

CONGRESSIONAL TESTIMONY

The Muslim Ban: Impacts on Families and Implications for Future Conflict

Testimony Submission the Joint Hearing

Judiciary Committee, Subcommittee on Immigration

Foreign Affairs Committee, Subcommittee on Oversight

United States House of Representatives

September 24, 2019

Wa'el Alzayat

Chief Executive Officer

Engage Foundation, Inc.

A Shared Story

The quest for freedom, safety, and prosperity is as old as America. It is what compelled the Pilgrims and the Puritans to risk a treacherous journey to the New World. It is what drove the Irish and the Italians, the Germans and the Swedes, the Chinese and the Vietnamese, and people from all over the world to leave their homelands, their families, and everything they ever knew to build new lives here. Unless you are a Native American, you are a descendant of someone who came here from somewhere else.

Since the first Muslim ban was signed by President Trump on Jan 27, 2017, Muslim Americans have been at the forefront of a pernicious effort to undermine their rights and demonize their identity. Whether via words or deeds, our community has been on the receiving end of constant attacks simply because of the religion we practice, the countries we or our parents may have come from, and even our last names. Certainly, we are not alone nor unique in our struggle. Hundreds of thousands of people, especially Hispanics, are being harmed today in cruel and unprecedented ways. From families torn apart to children indefinitely detained at camps, people are being targeted and denied their internationally recognized right to seek protection from violence and insecurity.

Religious Freedom Under Threat

We witnessed during the 2016 elections season unprecedented rhetoric targeting the Muslim community with the aim of translating the anxieties of average Americans into votes. Beyond its psychological impact, the rhetoric has fueled a dramatic rise in hate crimes against Muslim Americans, but also, against other ethnic and religious minorities. There are clear signs now that what we are seeing at home is part of a global epidemic of supremacist ideology that requires an immediate response. Instead of working with the American people to confront these real challenges, this Administration has chosen to divide us and make us afraid of one another. Instead of making us great, it has made us weaker.

While each new generation of immigrants has had to deal with its own set of challenges, the Muslim ban should trouble us all because it concerns a fundamental right that is enshrined in the Constitution and on which the American ideal is based. That right is religious freedom. The ban prohibits citizens of certain Muslim-majority countries from traveling to the United States plus Venezuela and North Korea on the basis of national security without providing any evidence to justify such an exclusion. After researching databases, media reports, court documents, and other sources, Alex Nowrasteh, an immigration expert at the libertarian Cato Institute found that nationals of the seven countries singled out by Trump have killed zero people in terrorist attacks on U.S. soil between 1975 and 2015.¹ To date, the Administration has failed to provide evidence pointing to a heightened risk emanating from travelers from Muslim ban countries.

If national security is not the real motivation behind the ban, then what is? One only needs to look at what Donald Trump has said as a candidate and president to answer that question. From

¹ Alex Nowrasteh, *Terrorists by Immigration Status and Nationality: A Risk Analysis, 1975 – 2017*, <https://www.cato.org/publications/policy-analysis/terrorists-immigration-status-nationality-risk-analysis-1975-2017>

calling for a “complete and total shutdown”² of Muslims into this country to claiming, “Islam hates us”³, Trump has seized on a strategy that he believes will help him politically. Despite denials from the Administration regarding the real intent behind the ban, the policy is unequivocally targeting people based on their faith and infringes on the constitutionally protected right of religious freedom. According to the *Bridge: A Georgetown University Initiative*, “The intent of the Muslim ban has always been discriminatory. The first Muslim ban delivered on Trump’s 2015 campaign promise of banning Muslims. According to the Cato Institute, “nothing in the Constitution justifies such near total exclusion of immigration policy from the constraints of the First Amendment. Like most of the rest of the Bill of Rights, the amendment is phrased as a general constraint on government power, not one limited to particularly types of policies, or protecting only a specific group of people, such as citizens of the United States. The Founding generation recognized this, which is why they applied the Bill of Rights even to pirates captured at sea, regardless of whether they were American citizens or not.”⁴

This blanket ban infringes on that First Amendment and targets individuals specifically on the basis of how they choose to practice their faith, which is indisputably un-American. With the Muslim ban indefinitely in place, legitimate concerns have been raised regarding the impact it will have on those seeking refuge and families being separated by the policy. Will the visa waiver process be made more clear and transparent? Will the State Department provide clearer data and reporting? And if these waivers are implemented in an unjust manner, how will Congress respond?

Impact of the Ban and Visa Waivers

According to Presidential Proclamation 9645 (PP 9645), the “waiver scheme for affected nationals to demonstrate eligibility for a waiver based on three criteria: 1) undue hardship if entry is denied; 2) entry would be in the national interest; and 3) entry would not pose a threat to national security or public safety.”⁵ The Administration referenced the visa waiver as proof that its policy was not discriminatory in nature because it offered a way for those who do not pose a security threat to travel to the United States. However, the evidence proves otherwise.

Following numerous calls for information from the Department of State by members of both the Senate and the House, there are now public records that show the number of waivers that have been granted since the Muslim ban has been in effect. According to reporting by Reuters, Between December 8, 2017 and October 31, 2018, State Department officers ruled on nearly 38,000 applications for non-immigrant and immigrant visas filed by people subject to the travel ban who otherwise qualified for the visas and needed waivers to get them. They determined that

² Jessica Taylor, *Trump Calls for ‘Total and Complete Shutdown of Muslims Entering’ U.S.*, <https://www.npr.org/2015/12/07/458836388/trump-calls-for-total-and-complete-shutdown-of-muslims-entering-u-s>

³ Theodore Schleifer, *Donald Trump: ‘I think Islam hates us’*, <https://www.cnn.com/2016/03/09/politics/donald-trump-islam-hates-us/index.html>

⁴ Bridge: A Georgetown University Initiative, *The Muslim Bans*, <https://bridge.georgetown.edu/research-publications/reports/muslimban/>

⁵ *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/>

just 6 percent – or 2,216 applicants – met the criteria for the waiver. Of those, 670 had not yet received their visa but were expected to do so.⁶ The data was provided on February 22, 2019 through a letter from Assistant Secretary of State Mary Taylor to Democratic Senator Chris Van Hollen. “This data paints a clear – and deeply disturbing – picture of the Trump travel ban,” Van Hollen said in a statement to Reuters. “The administration repeatedly swore to the Supreme Court and the American people that this was not a de-facto Muslim ban and that there was a clear waiver process to ensure fairness. That couldn’t be further from reality.”

Furthermore, a National Foundation for American Policy analysis showcased an overall decline of 84% in the number of immigrant visas issued to citizens of the countries included on the ban.⁷ What this demonstrates is that the waiver process, though on its face was able to convince narrow majority of the Supreme Court that the ban was not targeting Muslims, its actual effects have been just that. In the broader scheme of immigration, it is important to keep in mind that the Muslim ban is another form of family separation. The policy, according to the Cato Institute, has already blocked about 9,500 family members of U.S. citizens from joining their relatives in the United States. Of these family members, 5,500 have been children and nearly 4,000 spouses were blocked.

In a response from the Department of State to Congressman Ami Bera, there has been updated information on the implementation of PP 9645. According to the Department, “[a]s of March 31, 2,463 applicants were cleared for waivers and issued visas after a consular officer determined the applicants satisfied all criteria and completed all required processing.”⁸ What is important to note, is that the argument against this being a Muslim ban is two-fold. First, that there are non-Muslim countries listed (Venezuela and North Korea). And second, that there is a waiver process, which was cited as a defense in the SCOTUS decision. It is clear, as discovered by Congress, that the visa process is exposing the true nature of PP 9645 and its discriminatory actions against religious communities. What is most important to note is that of the 79 visas requested from North Korea, 57 have been approved, bringing the approval rating to about 72% of North Koreans applying for waivers. Additionally, with the reports from the Department of State there have been zero Venezuelans affected by PP 9645. The most impacted groups, which keep the approval ratings floating at about 6%, are the Muslim-majority counties of Iran, Libya, Somalia, Syria and Yemen. Although, as according to SCOTUS, the Ban is “facially neutral” on the issue of religion, doesn’t mean it is neutral in practice.

Ultimately, it is essential to expose the discriminatory implementation of PP 9645. From the rhetoric of then-candidate Trump to the actions taken as President, it was clear from the inception the intent of this policy. To fulfill the “total and complete shutdown of Muslims entering the United States.” Families have been separated, lives have been irreparably impacted

⁶ Yeganeh Torbati, *Exclusive: Only 6 percent of those subject to Trump travel ban granted U.S. waivers*, <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>

⁷ Stuart Anderson, *Muslim Travel Ban: Less Immigration And Few Waivers*, <https://www.forbes.com/sites/stuartanderson/2019/03/11/muslim-travel-ban-less-immigration-and-few-waivers/#64c5104427f0>

⁸ Mary Elizabeth Taylor, Letter to Representative Ami Bera, Jul. 8, 2019, https://bera.house.gov/sites/bera.house.gov/files/documents/7-8-19%20State%20response%20to%20HFAC_HJC%20Letter%20clean.pdf

and there has been a propagated façade that PP 9645 has no religious animus and is allegedly an order in the interest of national security, which could not be further from the truth.

Human Impacts of PP 9645 and the rise of Islamophobia

Beyond the statistics, the lack of a clear visa waiver process has impacted individuals in need and families. In one of the most publicized cases, a Yemeni mother was barred from the United States and almost kept from seeing her terminally ill toddler in California. Shaima Swileh was a victim of the travel ban when she was not approved for a visa waiver and told she could not travel to California.⁹ It was only after her husband, Ali Hassan, was able to raise public awareness in a tearful televised plea that she was granted a visa to visit their son was before he passed. This case also was brought to the attention of Oakland Representative, Barbara Lee, who called the Muslim Ban “inhumane and un-American.”

Innocent people including mothers, fathers, children, students, teachers, researchers, doctors, scientists—people of all walks of life— are being harmed every day by this unfair policy. Real lives are impacted and real people are being forced to choose between their families, dreams, and life. In the most serious circumstances, refugees fleeing from conflict zones are being turned away. Lives are literally hanging in the balance.

What is most concerning and must be brought to the forefront is that the Muslim ban is having real impacts on American citizens. Many of those barred from entering the United States are relatives of citizens and green card holders. According to the Georgetown Bridge Initiative highlighting 248 applicants in their database:

The unpredictable and protracted wait time of the waiver process exacerbates the hardships that many of the applicants and their families are currently experiencing. Thirty-seven (37) individuals are facing dangerous safety conditions and/or threats as a result of the precarity in which the Muslim Ban suspends them. This represents 6.7% of all individuals listed in the database. Of these 37 cases, 27 are living in or are at risk of being returned to a conflict area. This includes eight children under the age of 18. These 27 cases represent 3 in 4 of the applicants experiencing precarious safety conditions as a result of the Muslim ban.¹⁰

The conditions of violence and instability in the countries listed in PP 9645 cannot be ignored. Furthermore, the climate the ban has created has contributed to the rise of anti-Muslim sentiment and violence by promoting a dangerous myth that Muslims are a foreign “other,” not part of American society, and therefore, pose a threat. The President and his allies have a long history of demonizing the Muslim community. Before even the general elections, candidate Trump called for a total and complete shutdown of Muslims entering the United States. He also tweeted false¹¹

⁹ Christina Caron, *Son of Yemeni Mother Dies Soon After She Won Visa Battle With U.S. to See Him*, <https://www.nytimes.com/2018/12/29/world/abdullah-hassan-yemeni-toddler-dies.html>

¹⁰ Bridge: A Georgetown University Initiative, *The Muslim Bans*, <https://bridge.georgetown.edu/research-publications/reports/muslimban/>

¹¹ *Trump attacks May, defend Britain First* tweets, <https://www.aljazeera.com/news/2017/11/trump-attacks-defends-britain-tweets-171130060031738.html?emci=30e274fa-ed21-e911-b8b3-281878392e89>

videos of Muslims, declared "Muslims hate us" to CNN's Anderson Cooper, and appointed known Islamophobes such as Sebastian Gorka, Steve Bannon, and Michael Flynn to senior positions. Aside from enacting three iterations of the Muslim ban, he attempted to rename the already controversial Countering Violent Extremism program (CVE) to Countering Islamic Extremism¹², effectively excluding the very real threat of white extremism and solidifying the idea that only Muslims could be extremists.

Against the backdrop of anti-Muslim rhetoric and policies emanating from our leaders, Muslims live in fear because of the blatant attempts from the Administration to demonize, restrict, and target them (and more broadly all) minority communities. In her dissent, Justice Sotomayor argued "[d]espite several opportunities to do so, President Trump has never disavowed any of his prior invidious statements about Islam. Instead, he has continued to make remarks that a reasonable observer would view as an unrelenting attack on the Muslim religion."¹³ At its core, PP 9645 was always anti-Muslim and a direct attack against the community. What the ruling truly upheld were the tropes that Muslims and Islam are synonymous with "threat" and "terror." With SCOTUS ruling to allow PP 9645 to continue indefinitely, it perpetuates anti-Muslim sentiments and leaves Muslims residing in the United States more vulnerable to hatred and violence. The SCOTUS ruling sealed the false pretense that Islam is a direct threat to the American life and has identified Muslims unjustly as a national security issue.

The Importance and Urgency of Congressional Action

The House of Representatives hearing on the Muslim ban is vital to exposing the bigoted nature of the Presidential Proclamation and is a vital component to combating unfair policies targeting minorities and threatening the legal immigration system in this country. With the steep decline of visa approvals coupled with the impact the policy has had on Muslims at home and abroad, it is evident that the aim of these actions are to infringe on the religious freedoms granted to every person and protected by the constitution.

As one of the defining moments for Muslim Americans over the last few years, the Muslim ban has been the source of unnecessary hardship for thousands of parents, children, and families that have been separated from their loved ones. The barrage of vitriol in the form of tweets, remarks, nominations, and actions from the Trump Administration should have been enough to prove Trump's animosity towards Muslims. As Americans, it is our obligation to stand for religious freedoms for all people, without exception. And because of this, the SCOTUS ruling remains a stain on our history, and the only means of overcoming this injustice is through Congressional action. Banning a group of vulnerable persons based on their religious identity is not only against the very basis of our constitution. Trump succeeded in his promise for a "total and complete shutdown of Muslims entering the United States," and within the first week in office, made true on his promise, prompting Americans to protest across the nation and in our airports in a show of defiance. By banning a group of people based solely on their religion and national origin stood in direct defiance of our American values of freedom.

¹² Peter Beinart, *Trump Shut Programs to Counter Violent Extremism*, <https://www.theatlantic.com/ideas/archive/2018/10/trump-shut-countering-violent-extremism-program/574237/>

¹³ *Trump vs. Hawaii*, 2018, https://www.supremecourt.gov/opinions/17pdf/17-965_h315.pdf

Muslim Americans witnessed the Administration implementing this heinous executive order and Presidential Proclamation, witnessed the U.S. Court of Appeals for the Ninth Circuit Court and the U.S. Court of Appeals for the Fourth Circuit rule against the ban, and ultimately SCOTUS ruling to move forward with the ban. The Administration attempted to hide behind the third iteration that allowed individuals who met certain criteria to receive waivers. However, there is overwhelming evidence that these waivers are few and far in-between. It is time that this unjust policy is ended.