

Neo-Confederate Texas state law remains at center of attacks on migrants

Chase Lawrence
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Texas National Guard troops are continuing to use the threat of the new state law SB 4 to harass and intimidate migrants crossing the Rio Grande near Eagle Pass, it was reported Thursday, even though the measure passed in December by the Republican-controlled state legislature and signed by Texas Governor Greg Abbott remains a dead letter legally.

Journalists for the *Houston Chronicle* personally witnessed and overheard the soldiers threaten migrants seeking to climb out of the water onto the US side of the river, telling them they would be arrested and deported under a new Texas state law. The immigrants, clearly intimidated, returned to refugee camps in Mexico, to wait for another chance to cross. Officials at the head of the National Guard and state police did not respond to media questions after the incident.

Enforcement of the new, brazenly unconstitutional state law has been challenged in the federal courts, and no final determination of its status has yet been made. A federal district court judge ruled that the law violated the US Constitution, which reserves control of the national borders to the federal government.

The lower court judge, David Ezra, rejected arguments by the Texas state government that the entry of large numbers of undocumented migrants constituted an “invasion,” as the term is used in the Constitution. Governor Abbott claimed this would give the state the right to act to repel the “invaders,” that is, to deport them without even the threadbare legal procedure provided through federal immigration law.

After a three-judge panel of the Fifth Circuit Court of Appeals ruled that the law could take effect while the challenge to its substance was being appealed, the Biden administration and other opponents of SB 4 filed an emergency appeal to the US Supreme Court, asking it to strike down the procedural ruling by the appeals court and stay enforcement of the law until after a decision is

reached on its constitutionality.

On Tuesday, by a 6-3 vote, the ultra-right majority on the high court rejected the emergency appeal and allowed the law to take effect while the legal challenge continues. But barely eight hours later, a different three-judge panel of the Fifth Circuit of Appeals took a separate ruling to stay SB 4 until a hearing Wednesday on the substance of the constitutional challenge. This hearing took place without an immediate decision, so the enforcement of SB 4 remains on hold, pending further appeals court action or another direct appeal to the Supreme Court.

The court cases on SB 4 are distinct from those filed in response to Governor Abbott’s decision to deploy hundreds of state police and National Guard troops near Eagle Pass. This placed several miles of the US-Mexico border, along the Rio Grande, under control of the state rather than federal government, in direct defiance of federal authority. The Republican governors of a dozen other states gave him their support, some sending small numbers of National Guard troops or state police to participate in the anti-migrant effort.

While the legal measures are convoluted and no court, with the exception the federal district court, has ruled on the substance of the constitutional challenge, the intervention of the Supreme Court majority in relation to SB 4 was highly unusual. Rather than uphold the status quo during a constitutional challenge, it permitted enforcement of the potentially unconstitutional legislation which overturns the longstanding reservation of border authority to the federal government.

At the hearing Wednesday before the appeals court panel, chief judge Priscilla Richman, a George W. Bush appointee, underscored the sweeping character of the new law, which allows state police and state judges to expel undocumented workers from the territory of the United States.

“This is the first time, it seems to me, that a state has

claimed that they had the right to remove illegal aliens,” she said. “I mean, this is not something that just that—a power that historically has been exercised by states, has it?”

In support of his open defiance of federal authority in SB 4, which was supported by a majority of Republican-controlled states, Texas Governor Greg Abbott has claimed that the state’s right to “self-defense” is “the supreme law of the land and supersedes any federal statutes to the contrary.” As the *World Socialist Web Site* previously explained, the logic of this argument is “either the secession of Texas from the United States, the impeachment and removal of Biden, or his arrest should he set foot in Texas for supposed crimes against that state.”

White House Press Secretary Karine Jean-Pierre responded to the Supreme Court ruling by calling the law “unconstitutional,” yet in the next sentence downplayed its significance. “SB 4 is just another example of Republican officials politicizing the border while blocking real solutions,” she said, making a law-and-order argument that SB 4 would “burden law enforcement.”

The Biden administration denounced the order while at the same time appealing for support from the far-right for Biden’s own anti-immigrant proposals: “We remained focused on delivering the significant policy changes and resources we need to secure the border—that is why we continue to call on congressional Republicans to pass the bipartisan border security agreement, the toughest and fairest set of border reforms in decades.”

What Biden calls “tough” and a “bipartisan border security agreement” is a historic assault on the rights of immigrants and refugees fleeing war, poverty, and violence, virtually eliminating the right of immigrants to claim asylum in the US, in exchange for far-right support to the tune of \$60 billion for the ongoing US-NATO war with Russia in Ukraine.

A dissenting opinion authored by Supreme Court Justice Sonia Sotomayor described the Supreme Court as giving “a green light to a law that will upend the longstanding federal-state balance of power and sow chaos.”

Her dissenting opinion continued, “Texas passed a law that directly regulates the entry and removal of noncitizens and explicitly instructs its state courts to disregard any ongoing federal immigration proceedings. That law upends the federal-state balance of power that has existed for over a century, in which the National Government has had exclusive authority over entry and removal of noncitizens.”

Sotomayor’s dissenting opinion describes a political system that is being pulled violently apart at the seams, with Texas—one of the 11 states of the old Confederacy—in open defiance of federal constitutional authority to an extent without precedent since the civil rights struggles that resulted in the end of Jim Crow in the South.

Quoting Abbott’s statements regarding Texas’s supposed “constitutional right to self-defense,” Sotomayor described the idea that Texas could engage in “nullification of federal law and authority” as “a notion that is antithetical to the Constitution and has been unequivocally rejected by the federal courts since the Civil War.”

This expanding constitutional crisis is linked to the January 6, 2021 coup attempt, in which the Republican Party in Texas was deeply implicated at the highest levels. Three years later, none of the principal conspirators have ever been held accountable. The Biden administration, in an effort to achieve “bipartisan unity” behind the war in Ukraine, has helped to rehabilitate and embolden the conspirators.

The Supreme Court’s order follows a temporary freeze on March 4 by Justice Samuel Alito, ostensibly to give the court time to consider the Biden administration’s request for a stay—although the law is so clear that an immediate stay should have been issued. In the request, Biden administration Solicitor General Elizabeth Prelogar wrote that the law is “flatly inconsistent” with Supreme Court precedent for over a century, stating that “those decisions recognize the authority to admit and remove non-citizens is a core responsibility of the national government, and that where Congress has enacted a law addressing those issues, state law is preempted.”



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