Federal Judge Blocks Sweeping Texas Law Authorizing Arrests of Migrants

**By J. David Goodman**

A federal court in Austin on Thursday blocked a Texas law that would allow state and local police officers to arrest migrants who cross from Mexico without authorization, siding with the federal government in a legal showdown over immigration enforcement.

The ruling, by Judge David A. Ezra of the Western District of Texas, was a victory for the Biden administration, which had argued that the new state law violated federal statutes and the U.S. Constitution.

The Texas law had been set to go into effect on March 5; it will now be put on hold while a federal lawsuit to overturn the law moves forward. In granting a preliminary injunction on Thursday, Judge Ezra, who was appointed to the bench by President Ronald Reagan, said that the federal government was likely to eventually win the case on the merits.

“No matter how emphatic Texas’s criticism of the federal government’s handling of immigration on the border may be to some,” Judge Era wrote in his 114-page decision, “disagreement with the federal government’s immigration policy does not justify a violation of the Supremacy Cause” of the Constitution.

He said that, among the many legal problems presented by the Texas law, it would “moot many asylum applications” and “seriously harm” relations with Mexico, He said the provision of the law allowing state judges to order the removal of noncitizens is “patently unconstitutional.”

Gov. Greg Abbott, who has moved aggressively over the past three years to create a state-level system of border enforcement, said he would immediately appeal the decision.

“We will not back down in our fight to protect our state – and our nation – from President Biden’s border crisis,” Mr. Abbott said in a statement.

The Fifth Circuit Court of Appeals could step in and issue a stay, suspending Judge Ezra’s injunction and allowing the law to go into effect while it considers the appeal by Texas. During the hearing this month, lawyers for Texas, anticipating a possible decision against them, argued for the lower court to stay its decision pending an appeal. Judge Ezra denied that request.

The judge’s ruling was handed down shortly before Mr. Abbott was set to appear with former President Donald J. Trump in the border town of Eagle Pass, Texas, where the stat’s enforcement efforts have been most aggressive.

Texas has been fighting with the Biden administration on several legal fronts, including the state’s placement last year of a 1,000-foot barrier of buoys in the middle of the Rio Grande and, separately, the installation of miles of concertina wire along the river.

The battle over the new state law, known as Senate Bill 4, represented the most consequential legal confrontation, because the law directly challenged what has historically been seen as the federal government’s exclusive role in arresting, detaining and deporting migrants who are in the country without authorization.

Legal experts have said the fight over the law was likely to end up before the U.S. Supreme Court, and Judge Ezra said during a three-hour hearing earlier this month that he also expected the case to reach the nation’s highest court.

If it does, it would give the 6-to-3 conservative majority a chance to revisit a landmark 2012 decision in a case out of Arizona that upheld the federal government’s power to set immigration policy.

It is already illegal under federal law to cross into the United States between legal ports of entry. But in practice, most migrants are not prosecuted the first time they do so. Most of those apprehended are not trying to evade the authorities but rather are trying to be detained by the U.S. Border Patrol, affording them a chance to seek asylum protections. While the majority of asylum claims are eventually denied, the cases can take years to be resolved, and migrants are permitted to remain in the country in ate meantime.

The Texas legislature designed S.B.4 to closely follow the federal law barring illegal entry, making it a state-level misdemeanor to enter Texas from Mexico. A second illegal entry, under the law, would be a felony.

Immigrant groups, civil rights advocates and some Texas Democrats have criticized the legislation because it would make it more difficult for migrants who have been persecuted in their home countries to seek asylum, and it does not protect legitimate asylum seekers from prosecution in state courts.

Critics have also said that the law could lead to racial profiling, because it would permit law enforcement officers across Texas, even those far from the border, to arrest anyone they suspect of having entered illegally in the previous two years.

“It just slaps the federal immigration law in the face,” Judge Ezra said during the hearing.

Lawyers for the Biden administration, during the hearing and in their filings, argued that the Texas law conflicted with numerous federal laws that provide a process for handling immigration proceedings and deportations. The administration also said the law would interfere with the federal government’s ability to conduct foreign relations, pointing to complaints already lodged against the Texas legislation by the government of Mexico.

Under S.B.4, migrants charged with illegally crossing into Texas could, during the court process, be ordered to return to Mexico or face prosecution if they did not agree to go. The Mexican authorities said they “rejected” any legislation that would allow state or local authorities to send migrants, most of whom are not Mexican, back over the border to Mexico.

“To the extent Texas wishes to help with immigration enforcement, it can do so by working cooperatively with the federal government,” the Justice Department wrote in its motion seeking an injunction, “or by working with Congress to change the law.”

Lawyers for Texas, from the office of Attorney General Ken Paxton, argued in their opposition to the injunction that the state law did not conflict with federal law because it “comports” with existing federal prohibitions on illegal entry.

The state’s lawyers described the recent record number of migrant arrivals at the Texas border as “a full-scale invasion on transnational criminal cartels” and argued that Texas had he power to defend itself. They pointed to Article I, Section 10 of the U.S. Constitution, which bars states from engaging in war “unless actually invaded.”

Under pressure from immigration hard-liners and former Trump administration officials, Mr. Abbott said in November 2022 that he had invoked the “invasion” clause. The state has also cited the constitutional provision in the other pending cases between Texas and the federal government.

The argument had been previously shot down by Judge Ezra, who also presided over the buoy barrier case. He did so again in his decision on Thursday.

“To allow Texas to permanently supersede federal directives on the basis o an invasion would amount to nullification of federal law and authority – a notion that is antithetical to the Constitution and has been unequivocally rejected by federal courts since the Civil War,” he wrote.