



Written by [Selwyn Duke](#) on March 17, 2017

## Warning: Judges Creating “Affirmative Right to Immigrate”

In the name of stopping Donald Trump, the courts are not only endangering Americans but could be ushering in “the end of the United States in any meaningful sense.” They’re doing this by creating, out of thin air, an “affirmative right to immigrate,” says senior *Conservative Review* editor Daniel Horowitz.



As happened with President Trump’s first immigration ban, federal judges recently blocked his second, trimmed-down ban. This is not just a gross abuse of judicial power, but, [reports](#) WND.com:

He [Horowitz] explains the federal judges who blocked President Trump’s immigration order are challenging the most fundamental aspect of American sovereignty.

“Even President Trump’s original orders were grounded in precedent and statute,” Horowitz told WND. “But these federal judges who have issued a halt to President Trump’s new executive orders have gone even farther [sic]. Not only did they simply refuse to address the legislation that gives Trump the authority to issue these orders, they started creating new rights out of thin air, which gives practically everyone in the world a future affirmative right to immigrate to the United States. Obviously, that means the end of the United States in any meaningful sense.”

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By statute, Horowitz should be referring to [Section 1182\(f\)](#) of federal immigration law, which states that the president may “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.”

Of course, this executive power was always recognized by the courts, and the above was never ruled unconstitutional — and it *hasn’t been in Trump’s case*, either. Rather, the courts have simply ignored the law and opined based on dislike for the president and their own political agenda.

In fact, this presidential power has been recognized since our nation’s founding. As Thomas Jefferson wrote shortly after the Constitution’s adoption, “The transaction of business with foreign nations is Executive altogether.” He made clear that the only exceptions were matters such as declaring war and treaty-making, which are the domain of Congress.

Unsurprisingly, Trump characterized the judges’ blocks as “judicial overreach,” but Horowitz rightly goes further, saying, “The reasoning that was used in these cases doesn’t just undermine statute, precedent and law, it essentially repudiates the concepts of citizenship and sovereignty altogether,” reports WND.

He mentioned the opinion of Wisconsin federal judge William Connelly, who “reasoned” that Trump’s ban should be blocked because an asylee in the United States feared that it would prevent his wife and



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daughter from joining him here. This “harm” argument was also made by Washington judge James Robart, who [blocked](#) Trump’s initial travel ban in February, claiming it harmed his state’s public universities and tax base.

This is silly on its face. Is there a policy, law, or regulation that doesn’t harm someone? If the president suspends the importation of foreign beef on the suspicion it could carry Mad Cow disease, should this be overturned judicially on the basis that it harms domestic businesses that use beef in their products?

Horowitz says that, in essence, the courts are claiming the power to say that “any alien in the world be admitted to the United States”; furthermore, he states that implicit in this is that these aliens are “suffering from the loss of some newly created legal right to come to this country.”

In other words, these judges are behaving as if the president is contravening a “right” when banning entry to the United States; thus the burden is on him to demonstrate why this right should be denied in the given case.

The Wednesday opinion by U.S. District Judge Derrick Watson in Hawaii was even more “unhinged,” according to Horowitz, because it found that Trump’s order “was issued with a purpose to disfavor a particular religion.” Of course, the president’s order doesn’t mention any religion, but merely bans immigration from six terrorist-spawning countries.

That these countries are primarily Muslim is irrelevant. If a temporary immigration ban were placed on six eastern European nations, would it be blocked on the basis that it targeted Christians? If Trump were banning Muslims, his order would have said so; moreover, if he wanted to ban Muslims without stating so explicitly, the order should have at least included Indonesia and Pakistan, the world’s two most populous Muslim countries. It doesn’t.

Even this is irrelevant, however, because as the aforementioned Section 1182(f) of immigration law states, the president may block “any class of aliens” whatsoever — including a religious group. This is inarguable.

As Trump opponent David Frum [put it](#), Watson’s opinion argues that by “banning Muslims,” “the Trump administration has signaled disfavor of domestic Muslims as well, thereby violating their First Amendment rights to religious equality.”

First, there is no constitutional right to “religious equality,” only to “free exercise.” Moreover, as Frum explained, what the opinion does, “in effect, is globalize the First Amendment, and possibly other amendments too, provided only that a fellow adherent of that religion live inside the United States.”

This is as dangerous as it is silly. Here’s an analogy: The First Amendment guarantees freedom of speech just as it does of religion. Consequently, communists and Nazis can express their beliefs, as can religious cults, no matter how odious the majority may consider them. Does it follow then that banning foreign Nazis from immigrating here is unconstitutional because it signals government disfavor with domestic Nazis?

It should only have to be explained to a child that, as Frum puts it, it’s “firmly established U.S. law that the rights of the Constitution belong only to Americans. The U.S. Army can strip enemy combatants of weapons without offending the Second Amendment right to carry firearms. It can billet troops in private dwellings overseas without offending the Third Amendment. The NSA can intercept foreign communications without regard to the Fourth Amendment,” etc.

As he summed up, “Where do foreign nationals then acquire their supposed First Amendment right to



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enter the United States without religious discrimination?”

In reality and reflecting our relativistic age, these judges are just making it up as they go along. Both Watson and U.S. District Judge Theodore Chuang in Maryland claimed that Trump’s order is wrongly motivated because he promised to ban Muslims during the campaign; thus, it should be viewed as an attempted Muslim ban and therefore be disallowed.

It’s nice to have judges possessing psychic ability, but since when does alleged “thoughtcrime” motivating a law supersede its actual text? Following this reasoning, the 1954 law banning nonprofits from attacking political candidates should be overturned because then-senator Lyndon Johnson [only proposed it](#) to prevent a wealthy opponent from using a nonprofit against him during a campaign.

Horowitz was also correct in stating last summer that elections hardly matter anymore because “unelected judges are deciding most major social and political questions with finality,” as WND [related](#) it. In other words, one black-robed lawyer in Podunk can ignore the Constitution and the will of the electorate and impose his agenda on 320 million Americans.

Of course, Congress allows this to happen. It has the constitutional power not only to eliminate every federal court below the Supreme Court — and thus establish accountability — but to limit the appellate jurisdiction of the latter. But it does nothing.

Moreover, judicial supremacy isn’t in the Constitution and is a norm that Thomas Jefferson said would make it a suicidal document. President Trump could, as presidents have in the past, simply ignore the courts’ unconstitutional rulings.

Whatever the case, usurpative judges must be brought to heel. As Horowitz warned, the courts have created a standard that both prevents us from securing our borders and is a recipe for unlimited immigration; thus, it threatens not just our “constitutional system” but the “country itself.”

This is a time for choosing. What do we love more: our republic or judicial supremacy? Because we can’t have both.



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