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AFFAIRS COUNCIL

**MUSLIM PUBLIC AFFAIRS COUNCIL
STATEMENT FOR THE RECORD**

Joint Hearing on “Oversight of the Trump Administration’s Muslim Ban”

**HOUSE JUDICIARY COMMITTEE
Subcommittee on Immigration and Citizenship**

**HOUSE FOREIGN AFFAIRS COMMITTEE
Subcommittee on Oversight and Investigations**

UNITED STATES HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2019

Chairwoman Lofgren, Chairman Bera, Ranking Members Buck and Zeldin, and Members of the House Judiciary and Foreign Affairs Committees: We, at the Muslim Public Affairs Council (MPAC), appreciate the opportunity to submit this statement for the record regarding the hearing titled, “Oversight of the Trump Administration’s Muslim Ban.”

Since 1988, MPAC has been committed to promoting and strengthening American pluralism by increasing understanding and improving policies that impact American Muslims. We thank the Committees for holding such an important hearing, particularly because the impact of the Muslim Ban on families, as well as transparency of the implementation of the Ban, has not been the subject of a Congressional hearing until now.

Origins of the Muslim Ban. Trump’s first family separation policy -- the original Muslim Ban -- was issued on January 27, 2017 (Executive Order 13769¹), just one week after Trump took

¹ *Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States*, (January 27, 2017), <https://www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-United-states/>.



office. The Executive Order banned individuals from seven Muslim-majority countries including: Iran, Iraq, Libya, Somalia, Syria, Sudan, and Yemen.

These same countries were previously targeted when they were subjected to restrictions under the Visa Waiver Program (VWP), a program by which people of certain nationalities can be admitted to the United States without needing to apply for a visa for a limited period of time. While these prior restrictions did not explicitly ban individuals from these countries, since they could still apply for a visa through the regular consular process, they created a framework of discrimination that became an easy route for Trump to fulfill his campaign promise of a Muslim Ban. These restrictions were imposed in response to the November 2015 attacks in Paris and San Bernardino, and were among several fear-based proposals² in Congress that sought to limit the entry of people from certain countries into the United States. In December 2015, Congress passed the Consolidated Appropriations Act 2016,³ which included a provision establishing new eligibility requirements for travel under the VWP. In January 2016, DHS⁴ announced its decision to add Iran, Iraq, Sudan, or Syria as four countries of concern, limiting VWP travel for certain individuals traveling through these countries – including those who enjoyed dual citizenship in these countries. The following month, DHS expanded⁵ this list to include Libya, Somalia, and Yemen; however this time excluding restrictions for those with dual citizenship. Despite the fact that there is no evidence – neither then nor today – to support the blanket assertion that citizens of these countries are more likely to engage in “terrorist acts,” Congress enacted a discriminatory framework—singling out people from these Muslim-majority countries—and explicitly prohibited them from the VWP based upon their nationality and national origin.

² Bernstein, Hamutal and Nicole DuBois, *The debate versus the reality of refugees in the US*, (April 9, 2018), <https://www.urban.org/urban-wire/debate-versus-reality-refugees-us>.

³ *Consolidated Appropriations Act 2016*, <https://www.congress.gov/bill/114th-congress/house-bill/2029/text>.

⁴ *United States begins implementation of changes to the visa waiver program*, <https://www.dhs.gov/news/2016/01/21/united-states-begins-implementation-changes-visa-waiver-program>

⁵ *DHS announces further travel restrictions for the visa waiver program*, <https://www.dhs.gov/news/2016/02/18/dhs-announces-further-travel-restrictions-visa-waiver-program>.



Timeline of Events. January 27, 2017: President Trump issued Muslim Ban 1.0 (Executive Order 13769), banning individuals from seven Muslim-majority countries Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen for 90 days; suspending entry for all Syrian refugees indefinitely; and prohibiting all other refugees from entering for 120 days. Overnight, people flooded into airports, demanding⁶ the release of those being denied entry and detained. Attorneys around the country camped out in airports and filed lawsuits.

January 28, 2017: A federal judge granted a nationwide temporary injunction⁷ blocking the implementation of the Muslim Ban. Nevertheless, the administration violated⁸ the court's injunction and multiple other orders with its attempts to continue to ban individuals for nearly a week. Additional cases continued to be filed and orders were issued weighing in on Trump's discriminatory ban.

March 6, 2017: Trump issued Muslim Ban 2.0 (Executive Order 13780⁹), banning individuals from Iran, Libya, Somalia, Sudan, Syria, and Yemen for 90 days and banning refugees for 120 days. Notably, Iraq was removed from the Ban following an agreement between the U.S. and Iraqi government that Iraq would accept the deportations of Iraqis; within weeks, thousands of

⁶ Doubek, James, *Thousands protest at airports nationwide against Trump's immigration order*, (January 27, 2017),

<https://www.npr.org/sections/thetwo-way/2017/01/29/512250469/photos-thousands-protest-at-airports-nationwide-against-trumps-immigration-order>.

⁷ Shear, Michael, *Judge blocks Trump order on refugees amid chaos and outcry worldwide*, (January 28, 2017),

<https://www.nytimes.com/2017/01/28/us/refugees-detained-at-us-airports-prompting-legal-challenges-to-trumps-immigration-order.html>.

⁸ *DHS Implementation of Executive Order #13769 "Protecting the Nation From Foreign Terrorist Entry Into the United States,"* (January 27, 2017),

<https://www.oig.dhs.gov/sites/default/files/assets/2018-01/OIG-18-37-Jan18.pdf>.

⁹ *Executive Order Protecting The Nation From Foreign Terrorist Entry Into The United States*,

<https://www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states-2/>.



Iraqis were detained across the country.

March 15, 2017: Muslim Ban 2.0 is blocked¹⁰ by the courts prior to implementation. Additional injunctions and rulings against the administration followed. The administration continued to appeal these rulings.

June 26, 2017: The Supreme Court agreed¹¹ to hear the Muslim Ban case and set oral arguments for October 2017. The court also allowed the administration to implement a narrow portion of the Ban for those without a “bona fide relationship” with a person or entity in the U.S. This ruling became the source of additional briefings as the Trump administration attempted to use a very narrow reading of these relationships to ban people.

July 19, 2017: The Supreme Court allowed¹² a lower court order to stand, exempting grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins from the Ban—as having a “bona fide relationship.” Refugees were required to have ties to people or entities (in addition to refugee resettlement organizations) in order to come to the U.S. until the Supreme Court case was heard.

September 24, 2017: Trump issued Muslim Ban 3.0 (Presidential Proclamation 9645¹³), indefinitely banning individuals from most or all nationals of Chad, Iran, Libya, Somalia, Syria,

¹⁰ Burns, Alexander, *2 federal judges rule against Trump’s latest travel ban*, (March 15, 2017), <https://www.nytimes.com/2017/03/15/us/politics/trump-travel-ban.html>.

¹¹ Shear, Michael, *Supreme Court takes up travel ban case, and allows parts to go ahead*, (June 26, 2017), <https://www.nytimes.com/2017/06/26/us/politics/supreme-court-trump-travel-ban-case.html>.

¹² Kennedy, Merrit, *Supreme Court allows ‘grandparent’ exemption to Trump travel ban*, (July 19, 2017), <https://www.npr.org/sections/thetwo-way/2017/07/19/538115295/supreme-court-upholds-grandparent-exemption-to-trump-travel-ban>.

¹³ *Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats*, <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-enhancing-vetting-capabilities-processes-detecting-attempted-entry-united-states-terrorists-public-safety-threats/>.



and Yemen as well as a limited number of individuals from North Korea and Venezuela. **This is the current version of the Muslim Ban that is in effect indefinitely.**

October 10, 2017: The Supreme Court cancelled oral arguments scheduled in the case challenging Muslim Ban 2.0 on mootness grounds, since the 90-day national origin ban had expired.

October 17, 2017: Muslim Ban 3.0 is blocked¹⁴ by the courts.

October 24, 2017: The Supreme Court dismissed the other challenge to Muslim Ban 2.0 as moot, since the 120-day ban on refugees had expired. At the same time, Trump issued a new, separate refugee order, sometimes referred to as Muslim Ban 4.0 (Executive Order 13815¹⁵), banning refugees from Egypt, Iran, Iraq, Libya, Mali, North Korea, Somalia, Sudan, South Sudan, Syria, Yemen, and certain stateless individuals and implementing “extreme vetting measures” to halt the refugee process for these countries. For refugees from these countries, the ban was for 90 days; for those “following-to-join” other relatives, the ban was indefinite.

December 4, 2017: The Supreme Court allowed Muslim Ban 3.0 to go into effect¹⁶ as the case continued to be litigated. Though courts continued to issue rulings against the Trump administration, the Ban remained in effect per the Supreme Court’s ruling.

December 23, 2017: A federal court issued¹⁷ an injunction blocking Muslim Ban 4.0,

¹⁴ Yee, Vivian, *Judge temporarily halts new version of Trump’s travel ban*, (October 17, 2017), <https://www.nytimes.com/2017/10/17/us/trump-travel-ban-blocked.html>

¹⁵ *Presidential Executive Order on Resuming the United States Refugee Admissions Program with Enhanced Vetting Capabilities*, <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-resuming-united-states-refugee-admissions-program-enhanced-vetting-capabilities/>

¹⁶ Liptak, Adam, *Supreme Court allows Trump travel ban to go into effect*, (December 4, 2017), <https://www.nytimes.com/2017/12/04/us/politics/trump-travel-ban-supreme-court.html>

¹⁷ *Federal Court Grants Injunction in Suit to Stop Trump Administration from Separating Refugees from Their Families*, (December 23, 2017)



targeting refugees.

April 25, 2018: The Supreme Court heard oral arguments¹⁸ on challenges to Muslim Ban.

June 26, 2018: The Supreme Court issued a ruling allowing the Muslim Ban to remain in effect, indefinitely banning immigrants and certain nonimmigrants from Iran, Libya, Somalia, Syria, and Yemen as well as a limited number of individuals from North Korea and Venezuela (Chad was removed from the list of banned countries on April 10, 2018). It based its decision in part on the argument that the waiver provision would prevent the policy from being a complete ban. As the Supreme Court did not issue a ruling on the constitutionality of the Ban, lower courts proceed with these cases.

July 30, 2018: A U.S. district court denied¹⁹ the government's motion to dismiss the refugee Muslim Ban case as moot, an argument the government made after the order expired. This case has continued to discovery and the court is determining whether the government complied with the injunction blocking the implementation of this order.

July/August 2018: Class action lawsuits were filed²⁰ challenging the arbitrary and capricious way the government has implemented the waiver process and arguing it serves merely as window dressing for an otherwise unlawful ban.

July 25, 2019: Oral arguments were made in the lawsuits challenging the waiver process, with the judge indicating an intention to decide on the government's motion to dismiss and

<https://www.aclu-wa.org/news/federal-court-grants-injunction-suit-stop-trump-administration-separating-refugees-their>.

¹⁸ *Supreme Court of the United States Oral Arguments*,

https://www.supremecourt.gov/oral_arguments/argument_transcripts/2017/17-965_3314.pdf.

¹⁹ *Court says government must do more to show it is reuniting refugee families*,

<https://www.aclu-wa.org/news/court-says-government-must-do-more-show-it-reuniting-refugee-families>.

²⁰ National Immigration Law Center, *Groups challenge the waiver component of Trump Administration's Muslim travel ban*, <https://www.nilc.org/2018/08/01/waiver-component-of-muslim-travel-ban-challenged/>.



requesting the parties to return on September 12 for further guidance on discovery.

A variety of administrative actions have stemmed from the Muslim Ban, such as the expansion of social media vetting²¹ (which has implications for the First Amendment rights of those in the U.S.) and the creation of the National Vetting Center.²² Additionally, the Trump administration has used the same legal authority to issue and reissue an asylum ban,²³ which does not even include a waiver process. Finally, the administration continues to find other ways to prevent Black, Brown, and Muslim people from coming to or staying in the United States, such as ending²⁴ Temporary Protected Status for hundreds of thousands of people living in the U.S.; slashing²⁵ the admissions of refugees to their lowest levels; substantially reducing²⁶ the number of visas issued; and denaturalizing American citizens at unprecedented rates.

Current State of Play. Since December 4, 2017, America has been a country with a Muslim Ban in full effect. Further, in the one year since the Supreme Court’s decision, the Muslim Ban has been followed by heightened family separation policies and a court battle over the administration’s DACA rescindment, as well as efforts to curtail legal immigration through the public charge rule, changes to the asylum process, and the militarization of the southern border. The sum total of these moves sketch out an expressly white nationalist immigration policy, wherein the lives of non-white immigrants are completely disregarded in the service of scoring political points or institutionalizing nativist bigotries. These policies, along with the hateful

²¹ *Travel ban on Muslims to include social media ‘vetting,’* (January 31, 2017) <https://www.aljazeera.com/news/2017/01/travel-ban-muslims-include-social-media-vetting-170131205425042.html>.

²² *National Vetting Center*, <https://www.cbp.gov/border-security/ports-entry/national-vetting-center>

²³ Hesson, Ted, (August 16, 2018), *Trump scores partial win on asylum ban as court narrows injunction*, <https://www.politico.com/story/2019/08/16/immigration-asylum-donald-trump-1667003>.

²⁴ Lind, Dara, *Trump administration puts end of TPS on hold for Hondurans and Nepalis*, (March 12, 2019),

<https://www.vox.com/policy-and-politics/2019/3/12/18262314/tps-honduras-nepal-lawsuit-news-status>.

²⁵ Hesson, Ted, *Trump officials pressing to slash refugee admissions to zero next year*, (July 18, 2019), <https://www.politico.com/story/2019/07/18/trump-officials-refugee-zero-1603503>.

²⁶ Toosi, Nahal, *Foreign visas plunge under Trump*, (April 3, 2018), <https://www.politico.com/interactives/2018/trump-travel-ban-visas-decline/>.



rhetoric coming from the highest levels of government, translate into everyday harms in our communities. Hate crimes – particularly those motivated by racial, ethnic, or religious animus – continue to rise, even according to the underreported FBI data. Muslims are facing heightened levels of harassment and violence, though many are afraid to report it to law enforcement. Some – even United States citizens – are afraid that if they call the police, they will be turned over to immigration enforcement. These fears are warranted and exacerbated as we have seen U.S. citizens detained for extended periods of time based on their appearance or names.

On June 26, 2018, the Supreme Court made the Muslim Ban permanent. When Trump signed his first Executive Order to ban Muslims from coming to this country, many were reminded of the horrific Japanese American internment which led to the 1944 *Korematsu v. United States* case. Back then, the Supreme Court stood on the wrong side of history, ruling against the American people in favor of military necessity. The Supreme Court had the chance to redeem themselves for their complicity in endorsing discrimination during the *Korematsu* case. But after over 75 years, the courts have not learned from their mistakes. While lower courts proceed, it becomes clear that the path to ending this discrimination is in the hands of Congress and voters.

For those impacted by the Ban, the only immediate relief is in 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 serve as merely window dressing²⁷ with no consistency and has resulted in small numbers of approvals. According to documentation²⁸ received from Senator Van Hollen’s office, approximately 5.1% of individuals were issued waivers by the Department of State as of March 31, 2019. As noted by Justice Breyer, there is “reason to believe that waivers are not being processed in an ordinary way.”²⁹ Additionally,

²⁷ National Iranian American Council, Muslim Ban statistics show continued discriminatory impact, <https://www.niacouncil.org/muslim-ban-statistics-show-continued-discriminatory-impact/>.

²⁸ *Department of State Report: Implementation of Presidential Proclamation 9645 December 8, 2017 to March 31, 2019*, https://www.vanhollen.senate.gov/imo/media/doc/Van_Hollen_Proclamation_9645.pdf.

²⁹ *Trump v. Hawaii, No. 17-965, 585 U.S. ____*, (2018), https://www.supremecourt.gov/opinions/17pdf/17-965_h315.pdf.



some consular officers have echoed these concerns³⁰ and it appears the waiver clause is, at best, disingenuous attempt by the administration to conceal the full breadth of the Ban.

In addition to requests for data regarding waivers, several Members of Congress have also requested access to the 17-page Worldwide Threat Report that the Trump administration produced.³¹ This report purports to assess the security situation in nearly 200 countries and supposedly concludes that the greatest security threats originate in the countries cited in the Muslim Ban. The Trump administration refused to release the report and cited executive privilege.

At this time, the most secure way to end this discriminatory ban is through its rescission under a new administration or by Congressional action. The NO BAN Act (H.R. 2214/S.1123³²) is a crucial piece of legislation that would repeal all iterations of the Muslim Ban, including the refugee ban and the asylum ban, ending these discriminatory orders and abuses of authority by the Trump administration. Significantly, this legislation would also make necessary reforms to the Immigration and Nationality Act to prevent future discriminatory bans. The No Ban Act would strengthen limitations on this authority by raising the standard under which a President can invoke such authority – requiring that any suspension of or restriction from entry must be based upon credible facts and must be connected to specific acts that have already occurred. It would also establish a system of checks and balances whereby Congress would be regularly notified and briefed on the status, implementation, and constitutional and legislative authority of the executive branch’s decision.

As the litigation continues and the elections proceed, it is crucial that Congress take the action needed to protect Muslim communities and other communities that could be targeted

³⁰ Stahl, Jeremy, *The Waiver Process is Fraud*, *Slate*, (June 15, 2019), <https://slate.com/news-and-politics/2018/06/trump-travel-ban-waiver-process-is-a-sham-two-consular-officers-say.html>.

³¹ *Presidential Proclamation No. 9645*, *82 Fed. Reg. 45161*, (2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-09-27/pdf/2017-20899.pdf>.

³² *NO BAN Act*, <https://www.congress.gov/bill/116th-congress/house-bill/2214>.



discriminatorily or without good reason. Supporting and elevating the No Ban Act is one of the most important tools in the toolbox.

Oversight Recommendations. As described above, the process by which waivers are approved or rejected remains hidden and the Trump administration has failed to indicate what specific factors consular officers or the relevant departments and agencies use to determine waiver eligibility and/or approval. Vital information that impacts the lives of Americans, and those around the globe, including:

1. The number of applications from banned countries;
2. The status of those applications (denied, approved, pending);
3. The total number of waiver rejections;
4. And, the justifications for continuing the Ban – remains unknown and the administration remains unaccountable.

Furthermore, Freedom of Information Act (FOIA) requests of consular guidance have been heavily redacted. We recommend that Congress request consular guidance because government documents requested by the legislative branch should not be heavily redacted. This guidance is critical because based on the number of waiver requests granted, it seems as though the standard to qualify for a waiver are much more restrictive than what the Trump administration implied. We recommend that the consular guidance documents should be made public, or at the very least, should be made available to members of the Judiciary and Foreign Affairs Committees.

Impact of the Muslim Ban. The ACLU published personal stories describing the Muslim Ban as a family separation policy in its own right for forcing individuals “to choose between [their] family and the life [they’ve] tried to build here.” The Muslim Ban has severed the familial and communal bonds among communities who, by existing at the axes of oppressions like Islamophobia and structural disempowerment, already need the most support.

The Ban has also come alongside a rise in racially- and ethnically-motivated hate crimes as



well as widespread distrust between communities and law enforcement, particularly immigration enforcement. These effects are all interwoven and reverberate beyond immigrants from the countries explicitly mentioned in the Ban. The waiver process under the Muslim Ban has been described as a “sham” and in our experience, the Trump Administration has failed to grant waivers to individuals with serious humanitarian needs, including ones that involve life and death. Not only has this family separation policy been devastating to the immigrant community, but it also has detrimental impacts on United States citizens.

For 17 months, Shaima Swileh, a Yemeni citizen, fought for her waiver application to be approved to enter the country with her 2-year old United States citizen son who was seeking treatment for a genetic brain disorder. For months, Ms. Swileh’s United States citizen husband and their son were forced to remain outside of the country because Ms. Swileh could not get her waiver granted. As her son’s condition worsened, Ms. Swileh’s husband made the incredibly difficult decision to leave his wife and take their son to America to receive treatment. After civil rights organizations sued the State Department and multiple Members of Congress urged the Trump administration to grant a waiver, Ms. Swileh was finally allowed to enter the United States to be reunited with her son, and ultimately to say goodbye to him only days before he passed away.

Another United States citizen, Josh Moody from Dayton, OH, is married to a Yemeni woman and is unable to enter the U.S. with his wife because she is of Yemeni origin. Mr. Moody’s wife applied for a waiver in September 2018, but he has not received a response from the U.S. government. He and his wife are expecting a baby in September 2019 and they are desperately trying to come home so that their U.S. citizen child can be born here. The humanitarian crisis is made worse by the fact that Mr. Moody’s grandmother lives in Ohio and is suffering from a terminal illness. Mr. Moody is struggling with the Sophie’s choice of residing with his wife and unborn child, or leaving them to visit his grandmother before she passes away. For now, he is remaining with his wife, but it is unjust that the Trump Administration is forcing him to make this decision.



Fatuma Haji-Hersi, a U.S. citizen and teacher from New Brighton, MN, has been separated from her Somali husband for 18 months. Ms. Haji-Hersi has health conditions that require her to stay near her doctors and she is unable to visit her husband, who currently resides in New Zealand. Ms. Haji-Hersi works two jobs in order to support her family. They applied for a visa waiver in September 2018 and have not heard anything back from the Trump Administration.

Although Ahmad is a U.S. citizen, his wife is currently unable to get a visa to join him here in the United States. She applied for a CR1 visa about three months after getting married. They were asked to provide a number of documents including proof that they were continuously in contact, documents of marriage, documents of previous relationship, documents from employers, salary, a birth certificate, as well as photos. They provided other evidence such as records and a police certificate that she did not have any background or would be any threat, as well as her high-level education background to demonstrate that she would be a contributing member of society. Additionally, she was accepted to a prestigious fellowship program in the United States. They did not expect to come across any issues because they were told by the embassy in Armenia that they had a bona fide marriage, and would be eligible for a waiver. However, in late 2018, she had her interview at the embassy, where she was denied a waiver. Since this rejection, Ahmad has communicated with several attorneys and Members of Congress from New York via letters hoping to get support.

This separation has been very hard on the two and their relationship. Ahmad suffers from bipolar disorder which has been severely aggravated by the stress of the separation and the waiver process. Similarly, this separation has created a severe financial burden on the two as they have to pay for two houses and bills and constant travel for Ahmad to see his wife. Now, Ahmad also worries for his career and relationships as he considers moving elsewhere to be with his wife. If he is forced to move, this will likely cause a blow to his career as his experience is very specific to the United States, and he will lose many of the close relationships he has developed with his peers and neighbors in the states. Finally, the United States has very good mental health care, especially for his bipolar disorder, that he may not have access to in another country.



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Our American values of freedom, mercy, and equality are being threatened. America, a nation of immigrants, should not turn its back on immigrants and refugees. Trump’s discriminatory Muslim Ban is in conflict with the values of our nation.

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