****

Afghanistan assistance Clinic

Stephen Yale-Loehr, Professor of Immigration Law Practice

Hilary Fraser, Adjunct Professor of Law

Myron Taylor Hall

Ithaca, New York 14853-4901

**T:** 607.255.4196

**F:** 607.255.7193

**E:** clinicalprograms@cornell.edu

**LEGAL BRIEF IN SUPPORT** **OF AFFIRMATIVE APPLICATION FOR ASYLUM SUBMITTED BY E-N-**

Applicant submits this application for asylum because he has been persecuted and has a well-founded fear of persecution in Afghanistan on account of his outspoken political opinion as a prominent democracy and women’s rights activist, and now Fulbright Scholar in the United States, who experienced direct threats and attempts on his life by the Taliban during his time in Afghanistan, and on account of the political opinion imputed to him by association with his wife, also a prominent women’s rights activist who founded the first Afghan women’s cricket team, collaborated with the United States military on several construction projects, and was herself threatened and attacked by the Taliban. Mr. xx also associates with the particular social group of his wife’s prominent political family: her father serving as a police chief who battled the Taliban and received medals from the U.S.-led International Security Forces. Mr. xx is also a member of the xx, a minority Pashtun sect in xx Province, one historically persecuted by the Taliban and their supporters in the Andar sect, the majority Pashtun sect of xx.

Mr. xx submits extensive evidence of press conferences and other media appearances supporting his visibility as an international advocate of human rights and democracy, concepts the Taliban directly opposes. In addition, Mr. xx submits multiple letters from colleagues and family members who bore witness to the threats and attacks the Taliban made against Mr. xx and his wife on the basis of their beliefs. Because he is a Fulbright Scholar from Afghanistan, Mr. xx was referred to the U.S. Refugee Admissions Program Afghan P-1 on xx, 2021 by the U.S. State Department. Mr. xx thus respectfully requests that his application for asylum be granted so that he may remain in the United States, together with his wife and child, free to continue his work and contribute as an expert in the fields of educational policy and women’s rights without fear of persecution.

An individual may qualify for asylum if they meet the definition of “refugee” under the Immigration and Nationality Act (INA). INA 101(a)(42). Accordingly, an applicant satisfies the refugee definition by showing either (i) actual past persecution or (ii) a well-founded fear of future persecution on account of one of the enumerated grounds, including political opinion and race. *See* *Melendez v. U.S. Dep't. of Justice*, 926 F.2d 211, 215 (2d Cir. 1991) (evidence of past persecution suffices to make subjective fear of persecution objectively reasonable) (emphasis added); U.N. High Comm. for Refugees (UNHCR), Handbook on Procedures and Criteria for Determining Refugee Status (1992).

Mr. xx is eligible for asylum because (i) he fears that if he is forced to return to Afghanistan, he will continue to be threatened and attacked, and given that the Taliban is now in power, likely prosecuted, imprisoned, and tortured; and (ii) a reasonable person in his circumstances would also fear persecution if they returned to Afghanistan.

**I. Mr. xx’s has Suffered Past Persecution.**

Past persecution, "without more, satisfies the . . . [definition of refugee], even independent of establishing a well-founded fear of future persecution." *Desir v. Ilchert*, 840 F.2d

723, 729 (9th Cir. 1988) (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 441 (1987)). "If an alien

establishes that he has been persecuted in the past for one of the five reasons listed in the statute,

he is eligible for a grant of asylum." *Matter of Chen*, 20 I. & N. Dec. 16 (BIA 1989); *see* 8

C.F.R. § 208.13(b)(l).

The Board of Immigration Appeals (BIA) has defined persecution as the infliction of harm or suffering by a government or by persons a government is unwilling or unable to control, to overcome a characteristic of the victim. *See Matter of Kasinga*, 21 I. & N. Dec. 357 (BIA 1996). *Matter of T-Z-* generally described persecution as:

[T]he infliction of suffering or harm, under 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. The harm of suffering need not [only] 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.

*Matter of T-Z-*, 24 I. & N. Dec. 163 (BIA 2007) (citing H.R. Rep. No. 95-1452, at 5).

Further, “credible death threats, combined with an actual assassination attempt shortly thereafter, substantially supports a finding of past persecution.” *Singh v. Lynch*, 637 F. App'x 320 (9th Cir. 2016); *see* *Navas v. I.N.S.*, 217 F.3d 646, 658 (9th Cir. 2000) (holding that persecution was “unquestionably demonstrated” when petitioner provided evidence that he received death threats, he “was shot at,” and several of his family members were murdered).

In the instant case, Mr. xx suffered actual past persecution in the combination of multiple death threats on one hand, with the Taliban calling several of his relatives and writing him death warrants as recently as 2020, and multiple assassination attempts on the other hand. For instance, in 2015, a gunman attacked the car Mr. xx was riding in. In 2020, after receiving a death threat earlier that year, a gunman attempted to kill Mr. xx as he visited a grocery store close to his home.

The Taliban also abducted and tortured Mr. xx’s xx for two weeks due to Mr. xx’s work as a prominent human rights activist, killed his xx who had collaborated with him on human rights efforts in Xx Province, and directly threatened and attempted to assassinate Mr. xx’s wife. In addition to the above-described assassination attempt, the Taliban again attempted to kill Mr. xx’s wife two days before the former Afghan government collapsed.

*Please see* Mr. xx’s Sworn Declaration in Support of Affirmative Application for Asylum, which is corroborated by letters from colleagues and family members who bore witness to these threats and attacks, and by contemporaneous reports of Taliban attacks on prominent activists and women’s rights supporters.

Thus, like the petitioner in *Navas*, Mr. xx experienced death threats, assassination attempts, including one after the receipt of a death threat, and killing or torture of family members that when taken together convinced the Ninth Circuit that persecution had been “unquestionably demonstrated.”

Past persecution creates a rebuttable presumption of future persecution. 8 CFR 208.16(b)(1)(i). As described above, Mr. xx has been threatened and attacked by the Taliban in the past, and is therefore very likely to continue to be targeted by them in the future.

**II. Mr. xx has a Well-Founded Fear of Future Persecution on Account of His Actual and Imputed Political Opinion.**

Mr. xx’s fear of future persecution is both subjectively sincere and objectively reasonable. In addition to his fear of being singled out for persecution as a human rights and democracy activist with international stature and a former target of Taliban threats and attacks, Mr. xx also fears persecution based on the “pattern or practice” of persecution of similarly situated individuals, namely prominent democracy and women’s rights activists who have strong connections to western institutions and the United States. 8 C.F.R. 208.l3(b)(2)(iii). Mr. xx’s fear of future persecution is increased by association with his wife, herself a prominent women’s rights activist who collaborated with the U.S. military and whose political opinion can be imputed to Mr. xx.

**a. Mr. xx Subjectively Fears Persecution on Account of His Actual and Imputed Political Opinion.**

In *Matter of Mogharrabi*, the BIA reaffirmed that the requirement of well-founded fear

has both a subjective and an objective component. 19 I&N Dec. 439, 445 (BIA 1987).

The evidence contained herein presents extensive documentation of Mr. xx’s genuine fear of returning to Afghanistan as a formerly threatened and attacked prominent human rights activist and the husband of a U.S. military collaborator who herself was threatened and attacked. In Mr. xx’s Sworn Declaration, for example, he describes his fear of imprisonment, torture, and possible death at the hands of members of the Taliban were he to return to Afghanistan. *Please see* Mr. xx’s Declaration and supporting statements from those who know him well for further bases for his subjective fear of returning to Afghanistan.

**b. Mr. xx’s Genuine Fear is Well-Founded and Objectively Reasonable.**

In *Matter of Mogharrabi*, the BIA established a four-part test for "well-founded fear." 19 I&N Dec. 439 (BIA 1987). The Second Circuit has adopted this test:

The requirement that an applicant show that her fear of persecution is well-founded maybe broken up into four elements: the applicant must provide evidence (1) that he has a belief or characteristic that a persecutor seeks to overcome by means of some mistreatment, that the persecutor has the (2) capability and (3) inclination to impose such mistreatment, and (4) that the persecutor is, or could become, aware of the applicant's possession of the disfavored belief or characteristic. *Tun v. INS*, 445 F.3d 554, 565 (2d Cir 2006) (citing *Mogharrabi*, 19 I&N Dec. at 446).

**i. Mr. xx has multiple beliefs or characteristics that the Taliban as persecutor would seek to overcome by means of mistreatment.**

As the evidence contained herein proves, Mr. xx was a well-known advocate for human rights and democracy, with a focus on women’s education, appearing in hundreds of media interviews and traveling to international conferences to further the cause of Afgan democracy. Further, Mr. xx is presently studying in the United States as a Fulbright Scholar. The Taliban directly opposes each of these characteristics as they run counter to their extremist religious ideologies.

Indeed, during Mr. xx’s career of more than xx years as a prominent activist in Afghanistan, the Taliban continually threatened and attempted to assassinate Mr. xx, his wife, and colleagues he worked closely with. After each of these incidents, instead of adjusting his views or pursuing a more covert means of advocacy, Mr. xx instead deepened his resolve while taking extra security precautions.

The fact that the Taliban as persecutor sought in the past to impose threats and violence on Mr. xx, even when they did not have full control of the areas in which Mr. xx resided and worked (e.g., Kabul), illustrates how significant their desire was to impose these punishments and the great lengths they went to carry them out. Were Mr. xx to return to Afghanistan over which the Taliban now has control, it is likely that the Taliban would seek to imprison, torture, and possibly kill him given their knowledge of Mr. xx’s identity and past advocacy. This is likely to occur even if he didn’t continue his former activism upon his return, given the large number of former government officials that have been killed or forcibly disappeared since the Taliban removed them from power. *Please see* Mr. xx’s Sworn Declaration and the supporting country conditions evidence, including the U.S. State Department’s 2021 Human Rights Report.

Thus, given Mr. xx’s characteristics and the Taliban’s desire to overcome them by means of violence, the first element of the “well-founded fear” test has been satisfied in this case.

**ii. The Taliban as persecutor has the ability to become aware of Mr. xx’s beliefs or characteristics, and the capability and inclination to impose mistreatment.**

As previously mentioned, the Taliban was aware of Mr. xx’s beliefs as a prominent activist given that the group directly threatened and attacked him on multiple occasions. Now in power, the Taliban has access to Afghan biometric databases that contain the information of any Afghan that registered for a national identification card or passport. Mr. xx has both of these forms of identity, and used them to travel nationally and internationally, meaning that not only was Mr. xx well-known to the Taliban during his former time in Afghanistan, his presence would quickly be detected were he to re-enter the country.

Further, the Taliban has the capability and inclination to impose harm on Mr. xx were he to return to Afghanistan. In addition to former government officials, the Taliban has been killing or forcibly disappearing activists, including women’s rights advocates, since the group seized power. Given this recent history and the Taliban’s continued grip on power, were Mr. xx to return to Afghanistan, he would be at significant risk of facing a similar fate. *Please see* Mr. xx’s Sworn Declaration and the supporting country conditions evidence.

Thus, given the Taliban’s access to national databases and history with Mr. xx, and their capability and inclination to impose violence on those who previously opposed their beliefs, the second, third, and fourth elements of the “well-founded fear” test has been satisfied in this case.

**III. Conclusion**

Based on the above arguments, Mr. xx satisfies the definition of “refugee” found in the INA and meets all the legal requirements to receive a grant of asylum. Please process this case and grant his asylum request as early as possible.