

IMMIGRATION

Trumpism Reaches Out From The Grave To Gum Up The Immigration Works

Apparently we need a rule against political perpetuities.

By LORELEI LAIRD

at 2:14 PM



Joe Biden is president! The nonstop parade of horrors has ended! Everything is roses and sunshine! Right?

As George Washington [famously observed](#), not yet.

It's true that Biden has introduced [an ambitious immigration bill](#) and signed [a slew of immigrant-friendly executive orders](#). Unfortunately, there are still plenty of Republicans who don't like immigrants (or see a political upside to demonizing them), and one of them is Texas Attorney General Ken Paxton.

On January 22, while the Bernie inauguration memes were still coming thick and fast, Paxton sued the federal government for putting a 100-day moratorium on deportations. And a Trump-appointed federal judge issued a temporary restraining order against the

appointed DHS official Ken Cuccinelli! On January 8!

Let's go over these things one by one. This agreement first says that various things the federal government might do on immigration result in concrete injuries to Texas. Then it purports to create a binding obligation for DHS to consult the state of Texas before it makes any decision that could (among other things) "in any way modify immigration enforcement." That's right, ladies and gentlemen: the Trump administration, on its way out the door, handed over immigration enforcement power to the state of Texas.

Or at least it tried to. I am not a constitutional scholar, but I see some obvious federalism issues with giving one state power over policy that affects all the states. So does the ACLU, which filed an amicus brief pointing out that the federal government has not waived its sovereign immunity, making the agreement unenforceable. It also pointed out Texas has no standing without the unenforceable agreement, since it can't demonstrate that not deporting people actually harms it. The complaint has some language about how undocumented people cost Texas money, but you have to actually prove claims like that when you make them in court. And on this topic, [the facts have a liberal bias](#).

The ACLU said they weren't going to go into the many other reasons the contract is unenforceable, but another problem with this contract is the person who signed it for DHS: Ken "[definitely not a racist](#)" Cuccinelli. As I've mentioned in this space before, the Trump administration has appointed several people to DHS who were not legally eligible for their positions, which means that none of the actions they took in office have any legal effect. Cuccinelli is one of those people, and the ruling on that [came in March of 2020](#), ten entire months before he signed this purported contract. So not only did he not have the authority to bind DHS to anything, but everybody knew or should have known it.

Despite all of this, Trump-appointed federal Judge Drew Tipton [granted Paxton a temporary restraining order](#) on Tuesday. The Washington Post quotes a law professor who called this "baffling." Another hearing is set for today because, Tipton said, the issues are "of such gravity and constitutional import that they require further development of the record and briefing prior to addressing the merits." This is quite a lengthy way to say "I am immune to embarrassment."

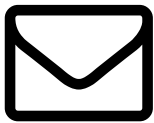
don't (which is possible, given their [partisan abandonment of precedent](#) in *June Medical Services v. Gee*), John Roberts should. But I hope the benchslap comes sooner rather than later, because this is not a trend America needs. If we start letting administrations create this kind of contract on their way out the door, why even have elections?

Lorelei Laird is a freelance writer specializing in the law, and the only person you know who still has an "I Believe Anita Hill" bumper sticker. Find her at wordofthelaird.com.



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