



## **The NO BAN Act Would Block the Discriminatory Muslim Ban and Prevent Future Abuses of Power**

*H.R. 2214/S. 1123 and H.R. 810/S. 246*

The National Origin-Based Antidiscrimination for Nonimmigrants Act, or the “NO BAN Act,” was introduced on April 10, 2019, by Representative Judy Chu (D-CA) and Senator Chris Coons (D-DE). The bill would repeal each iteration of the Muslim Ban, the Refugee and Asylum Bans, and further prevent the issuance of similar bans in the future that target immigrants based on religion or national origin.

### **The NO BAN Act (Bills H.R. 2214/S. 1123) would:**

- **Repeal each iteration of the Muslim Ban, Refugee Ban, and Asylum Ban.** The bill would end the series of discriminatory executive orders and presidential proclamations issued by the Trump administration that together constitute the Muslim Bans,<sup>1</sup> including ones that specifically targeted refugees for extreme vetting and that targeted asylum-seekers at the southern U.S. border.
- **Prohibit discrimination based on religion.** The bill would amend the non-discrimination provisions of the Immigration and Nationality Act (INA) to explicitly prohibit discrimination based on religion by adding religion to the list of protected classes. The bill would apply the nondiscrimination protections to immigrant and nonimmigrant visa applicants alike.
- **Limit the administration’s authority to issue similar bans in the future.** The bill would amend the INA to limit the President’s overly broad authority to issue future bans on classes of immigrants or nonimmigrants. It would do this by requiring that any restriction be supported by specific evidence and be narrowly tailored to address a compelling governmental interest, using the least restrictive means possible. This means that the courts would review any executive orders or policies under what is referred to as strict scrutiny, a standard that makes it easier for people who challenge such an order to get a court to block it. The bill would also require that any such orders allow individuals to apply for waivers, which provide for a rebuttable presumption in favor of family-based and humanitarian factors.
- **Require reporting to Congress.** The bill requires that within 48 hours of the issuance of a policy restricting immigration, the Secretary of State and the Secretary of Homeland Security

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<sup>1</sup> No Muslim Ban Ever Campaign, Understanding Trump’s Muslim Bans (updated March 8, 2019), <https://www.nilc.org/wp-content/uploads/2018/01/understanding-the-Muslim-bans.pdf>.

provide a briefing and written report on the action to several relevant Congressional committees with updates every 30 days following.

- **Enable impacted individuals to challenge violations of their rights in court.** The bill would create a cause of action for an individual, entity, or a class of individuals to seek declaratory or injunctive relief against the government if they suffer a harm.

The bill builds upon an earlier pair of companion bills “To block the implementation of certain presidential actions that restrict individuals from certain countries from entering the United States” (H.R. 810 and S. 246) on January 28, 2019 by Rep. Judy Chu (D-CA) and Senator Chris Murphy (D-CT). These bills would block the use of any government funding to implement the Muslim Ban and declare that the Muslim Ban violates both the anti-discrimination provision of the INA and the First Amendment to the U.S. Constitution protecting against religious discrimination and the Fifth Amendment’s violation of equal protection under the law.

### **Who Does the Muslim Ban Affect?**

The Muslim Ban permanently blocks individuals from seven countries, five of which have Muslim-majority populations (Iran, Libya, North Korea, Somalia, Syria, Yemen, and certain diplomatic officials from Venezuela) from being issued visas to enter the U.S. unless they can obtain a waiver.<sup>2</sup> This includes immigrant visas for family members of U.S. citizens and lawful permanent residents (LPRs) and non-immigrant visas to visit the U.S. for graduations, weddings, funerals, to receive life-saving medical treatment, and tourism.<sup>3</sup> A “waiver” is an exception, allowing otherwise banned individuals and families to get a visa.

The Supreme Court’s ruling in *Trump v. Hawaii* upholding the Muslim Ban explicitly focused on the government’s assurance that the ban would be offset by a “robust” waiver process.<sup>4</sup> Under the waiver provision, consular officers and Customs and Border Protection (CBP) officers have the discretion to authorize waivers to impacted individuals and the waiver process is the only mechanism and hope for otherwise banned individuals to obtain a visa. However, the waiver process is a sham and is currently being challenged by at least two federal class action lawsuits. There is no formal process or application for a waiver and most applications are denied or put on indefinite hold. Only about 6 percent of waiver applications have been granted, meaning that about 94 percent of waiver applications have been denied or are pending.<sup>5</sup>

The number of people worldwide who fall under the ban exceeds 135 million.<sup>6</sup> The number of visas granted to nationals of the countries impacted by the Muslim Ban have decreased dramatically compared to prior years. Each of the banned countries has seen drastic decreases in both immigrant and non-

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<sup>2</sup> The Trump administration rescinded an earlier ban affecting Chad, Sudan, and Iraq but recommended that all Iraqi nationals seeking to enter the U.S. be subject to additional security screening.

<sup>3</sup> An immigrant visa is issued to a person wishing to live permanently in the U.S. A nonimmigrant visa is issued to a person with permanent residence outside the United States, but who wishes to be in the U.S. on a temporary basis such as for tourism, medical treatment, business, or temporary work or study.

<sup>4</sup> *Trump v. Hawaii*, 138 S. Ct. 2392 (2018).

<sup>5</sup> Sen. Chris Van Hollen, “Van Hollen Releases New State Department Data on Travel Ban,” April 5, 2019, <https://www.vanhollen.senate.gov/news/press-releases/van-hollen-releases-new-state-department-data-on-travel-ban>.

<sup>6</sup> Rick Gladstone and Satoshi Sugiyama, “Trump’s Travel Ban: How It Works and Who Is Affected,” *The New York Times* (July 1, 2018), <https://www.nytimes.com/2018/07/01/world/americas/travel-ban-trump-how-it-works.html>.

immigrant visa issuances, except for Venezuela and North Korea, the only non-Muslim-majority countries subject to the ban.<sup>7</sup>

Since the implementation of the Muslim Ban, the U.S. Refugee Admissions Program has instituted increasingly stringent vetting procedures and slashed yearly refugee admissions. While the “ceiling” for refugee admissions has averaged 96,000 per year in previous administrations, President Trump proposed cutting the refugee admissions ceiling to 45,000 in FY 2018 and 30,000 in FY 2019 – the lowest since the beginning of the U.S. refugee program.<sup>8</sup> Furthermore, the number of refugees actually processed and admitted under these lowered ceilings has decreased drastically, with only 22,491 refugees admitted in FY 2018, and with all geographical zones experiencing drops in admissions except Europe.<sup>9</sup> Refugees from Syria and Iran have been particularly affected with their resettlement numbers dropping precipitously. In fact, the Syrian refugee crisis was used to stir up anti-Muslim animus by then Senator and former Attorney General Jeff Sessions, likely planting the seeds of the idea of a Muslim Ban in the Trump presidential campaign.

### **Why Do We Need These Bills?**

The Trump administration abused its broad authority over the flow of immigration into the U.S. to issue a series of discriminatory executive orders and presidential proclamations that collectively make up the Muslim Ban, Refugee Ban, and Asylum Bans. While there is much evidence that the President intended to discriminate against Muslims, the U.S. government was able to persuade the Supreme Court in *Trump v. Hawaii* that it had the authority to issue the third iteration of the Muslim Ban.

This was partly because Congress had ceded too much authority to the President in our immigration laws. In our constitutional system of checks and balances, Congress is intended to act as a check on the whims of the President. With the NO BAN Act, Congress is reclaiming its role as the branch of government tasked with creating laws that benefit the people of the U.S. and limiting the authority of the President to prohibit immigration of certain classes of people.

**The NO BAN Act would end the discriminatory Muslim Ban and prevent similar discriminatory actions from happening in the future. Congress should pass the NO BAN Act to uphold the U.S. Constitution and reassert that the United States is a country that does not allow the law to discriminate against people based on their religion or nationality.**

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<sup>7</sup> U.S. Department of State, Bureau of Consular Affairs, “Monthly Immigrant and Nonimmigrant Visa Issuances Data,” *FY2016 Annual Report; FY2017 Annual Report; FY2018 Annual Report*; U.S. Department of State, Bureau of Consular Affairs, “Table XVII (Part I), Nonimmigrant Visas Issued, Fiscal Year 2016,” *Report of the Visa Office 2016*; U.S. Department of State, Bureau of Consular Affairs, “Table XVII (Part I), Nonimmigrant Visas Issued, Fiscal Year 2018,” *Report of the Visa Office 2018*.

<sup>8</sup> Dara Lind, “Trump Slashed Refugee Levels This Year. For 2019, He’s Slashing Them Even Further,” Vox (Sept. 18, 2018), <https://www.vox.com/2018/9/17/17871874/refugee-news-record-history-asylum>.

<sup>9</sup> U.S. Department of State, Bureau of Population, Refugees, and Migration, Office of Admissions Refugee Processing Center, “Summary of Refugee Admissions,” FY 2018.