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## **HEARING ON “SHARIA-FREE AMERICA: WHY POLITICAL ISLAM AND SHARIA LAW ARE INCOMPATIBLE WITH THE U.S. CONSTITUTION”**

### **TESTIMONY BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION AND LIMITED GOVERNMENT**

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#### **INTRODUCTION**

I am grateful for the opportunity to address some of the important issues raised by the proposed “Preserving a Sharia-Free America Act.” My conclusions about this bill are clear and unequivocal: It is manifestly unconstitutional, in violation of the First Amendment. In addition, the vast majority of immigrant adherents of Sharia law – a category that includes all or most Muslims – pose no threat and there is no good reason to bar them from the United States.

The proposed legislation states that “Any alien in the United States found to be an adherent of Sharia law by the Secretary of State, Secretary of Homeland Security, or Attorney General shall have any immigration benefit, immigration relief, or visa revoked, be considered inadmissible or deportable, and shall be removed from the United States.”<sup>1</sup> This provision amounts to blatant discrimination on the basis of religious belief. As such, it violates both the Free Speech Clause and the Free Exercise Clause of the First Amendment.

In addition, expelling virtually all Muslim immigrants would needlessly harm many thousands of people and is not necessary to combat terrorism or any other threat to the United States. Far from seeking to undermine America’s liberal democratic values, most Muslim immigrants – like those of other faiths – have come precisely because of those values. If enacted, the legislation would harm national security by playing into the hands of radical Islamists and terrorists.

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<sup>1</sup> H.R. 5722 §2(b).

## I. THE PROPOSED “PRESERVING A SHARIA-FREE AMERICA ACT” VIOLATES THE FIRST AMENDMENT

In his General Orders to the Continental Army, issued on the occasion of the end of the Revolutionary War in 1783, George Washington stated that one of the reasons the United States was founded was to create “an Asylum for the poor and oppressed of all nations and religions.”<sup>2</sup> Later, in his famous 1790 letter to the congregation of the Touro Synagogue, he avowed that the United States has “an enlarged and liberal policy,” under which “All possess alike liberty of conscience,” and that the U.S. government “gives to bigotry no sanction, to persecution no assistance.”<sup>3</sup>

Thomas Jefferson similarly wrote, in 1781, that “[i]t [has] been the wise policy of these states to extend the protection of their laws to all those who should settle among them of whatever nation or religion they might be and to admit them to a participation of the benefits of civil and religious freedom.”<sup>4</sup> Jefferson later stated that the 1786 Virginia Statute for Religious Liberty (which he had drafted) protected “the Jew and the Gentile, the Christian and Mahometan, the Hindoo, and Infidel of every denomination,”<sup>5</sup> belying notions that the religious liberty of the Founding era was intended to protect only Christians. For present purposes, it is particularly noteworthy that Jefferson indicated that “Mahometans” were among those protected. The Virginia Statute was a key precursor for the First Amendment.<sup>6</sup>

Washington, Jefferson, and other Founders intended that the United States, unlike most other governments of the day, would not discriminate on the basis of religion, and would be open to immigrants of all different faiths. These principles were embodied in the First Amendment, which states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”<sup>7</sup> As the Supreme Court noted in *Carson v. Makin* (2022), the Court has “repeatedly” held that the government “violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits” and that such discrimination is unconstitutional when it targets individuals “because of their faith, or lack of it.”<sup>8</sup> All six conservative justices joined the ruling in *Carson* correctly holding that the government cannot bar religious private schools from a voucher program open to other schools.<sup>9</sup>

The proposed legislation is exactly the kind of discrimination on the basis of religion that the

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<sup>2</sup> George Washington, General Orders, Apr. 17, 1783, available at <https://founders.archives.gov/documents/Washington/99-01-02-11097>

<sup>3</sup> George Washington to the Hebrew Congregation in Newport, Rhode Island, Aug. 18, 1790, available at <https://founders.archives.gov/documents/Washington/05-06-02-0135>

<sup>4</sup> *The Papers of Thomas Jefferson*, vol. 4, (Princeton: Princeton University Press, Julian P. Boyd., ed. 1951), 505–506.

<sup>5</sup> Thomas Jefferson, *Autobiography* [1821], in *The Works of Thomas Jefferson*, vol. 1, (New York : G. P. Putnam's Sons, Paul Leicester Ford, ed. 1904-5), 71.

<sup>6</sup> For an overview of the significance of the Virginia Statute for Religious Liberty as a precursor to the First Amendment, see John A. Ragosta, *Wellspring of Liberty: How Virginia's Religious Dissenters Helped Win the American Revolution and Secured Religious Liberty* (New York: Oxford University Press, 2010).

<sup>7</sup> U.S. Const., Amend. I.

<sup>8</sup> *Carson v. Makin*, 596 U.S. 767, 778 (2022) (quoting *Everson v. Board of Ed. of Ewing*, 330 U.S. 1, 16 (1947)).

<sup>9</sup> *Carson*, 596 U.S. at 777-85.

Free Exercise Clause bans. It would bar and deport from the United States all non-citizens who are adherents of “Sharia law.” Sharia law is simply a standard term for the religious precepts of the Muslim faith.<sup>10</sup> All or most Muslims accept Sharia law at least to some degree, though they differ greatly among themselves about its meaning and significance. Thus, discrimination against adherents of Sharia law discriminates against Muslims in much the same way as a bill targeting adherents of Talmudic law discriminates against Orthodox Jews, or a bill targeting adherents of Catholic Canon Law discriminates against Catholics.

Freedom of religious belief is also protected by the Free Speech Clause of the First Amendment. As the Supreme Court held in 1944, “[f]reedom of thought, which includes freedom of religious belief, is basic in a society of free men,” and that freedom is protected by the Free Speech Clause.<sup>11</sup> In 1981, the Court held that “religious worship and discussion... are forms of speech and association protected by the First Amendment” and discrimination against them in the provision of public services violates the Free Speech Clause.<sup>12</sup> The Supreme Court, in a 2022 decision written by Justice Neil Gorsuch and joined by all six conservative justices, recently reaffirmed that “personal religious observance [is] doubly protected by the Free Exercise and Free Speech Clauses of the First Amendment,” and that the government may not discriminate against such observance, thereby barring a school district from firing a football coach for engaging in a religious prayer.<sup>13</sup>

Being an adherent of Sharia law is undeniably an example of “freedom of religious belief” and following its dictates in one’s personal life, is an undeniably a form of “personal religious observance.” Conservatives and others would readily recognize such discrimination as an infringement on religious freedom when directed against any other religion. Islam is no different.

The fact that this bill concerns non-citizen immigrants in no way changes the situation. There is no immigration exception to the First Amendment. Like most constitutional rights, it is phrased as a generalized limitation on government power, not a privilege limited to a specific group, such as citizens. A few constitutional rights *are* explicitly confined to citizens (such as the Privileges or Immunities Clause of the Fourteenth Amendment) or to “the people” (such as the Second Amendment right to bear arms), which may be a euphemism for citizens.<sup>14</sup> But that makes it all the more clear that rights *not* explicitly limited to citizens apply to all persons, without exception. During the Founding era, it was generally understood that the Bill of Rights applies even to suspected pirates captured by US vessels in international waters.<sup>15</sup> Its applicability to non-citizen immigrants in the United States - and those seeking to peacefully enter - is much more obvious.

In *Bridges v. Wixon* (1945), the Supreme Court ruled that “[f]reedom of speech and of press

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<sup>10</sup> See, e.g., Wael B. Hallaq, *Shari’a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009) (tracing the history and significance of Sharia law).

<sup>11</sup> *United States v. Ballard*, 322 U.S. 78, 86 (1944).

<sup>12</sup> *Widmar v. Vincent*, 454 U.S. 263, 269 (1981).

<sup>13</sup> *Kennedy v. Bremerton School Dist.*, 597 U.S. 507, 543 (2022).

<sup>14</sup> U.S. Const. Amend. XIV, §1 (protecting the “privileges or immunities of citizens of the United States”); U.S. Const. Amend. II (protecting the right of “the people” to “keep and bear arms”).

<sup>15</sup> See Nathan Chapman, “Due Process Abroad,” 112 *Northwestern University Law Review* 377 (2017).

is accorded aliens residing in this country.”<sup>16</sup> Multiple courts have recently applied that principle in ruling against the Trump administration’s policy of speech-based deportation of non-citizen students who express views the administration deems somehow detrimental to US foreign policy.<sup>17</sup> The same logic applies to the Free Exercise Clause, though there is not a Supreme Court case directly on point.

A standard response to the view that non-citizens are protected against deportation because of their speech or religion is the idea that, even if they have a right to free speech and freedom of religion, they do not have a constitutional right to remain in the US. Thus, under this logic, deporting them for their speech or religious beliefs would not violate the Constitution. But, in virtually every other context, it is clear that depriving people of a right in retaliation for their speech or religion violates the First Amendment, even if the right they lose does not itself have constitutional status.

For example, there is no constitutional right to get Social Security benefits. But a law that barred Jews, Mormons, or critics of the President from getting those benefits would obviously violate the First Amendment. Similarly, the Supreme Court ruled in *Carson v. Makin* that a state government cannot exclude religious schools from a voucher program open to other types of private schools,<sup>18</sup> even though there is no constitutional right to a voucher program, and the state could potentially eliminate that program entirely. Along the same lines, the fact that there is no constitutional right to be a public school football coach does not change the reality that firing one for his religious observances violates the First Amendment, because “[r]espect for religious expressions is indispensable to life in a free and diverse Republic.”<sup>19</sup> The same logic applies in the immigration context.

The Supreme Court’s badly flawed ruling in *Trump v. Hawaii* upholding President Trump’s first-term anti-Muslim “travel ban” does not undermine any of these points.<sup>20</sup> In that case, the Court upheld the constitutionality of the president’s Proclamation barring entry by residents of several Muslim-majority nations in large part because the proclamation was “facially neutral toward religion” and had a “facially legitimate and bona fide reason.”<sup>21</sup> By contrast, the proposed bill explicitly targets adherents of Muslim religious law, thereby openly discriminating on the basis of religion.

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<sup>16</sup> *Bridges v. Wixon*, 326 U.S. 135, 148 (1945).

<sup>17</sup> See, e.g., *AAUP v. Rubio*, 802 F.Supp. 3d 120, 139-71, 181-91 (D. Mass. 2025) (providing extensive overview of the issues, and summarizing previous litigation in other cases); Ilya Somin, “How Speech-Based Immigration Restrictions Threaten Academic Freedom,” in *Academic Freedom in the Era of Trump*, Lee Bollinger and Geoffrey Stone, eds. (New York: Oxford University Press, forthcoming), available at eds. (Oxford University Press, forthcoming), pp. 3-7 available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5604330](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5604330) (discussing this litigation and the issues it raises).

<sup>18</sup> *Carson*, 597 U.S. at 777-85.

<sup>19</sup> *Kennedy*, 597 U.S. at 543.

<sup>20</sup> *Trump v. Hawaii*, 585 U.S. 667 (2018). For my critiques of this ruling, see Ilya Somin “Donald Trump’s ‘Travel Ban’ is Still a ‘Muslim Ban’ No Matter What the Supreme Court Ruled,” *USA Today*, June 26, 2018; and Ilya Somin, “The Supreme Court’s Indefensible Double Standard in the Travel-Ban Case and *Masterpiece Cakeshop*,” *Vox*, June 27, 2018.

<sup>21</sup> *Trump v. Hawaii*, 585 U.S. at 702-03.

Moreover, the Proclamation upheld in *Trump v. Hawaii* applied only to non-citizens outside the United States seeking the right to enter.<sup>22</sup> The “Preserving a Sharia-Free America Act” would require deportation of numerous non-citizen Muslims already within the United States, including many thousands who have legal permanent resident status.<sup>23</sup> Even if, as some wrongly contend, the First Amendment does not apply to exclusion of non-citizens seeking admission from outside the United States,<sup>24</sup> it surely does apply to deportation of those legally present on US territory.

If the proposed law were to be enacted and (mistakenly) upheld against legal challenge, it would set a dangerous precedent for deporting virtually any non-citizens whose religious beliefs offend the dominant political majority at any given time. For example, a left-wing president and Congress could enact a law deporting immigrants who are socially conservative Christians, or those who fled to the United States because their religious beliefs require homeschooling banned in their country of origin.<sup>25</sup>

Americans rightly do not trust the government to decide what speech or religious beliefs should be permitted in this country, and that rejection of censorship is enshrined in the Constitution. Immigration must not be an exception to this crucial principle. The government cannot restrict immigrants’ speech or religious beliefs any more than it can that of native-born citizens. As Justice Oliver Wendell Holmes famously put it:

[I]f there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought -- not free thought for those who agree with us, but freedom for the thought that we hate. I think that we should adhere to that principle with regard to admission into, as well as to life within, this country.<sup>26</sup>

## **II. BARRING AND DEPORTING MUSLIM IMMIGRANTS WOULD NOT PROTECT AMERICA**

In addition to being a violation of the First Amendment, the proposed bill’s plan to bar and deport virtually all non-citizen Muslim immigrants would needlessly harm many thousands of innocent people, and would not counter any threat to America. Indeed it would actually undermine national security.

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<sup>22</sup> See *ibid.*, at 702 (stressing this point).

<sup>23</sup> See Office of Homeland Security Statistics, “LPR by State, County, Country of Birth, and Major Class of Admission,” U.S. Dept. of Homeland Security, available at <https://ohss.dhs.gov/topics/immigration/lawful-permanent-residents/lpr-state-county-country-birth-and-major-class> (providing data on LPRs by country of birth, and documenting hundreds of thousands from Muslim-majority nations).

<sup>24</sup> Cf. *AAUP*, 802 F.Supp. 3d at 182-84 (summarizing precedent that may support drawing a distinction between deportation and exclusion in this context).

<sup>25</sup> See J.D. Tuccille, “German Homeschooling Refugees Can Stay in U.S. for Another Year,” *Reason*, Oct. 30, 2024, available at <https://reason.com/2024/10/30/german-homeschooling-refugees-can-stay-in-u-s-for-another-year/> (describing one such case).

<sup>26</sup> *United States v. Schwimmer*, 279 U.S. 644, 654-55 (1929) (Holmes, J., dissenting), overruled by *Girouard v. United States*, 328 U.S. 61 (1946).

The vast majority of immigrant adherents of Sharia law pose no danger to our security or to America's liberal democratic values. Yet the proposed bill would exclude virtually all Muslim believers, regardless of whether they seek to impose their religious views on others, and regardless of whether those views actually have any illiberal attributes. Moreover, the bill is not even limited to those who actually are adherents of Sharia law, but covers even those merely "found to be" such adherents "by the Secretary of State, Secretary of Homeland Security, or Attorney General."<sup>27</sup> This could potentially open the door to deportation of any non-citizen whom the executive branch labels an "adherent of Sharia law," regardless of their actual views.

Like adherents of Christianity, Judaism, and other religions, Muslims have extensive internal disagreements about what the precepts of their religion require. Thus, there is widespread debate about the meaning of Sharia law, whether it should be applied to non-Muslims, and its relationship to the state.<sup>28</sup> For example, most Muslim-majority nations do not actually incorporate Sharia precepts into their criminal law, even though some extremists favor doing so.<sup>29</sup>

Many aspects of Sharia law govern such issues as prayer, fasting, and dietary restrictions that apply to religious believers.<sup>30</sup> The fact that many Muslims personally "adhere" to these practices does not mean they wish to impose Sharia on others. Muslim who peacefully follow these practices pose no more threat to American values than do adherents of similar worship and dietary rules required by other religions, such as Catholicism or Judaism. Yet a person who follows Muslim prayer and dietary rules is an "adherent of Sharia law" and therefore would be subject to deportation under the proposed bill.

Survey data indicates that the vast majority of Muslims in the United States (a large majority of whom are immigrants or children of immigrants)<sup>31</sup> reject religiously motivated violence against civilians and coercive state imposition of religion.<sup>32</sup> No major Muslim organization in

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<sup>27</sup> H.R. 5722 §2(b).

<sup>28</sup> For overviews of these disagreements among Muslims, see, e.g., Kali Robinson, "Understanding Sharia: The Intersection of Islam and the Law," Council on Foreign Relations, Apr. 25, 2025, available at <https://www.cfr.org/backgrounders/understanding-sharia-intersection-islam-and-law#chapter-how-do-governments-in-the-muslim-world-interpret-and-enforce-sharia>; Pew Research Center, *The World's Muslims: Religion, Politics and Society* (2013), ch .1, available at <https://www.pewresearch.org/religion/wp-content/uploads/sites/7/2013/04/worlds-muslims-religion-politics-society-full-report.pdf> (providing extensive survey data on these disagreements).

<sup>29</sup> Robinson, "Understanding Sharia."

<sup>30</sup> For a brief overview, see Wajahat Ali and Matthew Duss, "Understanding Sharia Law," Center for American Progress, Mar. 2011, available at [https://cdn.americanprogress.org/wpcontent/uploads/issues/2011/03/pdf/sharia\\_law.pdf](https://cdn.americanprogress.org/wpcontent/uploads/issues/2011/03/pdf/sharia_law.pdf).

<sup>31</sup> Some 59% of US Muslims are foreign-born. See Besheer Mohammed, "How U.S. Muslims compare with other Americans Religiously and Demographically," Pew Research Center, June 18, 2025, available at <https://www.pewresearch.org/short-reads/2025/06/18/how-us-muslims-compare-with-other-americans-religiously-and-demographically/>.

<sup>32</sup> See, e.g., Nicole Naurath, "Most Muslim Americans See No Justification for Violence," Gallup (2011), available at <https://news.gallup.com/poll/148763/muslim-americans-no-justification-violence.aspx>; Pew Research Center, *U.S. Muslims Concerned About Their Place in Society, but Continue to Believe in the American Dream* (2017), chs. 4-5 available at <https://www.pewresearch.org/wp-content/uploads/sites/20/2017/07/U.S.-MUSLIMS-FULL-REPORT-with-population-update-v2.pdf>.

the United States advocates the establishment of an Islamic theocracy in this country or the imposition of Sharia Law on non-Muslims. Even as immigrants became a larger proportion of the Muslim population in the United States, between 2007 and 2015, that population became more socially liberal and tolerant, indicating that most US Muslims reject the kind of religious oppression found in some Muslim-majority countries, such as Iran and Saudi Arabia.<sup>33</sup>

In this context, it is important to emphasize that many Muslim immigrants are actually refugees from oppression by radical Islamist dictatorships, such as those of Iran and Afghanistan under the Taliban. Far from seeking to spread that oppression, they have come to this country precisely for the purpose of escaping it. Some are here because they actively aided the United States during the War on Terror, including many Afghans who fought alongside US forces against the Taliban and al Qaeda, and now fear deportation at the hands of the Trump Administration.<sup>34</sup> Similarly, most immigrants who came to the US from communist states, such as Cuba and the Soviet Union (my parents and I were among the latter), are not adherents of communist ideology, but rather seekers of freedom from its rule.

Obviously, some Muslims – like some adherents of other faiths – do have awful views on various issues. But censorship and indiscriminate mass deportation is not the proper solution for that problem. Rather, we should enforce constitutional rules that bar religious persecution and oppression, regardless of the religious affiliation of those undertaking such actions.

Mass deportation and exclusion of Muslim immigrants also is not necessary to protect Americans against the threat of terrorism. The incidence of terrorism by immigrants is already extremely low. From 1975 to 2024, the average American had an annualized 1 in 4.6 million chance of being killed by a foreign-born terrorist on US soil, whether Muslim or otherwise.<sup>35</sup> This risk is actually smaller than that of being struck and injured by lightning in a given year (about 1 in 1.2 million per year during the thirty years from 1989 to 2018).<sup>36</sup>

Obviously, the federal government should work to reduce this already small risk further. But that objective cannot justify mass deportation of Muslim immigrants, the vast majority of whom reject terrorism and have never engaged in any violence.<sup>37</sup>

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<sup>33</sup> For an overview, see David Bier, “U.S. Muslims Become More Socially Liberal As Muslim Immigration Rises,” Cato Institute, Oct. 17, 2016, available at <https://www.cato.org/blog/us-muslims-become-more-socially-liberal-muslim-immigration-rises>.

<sup>34</sup> See Ilya Somin, “Trump Seeks to Deport Afghans Who Fled the Taliban,” *Reason*, May 26, 2025, available at <https://reason.com/volokh/2025/05/26/trump-seeks-to-deport-afghans-who-fled-the-taliban/>

<sup>35</sup> Alex Nowrasteh, “Terrorism and Immigration: 50 Years of Foreign-Born Terrorism on US Soil, 1975–2024,” Cato Institute Policy Analysis No. 991, Mar. 10, 2025, available at <https://www.cato.org/policy-analysis/terrorism-immigration-50-years-foreign-born-terrorism-us-soil-1975-2024>. 68% of the foreign-born terrorists during this period were radical Islamists. Ibid. The vast majority of the fatalities caused by foreign-born terrorists on US soil during this period (some 98%) were inflicted by the “dramatic statistical outlier” event of the 9/11 attacks, which has had no parallel either before or since. Ibid.

<sup>36</sup> See National Weather Service, “How Dangerous is Lightning?,” National Oceanic and Atmospheric Administration, available at <https://www.weather.gov/safety/lightning-odds>.

<sup>37</sup> For more detailed discussion of the reasons why terrorism risk does not justify large-scale immigration restrictions, see Ilya Somin, *Free to Move: Foot Voting, Migration, and Political Freedom* (Oxford University Press, rev. ed. 2022), 141-44; Ilya Somin, “Does the Threat of Terrorism Justify Migration Restrictions?” *Verfassungsblog*, Mar. 30, 2022, available at <https://verfassungsblog.de/os5-migration-restrictions/>.

In addition to being unjust and unconstitutional, such a policy would predictably play into the hands of Muslim extremists who depict the United States and the West as enemies of all Muslims. In part for this reason, the radical Islamist terrorist group ISIS praised President Trump's first-term travel ban targeting residents of several Muslim-majority nations as a "blessed ban."<sup>38</sup> A much more extensive exclusion and mass expulsion of Muslims would play into the hands of terrorists to a far greater extent, boosting their anti-American propaganda worldwide. The resources devoted to implementing and enforcing such exclusion and mass deportation could be better used to target actual terrorist groups,<sup>39</sup> not give those groups a major propaganda victory by harming many thousands of innocent people, and thereby needlessly alienating Muslims all over the world.

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<sup>38</sup> "Isis Hails Donald Trump's Muslim Immigration Restrictions as a 'Blessed Ban,'" *Independent*, Jan. 30, 2017, available at <https://www.independent.co.uk/news/world/middle-east/isis-donald-trump-muslim-ban-immigration-iraq-iran-restrictions-travel-islamic-state-us-visa-a7552856.html>.

<sup>39</sup> For more on how resources expended on mass deportation can be better used to combat crime and terrorism in other ways, see Somin, *Free to Move*, 143-44.