

February 11, 2020

The Hon. Jerrold Nadler  
Chairman  
Committee on the Judiciary  
2141 Rayburn House Office Building  
Washington, D.C. 20515

The Hon. Doug Collins  
Ranking Member  
Committee on the Judiciary  
2141 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Nadler and Ranking Member Collins:

Thank you for holding a markup of H.R. 2214, the National Origin-Based Antidiscrimination for Nonimmigrants Act or the NO BAN Act. Passage of this legislation is a critical response to President Trump's Muslim Ban and would ensure no one can be banned from our country based on religious or nationality-based discrimination again. We urge you to advance this vital bill.

### **President Donald Trump's Muslim Ban**

In 2015, while on the campaign trail, then-candidate Donald Trump promised a "total and complete shutdown of Muslims entering the United States."<sup>1</sup> Then on January 27, 2017, President Trump delivered on his promise when he signed Executive Order 13,769.<sup>2</sup>

The initial Executive Order immediately and categorically banned all travel to the United States by nationals of seven countries with populations that are overwhelmingly (most more than 99%) Muslim.<sup>3</sup> It banned entry by all non-U.S. citizens from the seven countries, be they students, workers, or tourists; and it applied even to legal permanent residents whose only home is the United States.

The order resulted in widespread chaos and anguish immediately after it was signed. Legal permanent residents who were abroad found themselves unable to return home. Students and professors were prevented from returning for the spring semester. Refugees holding valid visas and afraid to return to the countries from which they came landed at U.S. airports only to be put on return flights.

That the executive order was meant to be President Trump's promised Muslim Ban is clear. Throughout his campaign, he pledged to follow through on his promise in terms that explicitly singled out Muslims. And after he signed it, the President's attorney, Rudy Giuliani, admitted that the order was the result of an instruction by President Trump to him to find a way to "legally" implement

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<sup>1</sup> Press Release, Donald J. Trump, *Statement on Preventing Muslim Immigration*, Dec. 7, 2015, available at <http://bit.ly/1jKL2eW>.

<sup>2</sup> Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

<sup>3</sup> See Exec. Order No. 13,769 § 3(c); see also Pew Res. Ctr., *The Global Religious Landscape* 45-50 (2012), <http://bit.ly/2k4Us8B> (reporting population statistics).

the “Muslim ban.”<sup>4</sup> And just days after signing it, President Trump called the executive order “the ban.”<sup>5</sup>

After courts blocked the first Muslim Ban, President Trump signed a second executive order creating a second Muslim Ban.<sup>6</sup> Courts blocked the second Muslim Ban. Then in September 2017, President Trump issued a presidential proclamation on the Muslim Ban—unlike the previous two executive orders, now there would be no expiration date and those affected are indefinitely banned from entering the United States.<sup>7</sup> This too was blocked by federal courts of appeals.

In June 2018, the Supreme Court ruled in favor of the Trump Administration in *Trump v. Hawaii*<sup>8</sup> and allowed the ban to be implemented while cases challenging the ban continue. The litigation is ongoing in the lower courts, and in May 2019, a federal court ruled that the claims that the Muslim Ban violates the Constitution can continue.<sup>9</sup>

On January 31, just days after the third anniversary of the first Muslim Ban, President Trump signed a proclamation expanding the ban to six new countries.<sup>10</sup> The expansion targets even more Muslims and immigrants of color and includes the most populous African country. The ban blocks most citizens of the newly banned countries from coming to the United States, except for those who already have green cards or visas.

### **The Muslim Ban Imposes a High Cost on Families and the Country**

Because of the Muslim Ban, countless families remain separated with heartbreaking consequences. And now, countless more families face the same harms. People have been denied access to lifesaving medical treatments; parents have been unable to care for their children; and spouses have been forced to live in separate countries. Some have been denied the opportunity to attend funerals or visit dying family members, and accomplished professionals, researchers, and students have been denied access to career and educational opportunities that would contribute to our country’s advancement.

On behalf of just a few of the people who have been harmed, Americans United and Muslim Advocates have challenged the Muslim Ban in court. We filed the first case challenging the third iteration of the Muslim Ban, which is ongoing. We also filed a case challenging the second version of the Muslim Ban and filed amicus briefs in all the other major cases, including in the Supreme Court.

Here are a few stories from our clients:

- An elderly couple in poor health in Maryland desperately want their son to be able to care for them, but he is blocked from coming to see them.

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<sup>4</sup> Amy B. Wang, *Trump Asked for a ‘Muslim Ban,’ Giuliani Says—and Ordered a Commission to Do It ‘Legally’*, *Wash. Post*, Jan. 29, 2017, available at <http://wapo.st/2115WZA>.

<sup>5</sup> Donald J. Trump (@realDonaldTrump), Twitter (Jan. 30, 2017 5:31 AM), <https://twitter.com/realDonaldTrump/status/826060143825666051?s=20>.

<sup>6</sup> Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017).

<sup>7</sup> Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 24, 2018).

<sup>8</sup> 585 U.S. \_\_\_, 138 S. Ct. 2392 (2018).

<sup>9</sup> *Zakzok v. Trump*, No. 1:17-cv-02969, Order (D. Md. May 2, 2019), available at <https://bit.ly/2ni4eZd>.

<sup>10</sup> Improving Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats, Presidential Proclamation No. 9983 of Jan. 31, 2020, 85 Fed. Reg. 6699 (published Feb. 5, 2020).

- A husband and wife work for the federal government and have built their lives together in this country and are devastated not to be able to receive a visit from the wife’s mother, who lives in Iran.
- An American citizen has had to give up her community here in Maryland to live abroad because she cannot return home with her Iranian husband.
- Since the ban, members of a community organization that helps Iranian-American youth build community and connect to their roots have been harassed and the organization has been unable to carry out its educational programs.

At the same time, the Muslim ban has emboldened extreme anti-Muslim intolerance. Hate crimes and acts of intimidation against Muslims reached a modern high last year, easily surpassing the previous record year following 9/11.

Individual stories from people across the country sadly confirm how endangered Muslims and those perceived to be are feeling.<sup>11</sup>

- Sarah, an Afghan American described, “My family and I have never felt more unsafe at any point of our lives living in USA.”
- Monica, an American Hindu explained, “I’ve noticed heightened hostility towards my community” since the Muslim Ban was announced.
- Rasha, an Iraqi American Catholic said, “I feel like I did not belong here, that this is not a place for me anymore.”
- Seid, an Ethiopian American Muslim says, “After the Muslim ban, things turned intense. Some became more empowered to speak on their prejudices.”

### **The Muslim Ban Violates Religious Freedom**

The Muslim Ban is a breach of the foundational American promise of religious freedom for all. The Constitution protects the right of Muslims to exercise their beliefs, just like people who follow any other religion or no religion. Indeed, people of all faiths and backgrounds have long sought refuge in our country. Catholics, Protestants, Eastern Orthodox Christians, Jews, Muslims, Buddhists, Sikhs, Hindus, and atheists, among others, have all come to America because of our country’s promise of religious freedom. President Trump’s Muslim Ban, however, turns its back on this deeply rooted tradition of religious freedom.

Indeed, the “clearest command” of the First Amendment’s Establishment Clause is to forbid the government from officially preferring one religious denomination over another.<sup>12</sup> The Ban, in contrast, singles out Muslim-majority countries and subjects those who were born in or come from those countries (principally Muslims) to exclusion based on their faith. It has the principal effect of discriminating against, denigrating, and disfavoring Muslims.

The Establishment Clause also prohibits the government from “making adherence to a religion relevant in any way to a person’s standing in the political community”,<sup>13</sup> “the government may not

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<sup>11</sup> Rokia Hassanein, *Many Americans Have Been Affected By President Trump’s Muslim Ban. Here Are Some Of Their Stories.*, Americans United Blog (Apr. 6, 2018), <https://bit.ly/2m3klJL>; Rokia Hassanein, *People Are Being Harmed By President Trump’s Muslim Ban. Here Are Some Of Their Stories.*, Americans United Blog (Apr. 13, 2018), <https://bit.ly/2mX1ffk>; Rokia Hassanein, *People Are Being Harmed By The Muslim Ban. Here Are Some Of Their Stories.*, Americans United Blog (Apr. 20, 2018), <https://bit.ly/2mWJWEx>.

<sup>12</sup> *Larson v. Valente*, 456 U.S. 228, 244 (1982).

<sup>13</sup> *Lynch v. Donnelly*, 465 U.S. 668, 687 (1984) (O’Connor, J., concurring).

favor one religion over another” by endorsing one or condemning another.<sup>14</sup> Looking at the history of this shameful policy, which the Supreme Court has ruled is relevant to the constitutional analysis, it is clear that the government is disfavoring Muslims.<sup>15</sup> The genesis of the Muslim Ban and the “specific sequence of events leading to”<sup>16</sup> its implementation communicate that Muslims are “outsiders, not full members of the political community”<sup>17</sup> and that it was intended to bar Muslims from coming to this country.

Because the Muslim Ban treats Muslims differently than non-Muslims, it must withstand strict scrutiny.<sup>18</sup> The government has failed to demonstrate how, as it claims, the Muslim Ban enhances national security. Rather, the ban is woefully ill-suited to achieving that interest. In fact, former national security officials who served under Democratic and Republican administrations explained that it “not only fails to advance the national security or foreign policy interests of the United States; it cause multiple, serious harms to those interests.”<sup>19</sup>

The Muslim Ban also purports to be based on a worldwide review of information-sharing policies and practices of more than 200 countries to determine which countries (and their nationals) are placed on the banned list. The criteria used, however, are completely irrelevant and have been applied wholly inconsistently.

That there is putatively a waiver policy in place does not change the fact that this is a ban. In practice, there is no procedure to apply for these waivers and scant guidance on when waivers are to be issued. There is currently no application through which visa applicants may apply for or submit documentation demonstrating eligibility for a waiver. And waivers have been granted in only a miniscule percentage of cases. Former consular officials have stated that the waiver process is a “fraud” and has “no rational basis.”<sup>20</sup> A hearing in September 2019 examined countless stories about the grave harms suffered under this sham waiver process, including testimony from Dr. Abdollah Dehzangi and Ismail Ahmed Hezam Alghazali.

## **What Congress Can Do**

The Muslim Ban reneges on our Nation’s commitment to religious freedom. Its true intent is to narrow the space for religious diversity in our country. Indeed, the Muslim ban is emblematic of the struggle over the direction of our country. Congress should choose the path that embraces our country’s rich and robust diversity, and preserves the “profound commitment to religious liberty” “that has served [this Nation] so well.”<sup>21</sup> Congress should pass the NO BAN Act and this markup is the first step.

The NO BAN Act is a clear and unequivocal response to the Muslim Ban that would ensure no one can be banned from our country based on religious or nationality-based discrimination ever again. The bill would make important changes to the Immigration and Nationality Act (INA) by outlawing

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<sup>14</sup> *McCreary Cty. v. ACLU of Ky.*, 545 U.S. 844, 875 (2005).

<sup>15</sup> *See id.* at 866.

<sup>16</sup> *Id.* at 862.

<sup>17</sup> *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309 (2000).

<sup>18</sup> *Id.* at 246.

<sup>19</sup> Br. of Former Nat’l Security Officials as Amici Curiae in Support of Respondents at 20, *Trump v. Hawai’i*, 138 S. Ct. 2392 (2018).

<sup>20</sup> Jeremy Stahl, *The Waiver Process Is Fraud*, Slate (June 15, 2018), available at <https://bit.ly/2mWFFAX>.

<sup>21</sup> *See McCreary Cty. v. ACLU of Ky.*, 545 U.S. 844, 882, 884 (2005) (O’Connor, J., concurring).

discrimination in the entry of immigrants or nonimmigrants based on religion. The NO BAN Act would also amend the INA, based on precedent, to responsibly limit presidential authority to suspend or restrict the entry of non-citizens and put in place key congressional notification and reporting requirements as important safeguards against any future abuses of this authority.

### **Conclusion**

Thank you for considering this critical legislation and we urge you to advance the measure.

Sincerely,



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