

From: [Hugo Polanco](#)
To: [Debus, Nick](#); [Taylor, Richie](#)
Subject: Lucha Request
Date: Monday, May 6, 2024 4:53:55 PM

Nick and Richie, as you may have heard, legislative Republicans intend to offer a strike-everything amendment during a special Senate MAPS committee this Wednesday, entitled the "Secure the Border Act." It is described in Petersen's press release as inspired by Texas' SB4 but will include some other language we have yet to see. They also scheduled floor for Thursday as they intend to move the bill through the Senate this week and have the House vote on it next week. To that end, Lucha is asking if AG Mayes would oppose HCR2060 and come out with a statement against these efforts, as this policy and policies like them are not a sincere effort to address the humanitarian crisis at the border.

It is going to be tough to defeat this, but public pressure like this helps make it possible. Please let me know if this is possible? I have included below a memo on Texas' SB4 and "Myths vs Facts" about immigrants in case that is helpful. Thank you!

Texas S.B. 4

Overview of S.B 4:

Unconstitutional:

Texas S.B 4 is unconstitutional because it carves out powers for the state, law enforcement, and its judicial system to enact and enforce federally held immigration powers. Effectively the judges, magistrates, and law enforcement can all engage in immigration enforcement.

Precedence for why this is highly unconstitutional:

The Supreme Court's jurisprudence reflects that Congress retains broad power to regulate immigration and that the Court will accord substantial deference to the government's immigration policies, particularly those that implicate matters of national security.

[Article I, Section 8, Clause 4](#) of the constitution states that the Congress shall have the power to establish uniform rule of naturalization

Per [Galvin v. Press](#) (1953), the Supreme court has assigned constitutional power to regulate immigration to Congress

Violates Civil Liberties and Due Process Rights:

The bill allows police to question and arrest anyone they believe entered Texas through Mexico illegally and is currently without legal immigration status.

Police may charge individuals with a [new state crime](#) of "illegal entry" to Texas, punishable by up to 6 months in jail. Police may charge individuals previously denied admission to the U.S. or deported from the U.S., including those unlawfully deported by Texas, with "illegal re-entry" to Texas, punishable by up to 10-20 years in prison.

This new law authorizes and in some cases requires Texas judges (with no immigration law training or education) to order individuals deported under certain circumstances. Individuals who fail to leave the United States may then be charged under a new crime of refusing to comply with the state's deportation order, punishable by 2 to 20 years in prison.

- **Racial Profiling:**
Bill allows for racial profiling as an individual may be detained if the officer believes they are here illegally. With S.B. 4, police officers will have grounds to ask people whether they entered Texas from another country illegally putting individuals at great risk as they may not know their rights and that they have the right to remain silent.
- **Over Policing and Promote Fear in Communities:**
This law places Black and Brown communities within Texas and those traveling within the state at a high risk of racial profiling, higher policing and harmful interactions with law enforcement. Unnecessary policing and surveillance of groups based on appearance and skin color is discriminatory and racist.
- **Contradicts federal domestic and international laws on asylum seekers:**
Asylum seekers have up to one year to apply for asylum under federal law to be considered and processed for legal status. Moreover, under the International Declaration of Human Rights, all people have the right to seek asylum. This bill would contradict both federal and international law and take away this pathway for asylum seekers.

No Liability to Law enforcement and Contractors

Law enforcement already has immunity so this creates a provision for contractors only and is an overreach of taxpayers dollars and enforcement power for untrained contractors unfamiliar with the complexity of immigration law. The breadth of the discretion that contractors could have could put Black

and Brown communities at risk.

There is an implication that states have to right to enact such powers due to an invasion at the border:

Texas has argued the law follows federal immigration laws, and that the state has a right to defend itself under Article I, Section 10 of the U.S. Constitution, which prohibits states from engaging in war on their own “unless actually invaded.” A federal judge who blocked the law in February said he didn’t see evidence of a war in Texas and that the federal government would “suffer irreparable harm” under the law because it could inspire other states to pass their own immigration laws.

This creates a false narrative about the circumstances and is by definition false. A federally recognized [invasion](#) such as the meaning used in Article IV or the Suspension Clause; refers to a hostile armed incursion on or against the territory of the United States by a foreign nation, not individuals. This language is being weaponized to rationalize racist anti-immigrant policies and does not meet the basic required definition of an invasion by federal law or constitutional precedent.

The bill doesn't prohibit arrests on [college or university campuses](#):

The bill allows for arrests on college or university campuses leaving students vulnerable in an institution where they should not just feel safe but also be protected.

Background

- On November 7th Senator Charles Perry introduced Senate Bill 4.
- Similar bills are pending in other state legislatures including Florida, Louisiana, and North Carolina.

Provisions

- Makes a crossing the border a state crime rather than a civil offense

Removal

Status of S.B 4 to date:

Currently, the Fifth Circuit Court of Appeals has dissolved their previous administrative stay, reinstating the district court's injunction and thereby blocking the law from retaking effect. Finally, the Fifth Circuit Court of Appeals ruled to keep the block on [S.B. 4](#).

MYTHS VS. FACTS:

1 MYTH: Undocumented immigrants are a drain to welfare and public resources

TRUTH: Undocumented immigrants, including DACA status individuals are not eligible for most federal resources including [TANE, SNAP, ACA](#), Medicaid including [Arizona's AHCCCS](#), CHIP, and federal student aid such as [FAFSA](#).

2 MYTH: Harmful to the local economy

Truth: Undocumented immigrants play a productive economic role in the Arizona economy. Like any other consumer they contribute to state revenue by paying all local/state taxes including sales and property. They lower our unemployment rate by filling the high demand of low wage earner positions throughout the state.

3 MYTH: Are a threat to state and national security

TRUTH: There have been zero terrorist attacks [on U.S. soil by undocumented immigrants](#) or asylum seekers who crossed the southern border. The chance of being murdered in an attack by a foreign-born terrorist was about [1 in 4.3 million per year](#). That is, you are about 316 times more likely to be killed in a normal homicide in the US, than by foreign-born terrorists.

4 MYTH: There is an invasion at the border

TRUTH: This alarmist language creates a false narrative about the circumstances and is by definition false. A federally recognized [invasion](#) such as the meaning used in Article IV or the Suspension Clause; refers to a hostile armed incursion on or against the territory of the United States. This language is being weaponized to rationalize racist anti-immigrant policies and does not meet the basic required definition of an invasion by federal law or constitutional precedent.

5. MYTH: Undocumented immigrants are responsible for increased rates of crime

TRUTH: Increases in the undocumented immigrant population within states are [associated with significant decreases](#) in the prevalence of violence. Research overwhelmingly indicates that immigrants are less likely than similar US natives to commit violent and property crimes, and that areas with more immigrants have similar or lower rates of violent and property crimes than areas with fewer immigrants.

6. MYTH: State intervention in a federal crime like bank robbery is akin to state involvement in immigration enforcement

TRUTH: These are not comparable offenses and immigration and naturalization affairs are federal affairs to be maintained and implemented by the federal government [per constitutional law](#).

7. MYTH: Are responsible for the affordable housing shortage

TRUTH: Research finds that [immigrants revitalize](#) less desirable neighborhoods in costly metropolitan areas, opening up new alternatives for middle- and working-class Americans to buy homes, and immigration supports the housing market without exacerbating the nation’s worst affordability problems, because immigrants themselves tend not to settle in the most expensive places.

8. MYTH: Do not contribute to the economy

TRUTH: Mass deportation of the undocumented immigrant population would conservatively reduce the U.S GDP by [1.6 trillion, shrink the U.S. economy by 5.7%, and shrink the national labor force by 6.4%](#). In addition, undocumented entrepreneurs generate 15.2 billion dollars in business generated income.

9. MYTH: Are responsible for the fentanyl in Arizona

TRUTH: [90% of fentanyl](#) that is seized at U.S. ports of entry is being perpetrated by American citizens

10. MYTH: It is easy to immigrate here the “right” way

TRUTH: The U.S Immigration system has a backlog of more than [1 million](#) cases. In 2018 the wait time for 27% of immigrants waiting to be sponsored through existing family members was over 10 years.

11. MYTH: Military aged men are pouring over our border

TRUTH: [41% are people traveling as families](#) and 5% are unaccompanied minors. In December 2023, the Border Patrol had nearly 102,000 encounters with family members, up from around 61,000 a year earlier.

--
--

Hugo Polanco (He/Him)
Partner
Office Hours: Monday-Friday

