



Business Law September Section Meeting

Meeting Called By: Jeffrey Wheat, Chair

Meeting Location	Date	Time	Topic
The Safety of Your Home	Wednesday, September 15, 2021	12:00 PM to 1:15 PM	Is Doing Business with the Taliban Ethical? Is it Legal? - What Lawyers and Aid Workers Need to Know Moving Forward

We are continuing 100% remote access meetings. Please follow the Webcast instructions listed below to access the meeting.

1.00 Law & Legal CLE Credit – #1179340

For all KCBA sections, credit submittal to the State Bar occurs within 30 days of the program

AGENDA

12:00 PM Introduction

12:10 PM Presentation: 'Is Doing Business with the Taliban Ethical? Is it Legal? - What Lawyers and Aid Workers Need to Know Moving Forward', by Jeffrey Wheat, Cisneros Wheat Legal PLLC

- Legal obstacles to providing assistance to Afghanistan (*e.g.* sanctions violations and immigration restrictions on visas)
- Ethical implications of continuing to do business or provide support
- Outlook on Islamic law and its interplay with the legal pluralism in private and public international law (*i.e.* what to expect from an Islamic Emirate)

1:15 PM Adjourn

SPEAKER BIOGRAPHY

Jeffrey Wheat, Cisneros Wheat Legal PLLC - Jeff was born and raised in Garland, TX and has been around the world twenty times without losing his Texas roots. At age 22, he joined the Army and was stationed at Ft. Stewart, GA where he served as a combat medic in the 3rd Infantry Division. Later, he obtained his first law degree from the University of South Africa and bought a house with his beautiful wife Nicole. Today, he lives on Mercer Island with his family. He is fanatical about the game of chess and loves Shakespeare, the Simpsons, and Linux. He has experience in both public and private international law, including working with Afghan clients both in and out of Afghanistan, as well as international commercial legal experience across the globe.

WEBCAST: This Section Meeting will be broadcast via Zoom (*not Adobe Connect*).

To access the meeting, click the following link -

<https://us02web.zoom.us/join/tZEtcuqhgz0oHdx7ebFhUF5JHmuAUP-lrGU9>

You will be required to enter your WSBA # (or n/a) upon entering the meeting.

LISTSERV: Did you know your section has a discussion listserv? Members can use it to post messages and ask questions to other section members. Any Business Law Section member may post a message to the discussion forum. To post, send your message to: businesslaw@lists.kcba.org.

CONNECTwithKCBAs



HOW DO I EARN CREDIT FOR SELF-STUDY OR AUDIO/VISUAL (A/V) COURSES?

For pre-recorded A/V (self-study) programs, although the sponsor should apply for accreditation, **lawyers need to report the credits earned for taking the course.**

To add an approved course to your roster, follow the procedures below:

- ❖ Go to the "mywsba" website at www.mywsba.org/.
- ❖ Log in.
- ❖ Click on the "Access MCLE" link in the "MCLE Info" box on your home profile page.
- ❖ Click on "Add Activity." Search to find the approved course in our system. (See search suggestions on the screen.)

Adding a Recorded Course

Select Recorded Course from the Add New Activity screen.

You can search by Activity ID (**information is included on the first page of the materials that you receive with the recording**) or by specific Activity Details. For the Activity Details search, you can use keywords for the title, sponsor name and date.

After entering your search criteria and selecting Search at the bottom of the screen, a list of possible activities will be provided.

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Then claim the correct credits for which you attended this activity in the Credits Claimed fields and click the Submit button at the bottom of the page.

You will receive a confirmation message at the top of your screen stating, "The activity has been added to your roster."



Afghanista n

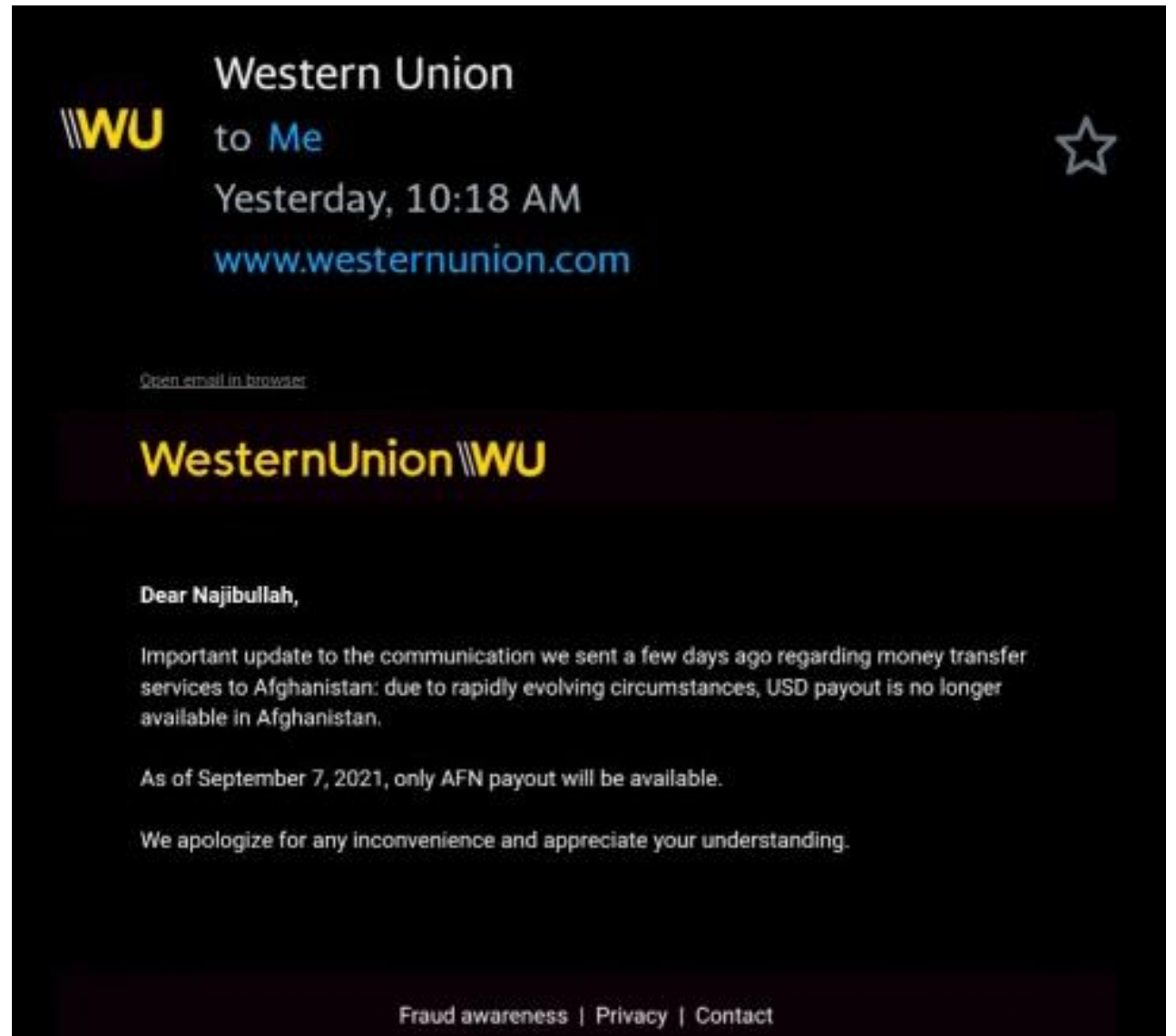
Is Doing Business with the Taliban
Ethical? Is it Legal? - What Lawyers &
Aid Workers Need to Know Moving
Forward

Presenters

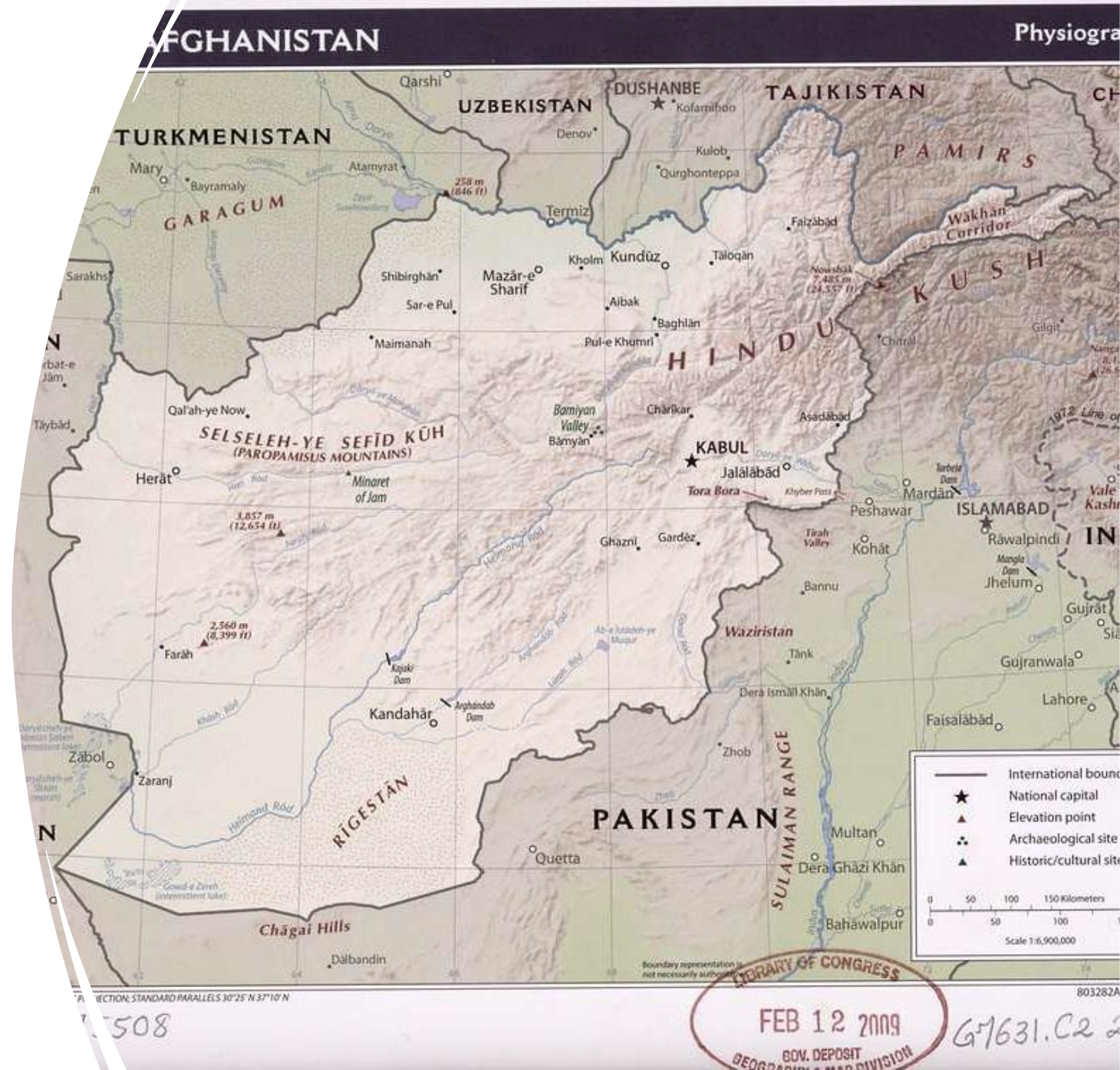
- **Jeffrey Wheat, Cisneros Wheat Legal PLLC**
- **Jeff was born and raised in Garland, TX and has been around the world twenty times without losing his Texas roots.**
- **At age 22, he joined the Army and was stationed at Ft. Stewart, GA where he served as a combat medic in the 3rd Infantry Division.**
- **He fought in Iraq during the Battle of Ramadi in 2007, only later to see the territory once again ceded to the Islamic Caliphate (ISIS/ISIL) in May of 2015**
- **University of South Africa – LLB 2014**
- **University of Washington – LLM 2018**
- **Experienced in both public and private international law + working with Afghan clients both in & out of Afghanistan, as well as international commercial legal experience & legal pluralism.**
- **Najibullah Hakimi, scholar focusing on Afghanistan**
- **Born and raised in Mazar-i-Sharif Afghanistan. As a child, survived the Mazar massacre when the Taliban first took over the north. Najib lived under Taliban rule until America entered Afghanistan in 2001.**
- **Worked with aid organizations empowering Afghan women and establishing rule of law**
- **Publications: Designing an Emergency Commercial Arbitration Mechanism for Afghanistan: A Composite of Successful Models from the International Community**
- **University of Washington GNM in Health law, Washington State Bar Courses 2021**
- **UW Law Master's Degree, International Business/Trade/Commerce 2015**
- **Balkh University School of Law Bachelor's Degree, Civil Law and Criminal Law 2012**

“Rapidly Evolving Circumstances”

Disclaimer: this is not legal advice & will probably be inaccurate or incomplete quickly



- Taliban took over Afghanistan in 1996
- Taliban provided sanctuary to Al-Qaeda
- Taliban were defeated following 9/11
- America established a democratic govt
- Taliban reappeared and



How could Taliban take over Afghanistan?

- Afghanistan was neglected:
 - 2002:
 - Rumsfeld (Secretary of Defense): “I had been told he [President Bush] wanted to meet with Gen. McNeill.”
 - Bush: “Who is General McNeill?”
 - Rumsfeld: “he is the general in charge of Afghanistan.”
 - Bush: “Well, I don’t need to meet with him.”
 - 2005:
 - Neumann (US Ambassador to
- Pakistan Created & Supported Taliban:
 - PM of Pak. Khan: “We had created these Jihadi groups in the 80s. We had indoctrinated them in the idea of Jihad that foreign occupation in Afghanistan, it was religious duty to fight them.”
 - 2014:
 - Gen. Hamid Gul (former head of Pakistan ISI):

Current Situation in Afghanistan

- US has frozen Afghanistan reserves
- WB & IMF have suspended funds to Afghanistan
- UN: 18 million Afghans facing humanitarian disaster
- UNDP: Drought, Covid-19, & War raising poverty rate to 97%
- Govt. agencies are shut down
- Banks are shut down
- Food prices have skyrocketed
- Healthcare and medicine not available
- Borders are closed
- Resistance of Northern Alliance continues
- ISIS-K competes with Taliban
- Taliban govt not inclusive (includes ONLY Taliban)
 - Members of Taliban govt are sanctioned by US & UN
- Protest/demonstration is criminalized.
- Women are prohibited from going into community without a male guardian.
- Ministry of Women Affairs is dissolved.
- Women are prohibited from going to work
- Schools are gender segregated; curricula is focusing on Islam; science is removed (against Islam)
- Taliban still have close ties with Al Qaeda and ISIS-K
- Taliban minister of higher education: higher education is not valued because
 - Uneducated Taliban are better than Masters and PhDs
- Taliban are going house to house and arresting

Taliban's Law?

- 2001 – August 15, 2021
 - Sources of law:
 - (1) Statutes (2) Sharia (3) Customs/traditions
 - Constitution
 - Hundreds of Statutes regulating various aspects of life:
 - Administrative, commercial, civil, criminal, employment, mediation, arbitration, mining, public welfare, disability, competition, e-signature, distance learning, intellectual property, copy right, trademark, investment, etc.
 - Afghanistan joined numerous international conventions &
- 1996-2001: Taliban had no expertise in legislation. They kept some old laws like Civil Code
 - Taliban issued decrees/messages (based on extreme interpretation of Islam) that
 - forced religious prayers, prohibited gambling and smoking, restricted women rights, restricted access to information, banned expensive weddings, forced beards and clothing regulations, regulated land affairs, and court procedure
- August 15 – Present
 - Taliban: “In the Islamic Emirate, all court proceedings are in according to

Engage with Taliban?

- Yes: To alleviate humanitarian catastrophe
 - To provide food and medicine to people who are in immediate need
 - To open airports and borders to





Geopolitics of Engagement

1. To prevent Pakistan, China, or Russia from replacing America
2. To prevent Afghan minerals from being used to sponsor terrorism
3. To prevent Afghanistan from becoming a safe haven for Al Qaeda & ISIS
4. To prevent escalation of terrorism and endangering the region and the US
5. To reduce opium production and trade
6. To protect the achievements of the last 2 decades & rule of law

engage:

- We remain enemies – as of 10am September 6, 2021, we lost 2,352 US Service Members in Operation Enduring Freedom
- Ties to Al Qaeda, who were responsible for 911
- Reduces the risk of them overtaking surrounding nations and expanding, including nations with nuclear weapons
- They have violated every “agreement” & norm on offer – there is no evidence which suggests cooperation will succeed
- No real negotiations ever occurred – they always knew we were leaving
- They do not need us, and I dare say they do not want us; Will not accept conditional support
- Association with Taliban may harm the United States relationships with the international community
- Assistance may not benefit Afghans
- Whether you consider the right thing to do as a moral



SEEKING INFORMATION

SIRAJUDDIN HAQQANI



DESCRIPTION

Aliases: Siraj, Khalifa, Mohammad Siraj, Sarajadin, Cirodjiddin, Seraj, Arkani, Khalifa (Boss) Shahib, Halifa, Ahmed Zia, Sirajuddin Jallaloudine Haqqani, Siraj Haqqani, Serajuddin Haqani, Siraj Haqani, Saraj Haqani	
Date(s) of Birth Used: Circa 1973 - 1980	Place of Birth: Afghanistan/Pakistan
Hair: Black	Eyes: Brown or Black
Height: 5'7"	Weight: 150 pounds
Build: Medium	Complexion: Light with wrinkles
Sex: Male	Citizenship: Unknown
Languages: Arabic	Scars and Marks: None known

REWARD

⚔️ Rewards For Justice Program, United States Department of State, is offering a reward of up to \$10 million for information leading directly to the arrest of Sirajuddin Haqqani.

REMARKS

⚔️ is thought to stay in Pakistan, specifically the Miram Shah, North Waziristan, Pakistan, area. He is reportedly a senior leader of the ⚔️ network, and maintains close ties to the Taliban and al Qaeda. Haqqani is a specially designated global terrorist.

DETAILS

⚔️ Haqqani is wanted for questioning in connection with the January 2008 attack on a hotel in Kabul, Afghanistan, that killed six ⚔️ including an American citizen. He is believed to have coordinated and participated in cross-border attacks against United States and

Whether to engage or not to engage...



- Each transaction is different but must be considered carefully.
- Limited Engagement:
 - To keep the borders open for the refugees to exit Afghanistan
 - To provide immediate humanitarian assistance: food, medicine, and safe refugee camps.
- Conditional Engagement:
 - Prior to recognizing Taliban gov. and providing financial assistance, Taliban should:
 - Cut ties with Al-Qaeda and ISIS.
 - Form an inclusive government in which women and leaders of diverse Afghan ethnicities have a proportionate role.
 - Respect human rights
 - All commitments should be created such that they may be abandoned immediately if the Taliban resumes cooperation with terrorist organizations
- Sanction Pakistan for sponsoring terrorism and invading

OFAC & International Sanctions

- Office of Foreign Asset Control List – this information is likely to change rapidly, so refer to primary sources often.
- As of now, there is not a general license as there are with many other nations subject to sanctions, such as Cuba, Venezuela, Libya, *etc.*
- There is not an “anti-Afghanistan” program of sanctions – however, there is an “anti-Taliban” program
- Expect this to change (probably more than once) with executive orders in the coming weeks.
- International Sanctions against Taliban
- The UN Security Council can take action to maintain or restore international peace and security under Chapter VII of the United Nations Charter. Sanctions measures, under Article 41, encompass a broad range of enforcement options that do not involve the use of armed force. Since 1966, the Security Council has established 30 sanctions regimes, in ... as well as against ISIL (Da'esh) and Al-Qaida and the Taliban.
- Note: the territorial limits of sanctions against the Taliban do not apply until

corruption

The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq. ("FCPA"), was enacted for the purpose of making it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business.

- Position buying – Awarding opportunities in the police force, judiciary or civil service based on bribes as opposed to merit
- Nepotism/clientelism – Awarding positions based on personal relationship/kinship networks rather than merit
- Offering and asking for preferential treatment – This includes giving bribes to expedite the processing of business documents or access to government-owned land

Foreign corrupt practices act best practices



- When a business expands into any new markets looking for new growth opportunities, they must be careful. Particularly, multinational companies face the risk that one of their subsidiaries, affiliates, employees, or agents may engage in misconduct in violation of the U.S. Foreign Corrupt Practices Act (FCPA).
- The Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) actively enforce the FCPA. To

company?

- What constitutes improper payment?
- Who is a foreign public official?
- Recordkeeping & Internal Controls
- Liability for Third Party Conduct
- Recordkeeping
- Use of data

businesses to succeed, & maintain public confidence in the integrity of the marketplace. It contains two types of anti-corruption provisions: (1) anti-bribery provisions prohibiting certain companies & individuals from making corrupt payments to foreign public officials in connection with their businesses & (2) accounting provisions that require

Why do 'terps get visas?



- Al-Qaeda kidnapped and tortured the disabled brother of my platoon's interpreter Zeke. Ultimately, we (American government taxpayers) wound up having to pay for his safe return. Zeke and his family got a visa and live in Maryland now.
- The US Army's Warrior Ethos says, "I will always place the mission first. I will never accept defeat. I will never quit. **I will never leave a fallen comrade.**"

Special Immigrant Visas

- Seriously, you just need to see the forms required to obtain these visas ...
- BIG PROBLEM – you need a signature from a Head of Mission or General Officer (07+) + one year of service with ISAF or US military in order to qualify – how do you even know who this is?
- Put on your earmuffs if you hold a security clearance ...
- **Caution: DO NOT USE LEAKED CLASSIFIED INFORMATION IN**
- Chelsea Manning unlawfully provided us with most info applicants
- All pre-2010 SIGACTS were published by WikiLeaks
- “Kabul War Diaries” : <https://wikileaks.org/afg/>
- Very easy to cross reference w/ Open Source Intelligence
- Easily establish unit commanders & chain of command - find people
- Unit commendations or combat actions involved are recorded in documents
- Do not access this information from an unclassified system if you have clearance
- Alternative is to apply for Chief of Mission (COM) approval in Kabul



OFFICE OF THE UNDER SECRETARY OF DEFENSE
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JUN 07 2013

MEMORANDUM FOR DOD SECURITY DIRECTORS

SUBJECT: Notice to DoD Employees and Contractors on Protecting Classified Information and the Integrity of Unclassified Government Information Technology Systems

Classified information, whether or not already posted on public websites, disclosed to the media, or otherwise in the public domain remains classified and must be treated as such until it is declassified by an appropriate U.S. government authority. It is the responsibility of every DoD employee and contractor to protect classified information and to follow established procedures for accessing classified information only through authorized means. Leadership must establish a vigilant command climate that underscores the critical importance of safeguarding classified material against compromise.

Accordingly, we request all DoD components send prompt notification to your employees and contractors reminding them of these obligations. Procedures for responding to classified information found in the public domain are attached. These procedures will be promulgated in future DoD issuances. My point of contact is Mr. Jeremy Bouchard at (703) 604-0217 or Jeremy.Bouchard@osd.mil.

SIV for interpreters cont.

- https://www.launchgood.com/campaign/help_vulnerable_afghans_pay_immigration_fees#!/ 501(c)(3) that is paying for visa immigration fees
- Establishing an “Ongoing Security Threat” should not be taken for granted – you will want to establish more of a summary judgment standard of when the Taliban came and threatened you, who/what/when/where/how and why you have a serious credible threat against your life – not just stating that “you are afraid” – we’re all afraid, tell me “what color was the gun they put to your head?”
- Cannot apply for SIV if you have applied for asylum
- There are resettlement benefits that should be applied for if this visa is granted
- DO NOT LIE OR EXAGGERATE ANY CLAIMS – the Afghans working with the US have more information recorded about them than the average US citizen as it is, including bioinformatics. If you have worked with the US before, you have certainly submitted this type of information before, and your previous answers will be tested against new answers. If someone in your family has ties to heroin smuggling, it is likely the US military knows this information. Make sure

exercise

- Shipping insulin to a diabetic aunt in Kabul?
- Sending money to a relative to attend school outside Afghanistan?
- I worked as an interpreter at OP Restrepo in 2008, how can I find someone to write a letter of recommendation for me to apply for a visa?
- Shipping rugs made in Afghanistan to the United States?
- Purchase emeralds mined under license by the Taliban? What about copper, gold, oil, natural gas, uranium, bauxite, coal, iron ore, rare earths, lithium, chromium, lead, zinc, gemstones, talc, sulphur, travertine, gypsum & marble?
- Operating an enterprise that deals in any of the above? Owning shares in an enterprise that, in part, does any of the above?
- Executing agreements outside of Afghanistan (*i.e.* in Dubai) to circumvent sanctions on Afghanistan?
- NGO delivering medical supplies to a clinic in a remote area?

Questions?

- This is being recorded – we ask you not to “name drop” or give out location information of anyone specifically. If you do have more specific questions, you may contact either of us ...
- jeff@wheatlegal.com
- najibullahhakimi@yahoo.com

Bibliography

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