



April 13, 2021

The Honorable Jerrold Nadler
Chairman
House Judiciary Committee
2138 Rayburn Office Building
Washington, DC 20515

The Honorable Jim Jordan
Ranking Member
House Judiciary Committee
2142 Rayburn Office Building
Washington, DC 20515

Dear Chairman Nadler, Ranking Member Jordan, and Members of the Committee:

In advance of the Committee's consideration of the bill, we write to reiterate the ADL's (Anti-Defamation League) strong support for H.R. 1333, the National Origin-Based Antidiscrimination for Nonimmigrants Act ("NO BAN Act" or "Act").

The United States is a nation dedicated to the ideals of equality, liberty, and justice. Selective prohibitions against immigrants and visitors to the United States based on prejudice, such as the bar imposed by revoked Executive Order 13780 and related Orders and Proclamations, are inhumane and trample on these values, and cannot be permitted. Moreover, for more than a century, ADL has been an ardent advocate for religious freedom. The religious liberty each American enjoys is jeopardized when the government uses religion to discriminate regarding who may enter this country.

The NO BAN Act would prohibit discrimination based on religion in suspending or restricting entry into the United States – with exceptions to ensure protection of national security and public safety. The Act would also require the Departments of State and of Homeland Security to provide specific and credible evidence of a need for any suspensions or restrictions, which must be narrowly tailored to meet a compelling government interest.

ADL supports the NO BAN Act as an important step by the United States Congress to protect America's core value of religious freedom and its promise to be a "shining city upon a hill," as John Winthrop envisioned, opening itself to "anyone with the will and the heart to get here."

America's Value of Religious Liberty and Character as a Nation of Immigrants

Throughout our history, the United States has aspired to be a beacon of hope for refugees fleeing oppression abroad, for victims of religious persecution, and for immigrants seeking better lives and opportunities. The colonies that became the United States of America were founded by religious refugees. The U.S. Constitution enshrines religious freedom in the First Amendment. The Statue of Liberty stands on our shores as a symbol for all who seek a better life in America.

In 1958 then-Massachusetts Senator John F. Kennedy wrote an essay for ADL entitled *A Nation of Immigrants*. In this monograph, the future President highlighted the vast contributions of immigrants to American society at a time when the United States was locked in a debate about the direction its immigration policy should take. His insights remain as relevant today: America is a nation of people who value both tradition and the exploration of new frontiers, people who deserve the freedom to build better lives for themselves in their adopted homeland.

The NO BAN Act Ensures a Discriminatory Travel Ban Will Not Be Legal

The NO BAN Act would uphold our longstanding national commitment to providing refuge to people pursuing religious freedom, and advance our shared effort to strengthen protections against discrimination, by amending the Immigration and Nationality Act (INA) to explicitly prevent the government from discriminating based on religion in the issuance of immigrant visas. The Act would also expand the INA's non-discrimination provision to nonimmigrant visas, entry into the United States, and the approval or revocation of any immigration benefit.

The Act would then revise the process by which the Executive Branch suspends or imposes restrictions on aliens attempting to enter the United States. In place of the current broad discretion to impose such policies, the NO BAN Act articulates a process in which the Secretary of State, in consultation with the Secretary of Homeland Security, must determine "based on credible facts" and "specific evidence" that suspension or restrictions on certain aliens' entry is required to "address specific acts that undermine the security or public safety of the United States; human rights; democratic processes or institutions; or international stability." Additionally, under the Act, the Executive Branch would need to "narrowly tailor the suspension or restriction to meet a compelling governmental interest."

By instituting a process in which the Department of State and the Department of Homeland Security evaluate with specific, credible, factual evidence the necessity of a suspension or restriction on certain persons' entry to the United States, the NO BAN Act limits the broad presidential authority in the INA upon which the Supreme Court relied in upholding the since-rescinded Muslim Ban in *Trump v. Hawaii*, 138 S. Ct. 2392. Moreover, this new process would dramatically decrease the likelihood that decisions about who can enter the United States will be made on xenophobic whims or to fulfill discriminatory campaign promises. *Cf.* 138 S. Ct. 2417 (describing then-candidate Trump's call for "a total and complete shutdown of Muslims entering the United States," among other statements).

Further, by requiring potential travel suspensions or restrictions to be narrowly tailored to meet a compelling governmental interest, the NO BAN Act explicitly mandates that such policies pass strict scrutiny – the Supreme Court’s highest standard to ensure protection of individuals’ Constitutional rights. As Justice Sotomayor, joined by Justice Ginsburg, wrote in her dissent in *Trump v. Hawaii*:

[T]he Court, without explanation or precedential support, limits its review of the Proclamation to rational-basis scrutiny. That approach is perplexing, given that in other Establishment Clause cases, including those involving claims of religious animus or discrimination, this Court has applied a more stringent standard of review. . . . [U]nder Supreme Court precedent, laws ‘involving discrimination on the basis of religion. . . are subject to heightened scrutiny whether they arise under the Free Exercise Clause, the Establishment Clause, or the Equal Protection Clause.’” 138 S. Ct. at 2441 (Sotomayor, J., dissenting) (internal citations omitted).

Under strict scrutiny, the previous Administration’s Muslim Ban is “plainly unconstitutional.” *Id.* By statutorily imposing this standard, the NO BAN Act would protect against implementation of future discriminatory policies.

The NO BAN Act Restores America’s Values of Equality, Liberty, and Justice

Since 1913, ADL has worked against intolerance and hatred, seeking to stop the defamation of the Jewish people and fighting to secure justice and fair treatment for all people. America is dedicated to the ideals of equality, liberty, and justice. But throughout our history, and frequently with respect to immigration, when prejudice and fear predominate over reason and compassion, we have faltered from these ideals – often with devastating consequences. We turned our backs on the S.S. St. Louis, a ship with nearly 1,000 Jewish people fleeing Nazi Germany, condemning hundreds of them to their deaths; we passed laws that overtly excluded and discriminated against Chinese immigrants; and we rounded up more than 100,000 Americans of Japanese descent and forcibly incarcerated them in prison camps. In each instance, when we later realized we had strayed from our principles, we were left to apologize to the people who had suffered, or to their descendants, or to the memory of those who perished without descendants, in each case promising to learn from our mistakes and not to repeat them.

The NO BAN Act would realize this vision of progress toward compassion and justice for all by preventing the repeat of past discriminatory and xenophobic U.S. immigration policies. The Act protects the core American value of religious freedom as it explicitly prohibits religious discrimination in visa or immigration decisions. It guards against policies inspired by a single person’s bigotry by involving the Departments of State and of Homeland Security in decisions regarding entry into the United States. Finally, it ensures that the Supreme Court will apply strict scrutiny in evaluating whether our government’s policies comply with core principles enshrined in the U.S. Constitution.

We urge the Committee to vote favorably upon, and Congress to expeditiously pass, the NO BAN Act.

Sincerely,

A handwritten signature in black ink, appearing to read 'Max Sevilla', written over a horizontal line.

Max Sevilla
Vice President, Government Relations, Advocacy, and Community Engagement

A handwritten signature in black ink, appearing to read 'Steven M. Freeman', written in a cursive style.

Steve Freeman
Vice President, Civil Rights