

# WINDOW DRESSING THE MUSLIM BAN:

*Reports of Waivers and Mass Denials From Yemeni-American Families Stuck in Limbo*





## **THE CENTER FOR CONSTITUTIONAL RIGHTS**

The Center for Constitutional Rights is dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a nonprofit legal and educational organization committed to the creative use of law as a positive force for social change.

## **THE RULE OF LAW CLINIC, YALE LAW SCHOOL**

The Yale Law School Rule of Law Clinic was launched in 2017 and focuses on maintaining U.S. rule of law and human rights commitments in four broad areas: national security, antidiscrimination, climate change, and democracy promotion. Projects include litigation, policy advocacy, and strategic planning matters.

© Center for Constitutional Rights and the Rule of Law Clinic, Yale Law School

For questions about this report, contact [dshamas@ccrjustice.org](mailto:dshamas@ccrjustice.org).

# Table of Contents

<b>1. Executive Summary</b>	<b>2</b>
Methodology and Limitations	3
Glossary	4
Acknowledgements	4
<b>2. Overview of U.S. Immigration Law</b>	<b>5</b>
The U.S. Visa System and Family Reunification	5
The Muslim Ban	7
The Current Ban	8
The Waiver Process: What We Know	9
<b>3. The Yemeni Experience with U.S. Immigration Law</b>	<b>12</b>
Heightened Scrutiny Faced by Yemeni Visa Applicants	12
<b>4. The War in Yemen</b>	<b>14</b>
The Conflict in Yemen	14
The Impact of the Conflict on Yemeni Visa Processing	14
<b>5. Living Under the Muslim Ban</b>	<b>15</b>
The Chaotic Implementation of the Current Muslim Ban	15
Approval Notification Letters Have Not Translated into Approved Visas	16
Arbitrariness at the Consular Level	16
An Elusive Visa Waiver Process	17
No Opportunity to Apply	19
Applicants' Experiences with the Waiver Process	19
<b>6. Hardships Faced by Yemenis and Yemeni-Americans in Djibouti</b>	<b>20</b>
Family Separation	20
Risks of Returning to Yemen	22
Financial Burden	23
Other Hardships	25
<b>Conclusion</b>	<b>26</b>
<b>Appendix A</b>	<b>28</b>
<b>Appendix B</b>	<b>29</b>
<b>Endnotes</b>	<b>30</b>



# 1. Executive Summary

***“My view of America changed a lot. There is war in Yemen, why do we have to be affected by this. My cousins, my grandfather were in the U.S. My whole family is there. We are not trying to do anything illegal. I went through the immigration system. We did everything right. I just want one reason. Every single day I suffer.”***

**– Amin Alzandani**

***“The waiver process is fraud”***

**– Unnamed U.S. Consular officer**

On February 2, 2017, throughout New York City, Yemeni-Americans shuttered their businesses, left their homes, and joined thousands of others protesting the Trump administration’s first Muslim Ban.<sup>1</sup> For Yemeni-Americans, the Ban was personal. Yemen was one of the seven majority-Muslim countries whose nationals the Ban suspended from entering the United States.<sup>2</sup> Overnight, plans to reunite with children, parents, and other family members were thrown into disarray.<sup>3</sup> Protestors waived American and Yemeni flags and signs: *The United Immigrants of America. Don’t Ban Our Families, No to Muslim Ban.*

More than a year later, those fears have been realized. U.S. citizens and lawful permanent residents (LPRs) of Yemeni origin remain separated from their families and unable to build the lives they dreamed of creating together in the United States. Following a series of losses before the courts and under intense public pressure, President Trump amended the Muslim Ban in a manner that was less overtly discriminatory and, theoretically, more tailored. One change was the inclusion of standards for case-by-case waivers, which are supposed to be granted by consular officers on a discretionary basis,

and to provide a path for people otherwise subject to the Ban to come to the United States if they meet a number of factors, including if visa denial would cause an “undue hardship.” Yet, as this report documents, despite the formal inclusion of a process to obtain a waiver in the third iteration of the Muslim Ban, soon after the Ban’s implementation reports of pro forma, en-masse denials of visas petitions and waiver denials emerged effecting numerous Yemeni applicants as well as applicants from other banned Muslim nations. Throughout this period, Yemenis received extremely few waiver grants.

In April 2018, the Supreme Court heard oral arguments about the third version of the Muslim Ban, at which the Justices asked about a waiver case involving a Yemeni, and the waiver process more broadly. The government had argued in part that this version of the Muslim Ban was not a categorical, discriminatory ban on Muslims because individuals from banned countries could nevertheless apply for a waiver based on assertedly individualized circumstances. Yet Justices Sonia Sotomayor and Stephen Breyer both asked whether the waiver process was merely “window dressing” for the Ban.<sup>4</sup> In the period surrounding the oral arguments, reports surfaced of a sudden rise in the number of notices of reconsideration of denials issued out of the U.S. embassy in Djibouti. One of these waivers was granted to the individual whose case the Justices inquired about. This abrupt change, without any corresponding amendments to the publicly released standards for granting waivers, only confirms the arbitrariness and opacity of the waiver process. At the same time, the continued high level of visa denials to Yemeni applicants and applicants from other countries calls into question the Trump administration’s defense of the Muslim Ban and highlights Justices Sotomayor and Breyer’s suspicion that the waiver process is little more than window dressing.

***“When I was denied, I fainted on the spot at the embassy. Psychologically, it was devastating... I couldn’t think, I couldn’t eat or sleep, I became depressed.”***

**– Sharifa Geilan**

Meanwhile, an ongoing civil war in Yemen has spawned a massive humanitarian crisis. Three-quarters of the population now requires assistance amidst widespread famine, a cholera epidemic, and the internal displacement of over two million people.<sup>5</sup> Due to the war, the United States closed its embassy in Yemen in 2015 and began scheduling visa interviews at consular posts in

other countries.<sup>6</sup> Thousands of Yemeni visa applicants called for the mandatory interview began travelling to nearby Djibouti. Many of those applicants had already faced serious delays and been waiting for years for visas. As a result, they were still in Djibouti awaiting interviews or visa approvals when the Muslim Ban was implemented, and they remain stranded there today.





*On February 2, 2017, thousands of Yemeni American business owners and community members in New York City protested the Muslim Ban, shutting down their stores for a day.*

This report documents the impact of the Muslim Ban on Yemeni nationals applying for immigrant visas to the United States, the denial of waivers under the Muslim Ban, and the resulting hardships inflicted upon Yemenis and Yemeni-Americans stranded in Djibouti and other countries. Our team traveled to Djibouti to obtain first-hand accounts from an otherwise difficult to access population. For many of the individuals interviewed, members of their families with different citizenship and immigration statuses remain scattered across multiple countries. Those in Djibouti—a country with a high cost of living—face mounting debts, limited medical and educational opportunities, and prolonged separation. The harrowing prospect of returning to the havoc in Yemen looms large and, absent a meaningful change in the Trump administration’s waiver-denial process, it may be the dangerous reality for many stranded families.

This report proceeds in five parts. First, it describes the existing U.S. immigration system, including the changes wrought by the Muslim Ban and waiver process. Second, it explains the history of Yemeni migration to the United States and the long-standing hurdles faced by Yemenis in the U.S. immigration process. Third, it provides a brief overview of the war in Yemen. Fourth, it describes life under the Muslim Ban and the challenges of the waiver process. Finally, it documents the hardships faced by those stranded in Djibouti. Stories of those we spoke with are included throughout to emphasize the many nuances of the impacts of the Muslim Ban on Yemenis and their families in the United States.

Yemen is but one of the several of the Muslim-majority countries listed in the Muslim Ban. In choosing to focus on Yemeni-Americans’ experience with the Ban, this report aims to highlight the importance of a contextual understanding of the Ban’s origins and impacts. For Yemeni-Americans, the Ban follows years of extra scrutiny by U.S. immigration officials, which had already delayed applications, sometimes by more than a

decade. In addition, Yemeni-Americans, like others included under the Ban, also face the direct consequences of U.S. interventions overseas. Finally, focusing on this community’s experience with one U.S. embassy allows a more detailed understanding of the Ban’s implementation, something that has been taken largely out of public view. When first implemented in January 2017, the Muslim Ban’s chaotic impact was visible for all to see as thousands rushed to airports in cities across the United States. Now, however, the center of activity has shifted to U.S. consulates overseas, rendering the process more inaccessible, invisible, and opaque. This report aims to shine a light on that ongoing chaos. The findings call into question any neutral, security-based interpretation of the Muslim Ban that has been central to the government’s defense of it.

## **METHODOLOGY AND LIMITATIONS**

In the days following the announcement of the first iteration of the Muslim Ban, its impacts on families and communities were immediately visible, and thousands rushed to airports to protest and help. The chaos and human impact was easily accessible. Yet when the current version of the Muslim Ban went into force, it was quietly rolled out of U.S. embassies overseas. Details of the implementation trickled out. To document these impacts and processes, the authors felt it crucial to travel to the new locus of the Muslim Ban’s implementation: U.S. embassies overseas.

This report relies on interviews with members of the Yemeni community in Djibouti and the United States, the staff of international and non-governmental organizations, government officials, academics, and immigration law practitioners. This report also includes information drawn from court documents, statutes, news articles, reports, and publicly available government data.



*Hundreds of U.S. citizens and their Yemeni relatives attend a community meeting led by CCR in Djibouti on March 20, 2018.*

In March 2018, the authors conducted 34 interviews in Djibouti with U.S. visa applicants and their relatives, and five interviews over the phone before and after returning to the United States. The interviews in this report cannot represent the full range of experiences of individuals stranded in Djibouti and other countries. Rather, the qualitative data is intended to highlight the most pressing issues facing both Yemeni and American visa applicants and their beneficiaries. Additionally, many of the interviews were conducted in Arabic through a translator. Interview subjects gave their informed consent. In some cases, the names of applicants and their relatives have been removed or altered in the interest of privacy. Those names that have been altered are marked with an asterisk.

This report focuses mainly on immigrant visas for family reunification, the most common form of visa sought by Yemenis. In cases involving family reunification, interview subjects included both petitioners (U.S. citizens and permanent residents) and beneficiaries (Yemeni nationals). However, applicants for student visas and diversity visas were also interviewed.

---

## GLOSSARY

**F3 Visa:** A family preference immigrant visa for children of U.S. citizens who are married, as well as their spouses and minor children.

**Form I-130:** The form used for U.S. citizens and lawful permanent residents to begin the application process for relatives to receive visas to immigrate to the United States.

**IR-2 Visa:** An immediate relative immigrant family visa for unmarried children of U.S. citizens under age 21.

**Muslim Ban or the Ban:** The set of three executive orders and proclamations issued by the Trump administration between January and September 2017 restricting the issuance of immigrant visas for citizens of a group of Muslim-majority and other countries.

**Proclamation:** The third version of the Muslim Ban, Presidential Proclamation 9645 issued on September 24, 2017. It restricted immigration from eight countries and was allowed to go into effect in December 2017.

**Yemeni[s]:** Nationals of Yemen.

**Yemeni-American[s]:** U.S. citizens or lawful permanent residents of Yemeni heritage. This includes both individuals of Yemeni descent born in the United States and naturalized citizens or green card holders born in Yemen.

## ACKNOWLEDGEMENTS

This report was written and researched by Rachel Brown, Idriss Fofana, Aisha Saad, Wazhma Sadat, and Georgia Travers, all members of the Rule of Law Clinic at Yale Law School. Hope Metcalf, Clinical Lecturer at Yale Law School, and Phillip Spector, Visiting Clinical Lecturer in Law, supervised the project. Ibrahim Qatabi, Diala Shamas, and Noor Zafar of the Center for Constitutional Rights were central to conceiving, planning, and editing the report. Special thanks to Baher Azmy and Aliya Hussain for their expertise and input.

This report would not have been possible without the support and assistance of the Yemeni and Yemeni-American communities in Djibouti and the United States. We owe a tremendous debt of gratitude to all those who shared their stories with us and agreed to be interviewed for this report. Many individuals in both countries provided their time and expertise. For his invaluable visa expertise and translation assistance, the authors wish to thank Ahmed Alsabahi. We also thank Anwar Alomaisi for allowing us to use his photographs of the community protests in New York.

Finally, the Streicker Fund for Student Research and Oscar M. Ruebhausen Fund at Yale Law School generously funded students' travel to Djibouti.

## 2. Overview of U.S. Immigration Law

The United States normally grants entry to foreign citizens only if they possess a valid visa or are nationals of a country in the Visa Waiver Program. Visas allowing foreign citizens to come to the United States broadly fall under two categories: immigrant visas and non-immigrant visas.<sup>7</sup> Immigrant visas allow individuals to live and work permanently in the United States by becoming lawful permanent residents (LPRs). As LPRs, individuals “may live and work permanently anywhere in the United States, own property, and attend schools, colleges, and universities.”<sup>8</sup> LPRs, like U.S. citizens, “may also join the Armed Forces and apply to become U.S. citizens.”<sup>9</sup> Non-immigrant visas cover shorter term visits, such as tourism, business, and study and cultural exchange.<sup>10</sup>

*“At the court when you get your U.S. passports and papers they tell you welcome to America, you are an American citizen now. You can help your family. You can bring your family. You are happy...Now all the time, I am mad.”*

– Ibrahim\*

Modern U.S. immigration law seeks to ensure that candidates for immigrant visas are not discriminated against based on their national origins. Prior to 1965, the United States had relied on country-based quotas to bar large numbers of individuals from non-European countries.<sup>11</sup> The National Origins Act of 1924 had aimed “to control both the quantity and quality of U.S. immigrants” in order to “prevent further erosion of the ethnic composition of U.S. society.”<sup>12</sup> The Immigration and Nationality Act of 1965 (INA) reversed this discriminatory legacy and provided that “no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person’s race, sex, nationality, place of birth, or place of residence.”<sup>13</sup>

### THE U.S. VISA SYSTEM AND FAMILY REUNIFICATION

The 2-Group Preference System for Family-Based Immigrant Visas	Group 1	Group 2
<b>Preference Groups</b>	U.S. Citizen’s Immediate Family Members	U.S. Citizen’s Non-Immediate Family Members + Legal Permanent Resident’s (LPRs) Immediate Family Members
<b>Group Descriptions</b>	“(1) spouses and minor (under 21), unmarried children of a U.S. citizen; (2) parents of U.S. citizens who are ‘at least 21 years of age’; and (3) widows, widowers, and children of deceased U.S. citizens	(1) unmarried children of U.S. citizens (who are not minors); (2) spouses and adult, unmarried children of LPRs; (3) married children of U.S. citizens; and (4) siblings of adult U.S. citizens (over 21 years of age)
<b>Distinctions</b>	No numerical cap or country-based limitations	480,000 minus the number of Group 1 visas and less than 7 percent of all visas per country

Chart 1: The Preference System for Family-Based Immigrant Visas



Most immigrants receive visas to the United States based on family relations or employment. U.S. family-based immigrant visas are designed for U.S. citizens and LPRs to reunite with their families based on the petitioner’s status and his or her relationship to the beneficiary.<sup>14</sup> For family-based immigrant visas, the INA established “a preference system based on immigrants’ family relationships with U.S. citizens or legal permanent residents . . . .”<sup>15</sup> The family preference system distinguishes immediate family members from non-immediate family members, giving the former group preference over the latter group when considering their immigration applications.<sup>16</sup>

The first group for immediate family members of U.S. citizens is comprised of “(1) spouses and minor (under 21), unmarried children of a U.S. citizen; (2) parents of U.S. citizens who are ‘at least 21 years of age’; and (3) widows, widowers, and children of deceased U.S. citizens.”<sup>17</sup>

The second group includes the non-immediate family members of U.S. citizens and all family members of LPRs. This group is further divided into four “preference categories” and it includes “(1) unmarried children of U.S. citizens (who are not minors); (2) spouses and adult, unmarried children of LPRs; (3) married children of U.S. citizens; and (4) siblings of adult U.S. citizens (over 21 of age).”<sup>18</sup>

The two preference groups are distinguished through numerical caps. Every year, the number of family-based immigrant visas is capped at 480,000. The group of immediate family members gets first preference. The remaining slots not taken by immediate family members of U.S. citizens are then allocated to members of the second preference group.<sup>19</sup> Immigrant visas for applicants in the second group are also subject to a per-country limit not exceeding seven percent of the total number of such visas made available to the foreign country in a given fiscal year.<sup>20</sup>

### Applying for a Visa

The first step in the family-based immigration process is for the sponsoring relative (Petitioner) to file a Form I-130, also known as a “Petition for Alien Relative,” in order to “establish their relationship to certain alien relatives who wish to immigrate to the United States.”<sup>21</sup> The 12 page form includes detailed questions about previous addresses, relationship to the beneficiary, the date and circumstances of marriage (if applying for spouse), and legal documents such as previous visa numbers.<sup>22</sup>

The volume of petitions at the U.S. Citizenship and Immigration Services (USCIS) Service Center where the form is filed plays a significant role in the varying range of processing times across the country.<sup>23</sup> For example, the processing time for Form I-130 in California ranges from 15 months to 106.5 months depending on the petitioner’s status, relationship

to beneficiary, and the age of the beneficiary (if being sponsored by parents).<sup>24</sup> For Texas, on the other hand, the wait times range from 5 to 9.5 months.<sup>25</sup>

After a Form I-130 is approved, the petitioner’s file is transferred from USCIS to the National Visa Center (NVC). The NVC then contacts the applicants with further instructions.<sup>26</sup> Once the NVC receives all necessary documentation, an interview at a U.S. consulate or embassy is scheduled.<sup>27</sup> Generally, “[t]he purpose of the interview is to obtain the correct information in order to make the correct adjudication of the case, not to prove a particular point or to find a reason to deny the benefit sought.”<sup>28</sup> It “is to cover (and discover) all the pertinent information, both favorable and unfavorable to the applicant.”<sup>29</sup> Sometimes both petitioner and beneficiary are invited for an interview. Prior to the interview, the beneficiary is required to complete medical examinations and vaccinations. After the interview, applicants may be asked to leave their passports at the consulate in order for the visa to be issued. Following the interview, the applicant’s file may also go through administrative processing, a stage of undetermined length during which officials review applications for security or other risks. According to the U.S. State Department, “[m]ost administrative processing is resolved within 60 days of the visa interview.”<sup>30</sup> In situations where “administrative processing is required, the timing will vary based on individual circumstances of each case.”<sup>31</sup> Many applicants from Muslim-majority countries found their cases stalled in administrative process even prior to the Muslim Ban.

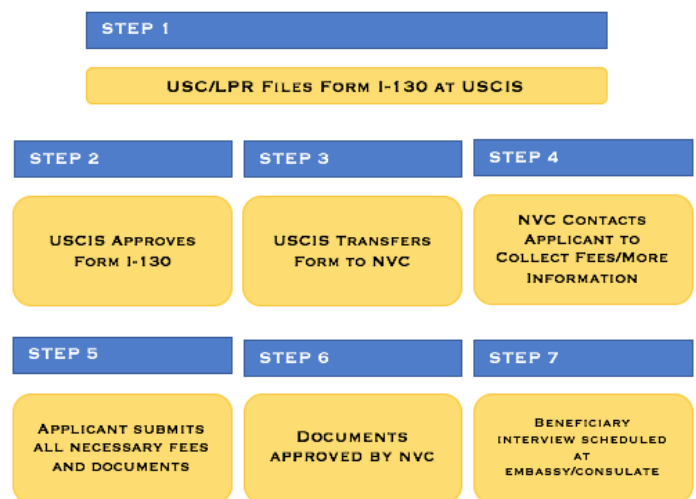


Chart 2: The Stages of Family-Based Visa Petitions



*“Who is 100% American in America. We know we all come from different places... We build each other. So don't destroy it. That's not how you make America great again.”*

– Shareef\*

# THE MUSLIM BAN

The multiple iterations of the Muslim Ban overturn long-standing U.S. immigration law by preventing categories of U.S. citizens and LPRs from reuniting with their families based solely on what passport their relatives hold. As detailed above, modern U.S. immigration law prohibits nationality-based discrimination in the issuance of immigrant visas. In addition, U.S. immigration law grants benefits to U.S. citizens and LPRs, allowing them to bring their close relatives to the United States. Yet, due to the Ban, these statutory protections and benefits no longer hold for U.S. citizens and LPRs whose relatives come from five predominantly Muslim countries.

## MANY ITERATIONS, SAME BAN

On December 7, 2015, then-candidate Donald Trump called for a “total and complete shutdown of Muslims entering the United States.”<sup>32</sup> At the time, then-candidate Trump was seeking the Republican nomination for president of the United States. Over the next year, as he successively won the nomination and the presidency, he reiterated his desire to bar Muslims from traveling to the United States.<sup>33</sup>

On January 27, 2017, just seven days after his inauguration, President Trump signed Executive Order 13,769 (the “First Executive Order” or “First Order”), the first version of what came to be known as the Muslim Ban.<sup>34</sup> The First Executive Order prohibited nationals of seven predominantly Muslim countries, including Yemen, from entering the United States for ninety days,<sup>35</sup> including lawful permanent residents.

Less than one day after the initial version of the Muslim Ban entered into force, a federal judge ordered the government to suspend its travel restrictions.<sup>36</sup> In the subsequent months, President Trump issued two additional versions of the Muslim Ban in response to legal challenges. On each occasion, courts blocked the government from enforcing the Ban. Several courts have ruled that, by suspending immigration from certain Muslim-majority countries, the different iterations of the Muslim Ban contravene the statutory bar on nationality-based discrimination in immigration. Other courts have gone further, holding that the Ban unconstitutionally targets Muslims.

The third version of the Muslim Ban, Presidential Proclamation 9645, often called “Muslim Ban 3.0,” is now under review by the U.S. Supreme Court.<sup>37</sup> Pending its ruling on the ban’s legality, the Court allowed the government to implement the Proclamation.<sup>38</sup> On December 8, 2017, two years and a day after President Trump first announced his intention to bar Muslims from entering the United States, the U.S. government resumed enforcing the Muslim Ban.<sup>39</sup> In the Supreme Court, the Justices questioned the government attorney in some detail about the waiver process, or seeming lack thereof. They suggested that if the process, in fact, does not actually confer any meaningful number of waivers, its inclusion in the Muslim Ban would appear to be little more than window dressing.

## THE CURRENT BAN

The current and third version of the Ban, Presidential Proclamation 9645 (the “Proclamation”), indefinitely restricts travel to the United States for nationals of seven countries.<sup>40</sup> The Proclamation confirms restrictions on travelers from five predominantly Muslim countries covered by previous versions of the Ban: Iran, Libya, Somalia, Syria, and Yemen. The Proclamation further extends the Muslim Ban to the nationals of two new countries: North Korea and Venezuela.<sup>41</sup>

The Muslim Ban’s restrictions do not affect all listed countries equally. With respect to North Korea, the Proclamation largely emulates pre-existing sanctions on the country.<sup>42</sup> Moreover, all but a handful of visas issued to North Korean nationals are diplomatic visas, which are exempt from the Ban.<sup>43</sup> Regarding Venezuela, the Proclamation only prohibits a select group of Venezuelan government officials from entering the United States on certain non-immigrant business and tourist visas.<sup>44</sup>





In contrast, the Proclamation categorically and indefinitely bars immigrant visas for the United States for nationals of the five Muslim-majority countries covered—Iran, Libya, Somalia, Syria, and Yemen. Nationals of these countries also face a range of restrictions on their eligibility for non-immigrant visas.<sup>45</sup> Yemenis, for example, may travel to the United States temporarily to study, but they may not visit the United States for business or tourism. The Proclamation provides for narrow exceptions to the restrictions, including for diplomats, those previously granted asylum, dual nationals from a non-Ban country, individuals already present in the United States, and those who already hold a valid visa or another document permitting them to travel to the United States. The only hope for most new and existing applicants is a case-by-case waiver process. As outlined in this report, that process remains elusive.

**THE WAIVER PROCESS:  
WHAT WE KNOW AND WHAT WE DON'T KNOW**

Subsection 3(c) of Presidential Proclamation 9645 contains a waiver provision, which specifies that consular officers and Customs and Border Protection (CBP) officials may, at their discretion, grant waivers to the Muslim Ban on a case-by-case basis for individuals otherwise blocked from entry to the United States.<sup>46</sup> According to the Proclamation, a consular officer determines whether to grant a waiver at some time after the interview at the U.S. embassy.<sup>47</sup> However, in now public and sworn statements, former consular officers familiar with the waiver process have disputed the notion that they do, in fact, possess any discretion. They have described clear – currently not public – guidance from the Department of State that amounts to removing any discretionary component to the waiver applications. One called the process “one step away from [the] Soviet Politburo.”<sup>48</sup>

According to the Department of State, all visa applicants automatically go through the waiver process except those who are ineligible for visas on grounds other than those specified in the Proclamation and those who fit within a set of narrow categorical exceptions to the Ban.<sup>49</sup> Categorical exceptions relevant to the issuance of new visas include applicants for diplomatic visas and dual nationals traveling on the passport of a country not subject to the Ban.<sup>50</sup>

*“So I want to know how do I find out...where we we have to—can we have another hearing? Do we send it back? Do we say, look, the government, of course, things [the waiver process] isn’t window dressing—but the other side says...no notice, nobody knows.”*  
**–Justice Stephen Breyer at during oral arguments in Trump v. Hawaii**

**PART ONE OF THE WAIVER PROCESS**

The Proclamation establishes a two-part waiver process. The first component sets strict requirements for when a consular officer may consider an individual subject to the Ban for a waiver. To qualify for consideration, the visa applicant must demonstrate that:

- denying entry would cause undue hardship;
- entry would not pose a threat to national security; and
- entry would be in the national interest.<sup>51</sup>

These three criteria for waiver eligibility are intentionally vague; the Proclamation specifies that the Department of Homeland Security (DHS) and Department of State (DOS) will develop additional guidance for how to determine whether an individual meets these criteria.<sup>52</sup>

However, despite this promise of new guidance, the Trump administration has released limited information expanding upon the Proclamation’s criteria language to assist individuals seeking to obtain a waiver and their attorneys.<sup>53</sup> Several civil rights groups, private citizens, and members of Congress have petitioned the administration to release more information regarding the opaque implementation of the Proclamation’s waiver provision.<sup>54</sup> On February 22, 2018, two and a half months after the Muslim Ban went into full effect, DOS finally acceded to a request for additional information in a private letter to Senator Chris Van Hollen.<sup>55</sup> The letter elaborated on the procedures that consular officers use to evaluate the three criteria for receiving a waiver under the Proclamation. The State Department explained each of the three mandatory standards as follows:

First, to meet the “undue hardship” criterion, the applicant must demonstrate “that an unusual situation exists that compels immediate travel by the applicant and that delaying visa issuance . . . would defeat the purpose of travel.”<sup>56</sup>

Second, an applicant’s entry into the United States may be in the “national interest” if “a U.S. person or entity would suffer hardship if the applicant could not travel until after visa restrictions imposed with respect to nationals of that country are lifted.”<sup>57</sup> Here, it is worth noting that candidates for Diversity Visas<sup>58</sup> face even more significant obstacles meeting the national interest test.<sup>59</sup>

Third, consular officers must determine, after “consultation with the Visa Office,” whether an applicant poses a national security threat based on “the information-sharing and identity-management protocols and practices of the government of the applicant’s country of nationality as they relate to the applicant.”<sup>60</sup> Relevant practices include sharing criminal histories and information about links to terrorism, and providing reliable travel documents and identity-related information.<sup>61</sup>

### **Opaque and Harsh Standards**

Even taken at face value, the guidance released in the State Department’s letter to Senator Van Hollen shows that the Trump administration has imposed a bar for waiver consideration far more exacting in practice than it appears from the Proclamation’s text. According to DOS, when assessing the “undue hardship” standard, the consular officer is not to consider the burden to the applicant due to the *indefinite* bar from the entering the United States. Instead, consular officers must apply a far higher standard, requiring an applicant to show that lest she travel *immediately*, her trip would lose its purpose.<sup>62</sup>

The State Department’s focus on “immediacy” is surprising given the indefinite nature of the Muslim Ban. The Proclamation only provides for a periodic review, every six months, of the list of designated countries.<sup>63</sup> This interpretation of the “undue burden” disadvantages applicants for immigrant visas, as anyone seeking to settle permanently in the United States with their U.S. family member would have difficulty meeting the immediacy component of the undue hardship standard. The hardship, in their case, often results from prolonged family separation. And while delaying departure may create significant burdens for families, it rarely, if ever, defeats the purpose of travel.

Like the “undue hardship” standard, the “national interest” standard requires the consular officer to consider the harm caused by delay in the applicant’s travel rather than her indefinite exclusion. However, the “national interest” standard does not emphasize immediacy, nor does it require that a delay defeat the purpose of travel. In this respect, the “undue hardship” standard is even more stringent than the “national interest” standard.

### **Part Two of the Waiver Process**

If a visa applicant meets all three mandatory criteria described above, a consular officer then has discretion whether to grant a waiver.<sup>64</sup>

To guide consular officers in this discretionary component of the waiver process, the Proclamation provides a non-exhaustive list of ten circumstances in which a waiver “may be appropriate,”<sup>65</sup> including notably if:

- the foreign national has previously established strong ties to the United States;
- the foreign national seeks to visit or reside with an immediate family member who is a U.S. citizen, lawful permanent resident or individual holding a valid visa; or
- the foreign national is an infant, young child, adoptee, or needs urgent medical care.<sup>66</sup>

While the list of examples offers some guidance, the text of the Proclamation makes it clear that these circumstances are neither necessary nor sufficient conditions for waiver eligibility.<sup>67</sup>

In all, the discrepancy between the waiver standards as applied, the language of the Proclamation, and the contradicting publicly available information has deprived visa applicants and their U.S. relatives the opportunity to present all the relevant evidence of their eligibility for waivers, and has furthered the chaos of the Muslim Ban. Section 5, below describes the difficulties Yemenis in Djibouti have faced navigating the waiver process with such limited guidance and how the Consulate has granted waivers in an arbitrary and opaque manner.

# ALI'S STORY: A LONG HISTORY OF OBSTACLES AND HURDLES



**2002**

Ali's father, a U.S. citizen, petitions for a visa for his 3 children to come to the U.S.



**2006**

Finds out that case has been closed since 2005 and could not be reopened.

**2009**

Ali's father returns to the United States

**2010**

Father re-orders DNA tests

U.S. Embassy does not give Ali an appointment. Told to wait.

**2014**

Embassy finally gives Ali an appointment after 4 years of waiting

Ali pays fee, takes test, obtains receipt, and returns to village

**2016**

U.S. Embassy in Sana'a closes, Ali transfers case to Djibouti.

Ali's mother inquires on Ali's behalf, Embassy instructs him to submit his documents for review

**2017**

Ali drops off his original documents and passport at U.S. Embassy in Djibouti

U.S. Embassy calls Ali, informs him they have his 2005, expired petition and it cannot be reviewed.

Ali finds out that the wrong case file was transferred to the U.S. Embassy by mistake

Ali tries over several weeks to pick up his passport and documents, is rebuffed

Ali has to apply and pay for new passport

In the U.S., Ali's father told that his petition has been closed for failure to submit DNA tests

USCIS agrees to open file on condition of a new DNA test

Ali submits new DNA tests

Ali passes tests, U.S. Embassy interview scheduled in Djibouti for September 2017

At interview, given paper that "visa has been approved"

December 2017: The Supreme Court allows Trump's Muslim Ban to go into effect

**2018**

U.S. Embassy in Djibouti sends letter:  
**YOUR VISA HAS BEEN DENIED. TODAY'S DECISION CANNOT BE APPEALED.**



### 3. The Yemeni Experience with U.S. Immigration Law

*“In those 16 years [I have been waiting], I would have built a future. I would have opened a house, a business or supermarket or gas station. I would have gotten married. I would have had children by now probably in school already. I would be in a good situation. That’s what my other compatriots have gone and done, I wouldn’t have been any different.”*

– Ali Ahmed Ali Mohammed <sup>68</sup>

Yemenis have a long immigrant tradition in the United States. Early waves of Yemeni immigration to the United States began in 1869. These new Americans became farmers in the West and worked in automobile factories in the Midwest and Northeast.<sup>69</sup> Immigration rates increased in the 1940s and considerably after the passage of the Immigration and Nationality Act (INA) in 1965. In the 1970s and 1980s, many Yemeni-Americans acquired citizenship through their parents or were born U.S. citizens.<sup>70</sup>

As of 2016, nearly 44,000 Yemeni-born individuals resided in the United States.<sup>71</sup> In Yemeni-American families it is not uncommon for families or family members to continue traveling back and forth between homes in the United States and in Yemen. In particular, men often immigrate to the United States to work, to support their families, and establish themselves in the United States before bringing their families. In some cases, once they obtain LPR status, some of them petition for their spouses and families to join them in the United States.<sup>72</sup>

In recent years, U.S. citizens and LPRs of Yemeni descent have been especially dependent on immigrant visas to reunite their families in the United States. Following the outbreak of war in Yemen in 2014, they have relied on the family reunification system to bring relatives out of harm’s way.<sup>73</sup>

#### HEIGHTENED SCRUTINY FACED BY YEMENI VISA APPLICANTS

The Muslim Ban is the latest and most severe iteration of government restrictions affecting Yemenis attempting to navigate the U.S. immigration system. Nearly a decade before the Muslim Ban, Yemeni applications for I-130s and other visas were subject to special scrutiny. Applicants faced heightened security screening, additional document requests, and extended wait times.

In 2009, a U.S. government cable described U.S. concerns about fraudulent activity at the U.S. embassy in Sana’a.<sup>74</sup> In response, the Department of State created significant additional hurdles for Yemeni applicants.<sup>75</sup> A 2010 inspection observed a “massive backlog” of immigrant visas at the embassy.<sup>76</sup>



## Passport Revocations Out of the U.S. Embassy in Sana'a

In 2012, the U.S. embassy in Sana'a revoked the U.S. passports of some Yemeni-Americans while they were abroad.<sup>77</sup> These U.S. citizens described going to the U.S. embassy for routine consular services, where they faced aggressive interrogation and allegations that their names differed from those recorded on their passports.<sup>78</sup> Officials then instructed them to sign statements suggesting they or their parents had misrepresented the family's name or relationships during immigration proceedings, and confiscated their U.S. passports on the spot. As a result, they were stranded in Yemen for several months.<sup>79</sup>

The United States later retracted or reversed many of these decisions, but only after public exposure and legal interventions. The State Department has not made the exact numbers of revocations or reinstated passports public, despite requests for records under the U.S. Freedom of Information Act. According to advocates, at least several dozen U.S. citizens had their passports revoked.<sup>80</sup> In February 2014, the U.S. embassy began providing some individuals whose passports had been revoked with limited validity single-entry passports, allowing them to return to the United States.<sup>81</sup> In some cases, passports were later re-issued, without any hearing, explanation or compensation.<sup>82</sup>

Immigration practitioners and advocates monitoring these revocations have noted that passport revocations have only been documented at the U.S. embassy in Yemen.<sup>83</sup>

To this day, Yemeni-Americans report that even when attempting to renew their passports in the United States they experience uncharacteristic delays, with the process inexplicably dragging on longer than a year in some cases.<sup>84</sup>

The Adjudicator's Field Manual currently released online by USCIS includes a section on "Special Concerns about Particular Nationalities" and singles out Yemen as one of the two nationalities that merit special consideration.<sup>85</sup> The document notes that "civil documents concerning marriage, birth, death, etc., are often issued in Yemen based solely on information furnished by an interested party, often the petitioner or beneficiary of the petition, they are usually not considered conclusive to establish claimed relationships."<sup>86</sup> As part of the unique procedure detailed for Yemeni visa applicants in the Adjudicator's Manual, the U.S. government requests interviews with both the petitioner and beneficiary.<sup>87</sup> This requirement departs from the standard I-130 process outlined in USCIS informational materials which note that "most standalone I-130 petitions will be completed without the need of a personal interview; however, the facts of an individual case may indicate that a personal interview is appropriate."

For further corroboration of visa applications, USCIS often requires affidavits for marriage certificates, photographs of important events, and detailed family trees with contact information from Yemeni applicants and others.<sup>88</sup> Other requested documents include proof of physical presence in the United States, wedding invitations, money transfer receipts, criminal records, hospital records, and as many as eight years of tax filings. Furthermore, DNA testing may be required where fraud is suspected. In the case of family reunification visas, U.S.-based petitioners and Yemeni beneficiaries are frequently asked to submit DNA tests to establish parent-child relationships.<sup>89</sup> Lawyers familiar with the Yemeni community noted that in Yemeni cases, unless the family had a contemporaneous birth certificate, USCIS almost always sought a DNA test<sup>90</sup> and observed that they often received DNA requests in cases involving Yemen or other Muslim-majority countries, but rarely in cases for beneficiaries in South or Central America.<sup>91</sup>

Even after completing the visa interview stage, Yemeni applicants have frequently found their applications stuck in administrative processing.<sup>92</sup> In some cases, administrative processing drags on for years. Practitioners we interviewed noted that although the standard wait time would normally be under a year, Yemeni applicants frequently experience far longer waits.<sup>93</sup>

Extended wait times can engender new sources of delay in the visa application process, as individuals may have in the meantime gotten married, had children, or passed the age of 21 and thus become required to change visa category. When Karim's\* U.S. citizen father petitioned for his son's visa in 2000 he was an IR2 applicant. During the 18-year visa application and review process, his son got married and had to change to an F3 application, beginning his filing process anew.<sup>94</sup>

## 4. The War in Yemen

***“How could I go back to Yemen? After all this time I have nothing left there. How could I return?”***  
– Alhassan\* (Qa’ataba, the city in Yemen he is from, is frequently subjected to airstrikes)

The United States’ decision to bar Yemeni immigration coincides with what the U.N. Secretary-General has called “the world’s worst humanitarian crisis.”<sup>95</sup> The war between the Houthi rebels, Yemeni government, and the international coalition led by Saudi Arabia has triggered famine, a cholera epidemic, and massive internal displacement and refugee outflows. Yemenis seeking to reunite with family in the United States face the untenable decision of returning to a humanitarian crisis or subsisting indefinitely in a third nation in hopes that U.S. policy may one day change.

### THE CONFLICT IN YEMEN

The conflict’s roots can be traced back over a decade, as Houthis and the Yemeni government have fought on and off since 2004. In 2014, during political transition following the 2011 Arab Spring, the Houthi movement from Yemen’s northern highlands,<sup>96</sup> which formed alliances with former President Ali Abdullah, demanded President Abed Rabbo Mansour Hadi’s resignation and clashes soon erupted between Houthis and government troops. That fall, the Houthis, who were allied with former President Ali Abdullah Saleh<sup>97</sup> seized Sana’a and Hodeida, a major port, and continued to push southwards towards the country’s second largest city of Aden. In January 2015, President Hadi and his government resigned in protest and were placed under house arrest by the Houthis. Soon after, a coalition of nine African and Middle Eastern countries, led by Saudi Arabia began bombing Houthi positions in Yemen.<sup>98</sup> Between March 2015 and February 2018 the Saudi-led coalition conducted an estimated 16,305 air raids, and the aerial bombardment continues today.<sup>99</sup> Throughout the conflict, the United States has provided vital logistical support and resources to the Saudi-led coalition including aircraft refueling, targeting guidance, and billions of dollars in weapons sales. It has also provided humanitarian assistance.

Prospects for a political solution remain distant: proposed peace talks and negotiations between the Houthis, Yemeni government, and the Saudi-led coalition have repeatedly collapsed.<sup>100</sup>

The devastation emanating from the conflict includes indiscriminate or inaccurate bombing of civilian areas by both Houthi and coalition

forces; a widespread cholera epidemic; persistent famine affecting a majority of citizens; a lack of access to water, fuel, medicine, and other emergency relief supplies; and the near total destruction of transportation and healthcare infrastructure. The war has also resulted in nearly ten thousand casualties.<sup>101</sup> Over one million Yemenis have contracted cholera, and more than two thousand have died of the disease.<sup>102</sup>

Nearly 18 million individuals (over 60 percent of the population) are at risk of starvation, with over 8.4 million suffering from severe hunger and reliant on food aid.<sup>150</sup> The Houthis have imposed a blockade on aid and goods from entering the major city of Taiz and fired indiscriminately into Yemeni cities.<sup>103</sup> Meanwhile, the Saudi-led coalition’s blockade of one of Yemen’s main ports has prevented much aid from reaching the country. Even after the lifting of the blockade in late 2017, the delivery of thousands of pallets of supplies remains stalled.<sup>104</sup> Due to this enduring, extreme hardship, as of April 2018, over two million Yemenis have been internally displaced due to the conflict, and more than 280,000 have fled abroad as refugees and asylum seekers.<sup>105</sup>

### THE IMPACT OF THE CONFLICT ON YEMENIS’ VISA PROCESSING

***“If I don’t get my visa, I don’t know where I would go... I have spoken up against the rebels...[and] I have insisted that my children never use weapons, I just want them to use their pens and their brains.”***  
– Fawzi\*

The war has exacerbated difficulties for Yemenis applying for U.S. visas. In February 2015, the United States closed its embassy in Sana’a,<sup>106</sup> relocating personnel elsewhere in the region and transferring all Yemeni visa petitions to consulates in Algiers and Cairo for



processing.<sup>107</sup> However, in March 2016, the Algerian government began requiring all Yemenis to obtain a visa prior to entry.<sup>108</sup> Those visas were not readily available for many. In response, the Department of State began scheduling immigrant visa appointments for Yemenis in Djibouti in June 2016.<sup>109</sup>

As a result, the Yemeni population in Djibouti has grown considerably, with both refugees from the civil war and U.S. visa applicants arriving in the country. Many U.S. citizens and LPRs of Yemeni descent have traveled to Djibouti to join family members awaiting visas. As of March 2018, an estimated one thousand Yemeni-Americans were stranded in Djibouti. The numbers are even higher when beneficiary family members are included. Some of those interviewed for this report had been living in Djibouti for less than a year, but many had been in the country for as long as three years.

Initially, many Yemenis traveled to Djibouti on overloaded cargo vessels previously used to ship cattle or other goods.<sup>110</sup> Now, individuals traveling from Yemen usually first fly to nearby countries such as Egypt, Sudan, and Jordan to apply for a Djiboutian visa before travelling on. Flights out of Yemen operate from Aden and Seiyun, but airport closures often delay travel. Yemenis can also still travel by sea to and from Djibouti, though that route, too, closes intermittently. Some visa applicants had also transferred their cases to Malaysia and Jordan. Malaysia, in particular, was desirable as an affordable alternative.

In addition to the Yemeni families arriving in Djibouti for purposes of U.S. Embassy appointments, an estimated 38,000 Yemeni refugees have also passed through Djibouti over the past three years. As of December 2017, 3,468 Yemeni refugees were registered with UNHCR in Djibouti.<sup>111</sup> Djibouti has welcomed new arrivals, and in 2017, the government passed the National Refugee Law to promote inclusion of refugees and liberalize access to education, work, and healthcare.<sup>112</sup>

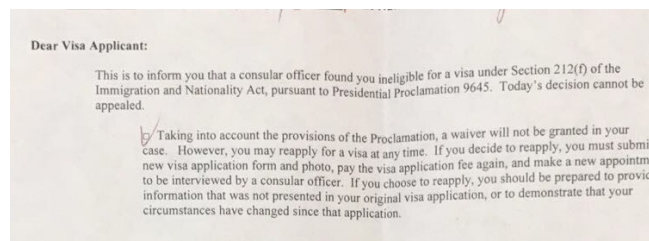
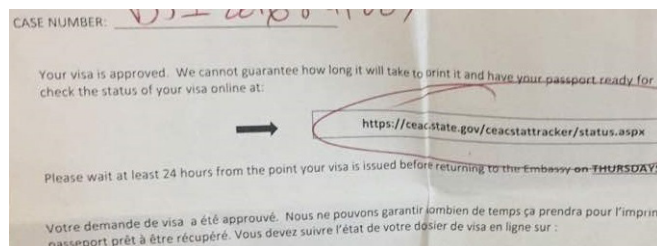
The war and ensuing disintegration of administrative functions also has made acquiring supporting documentation for pending immigration applications more difficult, as Yemeni government functions have been disrupted or relocated, and some records have been lost or completely destroyed.

## 5. Living Under the Muslim Ban

### THE CHAOTIC IMPLEMENTATION OF THE CURRENT MUSLIM BAN

When the current iteration of the Muslim Ban went into full effect on December 8, 2017, many Yemeni visa applicants in Djibouti had spent years navigating the already complex U.S. immigration system. For some, the end was in sight; they had received notice that their visa was approved and were merely waiting for the U.S. embassy to print it. Yet suddenly, they found themselves embroiled in an entirely new legal process, with opaque procedures and virtually no available guidance.

While some initially hoped that they would be able to obtain an individual waiver from the Ban and had even presented submissions demonstrating their eligibility, they were quickly disillusioned. Days after the Supreme Court lifted the stay on the Muslim Ban's full implementation, reports emerged from the U.S. embassy in Djibouti, as well as other embassies at which many individuals from banned countries were being processed, of mass denials of visas. In a span of only a few days, the authors obtained a list of over one hundred visa petitioners who had received denials out of the U.S. embassy in Djibouti alone. Those denials continued to be issued over the course of the months this report was being researched. Consular officers refused to review the evidence of eligibility many families had painstakingly prepared and issued summary denials.



*An approval slip, followed by a rejection notice after the Muslim Ban went into effect.*



## APPROVAL NOTIFICATION LETTERS HAVE NOT TRANSLATED INTO APPROVED VISAS

Before the Muslim Ban, Yemeni visa applicants with approved Form I-130s who completed their visa interviews at the U.S. embassy in Djibouti frequently received official notices of visa approval. Interviewees recounted completing fifteen to twenty-minute interviews and receiving approval notices on their way out. The text of the notice, printed in Arabic and English, explained, “Your visa was approved. We cannot guarantee how long it will take to print it and have your passport ready for pickup. You should check the status of your visa online.”<sup>113</sup> While interviewees took approval to mean just that, they soon discovered, to the contrary, that their visas would never be printed.

After December 8, 2017, when the current version of the Ban went into effect, hundreds of visa applicants who had previously received approval letters during their interviews received calls to pick up their passports from the U.S. embassy, and found along with their passports a full-sheet notice indicating that their visas had been rejected. The sheet read, “This is to inform you that a consular officer found you ineligible for a visa under Section 212(f) of the Immigration and Nationality Act, pursuant to Presidential Proclamation 9645. Today’s decision cannot be appealed.” The form also includes two check boxes indicating whether the applicant is or is not being considered for a waiver.

A number of individuals interviewed for this report received approval slips at or shortly after their interviews in the fall of 2017, only to receive visa rejections in early 2018. Qusai\* arrived in Djibouti in March 2017 and received a visa approval form in October 2017. Once he received his visa, he hoped to join his fiancée in the United States, begin to earn back the more than \$70,000 he had spent on the immigration process, and repay debts to family and friends. However, in March 2018, the U.S. embassy summoned Qusai\* to pick up his passport along with a visa denial form.

### CHILDREN GET VISAS, MOTHERS DO NOT

Mohamed\*, a U.S. citizen, applied for visas for his wife and four children, the youngest of whom is still breastfeeding. The family interviewed in Djibouti in November 2017 and received an approval slip for the five family members. Shortly after the interview, the four children received visas. The family waited on the mother. Yet, in February 2018, Mohamed’s\* wife received a visa refusal slip.<sup>114</sup> Ibrahim\* has been married since 2007. He and his wife, Amal\*, have three children, one of whom is a U.S. citizen. He applied for visas for his wife and their two non-citizen children. The family was interviewed in September 2017 and received a visa approval form on the same day. While the two children actually received their visas that day, Amal’s\* was rejected in January 2018.<sup>115</sup>

A group of thirty Yemeni visa applicants in Djibouti and their U.S. relatives have challenged in federal court the denial of their visas after they received approval slips. On May 27, 2018, the U.S. District Court for the Eastern District of New York issued a preliminary injunction ordering the government to print visas for the plaintiffs who received approval slips.<sup>116</sup> Though the litigation continues, at least four of the litigants have obtained their visas since the court issued the injunction.<sup>117</sup>

## ARBITRARINESS AT THE CONSULAR LEVEL

*“Because [the consular officers] have our passports, we are under detention without walls.”*

– Anas

In addition to the challenges faced as a direct result of the Muslim Ban, Yemenis and Yemeni-Americans describe specific consular policies that complicate their situation. Discrepancies in how different U.S. embassies handle cases have generated uncertainty regarding the best location to which to transfer one’s case. In 2015, when cases began to be transferred out of Yemen, processing times for visas at the U.S. embassy in Djibouti were relatively short. As a result, many individuals were initially hopeful their cases would be processed rapidly in Djibouti and sought to have their cases sent there.

More recently however, the diversion of visa processing from the U.S. embassy in Sana'a to the embassy in Djibouti has resulted in an increased workload that consular staff are unable to adequately manage. According to a 2018 report by the Office of Inspector General, the consular section received 75 to 100 emails regarding immigrant visas and Consular Reports of Birth Abroad and "relied on inadequate automatic responses for [these types of] inquiries, even though each inquiry merited research and individualized replies."<sup>118</sup> Visa correspondence generally was given a lower priority than other tasks. Indeed, several of our interviewees noted unresponsiveness despite their multiple efforts to inquire into their case status over the course of several months.

Furthermore, applicants described changes in consular procedure that impeded applicants' ability to travel and limited opportunities for family reunification.

**Withholding Passports:** The embassy in Djibouti holds individuals' passports while they are being considered for an approval or denial. In mid-March 2018, there were around 370 passports remaining at the consulate. As a result, individuals must remain in Djibouti while they await a decision and cannot travel to a third country where the conditions might be easier.<sup>119</sup>

**Power of Attorney Requirements:** There have also been unexpected changes surrounding power of attorney forms. In some cases where children are eligible for U.S. citizenship through a parent, they may

receive a visa to travel to the United States and are then eligible for a passport upon arrival. However, a power of attorney form is required to obtain the passport when the other parent is not present in the United States, as is the case for many Yemeni parents in Djibouti who have been denied a visa. Individuals report shifting and opaque procedures for signing the power of attorney form, and some have been turned away from the consulate when they go to sign the form and told they can only sign it once their spouse and child are in the United States.<sup>120</sup> Others report that consular staff has been reluctant to recognize powers of attorneys appointing a third person to oversee their visa application if families seek to leave Djibouti for a more affordable country. All of these procedural uncertainties may limit individuals' ability to leave Djibouti and reunite with family members elsewhere.

## AN ELUSIVE VISA WAIVER PROCESS

So far, the waiver system has failed to provide relief to U.S. citizens and LPRs of Yemeni origin and their families. As described in Section 3 above, the bar to qualify for a waiver is high—and qualifying alone is not enough. Data from the Department of State and the experiences of thousands of visa applicants show that waivers remain rare for Yemeni applicants in Djibouti. In particular, it remains unclear how the Department of State is assessing the "national security threat" standard with respect to Yemenis. This standard does not appear to depart materially from the vetting process in place before the Muslim Ban. If this standard focuses on information-sharing and national security concerns, then it should not be a major obstacle for children



and the elderly, who do not pose a serious national security threat. Yet consular officers in Djibouti and elsewhere have denied children and elderly applicants waiver consideration.<sup>121</sup>

An official at one point told an applicant in Djibouti that “Even for infants, we would need to see some evidence of a congenital heart defect or another medical issue of that degree of difficulty that likely could not be successfully operated upon in Djibouti and if not treated would likely lead to the child’s developmental harm or death.”<sup>122</sup> In addition, we have been credibly advised by individuals very knowledgeable about processes at the U.S. Embassy in Djibouti and that at least prior to any recent policy shift that might have happened surrounding the Supreme Court oral arguments, the Trump Administration had instructed that waivers be granted only in rare cases of imminent danger.

### How Many Waivers Have Been Granted?

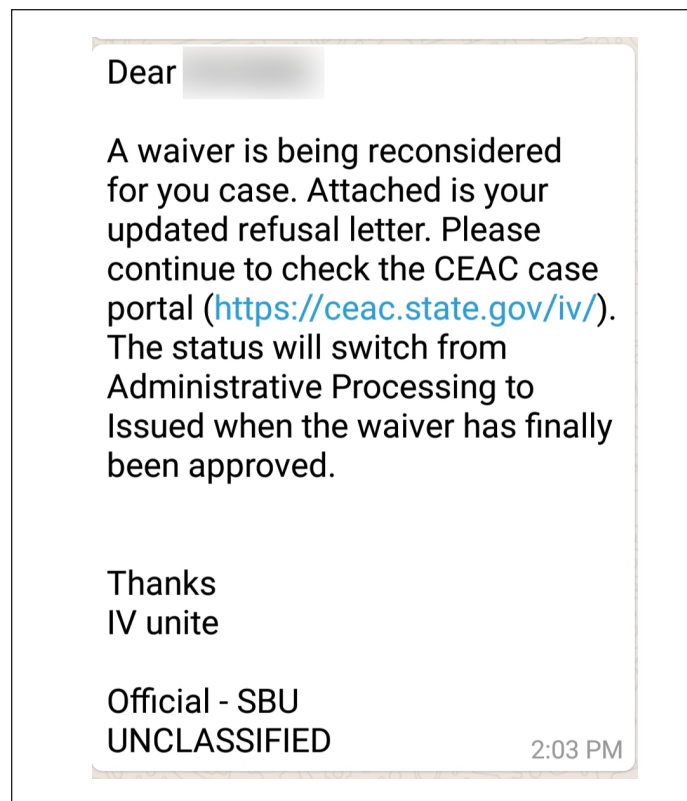
The Department of State’s letter to Senator Van Hollen contains alarming statistics about the grant rate of waivers since the full implementation of the Proclamation in December 2017. According to the letter, of the 8,406 visa applications by nationals subject to the Proclamation received and processed between December 8, 2017, and January 8, 2018, only 273 met the three mandatory criteria for a waiver.<sup>123</sup> Of those 273 applicants who met the high bar to qualify for waiver consideration, only two successfully completed the discretionary component and ultimately received waivers.<sup>124</sup> For the first month of the Muslim Ban’s full implementation, the discretionary waiver review therefore raised the bar to obtain a waiver well above the already stringent mandatory requirements incorporated in the Proclamation. Less than one percent of applicants who demonstrated that they would suffer undue hardship, that their entry was in the national interest, and that they posed no public-safety or national security threat ultimately obtained a waiver.

Those numbers appear to be slowly shifting, although they remain alarming. At oral arguments on April 24, 2018, the government told the Supreme Court that over 400 people had been cleared for waivers.<sup>125</sup> According to the Department of State, from December 8, 2017 through May 31, 2018, “at least 768 applicants were cleared for waivers after a consular officer determined [that] the applicants satisfied all criteria and completed all required processing.”<sup>126</sup> Not all waiver recipients have already obtained a printed visa, however. Moreover, it remains unclear whether the more than 768 applicants have completed the discretionary process or whether they are merely eligible for waiver consideration. The State Department has simply stated that “[m]any of [these] applicants have already received their visas.”<sup>127</sup> The State Department has also declined to specify how many waivers it has granted for immigrant rather than non-immigrant visas.

Publicly available data and accounts from local practitioners indicate that immigrant visas represent well under half of visas accorded pursuant to waivers. Although Yemenis have received far more immigrant than non-immigrant visas since fiscal year 2016, State Department data suggest that Yemenis have received more non-immigrant visas than immigrant visas since the Ban came into force.<sup>128</sup> Moreover, as of May 1, 2018, out of over one thousand pending immigrant visa applications when the Muslim Ban went into effect, and many more that have arrived since, the U.S. embassy in Djibouti had granted no more than seventeen, and more likely around one dozen, waivers.<sup>129</sup>

### CHANGES COINCIDING WITH SUPREME COURT ORAL ARGUMENTS

Between December 2017 and March 2018, only four to seven waivers were approved for Yemeni applicants in Djibouti.<sup>130</sup> Only in April did the number of waivers granted begin to rise as the impending Supreme Court oral arguments brought increased coverage of the Muslim Ban. Even through early May, after oral arguments had concluded and five months since the Ban went into full effect, attorneys reported that consular officers in Djibouti refused to consider the cases of children of U.S. citizens under the age of sixteen who were denied waiver consideration.<sup>131</sup> A reversal appears to have come about only



*Screenshot of an email received on May 23, 2018 by a woman who had previously received a denial.*



after repeated public reports about the exceedingly low rate of waiver approvals. In the case of Shaema Alomari, a 10-year-old child with cerebral palsy who had been initially denied consideration for a waiver, it took direct questions from Supreme Court justices about her case during the oral argument for her to finally obtain a waiver.<sup>132</sup>

Unlike Alomari's unique case, for most, there have been no reports of visas resulting from reconsiderations. In late May 2018, an unknown, but apparently limited number of individuals in Djibouti have reported receiving an email from the U.S. Consulate informing them that although their visa has still been denied, they are being considered for a waiver.<sup>133</sup> The waiver process remains as uncertain as it was before the recent spike in numbers. Hence, many mothers with young children, like Amal\*, remain separated from their families. To this day, children 16 and older are unable to join their siblings and parents in the United States.<sup>134</sup> Moreover, given the great variability in the standards consular officers have applied, there is no guarantee that, once litigation over the Muslim Ban concludes, waivers will remain available for the young children of Yemeni-Americans.

## NO OPPORTUNITY TO APPLY

The Proclamation places the burden on visa applicants to prove that they qualify for a waiver,<sup>135</sup> and the government has confirmed that consular officials are bound to consider all evidence of eligibility as part of an individualized review of the applicant's case.<sup>136</sup> However, without public information about the standards they have to meet or even when to present evidence, many visa applicants never had a meaningful opportunity to present relevant evidence.<sup>137</sup>

The Proclamation does not explain how visa applicants may apply for a waiver. Outside the text of the Proclamation, the government has offered only minimal guidance indicating how visa applicants may establish eligibility for a waiver.<sup>138</sup> In guidance released in December 2017, shortly before the Muslim Ban went into effect, the State Department acknowledged that there is no formal waiver application; consular officers determine eligibility for waivers based on applicants' pre-existing visa application. The State Department also advised visa applicants to "disclose during the visa interview any information that might qualify [them] for a . . . waiver."<sup>139</sup> The government has not mentioned any other ways applicants may present evidence of their eligibility. This lack of clear guidance resulted in confusion on the ground. All the individuals we interviewed were at a loss as to how to seek waivers, and many have received conflicting advice from various interpreters or attorneys as to whether to affirmatively seek them. Attorneys told several interviewees that assistance with submitting a waiver "packet" would cost more than \$7,000.

None of the individuals we interviewed in Djibouti had a meaningful opportunity to demonstrate their eligibility for a waiver, regardless of whether they had their interviews before or after December 8, 2017, when the Ban went into effect. Numerous applicants who attended visa interviews before December 8, 2017, had yet to receive a decision on their visas. Some of these applicants were notified that the consular officer had approved their visa and were merely waiting for the visa to be printed.<sup>140</sup> Other applicants had their cases stuck in administrative processing before final approval.<sup>141</sup> In a single day, on December 17, 2017, the U.S. embassy distributed over 200 nearly identical denial forms, each featuring a summary check mark indicating the case was not under consideration for a waiver.<sup>142</sup> Many more have received similar forms since.<sup>143</sup> Although some applicants attempted to submit supporting documentation during and after their interview, consular officers refused to accept it.<sup>144</sup> Visa applicants who attended interviews before December 8, 2017 therefore never had the opportunity to demonstrate that they qualified for a waiver. Moreover, they never received the individualized consideration of their circumstances so often promised.<sup>145</sup>

Those who had interviews at the U.S. embassy since the Muslim Ban entered into force continue to face significant hurdles. The government has released little information about how and when to apply for a waiver or what documentation to provide.<sup>146</sup> As noted above, it was only two and half months after the Muslim Ban went into effect that the government first elaborated on the three requirements for waiver consideration in response to an inquiry from a U.S. senator.<sup>147</sup> Many applicants receive a rejection the day of their interview without ever being told that they may apply for a waiver.<sup>148</sup> Moreover, consular officers have refused to accept supporting documentation that applicants have offered to submit during the interview.

## APPLICANTS' EXPERIENCES WITH THE WAIVER PROCESS

*"The waiver is a lie word."*

— Marwa\*

Over the course of about 30 interviews with Yemenis in Djibouti in March, not a single case had resulted in approval for a waiver under the Proclamation. For all individuals interviewed for this report, all but one of the cases with an interview at the U.S. embassy in Djibouti after December 8, 2017 had been rejected outright for a waiver, in many cases within minutes of arriving at the embassy and/or paying the visa processing fee.<sup>149</sup> Among those rejected are a mother who is breastfeeding a U.S. citizen son, and the teenage son of a U.S. citizen who

fears being conscripted in a militia if he returns to Yemen. As for those who applied and interviewed—but did not receive a final decision—before December 8, 2017, there was never any opportunity to present evidence that they qualified for a waiver. Most of these applicants have been put in “administrative processing,” and a subset of those have received incremental denials. Because most visa applicants were never told when or how they could receive a waiver, many individuals felt misled when they received a visa denial that stated that “[a] waiver will not be granted in your case.”

On January 18, 2018, when Ibrahim\* picked up his wife Amal’s\* rejection letter from the U.S. Embassy in Djibouti, he found out that she was not under consideration for a waiver. When Ibrahim\* sought to explain the hardship that will befall his family if his wife is unable to join the rest of the family, including her young children, in the United States, the officer present told him: “I don’t care, go! Take your passport and go!” Neither Ibrahim\* nor Amal\* had an opportunity to present evidence of eligibility for a waiver.<sup>150</sup>

Of the families interviewed for this report, only one was being considered for a waiver at the time of the interviews. The case involves a Yemeni-American parent who petitioned for visas on behalf of her young children. The parent did not do anything special in order to apply for such a waiver – she was simply informed that she was being considered for one. None of the Yemeni immigration specialists in Djibouti with whom we spoke – nor the individual herself – had any idea why her case would have merited waiver consideration. The only notable feature we identified was that the parent did not apply for a visa for her non-U.S. citizen spouse.<sup>151</sup>

The government has described the waiver process as “robust,”<sup>152</sup> “comprehensive”<sup>153</sup> and “individualized.”<sup>154</sup> In practice, however, the waiver process is opaque and often cursory. Many applicants never had an opportunity to apply, and many who did never knew what standard they were expected to meet. To add to these difficulties, the language of the proclamation, the information the government has released privately, and the accounts of consular officers suggest standards of varying rigor and consistency. For those applicants still awaiting final decisions, without additional public information about how visa applicants may present evidence of eligibility and what evidence DOS considers relevant, the waiver process offers little hope for relief.

## 6. Hardships Faced by Yemenis and Yemeni-Americans in Djibouti

As a direct result of the Muslim Ban, Yemeni families are torn apart, with members in the United States, Djibouti, and Yemen. Many have fallen into extreme debt during long waits in Djibouti and face ongoing uncertainty about their immigration status. For these families, a visa denial means much more than just a slip of paper announcing an inability to travel to the United States. It means that some families may be forced to send small children to live without their parents in the United States while their parents await visas. For others, it means that in a country they have called home for decades, Yemeni-Americans now feel like second-class citizens who are deprived of the opportunity to unite their families. Yemenis and Yemeni-Americans in Djibouti thus feel “stuck between two mountains.”<sup>155</sup> They cannot retrace the dangerous routes they took to Djibouti and return to a war zone, but they also cannot stay in Djibouti in the face of significant financial and personal strain.

### FAMILY SEPARATION

Yemeni-Americans continue to endure unusually lengthy separations from their spouses, parents, and children. After previously enduring extended wait times during earlier stages of the application process, many families now face indefinite separation as a result of visa denials under the Muslim Ban. Even though there are generally delays in family-based immigration visas because of numerical caps and administrative processing times, U.S. immigration laws have made sponsoring immediate family members streamlined by removing a numerical cap on the number of applications. However, the Muslim Ban deprives U.S.-born children of Yemenis and citizens of other listed countries of the benefits that the law purports to confer upon all U.S. citizens. In fact, many U.S.-born children of Yemeni parents have never met their parents because of wait times and visa denials. For example, Alhassan’s\* 3-year-old daughter, who is a U.S. citizen born in Michigan, has never met her father. She remains in the United States with her mother, a U.S. citizen who spent much of her life in Yemen. Alhassan’s\* wife had traveled back to the United States from Yemen shortly after she became pregnant, but expected at the time that her husband would soon join the family.<sup>156</sup> In other cases, visa denials and wait times have separated Yemeni-Americans from spouses and children for as long as seven years.<sup>157</sup>

Because of the long wait times, some families have felt they have no choice but to send their children to live among various relatives and friends in the United States. Parents in this position often explained

that this was the only way they saw to give their children a better life. They saw few prospects for their children in Yemen or Djibouti, frequently citing educational or medical needs. However, many worry that it will be too much of a burden to ask one relative to care for all of their children in the United States, especially when the extent of the stay is uncertain, and thus they had to disperse their children across households, sometimes states. Abdo Saba, a U.S. citizen and father of three U.S. citizens, has split up his children to live with an aunt and friends in the United States while he resides with his wife in Djibouti as they await news on their petition to reunite with their children.<sup>158</sup>

Similarly, the four children of Sharifa Geilan, all U.S. citizens, are now scattered between Djibouti, Michigan, and Alabama. Geilan's two older children live in the United States and convey a sense of loss and abandonment each time they speak to their mother on the phone.<sup>159</sup> Others spoke of the anxiety surrounding mentally preparing children who had received a U.S. passport or visa to travel to the United States and leave one or both of their parents behind. In those cases, there was no choice but to send children ahead to the United States rather than risk having their visas expire.

*“They can’t live far away from their mom, but I can’t do anything. I tell my children that this isn’t in my hands [and] that this is the decision from the ban, I want to be with them.”*

– Sharifa Geilan

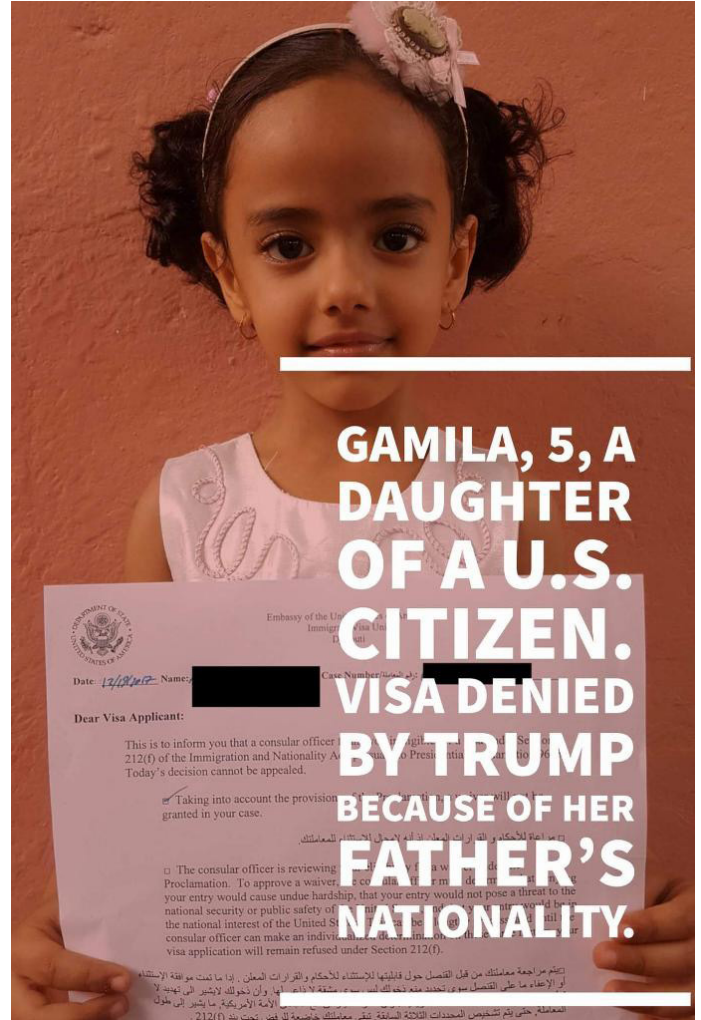
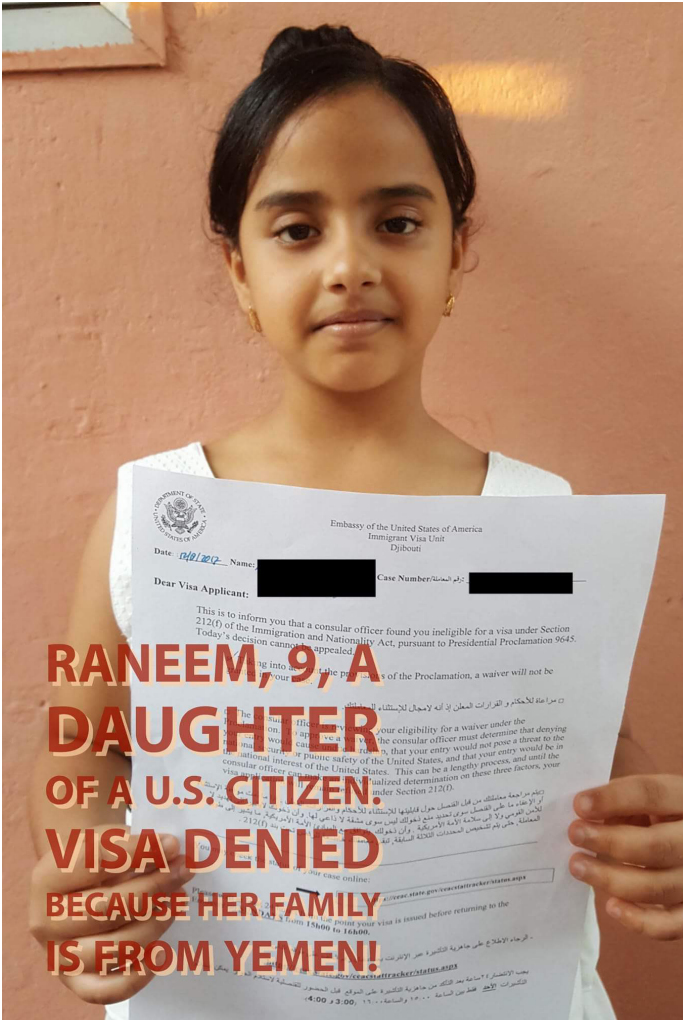
## The Elusive American Dream

“I had a dream that was so nice: having my own house, living there forever, with my wife and my kids. Just to be in peace.” – Radad Alborati<sup>160</sup>

Radad Alborati has been a U.S. citizen since 2010 and works in New York City. In 2012, he applied for visas for his wife and three children. He first traveled to Djibouti in September 2017 to join his wife and children for their visa interviews. At the interview, he was told his wife would receive her visa in two weeks; instead it still remains in administrative processing. Meanwhile, his children received visas in November 2017 and at the time we spoke with him, they were dispersed among three different families in the Bronx. After spending several months in Djibouti waiting with his wife, Mr. Alborati had to return to the U.S. to earn a living and be with his children. Alborati had saved to spend on a home \$40,000 in New Jersey for his family; now, however, he has spent that money on travel and expenses in Djibouti.

Mohamed\*, a U.S. citizen for nearly a decade, had achieved his dream of homeownership. However, because of the expenses associated with life in Djibouti, Mohamed\* was forced to sell the home in Detroit he had painstakingly readied for his family. He emigrated from Yemen to the United States in 2004 and settled successfully in North Carolina and Michigan. For nearly ten years, Mohamed\* saved money from his job driving trucks so he could afford to bring his wife and children to the United States. He eventually established his own truck leasing business and bought a house in Detroit. He spent the next three years preparing his new home to welcome his family.<sup>161</sup> In 2015, he applied for immigrant visas for his wife and four of his five children. His fifth child, born a U.S. citizen, is still breast feeding. He attended the visa interview at the U.S. embassy in Djibouti with his wife and children on November 21, 2017. Five days later, Mohamed\* received notification that the children's visas were approved and, on the same day, he picked up their passports with the visas printed. On February 28, 2018, Mohamed\* received a call from the consular section and went to pick up his wife's denial. She is not being considered for a waiver, nor did she ever have the opportunity to apply for one. Mohamed\* and his wife must now decide whether to send the four youngest children to Michigan without their mother before their visas expire. When we spoke, Mohamed\* was considering returning to Yemen with his U.S. citizen child and his wife, so the child may continue breastfeeding.





Posters of sisters who were denied visas in Djibouti, developed by Yemeni community organizers to help protest the Muslim Ban.

## RISKS OF RETURNING TO YEMEN

“The only option we have is to go back to a war zone. It’s the only country that will welcome us.”

– Abdo Saba

The ongoing war makes a return to Yemen unfathomable for many. Many of those interviewed for this report originally hail from Sanaa, Taiz, Rada’a and Ibb. All three cities are either under Houthi control or actively contested, and have been targets of air strikes.<sup>162</sup> Families with older children worry that their sons may be conscripted into local militias.<sup>163</sup> Travel within Yemen is risky, particularly for Yemeni-Americans who would want to help their family members travel back from Djibouti if they are denied visas or visit them upon their return. Yemeni-Americans described the fear of returning to Yemen and getting

“hassled” or receiving “kidnapping threats if it is known that [they] have a U.S. passport.”<sup>164</sup> Individuals also do not want to venture back to Yemen, only to then have to travel back to Djibouti for another visa interview in the event of a change in implementation of the Muslim Ban, or if it is struck down by the Supreme Court.

Some beneficiaries simply have nothing to return to in Yemen. Amin lived with his uncle in Yemen. Shortly after Amin Alzandani embarked for Djibouti in April 2015 his uncle’s home was bombed and his uncle was killed. However, he cannot travel to the United States and begin a new life with his wife, a U.S. citizen, after being denied a visa in January 2018.

Ahmed\* has been a U.S. citizen since 1987. In 2016, he applied for visas for his wife and five children to join him in the United States. Ahmed\* and his family attended their interview at the U.S. embassy in Djibouti on November 22, 2017, and was told that day that his four youngest children would receive visas. Within a week, the embassy had printed their visas. However, his wife, who was four months pregnant at the time of our interview, and his eldest son remained in administrative processing when the current version of the Muslim Ban went into full effect on December 8, 2017. Since then, Ahmed\* has called the embassy's consular section only to have the person on the other end hang up without even asking for his case number. Ahmed\* has also tried to send e-mails and drop off physical letters but has received no response. Ahmed\* still does not know how or when he will receive a final decision for his wife and son, nor if he will ever be able to apply for a waiver should their visas be denied. Ahmed\*, who was shot in the head during a previous trip to Yemen, is unwilling to send his wife and son back because of the war. He fears his son will be conscripted into a militia and his wife will not have access to proper medical care.

## FINANCIAL BURDEN

If returning to Yemen is unsafe because of the war, staying in Djibouti imposes its own grave implications due to the extreme financial strain imposed on the families. Many have fallen into crippling debt, in the tens or hundreds of thousands of dollars, to finance their immigration limbo in Djibouti. It is common for families to have sold all their belongings to pay for the visa process requirements and their basic living expenses in Djibouti, a country that is notoriously expensive to live in. The cost of living in Djibouti is much higher than in Yemen because the country relies on imports for most of its food and energy. Electricity rates in the country are \$0.28 per kilowatt-hour, double the average price for the continent.<sup>165</sup> Electricity costs skyrocket in the summer when temperatures climb to over 100 degrees. Monthly utilities bills run between \$225 to \$360, and rent for a one-bedroom apartment was \$930 on average.<sup>166</sup> These estimates were consistent with the experiences of interviewees who spent between \$600-\$1,100 per month on rent and \$200-300 per month on electricity.

Yemenis living in Djibouti struggle to find work because they do not have work permits. In 2017, Djibouti's overall unemployment rate was estimated at 60 percent.<sup>167</sup> While some Yemenis have found work in restaurants or stores, language barriers make finding and keeping a job difficult. Instead, the overwhelming majority rely on a combination of savings, bank loans, and support of family and friends abroad.

Yemeni-Americans also bear much of the burden of providing financial support for relatives stranded in Djibouti. Many of those interviewed for

this report relied entirely on family and friends in the United States to cover their living expenses. Additionally, some individuals must not only support family members in Djibouti, but also care for children who have remained in the United States.

The cost of travelling to and living in Djibouti has led some individuals to sacrifice employment and investments in the United States. Some petitioners, particularly men who have applied for their wives and children, were fired after accompanying family members to Djibouti for visa interviews. For example, Abu Bakr\* has lived in the United States for nine years and been a citizen for three. His parents and all but one of his siblings are U.S. citizens living in New York and St. Louis. He lost his job as a plumber in New York after spending six months in Djibouti waiting for a decision on his wife's visa. The visa was ultimately denied. Since he had spent down all his savings, he would now have to go back to the United States without his wife "and start all over again from zero."<sup>168</sup> Similarly, Radad Alborati explained, "I lost the best job of my life that I had in order to come here."<sup>169</sup>



## Losing One's Business

Abdo Saba is a U.S. citizen and operates a wholesale fruit business in New York. His three children are all U.S. citizens, and he applied for a visa for his wife in 2016. In late October 2017, he traveled to Djibouti to meet his wife for her interview. He thought the trip would last just a few weeks and cost no more than \$5,000. Instead, he has been there for eight months and spent more than \$40,000 on travel and other expenses. He not only must support himself and his wife in Djibouti, but also his three children who remain in New York living with friends and relatives. He spends around \$4,000 to \$4,500 each month to cover basic expenses including rent, water, electricity and food. He explains that finding a job in Djibouti would be difficult given the language barrier and sparse job opportunities. Moreover, his salary would be just \$300-400 a month, barely putting a dent in his expenses.

Now, he fears that he will also have to close his wholesale fruit business. A business partner from California briefly traveled to New York to oversee operations. However, he could not stay indefinitely, and Abdo explained how difficult it is to operate a business dependent on perishable goods without any oversight. He said, "It's been too much of a loss, I don't know if we can make the business keep working."<sup>170</sup>





## OTHER HARDSHIPS

### Lack of Educational Opportunity

Yemenis and Yemeni-Americans face additional hardships in Djibouti including limited opportunities for education and medical care. Most children of Yemeni families do not attend school. Parents explained that the uncertain duration of their stay complicates the timing of enrollment. Others cited language barriers (most Yemeni children do not speak French, one of Djibouti's official languages) and the costs of enrollment in one of the two private Yemeni schools. One family enrolled their children tuition-free in a Yemeni school in Djibouti for the year but stated that it was one-year exception granted as a favor.<sup>171</sup>

Nabil\*, a 16-year-old Yemeni boy, dreams of becoming a spinal doctor in the United States. For now, however, he remains stranded without any of his family.

Nabil\*'s father, a U.S. citizen living in North Carolina, applied for his son's visa around 2014. When Nabil\* received an interview appointment in December 2017, he left school before completing his exams and set off from Sana'a. As he passed through Yemen, soldiers stopped him every ten to fifteen kilometers for questioning at checkpoints. After traveling through Oman and Sudan, he arrived in Djibouti and moved in with a group of other visa applicants from his town. Nabil\* underwent a medical exam and later attended his interview, only to be denied a visa that same day. Embassy officials gave him no explanation beyond the text of the rejection slip. Nabil\* loves studying English but is not enrolled in school in Djibouti. He has few friends his age and worries he will soon be abandoned by the group he is staying with. He still dreams of reuniting with his father in the United States and explains, "I want to study. I want to pursue my higher education." He remains hopeful about the Supreme Court's ruling in June, and says that for now "[i]t is impossible to go back to Yemen because of the war. My only option is to bear with Djibouti."

### Medical Hardship

*"When the consul sees that she has this physical handicap, there should be some mercy."*

— Najeeb Alomari

In addition to the discontinuities in their children's education, Yemenis stranded in Djibouti also lack access to the quality of medical care they could receive if granted visas to the United States. For example, Fahmi Saleh applied for a U.S. visa for his wife, Saba, in 2011. Saba has rheumatic heart disease affecting the mitral valve. Saleh provided

evidence of his wife's medical condition during his interview with USCIS in 2016. Since arriving in Djibouti, he has brought his wife to the hospital three times for emergency injections. He explained, "I am scared this disease is going to get more problems. In Djibouti it is hard to find a good doctor and a good hospital." In other cases, Yemenis are unable to access necessary medications in Djibouti.

On January 28, 2018, Najeeb Alomari carried his eleven-year-old daughter, Shaema, who is severely handicapped, to her visa interview at the U.S. embassy. He hoped that he would soon be able to bring her to live with him in the United States. Alomari received U.S. citizenship in 2010. Shortly after receiving citizenship, he applied for visas for his wife and daughters, who were living in Yemen, to join him in New York. For seven years, requests for supplementary documentation stalled their applications. Finally, in June 2017, his family received an invitation to interview in Djibouti. Alomari traveled from New York to Ibb, a city in the highlands of central Yemen, and then spent nearly 30 hours traveling with his family to the airport in Aden. Once he was in Djibouti for his interview, the consular officials asked Alomari standard questions, but showed little interest in the extensive medical documentation he provided for his handicapped daughter. After the interview, Alomari's 6-year-old daughter, who has birthright citizenship, was approved for a passport. Her mother and sisters, however, received a denial form indicating they would not be considered for a waiver. When Alomari inquired whether any accommodations might be made for Shaema, the consular officer explained that nothing could be done with the Proclamation in place.

Living in Djibouti drained Alomari's savings. He spent around \$3,900 on his family's travel to Djibouti and paid \$1,000 a month to rent an unfurnished apartment. To cover ongoing expenses, he took loans from family and friends in the United States. The Djiboutian heat exacerbated his Shaema's handicap, and Alomari was unable to find the appropriate medications for her. His daughter is unable to fully close her mouth and frequently gets infections from dust blown in by fans. She went to the hospital three times but received little help. The medication brought from Yemen ran out after two months.

Finally, after months of extreme hardship in Djibouti, and only after Shaema's case received widespread media attention and was directly addressed by Supreme Court justices during oral arguments in the Muslim Ban litigation, she received a U.S. visa on May 23, 2018. She arrived in New York City a few days later and was greeted by crowds of supporters, community members, and advocates who had rallied around her case as particularly emblematic of the flaws inherent in the waiver process.

## A Feeling of Second-Class Citizenship

Many petitioners expressed frustration at being treated in a manner incommensurate with their status as U.S. citizens throughout the application process. Fahmi Saleh said, “How am I a U.S. citizen and I get treated like that? I am supposed to be treated better.”<sup>172</sup> Ibrahim\*, who has lived in the United States since 2004, echoed this sentiment. “I went through a lot of hardship to obtain U.S. citizenship and at the end I feel like I am still a Yemeni.” He added, “I am a decent person. I work and pay my taxes. My only concerns are my wife and my children.”<sup>173</sup> Another interviewee explained, “We feel that as Americans we have no rights. We feel that we are being treated as less than what we thought we are. It hurts.”

Several cited their long history in the United States as adding insult to injury. Mokhtar’s\* father has lived in the United States since 1969 and worked for Ford Motors. His grandfather served on the crew of a U.S. ship during World War II. Even though all of his siblings are U.S. citizens and nine of them live in New York State, Muhammad Abdu Ali Mohammed and his family were denied a visa and waiver in January 2018.<sup>174</sup>

Nonetheless, optimism about life in the United States remains high. Despite frustrations with the U.S. immigration system, many maintain strong loyalty to the United States. One interviewee explained, “I belong to America . . . I’m trying to plant the same feeling in my daughter to be loyal to America.”<sup>175</sup>

---

## Conclusion

In January 2017, Americans came out in droves to demonstrate at airports around the country and to protest against the first iteration of the Muslim Ban. Standing in solidarity with immigrants detained at their point of entry to the United States, the protestors chanted “we are all immigrants” and “let them in.” The same practices that prompted public outcry at U.S. airports, just 18 months ago, continue today at U.S. embassies around the world.

The Muslim Ban continues to impose extreme and enduring hardship for Yemenis stranded in Djibouti and in other countries where pending immigrant visa applications have been transferred. Yemeni-American families remain scattered across multiple countries: children are separated from their parents, husbands are separated from their wives, siblings and grandparents are presented with no option but to return to war-torn Yemen. Dreams have become elusive for families who burned through their savings and incurred extreme debt to finance an onerous and costly immigration process. Every day they remain in Djibouti, these individuals continue to bear the burdens imposed by displacement and uncertainty: family separation, unemployment, limited access to medical care, and stalled education for their children.

In the United States, Yemeni-Americans continue to draw attention to the hardships inflicted by the Muslim Ban both in the United States and abroad.<sup>176</sup> The day before the U.S. Supreme Court was scheduled to hear arguments over whether the Muslim Ban should be upheld, Yemeni business owners in New York, Virginia, Michigan, and San Francisco shuttered their doors once again, in a gesture harkening back to the protests of 15 months earlier.<sup>177</sup> These Yemeni-Americans retain hope that the U.S. government will reverse course and that they will be reunited with their loved ones in the country they call home. In the meantime, the families of Yemenis and nationals of the six other countries restricted under the Muslim Ban will continue to advocate for the rights of their community and for U.S. citizens to be able to live with their families.







# Appendix A

Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats (Third Muslim Ban), Proclamation No. 9645, 82 Fed. Reg. 45161, 45168-69, § 3(c)(iv) (Sept. 27, 2017).

(iv) Case-by-case waivers may not be granted categorically, but may be appropriate, subject to the limitations, conditions, and requirements set forth under subsection (i) of this subsection and the guidance issued under subsection (ii) of this subsection, in individual circumstances such as the following:

(A) the foreign national has previously been admitted to the United States for a continuous period of work, study, or other long-term activity, is outside the United States on the applicable effective date under section 7 of this proclamation, seeks to reenter the United States to resume that activity, and the denial of reentry would impair that activity;

(B) the foreign national has previously established significant contacts with the United States but is outside the United States on the applicable effective date under section 7 of this proclamation for work, study, or other lawful activity;

(C) the foreign national seeks to enter the United States for significant business or professional obligations and the denial of entry would impair those obligations;

(D) the foreign national seeks to enter the United States to visit or reside with a close family member (*e.g.*, a spouse, child, or parent) who is a United States citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa, and the denial of entry would cause the foreign national undue hardship;

(E) the foreign national is an infant, a young child or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by the special circumstances of the case;

(F) the foreign national has been employed by, or on behalf of, the United States Government (or is an eligible dependent of such an employee), and the foreign national can document that he or she has provided faithful and valuable service to the United States Government;

(G) the foreign national is traveling for purposes related to an international organization designated under the International Organizations Immunities Act (IOIA), 22 U.S.C. 288 *et seq.*, traveling for purposes of conducting meetings or business with the United States Government, or traveling to conduct business on behalf of an international organization not designated under the IOIA;

(H) the foreign national is a Canadian permanent resident who applies for a visa at a location within Canada;

(I) the foreign national is traveling as a United States Government-sponsored exchange visitor; or

(J) the foreign national is traveling to the United States, at the request of a United States Government department or agency, for legitimate law enforcement, foreign policy, or national security purposes.

## Appendix B

The State Department publishes monthly statistics showing the number of non-immigrant visas issued by nationality and consular post as well as the number of immigrant visas by “foreign state of chargeability” and consular post. The foreign state of chargeability generally corresponds to an individual’s state or territory of birth. In certain circumstances, for example children accompanying or joining a parent may be charged to their parent’s state of chargeability, regardless of their place of birth. Similarly, an individual born in a country of which neither of her parents is a national may be charged to either parent’s state of chargeability. As a result, foreign state of chargeability does not always correspond to nationality and it is difficult to determine exactly how many Yemeni nationals have obtained visas. For example, a person born in Yemen who subsequently acquired German citizenship and immigrated to the United States as a German citizen, would still be charged to Yemen in the State Department statistics.

Still, because people charged to Yemen are more likely than not Yemeni nationals, these statistics are still instructive. Moreover, because relatively few people of Djiboutian origin immigrate to the United States, and almost all immigrant visa applicants from the Djibouti consular post are either Djiboutian or Yemeni, we can use the statistics to accurately estimate the number of immigrant visas issued to Yemeni visa applicants in Djibouti.

For our estimates, we took the number of immigrant visas issued by the Djibouti post in each category. We subtracted the number of visas charged to Djibouti in that category from the number of visas issued by the Djibouti post. We then compared the remainder to the number of visas charged to Yemen in that category. We added to the tally for the maximum estimate the lesser of the remainder and the total number of visas charged to Yemen. That is, if the remainder was less than or equal to the number of visas charged to Yemen, we added it to our minimum estimate of waivers. If the remainder was greater than the number of visas charged to Yemen, we simply added the number of visas charged to Yemen to our minimum estimate.

Because not all visas charged to Djibouti are issued in Djibouti, to reach our maximum estimate, we did not subtract the number of visas charged to Djibouti from the number of visas issued in Djibouti. Instead, we added to the tally for the maximum estimate the lesser of the total number of visas issued in Djibouti in a category and the total number of visas charged to Yemen in the same category. In other words, if the number of visas issued in Djibouti was less than or equal to the number of visas charged to Yemen for the category, we added the number of visas issued in Djibouti to the maximum estimate. If the number of visas issued in Djibouti was greater than the number of visas charged to Yemen, we simply added the number of visas charged to Yemen to the maximum estimate.

# Endnotes

<sup>1</sup> Adam Chandler, *The Yemeni Bodega Strike*, ATLANTIC (Feb. 4, 2017), <https://www.theatlantic.com/business/archive/2017/02/yemen-bodega-brooklyn-immigration-ban/515670/green>.

<sup>2</sup> Protecting the Nation from Foreign Terrorist Entry into the United States (First Muslim Ban), Exec. Order No. 13769, 82 Fed. Reg. 8977, 8977-78 (Feb. 1, 2017).

<sup>3</sup> Chandler, *supra* note 1.

<sup>4</sup> Transcript of Oral Argument at 35, *Trump v. Hawaii*, No. 17-965 (U.S. *argued* Apr. 25, 2018), [https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2017/17-965\\_3314.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2017/17-965_3314.pdf).

<sup>5</sup> OFFICE OF THE U.N. HIGH COMM’R FOR REFUGEES, UPDATE — YEMEN CRITICAL REQUIREMENTS (Apr. 1, 2018), <http://reporting.unhcr.org/sites/default/files/UNHCR%20Yemen%20Critical%20requirements%20-%20April%202018.pdf>.

<sup>6</sup> “Notice to All U.S. Citizens Residing in or Traveling to Yemen- April 01, 2015,” U.S. EMBASSY IN YEMEN, <https://ye.usembassy.gov/notice-u-s-citizens-residing-traveling-yemen-april-01-2015>.

<sup>7</sup> U.S. Visas, U.S. DEP’T OF STATE—BUREAU OF CONSULAR AFF., <https://travel.state.gov/content/travel/en/us-visas.html> (last visited June 1, 2018).

<sup>8</sup> Ryan Baugh, Dep’t of Homeland Sec., U.S. Lawful Permanent Residents: 2016, Annual Flow Report, Dec. 2017, at 1, [https://www.dhs.gov/sites/default/files/publications/Lawful\\_Permanent\\_Residents\\_2016.pdf](https://www.dhs.gov/sites/default/files/publications/Lawful_Permanent_Residents_2016.pdf).

<sup>9</sup> *Id.*

<sup>10</sup> *Directory of Visa Categories*, U.S. DEP’T OF STATE—BUREAU OF CONSULAR AFF., <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/all-visa-categories.html> (last visited June 1, 2018).

<sup>11</sup> *The Legacy of the 1965 Immigration Act: Three Decades of Mass Immigration*, CTR. FOR IMMIGR. STUD. (Sept. 1, 1995), <https://cis.org/Report/Legacy-1965-Immigration-Act>.

<sup>12</sup> Karen Manges Douglas, *National Origins System*, in 1 ENCYCLOPEDIA OF RACE, ETHNICITY, AND SOCIETY 937, 938 (Richard T. Schaefer ed., 2008).

<sup>13</sup> 8 U.S.C. § 1152 (2016).

<sup>14</sup> Glob. Legal Research Directorate Staff, *Family Reunification Laws Part II: United States Approach to Family Reunification*, LIBRARY OF CONGRESS (July 2014), <https://www.loc.gov/law/help/family-reunification/us.php>.

<sup>15</sup> Muzaffar Chishti, Faye Hipsman & Isabel Ball, *Fifty Years On, the 1965 Immigration and Nationality Act Continues To Reshape the United States*, MIGRATION POL’Y INST. (Oct. 15, 2015), <https://www.migrationpolicy.org/article/fifty-years-1965-immigration-and-nationality-act-continues-reshape-united-states>.

<sup>16</sup> *Family-Based Immigrant Visas*, U.S. DEP’T OF STATE—BUREAU OF CONSULAR AFF., <https://travel.state.gov/content/travel/en/us-visas/immigrate/family-immigration/family-based-immigrant-visas.html> (last visited June 4, 2018).

<sup>17</sup> Glob. Legal Research Directorate Staff, *supra* note 14.

<sup>18</sup> *Id.*

<sup>19</sup> 8 U.S.C. § 1151(b). See also Glob. Legal Research Directorate Staff, *supra* note 14, n.3 (“To determine the number of non-immediate relative family-sponsored immigrants allowed each year, subtract from 480,000 the number of immediate relative immigrants from the year before (up to 254,000) and the number of individuals paroled into the United States for at least a year. The minimum number of family-sponsored immigrants each year is currently set at 226,000.”) (citing 8 U.S.C. § 1151(c)).

<sup>20</sup> 8 U.S.C. § 1152(a)(2).

<sup>21</sup> *I-130, Petition for Alien Relative*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Apr. 11, 2018), <https://www.uscis.gov/i-130>.

<sup>22</sup> U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP’T OF HOMELAND SEC., FORM I-130, PETITION FOR ALIEN RELATIVE (Feb. 27, 2017), [https://www.uscis.gov/system/files\\_force/files/form/i-130.pdf](https://www.uscis.gov/system/files_force/files/form/i-130.pdf).

<sup>23</sup> U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP’T OF HOMELAND SEC., NUMBER OF FORM I-130, PETITION FOR ALIEN RELATIVE, BY CATEGORY, CASE STATUS, AND USCIS FIELD OFFICE OR SERVICE CENTER LOCATION, JULY 1-SEPTEMBER 30, 2017. [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Family-Based/I130\\_performance\\_data\\_fy2017\\_qtr4.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Family-Based/I130_performance_data_fy2017_qtr4.pdf).

<sup>24</sup> *Check Case Processing Times*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://egov.uscis.gov/processing-times> (last visited June 3, 2018) (Under “Form,” enter “I-130 | Petition for Alien Relative” and, under “Field Office or Service Center,” enter “California Service Center.”).

<sup>25</sup> *Id.* (Under “Form,” enter “I-130 | Petition for Alien Relative” and, under “Field Office or Service Center,” enter “Texas Service Center.”).

<sup>26</sup> *Immigrant Visa Process*, U.S. DEP’T OF STATE—BUREAU OF CONSULAR AFF., <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/after-petition-approved/begin-nat-visa-center.html> (last visited June 3, 2018).

<sup>27</sup> *Id.*

<sup>28</sup> U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP’T OF HOMELAND SEC., ADJUDICATOR’S FIELD MANUAL—REDACTED PUBLIC VERSION 15.4 [hereinafter USCIS AFM], <https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-2449/0-0-0-2661.html>.

<sup>29</sup> *Id.*

<sup>30</sup> *Administrative Processing Information*, U.S. DEP’T OF STATE—BUREAU OF CONSULAR AFF. <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/administrative-processing-information.html> (last visited June 4, 2018).

<sup>31</sup> *Id.*

<sup>32</sup> Press Release, Donald J. Trump for President, Donald J. Trump Statement on Preventing Muslim Immigration (Dec. 7, 2015), reprinted in Joint Appendix at 158, *Trump v. Hawaii*, No. 17-965 (U.S. *argued* Apr. 25, 2018), [https://www.supremecourt.gov/DocketPDF/17/17-965/36175/20180221192736374\\_Final%20Trump%20v.%20Hawaii%20JA%20-%20REVISED%20for%20filing.pdf](https://www.supremecourt.gov/DocketPDF/17/17-965/36175/20180221192736374_Final%20Trump%20v.%20Hawaii%20JA%20-%20REVISED%20for%20filing.pdf); Jenna Johnson, *Trump Calls for “Total and Complete Shutdown of Muslims Entering the United States,”* WASH. POST (Dec. 7, 2015), [http://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states/?utm\\_term=.1a8f492fd8e](http://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states/?utm_term=.1a8f492fd8e).

<sup>33</sup> David Bier, *A Dozen Times Trump Equated His Muslim Ban with a Muslim Ban*, CATO INSTITUTE: CATO AT LIBERTY (Aug. 14, 2017, 12:06 PM), <https://www.cato.org/blog/dozen-times-trump-equated-travel-ban-muslim-ban>; Jenna Johnson & Abigail Hauslohner, *“I Think Islam Hates Us”: A Timeline of Trump’s Comments About Islam and Muslims*, WASH. POST (May 20, 2017), [https://www.washingtonpost.com/news/post-politics/wp/2017/05/20/i-think-islam-hates-us-a-timeline-of-trumps-comments-about-islam-and-muslims/?utm\\_term=.a6fc073fdc2c](https://www.washingtonpost.com/news/post-politics/wp/2017/05/20/i-think-islam-hates-us-a-timeline-of-trumps-comments-about-islam-and-muslims/?utm_term=.a6fc073fdc2c).

<sup>34</sup> Protecting the Nation from Foreign Terrorist Entry into the United States (First Muslim Ban), Exec. Order No. 13769, 82 Fed. Reg. 8977, 8977-78 (Feb. 1, 2017).

<sup>35</sup> *Id.* at 8978, § 3(c); see also 8 U.S.C. § 1187(a)(12) (2016). On revocation, see also Adam Kelsey, Justin Fishel & Geneva Sands, *60,000 Visas Revoked Since Immigration Executive Order Signed: State Department*, ABC NEWS (Feb. 3, 2017), <http://abcnews.go.com/Politics/60000-visas-revoked-immigration-executive-order-signed-state/story?id=45254827>. The First Order also suspended the resettlement of refugees in the United States for 120 days, drastically reduced the number of refugees allowed to settle in the United States and denied entry to Syrian refugees indefinitely. First Muslim Ban, 82 Fed. Reg. 8977, 8979, § 5(a), (c)-(d).

<sup>36</sup> *Darweesh v. Trump*, No. 17 Civ. 480 (AMD), 2017 U.S. Dist. LEXIS 13243 (E.D.N.Y. Jan 28, 2017).

<sup>37</sup> Docket for 17-965, Supreme Court of the United States, last visited, <https://www.supremecourt.gov/docket/docketfiles/html/public/17-965.html> (last visited Apr. 9, 2018, 8:52 PM EST).

<sup>38</sup> Order in Pending Case 17A560, *Trump v. Int’l Refugee Assistance Project*, No. 8:17-cv-00361-TDC (Dec. 4, 2017), [https://www.supremecourt.gov/orders/courtorders/120417zr1\\_j4ek.pdf](https://www.supremecourt.gov/orders/courtorders/120417zr1_j4ek.pdf).

<sup>39</sup> *Presidential Proclamation Fully Implemented Today*, U.S. DEP’T OF STATE (Dec. 8, 2017), <https://www.state.gov/r/pa/prs/ps/2017/12/276376.htm>.

<sup>40</sup> Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats (Third Muslim Ban), Proclamation No. 9645, 82 Fed. Reg. 45161, 45165-67 (Sept. 27, 2017). An eighth country, Chad, was originally included. However, on April 10, 2018, the U.S. Department of Homeland Security announced that Chad had met its baseline security requirements and that its nationals would once again be eligible to receive visas for travel to the United States. Press Release, U.S. Department of Homeland Security: Office of the Press Secretary, Chad Has Met Baseline Security Requirements, Travel Restrictions to be Removed (April 10, 2018), <https://www.dhs.gov/news/2018/04/10/chad-has-met-baseline-security-requirements-travel-restrictions-be-removed>; see also Maintaining Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats, Proclamation No. 9723, 83 Fed. Reg. 15937 (Apr. 10, 2018). Sudan and Iraq were also included in previous iterations of the Muslim Ban, but subsequently dropped. See Protecting the Nation from Foreign Terrorist Entry into the United States (Second Muslim Ban), Exec. Order No. 13780, 82 Fed. Reg. 13209, 13209, § 1(b)(i) (Mar. 6, 2017).



- <sup>41</sup> Third Muslim Ban, 82 Fed. Reg. at 45165-67, § 2.
- <sup>42</sup> Imposing Additional Sanctions with Respect to North Korea, Exec. Order No. 13,810, 82 Fed. Reg. 44705, 44705, 44707-08, §§ 1(iv), 5, 8(d) (Sep. 25, 2017).
- <sup>43</sup> U.S. DEP'T OF STATE, FY 2017 NONIMMIGRANT VISAS ISSUED, <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTables/FY17NIVDetailTable.pdf> (last visited Apr. 9, 2018, 7:13 PM EST); DEP'T OF STATE, TABLE XIV: IMMIGRANT VISAS ISSUED AT FOREIGN SERVICE POSTS (BY FOREIGN STATE CHARGEABILITY), FISCAL YEARS 2008-2017 [hereinafter IMMIGRANT VISAS, FY 2008-2017], <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2017AnnualReport/FY17AnnualReport-TableXIV.pdf> (last visited Apr. 9, 2018, 7:24 PM EST).
- <sup>44</sup> Third Muslim Ban, 82 Fed. Reg. at 45166, § 2(f).
- <sup>45</sup> *Id.*
- <sup>46</sup> *Id.* at 45168, § 3(c).
- <sup>47</sup> *Revisions to Presidential Proclamation 9645*, U.S. DEP'T OF STATE—BUREAU OF CONSULAR AFF., <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/presidential-proclamation-archive/RevisionatoPresidentialProclamation9645.html> (last visited Apr. 16, 2018) (“Any individual who seeks to travel to the United States should apply for a visa and disclose during the visa interview any information that might qualify the individual for an exception or waiver. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation, and if so, whether the case qualifies for an exception or a waiver.”).
- <sup>48</sup> Jeremy Stahl, “*The waiver process is fraud*”, SLATE.COM, (June 15, 2018).
- <sup>49</sup> Letter from Mary K. Waters, Assistant Sec’y for Legislative Affairs, Dep’t of State, to Senator Chris Van Hollen (Feb. 22, 2018), <http://fingfx.thomsonreuters.com/gfx/reuterscom/1/60/60/letter.pdf> (“When adjudicating the visa application of an applicant subject to the Proclamation, the consular officer must first determine whether the applicant is eligible for a visa under the provisions of the Immigration and Nationality Act (INA). . . . If an applicant from one of the designated countries is determined to be otherwise eligible for a visa under the INA, the interviewing officer must then determine whether the applicant falls into one of the exceptions to the Proclamation. Only if the otherwise eligible applicant does not fall within an exception, will the consular officer consider the applicant for a waiver. Each applicant who meets the conditions set forth in section 3(c) of the Proclamation must be considered for a waiver. There is no waiver form to be completed by the applicant.”).
- <sup>50</sup> Third Muslim Ban, 82 Fed. Reg. at 45168-69, § 3(b).
- <sup>51</sup> *Id.* at 45168, § 3(c)(i).
- <sup>52</sup> *Id.* at 45168, § 3(c).
- <sup>53</sup> CTR. FOR IMMIGRANTS’ RIGHTS CLINIC, PENN STATE LAW ET AL., A VIEW FROM THE GROUND: STORIES OF FAMILIES SEPARATED BY THE PRESIDENTIAL PROCLAMATION, (Feb. 20, 2018), <https://pennstatelaw.psu.edu/sites/default/files/documents/pdfs/Immigrants/WaiverExamplesFinal.pdf>.
- <sup>54</sup> MIDDLE E. INTEREST GRP., AM. IMMIGRATION LAWYERS ASS’N, AILA DOC. NO. 18032130, PRACTICE POINTER: APPLYING FOR A WAIVER PURSUANT TO PRESIDENTIAL PROCLAMATION 9645 (TRAVEL BAN 3.0) at I (Mar. 21, 2018), <http://www.aila.org/infonet/applying-for-a-waiver-pursuant-to-presidential>; Letter from Sirine Shebaya & Nimra Azmi, Muslim Advocates, & Diala Shamas & Noor Zafar, Ctr. For Constitutional Rights, to Dr. James V.M.L. Holzer, Deputy Chief FOIA Officer, U.S. Dep’t of Homeland Sec. et al. (Jan. 23, 2018), [https://ccrjustice.org/sites/default/files/attach/2018/01/2018.01.23\\_FOIA\\_Proclamation%20Waivers.pdf](https://ccrjustice.org/sites/default/files/attach/2018/01/2018.01.23_FOIA_Proclamation%20Waivers.pdf).
- <sup>55</sup> Letter from Mary K. Waters to Senator Chris Van Hollen, *supra* note 49.
- <sup>56</sup> *Id.*
- <sup>57</sup> *Id.*
- <sup>58</sup> In 1990, to ensure that individuals from countries without a long history of migration to the United States would still have the possibility to immigrate, Congress established the Diversity Immigrant Visa program. Under this program, individuals born in countries that have sent fewer than 50,000 immigrants to the United States in the previous five years may apply to obtain permanent residency through a lottery system. Immigration Act of 1990, Pub. L. 101-649, § 131, 104 Stat. 4978, 4997-99 (codified as amended at 8 U.S.C. § 1153 (2016)).
- <sup>59</sup> Few applicants for Diversity Visas have close ties to the United States. As a result, they may be unable to demonstrate that a U.S. person or entity would suffer hardship if they are unable to enter the United States. In line with U.S. immigration law’s rejection of nationality-based discrimination in immigration, the Diversity Visa system was aimed at allowing individuals of diverse origins to immigrate to the United States. The Muslim Ban effectively reverses the principles underlying the Diversity Visa scheme by denying Yemenis, among others, the opportunity they earned to immigrate to the United States by virtue of where they are from.
- <sup>60</sup> Letter from Mary K. Waters to Senator Chris Van Hollen, *supra* note 49.
- <sup>61</sup> Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats (Third Muslim Ban), Proclamation No. 9645, 82 Fed. Reg. 45161, 45162, § 1(c)(i)-(ii) (Sept. 27, 2017).
- <sup>62</sup> Letter from Mary K. Waters to Senator Chris Van Hollen, *supra* note 49.
- <sup>63</sup> Third Muslim Ban, 82 Fed. Reg. at 45169, § 4 (“Within 180 days of the date of this proclamation, and every 180 days thereafter, the Secretary of Homeland Security, in consultation with the Secretary of State, the Attorney General, the Director of National Intelligence, and other appropriate heads of agencies, shall submit a report with recommendations to the President . . . whether the restrictions and limitations imposed by section 2 of this proclamation should be continued, modified, terminated, or supplemented . . .”). *But see id.* at 45170, § 4(c) (“Notwithstanding the process described above . . . , if the Secretary of Homeland Security, in consultation with the Secretary of State, the Attorney General, and the Director of National Intelligence, determines, at any time, that a country meets the standards of the baseline described in section 1(c) of this proclamation, that a country has an adequate plan to provide such information, or that one or more of the restrictions or limitations imposed on the entry of a country’s nationals are no longer necessary for the security or welfare of the United States, the Secretary of Homeland Security may recommend to the President the removal or modification of any or all such restrictions and limitations.”).
- <sup>64</sup> *Id.* (“Notwithstanding the suspensions of and limitations on entry set forth in . . . this proclamation, a consular officer . . . may, in their discretion, grant waivers on a case-by-case basis to permit the entry of foreign nationals for whom entry is otherwise suspended or limited . . .”).
- <sup>65</sup> *Id.* at 45168-69, § 3(c)(iv).
- <sup>66</sup> *Id.* at 45168-69, § 3(c)(iv). For all ten applicable circumstances see Appendix A.
- <sup>67</sup> *Id.* at 45168-69, § 3(c) (noting that it is in the consular officer or CBP official’s “discretion” whether to grant a waiver, and that “[c]ase-by-case waivers . . . may be appropriate . . . in individual circumstances such as the [ten listed in the provision]”). See also the listed circumstance for “someone whose entry is otherwise justified by the special circumstances of the case.” *Id.* at 45169, § 3(c)(iv)(E).
- <sup>68</sup> Interview with Ali Ahmad Ali Muhammad in Djibouti, Djib. (Mar. 20, 2018).
- <sup>69</sup> *Yemeni Community*, EMBASSY OF THE REPUBLIC OF YEMEN IN WASHINGTON, D.C., <http://www.yemenembassy.org/yemeni-community> (last visited June 3, 2018).
- <sup>70</sup> Telephone Interview with Susanna Booth, Immigrant Justice Corp Fellow, Rama Issa, Executive Director, & Marwa Janini, Immigration Program Manager, Arab American Association of New York (Mar. 6, 2018) [hereinafter Telephone Interview with the Arab American Association of New York].
- <sup>71</sup> U.S. Census Bureau, *Place of Birth for the Foreign-Born Population in the United States: 2010-2014 American Community Survey 5-Year Estimates*, AMERICAN FACT FINDER, [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_14\\_5YR\\_B05006&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_B05006&prodType=table).
- <sup>72</sup> *About Yemeni Americans*, MIDDLE EASTERN AMERICAN RESOURCES ONLINE (2009), <http://www.mearo.org/yemeni-americans/yemeni-americans.php>.
- <sup>73</sup> Pub. L. No. 89-236 § 2, 79 Stat. 911 (codified as amended at 8 U.S.C. § 1152(a)(1) (2016)).
- <sup>74</sup> *Fraud Summary—Sana’a*, Cable 09SANAA1729 from the U.S. Consular Post at Sana’a, Yemen, to the Department of Homeland Security et al. (Sept. 29, 2009, 04:21 A.M.), [https://wikileaks.org/plusd/cables/09SANAA1729\\_a.html](https://wikileaks.org/plusd/cables/09SANAA1729_a.html).
- <sup>75</sup> *Id.* (“Post estimates that 1686, or two-thirds, of the 2542 IV cases adjudicated during the reporting period were referred directly to Fraud Prevention Unit (FPU). Approximately 226 of these were referred for phone investigations and 1395 for DNA testing.”).
- <sup>76</sup> BROAD. BD. OF GOVERNORS & OFFICE OF INSPECTOR GEN., U.S. DEP’T OF STATE, REP. NO. ISP-I-10-63A, REPORT OF INSPECTION: EMBASSY SANAA, YEMEN 25 (2010), <https://www.stateoig.gov/system/files/145254.pdf>.
- <sup>77</sup> Liz Robbins, *Yemeni-Americans, Thrust Into Limbo, Say U.S. Embassy Unfairly Revokes Passports*, N.Y. TIMES (May 27, 2015), <https://www.nytimes.com/2015/05/28/nyregion/yemeni-americans-thrust-into-limbo-say-us-embassy-unfairly-revokes-passports.html>.
- <sup>78</sup> ASIAN AMERICANS ADVANCING JUSTICE-ASIAN LAW CAUCUS & CREATING LAW ENFORCEMENT ACCOUNTABILITY & RESPONSIBILITY PROJECT, STRANDED ABROAD: AMERICANS STRIPPED OF THEIR PASSPORTS IN YEMEN (2016), 9-11, <http://www.law.cuny.edu/academics/clinics/immigration/clear/Stranded-Abroad-Americans-Stripped-of-Their-Passports-in-Yemen.pdf>.
- <sup>79</sup> *Id.* at 12-13.
- <sup>80</sup> *Id.* at 3 (Part I).
- <sup>81</sup> *Id.* at 12, 17.

<sup>82</sup> *Id.* at 39.

<sup>83</sup> UNITED STATES' COMPLIANCE WITH THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION, STRANDED ABROAD: SHADOW REPORT ON COERCIVE INTERROGATIONS AND DUE PROCESS VIOLATIONS IN THE CONFISCATION OR REVOCATION OF PASSPORTS OF AMERICAN CITIZENS OF YEMENI ORIGIN 9-11 (July 11, 2014), 4, [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_NGO\\_USA\\_17797\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17797_E.pdf).

<sup>84</sup> STRANDED ABROAD: AMERICANS STRIPPED OF THEIR PASSPORTS IN YEMEN, *supra* note 78, at 14. See also Complaint for Writ of Mandamus, Declaratory Relief and Equal Access to Justice Under 5 U.S.C. § 504 and 28 U.S.C. § 2412, *Nagi v. Kerry*, No. 2:14-cv-13948-AC-DRG (E.D. Mich. dismissed as moot Jan. 22, 2015).

<sup>85</sup> USCIS AFM, *supra* note 28, at 21.2(c)(6)(B), <https://www.uscis.gov/sites/default/files/ocomm/ilink/0-0-0-3513.html>.

<sup>86</sup> *Id.*

<sup>87</sup> See *id.* (“Both the petitioner and beneficiary should be interviewed. The consular officer will interview the beneficiary abroad . . .”).

<sup>88</sup> See Telephone Interview with Arab American Association of New York, *supra* note 70; Telephone Interview with J.C. Salyer, Staff Attorney, Arab-American Family Support Center (Mar. 6, 2018).

<sup>89</sup> See USCIS AFM, *supra* note 28, at 21.2(d), <https://www.uscis.gov/sites/default/files/ocomm/ilink/0-0-0-3513.html>. The instructions for form I-130 state, “if other forms of evidence have proven inconclusive, the petitioner may submit on a voluntary basis other evidence of a birth parent and birth child relationship to include [DNA] testing.” U.S. CITIZENSHIP & IMMIGRATION SERVS., DEP’T OF HOMELAND SEC., FORM I-130/I-130A, INSTRUCTIONS FOR FORM I-130, PETITION FOR ALIEN RELATIVE, AND FORM I-130A, SUPPLEMENTAL INFORMATION FOR SPOUSE BENEFICIARY (2017), <https://www.uscis.gov/sites/default/files/files/form/i-130instr.pdf>.

<sup>90</sup> Interview with J.C. Salyer, *supra* note 88.

<sup>91</sup> Interview with Julie Goldberg in New York, N.Y. (Mar. 4, 2018).

<sup>92</sup> *Administrative Processing Information*, *supra* note 30.

<sup>93</sup> Interview with J.C. Salyer, *supra* note 88.

<sup>94</sup> Interview with Karim\* in Djibouti, Djib. (Mar. 14, 2018).

<sup>95</sup> Antonio Guterres, *Yemen the World’s Worst Humanitarian Crisis, Says UN Chief*, INTERPRESS SERVICE (Apr. 4, 2018), <http://www.ipsnews.net/2018/04/yemen-worlds-worst-humanitarian-crisis-says-un-chief>.

<sup>96</sup> Mohammed Ghobari, *Tens of thousands of Yemeni Houthis protest against govt in the capital*, REUTERS (Aug. 22, 2014) <https://www.reuters.com/article/us-yemen-protests/tens-of-thousands-of-yemeni-houthis-protest-against-govt-in-capital-idUSKBN0GM12C20140822>.

<sup>97</sup> TSG IntelBrief: A Worsening Nightmare in Yemen, SOUFAN GROUP (Dec. 5, 2017), <http://www.soufangroup.com/tsc-intelbrief-a-worsening-nightmare-in-yemen>.

<sup>98</sup> *Multiple air raids hit Yemen despite calls for talks*, AL JAZEERA (Apr. 23, 2015) <https://www.aljazeera.com/news/2015/04/multiple-air-raids-hit-yemen-calls-talks-150423202329398.html>.

<sup>99</sup> *Death from Above: Every Saudi coalition air raid on Yemen*, AL JAZEERA (2018), <https://interactive.aljazeera.com/aje/2018/Saudi-Arabia-air-raids-on-Yemen/index.html>.

<sup>100</sup> Rod Nordland, *Talks to End War in Yemen Are Suspended*, N.Y. TIMES (Aug. 6, 2016), <https://www.nytimes.com/2016/08/07/world/middleeast/yemen-peace-talks-cess-fire.html>.

<sup>101</sup> Nour Youssef, *Airstrikes in Yemen Kill 68 Civilians in a Single Day*, N.Y. TIMES (Dec. 28, 2018), <https://www.nytimes.com/2017/12/28/world/middleeast/un-yemen-war.html>.

<sup>102</sup> *Outbreak Update—Cholera in Yemen, 1 March 2018*, WORLD HEALTH ORG.: REGIONAL OFF. FOR E. MEDITERRANEAN, <http://www.emro.who.int/pandemic-epidemic-diseases/cholera/outbreak-update-cholera-in-yemen-1-march-2018.html>.

<sup>103</sup> HUMAN RIGHTS WATCH, *Yemen: All Sides Fuel Humanitarian Crisis* (January 18, 2018)

<sup>104</sup> Stephanie Nebbehay, *U.N. Quietly Steps Up Inspection of Aid Ships to Yemen*, REUTERS (Apr. 5, 2018), <https://www.reuters.com/article/us-yemen-security-un/u-n-quietly-steps-up-inspection-of-aid-ships-to-yemen-idUSKCN1HC1P0>.

<sup>105</sup> OFFICE OF THE U.N. HIGH COMM’R FOR REFUGEES, *supra* note 5.

<sup>106</sup> *Notice to All U.S. Citizens Residing in or Traveling to Yemen*, U.S. EMBASSY IN YEMEN (Apr. 1, 2015), <https://ye.usembassy.gov/notice-u-s-citizens-residing-traveling-yemen-april-01-2015>.

<sup>107</sup> Marhaba Service, *Yemeni Hand-Out Received by U.S. Embassy in Djibouti*, FACEBOOK (May 16, 2015), <https://m.facebook.com/MarhabaService/posts/946244238739717>.

<sup>108</sup> *Yemeni Immigrant Visa Applicants*, U.S. EMBASSY IN ALG. (Dec. 8, 2016), <https://dz.usembassy.gov/yemeni-immigrant-visa-applicants>.

<sup>109</sup> BUREAU OF CONSULAR AFFAIRS, U.S. DEP’T OF STATE, NATIONAL VISA CENTER UPDATE FOR CONGRESSIONAL OFFICES (May 2016), [https://travel.state.gov/content/dam/travel/Congressional-Liaison/nvc-congressional-newsletters/NVC\\_Congressional\\_Newsletter\\_May2016.pdf](https://travel.state.gov/content/dam/travel/Congressional-Liaison/nvc-congressional-newsletters/NVC_Congressional_Newsletter_May2016.pdf).

<sup>110</sup> Interview with Ahmed Alsabahi in Djibouti, Djib. (Mar. 13, 2018).

<sup>111</sup> OFFICE OF THE U.N. HIGH COMM’R FOR REFUGEES, DJIBOUTI—RESPONSE TO THE YEMENI SITUATION (Jan. 2018), <http://crf.unhcr.org/en/documents/download/86>.

<sup>112</sup> OFFICE OF THE U.N. HIGH COMM’R FOR REFUGEES, DJIBOUTI FACT SHEET (Jan. 2018), <http://reporting.unhcr.org/sites/default/files/UNHCR%20Djibouti%20Fact%20Sheet%20-%20January%202018%20%28EN%29.pdf>.

<sup>113</sup> Liz Robbins, *‘Your Visa Is Approved,’ They Were Told. And Then It Wasn’t*, N.Y. TIMES (Jan. 17, 2018), <https://www.nytimes.com/2018/01/17/nyregion/immigrants-visa-yemen.html>.

<sup>114</sup> Interview with Mohamed\* in Djibouti, Djib. (Mar. 15, 2018).

<sup>115</sup> Interview with Ibrahim\* & Amal\* in Djibouti, Djib. (Mar. 14, 2018).

<sup>116</sup> Preliminary Injunction, *Alharbi v. Miller*, No. 18-CV-2435 (BMC) (E.D.N.Y. May 27, 2018). The court observed that State Department regulations and guidelines require consular officers to either issue or refuse the visa at the conclusion of the applicant’s interview; the consular officer “cannot temporarily refuse, suspend, or hold the visa for future action.” Findings of Fact and Conclusions of Law at 5, *Alharbi*, No. 18-CV-2435 (BMC) (E.D.N.Y. May 27, 2018). Moreover, if the consular officer refuses the visa, she must provide the applicant a document stating the statutory basis for the refusal. *Id.* at 7. The government admitted that refusing a visa after providing an applicant with an approval slip was “inconsistent with [State] Department policy.” *Id.* Having found that the plaintiffs received approval notices after their interviews and did not receive documentation notifying them that their visa was refused until after the Muslim Ban went into full effect, the court reasoned that their visa was approved and that the approval slips constituted issued visas. Because the Proclamation explicitly exempts previously issued visas from its scope, concluded the court, consular officers were bound to print visas for the plaintiff. *Id.* at 8-10.

<sup>117</sup> Status Report, *Alharbi*, No. 18-CV-2435 (BMC) (E.D.N.Y. June 12, 2018). The government has filed a motion to stay the preliminary injunction pending resolution of its motion for reconsideration. At the time of writing, the court has not yet ruled on the motion. See Motion to Stay Preliminary Injunction, *Alharbi*, No. 18-CV-2435 (BMC) (E.D.N.Y. June 11, 2018).

<sup>118</sup> Broad. Bd. of Governors & Office of Inspector Gen., U.S. Dep’t of State, Rep. No. ISP-1-10-63A, Report of Inspection: Embassy Djibouti, Djibouti 11, 12 (2018), <https://www.oversight.gov/sites/default/files/oig-reports/isp-i-18-14.pdf>.

<sup>119</sup> Interview with Ahmed Alsabahi, *supra* note 110; see also Telephone Interview with Malik Almathil, (Nov. 15, 2017); Telephone Interview with Abdo Elfageeh, (Feb. 8, 2018).

<sup>120</sup> Interview with Abu Bakr\* in Djibouti, Djib. (Mar. 15, 2018).

<sup>121</sup> See, e.g., Abigail Hauslohner, *Coveted Exemptions from Trump’s Travel Ban Remain Elusive for Citizens of Muslim-Majority Countries*, WASH. POST (May 22, 2018), [https://www.washingtonpost.com/national/coveted-waivers-for-trumps-travel-ban-remain-elusive-for-citizens-of-muslim-majority-countries/2018/05/22/d48cc8d8-48b6-11e8-827e-190efaf1f1ee\\_story.html?noredirect=on&utm\\_term=.5e5ef353d9d7](https://www.washingtonpost.com/national/coveted-waivers-for-trumps-travel-ban-remain-elusive-for-citizens-of-muslim-majority-countries/2018/05/22/d48cc8d8-48b6-11e8-827e-190efaf1f1ee_story.html?noredirect=on&utm_term=.5e5ef353d9d7) (“The stories of rejection . . . included a U.S. citizen’s 11-year-old Yemeni daughter who suffers from cerebral palsy and whose access to lifesaving medication has been hindered by the war in Yemen . . . and an 80-year-old Iranian man, whose American daughter wanted to bring him to the United States to live with her after his wife and son died.”); see generally Brief of Amici Curiae Pars Equality Center et al. in Support of Respondents at 13-28, *Trump v. Hawaii*, No. 17-965 (U.S. Mar. 30, 2018), [https://www.supremecourt.gov/DocketPDF/17/17-965/41720/20180330121826909\\_17-965-bsac-Pars-Equality-Center.pdf](https://www.supremecourt.gov/DocketPDF/17/17-965/41720/20180330121826909_17-965-bsac-Pars-Equality-Center.pdf) (describing several stories of children or elderly applicants who did not receive waivers); CTR. FOR IMMIGRANTS’ RIGHTS CLINIC, PENN STATE LAW ET AL., *supra* note 53 (same).

<sup>122</sup> Middle E. Interest Grp., Am. Immigration Lawyers Ass’n, *supra* note 54, app. A.

<sup>123</sup> Letter from Mary K. Waters to Senator Chris Van Hollen, *supra* note 55.

<sup>124</sup> *Id.*; see also Brief of Amici Curiae Pars Equality Center et al. in Support of Respondents at 12, *Trump v. Hawaii*, No. 17-965 (U.S. Mar. 30, 2018).

<sup>125</sup> Transcript of Oral Argument at 36, *Trump v. Hawaii*, No. 17-965 (U.S. argued Apr. 25, 2018), [https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2017/17-965\\_3314.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2017/17-965_3314.pdf).

- <sup>126</sup> *Revisions to Presidential Proclamation 9645*, *supra* note 47.
- <sup>127</sup> *Id.*
- <sup>128</sup> See Appendix B. The data were drawn from *Visa Statistics*, U.S. DEP'T OF STATE—BUREAU OF CONSULAR AFF., <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html> (last visited June 5, 2018 1:52 A.M. GMT).
- <sup>129</sup> See Appendix B; Interview with Ahmed Alsbahi, *supra* note 110; Interview with Julie Goldberg, *supra* note 91.
- <sup>130</sup> See sources cited *supra* note 129.
- <sup>131</sup> E-mail from an immigration practitioner to the Am. Immigration Lawyers Ass'n Middle E. Interest Grp. Mailing List (May 6, 2018) (on file with authors).
- <sup>132</sup> Transcript of Oral Argument at 72, 76, 77, *Trump v. Hawaii*, No. 17-965 (U.S. argued Apr. 25, 2018), [https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2017/17-965\\_3314.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2017/17-965_3314.pdf). See *infra* p. 19 for the Alomari family's story.
- <sup>133</sup> The authors have reviewed two such examples, on file with authors.
- <sup>134</sup> Interview with Ibrahim\* & Amal\*, *supra* note 115.
- <sup>135</sup> Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats (Third Muslim Ban), Proclamation No. 9645, 82 Fed. Reg. 45161, 45168, § 3(c)(i) (Sept. 27, 2017) (noting that “[a] waiver may be granted only if a foreign national demonstrates to the consular officer’s or CBP official’s satisfaction that” the foreign national meets the three mandatory criteria).
- <sup>136</sup> *Revisions to Presidential Proclamation 9645*, *supra* note 47. (“A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation, and if so, whether the case qualifies for an exception or a waiver.”); *DOS Updates Guidance Due to New Court Orders on Presidential Proclamation*, AILA Doc. No. 17120830, Am. Immigr. Law. Ass’n (Dec. 8, 2017), <http://www.aila.org/infonet/dos-updates-guidance-due-to-new-court-orders> (identical language); see also Defendants’ Memorandum in Opposition to Plaintiffs’ Motion for a Preliminary Injunction and/or Temporary Restraining Order of the Executive Order at 8, *Int’l Refugee Assistance Project v. Trump*, 241 F. Supp. 3d 539 (2017) (No. 8:17-cv-00361-TDC), 2017 WL 1047713 at \*11 (“Consular officers reviewing visa applications will carefully review each request under these criteria.”).
- <sup>137</sup> MIDDLE E. INTEREST GRP., AM. IMMIGRATION LAWYERS ASS’N, *supra* note 54, at III.A.
- <sup>138</sup> CTR. FOR IMMIGRANTS’ RIGHTS CLINIC, PENN STATE LAW ET AL., *supra* note 53; MIDDLE E. INTEREST GRP., AM. IMMIGRATION LAWYERS ASS’N, *supra* note 54, at III.B.i. For examples of guidance, see *DOS Updates Guidance Due to New Court Orders on Presidential Proclamation*, *supra* note 136; *Revisions to Presidential Proclamation 9645*, *supra* note 136.
- <sup>139</sup> *DOS Updates Guidance Due to New Court Orders on Presidential Proclamation*, *supra* note 136; see also *Revisions to Presidential Proclamation 9645*, *supra* note 47.
- <sup>140</sup> See *supra* p. 19; Robbins, *supra* note 113.
- <sup>141</sup> E.g., Interview with Abu Bakr\*, *supra* note 120; Interview with Ibrahim\* & Amal\*, *supra* note 115; Interview with Mohamed\*, *supra* note 114.
- <sup>142</sup> Mallory Moench, *The Yemenis Trapped Between War and US Extreme Vetting*, AL JAZEERA (Dec. 21, 2017), <https://www.aljazeera.com/news/2017/12/yemenis-trapped-war-extreme-vetting-171216090452611.html>; Robbins, *supra* note 113; see also Interview with Alasari\* family in Djibouti, Djib. (Mar. 21, 2018).
- <sup>143</sup> E.g., Interview with Sahar Alshami in Djibouti, Djib. (Mar. 21, 2018); Interview with Sharifa Geilan in Djibouti, Djib. (Mar. 22, 2018); Interview with Muhammad Abdu Ali Mohammed in Djibouti, Djib. (Mar. 20, 2018).
- <sup>144</sup> Interview with Ahmed Alsbahi, *supra* note 110; see also CTR. FOR IMMIGRANTS’ RIGHTS CLINIC, PENN STATE LAW ET AL., *supra* note 53.
- <sup>145</sup> See *supra* notes 135-136 and accompanying text.
- <sup>146</sup> See *supra* notes 135-145 and accompanying text.
- <sup>147</sup> See *supra* notes 53 and 55 and accompanying text.
- <sup>148</sup> E.g., Interview with Yasser\* in Djibouti, Djib. (Mar. 15, 2018).
- <sup>149</sup> Some applicants were still awaiting final decisions.
- <sup>150</sup> Interview with Ibrahim\* & Amal\*, *supra* note 115.
- <sup>151</sup> Interview with Anonymous Visa Applicant in Djibouti, Djib. (Mar. 15, 2018).
- <sup>152</sup> Defendants’ Opposition to Plaintiff’s Renewed Application for a Temporary Restraining Order & Preliminary Injunction at 2, *Doe v. Trump*, No. 3:17-cv-112-WMC (W.D. Wis. Mar. 10, 2017), 2017 WL 975996 at \*12, <https://assets.documentcloud.org/documents/3519757/Show-Temp.pdf>.
- <sup>153</sup> E.g., Defendants’ Memorandum in Opposition to Plaintiffs’ Motion for a Preliminary Injunction and/or Temporary Restraining Order of the Executive Order at 1, 10, 25, *Int’l Refugee Assistance Project v. Trump*, 241 F. Supp. 3d 539 (2017) (No. 8:17-cv-00361-TDC), 2017 WL 1047713 at \*4, 13, 28.
- <sup>154</sup> Application for Stay Pending Appeal to the U.S. Court of Appeals for the Ninth Circuit at 25 n.8, *Trump v. Hawaii*, 137 S. Ct. 2080 (2017) (No. 16-1540), <https://assets.documentcloud.org/documents/3765446/16A-Trump-v-Hawaii-CA9-Stay-Application-Addendum.pdf>; Brief for the Petitioners at 3, 66, *Trump v. Int’l Refugee Assistance Project*, No. 16-1436 (U.S. dismissed Oct. 10, 2017), 2017 WL 3475820, <https://assets.documentcloud.org/documents/3923161/16-143616-1540tsUnitedStates.pdf>.
- <sup>155</sup> Interview with Abdo Saba in Djibouti, Djib. (Mar. 14, 2018).
- <sup>156</sup> Interview with Alhassan\* in Djibouti, Djib. (Mar. 14, 2018).
- <sup>157</sup> Interview with Sahar Alshami, *supra* note 143.
- <sup>158</sup> Interview with Abdo Saba, *supra* note 155.
- <sup>159</sup> Interview with Sharifa Geilan, *supra* note 143.
- <sup>160</sup> Interview with Radad Alborati in Djibouti, Djib. (Mar. 15, 2018).
- <sup>161</sup> Interview with Mohamed\*, *supra* note 114.
- <sup>162</sup> *Mapping the Yemen Conflict*, EUROPEAN COUNCIL ON FOREIGN RELATIONS, <http://www.ecfr.eu/mena/yemen> (last visited June 4, 2018, 3:04 A.M. GMT).
- <sup>163</sup> *Id.*
- <sup>164</sup> Interview with Abdo Saba, *supra* note 155.
- <sup>165</sup> Paul Richardson, *Djibouti Seeks to Tap Volcanic Energy to Reduce Power Costs*, BLOOMBERG (Apr. 28, 2015), <https://www.bloomberg.com/news/articles/2015-04-28/djibouti-seeks-to-tap-volcanic-energy-to-bring-down-power-costs>.
- <sup>166</sup> *Cost of Living in Djibouti*, NUMBEO, [https://www.numbeo.com/cost-of-living/country\\_result.jsp?country=Djibouti](https://www.numbeo.com/cost-of-living/country_result.jsp?country=Djibouti) (last visited June 3, 2018).
- <sup>167</sup> Central Intelligence Agency, *Djibouti*, WORLD FACTBOOK (May 1, 2018), <https://www.cia.gov/library/publications/the-world-factbook/geos/dj.html>.
- <sup>168</sup> Interview with Abu Bakr\*, *supra* note 120.
- <sup>169</sup> Interview with Radad Alborati, *supra* note 160.
- <sup>170</sup> Interview with Abdo Saba, *supra* note 155.
- <sup>171</sup> Interview with Wafa Elnaham in Djibouti, Djib. (Mar. 21, 2018).
- <sup>172</sup> Interview with Fahmi Saleh in Djibouti, Djib. (Mar. 15, 2018), *supra* note 172.
- <sup>173</sup> Interview with Ibrahim\* & Amal\*, *supra* note 115.
- <sup>174</sup> Interview with Muhammad Abdu Ali Mohammed, *supra* note 143.
- <sup>175</sup> Interview with Abu Bakr\*, *supra* note 120.
- <sup>176</sup> Beth Fertig, *Yemeni Americans Say Trump’s Travel Ban Tears Families Apart*, WNYC (Dec. 27, 2017), <https://www.wnyc.org/story/yemeni-americans-say-trumps-travel-ban-tears-families-apart/>.
- <sup>177</sup> Deepti Hajela, *Yemenis protest ban in advance of Supreme Court arguments*, AP (Apr. 24, 2018), <https://www.apnews.com/9b9dc9de8652426c80509319877d9394>.



A young girl with dark hair and a fur-lined hood is smiling and holding a white sign. The sign has the text "I REALLY MISS MY MOM." written on it in black marker. She is wearing a black jacket with a fur-lined hood. The background shows concrete steps and a dark wall with a small rectangular vent or sign.

I REALLY MISS  
MY MOM.