



**Written Statement of the  
Council on American-Islamic Relations**

**On**

**Oversight of the Trump Administration's Muslim Ban**

**Submitted to the**

**U.S. House Judiciary's Subcommittee on Immigration and Citizenship  
and  
U.S. House Committee on Foreign Affairs' Subcommittee on Oversight  
and Investigations**

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Dear Honorable Chairpersons Zoe Lofgren and Ami Bera:

On behalf of the Council on American-Islamic Relations (CAIR), the nation's largest Muslim civil rights and advocacy organization, thank you for the opportunity to submit this statement for the record for today's hearing on the Trump administration's Muslim Ban. We applaud the members of the Judiciary's Subcommittee on Immigration and Citizenship and Committee on Foreign Affairs' Subcommittee on Oversight and Investigations for providing congressional oversight to this discriminatory, ill-intended and misrepresented executive order.

CAIR's statement for the record includes:

- 1) A brief overview of the Muslim Ban;
- 2) A history of the Muslim Ban's Islamophobic origins and how it inspires anti-Muslim bias incidents and hate crimes;
- 3) A summary of current legal challenges against the ban following the U.S. Supreme Court's 2017 ruling;
- 4) Recent cases that demonstrate that the Muslim Ban Visa Waiver Program is a broken system;
- 5) A list of recommended questions that Congress should ask the Trump administration to critically evaluate the administration's stated reasoning for and management of the Muslim Ban;
- 6) CAIR's endorsement of the National Origin-Based Antidiscrimination for Nonimmigrants (NO BAN) Act.

## **BACKGROUND ON THE MUSLIM BAN**

On Friday, January 27, 2017, President Donald Trump signed Executive Order 13769 which targeted Muslim immigrants and refugees. The first of what would become two discriminatory executive orders and a Presidential Proclamation, initially targeted seven Muslim-majority countries for 90 days, non-Syrian refugees for a period of 120 days, and Syrian refugees indefinitely.

The first two Muslim Ban executive orders temporarily barred the entry into the United States, with some exceptions, of nationals of multiple predominantly Muslim nations. These orders were followed by a Presidential Proclamation that extended the ban indefinitely as to immigrants and certain categories of nonimmigrants from a substantially similar set of Muslim-majority countries.

Since the Trump administration's first attempt to ban Muslim immigration to the United States, CAIR, other civil and human rights organizations, and several states filed legal challenges to each of the ban's permutations.

In a 5-4 decision, the Supreme Court last year reversed an injunction that had – until December 2017 – prevented the Trump administration from using the Muslim Ban as a basis for denying

visas to foreign nationals from eight affected countries. Justice Sonia Sotomayor dissented, explaining: “A reasonable observer would conclude that the Proclamation was driven primarily by anti-Muslim animus, rather than by the Government’s asserted national-security justifications. Even before being sworn into office, then-candidate Trump stated that ‘Islam hates us.’”

Historically, the Supreme Court has failed to protect minorities (evidenced by their decisions on Native American treaties, slavery, Japanese American internment in World War II) and change has only happened through political awareness and social mobilization. The Supreme Court’s decision to not overturn the Muslim Ban is a setback, not the end of the road. The responsibility is on the American Muslim community and its allies to push for an end to the Muslim Ban.

At present, the Muslim Ban prevents travel to the United States for citizens from five predominantly Muslim nations: Iran, Libya, Syria, Yemen, and Somalia. While this executive action includes two countries – Venezuela and North Korea – that are not Muslim majority, nationals of those countries do not face categorical bans. Statistics on the visa waiver process provide further evidence that the ban primarily targets foreign nationals from Muslim majority countries.

The Muslim Ban imposes concrete harm on American Muslim citizens and permanent residents whose family members are barred from traveling to the United States. It is responsible for separating thousands of families. It has kept loved ones from being together for countless weddings, graduations, funerals, and in the case of Shaima Swileh, it nearly kept a mother from seeing her dying 2-year-old son again before he was taken off life support.

CAIR believes that it is now up to the U.S. Congress to do what the Trump Administration and the Supreme Court are unwilling or unable to do: repeal the Muslim Ban and other limitations on refugees and persons of color from traveling or immigrating to the United States.

### **THE MUSLIM BAN IS STATE SANCTIONED ISLAMOPHOBIA AND INSPIRES ANTI-MUSLIM BIAS INCIDENTS AND HATE CRIMES\***

The Muslim Ban, in all three versions enacted through two executive orders and a presidential proclamation, violates the Constitution and legalizes discrimination at the institutional and individual levels. It has inflicted lasting and extensive harm that has upended the personal, professional, and academic activities of countless Muslim families, children, and communities around the world, including:

- Prolonged separation of family members
- The loss of First Amendment freedoms – including religious activity
- Significant restraint of travel and freedom of movement

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\* Text for this section has been directly sourced from CAIR’s 2018 “Civil Rights Report 2018: #NoMuslimBan: Not Now, Not Ever” and 2019 “The Bias Brief: Trump’s Impact on Anti-Muslim Bias.”

- The promotion of harmful stereotypes of Muslims
- Psychological harm and mental stress
- Subjection to physical violence

False and defamatory portrayals of Islam and Muslims in the public sphere, including in mainstream news and entertainment media, have triggered an increase in anti-Muslim discrimination, violence, and hate speech in the U.S. to an extent never witnessed before. From when Trump entered the presidential elections in 2015 to becoming president, CAIR has documented an alarming increase in the total number of anti-Muslim bias incidents and hate crimes, which measurably spiked in 2017 after the declaration of the Muslim Ban.

While campaigning for president, candidate Trump made numerous Islamophobic statements, such as when he expressed in a CNN interview in March 2016 that “Islam hates us.” When Trump was asked to distinguish those who commit bad actions, he asserted, “you don’t know who is who.” In another instance in June 2016, Trump accused Muslims of “trying to take over our children and convince them how wonderful ISIS is and how wonderful Islam is.” Trump’s Islamophobic worldview is drove him to call for a “complete shutdown of Muslims entering the United States.”

CAIR’s most recent research on this subject matter “The Bias Brief: Trump’s Impact on Anti-Muslim Bias” documents 10,015 anti-Muslim bias incidents and hate crimes that were reported to CAIR offices nationwide between 2014 to 2019. The highest spike in bias incidents occurred in 2017 with 2,599 incidents—a 94 percent jump over 2014 levels, as a result of the Muslim Ban. That included an overall increase in incidents involving federal agencies: 2,783 acts of bias or discrimination by agencies including the FBI, TSA, and Customs and Border Patrol (CBP).

The highest number of cases involving federal agencies documented by CAIR occurred in 2017, at 919 reported incidents. Again, this can be attributed to the Muslim Ban Executive Order signed in January of 2017. Customs and Border Patrol, which is responsible for enforcing the Muslim Ban, accounts for the second most common type of federal government agency for which American Muslims reported acts of bias between 2014 and 2017, totaling 635 bias incidents.

### **CAIR AND OTHERS CONTINUE TO LEGALLY CHALLENGE THE MUSLIM BAN**

In October 2017, CAIR and the Brennan Center for Justice at NYU School of Law filed a joint legal challenge to the third iteration of the Trump Administration’s Muslim Ban, commonly referred to Muslim Ban 3.0. On appeal, this case, *Zakzok v. Trump*, was consolidated with two others and jointly decided by the Fourth Circuit.

This lawsuit challenged the current Muslim Ban on the grounds that it violated several provisions of the U.S. Constitution and that the agencies implementing the ban have not complied with the Administrative Procedure Act.

After the United States Court of Appeals for the Fourth Circuit affirmed a preliminary injunction entered by this Court to prevent the implementation of the Muslim Ban executive order on the grounds that it violated the Establishment Clause of the First Amendment, the United States Supreme Court reversed a similar preliminary injunction that had been entered in a parallel case, held that the plaintiffs in that case were unlikely to succeed on the merits of their claims, including under the Establishment Clause, and remanded.

The consolidated cases – *Zakzok v. Trump*, *International Refugee Assistance Project v. Trump*, and, *Iranian Alliances Across Borders v. Trump* – were then remanded back to the District Court. Because the Supreme Court only ruled that a preliminary injunction was inappropriate and did not reach the final merits of the case, plaintiffs continued to assert that the Muslim Ban violates the Establishment Clause, due process under the Fifth Amendment, and First Amendment rights to free speech and association. Plaintiffs also amended their complaint to argue that the Muslim Ban and its implementation violated the Administrative Procedures Act.

The government moved to dismiss. Maryland District Court Judge Chuang denied the government's motion. That denial is currently on appeal to the Fourth Circuit, with discovery stayed until the appeal is resolved.

As plaintiffs have explained in their complaints and the briefing in the consolidated cases:

- President Trump has personally expressed his intent to bar Muslim entry from predominantly Muslim territories and that he reinforced those calls with bigoted statements about Muslims and Islam.
- The Trump administration has failed to reasonably argue its national security justifications for implementing the Muslim Ban, with DHS unable to name any "visa vetting failures" from barred countries prior to the ban or other related factors.
- While the Muslim Ban is based on barring certain nationalities – DHS has already concluded that nationality or country of citizenship is not a credible predictor of terrorist activity – nor has any American died from a terrorist attack in the past 40 years from the actions of a citizen from any of the designated Muslim countries.
- Certain foreign nationals from countries designated by the Muslim Ban are still able to enter the U.S. on some nonimmigrant visas, which receive less vetting, weakening the Trump administration's national security arguments.
- The exceptions for certain foreign nationals and certain countries within the Muslim Ban are in reaction to "legal challenges and public condemnation" originating from the first and second iterations of the Muslim Ban and not based on national security.
- The Trump administration failed to argue why it could not have alternatively vetted individuals from designated Muslim Ban countries under a separate screening regime or why barring such persons was the only possibility.
- Adding two non-Muslim majority countries, North Korea and Venezuela, to the Muslim Ban was window dressing to hide its discriminatory effects and had no new practical effect on blocking nationals from those countries.

- The Muslim Ban's Visa Waiver Program that would exempt individuals from the Muslim Ban is a broken system. Its case-by-case evaluations "mask" the Muslim Ban's "discrimination against Muslims" and do not in reality grant entry to those who meet the waiver's criteria – criteria totally unrelated to national security.
- State Department statistics released in June 2018 revealed that U.S. consular officers granted only two percent of visa waiver applications over the course of five months.

Part of the Supreme Court's decision in allowing the ban to remain in place was predicated on the possibility for some people to obtain waivers to the ban. But the data described above proves that the Muslim Ban's waiver process is a sham. Data published this February further shows that the State Department denied over 37,000 visa applications in FY 2018

CAIR does not believe the Muslim Ban Visa Waiver Program's case-by-case evaluation system was ever truly intended to provide relief to most qualifying applicants: anecdotally, many of identified applications appear eligible to enter the U.S but are regularly denied entry. The State Department's questionably low rate of accepting visa waiver applications continues to disprove the Supreme Court's view the waiver process renders the Muslim Ban constitutional.

### **CASES DEMONSTRATING THAT THE VISA WAIVER PROGRAM IS A BROKEN SYSTEM**

Through the Muslim Ban Visa Waiver Program, a waiver may be granted if a foreign national can demonstrate to the State Department or CBP that: (A) denying entry would cause the foreign national undue hardship; (B) entry would not pose a threat to the national security or public safety of the United States; and, (C) entry would be in the national interest. Under the provisions of the Muslim Ban, once a visa is denied because of the ban consular officers are required to automatically assess whether individuals from the banned countries qualify for a waiver.

It often is CAIR's experience that applicants who match the criteria of the Visa Waiver Program are routinely denied. In many cases waivers are only granted after the strategic intervention of civil rights and advocacy organizations, like CAIR, who are well-positioned to offer legal challenges on an applicant's behalf and elevate their stories in the news and on social media.

Below are several instances that highlight the arbitrary and illogical nature of the Muslim Ban's Visa Waiver Program:

**CASE ONE:** In December 2018, the CAIR Sacramento Valley office announced that a Muslim Ban visa waiver had been granted for Shaima Swileh, the mother of a dying 2-year-old who was on life support at UCSF Benioff Children's Hospital in Oakland.

The State Department granted the waiver only after the family's story spread across the news and social media. Just as Swileh's husband, Ali Hassan, was about to pull their son Abdullah off life support, CAIR-Sacramento Valley stepped in to help.

While CAIR believed that the Swileh-Hassan family should be allowed to mourn Abdullah with dignity and say their last goodbye together, the Visa Waiver Program did not.

It took a CAIR-Sacramento Valley news conference, along with advocacy efforts by CAIR and MPower Change, thousands of Tweets, 15,000 emails to elected officials and embassy staff, and intense media pressure and public outcry for the visa to be granted. Members of Congress also wrote their own letters urging action.

In addition to organizing a public media campaign, CAIR- Sacramento Valley partnered with Nimer Law, LLC, to file an emergency lawsuit in federal court.

Swileh was initially interviewed for her visa while the Muslim Ban was enjoined, and the lawsuit alleged that the embassy in Cairo purposely delayed a decision on her application until the Muslim Ban went into effect, at which time they informed Swileh that she was denied under the proclamation.

As the spouse of a U.S. citizen and the mother of a U.S. citizen child with a life-threatening medical condition, Swileh clearly met the criteria for a waiver. However, despite the family's repeated requests to expedite and clearly documenting their son's medical condition, the embassy refused to act until CAIR-Sacramento Valley brought media attention to their plight and filed a lawsuit.

Abdullah was placed in a medically induced comma before he had the opportunity to consciously see his mother one last time before he died. The fact that Abdullah could have been receiving comfort from his mother for many additional days or weeks if the U.S. government had not enforced the Muslim Ban demonstrates how broken the Visa Waiver Program was from its inception.

**CASE TWO:** In January 2018, CAIR welcomed home to Mississippi the wife of Fahed Muqbil, a CAIR plaintiff challenging the third Muslim Ban who received one of the first-ever waivers from that Trump administration executive order. The waiver was only issued after CAIR and the Brennan Center took legal action filing a declaration for injunctive relief.

Muqbil's wife, a Yemeni national, used her visa to enter the United States to be reunited with her baby daughter -- a U.S. citizen -- who suffers from severe medical conditions that led to life-threatening surgeries. That child, the youngest of the family's two daughters, suffers from a debilitating birth defect and requires advanced medical care not available in war-torn Yemen.

Due to the Muslim Ban, Muqbil and his one-year old critically-ill daughter had been separated from his wife and older daughter, who live abroad and had been awaiting the approval of the wife's visa to come to the United States.

Again, only after the threat of a legal challenge and public scrutiny did the Department of State relent and issue a visa waiver.

**CASE THREE:** In February 2019, the Georgia chapter of CAIR, announced the arrival of Mohamed Al-Bitar, a Syrian grandfather suffering from eye cancer, in Atlanta for medical treatment after receiving a waiver to the Muslim Ban. Al-Bitar and his wife were reunited with their Georgia-based family members, including a daughter, son-in-law and four grandchildren.

Al-Bitar -- who visited Georgia in 2013, 2014 and 2015 to spend time with his Georgia relatives -  
- was diagnosed with a cancerous eye tumor in 2018.

The tumor requires a unique medical treatment that is unavailable in Syria or surrounding Middle Eastern nations. A hospital in Atlanta, however, was able and willing to offer the procedure, which Al-Bitar is paying for himself.

His first application for a visa to return to the U.S. for medical treatment was denied by the State Department, so he applied a second time with assistance from CAIR-Georgia and a local elected official.

Al-Bitar's second visa application was then delayed by "administrative processing," which included review of the Trump Administration's new DS-5535 form. The form requires selected immigrants to share additional information about their social media accounts, family members and past employment.

His completed form was still under review when the U.S. Supreme Court reinstated President Trump's third Muslim Ban, banning Syrian nationals from traveling to the United States.

In December 2018, CAIR-Georgia sought a waiver to the Muslim Ban, directly and publicly calling on the Trump administration to make an exception for Al-Bitar, whose doctors urged him to receive treatment by December in order to achieve the best prospect of recovery.

It was only after CAIR-Georgia decided to publicly call for Al-Bitar to be issued a visa waiver that he was granted one.

### **CONGRESSIONAL OVERSIGHT OF THE MUSLIM BAN: QUESTIONS THAT CONGRESS MUST ASK**

Today's joint committee hearing on the Muslim Ban marks the first congressional attempt to provide jurisdictional oversight on this discriminatory Executive Branch program. CAIR believes that President Trump, his advisors, and the federal agencies responsible for carrying out the Muslim Ban and Visa Waiver Program have purposefully kept from the public their reasoning for and management of this travel ban.

CAIR has compiled a list of recommended questions to assist Congress and the public to critically evaluate the administration's assertions – made to the public and the courts – that the ban emerged from a credible interagency process initiated to address genuine national security concerns, rather than the product of religious animus.



So far, the Trump administration has failed in its public responsibility to answer the following fundamental questions about the Muslim Ban. Therefore, CAIR urges Congress to request the Department of Homeland Security and Department of State to respond to the following inquiries:

1. **DHS and State:** Section 2(a) of Executive Order 13870 identifies a “worldwide review” process to determine what additional information was needed from foreign countries to process visa applications from nationals of that country. Describe this “worldwide review” process, how long it took, and what standards against which each country was measured.
2. **DHS and State:** Based on the “worldwide review,” the Secretary of Homeland Security developed “baseline” criteria, as described in Section 1(c) of Presidential Proclamation 9645, for the kinds of information required from foreign governments to screen nationals of those countries for entry into the United States. Describe the process by which the “baseline” criteria were developed and identify each of them.
3. **DHS and State:** According to Section 1(d) and (e) of Presidential Proclamation 9645, the Department of Homeland Security and Department of State assessed every foreign government against the “baseline” criteria and identified 16 countries as being “inadequate” and 31 countries as being “at risk” of becoming “inadequate.” Describe the assessment process and identify each of these countries.
4. **DHS and State:** Section 1(f) of Presidential Proclamation 9645 identifies a “50-day engagement period” during which countries named as “at-risk” or “inadequate” had the opportunity to improve their performance with respect to the baseline criteria. Describe this period and what information was sought from each country during it.
5. **DHS and State:** During the “50-day engagement period,” 29 countries provided travel document exemplars to DHS to combat fraud and 11 agreed to share information on known or suspected terrorists. Name these countries.
6. **DHS:** For every country identified as “inadequate” or “at risk” but for which the Secretary of Homeland Security did not recommend travel restrictions, explain why no restrictions were recommended.
7. **DHS and State:** Name all countries that failed the “baseline” criteria but were excluded from Presidential Proclamation 9645 and why they were excluded.
8. **DHS and State:** Identify the reasons why every country listed for travel restrictions in Section 2 of Presidential Proclamation 9645 was so listed. Specifically identify which “key risk” criteria each country failed to meet and the “inadequacies” or “deficiencies” in these countries’ identity-management protocols.
9. **DHS and State:** The Secretary of Homeland Security determined that Somalia met the “baseline” criteria but was still included in Presidential Proclamation 9645. Identify all other countries that met the baseline criteria but were still considered for inclusion in the Proclamation and what the process by which those countries were considered.
10. **DHS:** On September 15, 2017, the Secretary of Homeland Security submitted a report to the President recommending entry restrictions on seven countries. Do these recommendations differ from the restrictions imposed by Presidential Proclamation 9645, and if so how?

11. **DHS and State:** How often do reviews of the countries listed for travel restrictions take place? Describe the process of such reviews and the findings of any reviews that have already taken place.
12. **DHS and State:** In April 2018, travel restrictions were removed from Chad. Describe why and whether or not Chad met any of the “key risk” criteria or fixed any of the inadequacies or deficiencies identified in the worldwide review process.
13. **State:** Section 3(c) of Presidential Proclamation 9645 outlines a waiver process for travel restrictions. Identify any policies or guidance, formal or informal, that relate to this waiver process.
14. **DHS:** How many citizens of Chad, Iran, Libya, Syria, Yemen, North Korea, Venezuela, and Somalia have been involved in carrying out or conspiring to carry out a terrorist attack in the United States or have been charged or convicted of terrorism in court.
15. **DHS:** List each person involved in the drafting of the Proposed Muslim Ban for the Trump Campaign. For each individual, state whether such individual had a security clearance prior to President Donald Trump’s inauguration on January 20, 2017.
16. **DHS:** List each person who advised or did work regarding Executive Order 13769, Executive Order 13870, or Presidential Proclamation 9645, indicating for each individual which agency that person is affiliated and how they were involved.

## **REASONS TO SUPPORT THE NO BAN ACT**

CAIR believes that it is time once and for all to put an end to Trump’s racist and harmful ban on travelers to the United States from five Muslim-majority countries. Trump’s bigoted Muslim Ban poses incredible hardships by separating families, rejecting refugees from war-torn areas, and blocking individuals from obtaining necessary medical treatments.

That is why CAIR is also calling on all members of Congress to co-sponsor and support the adoption of the National Origin-Based Antidiscrimination for Nonimmigrants (NO BAN) Act (H.R.2214/S.1123) introduced by Senator Chris Coons and Representative Judy Chu.

The NO BAN Act is the most comprehensive bill introduced in Congress to repeal the Muslim Ban. The legislation repeals the three versions of President Trump’s Muslim Ban, strengthens the Immigration and Nationality Act to prohibit discrimination on the basis of religion, and restores separation of powers by limiting overly-broad executive authority to issue future travel bans. Specifically, the NO BAN Act would:

- **Repeal each iteration of the Muslim travel ban** – including one that specifically targeted refugees for extreme vetting – as well as an asylum ban issued after the Supreme Court’s ruling and that relied on the same authority as the Muslim Ban;
- Amend the Immigration Nationality Act’s nondiscrimination provision to **explicitly prohibit discrimination based on religion** and to apply all nondiscrimination protections to immigrant and nonimmigrant visa applicants alike;
- **Responsibly limit overly broad executive authority to issue future bans** by, among other things, imposing stricter requirements and mandatory reporting to Congress.

## **CONCLUSION**

The incalculable amount of human suffering and tragedy caused by the Muslim Ban can never fully be remedied or resolved. The work of attempting to undo the harm that has resulted from the Muslim Ban will take the efforts of a generation of dedicated public officials and community servants. The first measurable step to rectify the Muslim Ban is for Congress to provide oversight and adopt legislation that will repeal it. Congress must also address other acts of institutional and systemic bias and discrimination that target immigrants, refugees, and others seeking to travel to the U.S.

As a nation, we must comprehensively reform our immigration and nationality laws. We must also look to each other to build greater bridges of mutual respect and understanding so that we do not permit hatred and discrimination to inform how we treat our neighbors or visitors. Finally, we need our president to lead by example and condemn in no uncertain terms racial and religious prejudice, xenophobia and intolerance.