

Hawaii Judge Wrong on Trump Travel Ban: Judges Can't Review "Political Question" of Trump's Prosecution of Terror War

Unconstitutional for Judges to Review Travel Freeze: Judges Don't Have Competence to Second Guess President Trump's War Prosecution & New Foreign Policy

WASHINGTON, DC, USA, March 15, 2017 /EINPresswire.com/ -- Lawyers, university professors, politicians, and other elites, apparently still suffering from Trump Derangement Syndrome, opened a new front in their war against Donald Trump and his administration by renewing their challenges against the revised travel freeze.

And, the elites have again recruited a federal judge into their decidedly anti-democratic efforts.



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Just hours before President Donald Trump's revised travel freeze was to become effective, "so-called" emergency hearings were in-play at federal courts in Hawaii, Maryland and Washington state.

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The political question doctrine bars our review of claims that...call into question the prudence of the political branches in matters of foreign policy or national security.”

D.C. Circuit, El-Shifa v. U.S., 607 F.3d 836, 842 (2010)(en banc).

reviewable) political question.

And Judge Derrick K. Watson in Hawaii froze the travel freeze nationwide with a Temporary Restraining Order.

[Law Professor Victor Williams](#) is one attorney who has repeatedly come to the defense of Donald Trump and the Trump administration.

In amicus curiae ("friend of the court") briefs filed in travel freeze litigation across the nation, Prof. Williams argues that federal judges should stop interfering with President Trump's prosecution of the war on terror. The cases should be immediately dismissed for raising a "nonjustiable" (non-

There are certain issues (such as war strategy and foreign policy) that have long been recognized as the exclusive business of the elected political branches. Unelected federal judges have no role to play.

While Prof. Williams supports the statutory and procedural arguments that have been offered by Justice Department lawyers, he asserts that his threshold constitutional abstention theory provides a much stronger defense.

[On February 15, 2017, Prof. Williams first presented his argument in an [academic essay published by Jurist.org.](#)]



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The political question doctrine protects the separation of powers and also protect the fundamental principle of government by consent.

As our elected president, Donald Trump is vested with all Executive powers and is made Commander-in-Chief by Article II of the U.S. Constitution. The travel freeze is President Trump's first step in prosecution of the war of terror and it announces his fundamental shift to an "America first" foreign policy.

The Supreme Court has ruled that "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952).

The abstention theory also goes directly to the [in]competence of the courts. The judiciary has neither the institutional competence nor the classified information needed to second guess the president's national-security and foreign-policy calculus.

The leading Appeals Court case comes, not from the rouge Ninth Circuit, but the respected D.C. Circuit:

"The political question doctrine bars our review of claims that, regardless of how they are styled, call into question the prudence of the political branches in matters of foreign policy or national security constitutionally committed to their discretion." *El-Shifa*, 607 F.3d 836, 842-43 (D.C. Cir. 2010) (en banc).

The president's calculus that led to the travel freeze also includes longer-term policy objectives.

The travel freeze cues our NATO allies to reconsider their own absurdly porous national borders.

The Executive Order directly disrupts expectations of wealthy monarchs and potentates of the Middle East. Those oil-rich kingdoms have long expected America to "pay any price, bear any burden" to deal with their own region's hellish disorder. The Executive Order explains the list can be expanded as well as contracted.

As our new president begins to prosecute America's prolonged war with terrorism, while the civil wars, violent disorder, and evil oppression worsen in the listed nations of the travel freeze, our federal judiciary has its own high duty to perform -- abstention.

Below are selected portions of Prof. Williams amicus curiae briefs filed and being filed in courts

across the nation. The full briefs are available to the media by calling AFLA at 301-951-9045 or emailing: americafirstlawyers@gmail.com.

Since September 11, 2001, over 40 terrorists from the six listed nations, are among 380 foreign-born terrorists, who have been charged, tried, and convicted of terrorist acts in the United States. Our new president instituted the travel freeze both to better prosecute this war on terror and to fundamentally shift American foreign policy related to the war.

This Court is barred from making an inquiry into the Executive Branch's war-prosecution calculus.

Assertion that such an inquiry is necessary for the Court to conduct a second-order immigration statute interpretation does not make that inquiry or the controversy justiciable.

Assertion of specious claims from American citizens, businesses, or sovereign States, that they suffer tangent harm from the the travel freeze, or equally specious claims of broad due process, equal protection, and religious discrimination violations arising from the travel freeze, do not make this controversy reviewable.

Consider: "[A]n alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).

Most recently, in its 2016 *Mobarez v. Kerry* ruling, the District Court for the District of Columbia explained that it could not review a decision by Barack Obama to close the U.S. Embassy in Yemen without helping American citizens trapped in Yemen come back to American soil.

The court refused to review the American-citizen plaintiffs' case, even though they had a statute that strongly supported their right to receive such travel assistance. The court said such inquiry and analysis would have required the unelected judge to answer a nonjusticiable political question. *Mobarez v. Kerry*, Civil Action No. 2015-0516 (D.D.C. 2016).

Just as the judiciary may not second guess President Obama's refusal to provide for embassy evacuations of American citizens out of Yemen, neither should it second guess President Trump's refusal to allow embassy/consular processing of visa applications for aliens in Yemen and in other of the listed nations.

In accessing that perpetually violent region of the world, this Court does not have better institutional competence, or better military strategy, or better classified information than does the Executive Branch.

Victor Williams, who headed a 2016 group of lawyers and professors for candidate Trump, now chairs the [America First Lawyers Association](#).

Prof. Victor Williams, Chair
America First Lawyers Association
301-951-9045

email us here

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