

Of Invasions, Fiddlers and Judicial Avatars

WILL “INVASION” AND “EVASION” BE OUR DOWNFALL?

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(Jul. 28, 2019) — In a 5-4 [decision](#) in *Donald J. Trump v. Sierra Club*, 588 U.S. ____ (2019), the U.S. Supreme Court last week “stayed” (halted) a Ninth Circuit Court of Appeals “permanent injunction” against President Trump’s efforts to construct a physical barrier along the southern border. Translation: start building the “Wall.”

That structure is intended, of course, to operate as a tangible barrier to prevent, and at minimum impede or slow, the current 100,000+ per month uncontrolled tsunami of illegal crossers, “migrants” and “asylum seekers” flooding into the United States. That tide of people from across the planet – not just Central America – is, of course, facilitated, welcomed and defended by the Democrats and their leaders in the Senate and House of Representatives as part of their long-term plan to “[fundamentally change](#) the United States of America.”

Apart from the “fundamental change” resulting from the wholesale disregard of Art. 2, § 1, Cl. 5 of the Constitution by the Congress, by the judiciary, and, thanks to the Congressional Research Service and a swooning media, by the majority of the electorate, thereby allowing one Barack Hussein Obama II to become the nation’s second usurper of the presidency, the continuing uncontrolled invasion of the country by millions and millions of persons will not only further “fundamentally change” the nation, the long-

term result will be its destruction. This, of course, is the goal of the “Squad” and to a slightly lesser extent, the Democrat leadership in Congress. By not-so-dissimilar analogy, Mount Vesuvius “fundamentally changed” [Pompeii](#) in 79 A.D...., and the place never recovered.

The Supreme Court’s decision above-noted authorized President Trump to immediately redirect and use \$2.5 billion in monies previously appropriated to the Department of Defense to enter into contracts for – and actually begin construction of – new “barriers” along the [southern border](#). Justices Ginsburg, Sotomayor and Kagan, naturally, voted against the majority, casting their lots with those who would facilitate and orchestrate the demise of the United States as we have known it since 1789. Justice Breyer hedged his bet with a partial concurrence/dissent.

P&E readers should take a few moments to read the Court’s short (3-page) opinion and, in particular, the concurring (in part) and dissenting (in part) opinion of Justice Breyer. His concurrence supported – weakly – the majority decision to stay (freeze) the Ninth Circuit’s injunction against redirecting the funds for construction of the wall.

He dissented, however, from the majority’s decision to allow *actual* construction to begin. He argued that while the Trump Administration should be allowed to enter into contracts with construction contractors, thereby encumbering the funds and preventing their lapsing at the end of this fiscal year, actual construction should be delayed until the Court makes a final decision on his petition for certiorari (review by the full Supreme Court) in its next term beginning in October.

So, Justices Ginsburg, Sotomayor and Kagan would deny the president both the authority to contract for and then actually begin *building* the wall, thereby allowing the current flood to continue – and even accelerate – unabated. Justice Breyer would allow the president to contract for the work, but not allow the work to actually begin..., thereby allowing the current flood to continue – and even accelerate – unabated.

Stated otherwise, five U.S. Supreme Court Justices agreed that something needs to be done *now* to address what can only be defined as an invasion of the United States. Four Justices would seemingly prefer to allow the invasion to proceed while they give the situation “more thought.” Seriously?

Moreover, lest you think that the Supreme Court has not already addressed the issue of whether what is taking place on the southern border is an “invasion” under Art. 1, § 1, Cl. 4 of the Constitution, be advised that it had the opportunity to do that back in 1997. In *State of California v. United States*, 104 F.3d 108 (9th Cir. 1997), a three-judge panel upheld the dismissal of a suit brought by Republican Governor Pete Wilson, governor before California took a *hard* left turn. The suit alleged that the United States was violating the invasion clause of the Constitution by failing to stop the intrusion of illegal aliens into the state, all to the financial detriment and safety of its residents.

The Ninth Circuit opinion dismissing the complaint did not disagree that an invasion of “illegal aliens” was taking place, even using that term to describe what the PC-dominated left now calls “undocumented immigrants” or “asylum-seeking migrants.” However, it upheld the lower court’s dismissal of California’s complaint because the issue presented was, as seen by the panel, a “non-justiciable political question” which was properly determined by the executive and legislative branches rather than the judicial branch. This is the so-called “hot rock” doctrine where a court dodges and then “deep-sixes” a politically radioactive issue. “Non-justiciable” is judge-speak for “we’re not going to touch that with a ten-foot pole.”

The U.S. Supreme Court denied California’s petition for certiorari and no case since has reached the Court resulting in a different outcome. In this respect, the Court’s tactic on the immigration “invasion” issue is not a great deal unlike its [“evasion”](#) of the question of whether Barack Hussein Obama II usurped the office of the president because he was not eligible to serve as a “natural born Citizen.”

At the end of the day, although there was only one Nero rumored to have fiddled while [Rome burned](#), it would appear that, at least with respect to the illegal immigration crisis, there may be at least four judicial avatars who seemingly prefer the Roman Emperor’s approach to problem-solving over that of President Trump.

Memo to faithful P&E readers: vote carefully in 2020... *very* carefully..., and tell your friends to do the same.