

Sixteen Democratic-led states file lawsuit against Trump's national emergency

By Eric London
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On Monday, a coalition of 16 Democratic Party-controlled states led by California filed a lawsuit opposing Donald Trump's national emergency declaration to construct a border wall along the US-Mexico border without congressional approval.

The legal challenge, filed by states with a total population of over 130 million, marks a major escalation in the bitter conflict between the pro- and anti-Trump factions in the ruling class. Fundamentally, the legal question the courts will answer is: can the president usurp the powers of the legislature?

On Tuesday, Trump responded to the filing with a tweet denouncing "Open Border Democrats and the Radical Left." When Trump announced the national emergency last Friday, he claimed the "absolute right" to do so and that he expects to do "very well" in court.

The 16 states have selected a favorable forum for their suit and anticipate the US District Court for the Northern District of California will issue an injunction halting construction of the wall while the case pends. The Trump administration will then appeal this injunction, likely right to the Supreme Court.

After resolving the injunction, the case will be heard on the merits back in district court. Legal analysts widely anticipate the district court and the intermediary appellate court, the US Court of Appeals for the Ninth Circuit, will rule against the national emergency. This will set up a showdown on the Supreme Court, which is solidly conservative, with 5 Republican and 4 Democratic appointees.

It is possible Trump could disobey a lower-court injunction and build the wall using the thousands of soldiers currently deployed to the border. In late 2018, Trump attacked the Ninth Circuit for ruling against his decision to ban asylum applicants crossing the US-Mexico border.

Trump tweeted on November 22: "The 9th Circuit is a complete & total disaster. It is out of control, has a horrible reputation ... Judges must not Legislate Security and safety at the Border, or anywhere else. They know nothing about it and are making our Country unsafe."

The core of the 16 states' complaint is that the national emergency declaration violates the constitutional separation of powers because the executive branch is claiming powers to legislate and appropriate funds reserved to the legislature under Article I of the Constitution.

A Supreme Court decision in Trump's favor on this question—even a deliberately narrow one—would mark a historic break with more than 200 years of constitutional precedent, giving the president powers that are not enumerated in the Constitution and have never been recognized by the judiciary. Such a decision would fatally discredit the court in the eyes of the American population: one reason why the conservative majority may not be prepared to issue a ruling favorable to Trump, in addition to concerns that Trump may not be the most suitable candidate to head an American authoritarian regime.

The fact that Trump has taken such a step and that the Supreme Court's position is uncertain testifies to the far-advanced degeneration of democratic principles in the American ruling class. In the 1974 case *US v. Nixon*, the Supreme Court ruled by an 8 to 0 unanimous vote (with Justice Rehnquist recused) establishing that there was no "absolute executive privilege" and that the president must comply with subpoenas issued by the courts or Congress.

Today, Trump's declaration is being downplayed in the corporate media while leading Democrats refuse to call for his impeachment for illegally usurping the

powers of Congress.

While the 16 Democratic states' complaint says "there is no factual basis" for the declaration, it does not challenge the power of the president to declare national emergencies or allocate billions of dollars without congressional authorization *in general*.

It argues, rather, that the national emergency is not necessary in this case because border apprehensions are declining and because most drugs pass through ports of entry where walls and checkpoints already exist.

"Even if the Administration could constitutionally redirect funds toward the construction of the border wall," the complaint reads, "this Administration does not satisfy the criteria in the statutes that it invokes to enable it to do so."

The Democratic Party is encouraging the federal courts to issue the narrowest ruling possible so as to not curtail the "national emergency" powers upon which the military-intelligence agencies that control the Democratic Party rely.

Agencies like the FBI, NSA, CIA and Defense Department draw their political strength from secret actions taken without approval from the courts or Congress. Under the Obama administration, the Democratic Party and the military-intelligence agencies justified unprecedented unconstitutional acts—including drone assassination of US citizens, mass surveillance and undeclared wars—on the pseudo-legal ground that the war on terror is a semi-permanent national emergency that renders the Bill of Rights a dead letter.

In a Tuesday *New York Times* op-ed column titled "Why Trump's Emergency Declaration Means Danger for the Courts," *Lawfare* editor and former Obama national security task-force member Robert Chesney urged the Supreme Court not to set the "dangerous judicial precedent" of curtailing the national emergency powers of the presidency.

While advising the courts to strike down *this* national emergency declaration, Chesney warned against "throwing the baby out with the bath water in the course of second-guessing the president in this extreme instance, resulting in a temptation of courts to second-guess in less-justified circumstances."

Cautioning against "a reckless anti-deference decision," Chesney called for the courts to rule that "this is an extremely rare instance" in which the courts should block the emergency powers of the president. In

other words, the Democratic Party's main aim is to protect and maintain the immense powers of the state from the "outsider" Trump.

Regardless of the Democrats' acceptance of the underlying emergency powers, the lawsuit has sparked a growing conflict between Trump and the state of California, with a population of nearly 40 million.

On Tuesday, Trump announced it would demand repayment of some \$3.5 billion in federal funds allocated to California's high speed-rail project, which California Governor Gavin Newsom recently cancelled.

Newsom responded, "It's no coincidence that the Administration's threat comes 24 hours after California led 16 states in challenging the President's farcical 'national emergency.' This is clear political retribution by President Trump, and we won't sit idly by."

However the lawsuit plays out, Trump's declaration of a national emergency is part of his turn toward more open forms of dictatorial rule. He proclaimed in his state of the union address and subsequent speeches that fighting "the evil of socialism" has become a central component of US foreign and domestic policy.

Across the world, the ruling classes are responding to the international growth of the class struggle by relying more and more on extreme-right forces responsible for the worst crimes of the 20th century. The antidote to this process is the fight to build a powerful, mass movement in the working class for socialist revolution.

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