

**KARAMAH: MUSLIM WOMEN LAWYERS FOR HUMAN RIGHTS**  
**WHITE PAPER ON PRESIDENT DONALD TRUMP’S EXECUTIVE ORDERS ON**  
**TRAVEL TO THE UNITED STATES**

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## I. Introduction

KARAMAH: Muslim Women Lawyers for Human Rights (“KARAMAH”) is a research-based educational organization. We strive to advance justice, gender equity, civil rights, and religious freedom within our Muslim community, in our society, and globally.

In this White Paper, KARAMAH explains its reasons for concluding that the recent Executive Orders promulgated by President Trump violate the United States Constitution, harm national security, particularly harm women and children, risk compromising the civil rights of American Muslims, and advance a discriminatory view of Islam in America.

## II. Background and the Original Executive Order

On January 27, 2017, President Trump issued Executive Order 13769, which “suspended for 90 days the entry of certain aliens from seven countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.” In compliance with the Executive Order, the State Department revoked over 60,000 previously issued visas and the Department of Homeland Security began to enforce the order at airports and borders. This also included banning Green Card holders—an unprecedented move. Four days after the Executive Order was issued, the State of Washington and the State of Minnesota both sued President Trump and sought an emergency restraining order—citing the ban as unconstitutional because it discriminates based on religion and nationality.<sup>1</sup> District Court Judge James Robart granted the restraining order on February 3, suspending the President’s Executive Order.<sup>2</sup> In compliance with the Federal District Court, the State Department then reversed<sup>3</sup> its revocation of visas and the Department of Homeland Security suspended<sup>4</sup> its implementation. In response, the Justice Department filed an appeal to Judge Robart’s order.<sup>5</sup> The Ninth Circuit Court of Appeals unanimously denied the appeal but permitted additional argument through the submission of subsequent briefs.<sup>6</sup> The President then tweeted “SEE YOU IN COURT,”<sup>7</sup> to his 25 million Twitter followers, after which he conceded to the Ninth Circuit’s ruling and did not further pursue the matter in court.

Throughout this process, however, this unconstitutional Executive Order impacted thousands of Americans and undocumented immigrants to America—leading to increased abuse of women and children in particular. On January 28th, 2017, a Somali woman and her

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<sup>1</sup> <http://stmedia.startribune.com/documents/11ori020217.pdf>

<sup>2</sup> <https://drive.google.com/viewerng/viewer?url=https://assets.documentcloud.org/documents/3446169/Robart-Order-20170203.pdf>

<sup>3</sup> <https://travel.state.gov/content/visas/en/news/executive-order-on-protecting-the-nation-from-terrorist-attacks-by-foreign-nationals.html>

<sup>4</sup> <https://www.dhs.gov/news/2017/02/04/dhs-statement-compliance-recent-court-order>

<sup>5</sup> <http://cdn.ca9.uscourts.gov/datastore/general/2017/02/04/17-35105%20motion.pdf>

<sup>6</sup> <http://cdn.ca9.uscourts.gov/datastore/general/2017/02/05/17-35105.pdf>

<sup>7</sup> <http://thehill.com/blogs/in-the-know/in-the-know/318859-social-media-users-parody-trumps-see-you-in-court-tweet>

two children were detained for twenty hours at Dulles, without food.<sup>8</sup> The three arrived at Dulles International Airport on a flight from Kenya, hours after President Trump signed the Executive Order. Although the children have American passports, the family was detained because the mother was a Somali immigrant. Immigration officers informed her that her visa was canceled and pressured her to sign deportation papers that would allow the children to be sent back to Kenya with her. Officers also told her that she would be barred from reentry into the U.S. if she did not sign. The woman refused to sign without the presence of her husband, a Minnesota resident. She was placed in handcuffs, even while using the restroom. The family was eventually reunited with the father after a New York Federal Judge granted an emergency stay to block immigration officers from the deportation of individuals with valid visas.

Meanwhile, a 5-year-old boy was detained and placed in handcuffs for five hours at Dulles International Airport because immigration officers deemed him a ‘security threat’ to the United States.<sup>9</sup> The boy was in fact a U.S. citizen from Maryland, traveling home from one of the seven countries listed on President Trump’s original Executive Order. These, and other similar instances, speak to the frightening actions taken by Customs and Border Patrol (“CBP”) that denied basic human rights, compelling respected public officials to draw comparisons of the travel ban to policies adopted by Nazi Germany.<sup>10</sup> More than just anecdotes, the State Department reports that over 60,000 valid visa holders were wrongly denied, detained, or deterred due to the President’s Executive Order on travel.<sup>11</sup>

Indeed, the most heavily scrutinized demographic of immigrants to the U.S. is the refugee.<sup>12</sup> A thorough two-year-long process spanning twenty steps of checks and balances precedes their arrival in America. It must be noted that this process has worked without fail for decades, as no refugee has ever committed an act of terrorism in the United States. Despite this, refugees face intense vilification for the acts of the very extremists they are trying to escape.<sup>13</sup> This reality prompted UN High Commissioner for Refugees Rudd Lubbers to caution, “All too often states fail to live up to their pledges to protect people fleeing persecution. The reality is that there is far too much anti-foreigner sentiment. In many countries, refugees and asylum seekers are vilified by both politicians and the media almost as a matter of routine.”<sup>14</sup>

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<sup>8</sup> Woman And Her 2 Children Held At Dulles Airport for 20 Hours With No Food by Rachel Vorona Cote *available at* <http://jezebel.com/woman-and-her-2-children-held-at-dulles-airport-for-20-1791762183>

<sup>9</sup> Boy, 5, handcuffed at US border for being a ‘security threat’ to USA by Georgia Diebelius *available at* <http://metro.co.uk/2017/01/31/boy-5-handcuffed-at-us-border-for-being-security-threat-to-usa-6417601/>

<sup>10</sup> Rosenberg links Trump travel ban to Nazi Germany by Andy Metzger *available at* [http://www.lowellsun.com/breakingnews/ci\\_30761486/rosenberg-links-trump-travel-ban-nazi-germany](http://www.lowellsun.com/breakingnews/ci_30761486/rosenberg-links-trump-travel-ban-nazi-germany)

<sup>11</sup> President Trump says 109 people were affected by the Executive Order. It’s at least 60,000 by Linda Qiu *available at* <http://www.politifact.com/truth-o-meter/statements/2017/feb/06/donald-trump/president-trump-says-109-people-were-affected-trav/> (Last Visited March 9, 2017).

<sup>12</sup> Refugees entering the United States already face a rigorous vetting process *available at* <https://www.nytimes.com/interactive/2017/01/29/us/refugee-vetting-process.html>

<sup>13</sup> Replace vilification with refugee protection, says Lubbers *available at* <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&skip=594&docid=3f7d9ac57&query=persecution>

<sup>14</sup> Id.

### III. The Revised Executive Order

After the Ninth Circuit Court of Appeals affirmed the stay on the original Executive Order, the President chose not to pursue further litigation. Instead, on March 6, 2017, the President issued the revised Executive Order Protecting the Nation from Foreign Terrorist Entry Into the United States, repealing Executive Order 13769.<sup>15</sup> The revised Executive Order was scheduled to go into effect on March 16, 2017. As with the original Executive Order, KARAMAH is deeply concerned with this revised Executive Order (henceforth referred to as the original and revised bans). While this revised ban attempts to rectify several constitutional errors of the original ban—such as the illegal suspension of validly issued visas and the travel restriction on valid Green Card holders—it continues, however, to infringe on the religious freedom of Muslims by unfairly, discriminatorily, and exclusively targeting Muslim-majority nations. On March 8, 2017, the State of Hawaii filed a lawsuit challenging the President's revised Executive Order.<sup>16</sup> On March 15, 2017 U.S. District Courts in Hawaii and Maryland issued temporary restraining orders to block the revised ban from going into effect on March 16 as scheduled.<sup>17</sup>

As was the case with the original ban on seven Muslim-majority nations, none of the now six Muslim majority nations<sup>18</sup> on the revised ban have ever produced an individual who had committed an act of terrorism in the U.S. The fact remains that refugees are the most heavily vetted groups of people entering the country.<sup>19</sup> If the premise of the revised ban is to protect the nation from foreign terrorist activity, it is logical that there would be substantiation provided for why these six countries have now been targeted. The revised order does not provide such information. Likewise, while the ban references 300 alleged criminals who have entered the United States, it does not provide any actual evidence regarding them. One of the primary examples cited in the ban is that of two Iraqi refugees who were convicted of terrorism. Yet, in this revised ban, Iraq is left off the list. This inconsistency illustrates the massive disconnect between what the ban claims, namely to protect Americans, versus the reality that the ban disproportionately targets and significantly harms women and children from Muslim countries. With this context KARAMAH presents its case to extend the temporary restraining order on the revised travel ban into a permanent repeal.

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<sup>15</sup> <https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states>

<sup>16</sup> Hawaii files first legal challenge to President's new travel ban *available at* <http://fortune.com/2017/03/09/hawaii-first-legal-challenge-trump-new-travel-ban/>

<sup>17</sup> Travel Ban Rulings Highlight Trouble Posed by Trump's Record by Gene Johnson and Sudhin Thanawala *available at* [http://hosted.ap.org/dynamic/stories/U/US\\_TRUMP\\_TRAVEL\\_BAN\\_LAWSUITS\\_TXOL-?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT](http://hosted.ap.org/dynamic/stories/U/US_TRUMP_TRAVEL_BAN_LAWSUITS_TXOL-?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT)

<sup>18</sup> The new executive order excluded Iraq for national security considerations relating to the presence of American forces in that country.

<sup>19</sup> This is how the Syrian refugee screening process works by Alex Altman *available at* <http://time.com/4116619/syrian-refugees-screening-process/>

#### IV. The Revised Executive Order Disproportionately Targets and Harms Women and Children

Remarkably, the revised ban claims to provide additional support to combat Gender Based Violence (“GBV”). In reality, it places the lives of countless already marginalized women and children at risk. The marginalization of women and children is unfortunately underreported. It is no mystery that crises, in various forms, disparately impact women and children. Whether it is because they are victims of GBV, suffer from economic disparities, or struggle with access to justice, women and children always suffer a greater negative impact than men when there are crises. Women and children are perceived as easy targets, and accordingly, they are more vulnerable to mental abuse, sexual abuse and other forms of physical abuse, and human trafficking. The sex trafficking of women and children is the world’s fastest-growing criminal enterprise. A shocking 98% of the world’s nearly 21 million<sup>20</sup> human trafficking victims are women and girls.<sup>21</sup> Children alone make up over 2 million trafficking victims.<sup>22</sup> Women are more susceptible to trafficking when they lack access to resources such as land, property, housing, and inheritance.<sup>23</sup>

Therefore, it is no surprise that the revised ban disproportionately targets women and children—who comprise over 70% of refugees. In banning women and children, the President’s revised ban further exacerbates the danger to which refugee women are already exposed. While the revised ban claims to combat GBV, its actual effect ensures the opposite. Under Section 11(iii) of the revised ban, the government intends to collect targeted data on foreign nationals who commit GBV. While KARAMAH invites additional resources to combat GBV, it strongly objects to the vilification of refugee and immigrant minorities. It is irresponsible and discriminatory to ignore the epidemic rates of all types of GBV in the United States and focus only on immigrants and refugees. GBV is not specific to any one community, culture, or religion. The discourse that GBV in these particular immigrant and refugee communities must be examined promulgates the problematic, discriminatory, and false narrative that GBV is a “Muslim” problem.

The relevant provision of the revised ban states that the Secretary of Homeland Security will gather data on the number and type of GBV, including so called “honor killings.” The term “honor killing” has been unfairly associated with Islam and Muslims. In Islamic law, there is no concept of “honor killing.”<sup>24</sup> This and other types of killing are explicitly designated as crimes in Islam, as well as in all Muslim-majority countries. Furthermore, this patriarchal cultural practice

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<sup>20</sup> Equality Now: Sex Trafficking Facts *available at* <http://www.equalitynow.org/traffickingFAQ>

<sup>21</sup> International Labour Organization, *Minimum Estimate of Forced Labour in the World*(April 2005) p. 6.

<sup>22</sup> UNICEF, *Children Out of Sight, Out of Mind, Out of Reach; Abused and Neglected, Millions of Children Have Become Virtually Invisible* (Dec. 2005)

<sup>23</sup> Centre on Housing Rights & Evictions, *Women and Housing Rights* (April 2008) p. 52

<sup>24</sup> Trump’s ‘Honor Killing’ Tracking System Could Exacerbate Domestic Violence, by Emma Green, *available at* <https://www.theatlantic.com/politics/archive/2017/03/honor-killings-trump/518766/>

exists in non-Muslim countries as well.<sup>25</sup> In France and other European countries, it is often referred to as a “crime of passion.” The revised ban’s focus on migrants from Muslim-majority countries, reasserts this false association, and we strongly reject it as a matter of fact, justice, and principle. However, the revised ban’s insistence to find some specialized connection between Muslims and GBV where no such connection exists further demonstrates that the conclusions of the revised ban are based in opinions and alternative facts—not in reality.

## V. The Data Does Not Support The Executive Order’s Claim of National Security

America’s security is paramount—no one disputes this fact. It is paramount that America leads by example and not by fear. The data simply does not support the revised ban’s claim of protecting national security. For example, the six banned nations notwithstanding, no fatal attacks have ever occurred on U.S. soil as a result of refugees—man, woman, or child.<sup>26</sup> None of the terrorist attacks that President Trump cited as examples to support the revised ban were executed by individuals that hail from the six banned nations.

Furthermore, an analysis of immigrant terrorism risks shows that no refugee accepted into the U.S., Syrian or otherwise, has been involved in any attack of terrorism since the Refugee Act of 1980 (the “Refugee Act”). The Refugee Act created the current rigorous refugee-screening procedures.<sup>27</sup> One possible counterexample is that of the Somali refugee from Pakistan. He carried out a knife attack at Ohio State University in November 2016. The attack resulted in eleven people injured and no fatalities. However, in this case, authorities found “no indication” that the attacker was linked to any terror group” and concluded that the evidence pointed to a lone wolf attack.<sup>28</sup> In fact, a February 2017 Department of Homeland Security report stated that,

Analysts at the Homeland Security Department's intelligence arm found insufficient evidence that citizens of seven Muslim-majority countries included in President Donald Trump’s travel ban pose a terror threat to the United States. A draft document obtained by The Associated Press concludes that citizenship is an “unlikely indicator” of terrorism threats to the United States and that few people from the countries Trump listed in his travel ban have carried out attacks or been involved in terrorism-related activities in the U.S. since Syria's civil war started in 2011.”<sup>29</sup>

Before the Refugee Act, only twenty out of 162,625 refugees admitted between 1975-2015 were terrorists. Only three of the twenty were successful in their attacks. Those three were not Muslim

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<sup>25</sup> European Union Policy Paper on gender based violence *available at* [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2007/385527/EXPO-JOIN\\_ET\(2007\)385527\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2007/385527/EXPO-JOIN_ET(2007)385527_EN.pdf)

<sup>26</sup> <http://www.cnn.com/2017/01/29/us/refugee-terrorism-trnd/>.

<sup>27</sup> <https://www.cato.org/publications/policy-analysis/terrorism-immigration-risk-analysis>.

<sup>28</sup> <http://www.cnn.com/2016/11/29/us/ohio-state-university-attack/>.

<sup>29</sup> DHS Intelligence report disputes threat posed by 7 banned nations, by Vivian Salama and Alicia A. Caldwell, *available at* <http://www.chicagotribune.com/news/nationworld/ct-dhs-report-travel-ban-nations-20170224-story.html>

nor from the banned nations.<sup>30</sup> Many refugees arrested post 9/11 for “terrorism-related charges” were implicated in overseas situations.<sup>31</sup> Furthermore, exactly four asylum seekers were, in fact, terrorists.<sup>32</sup> Unlike refugees, asylees must apply in person at the border and are often detained before being granted asylum.<sup>33</sup> From 1975 to 2016, 0.00006% of 700,522 asylees carried out two attacks in which four people died. This includes the 2013 Boston Marathon bombing where the Tsarnaev brothers, who entered the U.S. as children, killed three people. The second attack was the 1993 World Trade Center bombing. This attack was planned by six people including one asylee, Ramzi Yousef. Yousef was held responsible for one of the six deaths caused by the attack.

Tourists on the B Visa are granted entry to the U.S. for business, pleasure, or recreational courses of study.<sup>34</sup> Terrorists holding tourist visas are responsible for 93.7% of all deaths caused by terrorism. Still, none of these culprits are from the six nations listed in the revised ban. From 1981-2015, thirty-four persons holding a tourist visa turned out to be terrorists. Eighteen of them were responsible for the 9/11 attacks. This is an average of 0.97 terrorists who entered on a tourist visa annually. 9/11 notwithstanding, there have been eight deaths caused by terrorists holding tourist visas. Lastly, fifteen of the nineteen terrorists responsible for 9/11 were from Saudi Arabia, two from the UAE, and one each from Egypt and Lebanon.<sup>35</sup> None of these four countries are named in the revised ban. As the Cato Institute study demonstrates, the chances of being killed in a terrorist attack by a refugee is statistically insignificant — 1 in 3.6 billion.<sup>36</sup> A recent PBS Newshour report likewise concluded that:

Indeed, no fatalities in the U.S. have been caused by extremists with family backgrounds in the six banned countries or Iraq, according to the Triangle Center,<sup>37</sup> as well as Fordham’s Center on National Security, New America Foundation’s international security program,<sup>38</sup> and the Program on Extremism<sup>39</sup> at the George Washington University Center For Cyber & Homeland Security.<sup>40</sup>

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<sup>30</sup> These three terrorists were Cubans who committed their attacks in the 1970s. Their attack resulted in the deaths of 3 people, including a Chilean dissident and his American aide, and a Cuban exile leader who favored a stronger relationship between Fidel Castro and the United States.

<sup>31</sup> U.S. Government Accountability Office, “Combating Terrorism: Foreign Terrorist Organization Designation Process and U.S. Agency Enforcement Actions,” GAO-15-629 (Washington: GAO, June 2015).  
<http://www.gao.gov/assets/680/671028.pdf>.

<sup>32</sup> <https://www.cato.org/publications/policy-analysis/terrorism-immigration-risk-analysis>.

<sup>33</sup> U.S. Citizenship and Immigration Services, “The United States Refugee Admissions Program (USRAP) Consultation & Worldwide Processing Priorities” (Washington: DHS).  
<https://www.uscis.gov/humanitarian/refugees-asylum/refugees/united-states-refugee-admissions-program-usrap-consultation-worldwide-processing-priorities>.

<sup>34</sup> Bureau of Consular Affairs, “Visitor Visa” (Washington: U.S. Department of State).  
<https://travel.state.gov/content/visas/en/visit/visitor.html>.

<sup>35</sup> <https://9-11commission.gov/report/911Report.pdf>.

<sup>36</sup> <https://www.cato.org/publications/policy-analysis/terrorism-immigration-risk-analysis>

<sup>37</sup> <https://sites.duke.edu/tcths/>

<sup>38</sup> <https://www.newamerica.org/in-depth/terrorism-in-america/who-are-terrorists/>

<sup>39</sup> <https://cchs.gwu.edu>

<sup>40</sup> <http://www.pbs.org/newshour/updates/convicted-terrorists-citizens/#.WMAupRqnGTs.twitter>

Just as significant, the data demonstrates that the greatest terrorism threat to America comes from U.S. citizens and not from foreign nationals or immigrants. Karen Greenberg, Executive Director of the Center on National Security reports:

If you are looking to create a fact-based policy for making the country secure against terrorism, focusing on immigrants will not provide the answer. There is no predictive trend for any particular foreign nationality and terrorism in the United States. But the numbers do suggest that the United States could and should do a better job helping immigrant families adjust to life in the United States.”<sup>41</sup>

Yet, President Trump claimed in his February 28, 2017 address to Congress that, “According to data provided by the Department of Justice, the vast majority of individuals convicted of terrorism and terrorism-related offenses since 9/11 came here from outside of our country.”<sup>42</sup> In fact, this data did not come from the Department of Justice. Rather, it was from a “congressional subcommittee chaired by then-senator Sessions.”<sup>43</sup> This misattribution notwithstanding, the data does not support the President’s claim. Politifact rated his claim “Mostly False.”<sup>44</sup>

In fact, the data proves the exact opposite of President Trump’s argument. It appears that the revised ban does not include those nations that have produced individuals who have attacked the United States and killed Americans, yet it has banned refugees from nations who have never produced a single terrorist. The President’s argument is likewise invalid even when accounting for those terrorists who have been successful in carrying out an attack on American soil. The threat from such individuals is so insignificant that, as the aforementioned Cato Institute study shows, Americans have a better chance of winning the lottery, getting struck by lightning, or dying in a freak furniture accident. The revised ban altogether ignores these facts and ignores the research-based findings of the Department of Homeland Security. Complicating the discussion is the false notion that non-citizens and undocumented immigrants do not have constitutional protections. On the contrary, they do, and by denying them such rights this revised ban once again runs afoul of the Constitution.

## VI. The Constitution Affords Rights to Non-Citizens and to Undocumented Immigrants

Some proponents of President Trump’s original and revised bans believe Constitutional protections do not apply to non-citizens or to undocumented immigrants. This is false. As David Cole wrote for Georgetown Law in 2003:

[T]he Supreme Court has squarely stated that neither the First Amendment nor the Fifth Amendment “acknowledges any distinction between citizens and resident aliens.” For more

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<sup>41</sup> Id.

<sup>42</sup> Trump misleads in claim about terrorism convictions since 9/11 by Miriam Valverde *available at* <http://www.politifact.com/truth-o-meter/statements/2017/mar/02/donald-trump/trump-misleads-claim-about-terrorism-convictions-9/>

<sup>43</sup> Id.

<sup>44</sup> Id.



than a century, the Court has recognized that the Equal Protection Clause is “universal in [its] application, to all persons within the territorial jurisdiction, without regard to differences of ... nationality.” The Court has repeatedly stated that “the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”<sup>45</sup>

Professor Cole continues:

The Due Process Clause of the Fourteenth Amendment applies to non-citizens<sup>46</sup> and non-citizens have First and Fifth Amendment rights (but a more recent case says the non-citizen must have substantial connections to the United States).<sup>47</sup> A permanent legal resident is a “person” protected by the Fifth Amendment.<sup>48</sup>

Although the President has plenary powers to ban certain immigrants, those powers have limits. Accordingly, the Ninth Circuit strongly rebuked the President holding, “There is no precedent to support this [argument by the government], which runs contrary to the fundamental structure of our constitutional democracy.”<sup>49</sup> The President’s revised ban does not remedy this fatal flaw of the original ban because, among other issues, it continues to blanket ban individuals on the basis of their national origin and religion. As U.S. District Court Judge Derrick Watson wrote in his opinion granting the temporary restraining order on the revised ban,

The Government appropriately cautions that, in determining purpose, courts should not look into the “veiled psyche” and “secret motives” of government decision makers and may not undertake a “judicial psychoanalysis of a drafter’s heart of hearts.” ... The Government need not fear. The remarkable facts at issue here require no such impermissible inquiry. For instance, there is nothing “veiled” about this press release: “Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States.”<sup>50</sup>

This cost of ignorance to the law is devastating to women in dire need of refuge. If the President’s revised ban is designed to protect survivors of GBV, it is not logical that refugees who may be fleeing GBV are not allowed into the country and thus denied constitutional protections. Moreover, by arbitrarily limiting the number of refugees from 110,000 to 50,000 for fiscal year 2017, the revised ban effectively disallows the entry of any more refugees for the

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<sup>45</sup> Are Foreign Nationals Entitled to the Same Constitutional Rights as Citizens? By David Cole, Georgetown University Law Center *available at*

<http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1302&context=facpub>

<sup>46</sup> *Bridges v. California*, 314 U.S. 252, 280 (1941).

<sup>47</sup> *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990).

<sup>48</sup> [3] *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 116 (1976) (finding that a Civil Service Commission policy of only hiring citizens deprives aliens of their Fifth Amendment Due Process rights).

<sup>49</sup> Here are 7 key takeaways from the appeal court’s ruling on Trump’s immigration order, by Matt Zopotosky *available at* <http://www.chicagotribune.com/news/nationworld/politics/ct-trump-travel-ban-ruling-key-takeaways-20170209-story.html>

<sup>50</sup> Travel Ban Rulings Highlight Trouble Posed by Trump’s Record by Gene Johnson and Sudhin Thanawala *available at* [http://hosted.ap.org/dynamic/stories/U/US\\_TRUMP\\_TRAVEL\\_BAN\\_LAWSUITS\\_TXOL-?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT](http://hosted.ap.org/dynamic/stories/U/US_TRUMP_TRAVEL_BAN_LAWSUITS_TXOL-?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT)

remainder of the fiscal year yet has no relation to the stated goal of national security. Instead, it further jeopardizes the health and safety of women and children.

Extremist groups have indicated their approval of the travel ban. Indeed, Daesh has made their intent to recruit and abuse women to advance violence, oppression, and terrorism against all humanity clear.<sup>51</sup> For Daesh, every woman kidnapped and forced into slavery is another sadistic ‘opportunity’ to build the next generation of child fighters. Daesh has demonstrated that it has no hesitancy to use rape in its human trafficking campaign.

## VII. The Executive Order Does Not Harm Daesh, it Empowers Them

It is no coincidence that Daesh terrorists see the President’s original and revised Executive Order as a victory.<sup>52</sup> Meanwhile, according to the United Nations Assistance Mission for Iraq (UNAMI) and the Office of the United Nations High Commissioner for Human Rights (UNHCHR), civilians in Syria are suffering enormous abuses from Daesh attacks.<sup>53</sup> Children, pregnant women, persons with disabilities, and elderly people have been particularly vulnerable.<sup>54</sup> Attacks have directly targeted civilians and civilian infrastructure and have included abductions, rape, and other forms of sexual and physical violence perpetrated against women and children.<sup>55</sup> Daesh is forcibly recruiting children and victimizing Yazidi women into forced conversions, forced marriages, and sexual slavery.<sup>56</sup>

In January and February 2015, Human Rights Watch interviewed twenty women who had escaped from Daesh control.<sup>57</sup> Daesh soldiers had forced almost all of them into marriage, sold them, or given them to others as “gifts.” Daesh raped half of them including two twelve-year old girls. Some of them were raped many times. A local doctor reported to Human Rights Watch that she examined 105 women and girls who escaped Daesh captivity and saw that 70 of them had been raped. All of these women show signs of emotional distress and several had attempted suicide. Not only have women been forced into marriage or sold off as slaves, but in the territories under Daesh control, “women have been found naked, tied to trees, appearing to have been repeatedly raped by ISIS fighters, and even executed as a result of speaking out against ISIS.”<sup>58</sup> According to the United Nations Commission of Inquiry on the Syrian Arab Republic,

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<sup>51</sup> How ISIS is recruiting women from around the world by Aryn Baker *available at* <http://time.com/3276567/how-isis-is-recruiting-women-from-around-the-world/>

<sup>52</sup> Trump ‘Muslim ban’ good news for Daesh recruiters, experts claim, *available at* <http://www.arabnews.com/node/1008956/middle-east>

<sup>53</sup> Report on the Protection of Civilians in Armed Conflict in Iraq:6 July – 10 September 2014

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 14-16

<sup>57</sup> <https://www.hrw.org/news/2015/04/14/iraq-isis-escapees-describe-systematic-rape>

<sup>58</sup> INCLUSION TO EXCLUSION: WOMEN IN SYRIA *available at* <http://law.emory.edu/eilr/content/volume-30/issue-2/articles/inclusion-exclusion-women-syria.html>

these attacks on women and girls in Syria are violations of international humanitarian law and are war crimes of sexual slavery and forced pregnancy.<sup>59</sup>

Once women are recruited or forced into marriage, they play many crucial roles to help maintain Daesh control. As wives for Daesh soldiers, they advance Daesh's global reach through online recruiting, maintain order within its network of women, and give birth to the next generation of Daesh victims.<sup>60</sup> Daesh has been indoctrinating and victimizing children with misinformation and propaganda aimed at fostering a new generation of recruits.<sup>61</sup>

The children who are born to Daesh soldiers are stateless and therefore unable to enroll in schools in Iraq. They are then more susceptible to Daesh recruitment. In May 2016, there were about 300 children who could not enroll in Iraqi schools. This is especially complicated for children whose mothers are from countries with laws that do not allow transmission of a mother's nationality to her children. These children will take the citizenship of their fathers even though these fathers are likely to "end up dead, detained, or in hiding." OHCHR found that these children are facing discrimination and frustration. These feelings make them especially vulnerable for radicalization in the future.<sup>62</sup>

The President's revised ban forces women and children to return to this horrific reality. This empowers Daesh with more victims, more sex slaves, and more opportunities to radicalize and harm youth, and harm the world. Accordingly, the revised ban succeeds in increasing GBV while simultaneously harming America's national security.

## VIII. The Executive Order Signals at Civil Rights Violations of American Muslims

KARAMAH is increasingly concerned about data gathering, profiling, and surveillance of American Muslim communities. It is well known that anti-Muslim sentiment, distrust of law enforcement and fear of discrimination are barriers for survivors and chills reporting of GBV. Yet, this is precisely what Section 11(iii) of the revised ban mandates. As already demonstrated in recent American history, surveillance does not work to prevent extremism and violence.

For example, from 2002 to 2015 the failed NSEERS program registered 138,000 Muslim men—all without capturing a single terrorist.<sup>63</sup> From 2002 to 2008 the NYPD conducted a six-year illegal surveillance on American Muslims—all without a single lead that led to capturing a

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<sup>59</sup> Rule of Terror: Living under ISIS in Syria *available at* [http://www.ohchr.org/\\_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/HRCouncil/CoISyria/HRC\\_CRP\\_ISIS\\_14Nov2014.doc&action=default&DefaultItemOpen=1](http://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/HRCouncil/CoISyria/HRC_CRP_ISIS_14Nov2014.doc&action=default&DefaultItemOpen=1)

<sup>60</sup> The Hidden Face of Terrorism: An Analysis of the Women in Islamic State (Author analyzed 72 profiles of individual women in ISIS) graphs on p. 91-92.

<sup>61</sup> Rule of Terror: Living under ISIS in Syria

<sup>62</sup> Children of the Caliphate, by Nadim Houry, *available at* <https://www.hrw.org/news/2016/11/23/children-caliphate>

<sup>63</sup> Before Trump, there was a Muslim registry. It caught no terrorists, by Hannah Allam *available at* <http://www.mcclatchydc.com/news/nation-world/national/article119755543.html>

terrorist.<sup>64</sup> In the meantime, both of these unconstitutional programs violated Fourth Amendment privacy protections and established precedent to continue to violate constitutional protections for American citizens.

This revised ban signals continued unconstitutional data gathering and surveillance. This is a poor strategy bound to fail, and it risks preventing abused women from coming forth. As the recent ICE raids of domestic violence survivors have already demonstrated, forcing women to choose between their physical safety and deportation is barbaric and immoral.<sup>65</sup> Such acts are mistakes of the past that should be left in the past. Unfortunately, it appears that with this revised ban, America is at risk of repeating the mistakes of history.

## IX. The Executive Order Repeats the Mistakes of History

The overwhelming evidence demonstrates that the President's revised ban is not based in facts, increases the risk of GBV, and in fact harms national security. Despite this evidence, many Americans still support the refugee ban. Unfortunately, this repeats the mistakes of history as the majority of Americans in 1939 supported the ban on Jewish refugees. About 48% of Americans support President Trump's revised ban blocking refugees and others from six Muslim-majority countries.<sup>66</sup> About 43% believe banning people from Muslim-majority countries is necessary to prevent terrorism, 42% believe the United States should close its borders to refugees of foreign conflicts, and 40% believe the United States should close its borders to refugees fleeing Daesh specifically.<sup>67</sup>

When European Jewish refugees were seeking to immigrate to the U.S. during World War II, *Fortune Magazine* polls showed that 67% of Americans did not want to give aid to refugees and 83% of Americans opposed the increase of immigration quotas.<sup>68</sup> This manifested in demonstrable harm to innocent refugees.

For example, in May 1939, a German transatlantic liner called the S.S. *St. Louis* carried 937 passengers—most of whom were Jews fleeing the Third Reich—from Germany to Cuba. Many of these passengers had applied for American visas. Cuba only admitted 28 of these passengers. Some of the remaining passengers called upon President Franklin D. Roosevelt to seek entry, but he never responded. President Roosevelt was reluctant to issue an Executive Order that would admit more Jewish refugees, because of his hopes for re-election. Congress failed to act as well. Ultimately forced to return to Europe, some 254 of those Jewish refugees died in the Holocaust.<sup>69</sup>

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<sup>64</sup> Factsheet: The NYPD Muslim Surveillance Program, by the ACLU available at <https://www.aclu.org/other/factsheet-nypd-muslim-surveillance-program>

<sup>65</sup> ICE details alleged victim of domestic violence at Texas courthouse, by Richard Gonzales available at <http://www.npr.org/sections/thetwo-way/2017/02/16/515685385/ice-detains-a-victim-of-domestic-abuse-at-texas-courthouse>

<sup>66</sup> <http://www.ipsos-na.com/download/pr.aspx?id=16379>

<sup>67</sup> Id.

<sup>68</sup> <http://dc.etsu.edu/cgi/viewcontent.cgi?article=1802&context=etd> (83% on pg. 23, 67% on pg. 25)

<sup>69</sup> Voyage of the S.S. *St. Louis* available <https://www.usmmm.org/wlc/en/article.php?ModuleId=10005267>

## X. Conclusion

Indeed, the most heavily scrutinized demographic of immigrants to the U.S. is the refugee. Rather than suspend a thorough two-year-long process that has worked without fail for decades, justice dictates we accept refugees and simultaneously continue to work to improve our process. The prescriptions of 90 or 120 days reflected in the Trump administration's revised ban are arbitrary time limits that have no advantageous effect on any credible threat against our country. The suspension of travel for refugees only allows for more time given to our enemies to recruit, train, and build animosity against Americans, and significantly harm already marginalized women and children. Rather than repeat the mistakes of World War II, it is incumbent upon America to courageously answer the call of refugees in general, and focus on the needs of women and children in particular.

KARAMAH also believes that this revised ban advances a discriminatory view of Islam in America. We must use our resources and knowledge to advance the just and gender equitable foundation of Islam and refute efforts to malign and distort Islam in the public square. KARAMAH, and similar organizations, are working to counter this ongoing campaign of propaganda with research, education, and outreach. No single organization can provide a remedy to the suffering of the countless women and children this revised ban adversely impacts. It is critical that we work collectively across religious and racial lines to serve the needs of women and children exposed to the aforementioned risks. It is critical that our national and international policies take into consideration the disparate impact this revised ban has on women and children.

KARAMAH believes that we must maintain our national security, but we must also do so while maintaining justice and our humanity. This revised ban does not protect America's interests, it does not protect national security, it does not protect women and children, and it does not align with the United States Constitution. Like its predecessor, it should be struck down as unconstitutional.