NILC LITIGATION UPDATE

What's Happening in Key Lawsuits Challenging the Muslim Ban?

Last updated DECEMBER 10, 2019

On June 26, 2018, in a 5-4 decision, the U.S. Supreme Court issued a ruling in *Hawaii v. Trump* allowing a third iteration of President Donald Trump's Muslim ban to go into full effect, pending further legal challenges.[1] While the Court did not find that the ban itself is lawful or constitutional, it concluded that the evidence leaned in favor of the Trump administration's position and justified its decision based on that rationale. This decision shamefully greenlights religious and ethnic discrimination that runs counter to the inclusionary principles we as a nation aspire to uphold.

Although the Supreme Court allowed Muslim Ban 3.0 to remain in effect, the fight is not over. NILC continues to push back against this discriminatory policy that is devastating families and communities across the globe. In partnership with several Muslim, Arab, and South Asian (MASA) organizations, NILC is leading four legal challenges against various iterations of the Muslim ban: *International Refugee Assistance Project (IRAP) v. Trump*; *Pars Equality Center, et al. v. Pompeo, et al.*; *Jewish Family Service of Seattle, et al. v. Trump*; and *P.K. v. Tillerson*.

International Refugee Assistance Project (IRAP) v. Trump; Iranian Alliances Across Borders (IAAB) v. Trump; *and* Zakzok v. Trump

Three consolidated cases in the U.S. District Court for the District of Maryland — *IRAP v. Trump*, *IAAB v. Trump*, and *Zakzok v. Trump* — continue to challenge Muslim Ban 3.0, which indefinitely bans entry into the U.S. for most or all nationals from Iran, Libya, Somalia, Syria, and Yemen. The ban also includes North Korea and certain government officials from Venezuela and their families. After the Supreme Court allowed Muslim Ban 3.0 to go into full effect permanently, the Court remanded these three cases back to the lower courts.

On May 3, 2019, District Judge Theodore Chuang allowed the plaintiffs' constitutional claims to proceed to the discovery stage. Subsequently, the U.S. Court of Appeals for the Fourth Circuit permitted the government to appeal Judge Chuang's decision and to put discovery on hold during that appeal. The case is tentatively scheduled for oral argument during the last week of January 2020, with a decision likely sometime in the months after.

Pars Equality Center, et al. v. Pompeo, et al.

On July 31, 2018, in response to the Supreme Court's decision to allow Muslim Ban 3.0 to go into full effect permanently, Asian Americans Advancing Justice - Asian Law Caucus, the Council on American-Islamic Relations - California, the Iranian American Bar Association, Lane Powell PC, NILC, and Arnold & Porter Kaye Scholer LLP, in partnership with the Council on American-Islamic Relations - Washington State, filed a class-action lawsuit challenging the

[1] More information at www.nilc.org/understanding-muslim-ban-one-year-after-ruling/.

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unlawful implementation of the Muslim ban's waiver provision[2] — and the fact that it serves merely as window dressing to an unlawful ban — on behalf of plaintiffs that include One America and Pars Equality Center. This lawsuit represents individuals with ties to all the Muslim-majority banned countries and was filed to bring transparency to a waiver process that is irrational and arbitrary.

Under the ban's waiver provision, individuals from the banned countries can theoretically obtain a waiver to come to the U.S., but countless individuals and families have been denied a visa and a waiver without notice of the process or an opportunity to submit evidence, even though it is the visa applicant's responsibility to demonstrate eligibility for a waiver. Likewise, documents show that the waiver criteria are defined in an irrational manner.

In January 2019, the U.S. District Court for the Western District of Washington granted the government's request to transfer the case to the Northern District of California, where another case, *Emami v. Trump*, is also challenging the waiver process.

The government has moved to dismiss the cases, and a hearing on the government's motion took place on July 25, 2019. A decision on the government's motion to dismiss remains pending. However, the court has permitted discovery to go forward, limited to the plaintiffs' claim that the government has failed to follow its own rules and policies in implementing the waiver program. That process is ongoing and is the subject of a pending motion to compel a deposition filed with the court on November 8, 2019.

Jewish Family Service of Seattle, et al. v. Trump

Jewish Family Service of Seattle, et al. v. Trump challenges the president's refugee ban, Muslim Ban 4.0,[3] which indefinitely suspended the refugee family reunification process and imposed a minimum 90-day suspension on the resettlement of refugees from eleven countries, including nine Muslim-majority countries. The complaint was filed based on violations of the Immigration and Nationality Act, the Administrative Procedure Act, and the Establishment Clause of the U.S. Constitution. In December 2018, the U.S. District Court for the Western District of Washington allowed the case to proceed to discovery on the issue of mootness.

The parties have reached a settlement that would resolve the remaining issues in the case. Although agreed to, the settlement has not yet been finalized and thus is not publicly available. In light of that settlement, on November 13, 2019, the court dismissed the case. If the settlement is not finalized, either party is able to have the case reopened within 60 days.

P.K. v. Tillerson

In August 2017, three winners of the U.S. diversity visa lottery filed a complaint after the U.S. State Department refused to issue their visas because they are from countries impacted by Muslim Ban 2.0,[4] which temporarily banned entry for nationals from six Muslim-majority countries: Iran, Libya, Somalia, Syria, Sudan, and Yemen. The Diversity Visa Lottery program annually selects 50,000 individuals from countries with historically low migration to the U.S. and allows them to immigrate here. Plaintiffs argued that the authority to suspend entry, if

[2] www.nilc.org/pars-equality-center-v-pompeo/.

[3] See note 1, above.

[4] See note 1, above, for more information about Muslim Ban 2.0. More information about *P.K. v. Tillerson* can be found at www.nilc.org/pk-et-al-v-tillerson-et-al/.

valid, should not affect the State Department's ability to issue visas, a completely different step in the immigration process.

In March 2018, the U.S. District Court for the District of Columbia dismissed the lawsuit on the ground that Muslim Ban 2.0 had expired and that the plaintiffs' case was moot. On appeal, the U.S. Court of Appeals for the D.C. Circuit agreed with the plaintiffs that their case was not moot: the court found that the plaintiffs had plausibly alleged a claim that further relief is legally available from the courts — i.e., that the plaintiffs could succeed on the merits of their case in the future and that the court could order the defendants to issue the plaintiffs their diversity visas.

The government was given an extension to decide whether to seek review by the full D.C. Circuit. That extension expired on November 12, 2019, and the government has approximately three months to decide whether to seek Supreme Court review or to allow the case to return to the district court for further proceedings.