

Statement of the National Immigration Law Center

House Committee on the Judiciary's Subcommittee on Immigration and Citizenship and
House Committee on Foreign Affairs' Subcommittee on Oversight and Investigations

Joint Hearing on Oversight of the Trump Administration's Muslim Ban

Tuesday, September 24, 2019 at 10:00AM

Dear Members of the House Judiciary Subcommittee on Immigration and Citizenship and of the House Foreign Affairs Subcommittee on Oversight and Investigations,

The National Immigration Law Center (NILC) is pleased to submit this statement to the U.S. House Subcommittee on Immigration and Citizenship of the Committee on the Judiciary and to the House Subcommittee on Oversight and Investigations of the Committee on Foreign Affairs for the September 24, 2019 hearing titled "Oversight of the Trump Administration's Muslim Ban." This first-ever oversight hearing on the Muslim Ban takes place exactly two years after the issuance of the current – and permanent -- iteration of the Muslim Ban, [Presidential Proclamation 9645](#) (Muslim Ban 3.0).

Established in 1979, NILC is an organization long dedicated to protecting and advancing the rights and opportunities of low-income immigrants and their families. We believe that all people should have the opportunity to achieve their full human potential – regardless of their race, gender, immigration, and/or economic status. Over the past 40 years, NILC has won landmark legal decisions protecting fundamental human and civil rights and advocated for policies that reinforce our nation's values of equality and justice for all. Furthermore, we engage in policy analysis and advocacy, strategic communications, and provide technical assistance to partner organizations across the country. We applaud the subcommittees for conducting this much-needed hearing to address the discriminatory barriers to entering or returning to the United States that nationals from several Muslim-majority countries are facing. The Muslim Ban, which has left people unable to join loved ones, pursue academic or professional opportunities, participate in family milestone events and seek urgent medical assistance, is motivated by a desire to ban individuals based exclusively on their nationality and their religion.

Each Iteration of the Muslim Ban Is Discriminatory and Unjust and Separates Families

Since the first version of the Muslim Ban was issued on January 27, 2017, via [Executive Order 13769](#), the Trump Administration has issued numerous iterations of this discriminatory ban, targeting individuals from Muslim-majority countries--based solely on their nationality and religion—in order to prevent their ability to enter or return to the U.S. and access the U.S. immigration process in a fair way. The driving force behind the first version of the Muslim Ban, as well as subsequent iterations, [Executive Order 13780](#), [Presidential Proclamation 9645](#), and [Executive Order 13815](#), has been to fulfill fear-mongering political campaign promises to effectuate a ban on Muslims from entering the U.S. While there have been cosmetic changes to subsequent versions of the ban – such as adding non-Muslim-majority countries in a superficial attempt to conceal the ban's primary motivation -- and efforts to neutralize the discriminatory

intent and impact by referring to it as a “travel ban” -- each iteration is clearly driven by anti-Muslim animus. This includes the targeting of refugees, given the increasingly high number of refugees from Muslim-majority countries in the years preceding the Trump administration. While the number of refugees from around the world and of all faiths has plummeted under this administration, Muslim refugees have been disproportionately affected, with the admission of Muslim refugees dwindling by 90% between FY 2016 to FY 2019. As a result, targeting refugees has been used as a proxy for banning Muslims.

Since the Supreme Court’s decision on June 26, 2018, allowing a permanent version of the ban -- Presidential Proclamation 9645 (Muslim Ban 3.0) – to remain in effect, most nationals from the Muslim-majority countries of Iran, Libya, Somalia, Syria, and Yemen (as well as an extremely limited number of individuals from North Korea and Venezuela) remain indefinitely banned from entering the United States. Consequently, individuals from those countries are permanently prohibited from obtaining most immigrant and nonimmigrants visas to the U.S. Regardless of whether they are trying to reunite with their relatives -- most of whom are U.S. citizens or lawful permanent residents and immediate relatives, such as spouses, children, and parents – or present compelling humanitarian reasons for entering the U.S., they are banned. As a result of the Supreme Court’s ruling, American families have been kept apart and denied the opportunity to celebrate family milestones, mourn together at funerals, receive life-saving medical treatment, or pursue educational or professional opportunities.

The majority opinion of the Supreme Court partially justified its decision to allow Muslim Ban 3.0 to remain in effect, while the lower courts determine its constitutionality, because it contains a waiver provision that, theoretically, would prevent it from functioning as a complete ban. The waiver process is supposed to be based upon three criteria, namely whether: (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. To date, however, the waiver process has served merely as window dressing in an attempt to obscure the ban’s clearly anti-Muslim intent and impact. In fact, there are two pending class action lawsuits challenging the waiver process for being administered in an arbitrary and capricious manner, with most cases either having been denied or indefinitely put on hold. According to statistics that Senator Chris Van Hollen (D-MD) recently released, the U.S. Department of State has only granted about 5% of waiver applications as of March 31, 2019, with approximately 95% of all waivers denied or pending,

Congress Must Support the No Ban Act (H.R. 2214/S.1123) to Repeal the Muslim Ban and Prevent Future Bans, and Other Legislation to Defund the Muslim Ban

Until voters have a chance to change the Administration and reverse the policies currently in place, Congress must step in to end the rampant discrimination of the Muslim Ban by passing the National Origin-Based Antidiscrimination for Nonimmigrants Act (“No Ban Act”) (H.R. 2214/S.1123). The “No Ban Act” was introduced on April 10, 2019, by Rep. Judy Chu (CA-27) and Sen. Chris Coons (DE) in both the House and Senate, respectively, and is an important piece of legislation that would: 1) repeal all iterations of previously introduced Muslim, refugee and asylum bans (including one specifically targeting refugees for extreme vetting), ending the

discriminatory executive orders and abuses of authority by the Trump administration; 2) make necessary reforms to the Immigration and Nationality Act (INA) to prevent future discriminatory bans by explicitly prohibiting discrimination based on religion and 3) limit executive authority under the INA to issue future bans by raising the standard so that any suspension or restriction of entry must be based upon credible facts and must be connected to specific acts that have already occurred. The No Ban Act 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.

The No Ban Act complements other legislative efforts, such as bills “To block the implementation of certain presidential actions that restrict individuals from certain countries from entering the United States,” introduced in the House ([H.R.810](#)) and Senate ([S.246](#)), that would prevent American taxpayer dollars from being used to implement the Muslim ban.

The Supreme Court's decision last year to allow the Muslim Ban to indefinitely remain in full effect, even as the ban faces continued challenges to its constitutionality in the lower courts, was a grave error and ranks alongside past decisions that have served as a stain on our nation's history, such as the decisions in *Dred Scott v. Sanford* and *Korematsu v. U.S.* In this instance, the Supreme Court has allowed a xenophobic and Islamophobic policy to remain in place and condoned a policy that discriminates the basis of nationality and religion. While we continue to challenge the Muslim Ban in the courts, it is by no means the only vehicle for fighting the Muslim Ban.

Other Ways Congress Can Act

Aside from supporting the No Ban Act, there are other things that Members of Congress can do to fight the Muslim Ban, ensure religious freedom and preserve constitutional protections.

As we see a rise in white supremacist violence that endangers all communities, we are concerned—and urge you to conduct oversight into—the waste of resources in targeting and banning whole populations with no basis. Accordingly, we encourage you to speak up against programs and policies that stigmatize, and harmfully stereotype Muslim, Arab, Middle Eastern and South Asian communities through programs such as Countering Violent Extremism (CVE), extreme vetting policies and surveillance policies, which are rooted in the same Islamophobia behind the Muslim Ban. We urge you to instead support programs that conduct fact-based investigations, which are proven to be the most effective way to keep communities safe, while protecting the civil rights and civil liberties of everyone.

The ban itself is part of a larger agenda to prevent communities of color from entering or remaining in the United States, which includes policies such as arbitrarily stripping away Deferred Action for Childhood Arrivals and Temporary Protected Status protections, separating and caging families, imposing a racialized wealth test on green card applicants, and taking away the permanence of naturalized citizenship. We urge you to address the Muslim Ban in this larger

context of this administration's desire to redefine who belongs in this country and to shut out those who are not wealthy and white.

Conclusion

In conclusion, NILC looks forward to working with members of these Committees to understand the repercussions and human impact of the Muslim Ban that remains indefinitely in place, to conduct oversight over the origins and implementation of the Muslim Ban and a waiver process that is being arbitrarily and capriciously administered, and to ultimately pass legislation such as the No Ban Act that would restore congressional intent to administer immigration laws that ensure fairness, equality, and justice. It is critical that we continue to fight against discriminatory policies like the Muslim Ban.

Sincerely,
The National Immigration Law Center