

**Questions for the Record from Ranking Member Steve Cohen for the Hearing on
“The State of Religious Liberty in America” for Rabbi David Saperstein**

- (1) Rep. DeSantis suggested that the wording of President Trump’s Executive Order 13769 was religiously neutral and that it was unfair to conflate the order’s two parts: (a) the ban on immigration from seven Muslim-majority countries and (b) the temporary ban on refugees that contains a preference for persecuted religious minorities. Please elaborate on your response during the hearing.

If I understood Rep. DeSantis, he pointed out that since the preference for religious minorities in the Executive Order was not limited to the then-seven countries from which all travel was banned, it was a facially neutral rule not disfavoring Muslims nor favoring Christians. But the two parts of the rule would not operate independently. The rule favoring religious minorities would be applied to all countries, including those affected by the “Muslim ban.” The clear impact in these countries would be to favor Christians as the largest non-Muslim minority. So in Iraq, where we know that the majority Shia, along with Yezidis and Christians, are victims of ISIL’s genocidal efforts, Shia would be disfavored simply because of their religious identity, i.e. they were Muslims in a Muslim-majority (indeed, Shia Muslim majority) country. Further based on the executive order’s text, it is not at all clear that persecuted minority Muslim sects in a Muslim-majority country would enjoy the same protections as non-Muslim minorities since they are part of the majority. .

As to the question of facially neutral laws, I would point out that all of us who testified before the subcommittee share a common view that the Religious Freedom Restoration Act (RFRA) was designed precisely to protect religious exercise from being substantially burdened by a law that, while facially neutral, has a functional discriminatory impact that violates the religious freedom of individuals or groups. Both the intent of a facially neutral law and the actual real-life impact are to be considered in ensuring religious freedom and equality.

Applying the same logic to the executive order’s preference for minorities: it may appear to be facially neutral, but in light of the discriminatory impact described above enhanced by President Trump’s stated intent to ban Muslims and favor Christians, its application is a violation of the constitutional protection against preferencing one religion over another. And federal courts have ruled this way.

I believe that, despite the President’s significant authority in the areas of immigration and national security policy, this executive order clearly passed a constitutional line that even the President cannot cross.

(2) You have long been a leader in a range of national civil rights organizations and more recently served as the Ambassador-at-Large for International Religious Freedom. In light of your experience and expertise, please answer the following:

(a) There has been an increase in anti-Muslim rhetoric, as well as an increase in hate crimes, bullying, and harassment aimed at Muslims or those perceived to be Muslim. There also often seems to be opposition from local governments to the building of mosques. What effect do you think this has had on America's image abroad, our foreign policy, and our national security?

I traveled to countries that have policies or practices that disadvantage minority religions (often Christian), and, beginning in 2016, government officials and civil society leaders would ask: How is what we do (or how is what happens from societal forces in our country) different than the prejudicial attitudes and actions of societal forces and government policies proposed by then-candidate/President-elect Trump? Such rhetoric and actions in the U.S. weaken the notions that there are universal standards applicable to all countries and that the U.S. is a model of tolerance, pluralism, equality, and constitutional protections that truly protect religious freedom for all.

When confronted with such questions, I would explain that the hate crimes that occur against Muslims, Jews, and other religious groups are, even with recent alarming increases, far fewer in number than in virtually any other country that faces similar problems. Moreover, in comparison to other countries, there are far fewer physical attacks on peoples or groups and there is less significant physical damage to the houses of worship and other institutions of religious groups. Perhaps most importantly, when such crimes occur, the powerful interfaith, multi-faith coalitions that are the norm in so many American communities react to protect those who have been targeted. And, I explain about national groups, like Shoulder-to-Shoulder, that bring together major religious communities and national leaders to combat Islamophobia, however it manifests itself.

Similarly, if community groups or local governments try to bar mosques from being built, other religious communities join Muslims in front of zoning boards or town councils, and ultimately, in court, to protect Muslims' rights. Almost every time, the mosque ends up being built.

These foreign leaders and public audiences were, I believe, reassured by my explanations. But the persistence of Islamophobic rhetoric and actions in the U.S. continues to weaken our status and credibility to make arguments based on international law and on the basic immorality of discriminatory actions. It is my profound hope that the Trump administration will resist inflaming the prejudices that underlie hate speech and hate crimes and ensure the continuation of the policies and practices I described to foreign leaders while traveling abroad – policies and practices that make America the shining example of pluralism and freedom.

(b) Prior to the issuance of Executive Order 13769, did our Nation's refugee policy disfavor in any way religious minorities facing persecution? Did the policy sufficiently consider religious persecution as a basis for refugee status? Should our refugee policy favor some religious groups over others?

Our policy did not disfavor religious minorities facing persecution because the religious identity of those seeking either asylum or refugee status is never a consideration. Anyone who faces persecution, oppression, discrimination and/or severe humanitarian crises meet the criteria of eligibility for asylum or refugee status, regardless of their religion. Without indirectly providing special status for any religious group, each person is judged on an individual basis.

And the current system works to protect those of minority religious communities who face persecution. For example, since 2007, 140,000 refugees have come to the U.S. from Iraq and nearly 40% of them were religious minorities (a substantial majority, Christians). This is not because they were Christian but rather because these individual Christians were among those targeted for persecution, ethnic cleansing and/or genocidal activity.

Because Christians are spread across the globe, many in countries where they are minorities, they often face discriminatory laws and societal hostility. Thus, on a global level, 44% of admitted refugees in fiscal 2016 were Christian. This year, however, that number will be far, far lower because the President intends to cut the total number of refugees the U.S. will admit in half. This is a true abandonment of our moral responsibilities and a tragedy for those of all those left behind who otherwise would have been welcomed here – often by America's religious communities, who play such a vital role in refugee resettlement and who seek to exercise their faith by "welcoming the stranger."
