



Texas Public Policy Foundation
**LEGISLATOR'S GUIDE
TO THE ISSUES
2021-2022**

Getting Immigration Right: Secure the U.S.-Mexico Border, End Human and Drug Trafficking, and Stop Asylum System Abuse

The Issue

Though the federal government is constitutionally required to protect international borders (United States Constitution, Article IV, § 4), Texas has yet to be able to rely on the federal government to completely fulfill that duty. In fact, prior to the creation of the U.S. Border Patrol in 1924, Texas Rangers routinely acted in this role. Nearly a century later, Texas spends nearly \$1 billion on border security per biennium.

With nearly two thirds of the entire U.S.-Mexico border and the second highest illegal immigrant population in the nation, Texas suffers a disproportionate share of the burden of both historically deficient border security and a chronically dysfunctional national immigration system. In addition to migrant smuggling, cross-border crime includes the twin scourges of human trafficking and drug trafficking.

The costs to the state of this breakdown in the rule of law are many, including 322,000 unauthorized immigrants booked into local Texas jails between June 1, 2011, and June 30, 2020, for committing local crimes. Both the state and unauthorized immigrants themselves are ill-served by a status quo that fails to align with legitimate labor needs that exist in Texas and other states, and which should be the primary basis for bringing in both temporary foreign workers as well as immigrants to the United States.

The fact that border security and immigration are primarily federal responsibilities certainly does not hamstring Texas and other states from taking constructive, proactive measures. On the contrary, to the extent that their actions are not preempted by federal law, states have the duty to legislate and act to support effective border security, combat illegal immigration, and foster lawful immigration. States can be force multipliers in both confronting and solving these challenges.

Measures such as SB 4, passed in 2017 by the Texas Legislature and upheld by federal courts, prohibits “sanctuary city” practices that facilitate lawlessness, by punishing local government department heads and elected officials who do not cooperate with immigration detainer requests by federal agents to turn over unauthorized immigrants who are subject to possible deportation. States like Texas can also enhance enforcement of federal immigration law by boosting the participation of state and local law enforcement agencies in Immigration and Customs Enforcement’s 287(g) program or the Warrant Service Officer (WSO) program. Both programs have proven to be effective in removing tens of thousands of dangerous criminals from communities throughout the country.

The U.S. Supreme Court has also recognized that federal immigration law “expressly reserves to the States the authority to impose sanctions on employers hiring unauthorized workers,

through licensing and similar laws.” Texas already mandates, for example, the use of E-Verify for public employees. Seven other states, in addition, have made E-Verify mandatory for all or most employers.

As the U.S. grapples with the challenge of fixing and modernizing its immigration system, there is an opportunity to reinstitute the principles of federalism held in the 10th Amendment. Other federal republics, such as Australia and Canada, have empowered their state and provincial governments with the ability to create their own sizeable, work-based immigration allotments within a broader federal structure. There is no reason why the U.S. could not rework its immigration system along similar lines.

The Facts

- Criminality directly tied to inadequate border security and a broken immigration system, such as drug trafficking and human trafficking, exacts a steep price on Texas taxpayers. The over \$800 million spent by the state on border security per biennium represents nearly one third of the budget of the Texas Department of Public Safety.
- Human trafficking is a \$150-billion industry and enslaves 25 million people worldwide; in 2018, the United States identified 23,078 domestic victims. Texas has the second highest rate of human trafficking in the United States, and the number of identified cases has been rising each year.
- In Texas and around the country, some individuals would be alive today—and their families would not be mourning their loss—if we had a secure border and an effective interior enforcement system. This is true not only of American victims of crime, but also for the migrants who have suffered at the hands of human traffickers.
- Widespread abuse of the U.S. asylum system almost drove Texas-Mexico border security to the breaking point in 2019 and was only stemmed by the implementation of Migrant Protection Protocols with Mexico and other administrative measures. Additional needed changes to asylum rules, such as amending the Trafficking Victims Protection Reauthorization Act to treat all unaccompanied minors equally, require congressional approval.
- Nearly 70% of Immigration and Customs Enforcement arrests are the result of notifications received from local jails or state prisons. This underscores the importance of anti-sanctuary city measures, like SB 4 enacted in 2017, that help ensure the removal of tens of thousands of criminal aliens each year.

- While the federal government has primary jurisdiction over these matters, the U.S. Supreme Court has recognized that states can take multiple steps to enhance both border security and immigration law enforcement, such as through the use of the 287(g) program and E-Verify.

Recommendations

- Boost the participation of state and local law enforcement agencies in Immigration and Customs Enforcement’s 287(g) program or the Warrant Service Officer program. Both have proven to be effective in removing tens of thousands of dangerous criminals from the country.
- In the fight against human trafficking, ensure the participation of Texas law enforcement teams in the National Johns Suppression Initiative and fully align Texas law with the Trafficking Victims Protection Act.
- Support the shift of the U.S. immigration system to a primarily work-based model, in which within the federal structure states are given a role in the evaluation and selection of legitimately needed immigrants for their workforces, as is already the practice in Australia and Canada.
- Be prepared, as was the case in Texas in the past, to assert the constitutional prerogative (United States Constitution, Article I, § 10) of states to repel foreign threats when “in such imminent Danger as will not admit of delay.”

Resources

[*A Brief History of Border Security: 1836 to Present*](#) by John Daniel Davidson, Texas Public Policy Foundation (May 2019).

[*Federal Immigration Reform, Texas-Style*](#) by Clint Bolick, Texas Public Policy Foundation (Sept. 2015).

[*Enforcing Immigration Law: What States Can Do to Assist the Federal Government and Fight the Illegal Immigration Problem*](#) by Hans von Spakovsky and Charles Stimson, Heritage Foundation (Oct. 2019).

[*State and Community Initiatives in the Fight Against Domestic Human Trafficking*](#) by Nikki Pressley, Texas Public Policy Foundation (May 2020).

[*Toward a 21st Century Asylum System*](#) by John Daniel Davidson, Texas Public Policy Foundation (July 2019).

[*Federalism in Immigration: The Cases of Canada and Australia*](#) by Elliott Raia, Texas Public Policy Foundation (Oct. 2019).