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November 30, 2020

VIA E-MAIL [HOUSTON.ASYLUM@USCIS.DHS.GOV]

USCIS Texas Service Processing Center Attn: Asylum

P.O. Box 851892 Mesquite, Texas 851892

*Re: First Amended Letter Brief in Support of Applicant’s Application for Asylum (A208-769-779)*

Dear USCIS:

We are pro bono counsel for Mr. H and respectfully submit this letter brief in support of his affirmative application for asylum in the United States. Also attached please find the indexed background and country conditions exhibits, with table of contents.

Mr. H, a 31-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 actual and imputed political opinion and because of his membership in a particular social group composed of Afghan civilians who are associated with, or who are perceived to be supporting the international community in Afghanistan.

Shortly after Mr. H began serving as a translator/interpreter for the International Security Assistance Force in July 2009, he began receiving death threats from the Taliban, which ultimately culminated in the bombing of his family home in 2012. That attack was merely a warning of worse to come. Mr. H now seeks asylum and protection under U.S. law and respectfully shows as follows.

1. **STATEMENT OF FACTS**
2. **The Taliban targets Afghan civilians who are associated with, or who are perceived to be supporting the international community in Afghanistan, including current and former International Security Assistance Force interpreters.**
	1. **The Taliban targets Afghan civilians associated with, or perceived as supporting, foreign actors.**

With 100,000 civilian casualties in Afghanistan in the past decade, the Taliban frequently targets Afghan civilians in local terror attacks.1 The situation was dire when Mr. H left Afghanistan in 2013, and it shows no signs of improvement: In 2019, the United Nations documented 4,904 civilian casualties resulting from attacks by the Taliban, a 21 percent increase compared to 2018.2

The United Nations High Commissioner for Refugees (“UNHCR”) identifies “civilians who are associated with, or who are perceived to be supporting…the international community in Afghanistan, including the international military forces and international humanitarian and development actors” as “risk profiles” that are systemically targeted by the Taliban and other anti- Government groups.3 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.4 In the past, Mullah Omar, the Taliban’s former, now-deceased spiritual leader, specifically ordered Taliban members to capture and kill any Afghan supporting or working for coalition forces.5 That ethos remains, and such campaigns have ranged from “intimidation, assassinations, abductions, and stand-off attacks, to

1 Ex. 33, Philip Walter Wellman, *100,000 Civilians Killed or Injured in Afghanistan in 10 Years, UN Says*, MILITARY.COM, Feb. 23, 2020, https://[www.military.com/daily-news/2020/02/23/100000-civilians-killed-or-injured-](http://www.military.com/daily-news/2020/02/23/100000-civilians-killed-or-injured-) afghanistan-10-years-un-says.html; Ex. 34, *Civilian Deaths from Afghan Conflict in 2018 at Highest Recorded Level*

*– UN Report*, U.N. ASSISTANCE MISSION IN AFGHANISTAN, Feb. 24, 2019, https://unama.unmissions.org/civilian- deaths-afghan-conflict-2018-highest-recorded-level-%E2%80%93-un-report; Ex. 35, Kathy Gannon and Rahim Faiez*, Civilian casualties by Taliban, Afghan forces rising*, AP NEWS (May 19, 2020), https://apnews.com/72f2f076abd017c1b58050535d5cedbd; Ex. 46, *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-](http://www.amnesty.org/en/articles/news/2015/05/afghanistan-talibans-atrocious-attacks-on-civilians-show-) contempt-for-human-life.

2 Ex. 36, *Afghanistan Annual Report on Protection of Civilians in Armed Conflict, 2019*, U.N. ASSISTANCE MISSION IN AFGHANISTAN, Feb. 22, 2020, at 34.

3 Ex. 52, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, U.N. HIGH COMMISSIONER FOR REFUGEES (UNHCR), Aug. 30, 2018, at 39, https://[www.refworld.org/docid/5b8900109.html.](http://www.refworld.org/docid/5b8900109.html)

4 *Id*. at 29-40, 43.

5 Ex. 14, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*,

U.N. HIGH COMMISSIONER FOR REFUGEES, U.N. Doc. HCR/EG/AFG/10/04, Dec. 17, 2010, at 8.

the use of improvised-explosive devices (“IEDs”) and suicide attacks.”6 The Taliban often films beheadings of ISAF supporters to televise them around the world.7

After combat began in 2009, ISAF hired thousands of young Afghan men in various capacities to assist solders in fighting Taliban insurgents.8 Tasks ranged from driving, translating, serving as security guards, and janitorial work.9 Anti-government forces, including the Taliban, specifically target these and other civilians who are suspected of collaborating with or “spying for” the Afghan government or foreign military forces, or embracing western ideas.10 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.11
* 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.12
* In 2013, Taliban gunmen were reported to have shot dead eight Afghan workers on their way to jobs at a U.S. military base.13
* In 2016, there were reports that a young man, who was perceived to be “westernized” by the Taliban, was beheaded by the Taliban upon returning to Afghanistan after spending time in Norway.14
* On November 11, 2020, 33-year-old Afghan journalist Elyas Dayee was killed by an explosive device placed on his car. He had received numerous death threats warning him

6 *Id*. at 7.

7 Ex. 15, William McGurn, *Operation Lost in Translation*, WALL ST. J., May 22, 2015, [http://www.wsj.com/articles/operation-lost-in-translation-1432332763.](http://www.wsj.com/articles/operation-lost-in-translation-1432332763)

8 Ex. 16, *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.](http://www.rferl.org/content/taliban-kill-two-afghans-working-for-nato/24770949.html)

9 *Id*.

10 *Id*.

11 Ex. 17, *Annual Report on Protection of Civilians in Armed Conflict, 2009*, U.N. ASSISTANCE MISSION IN

AFGHANISTAN, Jan. 2010, at 13.

12 Ex. 18, *MidYear Report 2010, Protection of Civilians in Armed Conflict 2010*, U.N. ASSISTANCE MISSION IN

AFGHANISTAN, Aug. 2010, at 6.

13 Ex. 19, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*,

U.N. HIGH COMMISSIONER FOR REFUGEES, U.N. Doc. HCR/EG/AFG/13/01, Aug. 6, 2013, at 34 n.96.

14 Ex. 37, *After Return: Documenting the experiences of young people forcibly removed to Afghanistan*, Refugee Support Network, April 2016.

https://hubble-live-assets.s3.amazonaws.com/rsn/attachment/file/8/After\_return\_April\_2016.pdf, at 30.

to stop his reporting on Taliban military operations. The night before he was killed, Dayee had emailed a colleague saying he believed his life was in danger.15

* 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.16
* In April of 2020, a suicide bomber killed three civilian contractors working for a U.S. army base outside the facility as the contractors waited to be let in. The attack was attributed to the Taliban.17

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.18

# 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.19 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.20 Further, in 2014, the Taliban listed “civilian contractors, translators, administrators, logistics personnel, Cabinet ministers, members of Parliament, attorneys and judges” as potential targets.21 Specifically, the Taliban called for the “infidel’s translators” to receive the death penalty.22

15 Ex. 38, *Afghanistan: Journalist Murdered in Helmand,* HUMAN RIGHTS WATCH, Nov. 12, 2020, https://[www.hrw.org/news/2020/11/12/afghanistan-journalist-murdered-helmand.](http://www.hrw.org/news/2020/11/12/afghanistan-journalist-murdered-helmand)

16 *Id*. at 34 n.196, 35 n.198.

17 Ex. 39, Rahim Faiez, *Afghan Officials: Suicide Bomber Kills 3 Civilians in Kabul*, AP NEWS, Apr. 29, 2020, https://[www.military.com/daily-news/2020/04/29/afghan-officials-suicide-bomber-kills-3-civilians-kabul.html.](http://www.military.com/daily-news/2020/04/29/afghan-officials-suicide-bomber-kills-3-civilians-kabul.html)

18 Ex. 20, *Mid-Year Report 2012, Protection of Civilians in Armed Conflict*, U.N. ASSISTANCE MISSION IN

AFGHANISTAN, July 2012, at 17.

19 Ex. 21, *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.](http://refugeerights.org/wp-content/files/IRAP_Afghan_SIV_Testimonials_10-24.pdf)

20 Ex. 22, *Mid-Year Report 2011, Protection of Civilians in Armed Conflict*, U.N. ASSISTANCE MISSION IN

AFGHANISTAN, July 2011, at iv-v; *see also* Ex. 40, *Annual Report on Protection of Civilians in Armed Conflict, 2017*,

U.N. ASSISTANCE MISSION IN AFGHANISTAN, Feb. 2018, at 37 (“Although Taliban claimed fewer attacks overall against civilians, the number of claimed attacks against civilian Government workers increased, in line with Taliban’s policy of targeting Government entities.”).

21 Ex. 23, *MidYear Report 2014, Protection of Civilians in Armed Conflict*, U.N. ASSISTANCE MISSION IN

AFGHANISTAN, July 2014, at 24.

22 Ex. 22, *Mid-Year Report 2011*, U.N. ASSISTANCE MISSION, 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.23
* In 2015, an Afghan interpreter was tortured and killed by anti-government insurgents for his work with the U.S. Marines and Air Force.24
* Another interpreter was chased by Taliban insurgents firing AK-47 rounds, who destroyed his vehicle and nearly killed him.25
* Multiple other Afghan interpreters have faced death threats and assassination attempts from the Taliban.26 In 2016 it was estimated by Politico that “1,000 interpreters were murdered by anti-government terror groups” and that “an interpreter is killed every 36 hours.”27
* On January 7, 2020 Matt Zeller, a U.S. soldier who served in Afghanistan, said the following about the Afghan interpreters who aided the Army: “They’re looked down as traitors, and they’re hunted. They’re often killed by the very people they helped us fight against.”28
* It is common knowledge among U.S. service members who served in Afghanistan that former and current interpreters for U.S. and other foreign governments are targeted by the Taliban and are in a dangerous position: “I don’t think it will be long before the Taliban

23 Ex. 24, Roy Norland, *Taliban Say They Killed 4 Afghan Interpreters*, N.Y. TIMES, May 15, 2010.

24 Ex. 25, *Afghan Interpreter Murdered by Taliban while waiting for VISA*, WASH, FREE BEACON, May 29, 2015, [http://freebeacon.com/issues/afghan-intelpreter-murdered-by-taliban-while-waiting-for-visa/.](http://freebeacon.com/issues/afghan-intelpreter-murdered-by-taliban-while-waiting-for-visa/)

25 Ex. 26, 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-inteipreters-wait-for-us-> visas/2012/10/24/5fc531e2-1d48-11e2-8817-41b9a7aaabc7\_story. html.

26 Ex. 41, Dan De Luce, *Lawmakers ask Trump admin why Afghan interpreter facing Taliban threats has no U.S. visa*, NBC NEWS, May 30, 2019, https://[www.nbcnews.com/news/us-news/lawmakers-ask-trump-admin-why-afghan-](http://www.nbcnews.com/news/us-news/lawmakers-ask-trump-admin-why-afghan-) interpreter-facing-taliban-threats-n1011931; Ex. 42, Deanne Fitzmaurice, *Afghan Translator Dodges Taliban on Long Road to U.S*., NBC NEWS, Jan. 23, 2014, https://[www.nbcnews.com/news/veterans/afghan-translator-dodges-taliban-](http://www.nbcnews.com/news/veterans/afghan-translator-dodges-taliban-) long-road-u-s-n14671.

27 Ex. 43, Sarah Feinberg and Daniel L. Davis, *Save the visa program for Afghan interpreters*, POLITICO, May 31, 2016, https://[www.politico.com/agenda/story/2016/05/congress-should-save-visa-program-for-afghan-interpreters-](http://www.politico.com/agenda/story/2016/05/congress-should-save-visa-program-for-afghan-interpreters-) 000135/.

28 Ex. 44, *Will visas for foreign interpreters come fast enough?*, RADIO.COM, Jan. 7, 2020, https://[www.radio.com/connectingvets/articles/visas-for-interpreters-amid-increased-violence.](http://www.radio.com/connectingvets/articles/visas-for-interpreters-amid-increased-violence)

takes over Afghanistan again. If that happens, these guys [former and current interpreters] are all targets.”29

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.”30 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.31 For example:

* The Taliban murdered the father and abducted the toddler brother of an interpreter because of his work for the U.S. Marines.32
* Another interpreter says his father received threatening phone calls, and his roommate, another interpreter for the U.S. military, was kidnapped and beheaded.33
* The Taliban called another interpreter to say, “we warned you,” after kidnapping his cousin.34
* 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.”35

The withdrawal of international military forces from Afghanistan in 2014 provided the Taliban with more opportunities to launch ground operations, often targeting the Afghan

29 Ex. 45, Sarah Blake Morgan, *As violence soars, time runs out for Afghan interpreters*, AP NEWS, Jan. 7, 2020, https://apnews.com/article/f0944262eb4db65e98487aaef4b2eb41.

30 Ex. 27, U.N. Secretary-General, *Children and the Armed Conflict: Rep. of the Secretary-General*, U.N. Doc. A/67/845-S/2013/245, May 15, 2013, ¶ 27, [http://unispal.un.org/pdfs/A67845.pdf.](http://unispal.un.org/pdfs/A67845.pdf)

31 Ex. 26, Kevin Sieff, *Facing Taliban Threats, Afghan Interpreters Wait for U.S. Visas*, WASH. POST, Oct. 25, 2012, <http://www.washingtonpost.com/world/asiapacific/facing-taliban-threats-afghan-intelpreters-wait-for-us-> visas/2012/10/24/5fc531e2-1d48-11e2-8817-41b9a7aaabc7\_story.html.

32 Ex. 28, Deanne Fitzmaurice, *Left Behind: Afghan translator dodges Taliban on long road to America*, NBC NEWS, Jan. 23, 2014, <http://usnews.nbcnews.comLnews/2014/01/23/22398694-left-behind-afghan-translator-dodges-> taliban-on-long-road-to-america?lite.

33 Ex. 29, 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.](http://america.aljazeera.com/watch/shows/america-tonight/articles/2015/5/13/us-afghan-translators.html)

34 Ex. 26, 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-inteipreters-wait-for-us- visas/2012/10/24/5fc531e2-1d48-11e2-8817- 41b9a7aaabc7\_story. html.

35 *Id*.

government.36 As a result, Afghan security forces focus their limited resources on preventing these anti-government attacks and are unable to protect civilians effectively.37 As a result of the intensifying ground attacks, Taliban violence against Afghan civilians rose 8% in the first three months of 2015, shortly after ISAF’s departure.38 Even with the passage of time, the situation has not come under control, and civilian deaths have continued to occur in large numbers, with 2018 seeing the highest number of deaths to date.39 The UN Assistance Mission in Afghanistan’s latest quarterly report documented 5,939 civilian casualties (2,117 killed and 3,822 injured) from January 1, 2020 to September 30, 2020.40 “High levels of violence continue with a devastating impact on civilians, with Afghanistan remaining among the deadliest places in the world to be a civilian.”41

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.”42 Moreover, Afghanistan police are highly corrupt. The 2019 U.S. State Department Human Rights Report for Afghanistan describes the country’s “significant human rights issues” as including “torture [and] extrajudicial killings by security forces” and “government corruption.”43 There is “[w]idespread disregard for the rule of law and official impunity for those responsible for human rights abuses were serious, continuing problems. The government did not prosecute consistently or effectively abuses by officials, including security forces.”44 There were numerous reports that government officials, security forces, detention center authorities, and police committed abuses, including torturing and beating civilians.45 The State Department reported that “Authorities detained many citizens without respecting essential procedural protections. According to NGOs, law enforcement officers continued to detain citizens arbitrarily without clear legal authority or due process. Local law enforcement officials reportedly detained persons illegally on charges not provided under local

36 Ex. 30, *Annual Report 2014, Protection of Civilians in Armed Conflict,* U.N. ASSISTANCE MISSION IN AFGHANISTAN, Feb. 2015, at 11; Ex. 46, *Afghanistan Annual Report on Protection of Civilians in Armed Conflict, 2019*, U.N. ASSISTANCE MISSION IN AFGHANISTAN, Feb. 22, 2020, at 84 (“With the withdrawal of ISAF in 2014, the Taliban have incrementally increased their territorial control and continued to launch large-scale assaults…”).

37 Ex. 30, *Annual Report 2014, Protection of Civilians in Armed Conflict,* U.N. ASSISTANCE MISSION IN

AFGHANISTAN, Feb. 2015, at 11.

38 Ex. 31, *Clashes with Taliban Take Growing Toll on Afghan Civilians in 2015*, REUTERS, Apr. 12, 2015.

39 Ex. 34, *Civilian Deaths from Afghan Conflict in 2018 at Highest Recorded Level – UN Report*, U.N. ASSISTANCE MISSION IN AFGHANISTAN, Feb. 24, 2019, https://unama.unmissions.org/civilian-deaths-afghan-conflict-2018- highest-recorded-level-%E2%80%93-un-report.

40 Ex. 47, *Afghanistan peace talks fail to slow civilian casualty toll*, UNAMA, Oct. 27, 2020, https://unama.unmissions.org/afghanistan-peace-talks-fail-slow-civilian-casualty-toll.

41 *Id.*

42 Ex. 32, Jonathan Beale, *Is the UK abandoning its Afghan interpreters?*, BBC NEWS, Feb. 11, 2013, [http://www.bbc.com/news/world-asia-21406826.](http://www.bbc.com/news/world-asia-21406826)

43 Ex. 48, 2019 U.S. DEPT. OF STATE HUMAN RIGHTS REPORT ON AFGHANISTAN, 1-2.

44 *Id.* at 2.

45 *Id.* at 4.

criminal law.”46 Now, especially with the growing number of deaths, and with no protection from the international troops that used to employ these Afghan civilians, interpreters are left to defend themselves and their families from the Taliban’s violent threats and attacks.47

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

Mr. H was born on March 7, 1976 in Herat City, Afghanistan.48 As a young teenager, Mr. H became interested in learning English. During high school he studied English in earnest, earning a certificate from the II Academy. After graduating from high school, Mr. H worked in his father’s shop, fixing appliances, but he soon learned of an opportunity to work for Mission Essential Personnel (“Mission Essential”) as an English interpreter for foreign military forces in Afghanistan. Mission Essential was hiring interpreters, and the job would allow Mr. H to earn a generous salary and continue to improve his English.49

The job was very compelling, not only for these reasons, but also because Mr. H had always been interested in different cultures and knew that working as an interpreter with a company like Mission Essential would give him the chance to meet people from all around the world. In the spring of 2009, Mr. H applied for a position with Mission Essential. The application process was followed by a long wait, but, in the summer of 2009, Mr. H began working for Mission Essential as a full-time interpreter for NATO/ISAF foreign military units.50

The International Security Assistance Force (“ISAF”) was a NATO-led military mission in Afghanistan, established by the United Nations Security Council, active from the early 2000s through December 2014. ISAF’s primary objective was to enable the Afghan government to provide effective security across the country and develop new Afghan security forces with the goal of ending the reign of terrorism in Afghanistan.51 During his time with Mission Essential, Mr. H was first deployed to B Province, where he worked at a FOB (Forward Operating Base) in BM and at a PRT (Provincial Reconstruction Team) at a different base in B Province. The FOB was led by American troops and the PRT was primarily led by Spanish troops, but also held American and Italian troops. He stayed at this base for about 3 months. He was then sent back to Camp Stone in Herat where he stayed for about one month. Finally, he was stationed at the FOB in F, Afghanistan, called CS. He remained there

46 *Id.* at 6.

47 Ex. 32, Jonathan Beale, *Is the UK abandoning its Afghan interpreters?*, BBC NEWS, Feb. 11, 2013, [http://www.bbc.com/news/world-asia-21406826.](http://www.bbc.com/news/world-asia-21406826)

48 Ex. 1, Mr. H Suppl. Dec. ¶ 3; Ex. 3, Birth Certificate.

49 Ex. 1, Mr. H Suppl. Dec. ¶¶ 4-7.

50 Ex. 1, Mr. H Suppl. Dec. ¶¶ 6-8; Ex. 7, Employment Verification.

51 Ex. 49, *ISAF’s mission in Afghanistan (2001-2014),* NATO, Sept. 1, 2015, https://[www.nato.int/cps/en/natohq/topics\_69366.htm.](http://www.nato.int/cps/en/natohq/topics_69366.htm)

for about 18 months and provided support to United States Armed Forces, as well as Italians and the Afghan National Army.52 Mr. H provided translation services to Italian, American, and Afghan troops. Among other things, he would go to meetings where the troops would discuss their next operations, go to trainings where the Western troops were training the Afghan army, and translate reports from Afghan sources about the Taliban’s activity.

Within only a few months of beginning work as Mission Essential translator in July 2009, while he was still in B, Mr. H started receiving threatening calls on his cell phone.53 The callers knew Mr. H’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. In other calls, Mr. H 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.54

Although the callers never identified themselves, Mr. H knew they were affiliated with the Taliban because of the way the callers spoke to him on the phone. Their tone was hostile, and their words were characterized by aggressive admonishment. The callers talked about “fixing” Mr. H and urged him to accept their “advice.” Mr. H 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. He also knew that the threats—including beheading—were carried out.55

Mr. H tried to tell the Taliban callers that they had the wrong person; he tried ignoring his phone altogether; but the calls would not stop. Mr. H received calls at all hours of the afternoon, evening, and night. On any given day, he could expect up to four or five threatening calls. Then, a week would go by with no calls at all. But they always started up again.56 Mr. H eventually changed his phone number. But within approximately ten days the Taliban found his new number, and the threats began again. All in all, Mr. H changed his number approximately five or six times. But each time, the Taliban was able to find him again.57 The calls become so harassing that Mr. H stopped answering his cell phone, and at that point, Taliban members began calling his parents at Mr. H’s family home.58 They accused Mr. H of being a spy for the United States government.59 They threatened to execute and behead him if he continued working as an interpreter. They threated everyone in Mr. H’s family.60

52 Ex. 1, Mr. H Suppl. Dec. ¶¶ 6-9, 16; Ex. 7, Employment Verification.

53 Ex. 1, Mr. H Suppl. Dec. ¶ 10.

54 Ex. 1, Mr. H Suppl. Dec. ¶¶ 10-11.

55 *Id*. ¶ 12.

56 *Id*. ¶¶ 10-13.

57 *Id*. ¶¶ 14-15.

58 *Id*. ¶ 17; Ex. 11, Father’s Statement.

59 Ex. 1, Mr. H Suppl. Dec. ¶ 19

60 *Id.*

During this time, Mr. H continued to work with Mission Essential, completing his rotations in B and F and then being deployed again.61 At first, he had hoped the phone calls would stop on their own, but he came to believe that the threats would never stop. As the threats continued, he began to worry more and more for his parents’ and his siblings’ safety. 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.62

Mr. H suffered these calls without any sense that the authorities could help. He saw no point in reporting the calls to the police because he knew the police could not offer any protection. It is well known among the Afghan civilians that relying on the police to help in a situation like this is hopeless and pointless. The government and police in Afghanistan are generally corrupt, cannot be trusted, and have no power over such a force as strong and powerful as the Taliban regardless. Moreover, some members of the police are suspected to be affiliated with the Taliban. Likewise, Mr. H did not tell his supervisors in the military or his co- workers or supervisors at Mission Essential because there was nothing they could do to stop the threats.63 The Taliban is so powerful and has such little regard for human life that there is essentially no way to control them or exert power over what they do in situations like the one Mr. H experienced.

His last complete deployment was to the F province. Usually rotations last approximately six months, but Mr. H volunteered to remain in F beyond his normal rotation because he was afraid to go back home. 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. He also believed that the closer he was to his family, the more he put them at risk.64

Mr. H worked in F as an interpreter until April 2011.65 While he was in F, a threatening letter from the Taliban appeared on his family’s doorstep.66 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. Mr. H’s father agreed with him; he told his son to stop before he got himself or anyone in his family killed. Mr. H officially resigned on July 31, 2011 and moved back to his parents’ home in Ghabulderaz Village.67

But the threats did not stop. 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. Because

61 *Id*. ¶¶ 9,16, 21-23.

62 *Id*. ¶ 18.

63 *Id.* ¶ 20.

64 *Id*. ¶¶ 20-23.

65 *Id*. ¶ 22.

66 *Id*.; Ex. 11, Father’s Statement.

of the threatening calls, Mr. H’s father only let Mr. H leave the house at night, and his contact with people was limited to close relatives and friends. In September 2011, he went to India for an English course. However, when his three-month, temporary visa expired, Mr. H returned to his parents’ home and retreated back into hiding.68

Then, on October 15, 2012, around 11:00 p.m., while Mr. H was at home with his family, the house was bombed.69 Two explosions sent the family into hiding.70 After about an hour, Mr. H went outside with his father. They found an indention in the yard that looked as though it had been caused by a hand grenade. The grenade had shattered the windows and caused significant damage to the interior of the house. Thankfully, no one was hurt. The next morning, Mr. H received a phone call. 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.”71

That same morning, Mr. H and his father went to the National Department of Security (“NDS”), which is in charge of security in the area, to report the attack.72 The NDS provided no help or support.73 Instead, Mr. H and his father were told that they should move from their life-long home in Ghabulderaz Village to the center of Herat City. 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.74

So, the family moved.75 But it took two months to find a new home—two months in which Mr. H and his family lived in constant terror.76 In those two months, Mr. H and his mother never left the house, and his father escorted his younger siblings to and from school every day. Finally, on December 12, 2012, the family was able to find a house for rent in Herat City. They moved immediately.77 But even in Herat City, Mr. H felt he was in danger and felt guilty for putting his family at risk.78 And the threatening calls continued.79 In an attempt to curb the threats, Mr. H’s parents lied to friends and family, telling them that Mr. H had left Afghanistan and was studying in India. But the family continued to receive calls at the house. Mr. H’s fear that the Taliban would kill him and hurt his family kept growing.80

68 *Id*. ¶¶ 24-25.

69 *Id*. ¶ 26; Ex. 10, NDS Report; Ex. 11, Father’s Statement.

70 Ex. 1, Mr. H Suppl. Dec. ¶ 26.

71 *Id.*

72 *Id*. ¶ 27; Ex. 10, NDS Report.

73 Ex. 1, Mr. H Suppl. Dec. ¶ 27.

74 *Id*.

75 *Id*. ¶ 28.

76 *Id*.; Ex. 11, Father’s Statement.

77 Ex. 1, Mr. H Suppl. Dec. ¶ 28.

78 *Id*. ¶¶ 29-30.

79 *Id*. ¶ 29; Ex. 11, Father’s Statement.

During this time, Mr. H did not leave the house. His life was confined to the basement of the house, where he and his family hoped no one would see him. As he remained there, day in and day out, he began to sink into depression. 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. During those endless days sequestered in the basement, Mr. H began developing an interest in computer programming. 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. But he knew that Afghanistan was not a place where he could get a quality education. 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.81

Finally, Mr. H identified a program at University, a school just outside of Houston, Texas. Mr. H qualified for the university’s computer science program, and the tuition—with the scholarship he received—was affordable. After being admitted, Mr. H applied for his student visa. During this time, on September 13, 2013, the United States Consulate in Herat City was attacked. One of Mr. H’s childhood friends and classmates, who was also working as an interpreter, was killed in the attack. This event only increased his fear while waiting.82

On October 7, 2013, Mr. H began his journey to Texas. His parents escorted him in secret to the Herat City airport. Mr. H 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. Mr. H continued his journey without his luggage. 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.83 When he arrived in Houston, his luggage was still missing. For the next two months, Mr. H 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.Mr. H]’s luggage from the airport to stop him from leaving.”84

After arriving in Houston and starting school, Mr. H met several men who were also former Afghan interpreters with foreign militaries and who had received permanent status in the United States. They told him that he might be eligible for a permanent status based on his work with ISAF. The former interpreters also informed him that the Canadian immigration system processed applications more quickly than the United States. So, on January 2, 2014, Mr. H walked across the U.S.-Canada border to present himself to the Canadian immigration officials. He remained in Canada for approximately six hours and was told eventually that his arrival and

81 Ex. 1, Mr. H Suppl. Dec. ¶¶ 29-33.

82 *Id*. ¶¶ 33-34.

83 *Id*. ¶¶ 35-36.

84 *Id.* ¶ 37.

duration of stay in the United States made him ineligible for asylum in Canada. Canadian officials then escorted Mr. H across the border back to the United States. Mr. H instead filed his I-589 in the United States on December 10, 2015.85

Since arriving in the United States, Mr. H enrolled at University in Houston, Texas, and graduated in 2018 with a bachelor’s degree in computer science.86 He currently holds a full-time position as a full-stack web developer at a marketing agency, where he has worked since June 2018 creating websites for companies, including companies engaged in e-commerce and blogging.87 While he remains a productive, law-abiding, working member of society, Mr. H’s mental health has suffered as a result of his dangerous and traumatizing experiences in Afghanistan.88

# ARGUMENT

To demonstrate eligibility for asylum, an applicant must establish that he is a “refugee.”89 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.”90

85 Ex. 1, Mr. H Suppl. Dec. ¶¶ 38-39.

86 *Id*. ¶ 41; Ex. 5, Student ID; Ex. 6, Enrollment Verification; Ex. 55, Diploma.

87 Ex. 1, Mr. H Suppl. Dec. ¶ 41; Ex. 56, Pay stub from Company.

88 Ex. 53, Medical Evaluation of Mr. H.

89 *See* C.F.R. § 1208.13.

90 8 U.S.C. § 1101(a)(42)(A); *INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992).

# Mr. H should be granted asylum because he has suffered past persecution by the Taliban on account of his actual and imputed political opinion and his membership in a particular social group—Afghan civilians who are associated with, or who are perceived to be supporting the international community in Afghanistan

**—and the Afghan government has been unable and unwilling to protect Mr. H 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.”91 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.”92 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.”93 Threats to life or freedom are uniformly found to be persecution.94 The applicant need only establish a reasonable possibility of persecution.95

Mr. H 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.”96 The Taliban also contacted Mr. H’s family, warning them that every member of his family would be beheaded because of Mr. H’s occupation as an interpreter for ISAF.97 Mr. H 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.98 Even after Mr. H had quit his work with ISAF because of his fear for his own and his family’s safety, the threats did not cease.99 The Taliban followed through on its threats—throwing grenades into the front yard of Mr. H’s family home late the night of October 15, 2012.100 Although the Taliban’s actions terrified Mr. H, they came as no surprise. Mr. H worried constantly because he was well aware that the families of interpreters—even children as young as Mr. H’s own siblings—were not immune from the Taliban’s terror. The bombing confirmed Mr. H’s fears. The next morning, the Taliban called, threatening: “Last night was the last warning for you. We know you are a spy for

91 *Tesfamichael v. Gonzales*, 469 F.3d 109, 113 (5th Cir. 2006).

92 *Chen v. Gonzales*, 470 F.3d 1131, 1135 (5th Cir. 2006).

93 *Id*.

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

95 *See* INA § 208(b)(1)(A); *Zhao v. Gonzales*, 404 F.3d 295, 307 (5th Cir. 2005).

96 Ex. 1, Mr. H Suppl. Dec. ¶ 10.

97 *Id*. ¶¶ 17, 19.

98 *Id*. ¶ 12; *see also supra* Part II.A.; Ex. 12, TRAP Aff. ¶¶ 7, 12, 17.

99 Ex. 1, Mr. H Suppl. Dec. ¶ 24; Ex. 11, Father’s Statement.

100 Ex. 1, Mr. H Suppl. Dec. ¶ 26; Ex. 11, Father’s Statement.

the United States, and we will take the last second of your life soon.”101 Even after Mr. H’s family moved, the threats continued.102

The Taliban’s persecution of Mr. H went beyond the bombing of his family home and the harassment and threats that he endured through phone calls and a letter; these threats took a severe psychological toll as well. Mr. H became consumed by the guilt he felt for putting his family at risk. Out of fear for his life, he never left his house. For months Mr. H was confined to the basement with no physical contact with the world outside his home. Day after day Mr. H 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 by the Taliban as a result of his perceived support of the international community and Afghan government and he became extremely depressed.103

# Mr. H was persecuted on account of his actual and imputed political opinion.

This past persecution was based on Mr. H’s actual and 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.104 Mr. H was undoubtedly persecuted because his persecutors believed that he supported the international community and Afghan government.105 Furthermore, Mr. H also actually holds political opinions which resulted in his persecution. Namely, Mr. H supports and agrees with the international community’s work in Afghanistan and opposes the Taliban, its violence, and its human rights violations.106

The threats to and attack on Mr. H’s life and physical safety were explicitly based on his imputed and actual political opinions. The Taliban constantly referred to Mr. H as a “spy” for the United States government.107 By insisting that Mr. H’s employment with ISAF aligned him politically with the perceived political objectives of the U.S. government in Afghanistan, the Taliban interpreted Mr. H’s position of employment as a political opinion. A member of the Taliban, in the first threat Mr. H received, informed Mr. H that he knew Mr. H was working as an interpreter for the U.S. Military—which the Taliban believes to be against Islamic religion and rules. He was later told that his work with the ISAF would result

101 Ex. 1, Mr. H Suppl. Dec. ¶ 26.

102 *Id*. ¶¶ 28-29.

103 Ex. 1, Mr. H Suppl. Dec. ¶¶ 29-31.

104 *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);

*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).

105 *See* Ex. 1, Mr. H Suppl. Dec. ¶¶ 10-11.

106 *Id.* ¶ 42.

107 *Id*. ¶ 19; Ex. 11, Father’s Statement.

in his death. Even when Mr. H denied working for the U.S. government, the Taliban continued to accuse him of being a spy for the U.S. government because of his work with ISAF.108

# Mr. H was persecuted on account of his membership in a particular social group.

Mr. H has also suffered persecution based on membership in a particular social group—Afghan civilians who are associated with, or who are perceived to be supporting the international community in Afghanistan. “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.”109 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.110 In order to meet the particularity requirement, a group must be sufficiently distinct that it would constitute a discrete class of persons.111 Finally, to be socially distinct, “a group need not be seen by society; it must instead be perceived as a group by society.”112 That is, certain persons can be considered by society as a group even though the members of that group cannot be identified by sight.113 Mr. H’s membership in the social group of Afghan civilians who are associated with, or who are perceived to be supporting the international community in Afghanistan satisfies this test.

The unifying characteristic shared by this group is their association with, or perceived support of the international community in Afghanistan. This characteristic is unquestionably immutable—Mr. H cannot change the fact that he was previously employed as an interpreter with ISAF, a NATO-led security mission in Afghanistan, and is therefore perceived by the Taliban as being associated with and/or a supporter of the international community. Because of their work, interpreters like Mr. H will forever be associated with ISAF and the international community in Afghanistan. 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.114 Mr. H suffered continued persecution for almost two and a half years after he relinquished his position with ISAF.115 Further, “cooperating” with the Taliban is not a 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

108 *See* Ex. 1, Mr. H Suppl. Dec. ¶¶ 10-11, 19.

109 *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014).

110 *Acosta*, 19 I&N Dec. at 233-34.

111 *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).

112 *Id.* at 216.

113 *Id.* at 217.

114 Ex. 12, IRAP Aff. ¶ 12-16.

115 *See* Ex. 1, Mr. H Suppl. Dec. ¶¶ 23, 26, 29-31.

capacity.116 Because the Taliban persecutes Afghan interpreters for ISAF—irrespective of when they worked for ISAF—their membership in the group of Afghan civilians who are associated with, or who are perceived to be supporting the international community in Afghanistan is an immutable characteristic.117

Moreover, Afghan civilians who are associated with, or who are perceived to be supporting the international community in Afghanistan are defined with particularity and socially distinct. This social group meets the particularity requirement as it is describable “in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons.”118 The group has “definable boundaries” which are “delineated and identifiable” and is specifically precise. 119 For social distinction, courts have looked to “evidence such as country conditions reports, expert witness testimony, and press accounts of discriminatory laws and policies, historical animosities, and the like [which] may establish that a group exists and is perceived as ‘distinct’ or ‘other’ in a particular society.” 120 High rates of violence against group members, enactment of laws designed to protect group member and punish aggressors, and the lack of enforcement of such laws are some examples.

The very nature of their work makes Afghan interpreters for ISAF readily identifiable as part of this group. 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 live on foreign military bases while deployed, which Mr. H was for the bulk of his employment with ISAF. They often work out in the public, accompanying forces on missions and helping international forces communicate with locals.121 They also can be identified when carrying employment badges off base. 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. H was during various deployments from 2009 through 2011) or after hearing the interpreter speak English.122 Furthermore, the record here is replete with country conditions evidence which documents Taliban attacks on and persecution of Afghan civilians who are associated with, or who are perceived to be supporting the international community in Afghanistan.

116 *See Mid-Year Report 2011*, U.N. ASSISTANCE MISSION, at v (noting that the Taliban has called for the death of interpreters).

117 *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”).

118 *Matter of S-E-G-,* 24I&N. Dec. 579, 584 (BIA 2008).

119 *Matter of M-E-V-G-,* 26 I&N Dec. 227.

120 *Matter of M-E-V-G-,* 26 I&N. Dec.227, 244.

121 Ex. 12, IRAP Aff. ¶ 9.

122 *Id*. ¶ 10.

# The Afghan government is unwilling and unable to protect Mr. H 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.123 “[P]rivate acts may be persecution if the government has proved unwilling to control such actions.”124 It is not necessary for the persecuting person or group to be affiliated with the government in any way.125 “[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.”126

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.”127 The police force in Afghanistan is powerless to protect citizens like Mr. H. Even in the face of repeated threats against his life and the lives of his loved ones, Mr. H did not go to the police because he believed that they could not do anything to help him.128 His belief was confirmed when—in desperation—Mr. H and his father went to the local police department after his family home was bombed with Mr. H and his family inside.129 Rather than offering protection, the police merely advised him to move closer to the city, where hopefully attacks would be less likely. However, even after moving to the city, the threats continued.130 The Taliban made it clear that it knew Mr. H’s location, and even attempted to stop Mr. H from leaving Afghanistan. Mr. H could not rely on the police or any other government service for protection from the Taliban.131 The Afghan government failed Mr. H, 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.132

# Additionally, Mr. H is eligible for asylum because he possesses a well-founded fear of future persecution on account of his membership in the social group

123 *Tesfamichael*, 469 F.3d at 113.

124 *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)).

125 *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). 126 *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).

127 Ex. 12, IRAP Aff. ¶ 17.

128 Ex. 1, Mr. H Suppl. Dec. ¶ 20.

129 *Id*. ¶ 27; Ex. 11, Father’s Statement.

130 Ex. 1, Mr. H Suppl. Dec. ¶ 29.

131 *Id*. ¶¶ 31, 36-37.

132 Ex. 12, IRAP Aff. ¶¶ 16-20.

# comprising Afghan civilians who are associated with, or who are perceived to be supporting the international community in Afghanistan, and his imputed and actual political opinions.

“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.”133 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.134

# The future persecution of Mr. H is presumed as a matter of law based on his past persecution.

Mr. H fears additional persecution if forced to return to Afghanistan.135 An applicant for asylum found to have suffered past persecution is presumed to have a well-founded fear of future persecution.136 Mr. H 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.”137 The Department cannot do so in this case. The circumstances of Mr. H’s case have not improved. Deadly attacks on ISAF interpreters continue.138 Indeed, because of the inescapable violence, the United States has admitted over 65,000 former Afghan interpreters and/or Afghans who worked for the U.S. Government under Special Immigrant Visas.139 Mr. H’s time in the United States will only reinforce perceptions that he is a supporter of the international community and West. Returnees to Afghanistan who have spent time in Western countries are commonly targeted by the Taliban and their status as returnees put them at particular, additional risk of attack.140

Nor can the government establish that Mr. H “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.”141 In determining whether relocation would be “reasonable,”

133 *Zhao*, 404 F.3d at 307 (internal quotation marks and citation omitted).

134 8 C.F.R. § 1208.13(b)(1).

135 Ex. 1, Mr. H Suppl. Dec. ¶¶ 40, 42.

136 8 C.F.R. § 1208.13(b)(1).

137 8 C.F.R. § 1208.13(b)(1)(i)(A).

138 *See* Ex. 12, IRAP Aff. ¶¶ 7, 12, 17.

139 *See* Ex. 51, Andorra Bruno, *Iraqi and Afghan Special Immigrant Visa Programs,* CONGRESSIONAL RESEARCH SERVICE, Apr. 2, 2020, at 21-22.

140 Ex. 37, After Return: Documenting the experiences of young people forcibly removed to Afghanistan, Refugee Support Network, April 2016,

https://hubble-live-assets.s3.amazonaws.com/rsn/attachment/file/8/After\_return\_April\_2016.pdf, at 28-30.

141 8 C.F.R. § 208.13(b)(1)(i)(B).

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.”142

Under all these metrics, any argument for relocation fails. Mr. H 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,143 which Mr. H himself witnessed.144 Indeed, it was through this network that the Taliban learned of Mr. H’s plans to flee the country—and tried to stop him.145 Moreover, Mr. H has strong family ties in Herat City. Apart from his time with ISAF, Mr. H has always lived with his family. Mr. H’s father owns a shop in Herat City and is therefore unable to relocate without an extreme burden.146 Taken together, these factors show clearly that internal relocation is not a viable option for Mr. H. He cannot safely return to Afghanistan and should be granted asylum.

# Even without a presumption, Mr. H 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.147 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.148

Such a pattern of persecution against former ISAF interpreters and other Afghan civilians who are associated with, or who are perceived to be supporting the international community in Afghanistan, is clearly present in Afghanistan. The evidence of widespread, violent persecution against current and former interpreters, unbridled by the Afghan government, is well-documented and has been recognized by the United States Government.149 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.150

Apart from the widespread pattern and practice of persecution against ISAF interpreters, Mr. H has established a well-founded fear of persecution. Mr. H very clearly and

142 8 C.F.R. § 1208.13(b).

143 Ex. 12, IRAP Aff. ¶ 16-20

144 Ex. 1, Mr. H Suppl. Dec. ¶¶ 15, 17, 25, 29, 37.

145 *Id*. ¶¶ 35-37.

146 *Id*. ¶ 3.

147 *See Cardoza-Fonseca*, 480 U.S. at 438-39.

148 8 C.F.R. § 120813 (b)(2)(iii).

149 *See generally supra* Part II.A; *see also, e.g*., Ex. 12, IRAP Aff. 13; House Report 113-108 § 1218.

150 Ex. 30, *Annual Report 2014*, U.N. ASSISTANCE MISSION, at 1.

visibly worked as an interpreter for ISAF and is an Afghan civilian who is associated with, or who is perceived to be supporting the international community in Afghanistan. This visibility prompted continual threats on Mr. H’s life by a group known to have caused the barbaric death of other interpreters for foreign militaries.151 Further, the Taliban is known for its gross, flagrant and mass violations of human rights.152 The Taliban has already inflicted severe mental suffering upon Mr. H, has physically attacked Mr. H and his family, and has threatened Mr. H with death, all of which have caused Mr. H immense mental anguish.153

Given his experiences and the robustly documented evidence of persecution of interpreters for foreign militaries in Afghanistan, Mr. H has demonstrated a well-founded, objectively reasonable fear that he, specifically, would be at risk of persecution.

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

* 1. **Mr. H’s application is not time-barred.**

Generally, asylum applicants must file their applications within one year of their arrival in the United States.154 However, the one-year time limit does not apply when an applicant demonstrates extraordinary circumstances explaining the delay in filing his application.155 Maintenance of lawful status is one such extraordinary circumstance.156 An applicant who has maintained lawful status need only show that the delay in filing was reasonable.157 Moreover, the period for determining reasonableness of delay is triggered *after* the expiration or termination of legal status—not while status is valid.158

151 *See, e.g*., Ex. 1, Mr. H Suppl. Dec. ¶ 12; Ex. 12, IRAP Aff. ¶¶ 3, 7, 12-15; Ex. 15, William McGurn, *Operation Lost in Translation*, WALL ST. J., May 22, 2015, <http://www.wsj.com/articles/operation-lost-in-translation-> 1432332763.

152 *See, e.g.,* Ex. 50, *World Report 2020,* HUMAN RIGHTS WATCH, https://[www.hrw.org/world-report/2020/country-](http://www.hrw.org/world-report/2020/country-) chapters/afghanistan.

153 *See* Ex. 1, Mr. H Suppl. Dec. ¶ 41; Ex. 53, Medical Evaluation of Mr. H.

154 8 U.S.C. § 1158(a)(2)(B).

155 8 U.S.C. § 1158(a)(2)(D); 8 C.F.R. § 208.4(a)(5).

156 8 C.F.R. § 208.4(a)(5)(iv).

157 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.”).

158 *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. H came to the United States pursuant to a valid F-1 student visa. His visa became effective in October 2013 and remained valid through October 2018.159 Because Mr. H had maintained his lawful status at the time he filed for asylum, on December 10, 2015, his asylum application is excepted from the one-year bar.160 Moreover, because he was still in valid status at the time he applied, Mr. H did not engage in unreasonable delay in filing his application.161 Thus, Mr. H’s application is not barred by the one-year deadline.

# Mr. H’s application is not subject to any statutory grounds for denial.

Mr. H 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.162 His application is not barred by any grounds for mandatory denial. Mr. H 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. H has experienced firsthand.163

# Discretionary factors counsel in favor of granting Mr. H asylum.

Other considerations weigh in favor of granting Mr. H 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.”164 The extent of Mr. H’s past persecution and risk of future persecution, because of his work with ISAF, warrants a favorable exercise of discretion. Mr. H was subjected to a vicious attack because of his imputed and actual political opinions and membership in a particular social group, and was told that the attack was a last warning—that the “last second of [his] life [would be taken] soon.”165 Mr. H 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. H’s application. Thus, Mr. H should be granted asylum in the exercise of discretion.

# CONCLUSION

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

159 *See* Ex. 54, Form I-20.

160 8 C.F.R. § 208.4(a)(5).

161 *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).

162 *See generally* Ex. 1, Mr. H Suppl. Dec. ¶¶ 25, 38-41.

163 *Id*. ¶¶ 15, 17, 26, 29, 37.

164 *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987).

165 Ex. 1, Mr. H Suppl. Dec. ¶ 26.