



September 24, 2019

Representative Zoe Lofgren, Chair  
Judiciary Subcommittee on Immigration and Citizenship

Representative Ken Buck, Ranking Member  
Judiciary Subcommittee on Immigration and Citizenship

Representative Ami Bera, Chair  
Foreign Affairs Subcommittee on Oversight and Investigations

Representative Lee Zeldin, Ranking Member  
Foreign Affairs Subcommittee on Oversight and Investigations

**Re: Amnesty International USA Statement for joint hearing on “Oversight of the Trump Administration’s Muslim Ban”**

On behalf of Amnesty International USA and our members and supporters throughout the United States, we submit this statement for the record. Today’s hearing is a much-needed step to assess the far-reaching impact that the Trump administration’s policies, starting with the Muslim ban, have had throughout the world.

As a global human rights organization with offices in more than 70 countries, Amnesty International views the rights of asylum-seekers and refugees as a top global priority. We are thus deeply concerned about the Trump administration’s relentless attacks on refugees and asylum-seekers, including those hailing from Muslim-majority countries.

At one time, the U.S. was both an author and a champion of refugee protection principles globally. Sadly, we are now leading this race to the bottom, devising harsh and exclusionary policies targeting refugees and asylum-seekers at home and abroad. The list of policies and practices this administration has attempted to implement is practically too long to list: whether it is the Muslim, refugee, and successive asylum bans; the policy of separating families along the Mexico/U.S. border; pushing people back from our borders; forcing them to remain in Mexico or apply for asylum in countries that are neither equipped to accept them or safe; dramatically increasing the detention of asylum-seekers who do arrive in the US; or targeting NGO human rights defenders - the United States’ policies towards refugees, migrants, and asylum-seekers are extreme, cruel, and contrary to international human rights law.

The ability of people to seek safety and enjoy lasting protection in the United States is not only at risk, it is in crisis. Practically from its first day in office, the Trump administration has waged a deliberate campaign of human rights violations against asylum-seekers and refugees, to broadcast globally that the United States no longer welcomes those seeking safety and a chance at a life free from persecution, violence, and war. Simultaneously, the Trump administration is

seeking to dismantle the U.S. asylum system, including by barring asylum-seekers at the U.S. southern border and narrowing the definition of who qualifies for protection.

We urge Congress to reverse the Administration's discriminatory and restrictive policies on refugee protection and ensure the U.S. upholds its commitments to share responsibility for refugee protection. A first and vital step would be for Congress to pass the *National Origin-Based Antidiscrimination for Nonimmigrants* ("NO BAN") Act (H.R. 2214/ S. 1123). We support this measure because if passed it would: (1) undo the animus-driven "Muslim ban" and check the President's ability to discriminate on the basis of religion; (2) rescind the administration's attempt to unlawfully limit the right of asylum at the U.S. border; and (3) remove needless impediments upon refugees seeking resettlement, who are already subject to more vetting than any other group entering the United States.

### **Refugees are impacted, everywhere**

As we detail in our June 2019 report, '*The Mountain is in Front of Us, and the Sea is Behind Us*', discriminatory and restrictive policies, starting with the Muslim ban signed in January 2017, have had a devastating impact on the lives of refugees everywhere. This impact is felt acutely in Lebanon, which hosts the largest number of refugees in the world relative to its size, and Jordan, which hosts the second largest refugee population in proportion to its national population.

Since 2017, the current Administration's policies targeting refugees from Muslim-majority countries have decimated refugee resettlement from Jordan and Lebanon. Starting with the Muslim ban, followed by successive refugee bans, cuts to refugee admissions, and extreme vetting, resettlement from both Jordan and Lebanon to the US has plummeted. Resettlement levels are likely to decrease further, as the Trump administration is reportedly considering setting the refugee admissions level at zero. The refugee admissions goal, set through presidential determination at the start of every fiscal year, is supposed to be just that: a goal that the Administration and relevant agencies work to achieve throughout the year. Sadly, the President has lowered the goal every chance he has had and has endeavored to stop certain populations from accessing the program altogether.

Syrian refugee resettlement to the US from Jordan and Lebanon has plummeted 94 percent in just over three years because of US policies targeting refugees from Muslim-majority countries. Ninety-nine percent of refugees in Lebanon are Syrian, while 87 percent of refugees in Jordan are. As we approach the end of the fiscal year, only 556 Syrian refugees had arrived in the US this calendar year<sup>1</sup>. In contrast, in Fiscal Year 2017, 6,557 Syrian refugees were resettled to the US. We ask this Committee, with Syrian refugees still representing the population the U.N. High Commissioner for Refugees (UNHCR) has determined have the highest global resettlement needs for the fourth year in row, is this really the best we can do?<sup>2</sup>

Not only Syrians are impacted – refugees of Iraqi, Sudanese, and other nationalities from Muslim-majority countries have precipitously dropped in resettlement rates to the US due to the Muslim ban and the successive refugee bans and other policies hindering resettlement to the

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<sup>1</sup> Data extracted from the Worldwide Refugee Admissions Processing System (WRAPS)

<sup>2</sup> <https://www.unhcr.org/5d1384047.pdf>

US. Further, despite being known as the Muslim ban, these policies affect people from all faiths. The experience of one family Amnesty International met while in Lebanon illustrates just how cruel these policies can be in practice.

### **A Family's Life on Hold**

Fearing for their lives on account of their Christian faith, Malik<sup>3</sup>, 65, fled Baghdad, Iraq, to Beirut, Lebanon, with his wife and two sons in 2013. Three years later, they were accepted for resettlement to the United States. As proof of his place in the resettlement process, Malik proudly showed Amnesty International his cultural orientation certificate, which indicated that he and his family had participated in a multi-day training to prepare them for their new life in the United States.

Malik and his family were in the final steps of the resettlement process as packed their bags in anticipation of flying to their new home in the US. They were ready to join family and friends here in the US and have a fresh start at life, in safety and in peace. Then the Muslim ban was signed in January 2017. Following a single signature from President Trump, the future of Malik and his family turned from set to uncertain, precarious, and deeply disheartening.

Over two-and-a-half years later, they are still stuck. Malik does not know when, if ever, his case will be resolved. He is told only that his case is on hold for “security checks,” a confusing explanation as his case had previously been approved. Day after day, week after week, Malik receives the same explanation for why their case is delayed, with no further details offered.

This limbo in which he and his family have been placed by the U.S. government is taking a psychological toll. Malik told Amnesty International: “We are suffering. We are suffering a lot. Quite frankly, we used to have a problem every day in the house, especially my wife. The kids would say, ‘What can we do, mother?’ It’s out of our control. It’s something that’s out of our control . . . I used to comfort her too . . . But every day she would say, ‘Why us? What did we do? We are good people. We love people. We don’t hurt anyone. We’ve never, in our lives, hurt any person.’”

Like most refugees in Lebanon, Malik and his family do not have residency permits, putting them at risk for arrest, detention, and even deportation, even though they are registered with the U.N Refugee Agency and are awaiting resettlement to the US. Malik had greeted Amnesty International with, “I welcome you, but I wish I would’ve met with an organization like yours two years ago or with [other] people who defend our rights. We don’t know who to go to, that’s why I want to thank you, because I’ve already completed my paperwork and I’m only waiting for a visa.”

When asked what he would say if he could speak with President Trump, Malik said, “We are refugees. We’re human refugees. We’re refugees because there are difficult situations that made us flee . . . Please, so that we’re able to live. We want to live; we want to live in peace.”

And now Malik and his family have endured yet another unfathomable cruelty: told earlier this summer they would fly to the US on September 12, 2019 and be resettled in Michigan, near

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<sup>3</sup> Name changed to protect identity.

family long-living there, they are stuck again. At the end of August, just mere weeks before they were to leave, they were told their file was “on hold.” Again. They don’t know why, except again being told there were in “security checks.” They’d sold their furniture, to be picked up when they left Lebanon in September and had to go to the woman who bought it and tell her that they would need their furniture after all. They are beyond despair.

Malik and his family are part of the 1.4 million refugees around the world in need of resettlement this year, according to UNHCR. Despite that need, the world will likely not even be able to meet a small fraction of that need. The President’s Muslim ban signed his first week in office was the first step in a long road of policies that have resulted in the near-decimation of a program once capable of resettling nearly 100,000 refugees per year.

The catastrophic reach of the Muslim ban continues. Consistently, refugees’ interview by Amnesty International expressed disbelief that the US could not resettle them as promised, and bewilderment and even pain at the US’s abrupt change toward supporting and welcoming refugees. Amnesty International has met with refugees who, two-and-half years later, are still in the resettlement pipeline to the US. They continue to await an answer on their cases, and for those on the cusp of being resettled in early 2017, are still waiting for the USA to make good on its promise to resettle them to their new homes. They carry with them forever the knowledge, in their words, they were “banned.”

People working directly with refugees described how the current US administration’s policies have distorted a once well-functioning refugee protection program, rendering it a shadow of itself. US policies have shifted the resettlement landscape, doubly impacting some of the most vulnerable refugees and creating other harm in untold ways. These abrupt policy shifts have produced incredible stress for people working to support and assist refugees, let alone refugee men, women, and children already in difficult situations.

### **The Right to Request Asylum is at Risk**

While the focus of this statement is on the impact the Muslim ban has had on refugees seeking resettlement, it is important to strongly note that the right to request asylum in the US is deeply at risk here in the US. The Administration’s proposed asylum bans, in particular the Interim Final Rule Regarding Asylum Eligibility (EOIR Docket ID No. 19-0504)<sup>4</sup>, violate the principle of non-refoulement – the requirement that states must not return an individual to any place where they would face serious harm – because it categorically bans nearly all asylum-seekers from all countries who apply for protection at the U.S. southern land border and denies them access to an asylum procedure. The text accompanying the rule explains that “with limited exceptions, an alien who enters or arrives in the United States across the southern land border is ineligible for the discretionary benefit of asylum unless he or she applied for and received a final judgment denying protection in at least one third country through which he or she transited en route to the United States.” In practice, this means that any asylum-seeker who has transited through any other country on their way here – i.e., all asylum seekers from countries other than Mexico – would be categorically barred from applying for asylum in the United States. The rule further clarifies that the bar is to be applied during the initial credible fear interview, meaning that the

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<sup>4</sup> See Amnesty International USA’s full comment on this rule here, <https://www.amnestyusa.org/wp-content/uploads/2019/08/08.05.2019-Amnesty-International-Comment-Opposing-Asylum-IFR-1.pdf>

vast majority of asylum-seekers will be barred from asylum under this rule before a judge ever hears their claims.

The United States is obligated to comply with the principle of non-refoulement, which requires that asylum-seekers receive an individualized determination regarding their fear of return to any country to which the United States seeks to transfer them. Categorical bans such as this one run counter to this obligation because they cut off access to protection for broad swaths of asylum-seekers without providing for such an individualized determination. Indeed, the UNHCR, which is responsible for interpreting states' obligations under the international refugee protection framework, sharply criticized the interim final rule for "excessively curtail[ing] the right to apply for asylum" and "jeopardizing the right to protection from refoulement."<sup>5</sup>

Furthermore, if a state seeks to deny asylum on the basis that the asylum-seeker can avail themselves of protection elsewhere, the burden of proof must lie with the state to demonstrate the alternative is safe.<sup>6</sup> For example, the "firm resettlement" bar under U.S. law, which renders applicants ineligible for asylum if they received an offer of permanent status or residence in a third country, requires the Department of Homeland Security to make a showing that the applicant received such an offer. Yet the interim final rule places the burden to establish the lack of availability of asylum protection in a third country with the asylum applicant, and curtails asylum for applicants unless they prove they applied for asylum and received a final, negative decision in their cases. Such a showing, in the words of UNHCR, "significantly raises the burden of proof on asylum seekers beyond the international legal standard."<sup>7</sup>

Finally, withholding of removal and relief under the Convention against Torture, which the rule clarifies will still be available for those subject to this new asylum bar, are not adequate substitutes for asylum. For one, withholding of removal requires asylum-seekers to meet a more stringent standard of proof to establish their eligibility for this relief.<sup>8</sup> Furthermore, unlike a grant of asylum, receiving withholding of removal protects from deportation but offers little else: no pathway to lawful permanent residence in the United States, significant barriers to education and work, and insurmountable barriers to family unity.<sup>9</sup> In sum, it fails to provide the panoply of rights to which refugees are entitled under domestic and international law.

## **Recommendations and Conclusion**

The US government is abandoning its duty to share responsibility for refugee protection. A fundamental principle of refugee protection is responsibility-sharing and international cooperation. These are required to reduce the impact of large-scale refugee populations on host countries, and each state should contribute to the maximum of its capacity. Instead of upholding its responsibilities, the US is abdicating responsibility for refugee protection. It is repeatedly and drastically cutting the number of refugees considered for resettlement to the US. Resettlement is

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<sup>5</sup> "UNHCR Deeply Concerned About New Asylum Restrictions," UNHCR, July 15, 2019, <https://www.unhcr.org/enus/news/press/2019/7/5d2cdf114/unhcr-deeply-concerned-new-asylum-restrictions.html>.

<sup>6</sup> "Amnesty International Public Statement: Halt the 'Remain in Mexico' Plan," April 15, 2019, <https://www.amnesty.org/download/Documents/AMR5101722019ENGLISH.PDF>.

<sup>7</sup> See *supra* note 3.

<sup>8</sup> *INS v. Stevic*, 476 U.S. 407 (1984).

<sup>9</sup> See INA 241(b)(3); 8 CFR. §§ 208.16-208.18.

a key component of responsibility-sharing and allows States to support each other by agreeing to settle refugees from host countries.

It is also imposing discriminatory and restrictive policies that undercut refugee admissions. Nondiscrimination is a core provision in all international human rights instruments. Executive orders and policies intended to discriminate against Muslims, and that have the effect of disadvantaging Muslims, are unjustifiable under international human rights law.

Amnesty International calls on the US to:

- Reaffirm its commitment to sharing responsibility for refugee protection by admitting more refugees, abandoning policies that undermine resettlement, and adhering to the principle of nondiscrimination in refugee protection.

Additionally, Amnesty International calls on Congress to:

- Push the Administration to commit to resettling 95,000 refugees in the Presidential Determination for FY 2020 and reverse policies that hinder resettlement to the US.
- Ensure processing of resettlement cases is timely and ensure that all refugees are considered fairly and fully and without discrimination for resettlement to the US.
- Pass the No Ban Act, amending it to outlaw the third-country transit ban on asylum (the asylum interim final rule).
- Congress should pass the Guaranteed Refugee Admission Ceiling Enhancement Act, otherwise known as the GRACE Act (H.R. 2146/S. 1088).
- Continue to conduct robust oversight of border and asylum policies motivated by xenophobia and religious animus.

The US government has the power to change the lives of the refugees with whom Amnesty International met, and the many more whose story goes untold. Amnesty International urges the US government to reaffirm its commitment to resettling the world's most vulnerable refugees without discrimination.

Sincerely,

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