioner, Customs and Border Protection
    Ur Jaddou, Director, U.S. Citizenship and Immigration Services

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19U.S. Citizenship and Immigration Services (USCIS).

Sincerely,

#AfghanEvac
ADL (Anti-Defamation League)
Afghan American Alliance of Georgia
Afghan Girls Financial Assistance Fund
Afghan Legal Empowerment Portal
Afghan Refugee Housing Network
Afghan Refugee Relief
Afghan-American Foundation
Afghans4tomorrow
Al Otro Lado
Alianza Sacramento
Alliance for Refugee Youth Support and Education (ARYSE)
Allied Shepherd
American Friends Service Committee (AFSC)
American Immigration Lawyers Association
American Muslim Empowerment Network (AMEN)
Amnesty International USA
Association of Wartime Allies
Asylum Seeker Advocacy Project (ASAP)
Broward for Progress
CAIR Washington
Capital Area New Mainers Project (Augusta, ME)
Catholic Community Services of Lane County
Catholic Legal Immigration Network, Inc.
Celsey Fannin, Esq.
Center for Gender & Refugee Studies
Center for Victims of Torture
Central Valley Immigrant Integration Collaborative
Church World Service
Church World Service Lancaster
Clarkston Community Center Foundation, Inc.
Coalition of Refugee Service Agencies, Georgia (CRSA)
Cohen Veterans Network
Combined Arms
Communities United for Status & Protection (CUSP)
Community Legal Aid Society, Inc.
Community Refugee and Immigration Services (CRIS)
Community Supported Film
Conklin Immigration Law LLC
Connecticut Institute for Refugees and Immigrants
Connecticut Institute for Refugees and Immigrants
Cooperative Baptist Fellowship
Dignidad
Direct Aid International
Disciples Immigration Legal Counsel
Dorcas International Institute of Rhode Island
Dorothy Day House, Washington DC
East Bay Refugee and Immigrant Forum
Equal Access Legal Services
Ethiopian Community Development Council, Inc. (ECDC)
Exodus Refugee Immigration, Inc.
Faiths for Safe Water
FAMIL
Fellowship Southwest
Franciscan Action Network
Global Friends of Afghanistan
Gutiérrez Berrios & Co.
Harvard Immigration and Refugee Clinical Program
Hearts & Homes for Refugees
HIAS
Human First Coalition
Human Rights First
Immaculate Heart Community Commission on Justice for Immigrants, Refugees, Indigenous Peoples
Immigrant Allies of Marshalltown
Immigrant and Refugee Outreach Center
Immigrant ARC
Immigrant Legal Advocacy Project
Immigration Equality
International Civil Society Action Network (ICAN)
International Institute of New England
International Refugee Assistance Project (IRAP)
International Rescue Committee
Islamic Relief USA
JAMAAT (Jews and Muslims and Allies Acting Together)
Jesuit Refugee Service/USA
Jewish Family and Community Services of Eastbay
Joint Development Associates International
Journey's End Refugee Services, Inc.
Just Neighbors Ministry
Justice for Our Neighbors El Paso
Justice for Our Neighbors Michigan
Keeping our promise -east bay
Khanbabai Immigration Law
La Raza Community Resource Center
Law Office Of Spojmie Nasiri, PC
Law Offices of Vincent E. Gentile, Esq.
Lutheran Family Services Rocky Mountains
Lutheran Immigration and Refugee Service
Lutheran Social Service
Lutheran Social Services of the National Capital Area (LSSNCA)
Maine Immigrants’ Rights Coalition
Marigold Fund/Gul-i-Maryam '04-'15
Metrowest Legal Services
Middle Eastern Immigrant and Refugee Alliance
Migrant Center for Human Rights
Mina’s List
MPower Change
National Immigration Forum
National Immigration Law Center
National Partnership for New Americans
Network Lobby for Catholic Social Justice
New Mexico Asian Family Center
Nilsen Immigration Law
NorCal Resist
North American Climate, Conservation and Environment (NACCE)
North Suburban Legal Aid Clinic
Northwest Immigrant Rights Project
Oasis Legal Services
Opening Doors, Inc.
Pars Equality Center
Partnership for the Advancement of New Americans (PANA)
Portland Refugee Support Group
Project ANAR
REACT DC, Inc.
Refugee & Immigrant Transitions
Refugee Advocacy Lab
Refugee Congress
Refugee Council USA
Refugee Education & Adventure Challenge (REACH)
Refugee Women's Alliance
Refugees International
Restoration Immigration Legal Aid
San Diego Afghan Connections and cultural center
Sanctuary Committee of Temple Beth Israel
Sensus Fidelium
Sisters of Mercy
SOAR Immigration Legal Services, A Program of Ecumenical Ministries of Oregon
Student Veterans of America
Tahirih Justice Center
Tarjoman Relief
The 5ive Pillars Organization
The Advocates for Human Rights
The Center for Victims of Torture
The Interfaith Center of New York
The Resurrection Project
The Welcome Co-op
Travis Manion Foundation
Truman Center for National Policy
Tulsa Immigrant Resource Network, TU Legal Clinic
U.S. Committee for Refugees and Immigrants
UNITED SIKHS
University YMCA - New American Welcome Center
UnLocal
Upwardly Global
VECINA
Vermont Network Against Domestic and Sexual Violence
Veterans for American Ideals
Volunteer Lawyers Project of CNY, Inc.
West Virginia University Immigration Law Clinic
William J. Collins, Jr., Attorney at Law
Wind of the Spirit Immigrant Resource Center
Women for Afghan Women
World Relief
World Relief - Asylum Clinic
YWCA Tulsa