Council on American-Islamic Relations – California

WE WON'T BE BANNED:

Fighting the 2017 Muslim Bans

A YEAR IN REVIEW

CAIR CALIFORNIA

Acknowledgements

The Council on American-Islamic Relations ("CAIR") is the largest American Muslim civil rights and advocacy organization in the United States. Its mission is to enhance a general understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding. CAIR-California is the organization's largest and oldest chapter, with offices in the Greater Los Angeles Area (CAIR–LA), the Sacramento Valley (CAIR–SV), San Diego (CAIR–SD) and the San Francisco Bay Area (CAIR–SFBA).

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Executive Summary

This report examines the impact of executive orders and a presidential proclamation targeting Muslim immigrants. Implementation of the first executive order ("EO-1") occurred on January 27, 2017, in an unexpected and haphazard fashion. EO-1 banned foreign nationals of seven Muslim-majority countries for 90 days, non-Syrian refugees for a period of 120 days, and Syrian refugees indefinitely. Tens of thousands of people, including lawful permanent residents ("LPRs") and dual citizens, were impacted by EO-1 through heightened questioning, delays in travel, cancellation of flights, and revocation of visas.

After continued legal challenges partially blocked implementation of EO-1, President Trump signed a revised order ("EO-2") less than two months later, on March 6, 2017. Among other changes, EO-2 removed Iraq from the seven designated countries and lifted the indefinite ban on Syrian refugees. Legal challenges ensued immediately. Federal judges in Hawai'i and Maryland issued orders temporarily blocking critical sections of EO-2 before its implementation. The administration appealed the orders to the U.S. Court of Appeals for the Fourth and Ninth Circuits. After both appeals courts refused to lift the bans on EO-2, the administration appealed those orders to the U.S. Supreme Court. In a June 26, 2017 decision, the Supreme Court partially granted the administration's request to stay the Maryland and Hawai'i U.S. District Courts' preliminary injunctions, holding that EO-2 "may not be enforced against foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States."[2] The Court also granted certiorari, consolidating the U.S. Court of Appeals for the Fourth and Ninth Circuits cases.

On September 24, 2017, the day on which the 90-day EO-2 ban on foreign nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen expired, President Trump issued a proclamation ("September 24 Proclamation") that imposes new travel restrictions on the entry of foreign nationals from Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen. Unlike EO-1 and EO-2, these travel restrictions are indefinite, resulting in a much more far-reaching impact on foreign nationals from the listed countries and their families in the U.S. One month later, on October 24, 2017, President Trump signed an executive order ending the temporary refugee ban imposed by EO-2, and effectively suspended refugee processing and family reunification for refugees from Egypt, Iran, Iraq, Libya, Mali, North Korea, Somalia, South Sudan, Sudan, Syria, and Yemen, as well as Palestinians who lived in any of those countries. The executive order enacted "extreme vetting" procedures, which were subsequently challenged in the U.S. District Court for the Western District of Washington.

Like visa-holders from Muslim-majority countries, refugees, who are among the most vulnerable of immigrant populations, have been singled out as targets of the government's "extreme vetting" policies. Those fleeing violence and seeking safe haven in the U.S. are subjected to "multiple interviews and . . . security vetting by nine U.S. law enforcement, intelligence and security agencies that check their backgrounds, social media activity and the reasons they fled their countries."[3] The vetting process alone for refugees can take up to two years, which can place defenseless individuals abroad at significant risk.[4] Nonetheless, their lives have been placed on hold while the administration assesses further measures. These executive orders and the September 24 Proclamation, commonly referred to as the "Muslim Bans," signify much more than our country's shift to a closed-door immigration policy through a purported focus on national security. Over the past year, the administration has haphazardly issued orders without regard to laws or constitutional principles. Federal courts have consistently rejected the administration's targeting of Muslim immigrants, holding that the administration's targeting of refugees and immigrants from Muslim-majority countries is discriminatory and a violation of fundamental constitutional protections.

This report details the impact of EO-1 and EO-2 on callers who contacted one of the four California CAIR offices. Findings illustrate that Muslims, including U.S. citizens, have expressed apprehension about travelling. Two-thirds of callers expressed concern about traveling and reached out to CAIR offices to see if EO-1 or EO-2 would impact them. They also sought legal guidance to learn about their rights while traveling. Nearly 30% of callers faced some issues while traveling, and more than one-third of those facing problems were U.S. citizens.

The chances of being struck by lightning TWICE is 1 in 9 million. The chances of being killed by a refugee committing a terrorist act is 1 in 3.6 billion. These facts lead me to conclude that Trump's action is not based on national security, it is based on bigotry. Lady Liberty is crying.[5]

CONGRESSMAN TED LIEU

A History of Institutional Discrimination Against Muslim Immigrants

Although the Muslim Bans of 2017 are viewed as one of the most overtly discriminatory programs implemented by the federal government in recent years, the singling out of Muslims as targets of suspicion and potential criminality is nothing new. The Department of Homeland Security ("DHS") has historically implemented programs with discriminatory intent against Muslim immigrants seeking entry into the U.S. Muslims have been the targets of entry and exit registration programs, extreme vetting, visa restrictions and cancellations, a "No Fly" List and other watch lists, and immigration processing delays.

National Security Entry-Exit Registration System

In September 2002, in the aftermath of the September 11, 2001 terrorist attacks, the Department of Justice ("DOJ") announced the "National Security Entry-Exit Registration System" or "NSEERS" program, which required nonimmigrant visa holders such as tourists and students to specially register with immigration officials.[6] NSEERS mandated registration of all males from any of 25 designated countries over the age of 16 years who met particular requirements.[7] Although the Bush Administration did not explicitly target Muslims, all but one of the designated countries (North Korea) are Muslim-majority. Much like the current administration, the government justified NSEERS by declaring that it was a necessary safety measure needed to maintain national security against foreign terrorist threats.[8] Eighty thousand males affected by NSEERS were fingerprinted, photographed, and interrogated about personal details including financial information and family ties.[9] Targeted Muslim immigrants were required to check in regularly with then-Immigration and Naturalization Service ("INS") (which has since been replaced by DHS). In 2011, DHS "delisted" all 25 countries, after determining that NSEERS "does not provide any increase in security"[10] and that it is not "necessary to subject nationals from these countries to special registration procedures."[11] More than five years later, in December 2016, President Barack Obama dismantled NSEERS in response to suggestions by then President-elect Trump to revive the dormant program in efforts to create a "Muslim Registry."[12]

Watch List/"No Fly" List/Secondary Security Screening Selection

The U.S. government has maintained clandestine databases of countless individuals, including U.S. citizens, who have been identified as potential targets of suspicion, while providing scant evidence as a basis.[13] These databases disproportionately impact Muslim travelers included on watch lists such as the "No Fly" List or Secondary Security Screening Selection, commonly referred to as the "Selectee List." Those on the "No Fly" List are subject to repeated questioning, law enforcement harassment, and indefinite bans on air travel altogether.[14] Although this watch list includes significant erroneous information and mistakenly identifies individuals as terror suspects, those who are on it have little recourse to rectify misidentification or clear their names.[15]

Passengers on the Selectee List are subject to additional inspection at airports where their boarding passes are clearly identified by quad-S's, or "SSSS". This signals the need for additional verification by airline staff, enhanced inspections, and TSA searches.[16] Thus, individuals placed on a watch list or selectee list are subjected to increased scrutiny and are banned in some cases from any travel due to their religion, nationality, and other profiling criteria.

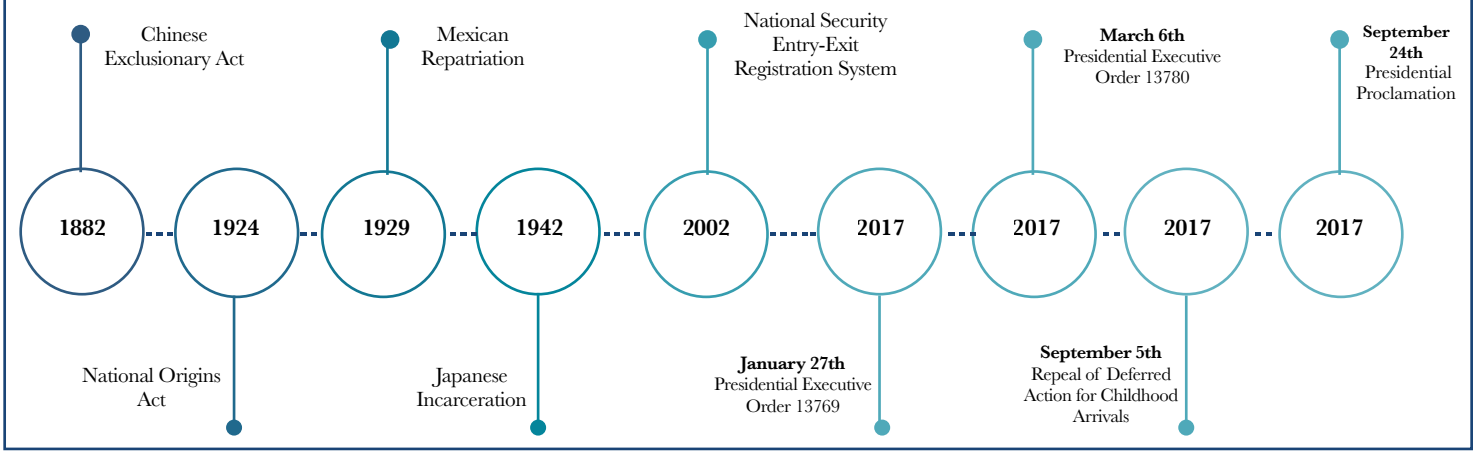
Visa Waiver Restrictions, Visa Cancellations, and "Extreme Vetting" of Muslims

Individuals from Muslim-majority countries experience increased scrutiny when applying for visas to the U.S. Since 2014, there has been a sharp decline in the overall number of visas issued to applicants from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.[17] According to the Brennan Center of Justice at the New York University ("NYU") School of Law, an average of 48.8% of visas were refused from Iran, Libya, Yemen, Somalia, Sudan, and Syria in 2016.[18] Additionally, based on data released by the U.S. Department of State ("State Department") in April 2017, "[t]he United States issued about 40 percent fewer temporary visas in March [2017] to citizens of seven countries covered by President Donald Trump's temporary travel bans than it did in an average month last year."[19]

Beginning December 2015, U.S. government officials passed new laws that have had an inordinate impact on Muslims traveling to the U.S. Through the "Visa Waiver Program Improvement and Terrorist Travel Prevention Act," Congress increased barriers to entry for individuals from designated Muslim-majority countries who were previously eligible for the Visa Waiver Program ("VWP").[20] Dual nationals of Iran, Iraq, Syria, and Sudan, as well as VWP eligible nationals who in recent years merely traveled to, or were present in Iraq, Syria, Iran, Sudan, Libya, Somalia, or Yemen were barred from entering the U.S. under VWP. Instead, they were required to obtain visas from a U.S. Embassy or Consulate.[21]

"Extreme vetting" policies implemented under the Trump Administration in day-to-day practices by immigration officials include reports of invasive questioning of travelers about their religious beliefs, such as whether they are Sunni or Shite, and why they carry a Quran in their luggage.[22] This intrusive questioning appears to disproportionately target Muslims and violates immigration laws that protect an immigrant's constitutional rights and religious freedom.[23] DHS officials have indicated that upcoming procedures for visa applicants would include questions regarding "honor killings, the role of women in society, and legitimate military targets" as well as guidelines that require applicants to reveal information in their electronics such as contacts, social media usernames, and passwords.[24]

History of Discriminatory Federal Immigration Policies



Immigration and Citizenship Delays for Muslims

The State Department and DHS have engaged in systematic discrimination against Muslim visa applicants and those petitioning for naturalization. In 2008, USCIS implemented the Controlled Application Review and Resolution Program ("CARRP"), which vets and adjudicates applications and petitions with a putative "national security concern" justification.[25] The American Civil Liberties Union ("ACLU") initially uncovered the covert USCIS program, which subjected Arab, Middle Eastern, Muslim, and South Asian applicants to heightened scrutiny and lengthy delays. According to the ACLU's report, CARRP "relies on deeply flawed mechanisms to identify 'national security concerns,' including error-ridden and overbroad watch-list systems and security checks; and religious, national origin, and associational profiling."[26]

Under CARRP, Muslim applicants have been asked detailed questions during naturalization interviews about their religion, such as how often they pray, and which mosque they attend.[27] Applicants' lawful practice of donating to Muslim charities is brought into question, and they are required to comply with extensive "requests for evidence" that extend so far into the past it is almost impossible to satisfy.[28] In some cases, there have been reports of Muslim applicants being extorted into becoming FBI informants in exchange for processing their immigration applications.[29]

These policies and restrictions are part of an institutional framework that creates a discriminatory and unlawful de facto burden on Muslim visa-holders based on unwarranted profiling criteria.

The Muslim Bans and Legal Challenges

Muslim Ban 1.0

On Friday, January 27, 2017, President Donald Trump signed Executive Order 13769, titled "Protecting the Nation from Foreign Terrorist Entry into the United States." EO-1 barred admission of visa-holders and LPRs from seven Muslim-majority countries – Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen – into the U.S. for a period of 90 days, including dual citizens. EO-1 also prohibited entry of all refugees for a period of 120 days, and barred Syrian refugees indefinitely. EO-1 created an exception for members of minority faiths from the seven listed countries, which was widely interpreted as protection of Christian immigrants. EO-1 took effect immediately, with no advanced notice for the implementing agencies.

Over the next 24 hours, chaos ensued, as U.S. Customs and Border Protection ("CBP") officials attempted to implement EO-1 despite a complete lack of prior notice or guidance from the White House. Nearly 750 non citizens were detained at ports of entry from coast to coast.[30] Internationally, visa-holders and LPRs from the seven designated countries were denied boarding and stranded at foreign airports.

> A 75-year-old Yemeni woman who resided in Saudi Arabia for most of her life, planned to visit her U.S. Citizen son and his family in Chicago on a B-2 visitor visa. The son's wife was pregnant with their second child. The Yemeni mother had witnessed the birth of their first child the previous year when she visited the U.S. for a few months, and planned to visit to see her grandson and witness the birth of her second grandson. On January 28, she flew from Riyadh, Saudi Arabia to Dubai, United Arab Emirates, where she had a brief layover. When she tried getting on the plane for the second leg of her flight, she was denied boarding. The Yemeni visa-holder was confined to a wheelchair due to back problems, and was shocked and humiliated by the attendant's refusal to allow her on the plane. She spent 11 hours alone at Dubai International Airport waiting for a flight back to Riyadh.
>
> **CAIR - MICHIGAN**

Protests erupted at airports around the country as tens of thousands came together to denounce EO-1. Given EO-1's ambiguous language, the lack of agency consultation, and poor communication during EO-1's roll-out, DOJ, DHS, and State Department employees implemented EO-1 in highly inconsistent ways. Challenges to particular sections of EO-1 intensified. On Saturday, January 28, 2017, just one day after EO-1 took effect, Judge Ann Donnelly of the U.S. District Court for the Eastern District of New York issued the first injunction against EO-1, enjoining the government from "removing individuals" who had arrived in the U.S. with valid immigration status.[31] The injunction did not apply to those individuals who had not yet arrived in the U.S.

While a senior White House official maintained that EO-1 would remain in place, and foreign nationals from the seven designated countries would continue to be barred from entering the U.S., the White House clarified later that day that "legal permanent residents [were] exempt from the travel restrictions in the new executive order."[32]

On February 3, 2017, Judge James Robart of the U.S. District Court for the Western District of Washington fully enjoined EO-1 nationwide. DOJ appealed Judge Robart's order to the U.S. Court of Appeals for the Ninth Circuit. Less than one week later, on February 9, the Ninth Circuit unanimously denied DOJ's motion for an emergency stay.

Muslim Ban 2.0

Rather than appeal the Ninth Circuit decision, on March 6, 2017, President Trump signed a revised executive order revoking EO-1, and implementing a more limited ban. To avoid much of the confusion that took place when EO-1 was immediately implemented, EO-2 went into effect ten days after signing, on March 16, 2017. For 90 days, EO-2 suspended the immigration of all nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen (collectively "Designated Countries"), but removed Iraq from the list of banned countries. Although Iraq was removed, Section 4 of EO-2 clarified that any visa applications filed by Iraqi nationals would be subject to "thorough review" to determine whether those individuals have had any ties to, or are under the influence of, any terrorist organizations.[33] Section 3 of EO-2 explicitly exempted LPRs and dual nationals. Like EO-1, EO-2 directed the U.S. Refugee Admissions Program to suspend all refugee applications for 120 days and to thereafter reduce the number of refugees admitted into the U.S. to 50,000 for the 2017 fiscal year. Unlike EO-1, however, EO-2 eliminated the indefinite ban on Syrian refugees and the exemption for refugees from a minority religion.[34] EO-2 allowed CBP and consular officials to issue waivers for nationals of Designated Countries, as well as for refugees whose denial of entry would cause undue hardship and those whose entry would not pose a threat to national security.

The state of Hawai'i filed a challenge against EO-2 two days after it was signed. On March 15, just hours before the order was scheduled to go into effect, Judge Derrick Watson of the U.S. District Court for the District of Hawai'i issued a temporary restraining order blocking EO-2. Judge Watson held that there was "significant and unrebutted evidence of religious animus" aimed at disfavoring a "particular religion."[35] The following day, Judge Theodore Chuang of the U.S. District Court of Maryland issued a nationwide preliminary injunction, likewise finding discriminatory intent against Muslims. Less than two weeks later, Judge Watson issued a broader preliminary injunction, prohibiting implementation of the core provisions of EO-2 until the state of Hawai'i's case was resolved.

On appeal, the U.S. Court of Appeals for the Fourth Circuit upheld a block of EO-2 on May 25 in a 10-3 ruling. In the opinion, Chief Judge Roger Gregory wrote, in text, EO-2 "speaks with vague words of national security, but in context drips with religious intolerance, animus, and discrimination."[36] On separate grounds, the U.S. Court of Appeals for the Ninth Circuit largely upheld the injunction issued by Judge Watson on June 12. In response, DOJ requested review of the appeals court rulings from the U.S. Supreme Court.

Supreme Court Review of Muslim Ban 2.0

On June 26, 2017, on the last day of its term, the U.S. Supreme Court partially reinstated EO-2, narrowing the scope of the Hawai'i and Maryland injunctions. The Court continued to block implementation of EO-2 against foreign nationals with "any bona fide relationship with a person or entity in the United States."[37] "Bona fide relationships" include close familial ties, admission to a U.S. educational institution, and existing job offers in the U.S. While the Supreme Court provided some specific examples of qualifying relationships, the novel legal standard created substantial ambiguity. State Department provided guidelines shortly after the Supreme Court's decision narrowly defined a "bona fide relationship" to only include a parent, spouse, child, adult son or daughter, sibling, son-in-law, or daughter-in-law of U.S. residents.[38] Refugees lacking the requisite family ties were excluded, since State Department maintained that formal assurances made to a refugee by a U.S. resettlement agency was not sufficient to establish a bona fide relationship under the Supreme Court's ruling.[39]

Plaintiffs were quick to challenge the narrow interpretation of bona fide relationship, which excluded grandparents, grandchildren, aunts and uncles, cousins, nieces and nephews, brothers-in-law, and sisters-in-law. On July 13, 2017, Judge Watson enjoined the application of EO-2 against grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins. Judge Watson also held that formal assurance from a refugee resettlement agency to a refugee seeking admission to the U.S. constitutes a bona fide relationship.[40]

An assurance from a United States refugee resettlement agency, in fact, meets each of the Supreme Court's touchstones: it is formal, it is a documented contract, it is binding, it triggers responsibilities and obligations, including compensation, it is issued specific to an individual refugee only when that refugee has been approved for entry by the Department of Homeland Security, and it is issued in the ordinary course, and historically has been for decades. . . . Bona fide does not get any more bona fide than that.[41]

JUDGE DERRICK WATSON

The government simultaneously appealed Judge Watson's order both to the Supreme Court and the U.S. Court of Appeals for the Ninth Circuit.

On July 19, 2017, the Supreme Court denied the government's motion, but temporarily stayed the portion of Judge Watson's order relating to refugees until the Government's appeal was heard by the U.S. Court of Appeals for the Ninth Circuit.

Nearly two weeks later, on September 7, the U.S. Court of Appeals for the Ninth Circuit affirmed Judge Watson's order, holding that extended family members and assurances from U.S. based resettlement agencies form a "bona fide relationship". On appeal, on September 11, 2017, Supreme Court Justice Anthony Kennedy temporarily stayed the U.S. Court of Appeals for the Ninth Circuit decision as related to refugees with assurance from resettlement agencies, pending a response to the administration's appeal and further orders of the Court.

Muslim Ban 3.0

On September 24, 2017, the day on which the 90-day EO-2 ban on foreign nationals from the Designated Countries expired, President Trump issued a proclamation ("September 24 Proclamation") that imposes new travel restrictions on the entry of foreign nationals from Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen.[42] It suspends all immigrant and non-immigrant visas for nationals of Syria and North Korea. All immigrant and non-immigrant visas are likewise suspended for nationals of Iran, except for F (student), M (vocational student) and J (exchange visitor) visas, which will be subject to "enhanced screening and vetting requirements."[43] Immigrant visas and non-immigrant business ("B-1") and tourist ("B-2") visas are suspended for nationals of Chad, Libya, and Yemen. The September 24 Proclamation also suspends all immigrant visas, and requires "additional scrutiny" of all nonimmigrants visas issued for Somalian nationals.[44] Lastly, the September 24 Proclamation suspends B-1 and B-2 visas for certain Venezuelan government officials and their immediate family members. Sudan, which had previously been impacted by EO-2, was removed from the list of countries.

The travel restrictions were not intended to take effect until October 18, 2017, for countries not previously listed in EO-2 – Chad, North Korea, and Venezuela – but were effective at signing for foreign nationals of Iran, Libya, Somalia, Syria, and Yemen unless nationals of those five countries have a "bona fide relationship" with a U.S. person or entity. The September 24 Proclamation excludes certain nationals of the eight listed countries from being impacted by the new restrictions, including lawful permanent residents of the U.S., dual-nationals traveling on a passport from a non-designated country, asylees, and refugees already admitted to the U.S.[45] It provides for a case-by-case waiver for impacted individuals if the individual can prove that denial of entry would cause undue hardship, and that his/her entry (1) would not pose a threat to U.S. national security; (2) would not pose a threat to public safety; and (3) would be in the U.S.'s national interest.[46] The September 24 Proclamation does not impose restrictions on refugees, who remain banned from entering the U.S. absent a bona fide relationship under EO-2's 120-day ban.

President Trump asserted that the September 24 Proclamation "adopt[s] a more tailored approach" aimed "to protect the security and interests of the United States and its people."[47] While President Trump's statement and the September 24 Proclamation itself are couched in national security rhetoric, the September 24 Proclamation is yet another clear attempt to make good on then-candidate Trump's racist pledge to impose a "total and complete shutdown of Muslims entering the United States."[48] Although the September 24 Proclamation includes Venezuela and North Korea, the impact on those countries' nationals is minimal since the Venezuelan designation is limited to B-1 and B-2 visas for certain government officials and their family members.[49] In North Korean, very few visas are issued annually. For 2016, the United States only issued 109 visas to North Korean nationals.[50]

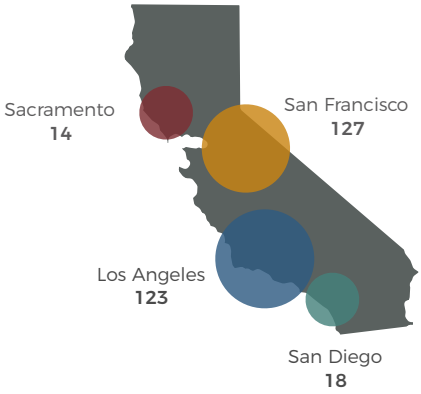
On October 10, 2017, in a one-page order, the Supreme Court vacated the U.S. Court of Appeals for the Fourth Circuit judgment concerning EO-2, holding that because the 90-day EO-2 ban on foreign nationals from Designated Countries had expired, the case was moot. The Court did not, however, address the broader injunction imposed by the U.S. Court of Appeals for the Ninth Circuit, which blocked not only the 90-day ban on foreign nationals from Designated Countries, but refugees as well. On October 17, 2017, Judge Chuang of the U.S. District Court of Maryland determined a nationwide preliminary injunction was warranted yet again, and prohibited the enforcement of Section 2 of the September 24 Proclamation.[51] That same day, Judge Watson of the U.S. District Court for the District of Hawai'i issued a temporary restraining order ("TRO") to block enforcement of the September 24 Proclamation on all listed countries except North Korea and Venezuela.[52] Three days later, he converted the TRO to a preliminary injunction, but the Ninth Circuit Court of Appeals issued a partial stay of it on November 13, 2017.[53] This left the preliminary injunction in place only if the citizens of Iran, Chad, Libya, Syria, Yemen, and Somalia could establish that they have "a credible claim of a bona fide relationship with a person or entity in the United States."[54] On December 4, 2017, the Supreme Court of the United States stayed the preliminary injunctions issued by U.S. District Courts in Hawai'i and Maryland,[55] allowing the September 24 Proclamation to go into full effect pending a decision on the appeal.[56]

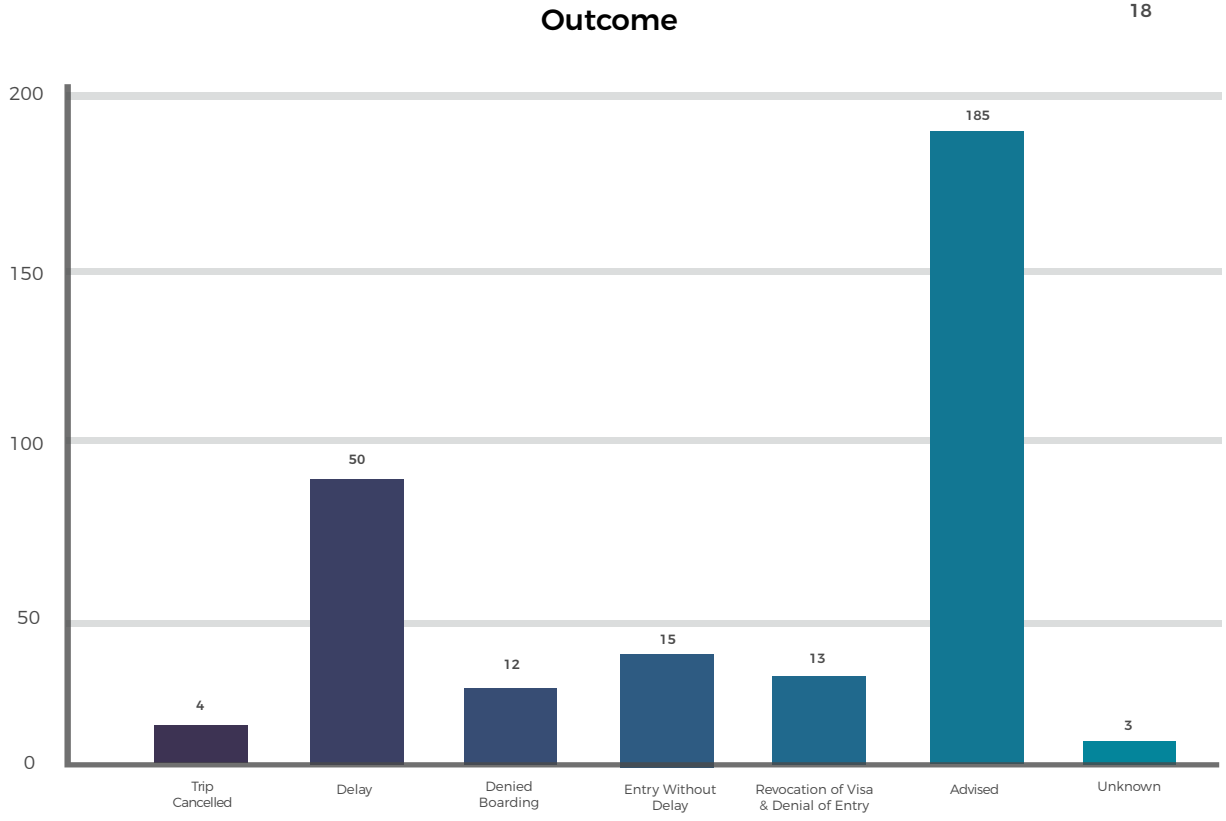
On October 24, 2017, President Trump signed an executive order ending the temporary refugee ban imposed by EO-2, and enacted "extreme vetting" procedures targeting refugees from 11 countries required to undergo additional security screening known as Security Advisory Opinions, or SAOs.[57] The 11 SAO countries were reported to be Egypt, Iran, Iraq, Libya, Mali, North Korea, Somalia, South Sudan, Sudan, Syria and Yemen, as well as Palestinians who lived in any of the above listed countries. Following the administration's effective suspension of refugee processing and refugee family reunification for nationals of those countries, the International Refugee Assistance Project ("IRAP") filed a lawsuit in the U.S. District Court for the Western District of Washington challenging the latest executive order. On December 23, 2017, the U.S. District Court issued a preliminary injunction lifting the restrictions affecting refugees who have a "bona fide relationship with a person or entity in the United States."[58]

Findings

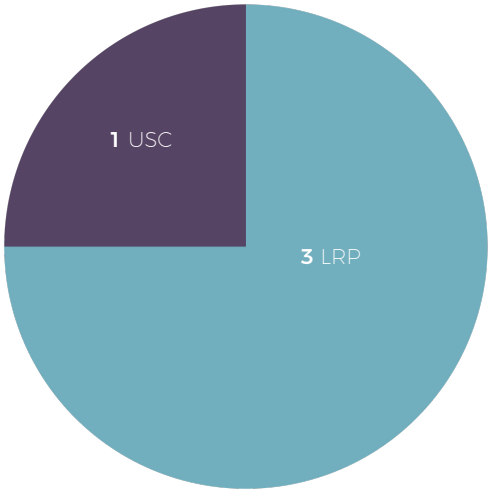
The unpredictability, complexity, and confusion surrounding the many iterations of the Muslim Bans have confounded legal professionals, immigration experts, U.S. citizens, and foreign nationals alike. CAIR advocates have worked tirelessly to respond to thousands of inquiries from citizens and non-citizens alike about the effect of the Muslim Bans and subsequent court decisions on their families, immigration applications, and travel.

CAIR California offices captured data regarding the Muslim Bans in different formats, due to a need for immediate response, some offices were unable to capture some information from callers. Data captured by CAIR California offices, however, provides telling information about the impact of EO-1 and EO-2 on travelers. Four offices within California – Los Angeles, Sacramento Valley, San Diego, and San Francisco – collected information on 282 calls in the six months following the announcement of EO-1.





Trip Cancelled



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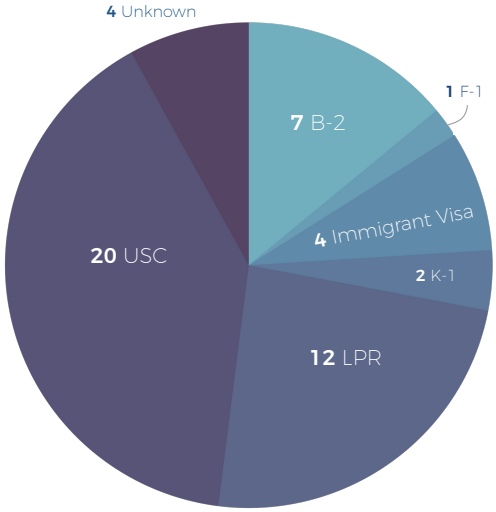
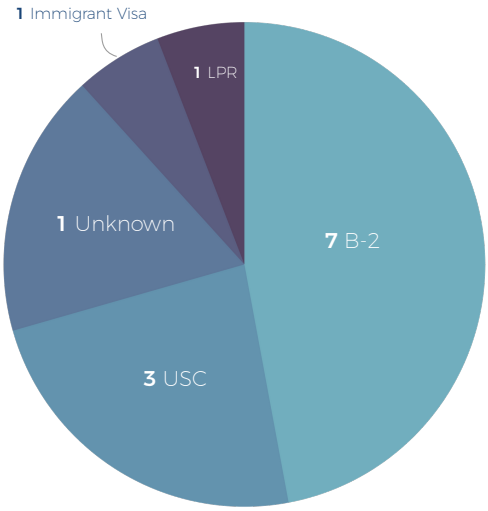
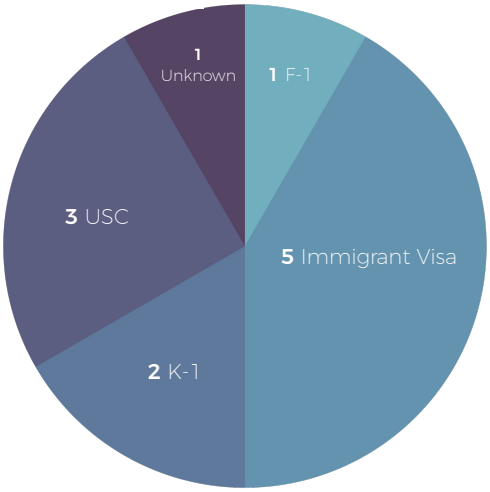


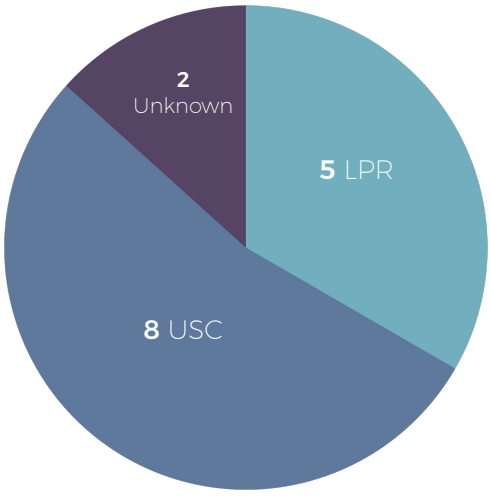
Revocation of Visa & Denial of Entry



Denied Boarding



Entry Without Delay



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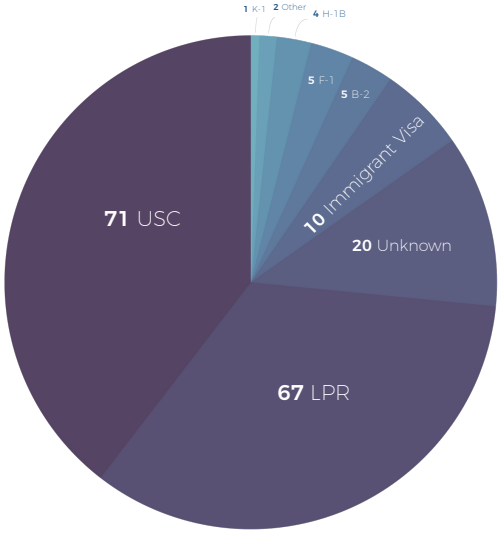
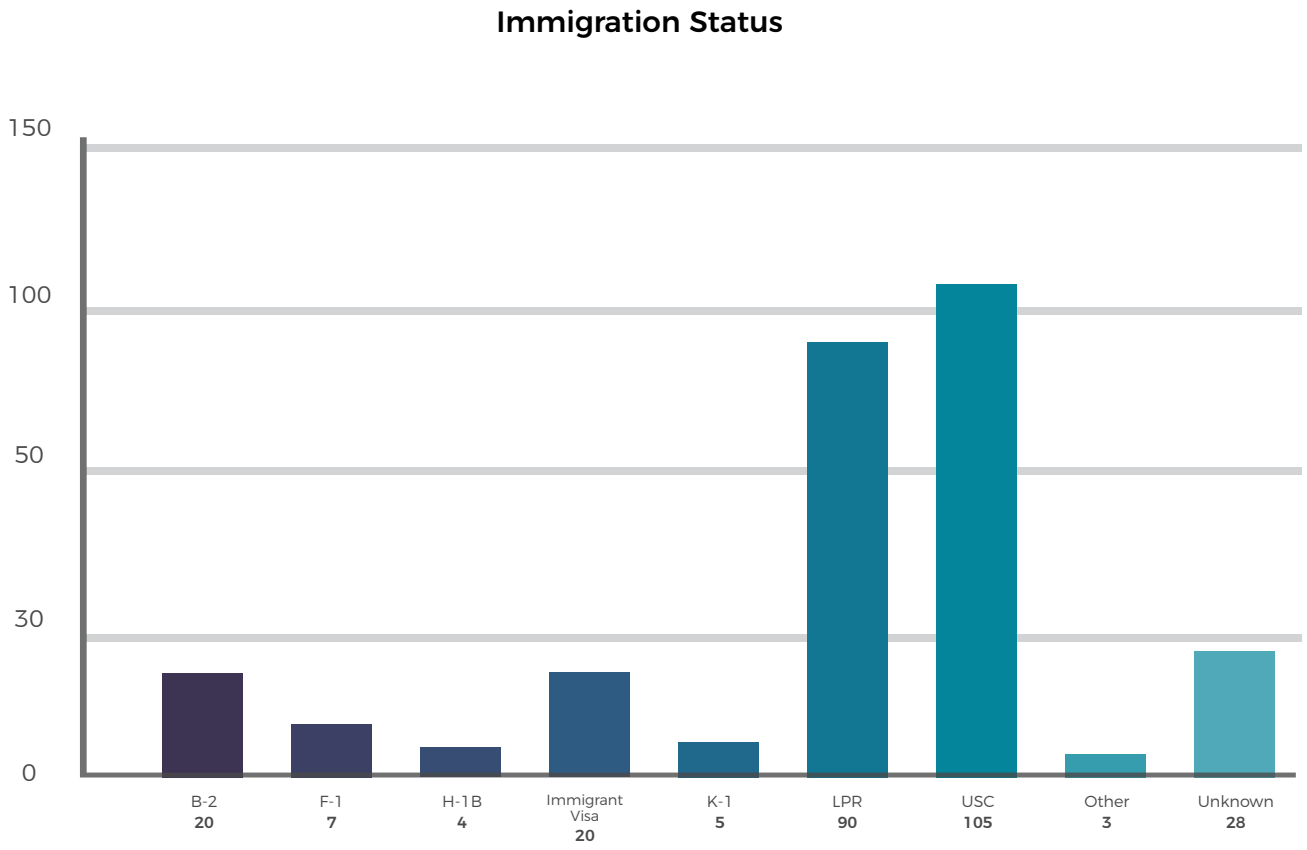


Of the calls received by the four CAIR California offices, an overwhelming two-thirds came from concerned individuals who were apprehensive about President Trump's executive orders and looking for advice about their rights while traveling. Twenty-eight percent experienced problems of some kind when traveling, of which 63% experienced delay. In nearly all cases, delay was a result of secondary inspection by CBP. Four percent of callers reported that they were denied boarding of flights to the U.S. by airlines, due to confusion about implementation of EO-1 immediately after signing. An additional 5% faced revocation of validly issued visas and denial of entry into the U.S. by CBP. Despite going through extensive background checks, a thorough vetting process by the State Department, and issuance of a visa, they were deemed inadmissible by CBP on discretionary grounds.



EO-1 and EO-2 were purportedly not intended to impact US. citizens. Whether CBP attributes travel issues experienced by US. citizens to the Muslim Bans or not, US. citizens are clearly experiencing issues while traveling

In the months following the first Muslim Ban, a U.S. citizen was approached by the FBI for a voluntary interview at a U.S. port of entry during secondary screening with CBP. He was pressured into answering questions in an interview with FBI officers since he was led to believe this was a mandatory part of the reentry process into the country.

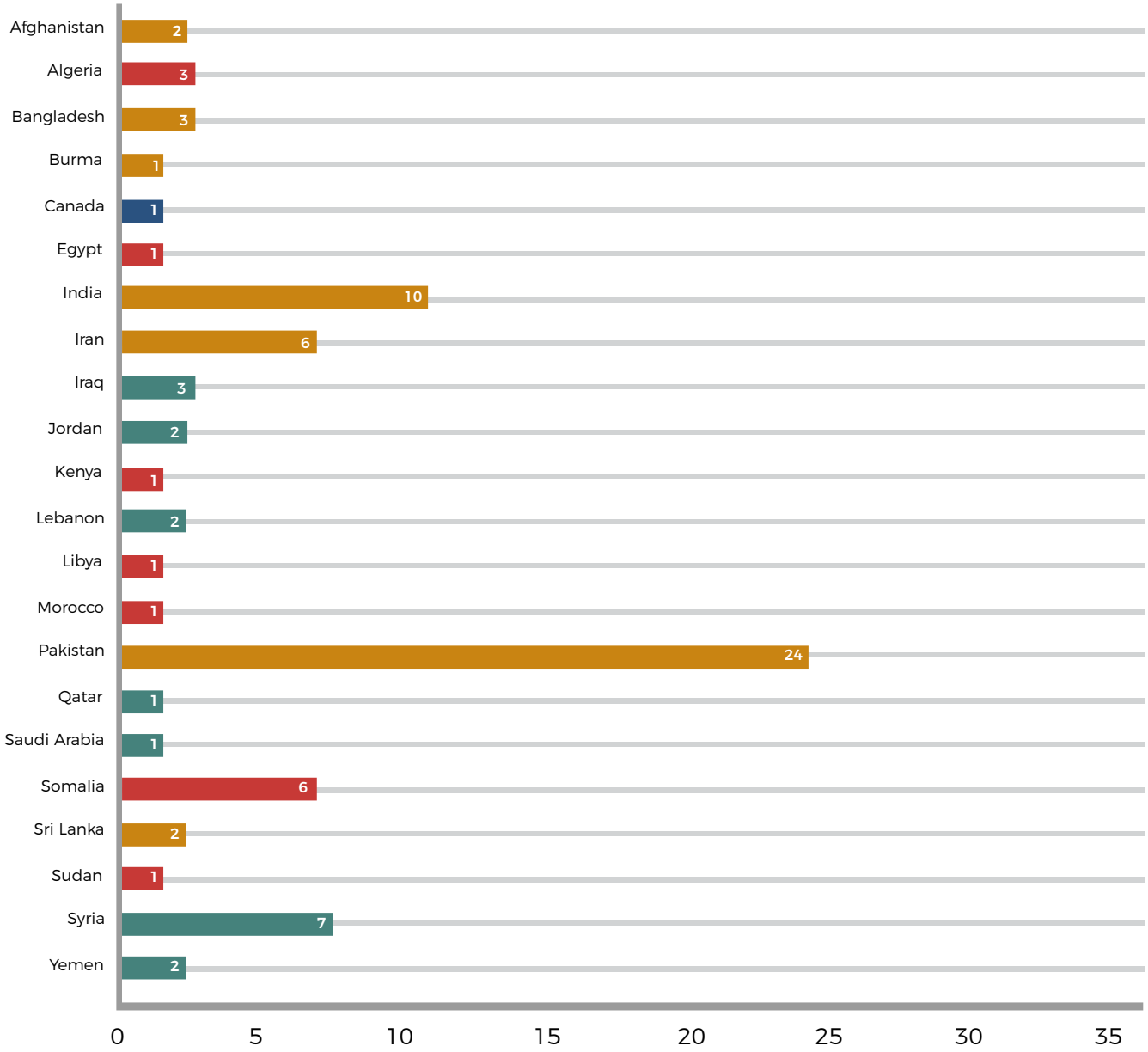
CAIR - SAN FRANCISCO BAY AREA

Additionally US. citizens expressed concern and fear about traveling after EO-1 went into effect. In fact, 41% of callers who provided their immigration status were US. citizens. When LPRs are included, the two groups represent three-fourth of calls where immigration status was identified.

Of the countries represented, the following are Muslim-majority countries: Afghanistan, Albania, Algeria, Azerbaijan, Bangladesh, Morocco, Nigeria, Oman, Pakistan, Egypt, Palestine, Saudi Arabia, Somalia, Indonesia, Iran, Iraq, Sudan, Syria, Turkey, Jordan, Lebanon, Libya, Malaysia, and Yemen.

Of those who identified their nationality, nearly two-thirds of the countries are Muslim-majority countries (24 of the 37 countries represented), and more than 98% of callers identified as Muslim, signifying the threat felt by Muslims once President Trump signed EO-1 and EO-2, regardless of his assertions that the executive orders were not motivated by anti-Muslim animus.

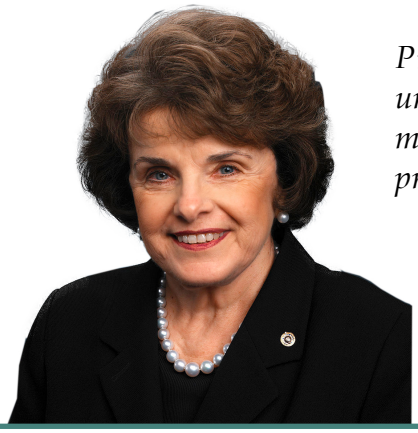
Among the 105 callers from the United States, 24 identified solely as US citizens whereas 81 identified with the following countries.



Although participating CAIR offices did not collect particular data regarding search of electronics, more than two-dozen individuals reported a search of their mobile phones at airports upon return to the U.S. Of those, 12 are U.S. citizens. Many were asked to turn over their phones to CPB officers and to provide password information to unlock the device. In many instances, their phones were held and reviewed by officers for up to three hours.

Legislative Efforts in Response to the Muslim Bans

In response to the Muslim Bans, several members of congress introduced legislation opposing President Trump's executive orders. Senators Dianne Feinstein (D-CA)[59] and Chris Murphy (D-CT)[60] introduced bills to nullify the executive orders and prohibit the use of federal funds for their implementation or enforcement.



President Trump's Muslim ban is unnecessary, it's unconstitutional and it's un-American. Painting more than 150 million people with the same broad brush is contrary to the principle of religious freedom and does nothing to make us safer.

SENATOR DIANNE FEINSTEIN

Similarly, Congresswoman Grace Meng's (D-NY) No Funds for Unconstitutional Executive Orders Act and Congresswoman Zoe Lofgren's (D-CA) SOLVE Act of 2017 both prohibit the use of federal funds to enforce the executive order. Senator Patrick Leahy (D-VT) and Congresswoman Alma Adams (D-NC) introduced resolutions reaffirming that the U.S welcomes refugees and asylum seekers regardless of race, religion, or country of origin. Congressman Donald Beyer (D-VA) affirmed First Amendment rights with his Freedom of Religion Act, which states that non-American citizens may not be denied admission or entry to the U.S. due to their religion. In response to the ban, freshman Congresswoman Pramila Jayapal (D-WA) introduced her first bill, the Access to Counsel Act, which guarantees legal counsel to those detained upon entry to the U.S. Another freshman member of Congress, Senator Kamala Harris (D-CA), introduced companion legislation in the Senate. A resolution by Senator Mazie Hirono (D-HI) highlighted the historical significance of Executive Order 13769, likening it to Executive Order 9066 ("EO 9066") which led to the incarceration of 120,000 Americans of Japanese descent, including tens of thousands of American citizens during World War II. Congresswoman Yvette Clarke (D-NY) chose to focus on those impacted by the bans by introducing the Freedom for Refugees Escaping Enmity Act, asking that all people in custody be released and all visas or documentation revoked be reinstated, reissued, or replaced.

In California, several state lawmakers have also introduced policies in response to the Muslim Bans. California Senate Resolution 16, introduced by Senate President Pro Tem Kevin De Leon, highlighted that EO-1 is "a discriminatory overreach that illegally targets immigrants based on their national origin and religion."[61] Assembly Members Eloise Gomez Reyes and Marc Levine introduced House Resolution 15, finding that EO-1 "is purely a political act and is not based on national security."[62] Assemblymember Blanca Rubio introduced California House Resolution 35, which urges the University of California to take concrete steps to protect and support its undocumented and immigrant students, faculty, and staff, and stand up to the President's Muslim Bans. Assemblymember Miguel Santiago introduced Assembly Joint Resolution 10, urging support for Senator Harris' Access to Counsel Act, which would ensure that those people held or detained while attempting to enter the U.S. would be guaranteed access to legal counsel, whether at a border crossing or a port of entry.

Conclusion

The Muslim Bans present the newest and most offensive form of discrimination against Muslims. Muslim travelers are targets of extreme vetting, "No Fly" and other watch lists, additional screening, and visa restrictions or denials. When applying for immigration benefits, Muslims experience disproportionate delays in processing times, which essentially place them in limbo, halting their ability to reunite with family members, gain authorized employment, receive much needed public benefits, or become fully engaged U.S. citizens. Despite such discriminatory practices, there has been scant evidence that such measures effectively improve national security.

The dangers posed by the Muslim Bans are not merely confined to families being torn apart, travelers facing lengthy delays, or denial of entry into the U.S. The Muslim Bans epitomize the culmination of a longstanding history of Muslim discrimination and scapegoating. These forms of discrimination contradict American values, which at their core, draw on the strength of our diversity and democracy. The Muslim Bans signify a ratification of bigotry by those at the highest levels of our government. Under the guise of "national security," we witness the broad power of the federal government used to undermine one of the tenants it was established to protect: freedom of religion.

Within a broader framework, the Muslim Bans are part of a larger anti-immigrant and xenophobic agenda advanced by the current administration. By way of example, on September 5, 2017, President Trump made the decision to end the DACA program, with instructions to "wind down" the program over several months. Since then, President Trump has used DACA as a bargaining chip by suggesting the possibility of backing a new law protecting "Dreamers" in exchange for Congress' support of his immigration priorities, which include "overhauling the country's green-card system, a crackdown on unaccompanied minors entering the country, and building his promised wall along the southern border."[63] Second, on September 18, 2017, DHS published a new rule effective October 18, 2017, which introduced additional scrutiny and checks on an even broader number of individuals applying for immigration benefits, regardless of their immigration status. The new DHS rule aims to "modify a current DHS system of records . . . [which] contains information regarding transactions involving an individual as he or she passes through the U.S. immigration process."[64] The expansion of DHS background record-keeping will encompass information collected through "social media handles and aliases, associated identifiable information, and search results."[65] Notably, the rule expansively covers not only visa applicants, but lawful permanent residents; naturalized U.S. citizens; family members of the above listed categories; and preparers, interpreters, and physicians who participate in preparation of an application for an immigration benefit. Third, the White House announced its plan to reduce the number of refugee admissions to 45,000 for the 2018 fiscal year, the lowest cap in decades. These examples reveal this administration's blatant attacks on immigrant communities.

Fortunately, the powerful and immediate nationwide response to the current administration's anti-immigration agenda shows the resiliency of our democracy and societal intolerance for bigoted policies. In addition to public outcry in the form of mass protests around the country, a flood of legal volunteers at airports, and social media campaigns, advocates, state officials, and lawmakers have taken legislative and legal steps to continue the fight against refugee restrictions under EO-2 and the September 24 Proclamation. At the time of this writing, it is unknown how the September 24 Proclamation will be implemented, or how courts across the country will address legal challenges, but we remain confident that the American people will not acquiesce in the face of a presidential decree that is at total odds with who we are as a nation. We call on all Americans to stay engaged, remain united, exercise their rights, and demand that the current administration put a stop not only to immigration bans, but to all discriminatory and xenophobic policies that run counter to American ideals.

End Notes

1 Protecting the Nation from Foreign Terrorist Entry into the United States, Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-02-01/pdf/2017-02281.pdf.

2 Trump v. Int'l Refugee Assistance Project, 137 S. Ct. 2080, 2088 (2017), *available at* https://www.supremecourt.gov/opinions/16pdf/16-1436_l6hc.pdf.

3 Deborah Amos, *Trump Backers Want Ideology Test for Extreme Vetting*, NPR (Feb. 4, 2017, 5:53 AM), http://www.npr.org/sections/parallels/2017/02/04/513289953/trump-backers-want-ideology-test-for-extreme-vetting; *see also* Haeyoun Park & Larry Buchanan, *Refugees Entering the U.S. Already Face a Rigorous Vetting Process*, N.Y. Times (Jan. 29, 2017), https://www.nytimes.com/interactive/2017/01/29/us/refugee-vetting-process.html?_r=0.

4 Faiza Patel & Rachel Levinson-Waldman, The Islamophobic Administration 6 (2017), *available at* https://www.brennancenter.org/sites/default/files/publications/BCJ_Islamophobic_Administration.pdf.

5 Press Release, U.S. Representative Ted Lieu, Rep. Lieu Statement on Trump's Anti-Muslim Executive Order (Jan. 27, 2017), https://lieu.house.gov/media-center/press-releases/rep-lieu-statement-trumps-anti-muslim-executive-order; *see also* Alex Nowrasteh, Terrorism and Immigration: A Risk Analysis (CATO Institute, Policy Analysis No. 798, 2016), available at https://object.cato.org/sites/cato.org/files/pubs/pdf/pa798_2.pdf.

6 *See* Registration of Certain Nonimmigrant Aliens from Designated Countries, 67 Fed. Reg. 77,136, 77,136 (Dec. 18, 2002), *available at* https://www.gpo.gov/fdsys/pkg/FR-2002-12-18/pdf/02-32045.pdf; *see also* Rights Working Grp. & Ctr. for Immigrants' Rights, Pa. State Univ. Dickenson School of Law, The NSEERS Effect: A Decade of Racial Profiling, Fear, and Secrecy 9 (2012) [hereinafter The NSEERS Effect], *available at* https://pennstatelaw.psu.edu/_file/clinics/NSEERS_report.pdf; see also Michael Price & Faiza Patel, *Muslim Registry or NSEERS Reboot Would Be Unconstitutional*, Brennan Center for Just. (Nov. 22, 2016), https://www.brennancenter.org/blog/muslim-registry-or-nseers-reboot-would-be-unconstitutional.

7 Registration of Certain Nonimmigrant Aliens from Designated Countries, 67 Fed. Reg. at 77,136. Non-immigrant male nationals of the following countries: Afghanistan, Algeria, Armenia, Bahrain, Eritrea, Iran, Iraq, Lebanon, Libya, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen; who were 16 years or older; who entered the U.S. on or before September 30, 2002; and who would remain after February 21, 2003; were required to register under the NSEERS program. *Id.*

8 *Attorney General Prepared Remarks on the National Security Entry-Exit Registration System*, Department of Just. (June 6, 2002), https://www.justice.gov/archive/ag/speeches/2002/060502agpreparedremarks.htm.

9 The NSEERS Effect, *supra* note 6, at 9–10 (noting that of the 80,000 males registered, more than 13,000 were placed in removal proceedings).

10 Removing Designated Countries From the National Security Entry-Exit Registration System (NSEERS), 76 Fed. Reg. 23,830, 23,831 (April 28, 2011) (to be codified at 8 CFR 264.1), *available at* https://www.gpo.gov/fdsys/pkg/FR-2011-04-28/pdf/2011-10305.pdf.

11 *Id.* at 23830.

12 Price & Patel, *supra* note 6; The NSEERS Effect, *supra* note 6, at 5.

13 *See* Latif, et al. v, Lynch, et al., 28 F.Supp.3d 1134, 1141 (D. Or. 2014) ("The Federal Bureau of Investigation (FBI), which administers the Terrorist Screening Center (TSC), develops and maintains the federal government's consolidated Terrorist Screening Database (TSDB or sometimes referred to as 'the watch list'). The No-Fly List is a subset of the TSDB . . .The government also has its own 'Watchlisting Guidance' for internal law-enforcement and intelligence use, and the No-Fly List has its own minimum substantive derogatory criteria. The government does not release these documents."), *available at* https://www.aclu.org/sites/default/files/assets/no_fly_list_ruling__-_latif_v._holder_-_6-24-14.pdf; *Anti-Muslim Discrimination*, Am. Civ. Liberties Union, https://www.aclu.org/issues/national-security/discriminatory-profiling/anti-muslim-discrimination (last visited Sept. 12, 2017) ("The U.S. government maintains a massive watchlist system that risks stigmatizing hundreds of thousands of people — including U.S. citizens — as terrorism suspects based on vague, overbroad standards and secret evidence.").

14 *Anti-Muslim Discrimination, supra* note 13.

15 *Id.*

16 Transp. Sec. Admin., U.S. Dep't of Homeland Sec., Aviation Security: Screening Management Standard Operating Procedure 4-13 (2008), *available at* https://s.ai/tsa/legal/evidence/2008-05-08%20TSA%20Screening%20Management%20Standard%20Operating%20Procedures.pdf.

17 Yeganeh Torbati, *Number of U.S. Visas to Citizens of Trump Travel Ban Nations Drops*, Reuters (Apr. 27, 2017, 1:55 PM), http://www.reuters.com/article/us-usa-immigration-visas-analysis/number-of-u-s-visas-to-citizens-of-trump-travel-ban-nations-drops-idUSKBN17T34G (noting infographic based on State Department data showing steep drop in visas issued since 2014).

18 Faiza Patel & Rachel Levinson-Waldman, *The Islamophobic Administration*, Brennan Center for Just. (Apr. 19, 2017), https://www.brennancenter.org/publication/islamophobic-administration (infographic noting the percentage of individuals from Iran, Libya, Yemen, Somalia, Sudan, and Syria who were refused visit visas). For the full report, see also Patel & Levinson-Waldman, *supra* note 4.

19 Torbati, *supra* note 17.

20 VWP allows foreign nationals from specific countries to visit the U.S. for business, tourism, or while in transit for up to 90 days without having to obtain a visa. Some argue that President Trump's executive orders are not motivated by animus towards Muslims since the designated countries originated from the "Visa Waiver Program Improvement and Terrorist Travel Prevention Act" passed by Congress under the Obama administration. However, the 2015 Act never banned entry of foreign nationals from specific countries. The 2015 Act changed the visa requirement process for nationals of designated countries to allow for additional review, rather than blocking travel for those individuals that have already undergone a lengthy vetting process to obtain visas to the U.S.

21 Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, § 217, 8 USC § 1187 (2015); H.R. 158, 114th Cong. (1st Sess. 2015), *available at* https://www.congress.gov/114/bills/hr158/BILLS-114hr158rds.pdf; s*ee also Visa Waiver Program Improvement and Terrorist Travel Prevention Act Frequently Asked Questions,* U.S. Customs & Border Protection, https://www.cbp.gov/travel/international-visitors/visa-waiver-program/visa-waiver-program-improvement-and-terrorist-travel-prevention-act-faq (last updated June 19, 2017); *Anti-Muslim Discrimination*, *supra* note 13 ("Congress tightened controls in the visa waiver program by passing a law that enshrines discrimination against dual nationals of Iran, Iraq, Sudan, or Syria, or anyone who has visited those countries in recent years — including the relatives of American citizens wanting to visit family.").

22 Patel & Levinson-Waldman, *supra* note 4, at 5.

23 Immigration and Nationality Act of 1952, 8 U.S.C. § 1182(3)(C)(iii) (2013) ("An alien…shall not be excludable or subject to restrictions or conditions on entry into the United States…because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States, unless the Secretary of State personally determines that the alien's admission would compromise a compelling United States foreign policy interest.").

24 Patel & Levinson-Waldman, *supra* note 4, at 5.

25 *See* Memorandum from Jonathan R. Scharfen, Deputy Dir. of U.S. Citizenship & Immigration Servs., U.S. Dep't of Homeland Sec., to Field Leadership of U.S. Citizenship & Immigration Servs. (Apr. 11, 2009), *available at* https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/Policies_and_Manuals/CARRP_Guidance.pdf.

26 Jennie Pasquarella, American Civil Liberties Union of S. Cal., et al., Muslims Need Not Apply 1 (2013), *available at* https://www.aclusocal.org/sites/default/files/carrp-muslims-need-not-apply-aclu-socal-report.pdf.

27 Jennie Pasquarella, *Unequal Access to Citizenship for Muslims,* American Civ. Liberties Union (June 22, 2010, 2:09 PM), https://www.aclu.org/blog/national-security/unequal-access-citizenship-muslims.

28 *Id.*

29 *Id.*

30 Meridith McGraw, Adam Kelsey & Meghan Keneally, *A Timeline of Trump's Immigration Executive Order and Legal Challenges*, ABC News (June 29, 2017, 12:22 PM), http://abcnews.go.com/Politics/timeline-president-trumps-immigration-executive-order-legal-challenges/story?id=45332741 (noting that 746 individuals were "detained or processed" in the 26-hour period after Judge Donnelly ordered that travelers could not be forced to return to their original point of departure); Allen J. Sheinman, *U.S. Customs Provides Data on Early Results of Trump's Executive Order*, Meetings & Conventions (Feb. 2, 2017), http://www.meetings-conventions.com/News/Business-Travel/US-Customs-Data-Trump-Executive-Order/.

31 *See* Darweesh v. Trump, No. 17 CIV. 480 (AMD), 2017 WL 388504 (E.D.N.Y. Jan. 28, 2017), *available at* http://fortune.com/2017/01/28/read-the-full-text-of-the-judges-order-blocking-trumps-immigration-ban/.

32 McGraw et al., *supra* note 30. Initially, LPRs and dual nationals were impacted by the Ban. *Id.*

33 Protecting the Nation from Foreign Terrorist Entry into the United States, Exec. Order No. 13780, 82 Fed. Reg. 13,209, 13,215 (Mar. 6, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-03-09/pdf/2017-04837.pdf.

34 *Id.*

35 Hawai'i v. Trump, No. CV 17–00050 DKW–KSC, 2017 WL 1011673, at *11–13 (D. Haw. Mar. 29, 2017), *hearing en banc denied*, 864 F.3d 994 (9th Cir. 2017).

36 Int'l Refugee Assistance Project v. Trump, 857 F.3d 554, 572 (4th Cir.), *as amended* (May 31, 2017), *as amended* (June 15, 2017), *cert. granted*, 137 S. Ct. 2080 (2017).

37 Trump v. Int'l Refugee Assistance Project, 137 S. Ct. 2080, 2087 (2017), *available at* https://www.supremecourt.gov/opinions/16pdf/16-1436_l6hc.pdf.

38 Initially, State excluded fiancé(e)s from the list of bona fide relationships, but then updated their guidance shortly before EO-2 went into effect.

39 Press Release, U.S. Dep't of State, Background Briefing on the Implementation of Executive Order 13780 Protecting the Nation From Foreign Terrorist Entry Into the United States (June 29, 2017), *available at* https://www.state.gov/r/pa/prs/ps/2017/06/272281.htm.

40 See Hawai'i v. Trump, No. CV 17–00050 DKW–KSC, 2017 WL 2989048, at *5–7 (D. Haw. July 13, 2017).

41 *Id.* at *7.

42 Sudan was removed from the Designated Countries, and North Korea and Venezuela were added.

43 Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats, Proclamation No. 9645, 82 Fed. Reg. 45,161, 46,165 (Sep. 24, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-09-27/pdf/2017-20899.pdf.

44 *Id.* at 45,167.

45 Exemptions also exist for individuals admitted to or paroled into the U.S. on or after the effective date; those with a document other than a visa that allows them to travel to the U.S. if the document is dated on or after the effective date; individuals traveling on diplomatic visas, NATO visas, C-2/U.N. visas, or G-1, G-2, G-3 or G-4 visas; individuals issued advance parole; or individuals granted withholding of removal or protection under the Convention Against Torture.

46 Amrit Cheng, *The Muslim Ban: What Just Happened?*, Am. Civ. Liberties Union (Dec. 6, 2017, 3:45 PM), https://www.aclu.org/blog/immigrants-rights/muslim-ban-what-just-happened.

47 Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats, Proclamation No. 9645, 82 Fed. Reg. at 45,161, 45,164.

48 Jessica Taylor, *Trump Calls For 'Total And Complete Shutdown Of Muslims Entering'* U.S., Nat'l Pub. Radio (Dec. 7, 2015, 5:49 PM), https://www.npr.org/2015/12/07/458836388/trump-calls-for-total-and-complete-shutdown-of-muslims-entering-u-s.

49 ACLU Staff, *Muslim Ban 3.0 Is Heading to Court – Here's What You Need to Know Right Now*, Am. Civ. Liberties Union (Oct. 13, 2017, 4:45 PM), https://www.aclu.org/blog/immigrants-rights/muslim-ban-30-heading-court-heres-what-you-need-know-right-now.

50 *Us expands travel ban to include N Korea*, BBC News (Sep. 25, 2017), http://www.bbc.com/news/world-us-canada-41382585.

51 Int'l Refugee Assistance Project v. Trump, 265 F.Supp.3d 570, 633 (D. Md. 2017).

52 State v. Trump, 265 F.Supp.3d 1140, 1160–61 (D. Haw. 2017).

53 State v. Trump, No. 17-17168, 2017 WL 5343014, at *1 (9th Cir. Nov. 13, 2017), *available at* http://www.nafsa.org/_/file/_/amresource/travelban3_9cirstay.pdf.

54 *Id.*

55 Trump v. Int'l Refugee Assistance Project, No. 17A560, 2017 WL 5987435 (U.S. Dec. 4, 2017), *available at* https://www.supremecourt.gov/orders/courtorders/120417zr1_j4ek.pdf.

56 *See* Cheng, *supra* note 47.

57 Exec. Order No. 13815, 82 Fed. Reg. 50055 (Oct. 27, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-10-27/pdf/2017-23630.pdf.

58 Doe v. Trump, No. 2:17-CV-00178 (JLR), 2017 WL 1378504, at *1 (W.D. Wash. Apr. 11, 2017).

59 S. 608, 115th Cong. (2017), *available at* https://www.congress.gov/115/bills/s608/BILLS-115s608is.pdf.

60 S. 549, 115th Cong. (2017), *available at* https://www.congress.gov/115/bills/s549/BILLS-115s549is.pdf.

61 S. Res. 16, 2017 Leg., Reg. Sess. (Cal. 2017), *available at* http://sd24.senate.ca.gov/sites/sd24.senate.ca.gov/files/SR%2016.pdf.

62 H. R. Res. 15, 2017 Leg., Reg. Sess. (Cal. 2017), *available at* https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180HR15.

63 Jill Colvin, *Trump links border wall, green-card overhaul to DACA*, Associated Press (Oct. 9, 2017), https://www.apnews.com/863569966ee443e7b148ff8e7fd03641.

64 Privacy Act of 1974; System of Records, 82 Fed. Reg. 43,556, 43,557 (Sept. 18, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-09-18/pdf/2017-19365.pdf.

65 *Id.* at 43,560.

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