

Supreme Court narrowly upholds federal immigration authority against Texas measures

John Burton
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On Monday, the US Supreme Court overruled a lower court injunction that was preventing US Border Patrol agents from removing sections of razor wire laid along the banks of the Rio Grande by Texas officials at the direction of the state's fascistic, anti-immigrant Governor Greg Abbott.

The Supreme Court's summary action restores the status quo that existed before Texas filed suit against the US Department of Homeland Security last October. The state claimed that Border Patrol agents were violating Texas law by damaging state property when cutting razor wire on a 30-mile stretch of the international border near Eagle Pass, about 150 miles southwest of San Antonio.

The curt, unsigned 5-4 order gives no reasons, as is frequently the case for matters decided on the "shadow docket." The lineup was unusual because Chief Justice John Roberts and Trump nominee Amy Coney Barrett voted with Elena Kagan, Sonia Sotomayor and Ketanji Brown Jackson to form a majority against arch-reactionaries Clarence Thomas, Samuel Alito, Neil Gorsuch and Brett Kavanaugh, none of whom penned a dissent.

From a purely legal standpoint, the injunction was outrageous. The fact that the vote was even close reflects the advanced disintegration of bourgeois democratic rule, as the ultra-right exploits the desperate plight of immigrants at the US Southern border, many of whom are seeking asylum, to pummel the Biden administration in neo-Nazi terms.

Biden and the Democrats, for their part, are doing their best to appease the fascist right at the expense of the democratic rights—and even the lives—of undocumented workers. Less than two weeks ago, on

January 12, a mother and two children drowned in the Rio Grande because Biden's Justice Department and Department of Homeland Security failed to forcefully counter Abbott's deployment of Texas National Guard along a section of the border to block federal border agents from access to the Rio Grande.

The US Constitution gives the federal government sole and virtually unfettered authority over entry of persons into the United States. Individual states are specifically precluded from enacting their own immigration laws, an essential feature of the federal system. A specific act of Congress authorizes Border Patrol agents access to private land within 25 miles of any international border to "interrogate" and "arrest" anyone suspected of entering the United States without first passing through immigration authority at a port of entry.

Because the Supremacy Clause, Article Six, Paragraph 2 makes "the Constitution and the laws of the United States ... the supreme law of the land ... anything in the Constitution or laws of any State to the contrary notwithstanding," no state can interfere with the Border Patrol.

Eagle Pass is located on a 245-mile stretch of the Rio Grande between ports of entry, in the midst of where Texas lined the US side of the Rio Grande with 30 miles of coiled razor wire that can slice a person to ribbons. Migrants approaching the barrier from the river, which is four to six feet deep and has slippery banks in many places, are already in the United States. Border Patrol agents have cut and removed sections of the wire, mostly to herd migrants to processing centers, where most will be deported under reactionary Biden administration guidelines.

Last October, West Texas District Judge Alia Moses, a nominee of George W. Bush, issued a temporary restraining order against the Department of Homeland Security to forbid agents from cutting razor wire, except in response to a medical emergency. Although Moses concluded that the Border Patrol removed wire “for no apparent purpose other than to allow migrants easier entrance further inland,” repeating a right-wing talking point, she nevertheless denied Texas a preliminary injunction on the grounds of “sovereign immunity.”

Texas appealed the denial of the injunction to the far-right Fifth Circuit Court of Appeals, headquartered in New Orleans, where a three-judge panel consisting of one George W. Bush nominee and two Trump judges reversed Moses, essentially reinstating her temporary restraining order.

The Biden administration filed in the Supreme Court on January 2, claiming the supremacy of federal control over immigration allowed removal of wire that interfered with the activities of border patrol agents. The exception for medical emergencies did not protect migrants from harm, the US government asserted, because it takes time to cut through the wire, increasing the “risk of death along this stretch of the river.”

“Cutting Texas’s fencing to waive thousands of people into Texas has nothing to do with inspection, apprehension or removal,” responded Texas Attorney General Ken Paxton.

The Biden administration supplemented its application on January 12, pointing out that Texas had built fencing that blocked Border Patrol agents from launching boats used for “monitoring the border to determine whether a migrant requires the emergency aid that the court of appeals expressly excepted from the injunction.” Later that evening, the razor-wire barriers played an instrumental role in the death of a 27-year-old near the closed boat ramp, as currents swept the migrant away in the river. Three other migrants had to be rescued by Mexican officials.

The Supreme Court’s ruling will remain in effect while the Fifth Circuit completes its review of Texas’s appeal. Oral arguments are set for February 7. After that the case is likely to return to the Supreme Court for final resolution.

The ruling does not affect other Texas measures, including the installation of floating barriers in the Rio

Grande and new legislation allowing state troopers to detain and arrest people for suspected violations of immigration laws.

The recent decision has triggered an outpouring of venom and threats from Republican lawmakers. Chip Roy, who represents the Congressional District north of San Antonio, advocated openly that Texas ignore the ruling, saying, “You tell the court to go to hell. You defend yourself and then figure it out later.” Roy called for defunding the Department of Homeland Security “or any other entity facilitating this brazen violation of the security and welfare of Texans.”

Abbott’s office issued a statement that the governor “will continue fighting to defend Texas’ property and its constitutional authority to secure the border.” In fact, the Constitution gives that authority to the federal government and denies it to the states.

Speaking on Fox Business News, National Border Patrol Council President Brandon Judd, an outspoken Trump supporter, lied about the ruling, accusing the Supreme Court of taking away “one of our tools to fight the cartels.” In fact, the ruling allows the Border Patrol to cut and remove wire, but does not require it to do so. Echoing the fascistic “replacement theory,” Judd added, “the far left agenda wants to get in as many people as they possibly can before this administration’s term is up.”

The response of the Biden administration and the Democrats generally has been feckless, calling for “a bipartisan agreement with Congress that includes additional resources and meaningful policy reforms.” At the White House press briefing Tuesday morning, retired Admiral John Kirby, speaking for the National Security Council, refused to consider the option of federalizing the Texas National Guard or any other steps to counter interference with the Border Patrol’s operations on the Rio Grande, despite the open threats of defiance from Texas authorities.



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