

Thank you for having me today. I am the former two time elected State Attorney General of Arizona, as well as a former federal prosecutor and state gang prosecutor. I am proud to have served our country as an Army Judge Advocate General, as well as being a first generation American. I understand more than many what the American dream represents. But it is founded on the rule of law. And as I sit here today not only as a former federal and state prosecutor, but as a husband and parent, I worry that our nation is under assault from cartels and gangs that have seized control of our southern border. We have seen an unprecedented amount of lawlessness, human smuggling, sex trafficking and illegal drugs flooding into our country. I believe this qualifies as an invasion pursuant to the United States Constitution.

The State Self-Defense Clause in Article I, Section 10 provides that a State may defend itself when it has been “actually invaded, or in such imminent Danger as will not admit of delay,” and the State does not need the consent of Congress to do so. The Invasion Clause in Article IV, Section 4 provides that “[t]he United States ... shall protect each [state in this union] against invasion.” These clauses provide dual protection against invasion broadly defined. This includes defending against actions by “foreign hostility [and] ambitious or vindictive enterprises of [a state's] more powerful neighbors.” This encompasses defense against hostile non-state actors such as cartels and gangs operating at our southern border.

The Import-Export Clause in Article I, Section 10 also recognizes that States retain sovereign authority to execute inspection laws, which requires operational control of the border to channel entry of goods to authorized ports of entry. This is an aspect of the historical police power that is expressly preserved for the States. In sum, both the power of self-defense against being “actually invaded” and the power to “execut[e] [their] inspection laws” are sovereign powers that were retained by the States under the U.S. Constitution to permit States to control on-the-ground conditions at their borders that are essential to public safety and security in a State.

The on-the-ground violence and lawlessness at our southern border caused by cartels and gangs is extensive, well-documented, and persistent. It can satisfy the definition of “actually invaded” and “invasion” under the U.S. Constitution. Two conclusions flow from this. First, the federal government has a duty to protect states under the Invasion Clause. Second, when the federal government fails to meet its Constitutional duties, states retain the independent authority under the State Self-Defense Clause to defend themselves when being invaded.

There is nothing in federal constitutional or statutory law authorizing the federal executive to thwart States from ensuring on-the-ground safety and an orderly border within the State's own territory. Nor is there any conflict with this and the orderly conduct of immigration policy by the federal executive. No State should be put in the position that border states have been put in through the federal government's recent actions. The federal government is failing to fulfill its duty under Article IV, Section 4 of the Constitution to defend the States from invasion. The State Self-Defense Clause exists precisely for situations such as the present.

Please let us remember, the state's created the federal government. Not the other way around. When the federal government refuses or neglects to protect its citizens, the state's have the obligation to do so.