



Asian Americans Advancing Justice Supports Passage of the NO BAN ACT & Access to Counsel Act of 2020

July 21, 2020

We strongly urge Members to vote YES on the NO BAN ACT and Access to Counsel Act of 2020 and NO to any amendments or changes to these bills.

Asian Americans Advancing Justice is a national partnership of five non-profit, non-partisan organizations working to advance the human and civil rights of Asian Americans and Pacific Islanders (AAPIs) through advocacy, public policy, public education, and litigation. The affiliation's members are: Advancing Justice | AAJC (Washington, DC), Advancing Justice – Asian Law Caucus (San Francisco), Advancing Justice – Los Angeles, Advancing Justice – Atlanta, and Advancing Justice | Chicago.

We urge Congress to protect our nation's bedrock ideals of religious freedom and equal protection and pass the NO BAN Act.

The NO BAN Act will:

Repeal each iteration of the Muslim Ban, Refugee Ban, Asylum Ban and Expanded Muslim-African Ban (Proclamation 9883).

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 limit the President's overly broad authority to issue future bans on classes of immigrants or nonimmigrants 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. The bill would **enable impacted individuals to challenge violations of their rights in court and review policies under a strict scrutiny standard of review.** 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 provide a briefing and written report on the action to several relevant Congressional committees with updates every 30 days.

Addition of legislative text intended to address concerns relating to COVID-19 is unnecessary and enables xenophobia and racism. The NO BAN Act as originally drafted would allow the President to respond to public health concerns under the original definition of “public safety” in the bill text. The inclusion of “communicable disease” under the definition, however, is unnecessary and risks further stigmatizing immigrant communities facing ongoing and disproportionate discrimination in light of the Trump administration’s irresponsible rhetoric relating to communities of color and immigrants—including in reference to the coronavirus. We have witnessed a rise in xenophobic statements and acts against community members related to coronavirus, including from Members of Congress. Such harmful rhetoric and framing should be denounced and not reinforced by adding language that enables race- and ethnicity-based discrimination.

We also urge your boss to vote YES to the Access to Counsel Act of 2020. With the first iteration of the Muslim Ban, we witnessed individuals being detained at airports, barred from boarding flights overseas and in some cases forced to relinquish their immigration status without any opportunity to access legal support. More recently, numerous instances of Customs and Border Protection (CBP) officers unjustly detaining Iranians and Iranian Americans at the border and in airports around the globe, despite having valid visas, have been well documented. This bill would, among other things:

- 1) Allow U.S. citizens and those who otherwise have lawful immigration status in the United States and who are held in secondary inspection at airports or other points of entry for more than an hour the opportunity to access legal counsel or contact a family member or other interested party.
- 2) Allow counsel or an interested party the ability to advocate on behalf of the individual by providing information or documentation in support of the individual.
- 3) Invalidate any effort by CBP to persuade someone to give up their lawful immigration status if that person has been denied access to counsel or voluntarily waives, in writing, the opportunity to seek advice from counsel.

More information on the NO BAN ACT:

The federal government has a long and sordid history of discriminating against and criminalizing Asian and Arab, Middle Eastern, Muslim and South Asian (AMEMSA) communities based solely on their religion and nationality. This administration's Muslim Ban and Expanded Muslim-African Ban is an extension of such racist and xenophobic policies that Asian Americans are unfortunately all too familiar with. We urge this Congress to stop history from repeating itself, to reject the Muslim Ban in all its iterations and to pass the NO BAN Act.

Muslim Ban 3.0 was issued using executive authority under INA 212(f). Still in effect, the Ban separates families through bans on certain visa categories for nationals of Libya, Iran, Somalia, Yemen, Syria, North Korea, and Venezuela (North Korea and Venezuela have limited impact). Over [170 million](#) foreign nationals are subject to this ban.

On January 31, 2020, President Trump also used his authority under INA 212(f) to issue Proclamation 9883 (the "Expanded Muslim-African Ban") by adding six more nations to the list of countries that have visa restrictions. The expanded ban adds Sudan, Nigeria, Tanzania, Burma (Myanmar), Eritrea, and Kyrgyzstan and bans some or all immigrant visas (green cards) from being issued to nationals of these states.

Proclamation 9883 bans immigrants and refugees from Myanmar (Burma) from seeking entry to the United States. The addition of Myanmar to the Muslim Ban causes irreparable and in some cases fatal harm to Burmese immigrants and refugees. This is particularly tragic given the recent decimation of the Refugee Admissions Program. In the past 10 years, 1 in 4 US-bound refugees have arrived from Myanmar, and since Fiscal Year 2012, the largest group of refugees by national origin has come from Myanmar. The Rohingya, a Muslim ethnic minority experiencing ongoing genocide in Myanmar, are a particularly recent population of refugees to the U.S. seeking to reunite with family in Myanmar or refugee camps in neighboring countries, but are now barred from doing so. As the New York Times has reported, many Rohingya children have been resettled here as refugees without their families and eagerly await to become citizens old enough to sponsor their family members. However, this cruel expansion prevents these children from ever seeing their loved ones. Contrary to our values, it is unthinkable that our nation would turn away innocent victims fleeing oppression and genocide.

On April 22, the President again used the INA 212(f) authority to issue Proclamation 10014 of April 22, 2020, "Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak" ("Immigration Ban") for 30 days which was extended and expanded on June 22, 2020 by "Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak" ("Expanded Immigration Ban") through December 31st, 2021. This Immigration Ban is a virtual shutdown of our immigration system resulting in a massive decrease in immigration to the U.S. fulfilling the President's white nationalist agenda.

For questions, please contact **Megan Essaheb** messaheb@advancingjustice-aaajc.org or **Hammad Alam** hammad@advancingjustice-alc.org.