



October 24, 2023

Lieutenant Governor Dan Patrick  
Office of the Lieutenant Governor  
P.O. Box 12068  
Austin, TX 78711

House Speaker Dade Phelan  
Room 2W.11  
P.O. Box 2910  
Austin, TX 78768

Dear Lt. Gov. Patrick and Speaker Phelan:

The National Immigration Forum (“the Forum”) urges you to oppose House Bill (H.B.) 4 and Senate Bill (S.B.) 11, which would make unlawful entry from abroad a state crime in Texas and, specifically in H.B. 4, would allow the state to “remove” someone who crossed the Texas border without authorization by transporting them to a port of entry and ordering them to walk into Mexico. These legislative proposals raise serious constitutional questions, while jeopardizing the fundamental human rights of asylum seekers and others asking for protection in the United States. For the remainder of this special session and beyond, we urge state lawmakers to focus instead on more constructive, actionable solutions to address concerns around immigration and the Texas-Mexico border.

The Forum is a nonpartisan organization that advocates alongside our partners and coalitions in law enforcement, faith, and business to advance policies based on the unquestionable value of immigrants. We recognize that the U.S. immigration system is broken, and [we join the vast majority of American voters](#) in calling for a bipartisan, federal compromise that would combine smart border security with targeted immigration reforms.

We also acknowledge that Texas and its border communities face significant operational and humanitarian challenges amid today’s new normal of large-scale migration. Texans have often gone above and beyond to welcome migrants with compassion, while receiving little support from the federal government. We understand why the state wants to act.

But neither H.B. 4 nor S.B. 11 represents an adequate solution. On the contrary, the proposals may exacerbate operational and humanitarian pressures, while also teeing up a costly court battle over policies that would ultimately fail to restore order and human dignity at the Texas-Mexico border.

First, long-standing precedent recognizes immigration enforcement as a federal — not state — responsibility. The U.S. Constitution’s Supremacy Clause makes clear that federal laws preempt contradictory state laws. These foundational tenets were reinforced in *Arizona v. United States*, when the Supreme Court struck down Arizona’s [similar attempt to create a state crime](#) against unlawful presence. In addition, a proposal that would direct state law enforcement to facilitate removals to Mexico would have significant foreign policy consequences, in tension with U.S. constitutional structure and history. If state lawmakers in Texas enact legislation such as H.B. 4 or S.B. 11, they will undoubtedly invite a legal challenge, where Supreme Court precedent suggests they will lose.

In addition to these constitutional concerns, we also believe that H.B. 4 and S.B. 11 are bad policy. To understand why, lawmakers in Texas need only look to decades of federal government actions, including erecting [walls](#), ramping up [immigration detention](#), and [prosecuting migrants](#) for crossing without authorization. In fact, improper entry and re-entry — the existing crimes that serve as templates for H.B. 4 and S.B. 11’s proposed penalties — together constituted [the most prosecuted federal offenses](#) in recent years. And yet, [millions](#) of people have continued to traverse the U.S.-Mexico border, through river and desert, in search of protection and a brighter future they can no longer access at home. The risk of prosecution or jail time has done little to deter increasing numbers of migrants from trying to reach U.S. soil, many of them hoping to get their loved ones to safety.

At the same time, through Operation Lone Star (OLS), Texas has used a great deal of resources and funding in recent years to try to discourage migration at the state level. Yet Texas continues to see large numbers of new arrivals, with the [Wall Street Journal](#) reporting that “there’s no indication it [OLS] has worked.” In fact, according to the Journal, the region most targeted by the initiative has experienced “the most rapid increases in illegal border crossings in the state since the operation began.”

Taken together, these federal and state attempts to deter migration through criminal prosecutions have cost many billions in taxpayer dollars, harmed families, [frustrated frontline officials](#), and achieved little in terms of solving the real challenges at the Texas-Mexico border. Still, H.B. 4 goes further, giving peace officers the authority to “remove” someone who enters unauthorized by transporting them to a port of entry and ordering them to cross into Mexico. Because H.B. 4 does not include protections for vulnerable demographics such as asylum seekers with pending adjudications, these state-sponsored expulsions risk widespread forced returns to persecution. They could also stoke already [high tensions](#) with Mexico, whose government might not willingly consent to accepting removals from Texas.

Moreover, H.B. 4 empowers any peace officer to carry out these expulsions from anywhere in the state, against most undocumented noncitizens, so that long-time Texans could be returned to Mexico — even if that is not their country of origin. It does not account for people’s lives and contributions, such as how long someone has resided in Texas, whether they have worked and paid taxes, or whether their children are U.S. citizens.

Such a policy, which extends far beyond border security, would undoubtedly have a chilling effect on public cooperation with law enforcement. [Community trust](#) is key to keeping towns and cities safe from bad actors, many of whom purposefully target undocumented residents afraid to come forward because of their immigration status. Bills such as H.B. 4 and S.B. 11 would only heighten those fears, undermining the safety of Texas communities.

Instead of pursuing legislation such as H.B. 4 and S.B. 11, the Forum encourages Texas's leadership to shift state lawmakers' dialogue toward more productive discussions around border security and immigration. To start, policymakers in Texas should urge the Biden administration to build processing capacity at ports of entry so that asylum seekers are able to access safer, more orderly pathways to protection and do not feel the need to make more dangerous, irregular crossings. The Biden administration must also provide funding and support to local communities along the border, to help them respond to today's elevated migration numbers. Should the opportunity arise, the Forum stands ready to engage with Texas's legislature on these and other more substantive, humane solutions.

Best,

*Alexandra E. Villarreal*

Alexandra Villarreal  
Policy & Advocacy Associate  
National Immigration Forum  
[AVillarreal@immigrationforum.org](mailto:AVillarreal@immigrationforum.org)  
Resident of San Antonio, Texas