

HJR 16: TESTIMONY BEFORE THE TEXAS HOUSE COMMITTEE ON CRIMINAL JURISPRUDENCE

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Chairman Smithee, Vice Chair Wu, and distinguished members of the Committee:

My name is Ammon Blair, and I am a Senior Fellow at the Texas Public Policy Foundation. I appear before you today to present testimony in strong support of House Joint Resolution 16, which proposes a vital amendment to Article I of the Texas Constitution addressing bail denial for illegal aliens accused of felony offenses. This proposed amendment represents a carefully crafted response to an urgent public safety crisis while recognizing the distinct legal status of those who have entered our country in violation of our laws.

I bring 22 years of military experience and extensive border security expertise from my service in the U.S. Army and U.S. Border Patrol. My roles have included serving as an Infantry Officer in Operation Lone Star, Collateral Intelligence Agent, and Marine Border Patrol Agent.

Throughout my career, I have worked on the front lines to combat drug trafficking, human smuggling, and illegal immigration. I have witnessed firsthand the security threats posed by felony offenders unlawfully present in our country.

The authority of Texas to enact this amendment rests upon fundamental principles of federalism embedded within our constitutional structure. The Framers of our Constitution established a federal government of limited, enumerated powers while reserving vast concurrent powers to the states through the Tenth Amendment ([U.S. Const. amend. X](#)). Alexander Hamilton, writing in Federalist No. 32, explained that state governments would retain all rights of sovereignty not explicitly delegated to the federal government. This principle takes on particular significance in matters of public safety and criminal justice, where states have traditionally exercised primary authority ([Hamilton, 1788](#)).

THE CURRENT CRISIS AND ITS IMPLICATIONS FOR PUBLIC SAFETY

The scale and severity of the current immigration crisis demands careful examination, as it forms the practical foundation for this constitutional amendment. Under the current federal administration, our nation has witnessed an unprecedented surge in illegal border crossings, with over 10.1 million encounters nationwide, including 8.2 million along the Southwest border alone ([Homeland Security Committee Republicans, 2024c](#)). Even more concerning, nearly 5.7 million illegal aliens have been released into our communities ([House Judiciary Committee, 2024](#)).

These numbers, while staggering, tell only part of the story. Approximately 2 million individuals have successfully evaded detection and arrest, becoming what law enforcement terms “gotaways”—a particularly alarming

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statistic when considered alongside the fact that 382 individuals on the terrorist watchlist were intercepted at the southern border between FY 2021 and FY 2024, compared to just 11 from FY 2017 to FY 2020 ([Homeland Security Committee Republicans, 2024c](#)).

In July 2024, Immigration and Customs Enforcement (ICE) released data that revealed “nearly 650,000 criminal illegal aliens were currently on ICE’s Non-Detained Docket (NDD) and roaming free in communities throughout the United States” ([Homeland Security Committee Republicans, 2024a](#)).

The specific breakdown of what types of criminals have been released is sobering. The presence of 14,944 individuals convicted of or charged with homicide represents not merely a statistic, but a direct threat to public safety. The 20,061 cases involving sexual assault charges or convictions—combined with 105,146 assault cases, 16,820 weapons offenses, and 3,372 kidnapping charges—paint a picture of a genuine public safety emergency that demands immediate action. When we consider the additional 60,268 cases involving burglary, larceny, or robbery, along with 3,971 commercialized sexual offenses, the pattern of criminality becomes impossible to ignore ([Homeland Security Committee Republicans, 2024a](#)).

The current system’s failures extend far beyond mere numbers. In September 2024, the House Committee on Homeland Security released a comprehensive report titled “Crisis by Design” which revealed a troubling deterioration in our vetting processes for illegal aliens. Former Border Patrol Chief Rodney Scott’s told the committee that vetting has devolved into a mere “check-the-box exercise” should raise serious concerns about our ability to protect public safety under current protocols ([House Committee on Homeland Security, 2024b](#)).

The daily reality of border enforcement underscores these systemic failures. By October 2023, Border Patrol encountered more than 47 illegal aliens with “serious criminal histories” every single day. Veteran agents have reached the troubling conclusion that “there’s really nothing stopping them from coming here at this point” ([Homeland Security Committee Republicans, 2024a](#)).

Current enforcement efforts face overwhelming challenges. While DHS managed to remove 179,400 aliens in FY 2023, this number represents a mere fraction of the 3.2 million encounters during the same period. The stark increase in criminal arrests is particularly noteworthy: from FY 2021 through FY 2024 year-to-date, Border Patrol recorded “more than 53,000 arrests of illegal aliens with criminal backgrounds, approximately 30,000 more such arrests” than in FY 2017 through FY 2020 ([Homeland Security Committee Republicans, 2024a](#)). This dramatic increase in criminal activity among illegal border crossers directly supports the need for stronger bail restrictions. Yet, despite this alarming reality, many of these criminal illegal aliens are released back into American communities on bail—free to disappear, reoffend, and further erode the rule of law.

The legal foundation for denying bail to criminal illegal aliens is well established. Under the Bail Reform Act of 1984, courts have the authority to deny bail to individuals who pose a significant flight risk or a danger to the community ([S.215, 1984](#)). By their very nature, individuals who have entered the country illegally and have no lawful status present an inherent flight risk. Without legal ties to the United States, the incentive to flee before trial is significantly higher than for a legal resident. Moreover, history has shown that many illegal aliens simply fail to appear for their immigration court hearings.

Beyond the flight risk, the sheer volume of violent crimes committed by criminal illegal aliens is staggering. According to Immigration and Customs Enforcement (ICE), there are currently more than 650,000 known criminal illegal aliens roaming freely across the United States. Their offenses include nearly 15,000 homicides, over 20,000 cases of sexual assault, more than 105,000 assaults, and thousands of weapons violations and kidnappings. These are not isolated incidents but rather a pattern of criminality that poses a direct and imminent threat to public safety ([Homeland Security Committee Republicans, 2024a](#)).

The national security implications of these policies cannot be ignored. FBI Director Christopher Wray has confirmed before Congress, “We are seeing a wide array of very dangerous threats that emanate from the border” ([Barr, 2024](#)). Espionage and sabotage risks are at an all-time high as foreign adversaries exploit weak immigration enforcement to infiltrate the country ([Hankinson, 2024](#)). Meanwhile, Mexican cartels and transnational criminal organizations such as the Jalisco New Generation Cartel (CJNG), Tren de Aragua and MS-13 continue to use the border as a conduit for trafficking drugs, weapons, and human slaves. These organizations do not hesitate to leverage corrupt legal loopholes—like the granting of bail—to continue their criminal enterprises unimpeded ([Sanchez, 2024](#)).

The proposed amendment provides a carefully structured framework that balances public safety imperatives with appropriate due process protections. By requiring probable cause hearings before a judge or magistrate, it ensures that bail denial decisions rest on solid evidentiary foundations rather than mere allegations. The amendment mirrors federal law, specifically 8 U.S.C. § 1231 in terms of detention, ensuring consistency in application and avoiding potential conflicts with federal immigration enforcement ([8 U.S.C. § 1231](#)).

The constitutional framework for pretrial detention rests on well-established legal precedent. The Supreme Court has consistently held that bail is not an absolute right when defendants present substantial flight risks or pose dangers to the community.

This principle was definitively articulated in *United States v. Salerno* where the Court emphasized that the Eighth Amendment “says nothing about whether bail shall be available at all” ([United States v. Salerno, 1987](#)). This builds upon earlier jurisprudence, notably *Carlson v. Landon*, which affirmed Congress’s authority to establish specific categories of cases where bail may be denied. As the Court noted in *Carlson*, “The [Excessive Bail Clause of the] Eighth Amendment has not prevented Congress from defining the classes of cases in which bail shall be allowed in this country... Indeed, the very language of the Amendment fails to say all arrests must be bailable” ([Carlson v. Landon, 1952](#) , pp. 545–546).

As the Court noted in *Carlson*, the Eighth Amendment does not guarantee bail for all arrests, giving legislators the flexibility to craft detention policies that serve both justice and public safety. The proposed amendment extends this principle to a category of defendants who, by definition, have already demonstrated disregard for our laws and who pose inherent flight risks.

The confluence of unprecedented illegal immigration, rising criminal activity among illegal aliens, and systemic failures in our current enforcement mechanisms creates an urgent need for this constitutional amendment. The legal framework established by *United States v. Medina-Cantu* and related precedents provides clear constitutional authority for state action in this arena ([United States v. Medina-Cantu, 2024](#)). The careful balance struck between public safety and due process considerations ensures that the amendment will withstand legal scrutiny while providing effective tools for protecting our communities.

I therefore ask this committee to support House Joint Resolution 16. This amendment represents a necessary and proportional response to a genuine public safety crisis, one that falls squarely within Texas’s sovereign powers while complementing federal enforcement efforts.

Thank you for your consideration of this crucial legislation.

Respectfully submitted,

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