

Written Statement of Asian Americans Advancing Justice

House Judiciary Committee Markup of the No Ban Act, H.R. 1333 and Access to Counsel Act of 2021, H.R. 1573

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Asian Americans Advancing Justice (Advancing Justice) write to express our support for the No Ban Act, H.R. 1333 and the Access to Counsel Act of 2021, H.R. 1573. We appreciate this opportunity to submit a written statement for today's markup of the No Ban Act and the Access to Counsel Act. We commend the Biden administration's actions to end the Muslim and African Bans and thank the committee members for directing their attention to ensure such unjust and inhumane policies are never enacted again. Advancing Justice is a national partnership of five non-profit, non-partisan organizations working to advance the human and civil rights of Asian Americans and Pacific Islanders (AAPIs) through advocacy, public policy, public education, and litigation. The following five members of Advancing Justice are submitting this statement: Advancing Justice | AAJC (located in Washington, D.C.)¹, Advancing Justice | Asian Law Caucus (located in San Francisco, CA),² Advancing Justice | Atlanta³, Advancing Justice | Chicago⁴, and Advancing Justice | Los Angeles.⁵

I. Government Discrimination Against Asian Americans

¹ Advancing Justice | AAJC, formerly known as Asian American Justice Center, is a national organization that advances the civil and human rights of Asian Americans and builds and promotes a fair and equitable society for all through public education, policy analysis and research, policy advocacy, litigation, and community capacity and coalition-building.

² Advancing Justice | Asian Law Caucus, formerly known as Asian Law Caucus, is the nation's oldest legal organization defending the civil rights of Asians and Pacific Islanders, particularly low-income, immigrant, and underserved communities.

³ Advancing Justice | Atlanta, formerly known as Asian American Legal Advocacy Center (AALAC), is the first nonprofit legal advocacy organization dedicated to protecting the civil rights of Asian Americans, Native Hawaiian, Pacific Islander (AANHPI) and Arab, Middle Eastern, Muslim, and South Asian (AMEMSA) communities in Georgia and the Southeast.

⁴ Advancing Justice | Chicago, formerly known as Asian American Institute, is the leading pan-Asian organization in the Midwest dedicated to empowering the Asian American community through advocacy, research, education, leadership development, and coalition-building.

⁵ Asian Americans Advancing Justice | Los Angeles is the nation's largest legal and civil rights organization for Asian Americans, Native Hawaiians, and Pacific Islanders (NHHPI).

The United States government has a long history of using national security justifications to discriminate and target Asian Americans, including Arab, Middle Eastern, Muslim, and South Asian (AMEMSA) communities. Often, these xenophobic policies have made their way into our immigration laws, just like the current Muslim Ban. The Chinese Exclusion Act of 1882, which prevented Chinese immigrants from coming to the United States for over 60 years,⁶ was the first major immigration law that prevented immigrants from entering the country or gaining citizenship, based on ethnic and national origin.⁷ In 1914, the federal government once again targeted Asian Americans when under the guise of national security it barred anyone born in a geographically defined “Asiatic Barred Zone” from entering the country.⁸ The act extended the exclusion formerly limited to the Chinese to all Asians and Pacific Islanders from Turkey and Saudi Arabia in the west to the Polynesian Islands in the east.⁹ Finally, in 1924, with the passage of the Asian Exclusion Act, the government effectively ended all immigration from Asian countries.¹⁰

These anti-Asian sentiments culminated in one of the darkest chapters of American history: the incarceration of 120,000 Americans of Japanese ancestry during World War II.¹¹ Whole families, including children, were rounded up, removed from their homes, and forced to live in detention centers under the pretext of national security based simply on their ancestry.¹² Americans of Japanese ancestry were targeted and incarcerated in federal detention centers without due process, while members of white ethnic groups with ancestry of countries that the United States was at war with were not detained.¹³

II. Government Targeting of Arab, Middle Eastern, Muslim and South Asian Communities

In the wake of the tragic events of September 11, 2001, the United States government engaged in the pervasive targeting, monitoring, and surveillance of AMEMSA communities through various policies and programs. In 2002, the federal government initiated the National Security Entry-Exit Registration System (NSEERS), which targeted men who entered the U.S. on nonimmigrant

⁶ Id.

⁷ *Archives of the West from 1877-1887: Chinese Exclusion Act of 1882*, PBS (2001), <https://www.pbs.org/weta/thewest/resources/archives/seven/chinxact.htm> (last visited September 19, 2019).

⁸ See U.S. Dep’t of State, *The Immigration Act of 1924 (The Johnson-Reed Act)*, available at <https://history.state.gov/milestones/1921-1936/immigration-act> (last visited September 23, 2019).

⁹ *Asiatic Barred Zone*, <https://immigrationtounitedstates.org/362-asiatic-barred-zone.html> (last visited September 23, 2019).

¹⁰ Id.

¹¹ See Exec. Order 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942) (authorizing the internment of Americans of Japanese ancestry); see also *Korematsu v. United States*, 323 U.S. 214 (1944) (upholding the internment under strict scrutiny review).

¹² Id.

¹³ See *Korematsu*, 323 U.S. at 233, 240-42 (Murphy, J., dissenting) (noting that similarly situated American citizens of German and Italian ancestry were not subjected to the “ugly abyss of racism” of forced detention based on racist assumptions that they were disloyal, “subversive,” and of “an enemy race,” as Japanese Americans were); Natsu Taylor Saito, *Internments, Then and Now: Constitutional Accountability in Post-9/11 America*, 72 Duke F. for L. & Soc. Change 71, 75 (2009) (noting “the presumption made by the military and sanctioned by the Supreme Court that Japanese Americans, unlike German or Italian Americans, could be presumed disloyal by virtue of their national origin”).

visas from primarily Muslim-majority, Arab, African, and South Asian countries.¹⁴ Men who were required to register with the federal government were interrogated by authorities without any reason to suspect them of wrongdoing. Communities saw family members and neighbors disappear in the middle of the night, held in overcrowded jails, and deported without due process.¹⁵ More than 13,000 people were placed in removal proceedings, businesses were closed down, and students were forced to leave schools and colleges with degrees uncompleted.¹⁶

This criminalization of AMEMSA communities, specifically Muslim communities, continues to this day through other discriminatory federal policies. Since 2001, members of AMEMSA communities, including thousands of Muslim American citizens, have had their lives upended after their names have been added to the federal government's unconstitutional No Fly List, without any suspicion of wrongdoing.¹⁷ Additionally, under the guise of national security, the FBI to this day carries on discriminatory investigations, predatory sting operations, and baseless prosecutions against members of AMEMSA communities.¹⁸

Rather than learning from these mistakes, once again, we find ourselves on the wrong side of history with this discriminatory Muslim Ban.¹⁹ We cannot forget the mistakes of the past, and we must be vigilant of the horrors that arise from racial profiling and blanket determinations of guilt based on ancestry, religion, race, and/or national origin.

III. Impact of the Muslim Ban

A. Impact by the Numbers

No family or community should be separated because of their religion or nationality, but that is exactly what the Muslim Ban did. Since January 2017, when the first iteration of the Muslim Ban

¹⁴ See *Delete NSEERS Before Trump Takes Office*, CATO INSTITUTE (2016), <https://www.cato.org/blog/delete-nseers-trump-takes-office> (last visited September 23, 2019); see also *Immigrants Welcome**, BOSTON REVIEW (2018), <http://bostonreview.net/globaljustice/maytha-hassen-immigrants-welcome> (last visited on September 23, 2019).

¹⁵ *Muslims to march on White House in bid to dismantle discriminatory registry*, THE GUARDIAN (2016), <https://www.theguardian.com/us-news/2016/dec/12/american-muslims-march-white-house-nseers> (last visited September 23, 2019).

¹⁶ *Immigrants Fear Deportation After Registration*, WASHINGTON POST (2003), <https://www.washingtonpost.com/archive/politics/2003/07/28/immigrants-fear-deportation-after-registration/f667a74e-61c7-4af3-a7e8-eb11cd7c9287/> (last visited September 23, 2019).

¹⁷ *The FBI's terrorism watch list violates the Constitution, federal judge*, WASHINGTON POST (2019), <https://www.washingtonpost.com/nation/2019/09/05/fbi-terror-watch-list-unconstitutional/> (last visited September 23, 2019).

¹⁸ See, *Illusion of Justice: Human Rights Abuses in US Terrorism Prosecutions*, Human Rights Watch & Human Rights Institute, Columbia Law School, 2014, https://www.hrw.org/sites/default/files/reports/usterrorism0714_ForUpload_1_0.pdf. See also, Trevor Aaronson, "The Released: More Than 400 People Convicted of Terrorism in the U.S. Have Been Released Since 9/11", Apr. 20, 2017, available at <https://theintercept.com/2017/04/20/more-than-400-people-convicted-of-terrorism-in-the-u-s-have-been-released-since-911/>. The full "Trial and Terror" series is available at <https://theintercept.com/series/trial-and-terror/>.

¹⁹ See U.S. Dep't of Justice, *Confronting Discrimination in the Post-9/11 Era: Challenges and Opportunities Ten Years Later*, at 4 (Oct. 19, 2011) (noting that the FBI reported a 1,600 percent increase in anti-Muslim hate crime incidents in 2001), available at http://www.justice.gov/crt/publications/post911/post911summit_report_2012-04.pdf (last visited September 19, 2019).

went into effect, thousands of Americans were separated from their loved ones for nothing more than to satisfy the Trump administration's xenophobic and Islamophobic urges. The Muslim Ban barred individuals from five Muslim majority countries from entering the United States: Iran, Libya, Syria, Yemen, and Somalia. Although it also barred North Koreans and certain individuals from Venezuela from entering the United States, the addition of these countries to the list did nothing to hide the true intent behind the policy: the exclusion of Muslims from this country.²⁰ The Trump administration expanded the Ban on January 31, 2020 and added another six countries to the list: Myanmar, Kyrgyzstan, Nigeria, Eritrea, Sudan, and Tanzania - countries which are either Muslim majority or have a significant Muslim population. The expanded Ban also disproportionately impacted African immigrants, effectively barring more than twenty percent of African immigrants from entering the United States.²¹

The number of visas granted to nationals of countries impacted by the Muslim Ban decreased significantly compared to prior to the implementation of the Ban.²² With the exception of North Korea and Venezuela, there was a significant decrease in immigrant and nonimmigrant visa issuances for all countries listed in the Ban.²³ For example, foreign nationals from Yemen saw a 90.8% decrease in immigrant visas issued, while those from Iran saw an 81.2% decrease.²⁴ Iranian nationals also saw a dramatic decrease of nonimmigrant visa issuances across the board.²⁵ This decrease impacted not only foreign nationals but also businesses, schools, and health care agencies that rely on them to work or study. The impact of the Ban on the newly added countries is yet to be ascertained, but if the previous implementation of the Ban was any indication, the newly added countries would have seen a similar reduction in the number of visas being granted.

Individuals confronted by the Muslim Ban purportedly had a way of getting past the Ban by applying for a waiver. However, the Muslim Ban's waiver provision was a sham. The Department of State's own data shows that in the early days of the Ban, only two percent of visa applicants

²⁰ Venezuela and North Korea appear to have been added solely to make the argument that it is not a "Muslim ban." Zero Venezuelans have been subject to the proclamation, while only 79 North Koreans have attempted to apply for a visa, with 57 North Korean nationals being approved. Contrast the lack of impact of these non-Muslim majority nations to the tens of thousands subject to the ban from Muslim-majority nations. This remains a Muslim ban, as envisioned and in practice.

²¹ *Trump Administration Travel Ban Expands to 6 Additional Countries*, NPR (Jan 2020), <https://www.npr.org/2020/01/31/801687700/trump-administration-travel-ban-expands-to-6-additional-countries> (last visited February 11, 2020); *Trump's expanded travel ban targets Nigeria, five other countries*, REUTERS (Jan 2020), <https://www.reuters.com/article/us-usa-immigration-ban/trumps-expanded-travel-ban-targets-nigeria-five-other-countries-idUSKBN1ZU2WD> (last visited February 11, 2020); see also *Nigeria*, CIA WORLD FACTBOOK (Feb 2020), <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html> (last visited February 11, 2020) Nigeria represents about twenty percent of the total population of sub-Saharan Africa, and is also the country with the largest population in Africa.

²² ADVANCING JUSTICE—AAJC & ADVANCING JUSTICE—LOS ANGELES, *INSIDE THE NUMBERS: HOW IMMIGRATION SHAPES ASIAN AMERICAN AND PACIFIC ISLANDER COMMUNITIES* 56 (2019) (citing U.S. Department of State, Bureau of Consular Affairs, "Table XIV, Immigrant Visas Issued at Foreign Service Posts (by Foreign State Chargeability) (All Categories), Fiscal Years 2009-2018," *Report of the Visa Office 2018*), available at https://www.advancingjustice-aajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-comp_ressed.pdf.

²³ Id.

²⁴ Id.

²⁵ Id.

were granted a waiver.²⁶ Later data shows that the government granted waivers to only six percent of visa applicants since the implementation of the Muslim Ban.²⁷ The waiver process itself was shrouded in secrecy with no meaningful guidelines for visa applicants on how to apply for the waiver.²⁸ Moreover, different U.S. embassies and consulates implemented the waiver provision differently. The inconsistency in the processes by which waivers were supposedly granted functions to reinforce that this religious and race-based ban is a complete one.²⁹

B. Human Face of the Impact

Underlying the numbers is the impact of the Muslim Ban on Americans who see no end in sight for the separation from their families and communities. On July 18, 2018, Mahmood Salem, a 31-year-old Yemeni-American U.S. citizen, died by suicide when his wife and two eldest children were denied visas because of the Muslim Ban. He and his family were facing overwhelming psychological, physical, and financial stress due to their inability to obtain waivers so they could reunite in the United States. Unable to return to war-torn Yemen, the family stayed in Djibouti, where their visa interview had taken place. The rent in Djibouti is six times higher than the rent in Yemen; Mahmood borrowed \$7,000 to support them, but still could not make ends meet. His children were sick from bug bites and rashes due to Djibouti's hot climate. Even though Salem's wife and two of his children were finally issued waivers, this was too little too late. The waivers were not issued until five days after Salem's death, by which time his funeral had already taken place.

Or consider the case of John Doe #1, a native-born U.S. citizen of Libyan heritage. He sought a visa for his elderly parents, whose living situation in Libya has become increasingly dire as the country has become less stable. He is devastated that his parent's visas have been refused due to the Muslim Ban. These are but two stories of the many thousand that existed across the United States of families unable to reunite with their loved ones because of the Trump administration's Islamophobic policies. For each day that the Muslim Ban remained in effect, the 170 million people who fael under the Ban worldwide continued to suffer its consequences.

C. The Refugee Ban, a De Facto Muslim Ban

In addition to the Muslim Ban, the Trump administration cut the number of refugees allowed to resettle in the United States. In 2019, the number of refugees expected to resettle in the United

²⁶U.S. issued waivers to Trump's travel ban at rate of 2 percent, data shows, REUTERS (2018), <https://www.reuters.com/article/us-usa-immigration-ban/us-issued-waivers-to-trumps-travel-ban-at-rate-of-2-percent-data-shows-idUSKBN1JN07T> (last visited September 23, 2019).

²⁷ Exclusive: Only 6 percent of those subject to Trump travel ban granted U.S. waivers, REUTERS (2018), <https://www.reuters.com/article/us-usa-immigration-visas-exclusive/exclusive-only-6-percent-of-those-subject-to-trump-travel-ban-granted-u-s-waivers-idUSKCN1RG30X> (last visited September 23, 2019).

²⁸ Advancing Justice—AAJC & Advancing Justice—Los Angeles, Inside the Numbers: How Immigration Shapes Asian American and Pacific Islander Communities 57 (2019), available at https://www.advancingjustice-aajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-comp_ressed.pdf.

²⁹ Id.

States was already down to 30,000 from 110,000 in 2016.³⁰ Moreover, even as we faced record lows for refugee admissions, the U.S. Refugee Admissions Program has instituted even stricter vetting procedures.³¹ The result is that refugees from Syria and Iran have been greatly impacted and face a drop in resettlement numbers even in the midst of a humanitarian crisis.³² By cutting the overall number of refugees allowed in the country, and by instituting unnecessary extreme vetting procedures, the administration effectively banned a large number of Muslims from coming to the country.

IV. The NO BAN Act

We urge Congress to protect the bedrock ideals of religious freedom and equal protection and pass the NO BAN Act to protect against similar bans being implemented unchecked in the future. The bill would add religion to the list of protected classes in the non-discrimination provisions of the Immigration and Nationality Act (INA), and apply the provision to both immigrant and nonimmigrant visa applicants. It would finally ensure that future administrations do not have the authority to discriminate against entire communities to further their racist and xenophobic policies, by restricting the authority of the executive to enact bans similar to the Muslim Ban and ensuring that impacted people would have the right to challenge such actions in federal court with a high standard of review.

For too long Congress has left presidential powers on matters of immigration unchecked. The NO BAN Act helps restore the checks and balances that our Founding Fathers left in place. Congress must reclaim its role as the maker of laws and check the president's authority to prohibit the entry of immigrants and nonimmigrants into our country simply based on their race, religion, and/or national origin.

V. The Access to Counsel Act of 2021

We also urge Congress to pass the Access to Counsel Act of 2021. With the first iteration of the Muslim Ban, we witnessed individuals being detained at airports, barred from boarding flights overseas and in some cases forced to relinquish their immigration status without any opportunity to access legal support. Numerous instances of Customs and Border Protection (CBP) officers unjustly detaining Iranians and Iranian Americans at the border and in airports around the globe, despite having valid visas, have been well documented. This bill would, among other things:

1. Allow U.S. citizens and those who otherwise have lawful immigration status in the United States and who are held in secondary inspection at airports or other points of entry

³⁰ *Popular Refugee Resettlement Programs Closing Under Trump Administration*, NPR (2019), <https://www.npr.org/2019/09/12/759967768/popular-refugee-resettlement-programs-closing-under-trump-administration> (last visited September 23, 2019).

³¹ *Advancing Justice—AAJC & Advancing Justice—Los Angeles, Inside the Numbers: How Immigration Shapes Asian American and Pacific Islander Communities 57-58* (2019), available at https://www.advancingjustice-aajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

³² *Id.*

for more than an hour the opportunity to access legal counsel or contact a family member or other interested party.

2. Allow counsel or an interested party the ability to advocate on behalf of the individual by providing information or documentation in support of the individual.

Invalidate any effort by CBP to persuade someone to give up their lawful immigration status if that person has been denied access to counsel or voluntarily waives, in writing, the opportunity to seek advice from counsel.

VI. Recapturing Unused Visas due to Discriminatory Executive Orders

We urge Congress to provide green cards to persons who were selected through the Diversity Visa program lottery but did not receive a green card due to any of the former administration's executive actions on immigration. Thousands of diversity visa applicants who were selected during the diversity visa lotteries from FY2017 through FY2020 lost their opportunity to immigrate to the U.S. due to the Muslim or African bans or later COVID-related bans. Inclusion of this language in the FY2022 Department of Homeland Security appropriations bill would restore these individuals with the opportunity to come to the U.S.

VII. Conclusion

The federal government has a long and sordid history of discriminating against and criminalizing Asian and AMEMSA communities based solely on their religion and nationality. The former administration's Muslim Ban was an extension of such racist policies that Asian Americans are unfortunately all too familiar with. We urge this Congress to stop history from repeating itself, to reject the Muslim Ban in all its iterations, pass the NO BAN Act and the Access to Counsel Act of 2021, and recapture unsued visas due to discriminatory executive orders