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THE FIRST AMENDMENT AND THE CLAIM THAT MUSLIM EMIGRANTS BE DENIED ENTRANCE INTO THE UNITED STATES

Vincent J. Samar*

ABSTRACT

Terrorist attacks throughout the world and particularly within the United States have given rise to a new chapter in the ongoing debate over liberty versus security. The most recent manifestation of this dispute focuses on whether Muslim refugees can be denied entry as a class into the United States, based on their religion alone, for fear they might be harboring potential terrorists. This Essay shows that such a policy cannot be justified under the First Amendment Establishment Clause, as well the United States' expressed international commitments to preserving international human rights. What can be done is to engage a broader set of investigative approaches that are more likely to provide greater security than any policy focused on religion alone.

INTRODUCTION

Recent terrorists' killings in Paris, France and in San Bernardino, California have caused some in the United States (U.S.) to argue that no Muslims be allowed to emigrate into the United States.¹ This Essay will consider whether the Establishment Clause of the First Amendment of the U.S. Constitution disallows the government from denying any group of people entry into the United States based on religion alone. It also considers what impact

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¹ Dan Bilefsky, *Trump's Plan to Bar Muslims is Widely Condemned Abroad*, N.Y. TIMES (Dec. 8, 2015), http://www.nytimes.com/2015/12/09/world/europe/donald-trumps-call-to-bar-muslims-reverberates-abroad.html?_r=0.

the United States barring Muslims from entry would have on its international human rights obligations. Based on the assumption that such a restriction would not normally be within the constitutional power of the government to act, this Essay will also consider whether that limitation might be overcome by a compelling interest on the part of the United States to protect national security. Part I presents a very brief history of the Establishment Cause as a structural limitation on the power of government to act. Part II discusses the U.S.'s obligations under international human rights law to protect both the freedom to emigrate and the freedom of religion. Part III considers the compelling interest of the U.S. federal government to protect national security and the fact that this interest must be narrowly drawn when it would override other fundamental human rights. Finally, Part IV evaluates the practical implications of the present claim that potential Muslim emigrants into the United States can be denied entry based on religion alone.

I. THE ESTABLISHMENT CLAUSE

Since I have elsewhere dealt at some length with the Establishment Clause, how it came about, and what it means today,² I will keep my remarks here more focused on laying the groundwork for the present issue of Muslim emigration. The First Amendment to the U.S. Constitution provides in pertinent part: "Congress shall make no law respecting an establishment of a religion, or prohibiting the free exercise thereof"³ This provision was adopted as part of the Bill of Rights in 1791 to fulfill a compromise reached in 1788 in Massachusetts between those who sought to create a strong central government and those concerned with protecting states' rights and personal liberties.⁴ The early history of the republic shows that many of the colonies were founded not so much out of fear of European state-established religions, but more out of fear that the state would force conformity and membership in a state religion.⁵ Unfortunately, as several colonies in the New World sought to establish a particular religion, not all were tolerant of outsiders' religions.⁶

² See generally Vincent J. Samar, *Religion / State: Where the Separation Lies*, 33 N. ILL. U.L. REV. 1 (2012).

³ U.S. CONST. amend. I.

⁴ See Alagood Cartwright, *The Bill of Rights: A Tale of Constitutional Compromise*, MARTINDALE.COM (Feb. 1, 2013), http://www.martindale.com/constitutional-law/article_Alagood-Cartwright-PC_1672318.htm.

⁵ See FORREST McDONALD, *NOVUS ORDO SECLORUM: THE INTELLECTUAL ORIGINS OF THE CONSTITUTION* 41–42 (1985).

⁶ See James H. Hutson, *Religion and the Founding of the American Republic: America as a Religious Refuge: The Seventeenth Century, Part 2*, LIBRARY CONGRESS, <http://www.loc.gov/exhibits/religion/rel01-2.html> (last visited Jan. 25, 2016).

James Hudson provides a concise summary of the state of religion at the founding of the American Republic:

Although they were victims of religious persecution in Europe, the Puritans supported the Old World theory that sanctioned it, the need for uniformity of religion in the state. Once in control in New England, they sought to break “the very neck of Schism and vile opinions.” The “business” of the first settlers, a Puritan minister recalled in 1681, “was not Toleration, but [they] were professed enemies of it.” Puritans expelled dissenters from their colonies, a fate that in 1636 befell Roger Williams and in 1638 Anne Hutchinson, America’s first major female religious leader. Those who defied the Puritans by persistently returning to their jurisdictions risked capital punishment, a penalty imposed on four Quakers between 1659 and 1661. Reflecting on the seventeenth century’s intolerance, Thomas Jefferson was unwilling to concede to Virginians any moral superiority to the Puritans. Beginning in 1659 Virginia enacted anti-Quaker laws, including the death penalty for refractory Quakers. Jefferson surmised that “if no capital execution took place here, as did in New England, it was not owing to the moderation of the church, or spirit of the legislature.”⁷

One of the most enlightening indications of early intolerance was the Virginia Declaration of Rights. “After declaring that ‘all men are equally entitled to the free exercise of religion, according to the dictates of conscience,’” Article 16 of the Declaration continued “that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other.”⁸ Five states—New Hampshire, Massachusetts, Connecticut, South Carolina, and to some degree, Maryland—“continued to have tax-supported established churches.”⁹

Concerns such as these would later lead James Madison to note in the *Federalist Paper No. 10* that “[a] zeal for different opinions concerning religion, concerning government, and many other points . . . have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other, than to co-

⁷ *Id.*

⁸ VIRGINIA BILL OF RIGHTS art. 16 (May 15, 1776) (internal quotation marks omitted).

⁹ MCDONALD, *supra* note 5, at 43. “The Virginia Declaration of Rights had effectively disestablished the Anglican Church, though Baptists and other dissenters were not thereby accorded full rights. Whether because of disestablishment, the war, or other reasons, the 1780s witnessed a decline in religiosity in Virginia . . .” *Id.* at 44.

operate for their common good.”¹⁰ As a consequence, when the new Constitution of 1787 was proposed to replace the Articles of Confederation, it specifically provided that

[t]he Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.¹¹

Anti-Federalists’ sentiment regarding the relationship of government to religion was more inconsistent.¹² Still, even the Constitution’s exclusion of a religious test as a way to avoid too much government involvement with religion would hardly have satisfied the Anti-Federalist Thomas Jefferson, who would later come to propose a “wall of separation between Church and State.”¹³ Justice Reynolds would later elevate Jefferson’s proposal in *Reynolds v. United States*,¹⁴ the 1879 U.S. Supreme Court case that upheld a federal law prohibiting polygamy in the then territory of Utah, by saying it “may be accepted almost as an authoritative declaration of the scope and effect of the [First] [A]mendment thus secured.”¹⁵ Indeed, the idea of a wall of separation would subsequently be invoked by Justice Hugo Black to also apply to states in *Everson v. Board of Education*, a case involving state reimbursements to parents for transportation of children attending public and parochial schools.¹⁶ There, Justice Black held that the Establishment Clause applies to the states via the Fourteenth Amendment’s Due Process Clause, while still upholding New Jersey’s law permitting reimbursement of transportation expenses.¹⁷

More recent commentary on the Establishment Clause describes the approaches taken by different Supreme Court Justices as “strict separation,”

¹⁰ THE FEDERALIST NO. 10 (James Madison).

¹¹ U.S. CONST. art. VI, § 3.

¹² See HERBERT J. STORING, WHAT THE ANTI-FEDERALISTS WERE FOR: THE POLITICAL THOUGHT OF THE OPPONENTS OF THE CONSTITUTION 22–23 (1981).

¹³ See Letter from Thomas Jefferson to a Committee of the Danbury Baptist Association (Jan. 1, 1802), in THE LIFE AND SELECTED WRITINGS OF THOMAS JEFFERSON 332–33 (Adrienne Koch & William Peden eds., 1944).

¹⁴ *Reynolds v. United States*, 98 U.S. 145, 164 (1878) (citing Thomas Jefferson’s Letter to Danbury Baptist Association).

¹⁵ *Id.*

¹⁶ *Everson v. Bd. of Educ.*, 330 U.S. 1, 3 (1947).

¹⁷ *Id.* at 5.

“neutrality theory,” and “accommodation/equality.”¹⁸ The basis for these seemingly different approaches no doubt stems from the fact that the amendment itself does not clearly state what exactly constitutes an establishment of religion. This lack of clarity is especially poignant when, at times, it appears that the government can use religion in furtherance of various independent objectives, such as allowing state funding of religious-based drug and alcohol treatment centers.¹⁹ Still, *Everson* demonstrates that the Court will inevitably interpret the Establishment Clause alongside the Free Exercise Clause, causing it to walk a tightrope between the two clauses. This would have been necessary in *Everson*, where some parents would have chosen to send their children to parochial rather than public schools. Still, the outer parameter of how far any accommodation to religion can go before it becomes an establishment of the state seems clear in Justice Black’s statement in *Everson* that the

“establishment of religion” clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*.²⁰

Despite the subtle differences between various government benefit programs that involve religion, the clear line between accommodation and establishment is where the government’s action will “aid one religion, aid all religions, or prefer one religion over another.”²¹ That is especially true, as Justice Black noted, not only where a criminal punishment may be involved, but also where the government imposition is in the form of a tax or a mere

¹⁸ ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 1192–98 (Vicki Been et al. eds., 3d ed. 2006).

¹⁹ See, e.g., CARL H. ESBECK, STANLEY W. CARLSON-THIES, RONALD J. SIDER, CTR. FOR PUB. JUSTICE, THE FREEDOM OF FAITH-BASED ORGANIZATIONS TO STAFF ON A RELIGIOUS BASIS 15, 19 n.6 (2004).

²⁰ *Everson*, 330 U.S. at 15–16.

²¹ *Id.*

regulation that favors one religion over another.²² The clear message Justice Black set out is that government cannot in any way favor one religion over another if the government is acting on the basis of religion alone.²³ Thus, if the effect of the government's actions is to benefit one religion over another, it must in all cases be based, at least in part, on some independent, legitimate reason that the government has a powerful obligation to promote.

II. INTERNATIONAL HUMAN RIGHTS LAW

Several international human rights documents address the rights to emigrate and of religious freedom. For example, Article 14(1) of the Universal Declaration of Human Rights (UDHR) adopted by the United Nations in 1948 states: "Everyone has the right to seek and to enjoy in other countries asylum from persecution."²⁴ The Article goes on to provide that the right can only be asserted by those suffering from political, not civil, persecution.²⁵ Although it was originally believed to set forth only aspirational goals for U.N. member states to achieve, "the reference to [it as] customary law has become a standard argument in discussions of the legal nature of the Declaration and individual provisions thereof," which would make it binding on all member states.²⁶ Additionally, Article 18 of the UDHR provides: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."²⁷ Particularly important when analyzing Article 18 of the UDHR is its subsequent inclusion in Article 18 of the International Covenant on Civil and Political Rights (ICCPR), which has almost identical wording.²⁸ This fact is crucial in understanding that the rights to emigrate and of religious freedom are binding treaty obligations on ICCPR signatory states, which includes the United States.²⁹

²² *Id.*

²³ *See id.*

²⁴ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 14(1) (Dec. 10, 1948).

²⁵ *Id.* art. 14(2).

²⁶ *See* Jochen von Bernstorff, *The Changing Fortunes of the Universal Declaration of Human Rights: Genesis and Symbolic Dimensions of the Turn to Rights in International Law*, 19 EUR. J. INT'L L. 903, 913 (2008). *See generally* LAW. RTS. WATCH CAN., *lrwc.org* (last visited Feb. 9, 2016); COLUM. CTR. FOR TEACHING & LEARNING, *ccnmtl.columbia.edu* (last visited Feb. 9, 2016).

²⁷ Universal Declaration of Human Rights, *supra* note 24, art. 18.

²⁸ *See* International Covenant on Civil and Political Rights (ICCPR) art. 18, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

²⁹ *See generally id.*

Reading these two documents—the UDHR and the ICCPR—together creates an obligation for the nations of the world to assist people escaping political persecution in their home countries and to do so without regard to their religious biases or prejudices. While the UDHR does not prescribe how many emigrants escaping persecution a country must admit, the UDHR, read alongside the ICCPR, clearly requires that the determination not be based on religion alone. That said, it would certainly be within the normal sovereign authority of any nation-state to provide appropriate quotas and vetting to ensure its own national well-being within the broader humanitarian purposes these treaties set forth. What would not be legal would be for a nation-state to refuse to admit an immigrant solely on grounds of the petitioner's religion, while immigrants with other religious beliefs are easily admitted. This limitation is especially true where a nation-state has already agreed to admit persecuted persons, because the UDHR obligation is not even an issue in that case; rather, only the closing of the door to immigrants based on their religious belief would be a problem, should it happen.

Here it is important to also note that the ICCPR has the authority of federal—not just international—law. Under Article 6 of the U.S. Constitution,

all Treatises made, or which shall be made, under the Authority of the United States, shall be [along with the Constitution itself and the Laws of the United States which are made in Pursuance thereof] the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.³⁰

Since the ICCPR was ratified by the U.S. Senate in 1992, it is binding on the United States not only as a matter of international treaty law, but also as a matter of domestic federal law.³¹ This means that, both as a matter of international and federal law, the United States cannot conduct its own immigration policy in a way that discriminates against immigrants based strictly on their religion. But what exactly would that policy look like?

In accordance with its obligations under the UDHR, the United States has an immigration policy designed to address incoming refugees seeking asylum

³⁰ U.S. CONST. art. VI, § 2.

³¹ See Jimmy Carter, *U.S. Finally Ratifies Human Rights Covenant*, CARTER CTR. (June 29, 1992), <http://www.cartercenter.org/news/documents/doc1369.html>.

from political persecution.³² U.S. Immigration Policy is rather complex but can be briefly summarized as follows:

Refugees are admitted to the United States based upon an inability to return to their home countries because of a “well-founded fear of persecution” due to their race, membership in a social group, political opinion, religion, or national origin. Refugees apply for admission from outside of the United States, generally from a “transition country” that is outside their home country. The admission of refugees turns on numerous factors such as the degree of risk they face, membership in a group that is of special concern to the United States (designated yearly by the President of the United States and Congress), and whether or not they have family members in the U.S.³³

This policy both provides the criteria for who can be admitted to the country and affords the President a fair amount of discretion in making decisions about which groups are designated for admission. Still, it is clear from the language of the ICCPR and the U.S. Constitution, as discussed above, that religion by itself can never be a basis for refusing admittance, especially where the persecution is itself connected to religion. If religion could operate as the sole determinant for admission to the country, it would create a conflict between the government’s constitutional authority to provide a system for immigration and naturalization³⁴ and the Establishment Clause’s limitation on the government’s ability to act in these circumstances.

III. PROTECTING THE NATIONAL SECURITY OF THE UNITED STATES

By now it should be clear that because the United States cannot constitutionally favor one religion over another and because its international obligations and domestic policy require it to provide refuge for those fleeing political persecution, a general ban against Muslim emigrants fleeing persecution is not legally tenable. This does not, however, mean that appropriate procedures cannot be put in place to ensure the security and safety of those living in the United States. The problem that arises here, as with most areas where different legal (including, in this case, constitutional) obligations intersect, is knowing exactly where to draw this line.

³² See Universal Declaration of Human Rights, *supra* note 24.

³³ *How the United States Immigration System Works: A Fact Sheet*, AM. IMMIGR. COUNCIL (Mar. 1, 2014), <http://www.immigrationpolicy.org/just-facts/how-united-states-immigration-system-works-fact-sheet>.

³⁴ U.S. CONST. art. I, § 8.

As a general constitutional matter, the state cannot establish religion. But what if religion is itself an indicator of a potential threat to the homeland? Can the federal government then potentially refuse to grant refugee status to Muslims outside the United States fleeing persecution in order to safeguard the homeland? In other words, even though most Muslims are not terrorists, can refugee status be refused to all Muslims if a significant number of terrorists are Muslim? On the one hand, the First Amendment does not permit states to favor one religion over another, and refusing entry to Muslims would in fact be favoring non-Muslim refugees over Muslim refugees. Of course, the alleged reason for the United States restricting entry for Muslim refugees would not be because they are Muslim *per se*, but because the government views being Muslim as an indicator that the refugee is a terrorist. The problem is not avoided by claiming that non-nationals do not have a constitutional right to emigrate; the issue here is a structural limitation on the power of the U.S. government to establish religion—not to whom the right is being denied. While non-national refugees of any faith have a right to the possibility of asylum under the UDHR, their claim must be juxtaposed with the U.S. government's constitutional obligation and sovereign authority to protect its own national security interests. I would present this latter obligation as the focus when deciding whether any group can be excluded from entry into the United States based on the compelling interests of national security and protection that every government shares and has a right to pursue.

The Constitution acknowledges this compelling interest when it states: “We the People of the United States . . . [are empowered to] provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Prosperity”³⁵ In so doing, it affords to Congress the specific power to raise an army and a navy,³⁶ and says that “[t]he President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into actual service of the United States”³⁷ But does the Constitution's acknowledgement of these specific security interests automatically legitimize excluding any Muslim non-nationals from emigrating into the country, even if statistical support suggests that the exclusion of Muslims is likely to advance security? If it does, then this would seem to be a far greater extension of the federal government's reach of power than the framers of the Bill of Rights intended when they

³⁵ U.S. CONST. pmb1.

³⁶ U.S. CONST. art. I, § 8.

³⁷ U.S. CONST. art. II, § 2.

adopted the Establishment Clause as a structural limitation on the scope of government power.

IV. EVALUATING MUSLIM REFUGEES ENTERING THE UNITED STATES

It has been suggested that the Muslim refugee issue might bring about a rerun of the situation in *Korematsu v. United States*,³⁸ only now applied to Muslim non-nationals rather than Japanese-American citizens. In *Korematsu*, President Franklin Roosevelt issued an Executive Order after the Japanese attack on Pearl Harbor

designed to safeguard “against espionage [and] against sabotage,” and providing that certain military commanders might designate “military areas” in the United States “from which any and all persons may be excluded, and with which right of any person to enter, remain in, or leave shall be subject to whatever restrictions” the “Military Commander may impose in his discretion.” The West Coast program established for persons of Japanese ancestry included curfews, detention in relocation centers, and exclusion from the West Coast area.³⁹

In 1943, following a unanimous upholding of the curfew orders in *Hirabayashi v. United States*, the Court upheld the exclusion order by majority vote in *Korematsu*.⁴⁰ That decision has since been deeply regretted by subsequent members of the Supreme Court, most recently by Justice Stephen Breyer in his 2015 book, in which he points out that there was not a shred of evidence to support the government’s alleged need to exclude American citizens of Japanese ancestry from the West Coast and to intern them in detention camps.⁴¹ The case was decided based on a perceived but unsubstantiated notion of military necessity.⁴² It was a racial classification, but the Court was willing to accept the government’s interest as a sufficiently compelling justification, regardless of whether it applied strict scrutiny.

³⁸ See generally *Korematsu v. United States*, 323 U.S. 214 (1944).

³⁹ KATHLEEN M. SULLIVAN & GERALD GUNTHER, CONSTITUTIONAL LAW 505 (16th ed. 2007).

⁴⁰ *Korematsu*, 323 U.S. at 217, 224 (citing *Hirabayashi v. United States*, 320 U.S. 81 (1943)).

⁴¹ STEPHEN BREYER, THE COURT AND THE WORLD: AMERICAN LAW AND THE NEW GLOBAL REALITIES 31–37 (2015). In 1988, Congress passed a law apologizing for the internment program and providing for reparations. Bilal Qureshi, *From Wrong To Right: A U.S. Apology for Japanese Internment*, NPR (Aug. 9, 2013, 5:45 PM), <http://www.npr.org/sections/codeswitch/2013/08/09/210138278/japanese-internment-redress>.

⁴² See *Korematsu v. United States*, 584 F. Supp. 1406, 1417, 1420 (N.D. Cal. 1984) (vacating *Korematsu*’s earlier conviction on grounds that the government had in the 1940s submitted false information in its paper to the Supreme Court).

The present situation involving Muslim refugees does not exactly mirror *Korematsu* because the Muslims in question are not American citizens with the full range of constitutional rights that American citizens possess. However, once we move beyond this difference, the motivation for banning Muslim refugees from entering the United States parallels the motivations in *Korematsu*: they are based on fear following armed attacks by a particular group. In *Korematsu*, the government reacted to the widespread fear in the aftermath of Pearl Harbor. Now, it wants to react to the widespread fear following the recent attacks in Paris and San Bernadino by radical Muslims.

The problem with fear is that it can lead to poor assessments of the real dangers Americans and the world face. Are not most of the refugees that a blanket ban on entry into the country would exclude themselves fleeing the same destabilized dangerous conditions that Americans are now so concerned about? Could not a terrorist just as easily enter the country posing as a non-Muslim European or even an American returning home to engage in a terrorist act? Indeed, while the husband in the San Bernardino attacks was a Muslim, he was also an American citizen, whom one would not normally exclude.⁴³ It would seem like the idea that religion should be the single factor deciding who enters and who is kept out of the United States would actually decrease the real level of security that the ban is supposed to create. Without denying that there is a real compelling interest for security and protection, all this goes to say that the measure being focused upon, namely being a member of the Islamic faith, is both over- and under-exclusive as a matter of law. It is over-exclusive in that it keeps out potentially thousands of non-terrorists fleeing persecution, and in that sense puts the country in the position of not living up to its own values and international legal commitments. At the same time, it is also under-inclusive in allowing those who too easily present themselves as non-Muslims or with some other seemingly legitimate connection to potentially slide under the vetting radar. A far better alternative would be to reform the measure by basing the determination on how likely the person is to actually present a threat to national security.

Such an alternative would not merely focus on any single measure, especially one as elusive as religion, but would consider a spectrum of activities and behaviors, such as past and present associations, as well as

⁴³ Shellie Nelson, *Husband and Wife Identified as Suspects from Mass Shooting in San Bernardino*, WQAD 8 (Dec. 3, 2015, 9:48 AM), <http://wqad.com/2015/12/03/husband-and-wife-identified-as-suspects-from-mass-shooting-in-san-bernardino/>.

serious psychological assessments,⁴⁴ including the person's commitment to finding a job and making a life for themselves and their family and living in a diverse community. It would also look at present behavior and ask immigrants to report what could be considered suspicious or potentially harmful criminal activity, regardless of where it occurs or by whom. Granted, this is not a full-proof way to ensure safety and security. There is no such thing as a full-proof guarantee of safety and security any more than employees going to work or teachers going to school can be absolutely certain that a threat will not make its way into their lives. But this is certainly a far more effective way of ensuring security than bringing into what is already a dangerous situation widespread fear, which would not only put the United States in the untenable position of violating its own values and legal commitments but encourage a general distrust of Muslims. Such a distrust would only serve to engender reciprocal fear and distrust from Muslim immigrants. At a time when the United States and its allies need to work together with both Muslims living in the U.S., as well as the nations of the Middle East, especially the Muslim nations, the focus must be to bring people together under the values and ideals established by our constitutional order and international commitments. We must not squander these opportunities by giving into irrational fears that will not provide us real security and, in the long run, will probably do more harm than good by making us complacent in the belief we have solved the security problem.

CONCLUSION

In this short Essay, I have tried to show—by pointing out how one misguided suggestion that would ban a whole group of people from entering the country based on their religious belief—that the challenges posed by global terrorism will not be resolved by breaking faith with those constitutional principles and international human rights values that have allowed us to develop as a nation and to protect the human dignity and freedom that we have all come to cherish. I have further tried to demonstrate that only by continuing on this path of developing those principles and values along with the institutions that can sustain them will we be able to ensure the future and avoid the darkness of fear that might otherwise inhibit our development as a free people. We stand at an epic crossroads with the other nations of the world over what kind of future we shall impart to the next generation. Hopefully, it will be

⁴⁴ *Psychological Test May Help Spot Killers*, CBC NEWS (May 28, 2003, 8:08 PM), <http://www.cbc.ca/news/technology/psychological-test-may-help-spot-killers-1.374134> (discussing a standardized psychological test that can detect a person's "deepest thoughts and feelings," such as those of murderers and serial killers).

one where the dignity of the individual matters constitutionally across the globe, so that people are judged by how they act, and not by what they believe.