

Board of Directors
Chair
Esta Gordon Epstein
CEO and National Director
Jonathan Greenblatt



Andy Adelson
Barry Curtiss-Lusher
Yasmin Green
Yadin Kaufmann
Alan Lazowski
Glen S. Lewy
Daniel Lubetzky
Nicole Mutchnik
Elizabeth A. Price, Secretary
Ben Sax, Vice Chair
Milton S. (Tony) Schneider
Larry Scott, Vice Chair
Robert Stavis
Christopher Wolf

Global Advisory Council
Barbara Adelman, Co-Chair
Michael N. Sheetz, Co-Chair
National Commission
Faith Cookler, Co-Chair
Joseph A. Goldblum, Co-Chair

Deputy National Director
Kenneth Jacobson

Senior Vice Presidents
Growth
Frederic L. Bloch
Chief of Staff
Emily Bromberg
Policy
Eileen Hershenov
Finance and Administration
Anat Kendal
International Affairs
Sharon Nazarian
Technology
Rafail Portnoy
Talent & Knowledge
Tom Ruderman
Programs
George Selim
General Counsel, Privacy & Security
Steven C. Sheinberg

Past National Chairs
Barbara B. Balsler
Howard P. Berkowitz
Kenneth J. Bialkin
Barry Curtiss-Lusher
Burton S. Levinson
Glen S. Lewy
Marvin D. Nathan
David H. Strassler
Robert G. Sugarman
Glen A. Tobias

September 24, 2019

The Honorable Zoe Lofgren
Chair
Judiciary Subcommittee on
Immigration and Citizenship
Washington, DC 20515

The Honorable Ken Buck
Ranking Member
Judiciary Subcommittee on
Immigration and Citizenship
Washington, DC 20515

The Honorable Ami Bera
Chair
Foreign Affairs Subcommittee on
Oversight and Investigations
Washington, DC 20515

The Honorable Lee Zeldin
Ranking Member
Foreign Affairs Subcommittee on
Oversight and Investigations
Washington, DC 20515

Re: Oversight of the Trump Administration's Muslim Ban

Dear Chairs Lofgren and Bera, and Ranking Members Buck and Zeldin:

In advance of the September 24 hearings on the Trump administration's Muslim Ban, we write to provide the views of ADL (Anti-Defamation League) on the this discriminatory action and to express our support for H.R. 2214, the National Origin-Based Antidiscrimination for Nonimmigrants Act ("NO BAN Act" or "Act"). We would ask that this statement be included as part of the official hearing record.

The United States is a nation dedicated to the ideals of equality, liberty, and justice. ADL believes the Trump Administration's policy blocking immigrants and visitors to the United States from six Muslim-majority countries tramples on these values. The Muslim Ban is plainly discriminatory, inhumane, and un-American, and it betrays the President's oath to uphold the U.S. Constitution.

For more than a century, ADL has been an ardent advocate for religious freedom and a defender of immigrant and refugee rights. Religious liberty is jeopardized when the government uses religion to discriminate regarding who may enter this country. America is a nation of immigrants that has aspired over its history to embrace those fleeing oppression around the globe. ADL regards the U.S. Supreme Court's decision in *Trump v. Hawaii*, 138 S.Ct. 2392 (2018), upholding the Muslim Ban as a dark and shameful stain on America's history.

We are heartened by the United States House of Representatives Committee on the Judiciary's Subcommittee on Immigration and Citizenship and Committee on Foreign Affairs' Subcommittee on Oversight and Investigations' attention to oversight of the Trump Administration's Muslim Ban and its efforts to pass legislation that will remedy this unjust policy.

The NO BAN Act would prohibit the President from discriminating based on religion in suspending or restricting entry into the United States – with exceptions to ensure protection of national security and public safety. Importantly, the legislation would also rescind the

administration's cruel and unlawful asylum and refugee bans and establish vital protections against future discriminatory bans such as these.

The Act would also require the Departments of State and of Homeland Security to provide specific and credible evidence of a need for any suspensions or restrictions, which must be narrowly tailored to meet a compelling government interest.

ADL supports the NO BAN Act as an important step by the United States Congress to protect America's core value of religious freedom and its promise to be a "shining city upon a hill," as John Winthrop envisioned, opening itself to "anyone with the will and the heart to get here."

America's Value of Religious Liberty and Character as a Nation of Immigrants

Throughout our history, the United States has aspired to be a beacon of hope for refugees fleeing oppression abroad, for victims of religious persecution, and for immigrants seeking better lives and opportunities. The colonies that became the United States of America were founded by religious refugees. The U.S. Constitution enshrines religious freedom in the First Amendment. The Statue of Liberty stands on our shores as a symbol for all who seek a better life in America.

In 1958 then-Massachusetts Senator John F. Kennedy wrote an essay for ADL entitled *A Nation of Immigrants*. In this monograph, the future President highlighted the vast contributions of immigrants to American society at a time when the United States was locked in a debate about the direction its immigration policy should take. His insights remain as relevant today: America is a nation of people who value both tradition and the exploration of new frontiers, people who deserve the freedom to build better lives for themselves in their adopted homeland.

The Legality of the Trump Administration's Muslim Ban

In *Trump v. Hawaii*, the U.S. Supreme Court held that the President "lawfully exercised the broad discretion granted to him under the Immigration and Nationality Act to suspend the entry of aliens into the United States." 138 S. Ct. 2400 (internal citations omitted). *See* 8 U.S.C. § 1182(f). The Court also found that the plaintiffs "have not demonstrated a likelihood of success on the merits of their claim that the Proclamation violates the Establishment Clause." 138 S. Ct. at 2401.

ADL filed an *amicus brief* in this case along with a number of Jewish religious and civil rights organizations urging the U.S. Supreme Court to uphold lower court rulings that blocked the President's third attempt to prohibit travel to the United States from six majority-Muslim nations. ADL also filed *amicus briefs* in several related federal circuit cases along with numerous civil rights organizations.

The NO BAN Act Ensures a Discriminatory Travel Ban Will Not Be Legal

The NO BAN Act would repeal the Trump Administration's Muslim Ban (Presidential Proclamations 9645 and 9822 and Executive Orders 13769, 13780, and 13815) and address the legal avenues by which the Administration's discriminatory policy survived Supreme Court review.

The NO BAN Act would amend the Immigration and Nationality Act (INA) to explicitly prevent the government from discriminating based on religion in the issuing of immigrant visas. The Act would also expand the INA's non-discrimination provision to nonimmigrant visas, entry into the United States, and the approval or revocation of any immigration benefit.

The Act would then revise the process by which the Executive Branch suspends or imposes restrictions on aliens attempting to enter the United States. In place of the President’s current broad discretion to impose such policies, the NO BAN Act articulates a process in which the Secretary of State, in consultation with the Secretary of Homeland Security, must determine “based on credible facts” and “specific evidence” that suspension or restrictions on certain aliens’ entry is required to “address specific acts that undermine the security or public safety of the United States; human rights; democratic processes or institutions; or international stability.” Additionally, under the Act, the Executive would need to “narrowly tailor the suspension or restriction to meet a compelling governmental interest.”

By instituting a process in which the Department of State and the Department of Homeland Security evaluate with specific, credible, factual evidence the necessity of a suspension or restriction on certain persons’ entry to the United States, the NO BAN Act limits the broad presidential authority in the INA upon which the Supreme Court relied in *Trump v. Hawaii*. Moreover, this new process would dramatically decrease the likelihood that decisions about who can enter the United States will be made on xenophobic whims or to fulfill discriminatory campaign promises. *Cf.* 138 S. Ct. 2417 (describing then-candidate Trump’s call for “a total and complete shutdown of Muslims entering the United States,” among other statements).

Further, by requiring potential travel suspensions or restrictions to be narrowly tailored to meet a compelling governmental interest, the NO BAN Act explicitly mandates that such policies pass strict scrutiny – the Supreme Court’s highest standard to ensure protection of individuals’ Constitutional rights. As Justice Sotomayor, joined by Justice Ginsburg, wrote in her dissent in *Trump v. Hawaii*:

[T]he Court, without explanation or precedential support, limits its review of the Proclamation to rational-basis scrutiny. That approach is perplexing, given that in other Establishment Clause cases, including those involving claims of religious animus or discrimination, this Court has applied a more stringent standard of review. . . [U]nder Supreme Court precedent, laws ‘involving discrimination on the basis of religion. . . are subject to heightened scrutiny whether they arise under the Free Exercise Clause, the Establishment Clause, or the Equal Protection Clause.’” 138 S. Ct. at 2441 (Sotomayor, J., dissenting) (internal citations omitted).

Under strict scrutiny, the Trump Administration’s Muslim Ban is “plainly unconstitutional.” *Id.* By statutorily imposing this standard, the NO BAN Act would help prevent future discriminatory policies.

The NO BAN Act Restores America’s Values of Equality, Liberty, and Justice

Since 1913, ADL has worked against intolerance and hatred, seeking to stop the defamation of the Jewish people and fighting to secure justice and fair treatment for all people. America is dedicated to the ideals of equality, liberty, and justice. But throughout our history, and frequently with respect to immigration, when prejudice and fear predominate over reason and compassion, we have faltered from these ideals – often with devastating consequences. We turned our backs on the *S.S. St. Louis*, a ship with nearly 1,000 Jewish people fleeing Nazi Germany, condemning hundreds of them to their deaths; we passed laws that overtly excluded and discriminated against Chinese immigrants; and we rounded up more than 100,000 Americans of Japanese descent and forcibly incarcerated them in prison camps. In each instance, when we later realized we had strayed from our principles, we were left to apologize to the people who had suffered, or to their descendants, or to the memory of those who perished without descendants, in each case promising to learn from our mistakes and not to repeat them.

The NO BAN Act would take a significant step in preventing the repeat of past discriminatory and xenophobic U.S. immigration policies. The Act protects the core American value of religious freedom as

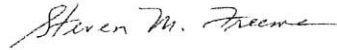
it explicitly prohibits religious discrimination in visa or immigration decisions. It guards against the potential bigotry of one person, the President, by involving the Departments of State and of Homeland Security in decisions regarding entry into the United States. Finally, it ensures that the Supreme Court will apply strict scrutiny in evaluating whether our government's policies comply with core principles enshrined in the U.S. Constitution.

We urge the Congress to expeditiously pass the NO BAN Act.

Sincerely,



Erika Moritsugu
Vice President of Government Relations,
Advocacy & Community Engagement



Steven M. Freeman
Vice President of Civil Rights and Director of
Legal Affairs



Moran Banai
Director of Federal Relations



Michael Lieberman
Washington Counsel