

Supreme Court clears way for Texas to enforce immigration law, for now

Story by Ann Marimow



Supreme Court clears way for Texas to enforce immigration law, for now© John Moore/Getty Images

The Supreme Court on Tuesday cleared the way for Texas to begin enforcing, for now, one of the nation's harshest immigration laws, which opponents say would disrupt more than a century of federal control over international borders.

The law, known as S.B. 4, makes it a state crime for migrants to illegally cross the border and **allows Texas officials to deport undocumented individuals**. It was passed

last year amid a record surge in border crossings — part of Gov. Greg Abbott's (R) push to expand the state's role in immigration enforcement, which historically has been a federal responsibility.

The Supreme Court's decision was divided and preliminary, with two justices in the majority urging a lower court to quickly decide whether to allow the law to remain in effect while appeals continue. The order drew dissent from the three liberal justices, two of whom said the majority was inviting "further chaos and crisis in immigration enforcement."

"This law will disrupt sensitive foreign relations, frustrate the protection of individuals fleeing persecution, hamper active federal enforcement efforts, undermine federal agencies' ability to detect and monitor imminent security threats, and deter noncitizens from reporting abuse or trafficking," wrote Justice Sonia Sotomayor, joined by Justice Ketanji Brown Jackson.

Texas Attorney General Ken Paxton called the high court's order Tuesday a "huge win," and a defeat for the Biden administration, and said the state law is "now in effect."

The measure imposes state **criminal penalties of up to six months in jail on noncitizens who illegally enter Texas from Mexico**. Anyone accused of reentering the country illegally could face **felony charges**. Lawmakers also **empowered state judges to order deportations to Mexico** — without Mexico's consent — and allowed local law enforcement personnel to carry out those orders. Judges may also drop state charges if a migrant agrees to return to Mexico voluntarily.

- The litigation over the state law is the **latest court battle between the Biden administration and Republican leaders in Texas** over the proper role of states in immigration enforcement. In January, a divided Supreme Court said the Biden administration could remove razor wire that Texas had installed along the U.S.-Mexico border, until the courts determine whether it is legal for the state to erect its own barriers.
- A lower court judge had temporarily blocked S.B. 4, saying the statute is probably unconstitutional and "could open the door to each state passing its own version of immigration laws" and force the federal government to navigate a patchwork of regulations. But the U.S. Court of Appeals for the 5th Circuit quickly reversed that decision, without explanation, and said the law could be enforced, at least temporarily, unless the Supreme Court intervened.
- The Biden administration, El Paso County and immigrant advocacy groups, which had sued to block the law, then asked the Supreme Court to keep it on hold while litigation continues. Justice Samuel A. Alito Jr., who oversees emergency requests from the 5th Circuit, delayed implementation of the law while the high court considered the request.

As is customary in emergency matters, the majority did not explain its reasons on Tuesday for allowing the law to take effect. But Justice Amy Coney Barrett, joined by Justice Brett M. Kavanaugh, said it was premature for the justices to intervene at this moment, before the 5th Circuit had to decide whether to keep the law in effect while the appeal is underway.

They urged the 5th Circuit to act quickly and suggested the dispute could soon be back before the justices. *"If a decision does not issue soon, the applicants may return to this Court,"* Barrett wrote.

The liberal justices pushed back, saying the 5th Circuit had already indefinitely upended the status quo by halting the lower court's injunction with a procedural one-line order that Sotomayor and Jackson characterized as "an abuse of discretion."

"This Court makes the same mistake," Sotomayor wrote, *"by permitting a temporary administrative stay to alter the status quo that has existed for over a century."*

Kagan wrote separately to say that she, too, would have prevented the Texas law from taking effect, noting that immigration, and the entry and removal of noncitizens "are matters long thought the special province of the Federal Government."

The 5th Circuit has scheduled oral argument in the case for April 3.

Texas officials said Tuesday *they plan to begin carrying out their own deportations to Mexico* under the new law, but it's unclear to what extent the Mexican government is willing to cooperate, if at all. A spokesman for Mexico's Foreign Ministry did not immediately respond to request for comment. **The Mexican government has been a key partner in the Biden administration's migration management strategy**, and U.S. authorities say lower numbers of illegal crossings over the past two months are **partly due to tougher measures from Mexico**.

- Alicia Bárcena, Mexico's foreign minister, had applauded Monday when the Supreme Court kept the Texas law on hold. *"Addressing the structural causes of migration is the right course, not criminalizing migrants who do so much to help their communities,"* she wrote on social media.
- Jorge Dominguez, a staff attorney for El Paso-based Las Americas Immigrant Advocacy Center – one of the groups challenging the law – said the **Supreme Court's order is a gut punch that will impact not only immigrants in Texas but also any state resident of color**. Dominguez said his center's clients, most of whom are immigrants in various types of legal proceedings, have signaled they will go into hiding and limit their presence in the community if the law takes effect. *"Could I be detained because I'm brown, speak Spanish fluently and look like someone who crossed into Texas illegally?"* Dominguez, who is an U.S. citizen, mused. *"This law essentially makes anyone like me vulnerable to any law enforcement officer in the state who wants to play the game, 'Guess the immigrant.'"*

Law enforcement agencies across the state, including Houston Police, have said the law threatens their relationship with immigrant communities and may prevent people from calling 911 during emergencies **out of fear they could face arrest** because of their immigration status. Community organizations have been preparing residents for months with workshops about their constitutional rights to remain silent and the prohibition against unreasonable search and seizure, and what to do if they are arrested.

In urging the high court to block the law from taking effect, Solicitor General Elizabeth B. Prelogar said it *"prevents the Nation from speaking 'with one voice' in matters involving foreign affairs"* and tramples on federal responsibilities that Congress has laid out. Implementing it, she said, could **inflame tensions with Mexico**, the largest U.S. trading partner, and lead to the deportation of migrants whose lives are in danger, a violation of federal law.

Paxton told the justices in filings that state law "mirrors rather than conflicts with federal law" and that states often coordinate border enforcement efforts with federal immigration officers.

Texas defended its law in part by invoking limited state war powers, suggesting that **the influx of immigrants is akin to the imminent danger of an invasion**. A provision of the Constitution, which in general prohibits

states from engaging in war, includes an **exception for when a state is “actually invaded, or in such imminent danger as will not admit of delay.”**

*“Texas is the nation’s first-line defense **against transnational violence**,”* wrote Texas Solicitor General Aaron L. Nielson. The state, he said, *“has been forced to deal with the deadly **consequences of the federal government’s inability or unwillingness to protect the border.**”*

In response, the Biden administration said Texas officials are misreading the Constitution and insisted that a “surge of unauthorized immigration plainly is not an invasion within the meaning of the State War Clause.”