

NOEL FRANCISCO ON EXECUTIVE POWER

Highlights:

- Noel Francisco argued for an expansive view of executive power at the expense of the other two branches.
 - Francisco said that Trump was not subject to state issued subpoenas.
 - Francisco said that the judicial branch could not question prosecutorial decisions.
 - Francisco said that Congress could not have redacted materials from the Mueller report.

Francisco Argued For An Expansive View Of Executive Power

FRANCISCO ARGUED THAT TRUMP DID NOT HAVE TO RESPOND TO A SUBPOENA FROM NEW YORK

Francisco Argued Before The Supreme Court That There Limits As To What Authorities The President Of The United States Had To Respond To. According to the New Republic, “While Americans generally can’t shield themselves or their records from grand juries and Congress, the president argued that he could do so because of his unusual constitutional status. ‘He is the sole person in whom all executive power is vested,’ Solicitor General Noel Francisco told the justices at oral arguments in May. ‘And so that necessarily implies that there are limits on what others can do to unduly burden him in his ability to do his job.’” [New Republic, [7/9/20](#)]

The Supreme Court Ruled That The President Did Not Have Absolute Immunity From State Actions

The Supreme Court Ruled 7-2 That The President Was Not Immune From Subpoenas From State Courts. According to Oyez, “Article II and the Supremacy Clause neither categorically preclude, nor require a heightened standard for, the issuance of a state criminal subpoena to a sitting President. All nine justices agreed that a President does not have absolute immunity from the issuance of a state criminal subpoena, but a seven-justice majority voted to affirm the decision of the Second Circuit below.” [Oyez, viewed [6/25/24](#)]

FRANCISCO ARGUED THAT THE JUDICIAL BRANCH COULD NOT REJECT PROSECUTORIAL DECISIONS FROM THE EXECUTIVE BRANCH

Francisco Argued That The Judicial Branch Did Not Have The Authority To Reject Prosecutorial Decisions Made By The Executive Branch In The Michael Flynn Case. According to the New York Times, “Most recently, Mr. Francisco wrote a brief asking an appeals panel to force Judge Emmet G. Sullivan of the United States District Court for the District of Columbia to grant the Justice Department’s motion to withdraw its case against Michael T. Flynn, Mr. Trump’s first national security adviser. Mr. Francisco essentially argued that the courts did not have the authority to reject prosecutorial decisions made by the executive branch.” [New York Times, [6/11/20](#)]

The Case Was Dismissed After Michael Flynn Was Pardoned

The Case Was Dismissed As Moot After Trump Pardoned Flynn. According to CNN, “Judge Emmet Sullivan of the DC District Court on Tuesday dismissed Michael Flynn’s criminal case as moot, following Flynn’s pardon by President Donald Trump, ending a tortured three-year-long proceeding.” [CNN, [12/8/20](#)]

FRANCISCO ARGUED THAT CONGRESS DID NOT HAVE THE RIGHT TO GRAND JURY MATERIALS IN AN IMPEACHMENT INVESTIGATION

Francisco Argued That Congress Did Not Have The Right To See Redacted Materials From The Mueller Report. According to the New York Times, “This May, the Supreme Court temporarily blocked Congress from seeing redacted portions of the special counsel’s report that contained grand jury information. Democrats had argued that they needed the

materials as part of their impeachment proceedings against the president. Mr. Francisco had argued that the materials should not be released because Congress did not have the right to obtain grand jury materials as part of an impeachment proceeding.” [New York Times, [6/11/20](#)]

The Case Was Vacated After Trump Left Office

July 2021: The Supreme Court Vacated The Judgment After Trump’s Term Ended. According to SCOTUSblog, “The motion to vacate the judgment is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the District of Columbia Circuit with instructions to direct the District Court to vacate the October 25, 2019 order granting the application of the Committee on the Judiciary, U. S. House of Representatives. See *United States v. Munsingwear, Inc.*, 340 U. S. 36 (1950).” [SCOTUSblog, viewed [6/25/24](#)]