

DAILY BEAST

Legal Immigrants in Texas Should Be Worried, Too

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This week, Texas is battling in the courts to implement its new immigration law, SB 4. The law is an unprecedented attempt to supersede federal immigration policy, allowing the state to order immigrants to leave.

At the same time, Iowa and other states are advancing copycat bills. Their supporters say it's all about "state sovereignty." In reality, it's all about unleashing chaos on America's embattled immigrants who already face the world's most complicated immigration system.

SB 4 authorizes the state to charge immigrants who enter the United States illegally with a misdemeanor. Judges will order them to leave the country and require state police to drive them to the Mexican border. If immigrants fail to leave after drop-off—or if they re-enter—they could be charged with felonies. The scheme is ill-considered both legally and practically.

Texas claims that the law mirrors federal immigration law, but it does not. The bill directly threatens immigrants who have the right to be in the U.S. under federal law—even naturalized U.S. citizens.

Federal law does permit immigrants who enter illegally to be criminally charged and ordered removed, but it also permits them to apply for various kinds of lawful status or deportation relief before removal. Here are just some of the options: asylum, withholding of removal, Convention Against Torture protection, U visas for crime victims, T visas for trafficking victims, and cancellation of removal.

But Texas doesn't stop with *applicants* for status. SB 4 also criminalizes anyone who has actually received asylum, a green card, or even U.S. citizenship: if the person has re-entered after a prior deportation, they can be charged with a felony.

It may shock the bill's authors, but people who are deported can return legally or illegally and then receive a green card through family sponsorship, legalization programs enacted by Congress, or any of the types of programs above. These people can then become naturalized citizens.

Even more outrageous, immigrants who never entered the country illegally and were never deported would be subject to felony prosecution if they had merely been denied admission or excluded at airports or land ports of entry into the U.S. This happens every single day to legal immigrants who can go back and apply to enter legally again.

I recently interviewed a U.S. citizen and veteran whose fiancé was excluded and denied admission at a port on the grounds that they were likely to marry while here (yes, that's seen as problematic). She'd been traveling back and forth to the United States for years as his girlfriend under the Visa Waiver Program—it never occurred to her that she'd be a threat as a fiancée. They were forced to live in exile for years in Europe. But she's now living here legally—in Louisiana, which just introduced an SB 4 copycat bill.

It's not just spouses. It's guest workers, skilled workers, business travelers, and others. SB 4 and copycat bills aren't just overkill in targeting illegal immigrants. They directly threaten hundreds of thousands of legal immigrants—many of whom might now be U.S. citizens. Some U.S. citizens might be saved by Texas' relatively short statute of limitations, but other states have longer periods.

In response, Texas simply tells the courts: “Trust us! We wouldn't overstep.”

Yet we've already seen Texas repeatedly overstep in its border war: illegally telling immigrants to trespass on private property and then arresting them for it; unconstitutionally discriminating against fathers; illegally banning all transport of migrants; illegally detaining immigrants without giving them attorneys or filing charges; shutting down trade with Mexico; charging a Catholic charity for “human smuggling,” and so much else.

Legal immigrants may not be the legislation's supposed point, but they illustrate exactly why the country shouldn't have 50 states trying to make immigration law.

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The chaos is inevitable, even in the purportedly clear-cut cases of someone who crossed illegally. Texas plans to order these people to leave the country and is planning to drive them to the Mexico border to force them out. Yet Mexico's government says it won't let that happen, and the federal government isn't going to help.

So when the police march the immigrants to the border, what then? If the immigrants don't violate Mexico's laws, will the police rearrest them for felonies? What happens when Iowa starts driving immigrants to the Texas border and dropping them off? At least in Texas, you can actually observe someone crossing illegally. On what grounds will Iowa and other states be basing their “deportations?”

The complexities here are endless. Having a “lawful presence” granted by the federal government is a defense against prosecution (but not arrest), yet states have no way to check this directly.

The abuse of this law is baked in, but that's the cake Texas wants.

Of course, the other interpretation is that Texas never actually expected this mess to be enforced, so they didn't bother with thinking it through. Gov. Greg Abbott said this week he still needs to talk to the Department of Public Safety, the state National Guard, and local police about how exactly they plan to enforce this law—clearly, they were as shocked as anyone when the Supreme Court briefly allowed the law to go into effect.

The real point of this law is political: to claim—erroneously—that the federal government is unleashing chaos by failing to enforce immigration law, so states should take over. But SB 4 shows exactly why the states aren't the answer to chaos. They'll only cause more of it.

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