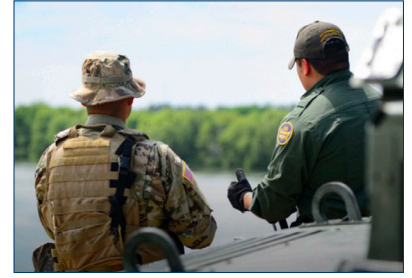


COMMENTARY

# The DOJ's Attack on Texas' Sovereignty

by Carine Martinez



*This commentary was originally published July 24, 2023, in The Cannon Online.*

Not content with creating the humanitarian crisis Texans are facing at their southern border, the federal government is now adding insult to injury by threatening to sue Texas over a floating barrier the state is now using to ensure the integrity of its border.

In early July, Texas [installed a 1,000-foot marine buoy barrier](#) in Eagle Pass to deter migrants from crossing the border in the Rio Grande River itself and exposing themselves to its dangerous currents. The barrier is part of a bigger deterrence strategy under Operation Lone Star, which also includes the installation of razor wire on the banks of the river.

According to the [Houston Chronicle](#), on July 20, the Environmental and Natural Resources Division of the U.S. Department of Justice sent a [letter](#) to Texas Gov. Greg Abbott informing him that “The State of Texas’s actions violate federal law, raise humanitarian concerns, present serious risks to public safety and the environment, and may interfere with the federal government’s ability to carry out its official duties.” The letter demands that the state remove the buoy barrier.

Even as the federal government has failed for years to “carry out its official duties” at the border, a division of the DOJ that concerns itself with “[environmental justice](#)” is trying to prevent Texas from exercising its authority to maintain its territorial integrity and defend its citizens on the basis that the barrier violates the Rivers and Harbors Act without a permit from the U.S. Army Corps of Engineers to build it.

Here’s why Texas should stand firm.

The Tenth Amendment to the United States Constitution explicitly recognized the states, representing their people respectively, as sovereign for any power not delegated to the federal government nor prohibited to them. As the late Justice Scalia reminded us in his partial dissent to [Arizona v. United States](#), there is no clause in the Constitution or law depriving states of “the power to exclude from the sovereign’s territory people who have no right to be there.”

In addition, the U.S. Constitution has explicitly made an exception to the power of the federal government to engage in war to allow states to defend themselves—their territorial integrity and their citizens—against sudden or imminent foreign aggression ([Article I, Section 10, Clause 3](#)), which the Mexican cartels are currently engaging in at our southern border.

Finally, under the [Texas Constitution, Article 4, Section 7](#), the governor is commander in chief of the military forces of the state and has “the power to call forth the militia to execute the laws of the State ... and to repel invasions.”

The floating buoy barrier and razor wire fencing aim to discourage *illegal* entry to Texas and the U.S. by crossing the Rio Grande. Texas is rightly asserting its sovereignty.

The letter’s mention that the buoy barrier “presents humanitarian concerns” appears to echo heightened criticism of Texas DPS and Operation Lone Star.

[Allegations from a DPS trooper](#) that officers were ordered to maltreat migrants by pushing them back in the water or denying them water need to be taken seriously, investigated—[which they are](#)—and corrected if true. Such abuse is [not official policy](#).

*continued*

On the other hand, claims that the barrier represents inhumane treatment of migrants is hypocritical, at best, when faced with the reality of what's going on.

Mexican cartels do not exist to provide migrants trying to enter the U.S. with travel services. Rather, they smuggle them in the worst conditions imaginable to serve their nefarious purposes. Actually inhumane treatments of migrants include smugglers regularly abandoning children to both the [buoy-free river](#) and the [heat](#). Turning a blind eye and letting this happen is not being pro-immigration or humane. It's allowing cruelty to continue. The barrier aims to deter smuggling activity in the river.

Often, the cartels use migrants as a way to distract a people—Texans and Americans—who, the cartels know, unlike them, are generally compassionate and will help migrants, even to the detriment of securing the integrity of the border against those who do not want to be caught, such as criminals, people on terrorist watch lists, cartel members, and drug and human smugglers and traffickers.

And a *buoy-free* river is not without dangers. In fact, its strong currents have resulted in tragic [deaths of migrants](#) and of a [Texas National Guard soldier](#) trying to rescue migrants.

Migrants who think they are in their right to claim asylum can and should enter at ports of entry. By preventing *illegal* entry of migrants, the state of Texas removes one way the Mexican cartels can use the migrants to facilitate their other illegal activities—and sends the message to cartels that Texas will not stand for this. The floating buoy barrier can actually protect migrants.

Most importantly though, the barrier remains a way for Texas to reestablish the integrity of part of its—our, as Americans—border by deterring people with malicious intentions from illegally entering the state and hence protecting Texans. This is not only Texas government's prerogative but also duty—a duty that the federal government seems to forget to the benefit of only one group: the cartels.

Texas has pursued innovative and defensive ways to fulfill its duty to Texans, as well as constitutional and voluntary remedies to protect Texas communities, American families, and even migrants. The floating buoy barrier is just the latest example. Now the federal government has informed us that Texas needs a permit for that.

Gov. Abbott should continue to [rightly stand his ground](#) to protect Texans and Americans who, once again, can see that the federal government's main preoccupation is not a secure border. ★

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