

THE MUSLIM BAN REVISITED: *TRUMP V. HAWAII* TWO YEARS LATER

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From November 2019 to April 2020, the ABA Section of Civil Rights and Social Justice's Rights of Immigrants Committee hosted a six-part webinar series exploring international law, and U.S. Constitutional law. What follows is a transcript from the sixth panel of the series, which took place on April 15, 2020. The transcript has been edited for clarity.

Engy Abdelkader: Welcome to the American Bar Association webinar "The Muslim Ban Revisited: Trump vs. Hawaii Two Years Later." My name is Engy Abdelkader, and I'm the program moderator.

Today's webinar is hosted by the Section of Civil Rights and Social Justice and it's sponsored by the Rights of Immigrants Committee. It's part of a six-part national lecture series. This is our last event in that series. We're excited to have a number of other important co-sponsors including the ABA Commission on Immigration, the ABA Criminal Justice Section, the ABA Center for Public

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Judy Chu is a Congresswoman from California who represents the 27th Congressional district in the U.S. House of Representatives. She serves on the House Ways and Means Committee, and is a member of the Subcommittee on Health. She also serves on the House Small business Committee. In 2009, she became the first Chinese American Woman elected to Congress.

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Interest Law, the ABA Section of International Law, the ABA Government and Public Section Lawyers Division, and the ABA Commission on Hispanic Legal Rights and Responsibilities. We appreciate all of your support. It's also important to highlight that none of this would be possible without the logistical support of ABA staff. Thank you, specifically, Paula Shapiro and Alli Kielsgard for all of your work in making this program a success.

We have an exciting lineup for you today. But, first, let me lay the substantive foundation for our discussion. As some of you are aware, Donald J. Trump's ascension to the White House is arguably the most consequential development for religious freedom and immigrant rights in contemporary America particularly as it relates to Muslim Americans. The 2016 presidential election cycle exacerbated already worsening anti-Muslim sentiment across the country. Then Republican presidential candidate Trump specifically ran a campaign that exploited national divisions, animosities, and anxieties surrounding Islam and Muslims.

Just a few months after declaring his candidacy during a September 2015 New Hampshire town hall meeting, one of Trump supporters asked when the government would “get rid of Muslims” while referencing imaginary training camps sprawled across the country. Rather than providing a corrective, Trump responded “We're going to be looking at that and a lot of different things.” In the days and weeks that followed, Trump publicly advocated for closing mosques. He also spoke in favor of special identification cards and a religious registry for Muslim Americans.

On December 7, 2015, Trump unveiled his infamous Muslim Ban. After the tragic mass shooting by a Muslim couple in San Bernardino, California, Trump released a written campaign statement that called for a “total and complete shutdown of Muslims entering the United States until our countries representatives can figure out what's going on.” Later that same day on MSNBC, Trump explained how immigration officials would operationalize that measure. “They would say are you Muslim?” Trump was asked, “And, if they said yes they would not be allowed in the country?” Trump replied, “That's correct.”

Soon thereafter Trump likened his Muslim Ban to former President Franklin D. Roosevelt's decision to intern Japanese-Americans during the Second World War due to a perceived national security risk. Trump explained in relevant part, “This is a president highly respected by all. Roosevelt did the same thing.” Indeed, two months after Japan attacked Pearl Harbor on February 19, 1942 President Roosevelt signed executive order 9066 forcing the relocation of more than 100,000 Japanese-Americans into internment camps around the country. The U.S. Supreme Court upheld the order's constitutionality in *Korematsu*, holding that the government internment of citizens was lawful during wartime to avoid espionage. Notably this internment is widely regarded as one of the most appalling violations of civil liberties in American history.

Once in the White House, President Trump has persisted in exploiting divisions around religion, race, and immigration status. He consistently dehumanizes Muslims as disloyal, suspicious, and dangerous national security risks. One week following his inauguration on January 27, 2017, President Trump

signed his executive order, "Protecting the Nation from Foreign Terrorist Entry into the United States." The order, also known as the Muslim Ban, explained that its objective was to protect Americans from immigrants who bear hostile attitudes towards the US and the Constitution. To that end, it immediately barred entry of immigrants and refugees from seven Muslim majority countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen for 90 days. The order applied to non-citizens with lawful permanent residence as well as immigrants previously authorized to live and work in the country permanently. Those outside the US at the time of its issuance were barred from reentry. In addition, it prevented immigrants enrolled in universities or employed on temporary work visas from entering the U.S. if they arrived from one of the designated countries. The order also temporarily suspended the U.S. refugee admissions program in its entirety preventing travel into the country and any decisions on refugee applications for a period of 120 days.

Notably the order repeatedly cited the 9/11 attacks as support of his purported objective in enhancing national security. Significantly, however, none of those hijackers came from the countries enumerated in the Muslim Ban. According to research from Cato institute not a single person from the designated countries has killed anyone in a terrorist attack on US soil. Still, at the order's signing ceremony, President Trump explained that the measure was "establishing a new vetting measure to keep Islamic radical terrorists out." The order avoided explicit references to Muslims so as to appear facially neutral with respect to religion. However, many pointed to President Trump's prior campaign promise to ban Muslim immigration as evidence of discriminatory intent. Ultimately, the ban faced numerous legal challenges to each of its three distinct iterations.

On September 24, 2017, President Trump signed a third and final iteration of the original Muslim ban entitled "Enhancing Vetting Capabilities and Processing for Detecting Attempted Entry into the United States by Terrorists or other Public Safety Threats." That proclamation was more narrowly tailored than its predecessors. It explained that seven countries did not meet a baseline for the kinds of information required from foreign governments to facilitate official vetting of immigrants and refugees. According to the criteria which assessed identity, security, and public safety threats as well as natural security risks, 16 countries were initially categorized as "inadequate" while 31 additional countries were found to be at risk of becoming inadequate. Although a subsequent engagement period allowing countries additional time to meet the criteria yielded significant improvements the Trump administration ultimately deemed seven countries as inadequate and banned immigration from those countries. Unlike in prior versions of the Muslim Ban those banned countries: Chad, Iran, Libya, North Korea, Syria, and Yemen did not exclusively consist of Muslim majority nations. However, the ban only applied to high level officials from Venezuela and only a few immigrants traveled to the US from North Korea. The list also included Somalia even though the country met the baseline criteria while omitting Iraq which did not. As with the prior versions, foreign nationals from the Muslim majority countries were barred from traveling to the US but this time indefinitely.

Similar to the prior two iterations, this executive order inspired a wave of lawsuits claiming violations of constitutional and statutory guarantees.

Representative of these lawsuits is *Hawaii v. Trump*. On October 15, 2017, the state of Hawaii challenged the third iteration of the original Muslim Ban on similar grounds as the first two orders. While the third ban included 8 countries, the state only challenged the restrictions against the nationals of the six Muslim majority countries. The government on the other hand argued for judicial deference in favor of presidential supremacy in matters of national security and foreign policy. It explained that the executive must be permitted to act quickly and flexibly in these areas. As such, the government cautioned the court against second-guessing the executive branch's national security judgments. Ultimately a conservative majority on the US Supreme Court allowed the administration to proceed with that last iteration of the Muslim Ban.

With this backdrop in mind, this webinar is important for a number of reasons. The discriminatory laws, practices, and policies promised and delivered by President Trump have social, political, and economic ramifications. First, they reinforce misconceptions about Islam as an inherently violent religion. Second, they breed intolerance, fear, and hostility among the general population toward a marginalized minority faith community. Third, they signal government approval for discrimination against Muslim citizens and immigrants alike in education, employment, and the public square. Moreover, such institutionalized discrimination creates a precedent for the government to similarly mark other minority groups for official disfavor in the future. In fact, the most recent expansion of the ban encompasses primarily African nations and proves this very point. Even more recently, with disparaging comments from our elected officials about the Coronavirus connecting it to Asian American populations, we've also seen another minority group marked for disfavored treatment.

However, President Trump does not enjoy unfettered authority even in the Oval Office. The separation of powers doctrine, the US Constitution, and rule of law continue to serve substantial checks in our federal system. Indeed, since *Trump v. Hawaii*, several important developments have occurred—from new legislation in Congress to class action lawsuits and more. As such we're grateful to have a fantastic lineup of speakers to help us examine these developments.

First, we're thrilled to be joined by Congresswoman Judy Chu. Judy Chu was elected to the US House of Representatives in July of 2009. She represents the 27th Congressional district which includes Pasadena as well as San Gabriel Valley of Southern California. Representative Chu currently serves as the powerful House Ways and Means Committee under the jurisdiction of legislation pertaining to taxes, revenue, Social Security, and Medicare. In that committee Representative Chu is a member of the Subcommittee on Health giving oversight over health care reform and crucial safety net programs, worker and family support, as well as oversight. She also serves on the House Small Business Committee which has oversight of the Small Business Administration and is the chair of the Subcommittee on Investigations, Oversight, and Regulations. She was first elected to the Board of Education for the Garvey School District in 1985. From there she was elected to the Monterey Park City Council where she served as mayor three times. She then was elected to the State Assembly and then California's elected Tax Board known as the State Board of Equalization. In 2009, she became the first

Chinese American woman elected to Congress in history. On that note please join me in welcoming Congresswoman Judy Chu.

Representative Judy Chu: Thank you so much. Thank you so much and thanks to the Rights of Immigrants Committee of the American Bar Association for inviting me to speak on this webinar about the Muslim Ban. I'm always proud to stand with the lawyers who are some of the most important fighters on the front lines and protecting our immigrant communities. Your work is especially critical as the Trump administration continues to test our laws and put forth policies that are inhumane and seek to separate families and children. The Muslim Ban is no exception and I'm committed to fighting back against it in its many iterations. Well, the failure of this ban was apparent the day that it began.

I'll never forget that day in January of 2017, just a little over three years ago, when Donald Trump shocked us with all the announcements of the first Muslim Ban. What I remember is the chaos and separation of families with no justification. I was, in fact, on my way to speak at an event when I received a frantic call about 50 Muslims who were being detained at LAX for hours despite the fact that they had a legal right to be in the United States. So I decided to drop everything and help in any way I could.

I rushed over to LAX to advocate for the detained individuals and in fact, I found out immediately that there were scores of people with a legal right to be here kept for hours without food and blocked from receiving legal advice from an attorney. But, what was even more impressive were the number of attorneys who came out who dropped everything and decided to camp out at the airport for hours offering their legal advice to anybody who needed it. I was so impressed by them and that is why I am especially proud to be on this call because I know what role you can take in making sure that there is justice with regard to this Muslim Ban.

This cruel ban continues to needlessly tear families apart and cause misery and psychological trauma. Spouses and fiancées are separated, weddings, births, funerals, graduations have all been missed. Over 5000 adopted children of US citizens cannot join their families and there's no end in sight. They're even looking to go further. In January of this year the Trump administration announced that the ban would be expanded to include Nigeria, Eritrea, Kyrgyzstan, Sudan, Myanmar, and Tanzania.

Unfortunately, the Supreme Court ruled in favor of the administration's third Muslim Ban in *Trump v. Hawaii*. This ruling found that the president acted within his authority under Section 212 (f) of the Immigration and Nationality Act which allows him to suspend the entry of individuals if their admittance would be detrimental to the interests of the US. This ruling has only emboldened the administration to expand the ban and that's why we have to fight back.

It was almost exactly a year ago that I introduced HR 2214, the No Ban Act, in the House and Senator Chris Coons introduced a companion version in the Senate. Our bill would repeal all versions of President Trump's Muslim Ban, putting an immediate end to this family separation. It also requires transparency on how many individuals are granted waivers to them and are allowed to come to the U.S. so we know the truth about the actual impact of the ban. In addition, the bill

amends Section 212(f) of the INA so that if a president does want to implement such a ban they would actually have to produce specific and credible facts about the individual or class of individuals excluded from entering the U.S. and they would have to consult with Congress. The bill seeks to ensure that in the future no one is excluded simply based on their religion or national origin.

This is important for people like Ismail Alghazali who was my guest at the State of the Union this January. Despite being a US citizen Ismail was separated from his wife, he didn't get to witness the birth of his daughter, he didn't even get to meet her for seven months because of the Muslim Ban. Luckily he was able to appeal to Senator Chuck Schumer who intervened for him and ultimately most recently he was reunited. But there are many people like him who just want to be with their family members, who do not have a senator working on their behalf, and they deserve an immigration policy that is not arbitrary and cruel. That is what the No Ban Act will help us achieve.

Well, I must tell you the response to the No Ban Act has been tremendous. 218 members have co-sponsored the bill in the House which is the threshold needed to pass a bill in the House and there are 40 co-sponsors in the Senate. In addition, over 480 groups have endorsed it, but it still wasn't moving in Congress. Then, in February, just a few weeks after the anniversary of the first Muslim Ban, we were able to get movement to happen. The Judiciary Committee held a hearing and favorably voted to send the No Ban Act to the floor. Finally, after so many months and years of hard work to this terrible Muslim Ban, a vote was scheduled for the floor. In fact, the bill was passed by the Rules Committee and was ready to be debated. A vote date was even announced but then Covid-19 hit within days. Suddenly our nation was facing far-reaching stay at home orders, social distancing requirements, and an unprecedented public health crisis. Congress had dropped everything we were doing and began working on these bipartisan relief efforts like ensuring that workers had access to paid sick leave and that testing for Coronavirus was free for everyone. Unfortunately, in all this activity, the No Ban Act was delayed and actually we haven't had a session on the floor with all of us there since then and since we are in a new era where we are not supposed to be all on the floor at the same time without endangering ourselves in terms of Coronavirus. It is unclear when we will actually have that type of session in the near future.

So, you can imagine our disappointment in getting so close to a floor vote and then having to shift gears because of the Coronavirus. It even contributed to misinformation that our bill would have prevented travel bans meant to stop Coronavirus even though our bill specifically permitted the president to limit travel due to pandemics like the Coronavirus. Nonetheless those on the other side of the aisle used this as their argument to oppose this.

Although we are disappointed by the setback we know the work is not over. The Muslim Ban is just one example of the way this administration has weaponized xenophobia. Unfortunately there are many others that demand action as well because on the very first day of his campaign President Trump has made it his priority to stoke xenophobia against immigrants and communities of color. This has proven to be incredibly dangerous for immigrant communities and as a result hate crimes and violence have been on the rise since 2016.

Unfortunately, the Trump administration has allowed its cruel anti-immigrant policies to hamper our nation's response to the Coronavirus and this xenophobia is particularly dangerous at this time with so many immigrants and people of color in the front lines of our Coronavirus response. In fact, there are over two million Asian-American Pacific Islanders in the health care, transportation, and service industries. There are 27,000 dreamers working in health care. These are workers we're all counting on to risk their own safety in the most necessary places like hospitals and grocery stores but the president's words have put these workers in danger. Looking to deflect anger about Coronavirus away from himself, the president repeatedly used the term "Chinese virus" to refer to Covid-19 even though he was warned by health experts at the CDC and WHO not to associate the disease with a specific geographical location or ethnicity due to the stigma it causes. In this case associating Covid-19 with an ethnicity has perpetuated false beliefs that people of Chinese or Asian ancestry are more likely to carry the disease and as a result we've seen an alarming rise of anti-Asian coronavirus xenophobia and discrimination in the past few months. In New York there was a physical assault on a subway against a woman for wearing a face mask and most recently there was acid thrown on a woman who was simply emptying her garbage can, causing burns on her face and arms. In Texas, a man stabbed three Asian Americans including two children under six years old at a Sam's Club saying that he wanted to kill Asian Americans. In the Bay Area, an elderly Asian man who was simply collecting cans was taunted and attacked by individuals who said that they hated Asians. And, in Los Angeles, a 16 year old boy was sent to the hospital after being attacked by bullies who accused him of having Coronavirus just because he was Asian.

At a time when many Americans are fearful and worried about their health and safety it's more important now than ever to come together as a nation to get through these challenging times and that's why the Congressional Asian Pacific American Caucus which I chair has called out President Trump and his followers every time they've used this term "Chinese virus." We have been heartened though by the strong support we have received from our leaders in the Congressional Black, Hispanic, and Native American Caucus as well as actually the entire Democratic caucus and leadership who have stood in solidarity with us to denounce anti-Asian bigotry. In addition, we've led a resolution in Congress to address these anti Asian sentiments pertaining to Covid-19 led by two of our KPAC members Congress member Grace Meng and Senator Kamala Harris and it's received strong support in both chambers. So there have been many efforts to oppose this anti Asian bigotry but as a result the president finally acknowledged how harmful his words could be to Asian-Americans but his words wouldn't have been necessary in the first place if he and Republican leaders have refrained from stoking xenophobia in this way.

So, we have to continue fighting against Trump's xenophobia and the cruel policies it inspires and for that I'm so grateful to have lawyers like you as allies. So, thank you again for all that you are doing and thank you for inviting me to join you today.

Engy Abdelkader: Thank you, Representative Chu. I know that I'm not alone when I say that we are inspired by your leadership and courage and grateful for your efforts. At this time I want to alert our audience that Representative Chu does have other pressing commitments to attend to so we're going to open up the session to Q&A specifically directed for the Congresswoman. So, if you move your mouse at the bottom of the screen you'll see that there is an icon titled Q&A which is where you'd be able to type in any questions that you may have specifically for Representative Chu as well as any other panelists during the rest of our webinar. But, right now, we're going to receive questions for Representative Chu before she departs the webinar.

Representative Chu, I do have a few queries for you. I know that you had mentioned the fact that the vote on the No Ban Act was delayed because of the Coronavirus. Is there any indication of when it may be up for another vote in the meantime? Also, what would you suggest constituencies or civil society do to help support that initiative to see its realization? Additionally, I know that when the Coronavirus emerged that there were opponents to the bill who argued that the virus is in fact evidence as to why we should be barring various immigrant populations from the United States in the first instance. So, if you could address those questions and then I'll take a look at any questions we have from our audience.

Representative Judy Chu: Well, I want to tell you that the very last week in which we had the session we were actually scheduled to have the Muslim Ban on the floor it was on the Friday of that week and so we were truly anticipating it but then the Coronavirus broke and we just had to address those issues. I do have to say that I talked to our Majority Leader Steny Hoyer who is in charge of scheduling these items on the floor and he promised that this would be a high priority for when we get back. The only thing is we haven't gotten back and in fact with the terribly contagious nature of the Coronavirus we have to do our physical distancing. It's actually quite an endeavor to have us go back on our airplanes and come back and then there's the issue of how we would exactly vote since we're not supposed to be within six feet of each other. We have been pushing for some kind of remote voting system but even to get a remote voting system we would actually have to go back to vote on it. So we are at loggerheads right now. Our Rules Committee Chair is looking at how we might accomplish that so that is actually our first problem. I do know that our leadership is committed to having that floor vote so that is not the problem. I do think that however the advocates out there still need to push this forward to talk about the harm that it creates so many family members so many people in this country and that we need to have this vote ASAP and let me tell you the reason I know that this is very powerful is that you are the folks that actually created the breakthrough. Many, many members of the Muslim American community met with our leadership and also met with members of Congress and in fact they met with members of Congress that are front liners we call them the ones who are in the red to blue states and they were able to convince all of them that it was a matter of justice to be able to get this Muslim Ban passed out of the floor. But, you're right, the people on the other side of the aisle use the

Coronavirus to say that this is why we must have travel bans even though the bill itself says that the president has the ability to have a travel ban if there's a pandemic so they just didn't care what the truth was and they just have gone ahead with that particular argument.

Engy Abdelkader: Thank you, Representative Chu. I do have a couple questions from members of our audience. One pertains to the current circumstances and context in which we find ourselves in and whether the House of Representatives is considering doing business virtually or telephonically. I think there's an analogy being drawn to the US Supreme Court which conducted its first oral arguments via telephone for the first time in history because of the virus and so there's an inquiry as to whether the House is considering similar plans. Another question is with respect to the likelihood of the passage of the No Ban Act given the current constitution of the US Senate. So, if you could share your thoughts and response, that would be great.

Representative Judy Chu: Well, yes, thank you, for the questions because so many of our members would like to have remote voting because there's so many logistics with all of us coming together from all across the nation with all the flights that we would have to take and all the problems that that would involve. So yes, we would like to do it. Like I said it would have to involve changes of the rules and an actual vote for us in person first though. On the other hand, if you recall what happened in our last vote, we were able to have just a quorum of people voting and that was enough to be able to satisfy the vote. We wouldn't want to do this every single time but nonetheless it was enough to pass that last what which was the CARES bill which is the one that extended unemployment insurance and provided for this cash stimulus for everybody so it was such an important vote. So, if this issue is still rolling around, there's a lot of support for it amongst the members and I truly hope we can do this because I think that we are not going to be over this pandemic anytime soon and what then also about the Senate, we have 40 members of the Senate that are co-sponsors in fact that are very enthusiastic co-sponsors but as you know we do not control the Senate and in fact McConnell Senator McConnell prides himself as being the graveyard for many of our House bills. We have over 400 bills that we sent over there that he's not taking up at all. So I do think that having this Muslim Ban overturned depends on us taking back the Senate. And I do have high hopes for that because I believe that there are certain states it's actually a small number of states that we would have to turn over. We have to have a net four Senate seats that we would have to increase by in order to get this to happen so if you see that there's some possibility for turning over some Senate seat like in Colorado or Arizona please get active because that's really what we need in order to get this bill to ultimately make it to the end. Of course we also need a president that will sign it into law and that's where we also need to change who's in the White House.

Engy Abdelkader: Great, that's a really important point. I think often times particularly because of the particular juncture we find ourselves in there is an

outsized amount of attention being paid to the presidential election cycle but the local elections are just as important and looking at those Congressional seats and who's actually working for our collective interests is a really important point. One more question from our audience is actually from a law professor. As I'm sure you're aware Representative Chu, there's been much controversy regarding the recent public charge rule that has been instituted by the president and allowed to proceed at least temporarily by the US Supreme Court. Just this week we actually saw a lawsuit in New York by New York State related to the public charge rule, expressing concern about the immigrant populations who are afraid to receive health treatment related to the Coronavirus because they're afraid it'll trigger the public charge exclusion. So this particular audience member is asking whether Congress has considered including language in the CARE bill that would clarify that any health assistance would not trigger that public charge exclusion.

Representative Judy Chu: Thank you for that question because the public charge rule by President Trump is one of the cruelest things that could have happened. It greatly expanded the number of government programs that could deny a person a green card if they partook of that that particular program and it also caused great fear because there are so many programs that people are truly qualified for and yet they refrained from being in those programs or dropped out of those programs because they were afraid of being denied their green card. So, yes, this is why I actually put forth the bill on no funding for the public charge rule but we are in a critical situation right now with Covid-19 where people especially need to get their health care and they especially need to get their testing. So, yes, we have put forth the provision that there should be no counting towards the public charge for the time of this pandemic and in fact I have this bill which I'm leading on the House side and Senator Mazie Hirono is leading on the Senate side which has to do with the way immigrants are treated under Coronavirus and the fact that we should use, for instance, for the cash assistance that everybody got the tax identification number rather than Social Security numbers so that those who paid taxes in the system can actually get some financial relief. That's one of many provisions and the other provision is that the public charge rule should be not implemented in the case of any program pertaining to recovering from Coronavirus. So we are pushing for that we are pushing for that very hard so that everybody can get healthy and this nation can truly recover from this terrible pandemic.

Engy Abdelkader: Thank you Rep. Chu. We are mindful of the fact that you have a limited amount of time to share with us today. One more question: we appreciate the fact that you actually addressed the current context, challenges and hostility facing the Asian-American population today because of the irresponsible rhetoric of this administration. I, for one and I know others, believe that there is in fact a relationship between the vitriol that our elected officials spew out particularly about minority communities and resulting discrimination as well as hate crimes towards those minority communities. And, often ideologies of oppression such as anti-Asian racism, anti-black racism, xenophobia, anti-Semitism, and Islamophobia overlap and intersect. And, so, while this webinar is

about the Muslim Ban and the No Ban Act, I think it is important that we discuss the current uptick in hate crimes confronting the Asian American community. And, so, along those lines, as lawyers, as allies, what can we do to support the Asian-American community during this challenging time.

Representative Judy Chu: We are really concerned about the hate crimes and hateful incidents that are occurring against Asian Pacific Islanders so there have been a number of nonprofit groups that have put together a hate crime reporting site the most active one is under the title if you if you put in stop AAPI hate there is a way to report these hate crimes and incidents. And it's in different languages so it has gotten well all the sites combined have found that there have been sixteen hundred hate crime incidents since this all started and at its height there were about a hundred per day. So, we do definitely need the legal community because not all of those hate incidents rise to the level of a crime but we certainly need advice for our AAPI residents because some of them are absolutely scared to get scared to death and they're even scared to even report even though what they report on these hate incident sites is private and confidential. Nonetheless we also want to have these hate crimes prosecuted and these residents are definitely going to need help.

Engy Abdelkader: Wonderful. Thank you, again. As I mentioned, we are inspired by your leadership and grateful for your efforts. So you do have friends here at the American Bar Association. Thank you for joining us and we look forward to working with you again in the future.

Representative Judy Chu: Thank you.

Engy Abdelkader: Wonderful, next on our panel is Professor Khaled Beydoun. And, so, allow me to introduce him. Professor Beydoun is an Associate Professor at the University of Arkansas School of Law and Senior affiliated faculty at the University of California Berkeley Islamophobia Research and Documentation Project. He's a nationally recognized scholar examining national security and First Amendment. His research examines the tension between First Amendment protections and prevailing counter-terror policing programs. His scholarship has been featured in top law journals such as the Harvard Civil Rights and Civil Liberties Law Review and Northwestern University Law Review. His critically acclaimed book "American Islamophobia: Understanding the Roots and Rise of Fear" was published in 2018 and his co-edited volume Islamophobia and the Law was published last year in 2019. In addition to his scholarly investigation he contributes regularly to public intellectual discussion in the popular press as well as a member of the U.S. Commission on Civil Rights in Michigan. Beydoun joined the University of Arkansas faculty in 2018 and he holds a BA, JD, and LLM. He is a native of Detroit, Michigan. Welcome, Khaled.

Khaled Beydoun: Yeah thanks so much for having me Engy and thanks so much to the American Bar Association for hosting this important webinar. It's an interesting conversation to be having now with what's happening globally in in this

country with this pandemic. I mean it really incites me to think about how this global pandemic might actually supplant or even reform how we think about the war on terror moving ahead but those are questions we can field perhaps for in the Q&A and the interactive component of the of the conversation.

Four things I'd like to do in my time is first give some historical context. We tend to think about the Muslim Ban in Trump's Islamophobia as aberrational from American legal history specifically xenophobia that was ceded a long time ago. So just kind of contextualize where the Muslim Ban comes from this you know embedded sort of imagination and culture of xenophobia and what we now call Islamophobia it being effectively a modern emanation of those two things. Next I'll gloss over the decision made by the Supreme Court and the touchstones of the Roberts majority opinion. Then, I want to talk about how the Muslim Ban is deployed beyond the immigration context, how the Muslim Ban is actually deployed deep within the heart of Muslim communities as a counter surveillance tool and talk about how it functions in tandem with what I consider to be the most nefarious form of Islamophobia or what I call structural Islamophobia, counter-radicalization policing. And then finally I want to talk about how the Muslim Ban also functions as a dialectical tool that actually emboldens structural Islamophobia abroad in places like India for instance where we see a strong man populous like Modi employing the same kind of tactics as Trump. And then obviously in China where Muslims in that country have been persecuted considerably and we can see how the Muslim Ban has provided the Chinese government with considerable momentum and weaponry to persecute Muslims in that country.

Before we do that what I'd like to do is define Islamophobia. The term is, you know, thrown out a lot. It's obviously become a term of popular parlance and conversation today and the Muslim Ban again is a principle manifestation of what I call structural Islamophobia. A couple of years ago I published an article in the Columbia Law Review where I took it upon myself to try to define what Islamophobia meant during the moment when the term was really emerging as a term that was being used popularly, and within the mainstream media it was being adopted by activists and advocates, but it didn't have a cogent definition that I thought made sense of what was happening in the country, and specifically how Trump at that juncture as a candidate was looking to deploy Islamophobia as a campaign strategy but then obviously use it as a policy tool when he when he claimed the White House.

I define Islamophobia as the presumption that Islam is inherently violent, alien, and inassimilable driven by the belief that expressions of Muslim identity are correlated with a propensity for terrorism. That is the foundational definition, and there's three forms that emanate from that foundational definition. First we have private Islamophobia, which is the animus that is inflicted by private citizens, hate mongers and bigots, and this is the form of Islamophobia that the media tended to hone in on during the rise of Trump. Second, and I think most saliently, is that we have structural Islamophobia, which are the laws, the policies, the legislation, the Supreme Court decisions, and the lower court decisions which effectively affirm the idea that Muslim identity is conflated with terrorism, or this fear or presumption of terrorism that obviously drives the Muslim Ban. And third, we

have dialectical Islamophobia which is this relationship, this communique, between structural Islamophobia and the presumptions that Muslim is a national security threat which drives the popular violence we see happening on the ground.

So before I talk about the Muslim Ban specifically and the decision that was rendered by the court in *Trump v. Hawaii*, let's lay the foundation that the ban was in no way something that arose from a historical vacuum. It comes from a deep-seated memory where this notion that Muslims are foreign and inassimilable was seeded within the courts decades ago. Many of you might be familiar with a law that was enacted in 1790 called the Naturalization Act of 1790 which mandates whiteness as a prerequisite for naturalized citizenship. And this law functioned to effectively restrict the naturalization of Muslims as naturalized citizens up until 1944. There were a series of decisions which denied not only Muslims but also Arab Christians who were presumed to be undercover Muslims from becoming naturalized citizens based on the idea that Muslim identity was racialized to be non-white. So it wasn't necessarily deemed to be—Islam wasn't only conceived of to be a religion that was distinct or antithetical to Christianity, it was actually racialized as a non-white religion.

So when the 9/11 terror attacks happened and modern Islamophobia emerges and Trump seizes upon this new sort of—these new redeployed tropes of Muslim otherness and Muslim threat, this emanates directly from this deep-seated again legal memory that Muslims were this Fifth Column, were this population that needed to be denied entry into the country because they threatened not only the security of the country, but also because they threatened the ideals of the country—the norms the sort of democratic identity of the state. So when Trump announces that he wanted to put a temporary shutdown on Muslims coming into the country on December 7, 2015, he didn't assume the task of having to persuade the polity and convince the electorate of a new form of foreign threat. This was something that the polity was already familiar with because of this long-standing backdrop of Islamophobia that had penetrated not only legal halls of power, but political halls of power, and obviously was very saturated within the popular media space—we see that in films like *American Sniper* for instance, we see it on television shows and we clearly see it in the news media both conservative and liberal.

So Trump announces the Muslim Ban and I wrote an article in the *Illinois Law Review* which effectively theorizes that he deployed the Muslim Ban proposal as a campaign strategy to win over the electorate, and then he delivers his promise to the electorate a week after he's inaugurated with the first rendition of the executive order which is comprised exclusively of Muslim majority states—the seven states that were mentioned earlier. Executive Order Two was also comprised exclusively of Muslim majority states, with the lone difference compared the first one was that Iraq was removed. So those two executive orders aligned with the rhetoric of Trump during his campaign, when he was saying things like Islam hates us, Muslim immigrants are effectively undercover you know ISIS members, and so on and so forth. Executive Orders One and Two were essentially admissions of discrimination. They were admissions of explicit Islamophobia that the Trump administration feared would expose them to specifically the Establishment Clause

threat; the idea that this was facial discrimination that could undo the constitutionality of the order on grounds of it being in conflict with the Establishment Clause.

Executive Order Three I think is a concession on the part of the Trump administration to include two states, North Korea and Venezuela, which ate away at the superficial appearance of the executive orders as only being concerned with Muslims. And that was the decision that was rendered by the court—the 5-4 split decision—in the majority opinion Justice Roberts states that first the president has the executive order power over immigration questions tied to national security, but again in line with the strategic sort of revisions on the part of the administration that the third version of the executive order was not facially discriminatory because it included two non-Muslim majority states, and in addition to that, the rhetoric and the proclamations that were explicitly discriminatory made by Trump during the campaign and even while in office were essentially irrelevant to the assessment of its discriminatory nature in line with the First Amendment Establishment Clause.

So the order was obviously upheld and then expanded, as mentioned earlier, recently weeks ago to include additional, some of them Muslim majority, states like Sudan obviously was included again, and then you had the inclusion of African states. So two things and that's kind of the legal order of where we stand now we have an expanded Muslim Ban that was upheld by the court. Justice Roberts delivered what is very much a textualist opinion that ignored the proclamations and rhetoric Trump made that were explicit in nature and explicitly discriminatory in nature.

Two additional points I'd like to make: first is we what we saw when the first order was signed was transformative in the sense, at least from my vantage point as a scholar who's examined Islamophobia and national security for a long time, is we see Islamophobia in the wake of the first Muslim Ban being signed finally emerge into a centerpiece of the social justice movement. It was an issue that was championed by activists on the ground, it was an issue that was finally championed by mainstream legal organizations, it was an issue that obviously occupied considerable attention in the media space. I thought that to be very progressive that non-Muslims and non-Muslim organizations were challenging not only the Muslim Ban but other forms of anti-Muslim policy in ways that they hadn't 15 years earlier after the 9/11 moment and after the establishment of the modern war on terror architecture. So that was positive and we saw that in very lucid forms: airports became spaces of activism and protest, all sorts of challenges were arising the Second, Fourth, and Ninth circuits. So the Muslim Ban in some respects galvanized a new moment of popular opposition to anti-Muslim animus which clearly looms today.

A point that I'd like to make that I write about in the book, and that Engy alluded to earlier, is I think that the advocacy response and the nature of the orders demonstrated how this country thought about Muslim identity in very monolithic terms. The injury that was unleashed as a consequence of the ban—the ban's enforcement had distinct effects depending on the identity of who the individual was. Let me read you a quote from a woman who was a PhD student at Stanford, her name is Nisrin Elamin, who identifies as a Black Muslim which highlights the

intersectional injury experienced by black Muslims. And again two of the seven states that were initially impacted by the first order were majority black African states. She says, "I think this order is a reflection of a larger trend in this country to criminalize black people, to criminalize immigrants, and to criminalize Muslims and as a black Muslim immigrant I'm really concerned about that and I do think that the Somalis and Sudanese people of African descent who are going to be affected by this you know, I think they're going to be treated differently frankly." So her quotes demonstrate how her injuries as a black Muslim women were distinct on grounds of both racial, religious, and obviously also gendered identity.

In my remaining time I want to talk about how the Muslim Ban works in tandem again with what I consider to be the most nefarious form of structural Islamophobia which is counter radicalization policing. And to give a quick summary of what counter radicalization policing is, it's a new surveillance model that was established in 2011 by the Obama administration, which essentially assigns FBI agents to work in tandem with local law enforcement. It's essentially a spying on Muslims program that is akin to COINTELPRO which was used in the 50s and 60s against groups like the Black Panthers the Brown Berets and so on and so forth. It capitalizes on Muslim informants to keep tabs on members of their community. As part of a Racial Justice Fellowship with the Open Society Foundations, I had a chance to interview and hold workshops in 40 mosques across the country, many of them were CVE countering the violent extremism was taking place. And I learned firsthand how the Muslim Ban was working in tandem with counter radicalization policing or surveillance on Muslims.

What FBI agents were doing were essentially looking to recruit informants from individuals from Muslim majority states. They'd hone in on individuals who were compromised in some way. So for instance, they might go to a mother's house who was concerned about a son who was who was an immigrant who was outside of the country looking to pressure her based on that circumstance to function as an informant. So you had those strategies going on deep within Muslim communities and specifically Muslim communities that were populated by nationalities designated by the Muslim Ban. So Hamtramck here in Michigan which has a large Yemeni population, places like Minneapolis which has a very large Somali population, became hubs where FBI agents and their informants and their proxies, really use the Muslim Ban as a tool to put pressure on individuals to work with the FBI, to keep tabs on subjects, to keep tabs on institutions, to keep tabs on businesses that they suspected had terrorized or individuals young people that might become radicalized.

So that's a dimension of the Muslim Ban that again is not specifically administered and enforced just in airports or checkpoints but something that's used deep within Muslim communities, which demonstrates that it has not only collateral effects but very robust effects.

Before I close two quick points that I'd love to talk more about during the Q&A. I'm working on my on a book now examining global Islamophobia and learning about how Trump's rhetoric and Trump's policies really emboldening foreign governments, people like Narendra Modi who weeks ago passed what he dubbed to be his own Muslim Ban called a Citizenship Amendment Act restricting

immigrants from Muslim majority countries and in India for becoming naturalized citizens. There's a clear connection there and Modi and Trump are obviously close allies with what's happening in the United States it's really encouraging foreign governments with kindred Islamophobic missions to do the same. And obviously in China where we see very ominous forms of ethnic cleansing inflicted against Muslim communities in the form of concentration camps, again being encouraged by the momentum being spurred by the Muslim Ban here in the United States, by the Trump administration's broader mission and mandate of Islamophobia. So I'll stop there and I'm happy to have a more interactive conversation during the Q&A.

Engy Abdelkader: Wonderful, thank you so much, Khaled, for that presentation. So, next, we will turn to Elica who joins us from California. She is the Pro Bono and Strategic Partners Director at the Lawyers Committee for Civil Rights in the San Francisco Bay Area, a civil rights organization focusing on immigrant justice, criminal justice, and economic justice and marshals the private power to help effectuate structural change. She joined LCCR from Advancing Justice-Asian Law Caucus where she was a Staff Attorney and Program Manager of the National Security and Civil Rights Program. Her work focused on legal services, litigation, policy advocacy, and Know Your Rights education protecting the civil rights of Arab, Middle Eastern, Muslim, and South Asian communities, with a particular emphasis on the Muslim Ban. She worked with a variety of law firms, attorneys, and law students on pro bono cases to advance the program's work. She's also the chapter president and former pro bono chair of the of the Iranian American Bar Association Northern California Chapter. Elica formerly worked as a supervising attorney to establish the University California Immigrant Legal Services Center providing free immigration, legal services, clinics, and Know Your Rights training to UC students and their families across California. She was a project director of the One Nation Initiative at the California Community Foundation in Los Angeles where she managed the first philanthropic program in Southern California for Arab, Middle-Eastern, Muslim, South Asian nonprofit organizations advancing civic engagement, policy advocacy, litigation, and capacity building. Elica received her BA from UC Irvine and Sciences Po, Paris. She received her JD from UC Davis School of Law and was an active member of the Immigration Law Clinic and a UC Human Rights Fellow at the Center for Constitutional Rights. She is a previous German Marshall Memorial Fellow and a 2018 recipient of the Minority Bar Coalition Unity Award.

And, I know that the promotional materials had noted we'd be joined by Shirin Sinnar of Stanford University. Unfortunately, Shirin has been hospitalized and so we are grateful that we were able to secure Elica to discuss some of the class-action lawsuits that have been instituted since the Supreme Court's ruling in *Trump v. Hawaii*. Also, as a reminder to our attendees, you are invited to pose your questions via the Q&A tab at the bottom of your screen. We will open up the session to a Q&A as soon as Elica has completed her presentation. So, welcome, Elica. We're very grateful to have you with us.

Elica Vafaie: Thank you so much for having me, thank you to the American Bar Association, Engy, and thank you of course to Congresswoman Chu and Professor Beydoun. It's really a pleasure to be speaking with you all.

I'm going focus my presentation on the discriminatory implementation of the Muslim Ban. I'll be drawing from cases and experiences as direct legal service attorney who has worked on fighting the Muslim Ban, I'm an Iranian American myself, and part of the Iranian American Bar Association. I want to shift us back a bit to how the Ban is causing an incredible amount of pain and family separation. The Ban applies to individuals whether you are a citizen or green card holder or applying for a tourist visa or student visas (there's of course different exceptions on the Ban on a country-by-country basis) but ultimately the policy states that you are not able to get a visa unless you qualify for a waiver. In addition to this policy being tied to Islamophobia it is also a family separation and a policy that it's blocking life-saving access to medical treatments, preventing citizens and green card holders from being with their families, disrupting education, keeping folks from being together for weddings and for funerals and keeping folks in limbo based on nothing more than religion and national origin. I also think that the family separation fame is key because Muslim Ban is part in parcel of a broader attack on immigrants and communities of color. When we're talking about the Muslim Ban we have to remember that in 2017, when the first iteration of the ban came down, there were several other executive orders on border enforcement, interior enforcement demonstrating how the Muslim Ban ties in with broader family separation and attacks on immigrants and communities of color.

I was asked to focus on the waiver provision of the Muslim Ban and how the Muslim Ban is currently being implemented. I'd like to provide important context on how the Ban is being implemented and where we're seeing this fight play out from a community perspective and a direct legal service perspective, which is that is that the fight against this iteration of the Muslim Ban fight I think got kicked to the consulates. Everyone on this webinar likely remembers the protests at the airports and what happened in January 2017. The reason that fight was at the airports was because of how the first iteration of the Ban was drafted and the fact that the law changed while folks were mid-flight and so when they landed at different airports across the U.S., the law had changed and so there was a lot of activism, lawsuits, and pressure to release individuals detained airports. By the time we got to the third iteration of the Ban in September 2017, that fight had been largely kicked to the consulates abroad because it prevented folks from even getting the visas in the first place. The third version of the Ban did have a waiver provision (Section 3(c)) that allows for otherwise banned individuals and families to apply for an exemption to overcome otherwise being banned. Text of the third Ban states that an applicant seeking the visa and waiver would have to show that (1) denying them would cause undue hardship; (2) that the entry would not pose a threat to national security or the public safety to the United States; (3) and that entry would be in the national interest of the United States. The text of the third Ban provides nine examples where such a waiver might be appropriate. For example, if you are seeking to be reunited with a United States citizen family member, if your case involves a child, if you have previous ties to the United

States, if you're coming for educational purposes, if you needed particularly urgent medical care, etc. In other words, the law/waiver is supposed to have this mechanism for otherwise banned families and individuals to obtain the visas needed to come to the U.S.

The various lawsuits and injunctions felt like a roller coaster, but before the Supreme Court issued their final decision in June of 2018, in December of 2017 the Supreme Court had actually lifted the injunction and allowed the law to go into effect. That's when we started to see that the Section 3(c) waiver provision was really a sham, implemented haphazardly, and was arbitrary and capricious. The first case example I want to give from last 2017 is an individual from Iran who had their interview at the consulate *before* the third iteration of the Ban went into effect and was now required to demonstrate that they were eligible for a visa (but never had a chance to prove that) but their waiver was denied. Another example is an individual from Yemen who traveled through a war-torn country to get to a country that has a U.S. Embassy processing cases from Yemen and was unclear what will happen at the interview and their waiver. In both cases there was never a form that individuals could fill out to try to qualify and apply for the waiver (there is still not one to this day, consulates say individuals are automatically considered). Another case that really shook many of our communities to the core was the case of Mahmood Salem, who was a 31 year old Yemeni American U.S. citizen who died by suicide when his wife and two eldest children were denied visas because of the Muslim Ban. The waiver process was opaque and they had been living in Djibouti trying to figure out what was going on with the waiver. Five days after his death, his wife and eldest children were issued visas but it they were issued too late to attend the funeral. I raise these cases to demonstrate the impact that's being felt both about the Ban and the waivers.

Many advocates and lawyers felt that even though the waiver provision creates an additional barrier, the government should still be held accountable for having some type of a process for waivers, which many other immigration applications have. It is also notable that after the Supreme Court decision in June 2018 (which relied on there being a waiver process and Justice Breyer's dissent discussed the challenges with the waiver process), two lawsuits were filed/amended *Pars v. Pompeo* – the case I support on brought by the Iranian American Bar Association, Advancing Justice- Asian Law Caucus, Council on American-Islamic Relations California, National Immigration Law Center, Arnold & Porter and Lane Powell- and the previously filed *Emami v. Nielsen*. Both cases aim to hold the government accountable for waivers.

I also want to flag that for a long time we didn't have any statistics on the waiver grants. When we filed the *Pars* lawsuit, the percentage of waivers being granted in 2018 were approximately 2% so 98% of applicants were being denied making the waiver process just a complete barrier. As such, there was a lot of policy advocacy in addition to the litigation to require the government to provide ongoing reporting to Congress on the waiver statistics. Currently, as of the most recent government reporting, 35% of the waivers are being granted but that's still a 65% denial rate and we're talking about cases of families of citizens, individuals coming to study, etc. The lawsuits challenging the implementation of the Ban and

waiver process are still continuing and are in the discovery phase, which has been incredibly hard with COVID-19 and incredibly hard with government delays.

While the waivers and accountability on the waivers is incredibly important and critical to families and to our communities, ultimately what Representative Chu and Professor Beydoun were touching upon is critical—we need a much broader solution and a broader advocacy strategy. Efforts like the No Ban Act, the No Muslim Ban Ever Campaign, policy efforts, broader work fighting racial profiling national origin discrimination, work to fight Islamophobia are key. One component of the No Ban Act that I wanted to layer on top of Representative Chu's comments, is that that policy has a validity clause where, if passed, it would invalidate not just the Muslim Ban but also the Asylum Ban and the Refugee Ban. I think this is such an important point to highlight because again the Muslim Ban is part of many bans that target immigrants and refugees.

The last point I'll make before we switch to Q&A that I was asked to touch upon, is how pro bono attorneys and volunteer lawyers played a key role in this fight. Amazing legal institutions and law schools like Penn State Law Center for Immigrants' Rights Clinic, UC Davis Law Immigration Clinic, Stanford Immigration Law Clinic, and many other law clinics that filed amicus briefs provided resources to the community and many major law firms that co-counsel cases. Our co-counsel in *Pars v. Pompeo* is Arnold & Porter and Lane Powell LP. Their partnership really make the litigations possible so thinking about ways in which we harness the broader power of pro bono and legal services and legal work but to do it in a way that backs up what impacted communities, organizers, and people who are on the front lines need legal representation the most. I'll go ahead and stop there to leave time for Q&A and happy to answer any questions.

Engy Abdelkader: Great. Thank you so much. Elica. That was wonderful. So, at this point we will open this session up for Q&A. As a reminder, if you move your mouse at the bottom of your screen you'll see that there is a Q&A icon that you can double click on and just type in your questions for our panelists and I'm sure they'll be happy to field them. Khaled, let's begin with you. A couple of months ago, we saw the expansion of the so-called travel ban or Muslim Ban to include primarily African nations. How does that impact your various theories that you've put forth in your Law Review articles examining the Muslim Ban?

Khaled Beydoun: Yeah.

Engy Abdelkader: During your presentation you actually mentioned the intersectional identity of victims of the ban and their experience because of the discriminatory provisions of the ban but this is intersectionality in a different light, right? We're talking about the intersectionality of ideologies of oppression which I personally believe to be the case. I think that ideologies of oppression—such as anti-black racism, anti-Semitism, Islamophobia, and xenophobia—do intersect and overlap and I think this is one exemplification of that. So, if maybe you could speak a bit more to the recent expansion and the fact that it's not just targeting

exclusively Muslim countries. But, we also see the targeting of African countries and what the implications are in terms of policy going forward.

Khaled Beydoun: Yeah you had the addition of five African states and also two Asian states, Tanzania and Kyrgyzstan as well. I think that...so Trump uses the Muslim Ban and the expanded Muslim Ban as a way to effectively you know satiate the hatred of his of his following. You know it's no surprise that he expanded the ban as the presidential elections were revving up.

The sad reality is this is: I think that the vast majority of his base, but also the vast majority of the country at large, they can't distinguish between Muslim majority countries and non-Muslim majority countries, whether in the Middle East Asia or in Africa. So when the archetypal Trump supporter sees Myanmar or sees Tanzania, they think foreign, they think Asian-African, and then they think it potentially could be Muslim. So Trump is capitalizing on a popular ignorant ignorance of who Muslims are and which countries count as Muslim majority states in doing that.

But I think that beyond just sort of the optics and the way in which Trump deploys the expanded ban as a way to deliver to his base during the presidential election—is also the idea that we see Islamophobia obviously being an emanation of distinct forms of hatred and bigotry. It's not distinct, it doesn't function along a singular track, it converges with xenophobia at large. Like you mentioned and Representative Chu mentioned earlier, it intersects with anti-black racism. So the expanded ban is going to have a distinct form of injury, and a compounded form of injury for individuals for instance who are Nigerian and Muslim. So let's say, for instance, you come from a house a Muslim family in northern Nigeria, you are going to be injured as a consequence of this expanded ban on grounds of your racial identity but also your religious identity. So it manifests a broader form of bigotry and racism by the Trump administration in those two ways.

Engy Abdelkader: Okay thank you, and then I know that when you first began your presentation you mentioned the intersection of counterterrorism and particularly this pandemic and what...

Khaled Beydoun: Yeah.

Engy Abdelkader: It may look like in the months and years ahead. I wanted to give you an opportunity to elaborate on that.

Khaled Beydoun: Yeah I'm still kind of like thinking about that and contemplating what the war on terror is gonna look like. There was an article in The Atlantic that was really interesting a couple of days ago by written by Ben Rhodes, which was titled The End of the 9/11 Era. And then Rhodes was a former national security aide for the Obama administration. Part of me would like to think that this new pandemic moment, you know, initiates of war on pandemics that could supplant or severely diminish the war on terror, but I'm not convinced. I mean I think what I see moving ahead perhaps is more pessimistic in nature. I

think we're gonna see the war on terror continued and protracted, but also tied to this new war on pandemics which, like you mentioned early and Representative Chu mentioned earlier, is gonna hone in and fixate on Chinese and Asian identity as being the new pariah. So I see a continuation of the war on terror in conjunction with this new war on global pandemics that I think is going to inflict considerable injury not only on Muslims but specifically on Asians and Chinese individuals.

Engy Abdelkader: Thank you. Elica, I wanted to turn back to you. We did have a question from the audience member specifically regarding a statistic you cited. You had said 35% of waiver applications had been granted and I think there's a request in terms of the source for that information and whether or not it's a government source or from civil society.

Elica Vafaie: That's the government's own reporting. It's available on the Department of State website. I'm happy to drop the link in the chat box if folks can see that. One note is that people are still in limbo and 35% is still not robust enough of a number. The government first reported 2% and we are up to 35% but we also have those numbers because of advocacy to push the Department of State to publish them in the first place.

Engy Abdelkader: And, another question for you, Elica. Is the waiver process identical for each of the impacted countries that have been identified by the ban?

Elica Vafaie: That's a great question. The text of the Ban has an identical process for each of the impacted countries and individual cases. However, part of why we felt like the lawsuit challenging the waiver process was needed was that we were seeing how the experience of different individuals and families across the consulates completely varied. Partly because there's no application or form that applicants can fill out for a waiver and what we saw in our cases was that the process was haphazard and chaotic. One embassy might accept documentation while another embassy won't accept any additional documentation demonstrating eligibility for a waiver. Trying to navigate that process is a nightmare and trying to advise as a lawyer on what they should do it was a nightmare and continues to be so.

Engy Abdelkader: Also for you Elica: is there any empirical analysis available in terms of the likelihood of success of those waiver applications with respect to the country of origin. In other words, is it more likely that an individual applying for a waiver from country X is going to have a better experience than an individual applying for a waiver who's from country Y.

Elica Vafaie: Part of what why we brought the suit and part of what was so difficult was even individuals in seemingly very similar positions (for example the same country of origin and immigrant visas) were often being treated differently at different consulates or within the same consulate. There is a need for

accountability because even within cases that you would imagine would be able to be processed in a similar way, we were not seeing that happen in the field.

Engy Abdelkader: Great. Also, Elica, could you discuss a little bit more the significance of pro bono counsel in these cases. I know that you sort of highlighted the fact that there are several big law firms which have been powerful allies and partners in this fight but maybe just discussing for everyone who's on this call the significance of pro bono services and maybe drawing on these specific cases to help make your argument in terms of why this makes a difference.

Elica Vafaie: Whether it was attorneys showing up at the airport and helping secure the release of individuals, conducting Know Your Rights presentations, direct representation (a lot of immigration attorneys that might not have worked on national security issues before but then got trained—after the Supreme Court decision, the Asian Law Caucus and partners trained, I believe, 500 lawyers on how to do Muslim Ban cases in just a few months), I think there is clearly a strong need for legal representation. The way that that the different large law firms stepped in to support with litigation was really important. The Muslim Ban is also a really key example where the law just falls short right and the Supreme Court's decision was devastating. It's a great example of how we need to advance advocacy in a way that doesn't just rely on litigation. We need to also address structural racism, discrimination, Islamophobia, how this ties to other immigration policies and how we need to focus on community building power, narratives, and organizing equally if not more than the legal strategies.

Engy Abdelkader: Okay, we have reached the hour. It's four o'clock. So, as we wind down, I do want to give each of you an opportunity to share any concluding thoughts with members of our audience. And, specifically, often times when we have these sorts of discussions, members of impacted communities experience helplessness. Some might wonder what can I do to make things better. Perhaps if you have any ideas that might be helpful in this regard. So, let's start with you, Elica.

Elica Vafaie: In terms of just what people can do to support fighting against the Muslim Ban?

Engy Abdelkader: Also members of these impacted communities, whether it's members of the African immigrant community, members of the Muslim American community, so on and so forth. I think there's a role that allies can play which is highlighted by virtue of these advocacy efforts at the airport though admittedly they also petered out with each successive iteration of the Muslim Ban, the changing and the watered-down versions of the language making it less directed towards Muslim populations and converting it into so-called travel ban. We saw less and less resistance right? And, at this point, there's now a controversy about whether or not we should call this a Muslim Ban. I think many journalists have now routinely, have adopted the language of a travel ban without the quotation

marks, right? I think that is significant and revealing in many respects. I think it's telling that yes you know I think the advocacy efforts and the resistance that we first saw upon the implementation of the Muslim Ban back in January of 2017 should be applauded. But, also, we should be fully cognizant of the fact that that is no longer the case. And, in many ways, there's sort of a complacency that has settled over us as a population and again a sense of overwhelming and helplessness even within these particular impacted communities. And so I think any inspiration or insight or observation you could share would be helpful.

Elica Vafaie: Each impacted community speaks for themselves and leads in their own way. As a member of the Iranian American community and being part of the Iranian American Bar Association for me personally fighting the ban has been really key to protect our community's rights but also using this as a moment to push our community to understand how this is tied to broader issues of immigrants' rights right and racial and religious profiling. I'm only speaking for myself, but it was also important how we as a community increased support to make California a Sanctuary State and other issues to hold ICE accountable. To your second point on the legal front, I would say just it is important for lawyers to continue to be engaged and the need not over people still need representation on their waiver cases. There are a lot of different opportunities to get plugged in in that respect and there's a lot of opportunities to take on cases in a broader context on cases involving immigration detention and asylum; to me these are all tied together again as broader attacks on immigrants and communities of color so continuing that advocacy, continuing to give emergency legal support where it's needed is really key while keeping the longer longer-term strategies in mind.

Engy Abdelkader: Wonderful and, Elica, we do have a request from one of our audience members for practice pointers or resources for attorneys who are representing individuals applying for waivers. If you do share that with us we'll be sure to distribute it with the video recording that will be disseminated to all program registrants. Khaled, any concluding thoughts for us?

Khaled Beydoun: Yeah a couple of quick points. So I highly recommend a book from professor Shoba Wadhia called "Banned." I think Elica mentioned earlier about the Penn State Law School's really important work and their clinic's work in direct services, so that book is excellent it just came out four or five months ago—highly recommend it. Second, I think that one thing I'd recommended and one thing that was sort of disappointing to me during the height of the Muslim Ban activism was we saw a lot of the resources from communities being donated to large organizations, national organizations, while local Muslim organizations weren't receiving any kind of support or funding. So one recommendation I'd make moving ahead is for impacted communities to support their own local organizations because those local organizations are the ones that provide direct services to the more micro-immigration questions and they're oftentimes working on very shoestring budgets. Another individual that did tremendous work is Abed

Ayoub of the American-Arab Anti-Discrimination Committee who worked really closely with these local organizations.

And third most importantly because surveillance is still an issue, less an issue now because mosques are closed down, but when this pandemic wears away hopefully God willing in the near future, is for individuals in the community and on the ground on the grassroots level to be very vigilant and mindful of not speaking to FBI agents and individuals they suspect of being informants because again, that ties really closely to the way the travel ban is used within communities and can lead to removals, deportations, and even arrests. So to be vigilant on that front is really key.

Engy Abdelkader: Wonderful, so thank you so much. We want to take this moment to actually thank our esteemed panelists. Thank you for making the time to join us for this webinar. As I mentioned, this is the last lecture in our six-part national lecture series. It's been a pleasure hosting and moderating these sessions. Please be on the look out for the forthcoming Human Rights Magazine from the American Bar Association which will be dedicated exclusively to the issue of immigration. It includes articles from Representative Chu as well as from Penn State Law's Immigration Clinic and a number of other authors that you will recognize. In addition, we have a forthcoming symposium from NYU School of Law that is going to feature the transcripts and other articles from panelists from this lecture series. And, you will receive additional details regarding that shortly. Thank you so much, stay safe, and we wish you well.

Elica Vafaie: Thank you.