



**Statement of  
Muslim Advocates  
in Support of the NO BAN Act**

House Committee on the Judiciary  
Markup Session February 12, 2020

Muslim Advocates is a national civil rights organization working in the courts, in the halls of power, and in communities to halt bigotry in its tracks. Muslim Advocates was founded in the aftermath of the federal government's response to the events of September 11<sup>th</sup> when surveillance, animus, and discrimination targeting American Muslims first hit a crescendo. Our mission is to ensure that American Muslims have a seat at the table with expert representation, so that all Americans may live free from hate and discrimination.

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Muslims have been an integral part of America since the first slave ships arrived on its shores. Today, American Muslims reflect every race and ethnicity that comprise our nation's rich heritage. Muslims serve our nation as teachers, law enforcement, firefighters, members of Congress, and members of the armed services. They are business owners, scientists, service professionals, doctors, lawyers, entertainers, and professional athletes. They contribute to every aspect of our nation's economy and society.

Despite this country's long-celebrated promise of inclusion and diversity, in recent years there has been an alarming rise in anti-Muslim invective, violence, harassment, discrimination, attacks on mosques, and bullying of Muslim children. In particular, the number of hate crimes and attacks on mosques and Muslim institutions has increased dramatically since the announcement of the candidacy of now-President Donald Trump.

Against this backdrop, there is no doubt that Muslims are the targets of the Muslim Ban. And there is no doubt that American Muslims have been singled out for a peculiar and concentrated harm from this policy. The policy's manifest endorsement and legitimatization of anti-Muslim sentiment has contributed to an uptick in anti-Muslim harassment, bigotry, and discrimination.

Three years since the first Muslim Ban was issued, countless families remain separated with heartbreaking consequences. People have been denied access to lifesaving medical treatments; parents have been unable to care for their children; and spouses have been forced to live apart as they await decisions on their waiver applications. Some have been denied the opportunity to attend funerals or visit dying family members, and accomplished professionals and students have been denied access to career and educational opportunities.

The Muslim Ban is an egregious human rights violation that should be equally concerning to *all* Americans. On Friday, January 31, 2020, President Trump signed into law an expansion of the Muslim Ban that would suspend the issuance of almost all immigrant visas for individuals from Eritrea, Kyrgyzstan, Myanmar (Burma), and Nigeria, as well as end the issuance of diversity visas for nationals of Sudan and Tanzania. Presidential Proclamation 9983 maintains the original restrictions for Iran, Libya, Syria, Somalia, Yemen, North Korea and Venezuela under Presidential Proclamation 9645 from 2017. As a result, American families with connections to the thirteen countries are impacted by this discriminatory policy.

There is also no doubt that the Muslim Ban has hurt the U.S. economy at large by restricting the ability of companies, hospitals, and universities to fill critical jobs here in the U.S., which in turn has stifled America's ability to innovate, educate, and compete on a global scale.

On a more fundamental level, the Muslim Ban recapitulates the discriminatory practices and anti-immigrant sentiments of the early 1900's immigration laws—targeting Catholic, Jewish, Italian, Japanese, Chinese, Irish, and Mexican immigrants, among others—that Congress later condemned by passing the Immigration and Nationality Act of 1965 (INA), also known as the Hart-Celler Act. That law rejected a decades-old national origin-based quota system that favored immigrants from northern and western Europe and required non-discrimination in the issuance of visas on the basis of nationality. Therefore, it is critical to view the Muslim Ban not simply as a “Muslim” or “immigrant” concern, or as a partisan wedge to divide us. Instead, we urge Congress to view the Muslim Ban for what it is at its core: a paradigm of religious and racial bigotry that should offend us all. The Muslim Ban injects discrimination into our immigration system that Congress had long ago rejected and that runs counter to our most fundamental American values and beliefs.

We urge Congress to act now to repeal all iterations of the Muslim Ban and ensure that no future Administration can enact such a discriminatory by passing the **National Origin-Based Antidiscrimination for Nonimmigrants (NO BAN) Act (H.R. 2214/S. 1123)**.

We worked directly with members of Congress, congressional staff, and other stakeholders to support legislation that would clarify Congress's intent in the INA. On April 10, 2019, Representative Judy Chu (D-CA) and Senator Chris Coons (D-DE) introduced legislation to do just that: the **NO BAN Act**. Muslim Advocates along with our partners in the NO BAN Act Coalition organized a letter endorsing the NO BAN Act which is supported by more than 400 advocacy organizations. We applaud the more than 250 members of the U.S. House of Representatives and U.S. Senate who support it. We urge all members of Congress to support the NO BAN Act and to take a stand against discriminatory immigration policies that target individuals on the basis of religion. Congress must immediately repeal the Muslim Ban and amend the INA to ensure that no future President can enact such an overbroad, discriminatory ban again. The NO BAN Act would immediately repeal all iterations of the Muslim Ban. Importantly, the legislation would also clarify that no administration can use religion as the basis to establish discriminatory immigration policies targeting communities.

Given the Supreme Court's decision in *Trump v. Hawaii*, Congress must make clear that the INA cannot be used to blanketly and permanently ban foreign nationals simply based on their religion and national origin. Section 212(f) of the INA grants the President power, under specific circumstances to suspend or restrict the entry of certain classes of foreign nationals when such entry would be “detrimental to the interests of the United States.”<sup>1</sup> The Court held that the Muslim Ban falls within the President's section 212(f) authority because the language of the

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<sup>1</sup> Section 212(f) of the Immigration and Nationality Act [8 U.S.C. § 1182(f)] (“Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate. . .”).

statute “grants the President broad discretion.”<sup>2</sup> The Court read into the statute a congressional intent to grant broad discretion, without temporal or scope limitations, to the President.<sup>3</sup>

Congress long ago repudiated injecting national origin-based bigotry into our immigration system, and it is being called upon to clarify its intent by amending the INA to ensure that no President can attempt to override through executive fiat congressional intent of fairness and non-discrimination. The NO BAN Act would amend the non-discrimination provision, under section 202(a) of the INA, to explicitly prohibit religious discrimination by the government when making determinations on immigrant visas, nonimmigrant visas, entry into the U.S., or other immigration benefits.<sup>4</sup>

The bill would also make crucial changes to section 212(f) to ensure that this authority is not further abused by President Trump or by any future President. The bill would establish a structured, transparent process that a President must follow when suspending or restricting entry under section 212(f) of the INA.<sup>5</sup> Section 212(f) was enacted in 1952, against a backdrop of tailored presidential authority granted to Presidents Theodore Roosevelt and Woodrow Wilson during World War I and World War II.<sup>6</sup> The NO BAN Act would maintain the restriction authority that Congress granted to the President under 212(f), but amend the statute so that it more closely tracks the many specific, time-limited and narrowly tailored invocations of this authority by previous Republican and Democratic administrations in the last 40 years.<sup>7</sup>

Under the NO BAN Act, the Secretary of State, in consultation with the Secretary of Homeland Security, must determine “based on credible facts,” that a suspension or restriction of entry of any foreign nationals or class of foreign nationals would “undermine the security or public safety of the United States” or the preservation of human rights, democratic processes or institutions, or international stability before a president can invoke 212(f) authority.<sup>8</sup> The administration would have to supply “specific evidence” to support its determination and the suspension or restriction must be “narrowly tailor[ed] . . . to meet a compelling government interest.” The NO BAN Act also includes transparency measures to hold the President accountable to both Congress and the American people.

Importantly, the NO BAN Act would reflect that when this authority has been invoked, it typically includes family-based and humanitarian categorical exceptions by codifying this practice and creating a rebuttable presumption in favor of such categorical exceptions.

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<sup>2</sup> 138 S. Ct. at 2408.

<sup>3</sup> See Huq, *supra* note 9 (discussing statutory interpretation questions).

<sup>4</sup> Section 202(a)(1)(A) of the Immigration and Nationality Act [8 U.S.C. § 1152(a)(1)(A)] (“Except as specifically provided in paragraph (2) and in sections 1101(a)(27), 1151(b)(2)(A)(i), and 1153 of this title, no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence.”).

<sup>5</sup> See *supra* note 41.

<sup>6</sup> See Amicus Br. of Scholars of Immigration Law at 8-11 (stating that the president’s wartime authority was “limited in scope, authorizing not sweeping bans on foreign nationals but only more targeted restraints leveled against subversive wartime actors.”).

<sup>7</sup> See Congressional Research Service, *Executive Authority to Exclude Aliens: In Brief* (Jan. 23, 2017), <https://fas.org/sgp/crs/homsec/R44743.pdf>

<sup>8</sup> NO BAN Act, § 3.

Throughout the INA, Congress has conferred authority on each President to create immigration policies that are reasonable and limited to the standards enacted by Congress. This delegation of authority is not limitless and unbounded. Yet, by its silence, Congress cedes its authority to the Trump administration, allowing it to discriminate on the basis of religion. Congress must act now to end religious-based discrimination in immigration decisions, and ensure that we bring this dark chapter in our country’s history to an immediate end.

“Religious faith or national origin should never be an obstacle to whether we extend a hand of welcome to the refugee or the immigrant.”<sup>9</sup> This statement is from an open letter signed by 209 religious leaders and 92-faith based organizations across faith traditions in support of the NO BAN Act. And these faith leaders are right. Religious liberty is a bedrock principle of our country that should not be upheld for some and not others.

In the words of James Madison, one of the framers of the U.S. Constitution:

“...we hold it for a fundamental and undeniable truth, ‘that religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence.’ [citing to Decl. Rights, Article 16.] The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right.”<sup>10</sup>

Muslim Advocates – in partnership with the NO BAN Act Coalition and with the support of a diverse coalition of over 400 civil rights, faith, national security, and community organizations – endorses the NO BAN Act.<sup>11</sup> We urge Congress to pass the NO BAN Act swiftly and remove the scourge of religious bigotry from our immigration system.

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<sup>9</sup> See Faith Communities Support the NO BAN Act (Apr. 10, 2019), <https://medium.com/@S2SCampaign/faith-communities-support-the-no-ban-act-5000ff024a1>.

<sup>10</sup> James Madison, *Memorial and Remonstrance Against Religious Assessments* (1785), p. 1, <https://www.law.gmu.edu/assets/files/academics/founders/Madison%27sMemorial.pdf>.

<sup>11</sup> See Stakeholder Letter to Congress (April 8, 2019), <https://www.muslimadvocates.org/files/FINAL-NO-BAN-Act-Coalition-Letter-040519.pdf>.