

Immigration or invasion?

 cnav.news/2022/09/26/accountability/executive/immigration-invasion/

By Terry A. Hurlbut

September 26, 2022



America has never seen anything like the busing campaigns by the governors of Texas, Florida, and Arizona. The States along the Texas-Mexican border have a problem. (Well, California and New Mexico have the same problem, but their governors don't see it as a problem.) The problem is illegal immigration, and the refusal of the current administration to do anything about it. Not, that is, beyond their campaign last year to airlift the immigrants involved to States that Trump carried. So Governors Greg Abbott (R-Texas), Ron DeSantis (R-Fla.), and Doug Ducey (R-Ariz.) are now busing the illegal immigrants in their States to *liberal* jurisdictions. They sought to dramatize the hypocrisy of the American political left, and they are doing a first-rate job of that. But now they're drawing conservative criticism, on the theory that they are accomplishing a Democratic party objective.

Immigration law and the political football it now is, more than ever

Immigration law is a political football in America, more than has ever been the case before. President Donald J. Trump order the Remain in Mexico policy, and that slowed illegal immigration as never before. But the pResident (Biden) reversed that policy. The State of Texas sued to block the reversal, but the Supreme Court said the pResident can reverse a predecessor's policies if he wants. (*Biden v. Texas*, 21-954, 2022.)

Governor Abbott's first response to that decision was to order the Texas National Guard and Texas Department of Public Safety to return illegal immigrants in his State to a "port of entry" along the border. Both the pResident and the President of Mexico condemned that act. Mexican President Andrés Manuel López Obrador then said something incredible:

| If there's a candidate from a party that mistreats immigrants and Mexicans, we're going to ask our countrymen there that they don't vote for that candidate or party.

Whiskey Tango Foxtrot!? Since when does the head-of-state of a source country for migration tell his "countrymen" how to *vote in elections in the host country*? The only people who ought to vote in American elections are American *citizens*.

White House Press Secretary Karine Jean-Pierre specifically said Governor Abbott had exceeded his authority.

| Immigration enforcement is a federal authority and states should not be ... meddling in it. That is just, especially Texas Gov. Abbott, who has a track record of causing chaos and confusion at the border.

Confusing policies

Where that Texas order stands, is not clear – mainly because in April 2022, Governor Abbott first started busing immigrants to Washington, D.C. (That according to KDFW-TV, Channel Four, Dallas/Fort Worth, Texas.) So actually Governor DeSantis followed Texas' example, not the other way around. Abbott's targets have included Washington, D.C., New York City, Chicago – and the official residence of the Vice-President.

So Governor DeSantis started busing immigrants out of his State, too. Florida Politics has that story. First he transported immigrants to Delaware, Joe Biden's home State. More recently – and spectacularly – he *airlifted* forty-nine immigrants to Martha's Vineyard. The response was less than ecstatic. Scott Brown, former U.S. Ambassador to New Zealand, put the matter into brutal perspective yesterday afternoon.

| If Florida Gov. Ron DeSantis' intent was elevating the broader immigration challenge in this country, mission accomplished. Bonus points for spotlighting the "not in my backyard" hypocrisy among the glitterati.

With which *CNAV* certainly agrees. Within forty-eight hours the Massachusetts National Guard removed those migrants from Martha's Vineyard. They went to Joint Base Cape Cod, on the mainland. Where they'll go from there, no one will say.

Governor Ducey bused several immigrants to Washington, D.C., back in May. His busing program has received scant attention since then. He is not re-eligible, and Kari Lake has the Republican nomination for governor in this Midterms. And she has already promised to

handle things differently.

Can governors unilaterally send people back?

Governor DeSantis has an immigration problem that Abbott does not have, and a Governor Lake would not have, either. He has no land or even river border with Mexico. Illegal immigrants come to his State over water, over land from other States, or by air. So all he could do is airlift those immigrants back to Mexico City, or maybe to Havana. And maybe he should, hints Laura Loomer on her [Telegram channel](#).

Whereas Texas and Arizona both have ports of entry – and breaches in the wall. Governor Abbott has pledged to close the breaches in the wall – which the pResident left by ordering contractors to down tools and go home. The confusing part is: why didn't Governor Abbott stop busing immigrants to other States and *continue* busing them back to ports of entry?

Kari Lake isn't fooling around. *What's Going On News* [quoted her](#) as saying, in an interview (they didn't say with whom):

I think it's kind of cute that they're sending these buses around the country, but let's face it, when we send a busload of illegal aliens into Washington, DC, they're still our problem. We're going to send them back across the border. We're going to give them safe passage back across the border, but they're not staying in Arizona, and we're not going to allow them to be shipped to the other states either.

In an [interview](#) with *The Gateway Pundit* she set forth *the* most comprehensive rationale for a governor's authority on immigration.

Immigration or invasion

Article I, Section 10 of the [Constitution](#) forbids the States to do a number of things. The relevant clause in this Section is Clause Three. Call it the State War-making Clause.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Without question, a State may marshal its own military resources to repel an invasion of its territory from outside. After that the question of what a State may do “without the consent of Congress” gets tricky. Does illegal immigration constitute an invasion? After all, Article I Section 8 Clause 4 gives Congress the power to set rules of naturalization. Beyond that, may States enter into agreements or compacts in time of invasion or “imminent danger”?

One thing should interest any student of the Constitution. Namely, *Congress has already consented to having every State keep troops in time of peace*. We call this consent the National Guard. In addition, Texas has a State Guard, and Congress has never made an issue of it.

Kari Lake would test her powers

Kari Lake proposed, back in January, to test, more directly than ever before, the powers of a State governor. Ironically, if like-minded people capture Congress in this Midterms, Congress can “consent” to what she proposes. They can even “consent” in near-perpetuity by passing an Act directly conferring the authority she would assert. But *absent* a Congress willing to pass such a “consenting” law, Governor Lake will land in federal court. And the case would without a doubt go to the Supreme Court.

She proposes to declare illegal immigration, to the extent we now see, an invasion. The invasion consists not only of uninvited guests but also of illegal drugs. For that reason, she will establish an interstate compact, *which any State may join*, to share “resources” and intelligence.

We’ll let the federal government know what’s going on, but we’re not going to wait for their approval. They have dropped the ball. It’s a dereliction of duty. Article four, section four requires that they protect us from invasion, and they’re not doing that, and there’s a remedy in the US Constitution.

That remedy is Article I Section 10 Clause 3. In addition to the compact, she would task the Arizona National Guard with sending immigrants back across the border.

On her campaign site, she keeps a page setting forth the full particulars of what she plans.

Note that she campaigned on this very plan in the Arizona primary, which she won handily.

Would the courts distinguish illegal immigration from invasion?

CNAV can only speculate on the kind of lawsuit Governor Lake might face, of course. But in the interest of assisting the people of Arizona, Texas, Florida, Pennsylvania, and any other State with active governor’s races, CNAV will give the matter its best shot.

First, any party to any interstate compact would declare itself under actual invasion as part of joining it. This would “inextricably intertwine” the questions of declaring an invasion and forming a compact in response to it.

Again, is an interstate compact a legitimate response to an actual invasion? Not a court in the land has ever tested that. In fact a territorial invasion of the United States, *through a State*, with a mass army, has never happened. Even the attack on Pearl Harbor, Hawaii,

happened when Hawaii was a territory, not a State.

So the courts would first have to answer whether unrestricted immigration, nominally contrary to the federal “rules of naturalization,” constitutes an invasion. True, Governor Lake has refined the declaration she proposes. She will cite the importation of narcotics and other dangerous drugs, *and* human trafficking. But the central issue remains: if Congress *does not* secure the border, then has Congress laid America open to invasion? And does the mere flow of migrants constitute that invasion? Or does *invasion* connote a conventional mass army, naval bombardment, aerial attack and bombardment, and similar mass military acts *only*?

What may a State do in response to an invasion?

Sadly, one can read the State War-making Clause two ways. By one way, the only thing a State may do if “actually invaded, or in ... imminent danger” is to “engage in war.” Does transporting illegal immigrants back to the border constitute engaging in war within that meaning? Probably it would, once a court equated illegal immigration, in the face of lax enforcement of federal law, with invasion.

The other way to read it is that States may enter into agreements and compacts, or even lay duties of tonnage, to support its efforts to repel an invasion. (Again, Congress has already consented to the keeping of troops and even ships of war in time of peace.) To find in favor of any such compact and its members, a court would have to find that the purpose of the compact is to repel the invasion, and nothing more. So a Governor Lake would have to make *sure* this compact did not suffer from “mission creep.”

Ironically, Governor Abbott signed his executive order to transport people back to Mexico *while still carrying out his plan to send those people to Washington, New York, Chicago, and the Vice-Presidential residence*. So Governor Abbott needs to do one or the other – not both.

What can Governor DeSantis do?

Governor DeSantis, as above, has his own unique problem. How does *he* remove illegal immigrants from his State? Does he bus them to Texas, to hand them over to the Texas National and State Guards? If he joins the Lake Compact, he can – *if* he can get the consent of the Governors of Alabama, Mississippi, and Louisiana. The Governors of Alabama and Mississippi might possibly be willing to consent to Florida National Guard convoys rolling along Interstate Ten. But Governor John Bel Edwards, *Democrat* of Louisiana, most probably *would not*. And he won't be up for re-election until November of 2024.

So that leaves airlifting his immigrants, under Florida Air National guard fighter escort, to Mexico City. (If the plane or its escorts lack the range, the Texas Air National Guard might let them land and re-fuel.) What happens next? Would the Mexican Air Force scramble to

intercept such flights? Given the expressed attitude of the President of Mexico, they may. (Governor DeSantis could possibly airlift his immigrants to Texas for handover to the Texas National and State Guards.)

The only other thing *any* of these Governors can do, is build their own prisons for illegal immigrants. They would then detain such people and demand that Mexico send a plane to take them back. But again, given the attitude of the President of Mexico, they would not.

But the federal government has its own problem

The federal government has its own problem, should they decide to sue or prosecute a “No State Shall” violation. Doesn’t the Constitution command the federal government to protect all States from invasion? What should a court think of a government that has laws defining illegal immigration, but refuses to enforce them? Or shall the federal government *actually argue that the Constitution guarantees to every human being, anywhere in the world, the absolute right to enter the United States?*

The current Congress – or at least the House of Representatives – might be in a mood to argue precisely that. The House Committee on the Judiciary reported favorably, *along Party lines*, a bill to let non-citizens vote *in Federal elections*.

But that’s the current Congress. Midterms gives an opportunity to elect a Congress that could *consent directly* to everything Kari Lake proposes. The *next* question would be: *can the President override such a consent of Congress?* Must Congress express its consent *by law* (which requires Presidential assent per Article I Section 7)? Or may Congress express that consent *by joint resolution*, which *does not* admit of Presidential assent or interference?

So a Lake Compact might *still* land in the courts on the theory that Congress may consent only by law. Congress might obviate that obstacle by *removing* President Biden and Vice-President Harris on impeachment for, and conviction of, failure to repel an invasion. But *that* requires two-thirds of the Senate.

Recent criticism, and confusion, on immigration

We can safely ignore the criticism of Governors Abbott, DeSantis and Ducey from the left. After all, the left wants to replace patriotic Americans with international migrants who would vote “Yes” on a plebiscite to dissolve the United States and accept the Great Reset by the World Economic Forum. So any criticism they make, is self-serving. And any criticism that “blue city” Mayors (including the Mayor of Edgartown on Martha’s Vineyard) make, reveals their own hypocrisy.

But conservative critics have a point. Laura Loomer (and CNAV’s own contributor Bradlee Dean) insist that busing immigrants *anywhere* achieves the objectives of the “patriot replacers.” Both Loomer and Dean say flatly that those Governors should not send those

migrants *anywhere* except back where they came from. Anything else constitutes facilitation of the enemy's plans – or even something as blameworthy as directly *importing* illegal aliens.

Sadly, neither Loomer nor Dean have (thus far) examined whether a State governor has that authority. But Kari Lake has. Her answer: Yes. And she *ran* on that answer, and got the nomination. If she follows through with her plan, we might see a direct test, of either:

1. A State's authority to deport immigrants directly, either unilaterally or in concert with other States, or:
2. The Congress' authority to *consent* to letting States take illegal immigration into their own hands, whether a President likes it or not.

The Left accuses State governors of carrying out publicity stunts. Let's see them deal with a State governor who goes further.