

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**MOHAMMED ABDULLAH
TAWFEEQ,**

Plaintiff.

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY (“DHS”); JOHN F. KELLY,**
Secretary of DHS; **U.S. CUSTOMS AND
BORDER PROTECTION (“CBP”);**
KEVIN K. MCALEENAN, Acting
Commissioner of CBP; **CAREY DAVIS,**
Port Director, CBP ; **ANDY PRYOR,**
Manager, CBP; **SHANA WELLS,**
Manager, CBP; **U.S. DEPARTMENT
OF STATE (“Department of State”);**
REX WAYNE TILLERSON,
Secretary of State, Department of State.¹

Defendants.

Case No. 1:17-cv-353

**OPPOSITION TO MOTION
FOR LEAVE TO FILE AS
*AMICUS CURAIE***

On March 3, 2017, Professor Victor Williams filed a Motion for Leave to File an [sic] Brief *Amicus Curaie*. See ECF No. 26 at 4 (stating that Prof. Williams “offers this brief as an individual” despite his affiliation with the “America First

¹ Plaintiff originally brought this Action against Thomas Shannon, who was then the acting Secretary of State. Rex Wayne Tillerson became Secretary of State upon his confirmation on February 1, 2017 and should be substituted pursuant to Fed. R. Civ. Pro. 25(d).

Lawyers Association”). Prof. Williams primarily argues that the instant case presents non-justiciable political question because of the President’s authority to exclude aliens under the Immigration and Nationality Act (“INA”). *See* ECF 26 at 4-5. This Court retains broad discretion to permit the filing of amicus briefs, but it should exercise that discretion against this filing for at least two reasons. *DeJulio v. Georgia*, 127 F. Supp. 2d 1274, 1284-85 (N.D. Ga. 2001) (granting leave to file Amicus on a finding that the filer had an undisputed interest in the litigation and plaintiff did not oppose the filing).

First, the filing of the proposed *Amicus* appears to be politically motivated and would add nothing to the Court’s understanding of the relevant issues that cannot be fully addressed by the parties. *See, e.g.*, ECF No. 26-1 at 2 (“Williams was an early primary supporter of candidate Donald Trump. . . . The campaign group has now transformed into the ‘America First Lawyers Association’ (www.americafirstlawyers.com), which Professor Williams chairs, to advance the Trump administration ‘America first’ nominations, policies, and other efforts.”). The interests of President Trump are already more than adequately represented before this Court by the Department of Justice. Moreover, as the Amicus itself notes, this Court can raise any justiciability concerns directly. *See* ECF 26 at 4 (“[T]his Court has an obligation to *sua sponte* examine this subject matter

deficiency, in full, before proceeding further in this adjudication.”). The proposed amicus brief thus presents unnecessary new arguments—apparently for political purposes—that are not yet part of this matter and that can be raised by either the Court or Defendants as necessary.

Second, the core premise of the amicus brief—that exercises of the President’s authority to exclude aliens are non-justiciable—is mistaken. Both of the Executive Orders relevant to this matter—Executive Order No. 13,769 and Executive Order No. 13,780—rest on the President’s authority to exclude aliens under § 212(f) of the INA, 8 U.S.C. § 1182(f). The Supreme Court has historically raised no justiciability issues concerning a similar Executive Orders resting on this same legal authority. *See Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155, 165 n.13 (1993) (noting that underlying Executive Order rested on INA § 212(f)). Other Courts considering challenges to the Executive Orders here have similarly raised no concerns about justiciability. *See, e.g., Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017); *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017).

In conclusion, Prof. Williams’s amicus brief would inject erroneous legal arguments on matters not raised by the parties or the Court. The Amicus would serve to confuse and complicate this matter instead of clarifying issues for the

Court. The Court should thus exercise its discretion against the Motion for Leave to File.

DATED March 22, 2017

Respectfully submitted,

/s/ Daniel P. Pierce

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CERTIFICATE OF FONT AND POINT SELECTION

Undersigned counsel hereby certifies, pursuant to L.R. 7.1(D), N.D. Ga., that the foregoing **OPPOSITION FOR LEAVE TO FILE AS *AMICUS CURAIE*** was prepared in Times New Roman, 14 point font, which is one of the font and point selections approved in L.R. 5.1, N.D. Ga.

/s/ Daniel P. Pierce

Daniel P. Pierce

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed a true and correct copy of the within and foregoing **OPPOSITION FOR LEAVE TO FILE AS AMICUS CURAIE** by using the Court's CM/ECF, which will automatically send e-mail notification of this filing to the following counsel of record:

Sheetul S. Wall

Department of Justice - Office of Immigration Litigation
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202-598-2668
Email: Sheetul.S.Wall2@usdoj.gov

I have also sent a copy of this filing by U.S. mail (as *pro se* prospective *amicus* is not a registered ECF user) to:

Prof. Victor Williams

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5209 Baltimore Ave.
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This 22nd day of March 2017.

/s/ Daniel P. Pierce

Daniel P. Pierce