1. **PRELIMINARY STATEMENT**

XX, a 27 year old native and citizen of Afghanistan, should be granted asylum in the United States because he has endured past persecution in Afghanistan and has a well-founded fear of future persecution on account of his imputed political opinion and because of his membership in a particular social group composed of Afghan interpreters for the International Security Assistance Force. Shortly after Mr. XX began working as an interpreter for the International Security Assistance Force in July 2009, he began receiving death threats from the Taliban, which ultimately culminated in an attack on his family home. That attack was merely a warning of worse to come. Mr. XX now seeks asylum.

1. **STATEMENT OF FACTS**
   1. **The Taliban targets current and former International Security Assistance Force interpreters.**
      1. **The Taliban targets Afghan civilians associated with, or perceived as supporting, foreign military forces.**

With 47,745 civilian casualties in Afghanistan since 2009, the Taliban frequently targets Afghan civilians in local terror attacks. *Taliban’s Atrocious Attacks on Civilians Show Contempt for Human Life*,Amnesty International (May 14, 2015), https://www.amnesty.org/en/articles/news/2015/05/afghanistan-talibans-atrocious-attacks-on-civilians-show-contempt-for-human-life. The United Nations High Commissioner for Refugees (“UNHCR”) identifies “individuals associated with, or perceived as supportive of” the International Security Assistance Force (“ISAF”), the NATO-led security mission in Afghanistan, as “potential risk profiles” for civilian targets of Taliban violence. U.N. High Commissioner for Refugees. *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, at 7, U.N. Doc. HCR/EG/AFG/10/04 (Dec. 17, 2010). The UNCHR found that the Taliban and other anti-Government groups have a “systematic and sustained campaign” against civilians associated with or supportive of the Afghan government or the international community, including ISAF. *Id.* Mullah Omar, the Taliban’s spiritual leader, specifically ordered Taliban members to capture and kill any Afghan supporting or working for coalition forces. *Id.* at 8. Such campaigns range from “intimidation, assassinations, abductions, and stand-off attacks, to the use of improvised-explosive devices (“IEDs”) and suicide attacks.” *Id.* at 7.The Taliban often films beheadings of ISAF supporters to televise them around the world. William McGurn, *Operation Lost in Translation*, Wall St. J., May 22, 2015, http://www.wsj.com/articles/operation-lost-in-translation-1432332763.

After combat began in 2009, ISAF hired thousands of young Afghan men in various capacities to assist solders in fighting Taliban insurgents. *Taliban Kill Two Afghans Working for NATO*, Radio Free Europe/Radio Liberty, Nov. 14, 2012, http://www.rferl.org/content/taliban-kill-two-afghans-working-for-nato/24770949.html. Tasks ranged from driving, translating, serving as security guards, and janitorial work. *Id.* Anti-government forces, including the Taliban, specifically target these civilians who are suspected of collaborating with or “spying for” the Afghan government or foreign military forces. *Id.* For example:

* In 2009, the Taliban threatened to kill 42 civilians in a rural village for their alleged collaboration in an ISAF mission. The Taliban ultimately abducted four people in the area and accused them of spying; two were executed and the other two were severely beaten. U.N. Assistance Mission in Afghanistan, *Annual Report on Protection of Civilians in Armed Conflict, 2009* (Jan. 2010).
* In 2010, the U.N. Assistance Mission in Afghanistan recorded 183 executions and assassinations and 165 incidents of abductions of civilians perceived as supporting of the Afghan Government and the international community. U.N. Assistance Mission in Afghanistan, *MidYear Report 2010, Protection of Civilians in Armed Conflict 2010*, (Aug. 2010).
* In 2013, Taliban gunmen were reported to have shot dead eight Afghan workers on their way to jobs at a U.S. military base. U.N. High Commissioner for Refugees, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, U.N. Doc. HCR/EG/AFG/13/01, at 34 n.96 (Aug. 6, 2013).
* The Taliban is also reported to have amputated a hand and a foot each of two private Afghan security guards employed by the international military forces in Herat. The Taliban also accused an Afghan teenager of spying for foreign forces and cut off his ear as punishment. *Id.* at 34 n.196, 35 n.198.

Just as support of foreign forces results in threats from the Taliban, attempts to retreat from the Taliban also cost these civilians their lives: the Taliban shot and killed an Afghan civilian after he threatened to inform the Afghan government about plans to plant IEDs near his home. U.N. Assistance Mission in Afghanistan, *Mid-Year Report 2012, Protection of Civilians in Armed Conflict*, at 17 (July 2012).

* + 1. **The Taliban also specifically targets Afghan interpreters for foreign militaries.**

Local Afghan interpreters serve directly alongside foreign officers, and often make face to face appearances with captive enemies both in interrogations as well as in combat; thus, interpreters are easily identifiable by Taliban militants and are often the target of the Taliban’s deadly retribution. *Protecting Iraqi and Afghan Military Allies: The Afghan Special Immigrant Visa,* Iraqi Refugee Assistance Project, http://refugeerights.org/wp-content/files/IRAP\_Afghan\_SIV\_Testimonials\_10-24.pdf. In its 2010 Code of Conduct announcing formal strategies and objectives to fighters and supporters, the Taliban included “government workers, contractors, drivers, translators, and others” in its list of targets to kill or capture. U.N. Assistance Mission in Afghanistan, *Mid-Year Report 2011, Protection of Civilians in Armed Conflict* at iv-v (July 2011). Further, in 2014, the Taliban listed “civilian contractors, translators, administrators, logistics personnel, Cabinet ministers, members of Parliament, attorneys and judges” as potential targets. U.N. Assistance Mission in Afghanistan, *MidYear Report 2014, Protection of Civilians in Armed Conflict*, at 24 (July 2014). Specifically, the Taliban called for the “infidel’s translators” to receive the death penalty. U.N. Assistance Mission, *Mid-Year Report 2011*, at v.

Afghan interpreters fear for their lives because of their work for foreign militaries, and the attacks targeted toward unprotected Afghan interpreters are rampant. For example:

* In May 2010, the Taliban claimed the abduction and killing of four Afghan interpreters because of their work with the U.S. military. Roy Norland, *Taliban Say They Killed 4 Afghan Interpreters*, N.Y. Times, May 15, 2010.
* In 2015, an Afghan interpreter was tortured and killed by anti-government insurgents for his work with the U.S. Marines and Air Force. *Afghan Interpreter Murdered by Taliban while waiting for VISA*, Wash. Free Beacon, May 29 2015, http://freebeacon.com/issues/afghan-interpreter-murdered-by-taliban-while-waiting-for-visa/.
* Another interpreter was chased by Taliban insurgents firing AK-47 rounds, who destroyed his vehicle and nearly killed him. Kevin Sieff, *Facing Taliban Threats, Afghan Interpreters Wait for U.S. Visas*, Wash. Post, Oct. 25, 2012, http://www.washingtonpost.com/world/asia\_pacific/facing-taliban-threats-afghan-interpreters-wait-for-us-visas/2012/10/24/5fc531e2-1d48-11e2-8817-41b9a7aaabc7\_story.html.

The Taliban also targets friends, families, and supporters of these interpreters. As the U.N. Secretary General reported, children are abducted for the purposes of intimidation “in cases in which families worked or were perceived to be working for the Government or the international military forces.” U.N. Secretary-General, *Children and the Armed Conflict: Rep. of the Secretary-General*, ¶ 27, U.N. Doc. A/67/845-S/2013/245 (May 15, 2013), http://unispal.un.org/pdfs/A67845.pdf. In addition to direct attacks against interpreters, the Taliban also sends threatening messages, including letters and phone calls, to both interpreters and their families, forcing interpreters’ entire families to go into hiding, or flee and apply for asylum in countries like the United States. Kevin Sieff, *Facing Taliban Threats, Afghan Interpreters Wait for U.S. Visas*, Wash. Post, Oct. 25, 2012, http://www.washingtonpost.com/world/asia\_pacific/facing-taliban-threats-afghan-interpreters-wait-for-us-visas/2012/10/24/5fc531e2-1d48-11e2-8817-41b9a7aaabc7\_story.html. For example:

* The Taliban murdered the father and abducted the toddler brother of an interpreter because of his work for the U.S. Marines. Deanne Fitzmaurice, *Left Behind: Afghan translator dodges Taliban on long road to America*, NBC News, Jan. 23, 2014, http://usnews.nbcnews.com/\_news/2014/01/23/22398694-left-behind-afghan-translator-dodges-taliban-on-long-road-to-america?lite.
* Another interpreter says his father received threatening phone calls, and his roommate, another interpreter for the U.S. military, was kidnapped and beheaded. Serene Fang, Resettled in the US, Afghan interpreters plead for help, Al Jazeera America, May 13, 2015, http://america.aljazeera.com/watch/shows/america-tonight/articles/2015/5/13/us-afghan-translators.html.
* The Taliban called another interpreter to say, “we warned you,” after kidnapping his cousin. Kevin Sieff, Facing Taliban Threats, Afghan Interpreters Wait for U.S. Visas, Wash. Post, Oct. 25, 2012, http://www.washingtonpost.com/world/asia\_pacific/facing-taliban-threats-afghan-interpreters-wait-for-us-visas/2012/10/24/5fc531e2-1d48-11e2-8817-41b9a7aaabc7\_story.html.

* Another interpreter’s father received a call from the Taliban to say, “If your son doesn’t stop working with coalition forces, we’re going to remove his head from his body and burn your house.” *Id.*

The withdrawal of international military forces from Afghanistan in 2014 provided the Taliban with more opportunities to launch ground operations, often targeting the Afghan government. U.N. Assistance Mission in Afghanistan, *Annual Report 2014, Protection of Civilians in Armed Conflict*, at 11 (Feb. 2015). Therefore, Afghan security forces now focus their limited resources on preventing these anti-government attacks, and are unable to protect civilians effectively. *Id.* As a result of the intensifying ground attacks, Taliban violence against Afghan civilians rose 8% in the first three months of 2015. *Clashes with Taliban Take Growing Toll on Afghan Civilians in 2015*, Reuters (Apr. 12, 2015 9:50 a.m.)*.* In 2014 alone there were 3,699 recorded civilian deaths, marking the highest amount of civilian deaths in a single year since the conflict began. U.N. Assistance Mission, *Annual Report 2014*, at 1*.* Interpreters targeted by the Taliban thus have little help from the Afghan government: One interpreter says that no civilians believe that the Afghan police or army will be able to protect them from the Taliban since “they can’t even protect themselves.” Jonathan Beale, *Is the UK abandoning its Afghan interpreters?*, BBC News, Feb. 11, 2013, http://www.bbc.com/news/world-asia-21406826. Now, especially without the protection of the international troops that employed these Afghan civilians, interpreters are left to defend themselves and their families from the Taliban’s violent threats and attacks. *Id.*

* 1. **Mr. XX has suffered past persecution and faces future persecution by the Taliban because of his work as an interpreter for the International Security Assistance Force.**

XX was born on DATE in Herat City, Afghanistan. XX Aff. ¶ 3. He grew up in a village called Ghabulderaz Village on the outskirts of Herat City. *Id.* ¶ 4. As a young teenager, Mr. XX became interested in learning English. *Id.* ¶ 5. During high school he studied English in earnest, earning a certificate from the International Informatics Academy. *Id.* ¶ 4. After graduating from high school, Mr. XX worked in his father’s shop, fixing appliances, but he soon learned of an opportunity to work for Mission Essential Personnel (“MEP”) as an English interpreter for foreign military forces in Afghanistan. *Id.* ¶¶ 6–7. MEP was hiring interpreters, and the job would allow Mr. XX to earn a generous salary and continue to improve his English. *Id.*

The job was very compelling, not only for these reasons, but also because Mr. XX had always been interested in different cultures and knew that working as an interpreter with a company like MEP would give him the chance to meet people from all around the world. *Id.* ¶ 6.In the spring of 2009, Mr. XX applied for a position with MEP. *Id.* ¶ 8. The application process was followed by a long wait, but, on DATE, Mr. XX began working for MEP as a full-time interpreter for NATO/ISAF foreign military units. *Id.*

Within only a few months of beginning work, however, Mr. XX started receiving threatening calls on his cell phone. *Id.* ¶ 10. The callers knew Mr. XX’s name and told him that they knew he was working as an interpreter for the United States military and that working as a Muslim with non-Muslim people was against Islamic religion and rules. *Id.* ¶¶ 10–11. In other calls, Mr. XX was told he would be punished for his work and was threatened with death as a punishment in this world and hell as punishment in the afterlife. *Id.* ¶ 10.

Although the callers never identified themselves, Mr. XX knew they were affiliated with the Taliban because of the way the callers spoke to him on the phone. *Id.* ¶ 12. Their tone was hostile and their words were characterized by aggressive admonishment. *Id.* The callers talked about “fixing” Mr. XX and urged him to accept their “advice.” *Id.* Mr. XX had heard stories from neighbors and friends and stories on the news about the Taliban threatening civilians who worked with foreign militaries and knew that these threats, coupled with religious rebuke, was a trademark of the Taliban. *Id.* He also knew that the threats—including beheading—were carried out. *Id.*

Mr. XX tried to tell the Taliban callers that they had the wrong person; he tried ignoring his phone altogether; but the calls would not stop. *Id.* ¶¶ 10–13. Mr. XX received calls at all hours of the afternoon, evening, and night. *Id.* ¶ 11. On any given day, he could expect up to four or five threatening calls. *Id.* Then, a week would go by with no calls at all. *Id.* But they always started up again. *Id.*

Mr. XX eventually changed his phone number. *Id.* ¶ 14. But within approximately ten days the Taliban found his new number, and the threats began again. *Id.* ¶ 15. All in all, Mr. XX changed his number approximately five or six times. *Id.* ¶ 14. But each time, the Taliban was able to find him again. *Id.* ¶¶ 14–15.

Eventually, Mr. XX stopped answering his cell phone, and at that point, Taliban members began calling his parents at Mr. XX’s family home. *Id.* ¶ 17. They accused Mr. XX of being a spy for the United States government. *Id.* ¶ 19. They threatened to execute and behead him if he continued working as an interpreter. *Id.* They threated everyone in Mr. XX’s family. *Id.*

During this time, Mr. XX continued to work with MEP, completing rotations and then returning to Herat City for a time before being deployed again. *Id.* ¶¶ 9, 16, 21–23. At first, he had hoped the phone calls would stop on their own, but he came to believe that the threats would never stop. *Id.* ¶ 18. As the threats continued, he began to worry more and more for his parents’ and his siblings’ safety. *Id.* While he was deployed, he lived on a military base, and so he felt protected, but he knew the Taliban could easily get to his parents, his brothers, and his sister. *Id.*

Mr. XX suffered these calls without any sense that the authorities could help. *Id.* ¶ 20. He saw no point in reporting the calls to the police because he knew the police could not offer any protection. *Id.* Likewise, he did not tell his supervisors in the military or his co-workers or supervisors at MEP because there was nothing they could do to stop the threats. *Id.*

His last complete deployment was to the Farah province. *Id.* ¶¶ 21–23. Usually rotations last approximately six months, but Mr. XX volunteered to remain in Farah beyond his normal rotation because he was afraid to go back home. *Id.* ¶ 21. He knew that back home in Herat City, he would have to live off of the military base, and he was worried that he would be harmed if he left the base. *Id.*  He also believed that the closer he was to his family, the more he put them at risk. *Id.* ¶ 20.

Mr. XX worked in Farah as an interpreter until April 2011. *Id.* ¶ 22. While he was in Farah, a threatening letter from the Taliban appeared on his family’s doorstep. *Id.* He briefly returned to Herat before taking another assignment, but in May 2011, he decided that his job as an interpreter was too dangerous for his family and for him, so he decided to resign. *Id.* ¶ 23.Mr. XX’s father agreed with him; he told his son to stop before he got himself or anyone in his family killed. *Id.* Mr. XX officially resigned on July 31, 2011, and moved back to his parents’ home Ghabulderaz Village. *Id.*

But the threats did not stop. *Id.* ¶ 24. Every week, he received calls from unknown numbers telling him or his family that he would be killed because of his work with the foreign military. *Id.* Because of the threatening calls, Mr. XX’s father only let Mr. XX leave the house at night, and his contact with people was limited to close relatives and friends. *Id.* In September 2011, he went to India for an English course. *Id.* ¶ 25. However, when his three-month, temporary visa expired, Mr. XX returned to his parents’ home and retreated back into hiding. *Id.*

Then, on October 15, 2012, around 11:00 p.m., while Mr. XX was at home with his family, the house was bombed. *Id.* ¶ 26. Two explosions sent the family into hiding. *Id.* After about an hour, Mr. XX went outside with his father. *Id.* They found an indention in the yard that looked as though it had been caused by a hand grenade. *Id.* The grenade had shattered the windows and caused significant damage to the interior of the house. *Id.* Thankfully, no one was hurt. *Id.* The next morning, Mr. XX received a phone call. *Id.* The man on the other line said, “Last night was the last warning for you. We know you are a spy for the United States, and we will take the last second of your life soon.” *Id.*

That same morning, Mr. XX and his father went to the National Department Security (“NDS”), which is in charge of security in the area, to report the attack. *Id.* ¶ 27; Ex. \_\_, NDS Report. The NDS provided no help or support. XX Aff. ¶ 27. Instead, Mr. XX and his father were told that they should move from their life-long home in Ghabulderaz Village to the center of Herat City. *Id.* Although there were no assurances of safety in Herat City, the NDS stated that the police response time to another attack would be quicker in the city. *Id.*

So the family moved. *Id.* ¶ 28. But it took two months to find a new home—two months in which Mr. XX and his family lived in constant terror. *Id.* In those two months, Mr. XX and his mother never left the house, and his father escorted his younger siblings to and from school every day. *Id.* Finally, on December 12, 2012, the family was able to find a house for rent in Herat City. *Id.* They moved immediately. *Id.*

But even in Herat City, Mr. XX felt he was in danger and felt guilty for putting his family at risk. *Id.* ¶¶ 29–30. And the threatening calls continued. *Id.* ¶ 29. In an attempt to curb the threats, Mr. XX’s parents lied to friends and family, telling them that Mr. XX had left Afghanistan and was studying in India. *Id.* ¶ 31. But the family continued to receive calls at the house. *Id.* Mr. XX’s fear that the Taliban would kill him and hurt his family kept growing. *Id.*

During this time, Mr. XX did not leave the house. *Id.* ¶ 29. His life was confined to the basement of the house, where he and his family hoped no one would see him. *Id.* As he remained there, day in and day out, he began to sink into depression. *Id.* ¶ 30. He spent much of his time on the internet, dreaming of a day when he could come out of hiding, work at a good job, and continue utilizing his English skills. *Id.* ¶ 32. During those endless days sequestered in the basement, Mr. XX began developing an interest in computer programming. *Id.* The more he researched, the more he became convinced that it would be an interesting, lucrative field—and one that would not be a death sentence. *Id.* But he knew that Afghanistan was not a place where he could get a quality education. *Id.* ¶ 33. So he began researching programs, focusing on the United States, where he could use his English and where he knew he would receive a quality education. *Id.*

Finally, Mr. XX identified a program at North American University, a school just outside of Houston, Texas. *Id.* ¶ 33. Mr. XX qualified for the university’s computer science program, and the tuition—with the scholarship he received—was affordable. *Id.*  After being admitted, Mr. XX applied for his student visa. *Id.* ¶¶ 33–34. During this time, on DATE, the United States Consulate in Herat City was attacked. *Id.* ¶ 33. One of Mr. XX’s childhood friends and classmates, who was also working as an interpreter, was killed in the attack. *Id.* This event only increased his fear while waiting. *Id.*

On DATE, Mr. XX began his journey to Texas. *Id.* ¶ 35. His parents escorted him in secret to the Herat City airport. *Id.* Mr. XX made it safely from there to the airport in New Delhi, India, but in New Delhi he learned that his luggage had not been loaded onto the plane in Afghanistan. *Id.* ¶ 36. Mr. XX continued his journey without his luggage. *Id.* On Tuesday, October 8, 2013, he flew from New Delhi to the Charles De Gaulle International Airport in Paris, France, and then to the George Bush Intercontinental Airport in Houston, Texas. Ex. \_\_, Flight Itinerary.

When he arrived in Houston, his luggage was still missing. *Id.* ¶ 37. For the next two months, Mr. XX called the airline about his luggage, but he stopped all contact with the airline after his father told him that an unknown man had called, saying, “We took [Mr.XX]’s luggage from the airport to stop him from leaving.” *Id.*

After arriving in Houston and starting school, Mr. XX met several men who were also former Afghan interpreters with foreign militaries and who had received permanent status in the United States. *Id.* ¶ 38. They told him that he might be eligible for a permanent status based on his work with ISAF. *Id.* The former interpreters also informed him that the Canadian immigration system processed applications more quickly than the United States. *Id.* So, on DATE, Mr. XX walked across the U.S.-Canada border to present himself to the Canadian immigration officials. *Id.* He remained in Canada for approximately six hours and was told eventually that his arrival and duration of stay in the United States made him ineligible for asylum in Canada. *Id.* Canadian officials then escorted Mr. XX across the border back to the United States. *Id.* However, since returning from Canada, Mr. XX has been actively pursuing permanent status in the United States. *Id.* ¶ 39.

Since arriving in the United States, Mr. XX has been enrolled full-time at North American University in Houston, Texas. *Id.* ¶ 41. He studies computer science, and expects to graduate in October of 2018. *Id.*

1. **ARGUMENT**

To demonstrate eligibility for asylum, an applicant must establish that he is a “refugee.” *See* C.F.R. § 1208.13. A refugee is any person outside of his country of nationality who is unable or unwilling to return to his home 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.” 8 U.S.C. § 1101(a)(42)(A); *INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992).

* 1. **Mr. XX should be granted asylum because he has suffered past persecution by the Taliban on account of his imputed political opinion and his membership in a particular social group—Afghan interpreters for ISAF—and the Afghan government has been unable and unwilling to protect Mr. XX from such persecution.**

To establish eligibility for asylum based on past persecution, an applicant must demonstrate that he suffered persecution on account of a protected ground at the hands of the “government or forces that a government is unable or unwilling to control.” *Tesfamichael v. Gonzales*, 469 F.3d 109, 113 (5th Cir. 2006).

Persecution is the “infliction or suffering of harm, under government sanction, upon persons who differ in a way regarded as offensive (e.g., race, religion, political opinion, etc.), in a manner condemned by civilized governments.” *Chen v. Gonzales*, 470 F.3d 1131, 1135 (5th Cir. 2006). Such “harm or suffering need not be physical, but may take other forms, such as the deliberate imposition of severe economic disadvantage, or the deprivation of liberty, food, housing, employment, or other essentials of life.” *Id.* Threats to life or freedom are uniformly found to be persecution. *See Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985). The applicant need only establish a reasonable possibility of persecution. *See* INA § 208(b)(1)(A); *Zhao v. Gonzales*, 404 F.3d 295, 307 (5th Cir. 2005).

Mr. XX was continually harassed and threatened by members of the Taliban, who told him that his “work [in support of ISAF] would cause [him] death as a punishment in this world and that [he] would go to hell after [he] died.” XX Aff. ¶ 10. The Taliban also contacted Mr. XX’s family, warning them that every member of his family would be beheaded because of Mr. XX’s occupation as an interpreter for ISAF. *Id.* ¶¶ 17, 19. Mr. XX believed these threats to be credible given the Taliban was notorious for capturing, torturing, and killing Afghans who were employed by international military forces such as ISAF. *Id.* ¶ 12; *see also* Part II.A. *supra*; IRAP Aff. ¶¶  7, 12, 17. Even after Mr. XX had quit his work with ISAF because of his fear for his own and his family’s safety, the threats did not cease. *Id.* ¶ 24. The Taliban followed through on its threats—throwing grenades into the front yard of Mr. XX’s family home late one night. *Id.* ¶ 26. Although the Taliban’s actions terrified Mr. XX, they came as no surprise. Mr. XX worried constantly because he was well aware that the families of interpreters—even children as young as Mr. XX’s own siblings—were not immune from the Taliban’s terror. The bombing confirmed Mr. XX’s fears. The next morning, the Taliban called, threatening: “Last night was the last warning for you. We know you are a spy for the United States, and we will take the last second of your life soon.” *Id.* Even after Mr. XX’s family moved, the threats continued. *Id.* ¶¶ 28–29.

The Taliban’s persecution of Mr. XX went beyond the harassment and threats that he endured through phone calls and a letter; these threats took a severe psychological toll as well. Mr. XX became consumed by the guilt he felt for putting his family at risk. *Id.* ¶¶ 30–31. Out of fear for his life, he never left his house. *Id.* ¶ 29. For monthsMr. XX was confined to the basement with no physical contact with the world outside his home. *Id.* Day after day Mr. XX remained in constant fear for his life and for the lives of his family. He had nothing but time to think about the terror that had been visited upon his family as a result of his choice to work with ISAF and he became extremely depressed. *Id.*

**i. Mr. XX was persecuted on account of his imputed political opinion**.

This past persecution was based on Mr. XX’s imputed political opinion. An applicant may establish past persecution on account of an imputed protected ground, such as a political opinion imputed to him by his persecutors, whether or not he actually holds that opinion. *See, e.g.*, *Gao v. Gonzales*, 424 F.3d 122, 129 (2d Cir. 2005); *Al-*[*Harbi v. INS*, 242 F.3d 882, 888 (9th Cir. 2001)](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2001195587&pubNum=506&originatingDoc=I6f7ea1ad214911da8cc9b4c14e983401&refType=RP&fi=co_pp_sp_506_888&originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_sp_506_888); *Najjar v. Ashcroft*, 257 F.3d 1262, 1289 (11th Cir. 2001); *Morales v. INS*, 208 F.3d 323, 331 (1st Cir. 2000); *In Matter of S-P-*, 21 I&N Dec. 486, 494 (BIA 1996). Mr. XX was undoubtedly persecuted because his persecutors believed that he supported ISAF. *See* XX Aff. ¶¶ 10–11.

The threats to and attack on Mr. XX’s life and physical safety were explicitly based on his imputed political opinion. The Taliban constantly referred to Mr. XX as a “spy” for the United States government. *Id*. ¶ 19. By insisting that Mr. XX’s employment with ISAF aligned him politically with the perceived political objectives of the U.S. government in Afghanistan, the Taliban distorted Mr. XX’s position of employment with a political opinion. A member of the Taliban, in the first threat Mr. XX received, informed Mr. XX that he knew Mr. XX was working as an interpreter for the U.S. Military—which was against Islamic religion and rules. *Id*. ¶ 10. He was later told that his work with the ISAF would result in his death. *Id.* Even when Mr. XX denied working for the U.S. government, *id.* ¶¶ 10–11, the Taliban continued to accuse him of being a spy for the U.S. government because of his work with ISAF, *id.* ¶ 19.

**ii. Mr. XX was persecuted on account of his membership in a particular social group.**

Mr. XX has also suffered persecution based on membership in a particular social group—Afghan interpreters for ISAF. “An applicant for asylum…seeking relief based on ‘membership in a particular social group’ must establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.” *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014). A characteristic is immutable if it is either beyond the power of the individual to change, or so fundamental to his identity that he should not be required to change. *Acosta*, 19 I&N Dec. at 233–34*.* In order to meet the particularity requirement, a group must be sufficiently distinct that it would constitute a discrete class of persons. *Matter of W-G-R-*,26 I&N Dec. 208, 210 (BIA 2014) (citing *Matter of S-E-G-*, 24 I&N Dec. at 584). Finally, to be socially distinct, “a group need not be *seen* by society; it must instead be *perceived* as a group by society.” *Matter of W-G-R-*, 26 I&N Dec. at 216 (emphasis in original). That is, certain persons can be considered by society as a group even though the members of that group cannot be identified by sight. *Id.* at 217.[[1]](#footnote-1) Mr. XX’s membership in the social group of Afghan interpreters who work or have worked for ISAF satisfies this test.

The unifying characteristic shared by Afghan interpreters is former employment with ISAF—a NATO-led security mission in Afghanistan. This characteristic is unquestionably immutable. Because of their work, the interpreters will forever be associated with ISAF. Merely ceasing work with ISAF is not enough to relieve ISAF interpreters from the terroristic threats and actions of the Taliban. Even after interpreters have stopped working with ISAF, they are still targeted by the Taliban. IRAP Aff. ¶ 12–16. Mr. XX suffered continued persecution for almost two and a half years after he relinquished his position with ISAF. *See* XX Aff. ¶¶ 23, 26, 29–31. Further, “cooperating” with the Taliban is not an possibility for these interpreters given that the Taliban’s objective is to murder and torture interpreters—whether or not they are currently employed in that capacity. *See* U.N. Assistance Mission, *Mid-Year Report 2011*, at v. (noting that the Taliban has called for the death of interpreters). Because the Taliban persecutes Afghan interpreters for ISAF—irrespective of when they worked for ISAF—their membership in the group of Afghan interpreters for ISAF is an immutable characteristic. *See Matter of Fuentes*, 191 I&N Dec. 658, 662 (BIA 1988), *superseded by statute on other grounds, as stated in Falcon Carriche v. Ashcroft*, 350 F.3d 845, 854 n.9 (9th Cir. 2003) (holding that being a *former* member of the police was a part of the respondent’s past and was thus an “immutable characteristic, as it [was] one beyond the capacity of the respondent to change”).

Moreover, Afghan interpreters are socially distinct. The very nature of their work makes Afghan interpreters for ISAF readily identifiable. Afghan workers have been attacked as part of a “systematic and sustained campaign” against individuals associated with the international community on their way to jobs at international military bases. Interpreters often work out in the public, accompanying forces on missions and helping international forces communicate with locals. IRAP Aff. ¶ 9. They also can be identified when carrying employment badges off base. *Id.* ¶ 10. Even absent any visible indicia of affiliation with a foreign military, relatives might simply guess about the individual’s work after long absences while the interpreter was on mission or on base (much like Mr. XX was during various deployments from 2009 through 2011) or after hearing the interpreter speak English. *Id.*

**iii. The Afghan government is unwilling and unable to protect Mr. XX from persecution by the Taliban.**

To be eligible for asylum, the applicant must also demonstrate that the government either caused the persecution, or that the government was unable or unwilling to protect the applicant. *Tesfamichael*, 469 F.3d at 113. “[P]rivate acts may be persecution if the government has proved unwilling to control such actions.” *Gjicali v. Mukasey*, 260 Fed. App’x 360, 362 (2d Cir. 2008) (citing *Ivanishvili v. U.S. Dep’t of Justice*, 433 F.3d 332, 342 (2d Cir. 2006)). It is not necessary for the persecuting person or group to be affiliated with the government in any way. *Matter of O-Z- & I-Z*, 22 I&N Dec. 23 (BIA 1998) (persecution by individuals); *see also Matter of Fauziya Kasinga*, 21 I&N Dec. 357 (BIA 1996) (persecution by individual clan members); *Singh v. INS*, 94 F.3d 1353 (9th Cir. 1996). “[P]ersecution can certainly be found when the government, although not in and of itself conducting the persecution, but is unable or unwilling to control it.” *Kritsun v. Mukasey*, 276 Fed. App’x 20, 21 (2d Cir. 2008) (quoting *Rizal v. Gonzales*, 442 F.3d 84, 92 (2d Cir. 2006)); *see also* *Ivanishvili*, 433 F.3d at 342 (explaining that “physical abuse and violence at the hands of . . . private actors who behave with impunity in the face of government reluctance to intervene” is evidence of persecution).

The Afghan government was and still remains wholly unable to control the Taliban or protect former ISAF interpreters from persecution. “Even in parts of Afghanistan deep within government control, the Taliban is capable of issuing threats and carrying out attacks against those they view as infidels, which includes government officials and former interpreters.” IRAP Aff. ¶ 17. The police force in Afghanistan is powerless to protect citizens like Mr. XX. Even in the face of repeated threats against his life and the lives of his loved ones, Mr. XX did not go to the police because he believed that they could not do anything to help him. XX Aff. ¶ 20. His belief was confirmed when—in desperation—Mr. XX and his father went to the local police department after his family home was bombed with Mr. XX and his family inside. *Id.* ¶ 27. Rather than offering protection, the police merely advised him to move closer to the city, where hopefully attacks would be less likely. *Id.* However, even after moving to the city, the threats continued. *Id.* ¶ 29. The Taliban made it clear that it knew Mr. XX’s location, *see* *id.* ¶ 31, and even attempted to stop Mr. XX from leaving Afghanistan, *id.* ¶¶ 36–37. Mr. XX could not rely on the police or any other government service for protection from the Taliban. The Afghan government failed Mr. XX, showing itself unwilling or unable to prevent the Taliban’s persecution. Indeed, the Taliban’s resurgence throughout Afghanistan means that no part of Afghanistan is safe for former employees of ISAF. IRAP Aff. ¶¶ 16–20.

* 1. **Additionally, Mr. XX is eligible for asylum because he possesses a well-founded fear of future persecution on account of his membership in the social group comprising Afghan interpreters for ISAF and his imputed political opinion.**

“To establish a well-founded fear of future persecution, an [applicant] must demonstrate a subjective fear of persecution, and that fear must be objectively reasonable.” *Zhao*, 404 F.3d at 307 (internal quotation marks and citation omitted). Establishing past persecution gives rise to a presumption of a well-founded fear of future persecution and shifts the burden to the government to rebut that presumption by a preponderance of the evidence. 8 C.F.R. § 1208.13(b)(1).

* + 1. **The future persecution of Mr. XX is presumed as a matter of law based on his past persecution.**

Mr. XX fears additional persecution if forced to return to Afghanistan. XX Aff. ¶¶ 40, 42. An applicant for asylum found to have suffered past persecution is presumed to have a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). Mr. XX has established past persecution for the reasons detailed above.

The presumption of a well-founded fear of future persecution can be overcome only if the U.S. Department of Homeland Security can demonstrate that “[t]here has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant’s country of nationality.” 8 C.F.R. § 208.13(b)(1)(i)(A). The Department cannot do so in this case. The circumstances of Mr. XX’s case have not improved. Deadly attacks on ISAF interpreters continue. *See* IRAP Aff. ¶¶ 7, 12, 17. Indeed, because of the inescapable violence, the United States has admitted over 5,000 former Afghan interpreters under Special Immigrant Visas. *See* Andorra Bruno, Congressional Research Service, Iraqi and Afghan Special Immigrant Visa Programs (Jan. 20, 2015).

Nor can the government establish that Mr. XX “could avoid future persecution by relocating to another part of” Afghanistan or that “under all the circumstances, it would be reasonable to expect [him] to do so.” 8 C.F.R. § 208.13(b)(1)(i)(B). In determining whether relocation would be “reasonable,” adjudicators are to consider, *inter alia*, “whether the applicant would face other serious harm in the place of suggested relocation” and “social and cultural constraints, such as age, gender, health, social, and familial ties.” 8 C.F.R. § 1208.13(b).

Under all these metrics, any argument for relocation fails. Mr. XX would face the same harm that caused him to flee if forced to return and relocate within the small country of Afghanistan. The Taliban has a vast reach within Afghanistan, IRAP Aff. ¶ 16­–20, which Mr. XX himself witnessed, XX Aff. ¶¶ 15, 17, 25, 29, 37. Indeed, it was through this network that the Taliban learned of Mr. XX’s plans to flee the country—and tried to stop him. *Id.* ¶¶ 35–37.

Moreover, Mr. XX has strong family ties in Herat City. Apart from his time with ISAF, Mr. XX has always lived with his family. *Id.* ¶ 3. Mr. XX’s father owns a shop in Herat City and is therefore unable to relocate without an extreme burden. *Id.* Taken together, these factors show clearly that internal relocation is not a viable option for Mr. XX. He cannot safely return to Afghanistan and should be granted asylum.

* + 1. **Even without a presumption, Mr. XX has established a well-founded fear of future persecution.**

When an applicant has not been subjected to past persecution, he may demonstrate a well-founded fear of future persecution by establishing that he subjectively fears persecution and that the fear is objectively reasonable. *See Cardoza-Fonseca*, 480 U.S. at 438–39. Where there is a pattern or practice of persecution of a group of similarly situated persons to which an applicant belongs, the applicant need not show that he would be individually singled out for persecution. 8 C.F.R. § 120813(b)(2)(iii).

Such a pattern of persecution against former ISAF interpreters is clearly present in Afghanistan. The evidence of widespread, violent persecution against current and former interprets, unbridled by the Afghan government, is well-documented and has been recognized by the United States Government. *See generally* *supra* Part II.A; *see also, e.g.*, IRAP Aff. ¶ 13; House Report 113-108 § 1218. The steady withdrawal of international forces from Afghanistan has only exacerbated the lack of safety for current and former interpreters because the withdrawal has left Afghan security forces with even fewer resources to protect ISAF interpreters and other targets of the Taliban. U.N. Assistance Mission, *Annual Report 2014*, at 1.

Apart from the widespread pattern and practice of persecution against ISAF interpreters, Mr. XX has established a well-founded fear of persecution. Mr. XX very clearly and visibly worked as an interpreter for ISAF. This visibility prompted continual threats on Mr. XX’s life by a group known to have caused the barbaric death of other interpreters for foreign militaries. *See, e.g.*, XX Aff. ¶ 12; IRAP Aff. ¶¶ 3, 7, 12–15; William McGurn, *Operation Lost in Translation*, Wall St. J., May 22, 2015, http://www.wsj.com/articles/operation-lost-in-translation-1432332763. Given his experiences and the robustly documented evidence of persecution of interpreters for foreign militaries in Afghanistan, Mr. XX has demonstrated a well-founded, objectively reasonable fear that he, specifically, would be at risk of persecution.

* 1. **Mr. XX is eligible for asylum because his application is neither time-barred nor subject to any statutory grounds for denial.**

**i. Mr. XX’s application is not time-barred.**

Generally, asylum applicants must file their applications within one year of their arrival in the United States. 8 U.S.C. § 1158(a)(2)(B). However, the one-year time limit does not apply when an applicant demonstrates extraordinary circumstances explaining the delay in filing his application. 8 U.S.C. § 1158(a)(2)(D); 8 C.F.R. § 208.4(a)(5). Maintenance of lawful status is one such extraordinary circumstance. 8 C.F.R. § 208.4(a)(5)(iv). An applicant who has maintained lawful status need only show that the delay in filing was reasonable. 8 C.F.R. § 208.4(a)(5) (“[Extraordinary] circumstances may excuse the failure to file within the 1-year period as long as the alien filed the application within a reasonable period given those circumstances.”). Moreover, the period for determining reasonableness of delay is triggered *after* the expiration or termination of legal status—not while status is valid. *See* Asylum Procedures, 65 FR 76121-01, 76123(“[T]he Department expects an asylum-seeker to apply as soon as possible after expiration of his or her valid status.”); *see also Uluiviti v. Holder*, 509 Fed. App’x 629, 631 (9th Cir. 2013) (denying petitioner relief because she “did not file her asylum application within a reasonable time *of the expiration* *of her lawful status*” (emphasis added)); *Dhital v. Mukasey,* 532 F.3d 1044, 1049 (9th Cir. 2008) (determining that the petitioner’s application was not timely filed where the application was filed 22 months *after applicant’s lawful status terminated*) (emphasis added)).

Mr. XX came to and remains in the United States pursuant to a valid F-1 student visa. His visa became effective in October 2013, is valid until October 2018, and has not been terminated. Because Mr. XX has maintained and continues to maintain lawful status, his asylum application is excepted from the one-year bar. 8 C.F.R. § 208.4(a)(5). Moreover, because he is still in valid status, Mr. XX has not unreasonably delayed in filing his application. *Cf.* *Rebenko v. Holder*, 693 F.3d 87, 89 n.2 (1st Cir. 2012) (noting that the government conceded extraordinary circumstances where applicant applied for asylum three years after entry but almost two years before the expiration of her legal status). Thus, Mr. XX’s application is not barred by the one-year deadline.

**ii. Mr. XX’s application is not subject to any statutory grounds for denial.**

Mr. XX has never persecuted others, has never been convicted of a crime, and is not a danger to the security of the United States. He has never firmly resettled in another country prior to arriving in the United States. *See* *generally* XX Aff. ¶¶ 25 and 38–41. His application is not barred by any grounds for mandatory denial. Mr. XX has not committed any crime outside or inside the United States. He is a victim, not a perpetrator, of persecution. Moreover, as demonstrated, internal relocation is impossible because of the vast reach of the Taliban—which Mr. XX has experienced firsthand. *Id.* ¶¶ 15, 17, 26, 29, 37.

* 1. **Discretionaryfactors counsel in favor of granting Mr. XX asylum.**

Other considerations weigh in favor of granting Mr. XX asylum. Although an asylum applicant has the burden of establishing that a favorable exercise of discretion is warranted, absent any adverse factors “asylum should be granted in the exercise of discretion.” *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987). The extent of Mr. XX’s past persecution and risk of future persecution, because of his work with ISAF, warrants a favorable exercise of discretion. Mr. XX was subjected to a vicious attack because of his imputed political opinion and was told that the attack was a last warning—that the “last second of [his] life [would be taken] soon.” XX Aff. ¶ 26. Mr. XX has suffered because of his dedicated work with the NATO-led mission to provide for a more stable, democratic Afghanistan. Moreover, there are no adverse factors weighing against Mr. XX’s application. Thus, Mr. XX should be granted asylum in the exercise of discretion.

1. **CONCLUSION**

For the foregoing reasons, Mr. XX’s application for asylum should be granted.

1. As recently as 2012, the Fifth Circuit has used “social visibility” to refer to the third prong of the analysis for membership in a particular group. *See Orellana-Monson v. Holder*, 685 F.3d 511, 519, 521–22 (5th Cir. 2012). Subsequently, however, the Board of Immigration Appeals has clarified that social visibility does not require ocular visibility, and, to avoid confusion, has renamed the “social visibility” requirement as “social distinction” in order to include identifying characteristics that are not necessarily visible. *Matter of W-G-R-*, 26 I&N Dec. at 216 and *Matter of M-E-V-G-*, 26 I&N Dec. at 240. [↑](#footnote-ref-1)