



Written Statement of the Record
American Civil Liberties Union

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Oversight of the Trump Administration's Muslim Ban
on
September 24, 2019

Submitted to
House Judiciary Committee, Subcommittee on Immigration and Citizenship
House Committee on Foreign Affairs, Subcommittee on Oversight and Investigations

On behalf of the American Civil Liberties Union (ACLU) and our more than three million members, activists, and supporters, we submit this letter for the record hearing on “Oversight of the Trump Administration’s Muslim Ban” of the House Judiciary Committee, Subcommittee on Immigration and Citizenship and the House Committee on Foreign Affairs, Subcommittee on Oversight and Investigations on September 24, 2019. The ACLU condemns the unconstitutional and discriminatory Muslim ban and calls on Members of Congress to cosponsor the NO BAN Act.

I. The Muslim ban discriminates against people based upon their faith under the guise of national origin, separating people in the United States from their loved ones and using the waiver process as window dressing to legitimize the ban.

As one of his first acts in office, President Trump fulfilled in significant part, his campaign promise to ban Muslims from entering the United States by issuing an executive order banning the entry of nationals of certain Muslim-majority countries. People around the country flooded airports in outrage and Members of Congress waited in airports for the release of those detained. Court rulings enjoining the ban forced the President to issue three separate versions. But his efforts to respond to legal challenges by diluting the original ban, adding countries that are not Muslim-majority or splitting off the refugee ban in a separate order, did not change his fundamental agenda: to exclude large numbers of Muslims from coming into the United States by using national origin as a proxy for religion.

On December 4, 2017, the Supreme Court allowed the full implementation of Trump’s Muslim ban, pending the Court’s hearing on the injunction. On that day, America began to ban millions of Muslims from the United States, even if they have family members, jobs, academic spots, or other compelling connections in America, and even if they would otherwise be fully entitled to receive a visa. It was President Trump’s first family separation action.

As the ACLU collected stories of those impacted by the ban, dozens of people submitted their painful stories in just a matter of weeks.¹

- *Anahita*: an Iranian woman who never got to say goodbye to her father in Iran before he passed away and could not even mourn with her family.
- *Nisrin*: detained during the chaotic implementation of the first Muslim ban simply because of her Sudanese citizenship, although she has lived in the United States for 25 years.
- *Haya*: a Syrian student, separated from her parents and younger sister.

As a result of this ban, students are afraid to return home to visit their families because their visas may not be reissued.² People are denied life-saving health-care treatment and families are separated, unable to celebrate graduations and weddings or mourn the loss of loved ones. Some resorting to traveling thousands of miles and spending thousands of dollars to simply be able to hug someone they love at a library on the border of Canada and the United States.³

¹ ACLU, *Living with the Muslim Ban* available at <https://www.aclu.org/issues/immigrants-rights/living-muslim-ban>.

² Iman Sultan, *Ban or no ban, Muslim and Pakistani students fear for their futures in Trump’s America* (March 16, 2017) available at <https://www.dawn.com/news/1320240>.

³ Yeganeh Torbati, *Separated by travel ban, Iranian families reunite at border library* (Nov. 28, 2018) available at <https://www.reuters.com/article/us-usa-immigration-ban-insight/separated-by-travel-ban-iranian-families-reunite-at-border-library-idUSKCN1NX1P2>

For those impacted by the ban, the only immediate relief is the waiver process. The waiver process is supposed to be based upon three criteria:

- (1) A denial would cause undue hardship;
- (2) Entry does not pose a “national security or public safety threat;” and,
- (3) Entry is in the national interest.

Unfortunately, the waiver process continues to be mere window dressing without consistency and resulting in sparse approvals.⁴ In the first three months after the ban was implemented, the government issued just two waivers. As of June 2018, the number of waivers grew to around 570—a mere two percent of visa applications. A few months later, the State Department claimed to have “cleared” 1,836 applicants for waivers, but it is not clear whether those individuals were granted waivers.⁵ Most recently, in response to Senator Van Hollen’s request for data, the State Department indicated that 5.1% of individuals were issued waivers as of March 31, 2019.⁶

Despite the government’s reliance on the waiver process in the litigation, these small numbers and the stories those impacted indicate the government’s lack of consistency and unwillingness to grant such waivers. Take for example, Shaima Swileh, whose son was terminally ill and in need of medical treatment in the United States.⁷ Shaima had been living in Egypt with her son, but is of Yemeni nationality. She sent her son, Abdullah, who was just under two-years-old, to receive medical treatment in California, where her U.S. citizen husband was living.⁸ Only after her son was placed on life support and advocacy organizations, like the Council of American-Islamic Relations (CAIR), pushed in the press for relief was she finally granted a waiver to be with her son in his last days.⁹ Shaima is only one of many cases of this nature and even in the most severe of circumstances, like hers, the government’s waiver process continues to fail to meet its own standards or—at a bare minimum—show humanity to those needing life-saving health care treatment who are separated from their families.

II. The Muslim ban and other discriminatory policies and rhetoric have a larger impact on our country.

On June 26, 2018, the Supreme Court issued a ruling that will stand as one of its worst. By a 5-4 vote, the Court allowed the Muslim ban to continue. As in other historic decisions where the Court failed to vindicate the rights of disfavored people of color, the Court put to one side the obvious evidence of

⁴ National Iranian American Council, *Muslim Ban Statistics Show Continued Discriminatory Impact* (Aug. 14, 2019) available at <https://www.niacouncil.org/muslim-ban-statistics-show-continued-discriminatory-impact/>.

⁵ American Immigration Lawyers Association, *Practice Pointer: Applying for a Waiver Pursuant to Presidential Proclamation 9645 (Travel Ban 3.0)* (Nov. 29, 2018) available at <https://www.aila.org/infonet/applying-for-a-waiver-pursuant-to-presidential>.

⁶ Department of State Report, *Implementation of Presidential Proclamation 9645, December 8, 2017—March 31, 2019* available at https://www.vanhollen.senate.gov/imo/media/doc/Van_Hollen_Proclamation_9645.pdf (posted by Senator Van Hollen’s office).

⁷ Laura Anthony, *Family pleads for waiver to allow Yemeni mom to visit dying 2-year-old at UCSF Benioff Children’s Hospital Oakland* (De4c. 17, 2018) available at <https://abc7news.com/politics/travel-ban-keeps-yemeni-mom-from-sick-child-in-oakland/4917937/>.

⁸ *Id.*

⁹ Julie Watson, *Yemeni mom wins travel ban waiver to see dying son in US* (Dec. 18, 2018) available at <https://www.apnews.com/24e0cfb5f7bc47cdb870ee0de48b0d51>.

animus and discrimination. Moreover, it glossed over the obvious incompatibilities between the ban and the statutes that Congress had enacted. The administration has since ought to deploy the same proclamation authority to institute a ban on certain asylum-seekers, in direct contravention of the Refugee Act, and the President has threatened to use it to unilaterally impose even more aspects of his anti-immigrant agenda on the nation.

The ban's impact comes in many forms, reaching well beyond individuals from the listed countries and into the hearts, homes, and neighborhoods of the American people as well as those beyond the globe. Discriminatory government policies and rhetoric play a role in the escalation of bigotry, harassment and attacks on community members. Notably, hate crimes continue to rise,¹⁰ particularly those motivated by racial or ethnic animus as well as those motivated by religious animus. Muslims are facing heightened levels of harassment and violence,¹¹ though reporting numbers by the Federal Bureau of Investigation (FBI) do not reflect that reality in part because of the escalating fear these communities face engaging with law enforcement. Communities worry that law enforcement will report them to immigration enforcement or the FBI for little or no reason—even when they are U.S. citizens. As a result, many Americans feel they have nowhere to turn, and all communities are made less safe.

III. Congress must act to end the harm caused to millions of Muslims around the globe by ending this discriminatory ban.

While the litigation in the lower courts continues, it is essential that Congress takes action to end the Muslim ban as well as the refugee Muslim ban and the asylum ban. That is why the ACLU endorses the NO BAN Act, introduced by Senator Chris Coons (D-Del.) and Representative Judy Chu (D-Calif.).¹² The NO BAN Act would immediately rescind the Muslim, refugee Muslim ban, and asylum ban, ending these discriminatory orders and abuses of authority by the Trump administration.

Moreover, under current law, the executive branch claims the authority to bar the entry of large groups of people without effective accountability and without regard for the policies codified in other parts of the Immigration and Nationality Act (INA). The NO BAN Act would strengthen limitations on this authority by raising the standard for invoking it. Rather than the current law, which does not tightly cabin this authority in express terms, the proposed bill would require the executive branch to meet a more stringent standard—based upon “credible facts” that any suspension of or restriction from entry must be connected to “specific acts” that have actually occurred. Furthermore, the bill requires that any such suspension or restriction meet a compelling government interest and that the government use the least restrictive means in doing so. In addition, the NO BAN Act would establish a system of checks and balances whereby Congress would be routinely notified and briefed on the status, implementation, and constitutional and legislative authority of the executive branch's actions. The proposed legislation would also expand the non-discrimination provision of the INA to prohibit discrimination based on religion. Under the NO BAN Act, presidents would be prohibited from using such rank prejudice against a religion in lieu of individualized consideration in the visa process.

¹⁰ Department of Justice, *2017 Hate Crime Statistics* (2018) available at https://www.justice.gov/hatecrimes/hate-crime-statistics?wpisrc=nl_daily202&wpmmm=1.

¹¹ Katayoun Kishi, *Assaults against Muslims in U.S. surpass 2001 level* (Nov. 15, 2017) available at <https://www.pewresearch.org/fact-tank/2017/11/15/assaults-against-muslims-in-u-s-surpass-2001-level/>.

¹² National Origin-Based Antidiscrimination for Nonimmigrants Act of 2019, H.R. 2214, S. 1123, 116th Cong. (2019).

With the NO BAN Act, Congress has the opportunity to right the wrong perpetrated by the Trump administration and exacerbated by the Supreme Court. From airport protests to tragic stories of Muslim families separated, this discriminatory and heartless policy has gone on for too long. While we do not yet have an executive branch willing to rescind its order, we do have legislators willing to do so.

The people do not want an America with a Muslim ban. America strives to be a country free from discrimination—on the road to equality. It is time we get back on that path.