

# VIOLENT CRIME AND THE TRAVEL BANS: WHAT IS THE TRUE RELATIONSHIP?

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## TABLE OF CONTENTS

I. INTRODUCTION .....	356
II. LEGAL BACKGROUND .....	358
A. United States.....	359
1. Travel Ban 1.0.....	359
2. Travel Ban 2.0.....	360
3. Travel Ban 3.0 & Presidential Proclamation 9723 .....	362
4. <i>Trump v. Hawaii</i> , 138 S. Ct. 2392 (2018).....	365
5. Travel Ban 4.0.....	367
6. Acknowledgment of Alternate Rationale.....	368
B. Australia .....	370
1. Migration Program & Refugee and Humanitarian Program .....	370
2. Australia & Syrian Refugees.....	373
III. VIOLENT CRIME STATISTICS .....	373
A. United States.....	374
B. Australia .....	378
IV. COMPARISON OF DATA BETWEEN THE UNITED STATES AND AUSTRALIA .....	381
V. CONCLUSION .....	382

## I. INTRODUCTION

Najib Adi and Mona Nasri, son and mother, have been separated since 2002.<sup>1</sup> Adi is a United States citizen while Nasri is a resident of Syria.<sup>2</sup> Nasri is an elderly woman who resides in Damascus, a city that has experienced significant violence throughout the many years of the Syrian civil war.<sup>3</sup> Due to a travel ban enacted by the United States, Nasri is unable to reunite with her son, despite applying for a visa waiver that would allow her to enter the country.<sup>4</sup> Nasri has been waiting over a year for a decision on her visa waiver application, and with doctors, electricity, and drinking water becoming scarce, she is worried that she will not survive to see life in the United States.<sup>5</sup>

Gasem al-Hamad currently resides in the United States with his wife and five children.<sup>6</sup> Although he was lucky enough to make it out of Syria, his brother was not as fortunate.<sup>7</sup> Mr. al-Hamad's older brother is stuck in Jordan due to the U.S. travel bans<sup>8</sup> and he remains there despite having a resettlement visa.<sup>9</sup> To add insult to injury, al-Hamad's brother is separated from his son, who made it into the United States before the border closed.<sup>10</sup>

Sudi Wardere and her husband Bashin Tahlil have been separated for over two years due to the travel bans.<sup>11</sup> Wardere gave birth to her first child without her husband present and was forced to travel across the world so that her husband could meet his son for the first time.<sup>12</sup> Tahlil currently resides in South Africa and has been waiting for his visa waiver to be accepted for over a year.<sup>13</sup> As of August 2019, Wardere was five months pregnant and was beginning to lose hope that her husband would be present for the birth of their second child.<sup>14</sup>

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<sup>1</sup> Farnoush Amiri, *Trump Travel Ban: Thousands of 'Desperate' Families Remain Separated*, NBC NEWS (Apr. 7, 2019, 4:47 AM), <https://www.nbcnews.com/news/us-news/trump-travel-ban-thousands-desperate-families-remain-separated-n988636>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Monica Campbell, *Settled but Unsettled: 4 Years on, a Syrian Refugee Family Still Torn by US Policy*, PRI: THE WORLD (June 21, 2019, 11:30 AM), <https://www.pri.org/stories/2019-06-21/settled-unsettled-4-years-syrian-refugee-family-still-torn-us-policy>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

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

<sup>10</sup> *Id.*

<sup>11</sup> Amiri, *supra* note 1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

These are just a few of the stories of the many Syrian nationals who have been adversely affected by then-President Trump's travel bans, and, although the stories are quite different, they illustrate the very real hardships that the travel bans have caused. The bans, which included four separate versions, restrict and suspend immigration from select countries, most of which have significant Muslim or African populations.<sup>15</sup> Since their inception, the bans have been sources of contention among legal supporters and other advocates.<sup>16</sup> A complete picture of why the bans caused such an uproar in the United States and overseas requires an understanding of Syrian history and the constant state of war that the country has experienced since 2011.<sup>17</sup>

Syria's history is wrought with many twists and turns but is essential to consider as the basis for President Trump's travel bans. It begins in the city of Daraa in March 2011, where the actions of fifteen school-aged children and the Syrian government sparked the match that led to a civil war.<sup>18</sup> After the children were arrested for defacing school walls with anti-government graffiti, the Syrian government tortured them.<sup>19</sup> This human rights crisis triggered protests throughout the nation, which only expanded as the government attempted to dissolve the protests by force.<sup>20</sup> As the violence escalated, many protesters began fighting back against the security forces in their localities. By 2012, Syria was in the midst of a full-fledged civil war.<sup>21</sup> The war became even more complex as other players became involved, including the United States, Russia, Iran, and the Islamic State.<sup>22</sup> The Islamic State and other terrorist groups created an additional problem for Syria because the country was forced to deal with war on two fronts: the ongoing internal battle and the emerging fight against terrorist organizations.<sup>23</sup> Ultimately, the many

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<sup>15</sup> Proclamation No. 9983, 85 Fed. Reg. 6699, 6699.

<sup>16</sup> See *State v. Trump*, 265 F. Supp. 3d 1140, 1145 (D. Haw.), *aff'd in part, vacated in part*, 878 F.3d 662 (9th Cir. 2017), *rev'd and remanded*, 138 S. Ct. 2392 (2018) (granting preliminary injunctive relief to prevent the first travel ban from going into effect); see also *Hawaii v. Trump*, 859 F.3d 741, 789 (9th Cir.), *vacated and remanded*, 138 S. Ct. 377 (2017) (granting partial injunctive relief to prevent certain aspects of the second travel ban from going into effect); Emanuella Grinberg & Elliott C. McLaughlin, *Travel Ban Protests Stretch Into Third Day From US to UK*, CNN (Jan. 31, 2017, 12:16 AM), <https://www.cnn.com/2017/01/30/politics/travel-ban-protests-immigration/index.html>.

<sup>17</sup> Kathryn Reid et al., *Syrian Refugee Crisis: Facts, FAQs, and How to Help*, WORLD VISION (Mar. 15, 2020), <https://www.worldvision.org/refugees-news-stories/syrian-refugee-crisis-facts>.

<sup>18</sup> Julie Marks, *Why is There a Civil War in Syria?*, HISTORY (Sept. 14, 2018), <https://www.history.com/news/syria-civil-war-assad-rebels>.

<sup>19</sup> Joe Sterling, *Daraa: The Spark that Lit the Syrian Flame*, CNN (Mar. 1, 2012, 9:32 AM), <https://www.cnn.com/2012/03/01/world/meast/syria-crisis-beginnings/index.html>.

<sup>20</sup> Lucy Rogers et al., *Syria: The Story of the Conflict*, BBC NEWS (Mar. 11, 2016), <https://www.bbc.com/news/world-middle-east-26116868>.

<sup>21</sup> *Id.*

<sup>22</sup> *Civil War in Syria: Recent Developments*, COUNCIL ON FOREIGN RELATIONS (Sept. 24, 2020), <https://www.cfr.org/global-conflict-tracker/conflict/civil-war-syria>.

<sup>23</sup> Marks, *supra* note 18.

conflicts in Syria caused a humanitarian crisis, often referred to as the Syrian Refugee Crisis.<sup>24</sup> Since the war began, over twelve million Syrians have been displaced, either internally or abroad.<sup>25</sup>

The Refugee Crisis has caused disputes among many countries about how Syrian refugees should be resettled.<sup>26</sup> While some countries have affirmatively welcomed significant numbers of Syrian refugees,<sup>27</sup> President Trump slashed the number of them admitted into the United States since 2016 by 96%.<sup>28</sup> This significant drop in the number of refugee admissions into the United States has been attributed to the travel bans.<sup>29</sup>

This Note argues that the Muslim travel bans were unsuccessful at achieving then-President Trump's ostensible goals related to national security and public safety. Specifically, it focuses on how the Muslim travel bans compare with the policies of another Western democracy, Australia, and the two countries' relative violent crime and terrorism rates. Although the travel bans have now been repealed by President Biden, the impact of the bans on violent crime is still important to evaluate because it shows that using these types of tools to increase national security is not effective. Part II provides an extensive overview of the existing refugee law in the United States, with a particular focus on the four versions of the travel ban and the United States Supreme Court case upholding their validity. Part II also includes a summary of Australian refugee law and how it has changed to accommodate the Syrian Refugee Crisis. Part III discusses the violent crime rates for both the United States and Australia, including an explanation of the empirical data and how it has changed over time. Part IV addresses the difference in crime rates between the United States and Australia and evaluates how the immigration laws and policies of each country might have affected these differences. Part V summarizes why the former policies in the United States were ineffective and provides an acknowledgement to the recent changes that have been made to the United States immigration policy concerning the travel bans. Finally, Part V also concludes with a brief reiteration of the themes and discussions in this Note.

## II. LEGAL BACKGROUND

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<sup>24</sup> Rogers et al., *supra* note 20.

<sup>25</sup> Zachary Laub et al., *Syria's Civil War: The Descent Into Horror*, COUNCIL ON FOREIGN RELATIONS (Feb. 19, 2020), <https://www.cfr.org/article/syrias-civil-war>.

<sup>26</sup> *Id.*

<sup>27</sup> Zoe Todd, *By the Numbers: Syrian Refugees Around the World*, PBS FRONTLINE (Nov. 19, 2019), <https://www.pbs.org/wgbh/frontline/article/numbers-syrian-refugees-around-world/>.

<sup>28</sup> *Who is Left Behind When the U.S. Resettles Fewer Refugees?*, INT'L RESCUE COMM. (Mar. 17, 2020), <https://www.rescue.org/article/who-left-behind-when-us-resettles-fewer-refugees>.

<sup>29</sup> Katie Zezima, *The U.S. Has Slashed its Refugee Intake. Syrians Fleeing War are Most Affected.*, WASH. POST (Mar. 7, 2019, 5:55 PM), [https://www.washingtonpost.com/immigration/the-us-has-slashed-its-refugee-intake-syrians-fleeing-war-are-most-affected/2019/05/07/f764e57c-678f-11e9-a1b6-b29b90efa879\\_story.html](https://www.washingtonpost.com/immigration/the-us-has-slashed-its-refugee-intake-syrians-fleeing-war-are-most-affected/2019/05/07/f764e57c-678f-11e9-a1b6-b29b90efa879_story.html).

## **A. United States**

### **1. Travel Ban 1.0**

The first version of the travel bans, officially known as Executive Order 13769, was signed into law by President Trump on January 27, 2017, a mere week after his inauguration.<sup>30</sup> The rationale relied heavily on national security concerns.<sup>31</sup> Specifically, EO 13769 imposed four key changes to the immigration policy at the time: (1) suspended entry for both immigrants and non-immigrants from seven countries for ninety days, (2) indefinitely barred refugee admission from Syria, (3) halted use of the United States Refugee Admissions Program for 120 days pending reevaluation of the visa application, and (4) reduced the number of refugees that would be accepted in to the United States from 110,000 to 50,000.<sup>32</sup>

One of the biggest and most important changes made was the suspended entry of foreign nationals from Syria, Iran, Libya, Somalia, Iraq, Yemen, and Sudan.<sup>33</sup> However, the only country explicitly banned was Syria.<sup>34</sup> The rest of the countries were suspended only by reference to INA § 217(a)(12).<sup>35</sup> First, EO 13769 restricted the entry of people from countries designated in INA § 217(a)(12).<sup>36</sup> Section 217 of the INA established a visa waiver program that allowed entry into the United States without a visa under certain conditions.<sup>37</sup> Included in these conditions is the requirement that a person attempting to gain entry into the United States through the visa waiver program must not have been present in Syria or Iraq after March 11, 2011, and must not be a national of either country.<sup>38</sup> Additionally, § 217(a)(12)(A)(ii)(II) mandates that the person also cannot be a national of countries whose governments have repeatedly supported international terrorist acts, as designated under various titles.<sup>39</sup> When the first travel ban was launched in 2017, the countries designated under this provision were Syria, Iran, and Sudan.<sup>40</sup> Section 217(a)(12)(A)(ii)(III) also states that the person attempting to use the visa waiver program cannot be a national of a place named by the Department of Homeland Security (DHS) as an area or country of concern under

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<sup>30</sup> Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

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

<sup>32</sup> *Id.* at 8977-79.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*; see also Alison Siskin, *President Trump's Executive Order on Suspending Entry of Select Foreign Nationals: The Seven Countries*, FED'N OF AM. SCIENTISTS 1 (Feb. 1, 2017), <https://fas.org/sgp/crs/homesecc/IN10642.pdf>.

<sup>35</sup> Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017); see also Siskin *supra* note 34.

<sup>36</sup> Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

<sup>37</sup> 8 U.S.C.A. § 1187 (West).

<sup>38</sup> *Id.*

<sup>39</sup> Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

<sup>40</sup> Siskin, *supra* note 34.

subparagraph D.<sup>41</sup> The countries designated as concerning at the time EO 13769 was signed were Yemen, Libya, and Somalia.<sup>42</sup>

EO 13769 also included language that allowed for waivers and exceptions to the travel ban.<sup>43</sup> According to the EO, waivers would be granted on a case-by-case basis, at the discretion of DHS and the Secretary of State.<sup>44</sup> Furthermore, the admission of a refugee from a prohibited country required a showing that admission was in the national interest.<sup>45</sup> Admitting a refugee or other individual into the United States was within the national interest of the country “when the person [was] a religious minority in his country of nationality facing religious persecution, when admitting the person would enable the United States to conform its conduct to a preexisting international agreement, or when the person [was] already in transit and denying admission would cause undue hardship.”<sup>46</sup> However, if admission under any of these limited waivers still posed a risk to the welfare and security of the United States, admission could be denied.<sup>47</sup>

The first travel ban was imposed based on national security concerns.<sup>48</sup> These concerns largely centered around terrorist threats to the United States and how the visa process impacted the admission of terrorists.<sup>49</sup> President Trump outlined specific indicators, linked to the conditions of a country, that demonstrated that the country could be a terrorist breeding ground.<sup>50</sup> President Trump identified deteriorating conditions such as natural disasters, war, civil unrest, and strife as part of these indicators.<sup>51</sup> Additionally, President Trump stated that admission of individuals who are not supportive of the U.S. Constitution; who believe violent ideologies should override American law; who participate in acts of hate or bigotry (including various forms of violence against women, honor killings, and the persecution of people practicing different religions); or, who believe in the oppression of Americans based on sexual orientation, gender, or race, should not be admitted into the United States.<sup>52</sup>

## 2. Travel Ban 2.0

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<sup>41</sup> 8 U.S.C.A. § 1187 (West).

<sup>42</sup> DHS Press Office, *DHS Announces Further Travel Restrictions for the Visa Waiver Program*, DEP’T OF HOMELAND SECURITY (Feb. 18, 2016), <https://www.dhs.gov/news/2016/02/18/dhs-announces-further-travel-restrictions-visa-waiver-program>; Siskin, *supra* note 34.

<sup>43</sup> Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017); *see also* Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017); Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 24, 2017); Proclamation No. 9983, 85 Fed. Reg. 6699 (Jan. 31, 2020).

<sup>49</sup> Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

On March 6, 2017, President Trump issued Executive Order 13780, commonly referred to as “travel ban 2.0.”<sup>53</sup> The second version was signed into law as a direct response to the litigation surrounding the first travel ban.<sup>54</sup> When the Ninth Circuit Court of Appeals refused to lift an order blocking the enforcement of the ban nationwide, President Trump revoked EO 13769 and replaced it with EO 13780.<sup>55</sup> The crux of “travel ban 1.0” did not significantly change under the second version, but the latter provided a more detailed explanation of why the ban was signed into law and how it would function.<sup>56</sup> The aspects that remained essentially unchanged were the suspension of the United States Refugee Admission Program for 120 days (pending review of the application process) and the 50,000-person limit on refugees admitted to the United States.<sup>57</sup> Additionally, President Trump was specific about which individuals were subject to the ban.<sup>58</sup> “Travel ban 2.0” only applied to foreign nationals, coming from countries affected by the ban, who “(i) [were] outside the United States on the effective date of this order; (ii) did not have a valid visa at 5:00 p.m., eastern standard time on January 27, 2017; and (iii) [did] not have a valid visa on the effective date of this order.”<sup>59</sup> Despite the similarities between the first and second ban, President Trump did make one major change: deciding which countries were banned from travel to the United States.<sup>60</sup>

While the terms of the first travel ban implicitly barred both visits and immigration from Somalia, Yemen, Syria, Iran, Libya, Iraq, and Sudan for ninety days,<sup>61</sup> the terms of the second travel ban removed Iraq from the list.<sup>62</sup> Although Iraqi nationals remained subject to the same heightened screening and vetting procedures as the other six countries, travel from Iraq was no longer outright barred.<sup>63</sup> President Trump provided several reasons for the decision, including: the Iraqi government’s cooperation with American counterterrorism initiatives; the large presence of United States diplomatic and military personnel in the country; and Iraq’s determination and commitment to fight the Islamic State of Iraq and the Levant (ISIS).<sup>64</sup>

The other significant change between the first two versions of the travel bans regarded the use of waivers. Whereas the first travel ban only provided a basic

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<sup>53</sup> Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017).

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

<sup>55</sup> *Timeline of the Muslim Ban*, ACLU WASH., <https://www.aclu-wa.org/pages/timeline-muslim-ban> (last visited Oct. 5, 2020); Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017).

<sup>56</sup> Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *See id.*

<sup>61</sup> Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

<sup>62</sup> Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

overview of when a waiver could be granted,<sup>65</sup> “travel ban 2.0” listed nine instances where a waiver was appropriate.<sup>66</sup> Scenarios included: (1) when a foreign national established significant U.S. contacts but was not in the country on the effective date of Executive Order 13780; (2) when denial of admission into the country would cause an undue hardship to the individual because their close family members legally resided in the United States; and (3) if the foreign national was an adoptee, young child, infant, a person requiring immediate medical care, or any other individual whose entry is justified due to other special circumstances.<sup>67</sup>

“Travel ban 2.0” was challenged almost immediately after it went into effect.<sup>68</sup> District Courts in both Maryland and Hawaii prevented enforcement of the ban with preliminary injunctions.<sup>69</sup> The Ninth and the Fourth Circuit Courts of Appeals upheld these injunctions.<sup>70</sup> When these cases reached the Supreme Court of the United States, the injunctions were stayed and the suspension was allowed to go into effect against individuals who lacked a “credible claim of a bona fide relationship” with any entity or person within the United States.<sup>71</sup> However, before any legitimate action could be taken, the ninety day limit of the ban expired and the decisions of the lower court were rendered moot.<sup>72</sup>

### 3. Travel Ban 3.0 & Presidential Proclamation 9723

The third travel ban, Presidential Proclamation 9645, or “travel ban 3.0”, was issued on September 24, 2017.<sup>73</sup> This travel ban did not revoke “travel ban 2.0” but added to the mandates that were already set forth therein.<sup>74</sup> One of the biggest changes that was made with “travel ban 3.0” was the extensive discussion of the criteria used in the information sharing and vetting procedures that was not present in either of the former bans.<sup>75</sup> These criteria were mostly used to determine what information foreign governments were required to share with the United States and whether individuals attempting to enter the United States posed a public safety or national security threat to the country.<sup>76</sup> The three categories of criteria included

<sup>65</sup> Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

<sup>66</sup> Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017).

<sup>67</sup> *Id.*

<sup>68</sup> Int’l Refugee Assistance Project v. Trump, 857 F.3d 554, 572 (4th Cir. 2017); Hawaii v. Trump, 859 F.3d 741, 789 (9th Cir. 2017).

<sup>69</sup> Int’l Refugee Assistance Project v. Trump, 857 F.3d 554, 572 (4th Cir. 2017); Hawaii v. Trump, 859 F.3d 741, 789 (9th Cir. 2017).

<sup>70</sup> Int’l Refugee Assistance Project v. Trump, 857 F.3d 554, 572 (4th Cir. 2017); Hawaii v. Trump, 859 F.3d 741, 789 (9th Cir. 2017).

<sup>71</sup> Trump v. Int’l Refugee Assistance Project, 137 S.Ct. 2080, 2088 (2017).

<sup>72</sup> Trump v. Int’l Refugee Assistance Project, 138 S.Ct. 353 (2017); Trump v. Hawaii, 138 S.Ct. 377 (2017).

<sup>73</sup> Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 24, 2017).

<sup>74</sup> Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 6, 2017); Proclamation No. 9645, 82 Fed. Reg. 45161 (Sept. 24, 2017).

<sup>75</sup> Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 24, 2017).

<sup>76</sup> *Id.*



identity-management information, national security and public safety information, and the national security and public safety risk assessment.<sup>77</sup> First, identity-management information was aimed at determining whether foreign countries could provide adequate information concerning the true identities of people attempting to enter the United States.<sup>78</sup> This category focused on determining whether individuals were the people they claimed to be.<sup>79</sup> Additionally, special attention was given to whether a country used identity-confirmation software in electronic passports to enable identity confirmation, whether the country reported “lost and stolen passports to appropriate entities,”<sup>80</sup> and whether the country readily provided identity information when requested.<sup>81</sup>

Second, the national security and public safety information category focused on whether specific individuals posed a threat to the national security and public safety of the United States.<sup>82</sup> This inquiry was centered on whether a foreign country provided information about the criminal history of the individual, including any terrorism-related activities.<sup>83</sup> Furthermore, this category was also used to determine whether a country provided document exemplars relating to identity and passport verification and whether the government of the foreign country attempted to impede the United States’ ability to receive information about any crew member or passenger that was traveling to the country.<sup>84</sup> Lastly, the third category focused on specific indicators that an individual posed a national security risk.<sup>85</sup> This category zeroed in on whether the foreign country was “a known or potential terrorist safe haven,”<sup>86</sup> whether all requirements were met to participate in the Visa Waiver Program if the country was a participant, and whether the country failed to receive any nationals that were removed from the United States.<sup>87</sup>

While this was an important change in the chain of travel bans because it outlined the specific vetting procedures and criteria that contributed to the ban, the other equally important change was that the countries affected by the ban were altered.<sup>88</sup> Presidential Proclamation 9645 added North Korea and Chad to the existing list of affected countries, which already included Libya, Syria, Yemen, Somalia, and Iran, and restricted several Venezuelan government officials from traveling to the United States.<sup>89</sup> Several reasons were provided to explain why these three countries were added to the ban.<sup>90</sup>

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77 *Id.*

78 *Id.*

79 *Id.*

80 Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 24, 2017).

81 *Id.*

82 *Id.*

83 *Id.*

84 *Id.*

85 Proclamation No. 9645, 82 Fed. Reg. 45, 161 (Sept. 24, 2017).

86 *Id.*

87 *Id.*

88 *Id.*

89 *Id.*

90 Proclamation No. 9645, 82 Fed. Reg. 45, 161 (Sept. 24, 2017).

Beginning with Chad, the reasons provided for its inclusion were that the country does not adequately share information related to public safety and national security, it did not satisfy at least one criterion of the risk assessment, and the country hosted at least three active terrorist groups.<sup>91</sup> As for North Korea, it was simply noted that the country does not cooperate with the United States and that no information-sharing criterion were satisfied.<sup>92</sup> Finally, Venezuela was banned despite adopting many of the required standards, because the country failed to adequately share information related to terrorism and did not cooperate with the receipt of its nationals that were removed from the United States.<sup>93</sup> However, it was identified that the main problem in Venezuela's ability to comply with the standards was due to the uncooperative nature of many Venezuelan government officials.<sup>94</sup> Based on this assessment, the ban only applied to particular government officials and their immediate family members.<sup>95</sup>

"Travel ban 3.0" also made an important distinction about the types of immigrants the bans applied to.<sup>96</sup> A brief discussion explaining the distinction between immigrants and nonimmigrants stated that immigrants were individuals who were attempting to become permanent citizens of the United States and who therefore retained "more enduring rights," as opposed to nonimmigrants, who may be admitted on a specialized visa, such as a student or work visa.<sup>97</sup> It was also stated that the entry of immigrants from all the countries affected by the ban, except for Venezuela, was suspended.<sup>98</sup> Interestingly though, Sudan was not mentioned in "travel ban 3.0."<sup>99</sup> Therefore, for the purposes of this analysis, it will be assumed that "travel ban 3.0" only applied to North Korea, Somalia, Chad, Libya, Syria, Iran, Yemen, and Venezuela.<sup>100</sup> Additionally, while Presidential Proclamation 9645 did not outright ban travel and immigration from Iraq, it was noted that individuals seeking entry into the United States from Iraq would still face additional scrutiny before being allowed entry.<sup>101</sup> Finally, the ban did not discuss an extension of the suspension of the United States Refugee Admission Program or the number of refugees that would be allowed into the United States, and did not change the availability of a waiver under the circumstances outlined in the above section.<sup>102</sup> The third version of the travel ban was also challenged in Court, culminating in a decision from the Supreme Court of the United States, discussed below.<sup>103</sup>

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91 *Id.*

92 *Id.*

93 *Id.*

94 *Id.*

95 Proclamation No. 9645, 82 Fed. Reg. 45, 161 (Sept. 24, 2017).

96 *Id.*

97 *Id.*

98 *Id.*

99 *Id.*

100 *See* Proclamation No. 9645, 82 Fed. Reg. 45, 161 (Sept. 24, 2017).

101 Proclamation No. 9645, 82 Fed. Reg. 45, 161 (Sept. 24, 2017).

102 *Id.*

103 *See* *Trump v. Hawaii*, *supra* note 72.

Presidential Proclamation 9723, which went into effect on April 10, 2018, did not significantly alter the mandates in “travel ban 3.0.”<sup>104</sup> The only major change that occurred in this proclamation was the termination of travel restrictions for Chad.<sup>105</sup> Chad was removed from the travel ban list because the country made significant improvements to its information-sharing and identity management practices.<sup>106</sup> Specifically, Chad improved its handling of stolen or lost passports, began issuing passports that were more secure, helped detect fraud by “sharing updated passport exemplars,”<sup>107</sup> and had started sharing information related to suspected terrorists that could be used for identity-confirming procedures in the screening and vetting process.<sup>108</sup> Altogether, Presidential Proclamation 9723 did not significantly alter “travel ban 3.0,” other than reinstating Chadians’ ability to travel to the United States.<sup>109</sup>

Overall, the first three installations of the travel bans, and Presidential Proclamation 9723, were created in quick succession of each other. Only eight months passed between the implementation of the first and third ban, with the Presidential Proclamation coming to fruition one year, and three months after the first ban was introduced. Additionally, other than minor changes, the main functions of the bans remained virtually unchanged with each new installation. This lack of change shows that national security concerns only played a small part in the implementing the bans. The larger, more significant purpose was based on keeping individuals from particular countries out of the United States, and a national security rationale was merely the route taken to achieve that goal.

#### 4. *Trump v. Hawaii*, 138 S. Ct. 2392 (2018).

The third travel ban was challenged by the State of Hawaii based on claims that the President did not retain the power to enforce the provisions in the ban and that the ban violated the Establishment Clause of the First Amendment because it was motivated by anti-Islamic ideals.<sup>110</sup> Enforcement of the ban was barred after a nationwide preliminary injunction was granted.<sup>111</sup> This decision was reviewed by the Ninth Circuit Court of Appeals, where a partial stay was granted.<sup>112</sup> This meant enforcement of the ban was allowed to proceed only regarding foreign individuals who did not have a bona fide relationship with any person or entity in the United States.<sup>113</sup> When the injunction was stayed in full by the Supreme Court of the

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<sup>104</sup> Proclamation No. 9723, 83 Fed. Reg. 15,937 (Apr. 10, 2018).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> Proclamation No. 9723, 83 Fed. Reg. 15,937 (Apr. 10, 2018).

<sup>110</sup> *Trump v. Hawaii*, *supra* note 72, at 2406.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

United States, the Ninth Circuit found that “travel ban 3.0” exceeded the authority of the former President because only temporary, rather than indefinite, suspension of entry was allowed.<sup>114</sup> Additionally, the Ninth Circuit determined that the restrictions violated the “prohibition on nationality-based discrimination in the issuance of immigrant visas.”<sup>115</sup> The Establishment Clause claim was not decided and certiorari was granted.<sup>116</sup>

The Supreme Court of the United States first determined that the former President had not exceeded his authority to suspend the entry of foreign individuals from the countries designated in “travel ban 3.0.”<sup>117</sup> In a lengthy discussion, the Court first discussed the broad discretion, and inherent deference, granted to former President Trump under § 1182(f) of the United States Code.<sup>118</sup> Two main arguments were presented by the Court to support their determination that the then President was well within his authority in his enforcement of the bans.<sup>119</sup> First, the Court found that the proclamation itself explained a very comprehensive and thorough evaluation of each country’s ability to comply with information-sharing standards.<sup>120</sup> This was appealing to the Court because it illustrated how a lack of information-sharing would negatively impact the United States’ ability to locate an individual who might pose a risk to the country.<sup>121</sup> The Court also briefly discussed the importance that the restrictions were merely conditional and could be lifted.<sup>122</sup> This impermanence was significant because the annual reassessments of the countries’ information-sharing mechanisms provided opportunities for the United States to engage with cooperative countries to work to lift the suspensions, while still protecting the country until changes were implemented.<sup>123</sup>

Second, the Court keyed in on Congress’s role in the suspension of entry of foreign individuals.<sup>124</sup> The Court found that Congress’ goal in designing the current immigration scheme was to create a vetting and information-sharing system that would require a foreign individual to prove why admissibility was appropriate.<sup>125</sup> This system included providing information concerning the criminal history of the individual and any links to terrorism the individual might have.<sup>126</sup>

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<sup>114</sup> *Id.*

<sup>115</sup> Trump, *supra* note 72, at 2407.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 2412.

<sup>118</sup> *Id.* at 2407; 8 U.S.C. § 1182(f) (stating “[w]henver the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.”).

<sup>119</sup> Trump *supra* note 72, at 2408–12.

<sup>120</sup> *Id.* at 2408.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 2410.

<sup>123</sup> *Id.* at 2408–10.

<sup>124</sup> Trump, *supra* note 72, at 2411.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

Based on this finding, the Court determined that the travel ban supported this goal because it promoted the “effectiveness of the vetting process by helping to ensure the availability of such information.”<sup>127</sup> Overall, the Court concluded that the travel ban did not “exceed any textual limit on the President’s authority,” and that any claims of inadequate authority failed because a contradiction with §1182(f) did not exist.<sup>128</sup>

The other issue that the Court opined on regarded whether the travel ban violated the Establishment Clause due to the seemingly discriminatory nature of the bans.<sup>129</sup> The Court found that the bans were based on a legitimate national security justification.<sup>130</sup> The Court’s analysis began with a discussion of the limited control the Court has over these types of matters.<sup>131</sup> Essentially, the Court claimed that issues concerning the admission or exclusion of foreign individuals were best left to the Executive or Legislative branch.<sup>132</sup> Additionally, the Court stated that when an admission decision is made with a facially legitimate purpose, the courts will not test that decision.<sup>133</sup> The Court then went on to state that “travel ban 3.0” was facially legitimate because the text of the document did not reference any specific religion, the ban only affected countries that Congress had already determined to pose a national security risk, and it reflected a thorough review process.<sup>134</sup>

Finally, the Court identified three other reasons to support its finding that the travel ban was facially legitimate:<sup>135</sup> the removal of three Muslim-majority countries from the ban (Chad, Sudan, Iraq) showed that the ban was only enforced until the risks posed by a certain countries were addressed; the proclamation provided exceptions for visas that the majority of individuals from these countries applied for; and that application for a waiver was open to all individuals attempting to gain entry to the United States.<sup>136</sup> The case concluded with a reversal of the preliminary injunctions and was remanded for further proceedings.<sup>137</sup> Altogether, this case legitimized the President’s power to enforce the travel bans and prevented further claims of discrimination, based on the Establishment Clause, from barring enforcement.

## 5. Travel Ban 4.0

“Travel ban 4.0”, the most recent version of the bans, altered “travel ban 3.0” somewhat significantly by adding six additional countries to travel restriction

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*Id.*

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*Id.* at 2412.

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Trump, *supra* note 72, at 2415–16.

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*Id.* at 2423.

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*Id.* at 2418.

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*Id.*

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*Id.* at 2419.

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Trump, *supra* note 72, at 2421.

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*Id.* at 2422.

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*Id.*

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*Id.* at 2423.

list.<sup>138</sup> These countries were Kyrgyzstan, Burma (Myanmar), Nigeria, Eritrea, Tanzania, and Sudan.<sup>139</sup> This version, Presidential Proclamation 9983, did not alter the status of any previously listed countries included in the ban.<sup>140</sup> However, “travel ban 4.0” did impose different standards of restriction for the six newly added countries.<sup>141</sup> These standards included prioritizing the restriction of immigrant visas, instead of nonimmigrant visas.<sup>142</sup> The reason for focusing only on immigrant visas was because of the difficulty of removing individuals who were “discovered to have terrorist connections, criminal ties, or misrepresented information,”<sup>143</sup> when they were admitted into the United States via an immigrant visa.<sup>144</sup>

Additionally, only the entry of Diversity Immigrants was suspended for Sudan and Tanzania, instead of all immigrants.<sup>145</sup> A Diversity Immigrant is an individual who “won” entry to the United States through a lottery system.<sup>146</sup> The rationale provided was that these individuals did not have to present evidence of familial ties, employment, or governmental service to the United States.<sup>147</sup> Furthermore, “travel ban 4.0” created an exception to the restriction for Burma, Nigeria, Kyrgyzstan, and Eritrea for Special Immigrant Visas.<sup>148</sup> This exception centered on whether the eligibility of the individual for a visa was “based on having provided assistance to the United States Government.”<sup>149</sup>

Finally, “travel ban 4.0” also outlined the updated methodology used when assessing countries under the three categories of criteria explained in the third travel ban.<sup>150</sup> The categories themselves did not change, but they did become more specific in their application.<sup>151</sup> For example, where the first category broadly assessed whether a country reported lost or stolen passports, the revised method assessed whether a country has “reported lost or stolen passports . . . within 30 days of a report of a loss or theft.”<sup>152</sup>

## 6. Acknowledgment of Alternate Rationale

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<sup>138</sup> Proclamation No. 9983, 85 Fed. Reg. 6699 (Jan. 31, 2020).

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> Proclamation No. 9983, 85 Fed. Reg. 6699 (Jan. 31, 2020).

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> 8 U.S.C. § 1153(c); *Green Card Through the Diversity Immigrant Visa Program*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Jan. 11, 2018), <https://www.uscis.gov/green-card/green-card-eligibility/green-card-through-the-diversity-immigrant-visa-program>.

<sup>147</sup> Proclamation No. 9983, 85 Fed. Reg. 6699 (Jan. 31, 2020).

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*; 8 U.S.C. 1101(a)(27)(D-G), (K) (defining what a “Special Immigrant” is, as applicable to Presidential Proclamation 9983 or travel ban 4.0).

<sup>150</sup> Proclamation No. 9983, 85 Fed. Reg. 6699 (Jan. 31, 2020).

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

Even though the previously discussed rationales might seem facially legitimate, the use of national security language as a basis for exclusion has been criticized because it problematically allows the government to restrict otherwise free movement on the basis of protected characteristics, such as race or religion.<sup>153</sup> Furthermore, President Trump has been accused of harboring deep anti-Muslim biases in general.<sup>154</sup> The anti-Islamic rhetoric that he deployed during his 2016 campaign, and before, influenced this accusation.<sup>155</sup> For example, in late 2015, just over a year before his inauguration, President Trump called “for a total and complete shutdown of Muslims entering the United States until our country’s representatives can figure out what is going on.”<sup>156</sup> Additionally, President Trump expressed his support for surveilling or shutting down mosques and alluded to creating a national database of Muslims living in the United States.<sup>157</sup> During his run for the White House, President Trump even went so far as to say that he believed “Islam hates us.”<sup>158</sup> This statement was considered particularly problematic because it failed to distinguish between Islam (a world religion) and Islamic terrorists (a relatively small sect of militants), as well as propagated the belief that any follower of Islam inherently hates the United States.<sup>159</sup> Despite the use of

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<sup>153</sup> See Sivaprasad Wadhia, *National Security, Immigration and the Muslim Bans*, 75 WASH. & LEE L. REV. 1475, 1506 (2018) (arguing that using national security language has allowed the government, and especially the former administration, to exclude based on religion without being held accountable, and that this has negative human impact).

<sup>154</sup> *A Record of Bigotry and Hate: Donald Trump’s Long History of Anti-Muslim Animus*, MUSLIM ADVOCATES, <https://muslimadvocates.org/wp-content/uploads/2019/06/Timeline-of-Record-of-Bigotry.pdf> (last visited Oct. 3, 2020) (providing specific examples of statements made by Trump that are considered anti-Muslim).

<sup>155</sup> Jim Key, *Three Years into His Presidency, What’s the Impact of Trump’s Anti-Muslim Actions?*, USC DORNSIFE COLL. OF LETTERS, ARTS, AND SCI. (Jan. 15, 2020), <https://dornsife.usc.edu/news/stories/3147/three-years-into-his-presidency-whats-the-impact-of-trumps-anti/>.

<sup>156</sup> *Donald J. Trump Statement on Preventing Muslim Immigration*, INTERNET ARCHIVE (Dec. 7, 2015), <https://web.archive.org/web/20151207230751/https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration>.

<sup>157</sup> Jeremy Diamond, *Trump Doubles Down on Calls for Mosque Surveillance*, CNN (June 15, 2016, 8:10 PM), <https://www.cnn.com/2016/06/15/politics/donald-trump-muslims-mosque-surveillance/index.html>; Gregory Krieg, *Donald Trump: ‘Strongly Consider’ Shutting Mosques*, CNN (Nov. 16, 2015, 12:11 PM), <https://www.cnn.com/2015/11/16/politics/donald-trump-paris-attacks-close-mosques/>; Alana Abramson, *What Trump has said About a Muslim Registry*, ABC NEWS (Nov. 18, 2016, 5:00 PM), <https://abcnews.go.com/Politics/trump-muslim-registry/story?id=43639946>.

<sup>158</sup> Theodore Schliefer, *Donald Trump: ‘I think Islam Hates Us’*, CNN (Mar. 10, 2016, 5:56 PM), <https://www.cnn.com/2016/03/09/politics/donald-trump-islam-hates-us/index.html>.

<sup>159</sup> *Id.*

national security language in the travel bans themselves, these statements support a reasonable inference that President Trump may have imposed the bans for discriminatory (i.e. non-security-related) reasons. This is not to say that President Trump was undoubtedly motivated by anti-Muslim sentiment in imposing the travel bans. Rather, this Note argues that his statements before implementing the bans do not necessarily align with those provided in the text of the Executive Orders.

## **B. Australia**

### **1. Migration Program & Refugee and Humanitarian Program**

The Australian immigration system is divided between two sectors: The Migration Program and the Refugee and Humanitarian Program.<sup>160</sup> The Migration Program is for people who want to permanently relocate to Australia.<sup>161</sup> For the most part, this program is for skilled migration and “family stream” applicants.<sup>162</sup> The skilled migration portion consists of four different skill types: general skilled, employer nomination, business skills, and distinguished talent.<sup>163</sup> The general skilled branch is for people who do not require sponsorship.<sup>164</sup> Things such as skills, occupation, age, and employability are considered under these types of applications.<sup>165</sup> The employer nomination branch is for sponsored, work-related applicants, while the business skills section is for successful business people who want to start new businesses in Australia.<sup>166</sup> The distinguished talent section covers individuals with unique talents, such as artists, musicians, designers, and athletes.<sup>167</sup> The family stream portion is for the immediate family of permanent residents and citizens of Australia and New Zealand.<sup>168</sup> The “family stream” includes parents, spouses, and children.<sup>169</sup>

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<sup>160</sup> Harriet Spinks, *Australia's Migration Program*, PARLIAMENT OF AUSTRALIA,

[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/1011/AustMigration#\\_Toc274128798](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/1011/AustMigration#_Toc274128798) (Oct. 29, 2010); *Australia's Refugee Policy: An Overview*, UNSW SYDNEY (July 17, 2020)

<https://www.kaldorcentre.unsw.edu.au/publication/australias-refugee-policy-overview#:~:text=Australia%27s%20Refugee%20and%20Humanitarian%20Program,and%20the%20offshore%20resettlement%20program.&text=People%20in%20this%20category%20are,in%20Australia%20as%20permanent%20residents.>

<sup>161</sup> Spinks, *supra* note 160.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> Spinks, *supra* note 160.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*



The Refugee and Humanitarian Program, on the other hand, is predominantly used for refugee and asylum seekers.<sup>170</sup> There are onshore and offshore sections of the program.<sup>171</sup> The onshore program is for applicants who have already arrived in Australia and want to stay indefinitely for protection.<sup>172</sup> However, people who arrive by boat into Australia are excluded from participation in this section of the program.<sup>173</sup> Individuals in this section can apply for a protection visa, a temporary protection visa, or a safe haven enterprise visa.<sup>174</sup> The protection visa is for people “who arrived in Australia on a valid visa and want to seek asylum.”<sup>175</sup> If granted, it allows the individual to permanently live, study, and work in Australia, and sponsor other family members through the offshore program if they are eligible.<sup>176</sup> The temporary protection visa, while similar, is significantly more limited compared to the protection visa.<sup>177</sup> The temporary protection visa is for people who want to seek asylum in Australia, but have arrived without a valid visa.<sup>178</sup> This visa only allows individuals to work and study in Australia for three years.<sup>179</sup> Finally, the safe haven enterprise visa is almost identical to the temporary protection visa.<sup>180</sup> The only significant difference is that this visa allows individuals to stay in Australia to work and study for five years, rather than three.<sup>181</sup>

Each of these visas also require that an individual participate in Australia’s protection obligations or have a family member who does.<sup>182</sup> This means that the individual must qualify as a refugee, which is a person who is “outside their country of nationality or former habitual residence (their home country) and ow[ed] to a

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<sup>170</sup> *Australia’s Refugee Policy: An Overview*, *supra* note 160.

<sup>171</sup> *Id.*

<sup>172</sup> *Refugee and Humanitarian Program*, AUSTRALIAN GOV’T DEP’T OF HOME AFF., <https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program> (Mar. 17, 2020); *Australia’s Refugee Policy: An Overview*, *supra* note 160.

<sup>173</sup> *Refugee and Humanitarian Program*, AUSTRALIAN GOV’T DEP’T OF HOME AFF., <https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program> (Mar. 17, 2020); *Australia’s Refugee Policy: An Overview*, *supra* note 160.

<sup>174</sup> *Protection Visas (Onshore)*, AUSTRALIAN GOV’T DEP’T OF HOME AFF. (Oct. 29, 2019), <https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/onshore-protection>.

<sup>175</sup> *Subclass 866 Protection Visa*, AUSTRALIAN GOV’T DEP’T OF HOME AFF. (Oct. 19, 2020), <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/protection-866>.

<sup>176</sup> *Id.*

<sup>177</sup> *Subclass 785 Temporary Protection Visa*, AUSTRALIAN GOV’T DEP’T OF HOME AFF. (Oct. 19, 2020), <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-protection-785>.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Subclass 790 Safe Haven Enterprise Visa*, AUSTRALIAN GOV’T DEP’T OF HOME AFF. (Oct. 19, 2020), <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/safe-haven-enterprise-790>.

<sup>181</sup> *Id.*

<sup>182</sup> *Subclass 866 Protection Visa*, *supra* note 175; *see also Subclass 785 Temporary Protection Visa*, *supra* note 177; *see also Subclass 790 Safe Haven Enterprise Visa*, *supra* note 180.

'well-founded fear of persecution', is unable or unwilling to return to their home country or to seek the protection of that country."<sup>183</sup> This definition looks into the future to determine whether an individual faces a current, legitimate threat, not if they had previously faced one.<sup>184</sup> An individual can satisfy the "well-founded fear of persecution" requirement if they show that they face serious harm due to their religion, nationality, race, political opinion, or if they are part of a particular social group.<sup>185</sup> Additionally, the harm faced must be serious or significant.<sup>186</sup> A harm is serious if, among other things, it denies access to social services, imposes economic hardship that affects the individual's ability to survive, or causes physical harm, including harassment and torture.<sup>187</sup> Finally, the last requirement that must be met is to show that the persecution is resulting from conduct that is systematic and discriminatory.<sup>188</sup> To do this, an individual must show that they are personally being targeted or singled-out based on one of the five categories mentioned above.<sup>189</sup> However, if the persecution is directed at a complete group to which the individual belongs, this requirement is not satisfied.<sup>190</sup>

The offshore program is for people not currently in Australia, but who must be resettled due to persecution in their home country.<sup>191</sup> To qualify for participation in the offshore program, an individual must: (1) be outside of Australia, (2) face persecution in their country of origin, and (3) meet other requirements, such as "compelling reasons criteria" and "national security requirements."<sup>192</sup> Factors that are considered when determining whether an individual qualifies are: "the degree or severity of persecution to which they are subject, the extent of their connection with Australia, whether another country can provide for the applicant's resettlement and protection from persecution, and the capacity of the Australian community to provide for their permanent resettlement."<sup>193</sup> All of the four visas available under this section allow for an

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<sup>183</sup> *Australia's Protection Obligations*, AUSTRALIAN GOV'T DEP'T OF HOME AFF. (Aug. 21, 2020), <https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/about-the-program/seek-protection-in-australia/australia-protection-obligations>.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Australia's Protection Obligations*, *supra* note 183.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Refugee and Humanitarian Program*, *supra* note 172.

<sup>192</sup> *Refugee Visas (Offshore)*, AUSTRALIAN GOV'T DEP'T OF HOME AFF. (July 15, 2019), <https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/refugee-visas>.

<sup>193</sup> Elibritt Karlsen, *Refugee Resettlement to Australia: What are the Facts?*, PARLIAMENT OF AUSTRALIA (Sept. 7, 2016) [https://www.aph.gov.au/about\\_parliament/parliamentary\\_departments/parliamentary\\_library/pubs/rp/rp1617/refugeeresettlement](https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp1617/refugeeresettlement).

individual to permanently live, work and study in Australia.<sup>194</sup> Depending on the visa, they apply to people referred to Australia by the United Nations High Commissioner for Refugees (UNHCR) who require resettlement or are in immediate danger, people who have been unable to leave their home country, and to women who face victimization and do not benefit from the protection of a relative or partner.<sup>195</sup> Additionally, the Australian government has created specific standards under this program that, if met, would allow a person to rejoin their split family.<sup>196</sup>

## 2. Australia & Syrian Refugees

Regarding Australia's efforts to help the Syrian refugees, Australia admitted Syrian refugees into its borders during the Syrian Refugee Crisis.<sup>197</sup> Australia previously capped participation in their offshore program at around 13,750 people.<sup>198</sup> However, in direct response to the many conflicts plaguing Iraq and Syria, Australia added an additional 12,000 spots to its offshore program that were solely designated for individuals fleeing Iraq and Syria.<sup>199</sup> By 2018-2019, the amount of participants in the offshore program was 18,750, not including the newly added 12,000 spots.<sup>200</sup> This resulted in a 35% increase in Australia's total intake of refugees.<sup>201</sup> Furthermore, Australia has provided a total of \$462 million in support funds since 2011 in response to the Syrian Refugee Crisis.<sup>202</sup> This money not only supported Syria through humanitarian assistance, but it also helped fund educational and employment opportunities for refugees and host communities in Lebanon and Jordan.<sup>203</sup> This is a different approach than the United States because Australia elected to help through both monetary and asylum avenues.

### III. VIOLENT CRIME STATISTICS

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<sup>194</sup> *Subclass 200, 201, 203, and 204 Refugee Category Visas*, AUSTRALIAN GOV'T DEP'T OF HOME AFF. (Mar. 17, 2020), <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/refugee-200>.

<sup>195</sup> *Refugee Visas (Offshore)*, *supra* note 192.

<sup>196</sup> *Id.*

<sup>197</sup> *Refugee Law and Policy in Selected Countries*, THE LAW LIBRARY OF CONGRESS 6 (Mar. 2016) <https://www.loc.gov/law/help/refugee-law/refugee-law-and-policy.pdf>.

<sup>198</sup> *Australia's Refugee Policy: An Overview*, *supra* note 160; *see id.*

<sup>199</sup> *Refugee Law and Policy in Selected Countries*, *supra* note 197.

<sup>200</sup> *Leaders' Summit on Refugees*, PARLIAMENT OF AUSTRALIA (Sept. 21, 2016), <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F4830778%22>.

<sup>201</sup> *Id.*

<sup>202</sup> *Syria Humanitarian Response*, AUSTRALIAN GOV'T DEP'T OF FOREIGN AFF. AND TRADE, <https://www.dfat.gov.au/geo/syria/Pages/syria-humanitarian-response> (last visited Nov. 15, 2020).

<sup>203</sup> *Id.*

The focus of the travel bans was to prevent certain classes of people from entering the United States.<sup>204</sup> This was based on the belief that if these people did not enter the United States, the current citizens would be safer.<sup>205</sup> A typical way to measure safety is through crime statistics, especially rates of violent crime, including homicide.<sup>206</sup> Furthermore, legal scholars use data and empirical evaluation methods to determine whether particular laws are achieving their desired effect.<sup>207</sup> Here, statistics for violent crime and terrorism rates in the United States are highly relevant because it shows a correlation, or lack thereof, between the bans and their impact on national security. The following sections examine the crime statistics from 2015 to 2019 from both the United States and Australia. No data on terrorism will be included in this analysis because no statistics or data have been published on the subject.

### **A. United States**

The United States has two methods of reporting crime rate statistics. The first is through the Federal Bureau of Investigation (FBI) and the Uniform Crime Reporting Program (UCR).<sup>208</sup> The second is through the National Crime Victimization Survey (NCVS), which is reported through the Bureau of Justice Statistics (BJS).<sup>209</sup> Both of these services report on a wide variety of crime rate statistics, including violent crime and property crime.<sup>210</sup>

The FBI releases semiannual crime rates under the UCR.<sup>211</sup> Law enforcement agencies throughout the country report their crime data, and these data

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<sup>204</sup> See Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017); Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 6, 2017). Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 24, 2017).

<sup>205</sup> See Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017); Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 6, 2017). Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 24, 2017).

<sup>206</sup> *Safety*, OECD BETTER LIFE INDEX, [http://www.oecdbetterlifeindex.org/topics/safety/#:~:text=The%20homicide%20rate%20\(the%20number,the%20OECD%20average%20of%203.7](http://www.oecdbetterlifeindex.org/topics/safety/#:~:text=The%20homicide%20rate%20(the%20number,the%20OECD%20average%20of%203.7) (last visited Dec. 17, 2020) (“Homicide rates . . . are however a more reliable measure of a country’s safety level because, unlike other crimes, murders are usually always reported to the police”).

<sup>207</sup> See Christoph Engel, *Empirical Methods for the Law*, MAX PLANK INST. FOR RES. ON COLLECTIVE GOODS 5, (May 2017) [file:///C:/Users/shelb/Downloads/2017\\_07online.pdf](file:///C:/Users/shelb/Downloads/2017_07online.pdf).

<sup>208</sup> *Services: Uniform Crime Reporting (UCR) Program*, FED. BUREAU OF INVESTIGATION <https://www.fbi.gov/services/cjis/ucr/> (last visited Jan. 16, 2021).

<sup>209</sup> See BUREAU OF JUST. STAT. <https://www.bjs.gov/> (last visited Jan. 16, 2021).

<sup>210</sup> See *id.*; *Services: Uniform Crime Reporting (UCR) Program*, *supra* note 208.

<sup>211</sup> See *Crime in the U.S.*, FED. BUREAU OF INVESTIGATION <https://ucr.fbi.gov/crime-in-the-u.s> (last visited Jan. 16, 2021).

are used to determine yearly trends of crime statistics.<sup>212</sup> Under the UCR, “violent crimes” are crimes that involve the threat or use of force.<sup>213</sup> Furthermore, “the offenses of murder and nonnegligent manslaughter, rape (revised definition), robbery, and aggravated assault” are specific offenses encompassed within the definition of “violent crimes.”<sup>214</sup>

The BJS, while a separate publication from the FBI, relies on UCR program for data to use in its reports on crime rate statistics.<sup>215</sup> The BJS defines crimes of violence as offenses that qualify as “[r]ape, sexual assault, personal robbery, or assault.”<sup>216</sup> Crimes of violence also include “both attempted and completed crimes.”<sup>217</sup>

Overall, crime rate statistics reported by both of these publications showed a relatively consistent trend until 2019.<sup>218</sup> During 2015, two years before the first travel ban was created, the United States experienced a large increase in violent crime rates.<sup>219</sup> The number of crimes being committed for most violent crime categories increased by at least 3% between 2014 and 2015.<sup>220</sup> By 2016, violent crime rates had increased by another 5.3% between January and June.<sup>221</sup> In fact, the number of crimes being committed increased for every offense categorized as a “violent crime.”<sup>222</sup> For example, the murder and nonnegligent manslaughter rate increased from 15,883 per 100,000 people in 2015 to 17,250 per 100,000 in 2016.<sup>223</sup> Furthermore, the amount of rape victims increased between 2015 and 2016 by 8.6%,

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<sup>212</sup> *Crime Data Explorer: How These Numbers are Calculated*, FED. BUREAU OF INVESTIGATION <https://crime-data-explorer.app.cloud.gov/explorer/national/united-states/crime> (last visited Jan. 16, 2021).

<sup>213</sup> *Violent Crime: Definition*, FED. BUREAU OF INVESTIGATION 1 <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/violent-crime.pdf> (last visited Jan 17, 2021).

<sup>214</sup> *Crime Data Explorer: How These Numbers are Calculated*, *supra* note 212.

<sup>215</sup> *BJS Statistical Programs: BJS Data Collection Activities*, FED. BUREAU OF INVESTIGATION <https://www.bjs.gov/index.cfm?ty=abu> (last visited Jan 17, 2021).

<sup>216</sup> *Terms & Definitions: Crime Type*, BUREAU OF JUST. STAT. <https://www.bjs.gov/index.cfm?ty=tdtp&tid=3> (last visited Jan. 17, 2021).

<sup>217</sup> *Id.*

<sup>218</sup> See Rachel E. Morgan & Jennifer L. Truman, *Criminal Victimization, 2019*, BUREAU OF JUST. STAT 1 (Sept. 2020) <https://www.bjs.gov/content/pub/pdf/cv19.pdf> (“This is the first statistically significant decrease in the number of persons who were victims of violent crime excluding simple assault since 2015”).

<sup>219</sup> *Crime Trends by Population Group, 2014-2015*, FED. BUREAU OF INVESTIGATION tbl.12 (2015).

<sup>220</sup> *Id.*

<sup>221</sup> *Preliminary Semiannual Uniform Crime Report, January-June, 2016*, FBI: UCR <https://ucr.fbi.gov/crime-in-the-u.s/2016/preliminary-semiannual-uniform-crime-report-january-june-2016> (last visited Jan. 29, 2021).

<sup>222</sup> *Table 1 Crime in the United States, by Volume and Rate per 100,000 Inhabitants, 1997-2016*, FBI: UCR <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/tables/table-1> (last visited Jan. 29, 2021).

<sup>223</sup> *Id.*

rising from 126,134 to 130,603.<sup>224</sup> Finally, the number of victims of aggravated assaults rose from 764,057 to 803,007, an increase of about 5%.<sup>225</sup> These three statistics show an 8.6% increase in murders and nonnegligent manslaughters, a 3.5% increase in rapes, and 5.1% increase in aggravated assaults.<sup>226</sup>

Data from 2017 show that, although the overall violent crime rate decreased by 0.8%,<sup>227</sup> the rates for rapes and aggravated assaults continued to increase slightly.<sup>228</sup> The number of rapes per 100,000 increased from 132,414 people to 135,755, a 2.5% increase.<sup>229</sup> The number of aggravated assaults experienced a 1% increase,<sup>230</sup> rising from 802,982 to 810,825.<sup>231</sup> A similar situation occurred in 2018, where the overall rate for violent crime decreased 4.3%,<sup>232</sup> but the rates for specific categories of offenses increased.<sup>233</sup> However, only the number of rapes increased this time, rising from 135,666 to 139,380 per 100,000, which was a 2.7% increase.<sup>234</sup> In total, the number of victims of violent crimes increased from 2.7 million victims in 2015 to 3.3 million in 2018, which was a 27% increase.<sup>235</sup>

By 2019, another wave of decreasing rates of violent crime had begun. The preliminary semiannual UCR report stated that the nation experienced a 3.1% decrease in violent crime rates between 2018 and 2019.<sup>236</sup> This was largely attributed to “a decline in the number of victims of rape or sexual assault.”<sup>237</sup> Here,

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<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Table 1A Crime in the United States, Percent Change in Volume and Rate per 100,000 Inhabitants for 2 Years, 5 Years, and 10 Years*, FBI: UCR <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/tables/table-1a> (last visited Jan. 29, 2021).

<sup>227</sup> *Preliminary Semiannual Uniform Crime Report, January-June, 2017*, FBI: UCR <https://ucr.fbi.gov/crime-in-the-u.s/2017/preliminary-report> (last visited Jan. 29, 2021).

<sup>228</sup> *Table 1 Crime in the United States, by Volume and Rate per 100,000 Inhabitants, 1998-2017*, FBI: UCR <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-1> (last visited Jan. 29, 2021).

<sup>229</sup> *Id.*; *Table 1A*, FBI: UCR <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-1> (last visited Jan. 30, 2021).

<sup>230</sup> *Table 1A*, *supra* note 229.

<sup>231</sup> *Table 1 Crime in the United States, by Volume and Rate per 100,000 Inhabitants, 1998-2017*, *supra* note 228.

<sup>232</sup> *Preliminary Semiannual Uniform Crime Report, January-June, 2018*, FBI: UCR <https://ucr.fbi.gov/crime-in-the-u.s/2018/preliminary-report> (last visited Jan. 29, 2021).

<sup>233</sup> *See Table 1 Crime in the United States, by Volume and Rate per 100,000 Inhabitants, 1999-2018*, FBI: UCR <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/tables/table-1> (last visited Jan. 29, 2021).

<sup>234</sup> *Id.*; *Table 1A*, FBI: UCR <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/tables/table-1> (last visited Jan. 30, 2021).

<sup>235</sup> Rachel E. Morgan & Barbara A. Oudekerk, *Criminal Victimization, 2018*, BUREAU OF JUST. STAT 1 (Sept. 2019) <https://www.bjs.gov/content/pub/pdf/cv18.pdf>; Morgan & Truman, *supra* note 218.

<sup>236</sup> *Preliminary Semiannual Uniform Crime Report, January-June, 2019*, FED. BUREAU OF INVESTIGATION <https://ucr.fbi.gov/crime-in-the-u.s/2019/preliminary-report> (last visited Jan. 29, 2021).

<sup>237</sup> Morgan & Truman, *supra* note 218.

the number of rapes dropped from 143,765 to 139,815.<sup>238</sup> This amounted to another 2.7% decrease.<sup>239</sup> Finally, these data are unrelated to the reasons behind the travel bans: equating Muslim-majority countries with terroristic threats.

Altogether, these data show that while the nation may have been experiencing a decrease in violent crime rates overall, these rates were not necessarily indicative of singular offense categories. Regardless, the changes discussed here show that there was a difference in violent crime rate statistics before and after the travel bans were instituted. The difference does not conclusively show that the bans have been effective in keeping the nation safer. It is also worth noting that some agencies do not consider the differences in data to be statistically significant.<sup>240</sup>

Additionally, these reports do not expressly differentiate between violent crimes committed by American-born individuals and immigrants. However, the BJS, which draws on statistics from the UCR, has compiled a separate set of statistics that are specifically designated as involving immigrants.<sup>241</sup> Although not mutually exclusive, one can speculate that higher violent crime rates do not definitively point to immigration being the issue. This is especially true for immigrants from countries affected by the travel bans because there have not been studies specifically analyzing the impact these immigrants have on crime. While there have been various studies on undocumented immigration's impact on crime,<sup>242</sup> these are not distinguished based on nationality or religion. The lack of data on the crimes committed by these communities is important because it demonstrates that there may be no causal connection between immigrants from these countries and crime. That is not to say that a relationship is non-existent, however, the lack of research between religious affiliation and criminal charges shows that the relationship between a single religion and higher crime is low, if existent at all. Therefore, it is safe to assume that these immigrants do not pose as large of a threat as perceived, especially when it comes to crime and national security.

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<sup>238</sup> *Table 1 Crime in the United States, by Volume and Rate per 100,000 Inhabitants, 2000-2019*, FBI: UCR <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-1> (last visited Jan. 29, 2021).

<sup>239</sup> *Table 1A*, FBI: UCR <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-1> (last visited Jan. 30, 2021).

<sup>240</sup> See Morgan & Oudekerk, *supra* note 235; Morgan & Truman, *supra* note 218.

<sup>241</sup> See Mark Motivans, *Immigration, Citizenship, and the Federal Justice System, 1998-2018*, BUREAU OF JUST. STAT. 1 (Aug. 2019) <https://www.bjs.gov/content/pub/pdf/icfjs9818.pdf>.

<sup>242</sup> See Michael T. Light & Ty Miller, *Does Undocumented Immigration Increase Violent Crime?*, NAT'L CTR. FOR BIOTECHNOLOGY INFO. (Mar. 25, 2018) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6241529/>; Alex Nowrasteh, *Criminal Immigrants in Texas: Illegal Immigrant Conviction and Arrest Rates for Homicide, Sex Crimes, Larceny, and Other Crimes*, CATO INST. (Fed. 26, 2018) <https://www.cato.org/publications/immigration-research-policy-brief/criminal-immigrants-texas-illegal-immigrant>.

## **B. Australia**

Australia predominately reports the nation's crime statistics through the Australian Bureau of Statistics.<sup>243</sup> Much like other countries, Australia heavily relies on data provided from police departments, mostly administrative records, to develop their statistics.<sup>244</sup> Additionally, statistics are collected through the National Crime Recording Standard.<sup>245</sup> The offenses analyzed and included in the reports are homicide, which includes murder and manslaughter, sexual assault, robbery, blackmail and extortion, assault, burglary, abduction and kidnapping, robbery, and various types of thefts.<sup>246</sup> Furthermore, both completed and attempted offenses are included in the statistical evidence.<sup>247</sup> Since Australia does not define their crimes as "violent crimes," the following paragraphs will use data for homicides and sexual assaults to analyze violent crime rates. Additionally, because Australia does not publish their statistics on assaults due to lack of reporting, assault data will not be included.

Beginning in 2015, Australia experienced a decrease for most person-offense categories when compared to the previous year.<sup>248</sup> Homicide victims decreased 2%, dropping to 413 victims from 421.<sup>249</sup> This included a decrease from 243 murder victims in the year prior, to 236 victims in 2015, with the number of attempted murders remaining constant at 152 victims.<sup>250</sup> This decrease allowed the homicide victimization rate to fall to only 1.7 victims per 100,000, which was the lowest rate in six years.<sup>251</sup> It is worth acknowledging that Australia's crime rate is naturally much lower than the United States, especially for murder. This does not demonstrate that the United States is different from other equally developed countries, but it does show that the laws and approaches of other countries may be more adept at controlling violent crime rates. This is especially important in the immigration context because, although Australia elected to admit Syrian nationals, the country has not experienced a significant increase in violent crime rates. As for

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<sup>243</sup> See *Crime and Justice*, AUSTRALIAN BUREAU OF STAT.

<https://www.abs.gov.au/statistics/people/crime-and-justice> (last visited Jan. 29, 2021).

<sup>244</sup> *Recorded Crime- Victims, Australia methodology*, AUSTRALIAN BUREAU OF STAT. (July 9, 2020) <https://www.abs.gov.au/methodologies/recorded-crime-victims-australia-methodology/2019>.

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> *Recorded Crime- Victims, Australia, 2015*, AUSTRALIAN BUREAU OF STAT. (July 13, 2016)

<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4510.0~2015~Main%20Features~Victims%20of%20Crime,%20Australia~3>.

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*



the number of sexual assault victims, that number rose 3%, totaling 90 per 100,000 victims.<sup>252</sup> 2015 was the fourth year that sexual assault victimizations increased.<sup>253</sup>

By 2016, Australia experienced an increase in all offense categories.<sup>254</sup> The number of homicide victims was one of the largest increases, rising from 416 to 452 victims.<sup>255</sup> This was attributed to a significant rise in attempted murder, a 27% increase, to 196 victims from 155 in the previous year.<sup>256</sup> Murder statistics did not contribute to the increase, as the number of murder victims declined 4%.<sup>257</sup> Sexual assault statistics saw a fifth consecutive year of rising rates, with a 5% increase.<sup>258</sup> This brought the number of sexual assault victims to one per 1,000 people.<sup>259</sup>

Yet, in 2017, there was another decrease in most offense categories in Australia.<sup>260</sup> The number of homicide victims dropped to 414 from 453 in the year prior.<sup>261</sup> This time, the drop contributed to a decrease for both murder and attempted murder victims, with a decrease of 11% for murder and a decrease of 15% for attempted murder.<sup>262</sup> Yet, despite the overall decrease in crime rates, the rise in sexual assaults continued, with an 8% overall increase.<sup>263</sup> This translated to an additional 1,917 victims.<sup>264</sup>

While the overall crime statistics in Australia in 2018 have not yet been published, statistics for many categories of offenses have been made available.<sup>265</sup> The number of victims for several categories decreased, including the homicide category.<sup>266</sup> Overall, there was 13% decrease in the number of homicide victims, which was the lowest number since 2010.<sup>267</sup> Once again, the rates of attempted

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252

*Id.*

253

*Recorded Crime- Victims, Australia, 2015, supra* note 248.

254

*Recorded Crime- Victims, Australia, 2016*, AUSTRALIAN BUREAU OF STAT. (July 6, 2017)

<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4510.0~2016~Main%20Features~Victims%20of%20Crime,%20Australia~3>.

255

*Id.*

256

*Id.*

257

*Id.*

258

*Id.* (altogether, there has been a 24% increase since 2011).

259

*Recorded Crime- Victims, Australia, 2016, supra* note 254.

260

*Recorded Crime- Victims, Australia, 2017*, AUSTRALIAN BUREAU OF STAT. (June 28, 2018)

<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4510.0~2017~Main%20Features~Victims%20of%20Crime,%20Australia~3>.

261

*Id.*

262

*Id.*

263

*Id.*

264

*Id.*

265

*See Recorded Crime- Victims, Australia, 2018*, AUSTRALIAN BUREAU OF STAT. (June 27, 2019) <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims-australia/2018#key-statistics>.

266

*Id.*

267

*Id.*

murder played a large role in this, with a 31% decrease.<sup>268</sup> 2018 also saw another increase in the sexual assault arena, yet only a 2% increase this time.<sup>269</sup> In total, there were 105 sexual assault victims per 100,000 persons in 2018.<sup>270</sup>

Finally, like the 2018 statistics, the overall, national crime statistics for 2019 have not been published.<sup>271</sup> However, both the homicide and sexual assault categories increased in 2019.<sup>272</sup> Homicide victimization rates rose 10%, with the number of victims of attempted murder increasing 17%.<sup>273</sup> The rates of victims of sexual assault experienced a marginal increase, only 2%.<sup>274</sup> Altogether, this accounted for one more victim per 100,000 people, bringing the total to 106 per 100,000.<sup>275</sup>

Like the United States, Australian crime statistic reporters do not explicitly distinguish between crimes committed by native Australians and immigrants. However, Australia does have a separate publication relating to all migrant data, including a section for crime and justice.<sup>276</sup> Also, a study from 2019 concluded that a larger immigrant population does not contribute to high violent crime rates.<sup>277</sup> This study analyzed the relationship between crimes and the concentration of immigrants in Sydney and Brisbane, two popular destinations for immigrants in Australia.<sup>278</sup> The study found that language or religious concentration is not associated with higher crime, at least once environmental and sociological differences are accounted for.<sup>279</sup> The conclusions of this study provide support for the inference that immigrants do not play a significant part in the increases of crime rates in Australia.

While not completely conclusive, these data are likely to be illustrative of the impact immigrants have on crime because Sydney and Brisbane are the two largest cities in Australia.<sup>280</sup>

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<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *Recorded Crime- Victims, Australia, 2018, supra* note 265.

<sup>271</sup> *Recorded Crime- Victims, Australia, 2019*, AUSTRALIAN BUREAU OF STAT. (July 9, 2020) <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims-australia/2019#victims-of-crime-australia>.

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> *See Migrant Data Matrices*, AUSTRALIAN BUREAU OF STAT. (Dec. 22, 2020) <https://www.abs.gov.au/statistics/people/people-and-communities/migrant-data-matrices/latest-release#crime-and-justice>.

<sup>277</sup> Michelle Sydes, *Immigration, Ethnicity, and Neighborhood Violence: Considering Both Concentration and Diversity Effects*, SAGE J. 1 (Sept. 18, 2019) [https://journals.sagepub.com/doi/pdf/10.1177/2153368719875183?casa\\_token=DxXJ-HPmHf0AAAAA:2x\\_og0SNpqYS65VAqyPKb2iAn3czX-2OI56BhXqmPBA6exNa6Nx8tahY-EwgrIMLfrwY5vZBEEB3](https://journals.sagepub.com/doi/pdf/10.1177/2153368719875183?casa_token=DxXJ-HPmHf0AAAAA:2x_og0SNpqYS65VAqyPKb2iAn3czX-2OI56BhXqmPBA6exNa6Nx8tahY-EwgrIMLfrwY5vZBEEB3).

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> *Population of Cities in Australia (2021)*, WORLD POPULATION REV. <https://worldpopulationreview.com/countries/cities/australia> (last visited Jan. 29, 2021).

#### IV. COMPARISON OF DATA BETWEEN THE UNITED STATES AND AUSTRALIA

A comparison of the data between the United States and Australia shows a vast difference in violent crime rates. The United States experiences exponentially more crime than Australia, even with the harsh Trump-era immigration policies. This issue is exacerbated by the fact that studies have found that immigrants are less likely than native-born Americans to commit violent crimes.<sup>281</sup> Assuming all else equal, the differences between the data compels the conclusion that the travel bans were ineffective at enhancing national security, at least when measured by crime rates in the country. Although the United States implemented a series of travel bans, the violent crime rates in the country did not decrease. In fact, there were several instances where specific rates, such as murder or rape, increased. Australia, on the other hand, did not experience significant changes in violent crime rates, even after admitting refugees into the country. This shows that the bans themselves did not increase the national security of the United States.

First, the murder and attempted murder rates between the two countries depict an illustratable difference. The homicide victimization rates in Australia sit in the mid-400s per 100,000 persons in any given year. The number of victims of murder or attempted murder in Australia has not exceeded 500 per 100,000 people between 2015 and 2019. The United States, on the other hand, regularly experiences rates in 15,000 to 18,000 per 100,000 range. Based on this, the United States has more than 20 times the number of murders and attempted murder than Australia.

The comparison is similar when it comes to sexual assaults as well. Australia, although experiencing regular yearly highs for the number of sexual assault victims, only bodes a little over 100 victims per 100,000 people. Yet, the yearly rates of sexual assaults in the United States are typically between 12,000 and 15,000 per 100,000 inhabitants. The difference between these rates is astronomical. In this instance, the number of sexual assaults being committed in the United States is more than 1,000 times the amount in Australia.

The differing immigration policies between the two countries do not offer much explanation for these changes in violent crime rates for each country. If immigrants truly posed significant national security risks, especially individuals from war-ridden countries like Syria, those risks should be apparent in relevant crime data. It would then be natural to assume that violent crime rates in Australia should exceed those of the United States because of Australia's decision to admit 12,000 immigrants from Syria and Iraq per year. Yet, the opposite is true, and a ready explanation does not exist. Even the differences in population between the United States and Australia cannot explain the differences between violent crime rates because both countries measure crime per every 100,000 people. Altogether,

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*See Light & Miller, supra note 242; see also Nowrasteh, supra note 242.*

the harsher, more restrictive policies of the United States towards immigrants, especially Syrian nationals, have not succeeded in making this country a safer place. Finally, while this Note acknowledges that crime rate fluctuations are caused by various factors and only provide suggestive, not definitive, proof of whether a particular law is effective, a reasonable conclusion can be drawn that the travel bans were not successful in achieving their desired goal.

To change directions, the new changes made under President Biden's leadership must be recognized. On January 20, 2021, President Biden revoked Executive Order 13780, Presidential Proclamation 9645, Presidential Proclamation 9723, and Presidential Proclamation 9983.<sup>282</sup> This revocation effectively ended the travel bans' policy imposed by former President Trump.<sup>283</sup> Additionally, President Biden explicitly allowed for reconsideration of visas that were denied solely because of the travel bans.<sup>284</sup> This decision illustrates the important nature of the immigration policies of the country. Although the travel bans are no longer in effect, it is still worth evaluating the impact that these types of decisions have on the country, whether it be positive or negative.

## V. CONCLUSION

To conclude, the recent immigration policies of the United States are dense, complicated matters. Former President Trump's various iterations of travel bans demonstrate the widespread impact that these policies have throughout the world. Beginning in 2016, the travel bans created an extensive and controversial application of immigration policies towards various foreign nationals. The travel bans also presented a distinctly different approach to dealing with the issues abroad when compared to the avenues chosen by other countries, such as Australia. Ultimately, the travel bans did not prove as effective as their creator claimed they would be. When evaluated under the lens of violent crime statistics, the travel bans fell extremely short. Compared to Australia, the United States exhibited significantly larger rates of crimes in all relevant categories. Based on this, the travel bans were ineffective at promoting a safer country with stronger security protocols.

This analysis shows that the implications of using these types of tools to increase national security has a wide-reaching impact. The bans opened President Trump and his administration up to significant criticism and caused many people to question his true motivations behind the bans. Additionally, if the restrictions were ineffective at decreasing crime rates, then it causes one to wonder why the country is using them at all. If the bans are not achieving their desired effects, then the use of restrictions as tools to curb violence should be reconsidered. Finally, the difference in crime rates between the United States and Australia illustrates that developed countries have the capacity to achieve both goals: helping people in need,

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<sup>282</sup> Proclamation No. 10141, 86 Fed. Reg. 7005 (Jan. 20, 2021).

<sup>283</sup> *Id.*

<sup>284</sup> *Id.*

while also keeping the country safe. If Australia can do it, why not the United States?

