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CSSB 7 DEBATE - SECOND READING
(Leach, Klick, Troxclair, Raymond, et al. - House Sponsors)

CSSB 7, A bill to be entitled An Act relating to prohibiting a private employer from adopting or enforcing certain COVID-19 vaccine mandates; authorizing an administrative penalty.

REPRESENTATIVE LEACH: It's my honor this morning to lay out **CSSB 7** by Senator Middleton to you. This is the companion to my **HB 7**. I appreciate all of the members who have been working with me on this for a long time including Madame Chair Klick and Chairman Oliverson. There are many others who this issue is very important to and have been constructively and collaboratively working with me to get this bill to the floor today.

This is an important bill protecting the fundamental rights, freedoms, and liberties of Texans, Texas employees—protecting their right to work; protecting their right to protect themselves. This bill is not about infringing on employers' ability to protect their employees in the workplace and this bill is not about what vaccines are good or bad or what vaccines someone should or should not take. This bill is instead about who should decide. And I believe very strongly that decision as to whether to get an immunization—specifically, accordingly to this bill, the COVID-19 vaccine or its variants—I believe that decision should be a very personal decision made in conjunction with someone's doctor and informed by medical expertise and informed by deeply held personal values. There are many situations in which Texans decided not to get the COVID-19 vaccine based on medical advice and directives from their physician or based on reasons of conscience or religion. Those Texans who decided that they should not lose their right to work if they decide that. That's what this bill, in and of itself, is about. This bill protects employees' rights to not be vaccinated and yet maintain their ability to work and to apply for jobs. There were situations, multiple situations—I would say thousands of situations certainly across the country but even here in Texas—where employers took hard-line approaches and said you must get vaccinated, you must receive the COVID-19 vaccine and if you don't you cannot work here anymore, if you don't you can't apply here. And I do not believe we should discriminate against Texans who decide, for whatever reason, not to get the vaccine and that's what this bill is about.

I don't think I need to belabor the point. The bill is very simple and straightforward. I'm happy to go through the provisions of the bill. It is no doubt a strong legislative mechanism that I believe will prevent and deter companies from continuing to enforce and adopt these mandates on their employees, including a \$10,000 fine and potential injunctive action by the attorney general's office. So it is a strong bill, but it is smartly crafted in conjunction with our colleagues—many of you, with our colleagues in the senate, with the governor's office, and importantly, and finally, many, many stakeholders who we've been in meetings with around the clock working to craft an important piece of legislation. An effective piece of legislation that protects the fundamental rights of Texans to

work and to not receive a vaccine that their employers may be requiring them to receive. So that's it, members. Thank you, Mr. Speaker. With that, I'm happy to yield to questions.

REPRESENTATIVE ANCHÍA: Chairman Leach, you and I had a chance to share some ideas and experiences in committee. I, as an employer of 50 employees who is responsible for their safety and well-being and, in fact, has adverse legal consequences if I don't take care of their health—especially people with preexisting conditions, people who are immunocompromised, people who are senior citizens. You recall that dialogue that we had, do you not?

LEACH: Yes, I do.

ANCHÍA: Okay. As your bill, if it passes, goes out into the world, I wanted to establish some legislative intent so that employers have some guidance as to the parameters of how they navigate both your bill and their legal responsibility to keep people safe in their workplace. I want to just underscore for the membership that for employers there are a number of adverse consequences should they run afoul of your bill. I'll just name them and you tell me if you agree or not. An employer would be liable for an adverse action complaint or administrative penalty for the Texas Workforce Commission. Is that correct?

LEACH: Correct.

ANCHÍA: Potentially injunctive relief by the attorney general. Is that correct?

LEACH: Potential injunctive relief from the attorney general, yes.

ANCHÍA: Okay.

LEACH: Not mandatory injunctive relief, but potential.

ANCHÍA: Okay. Potential injunctive relief by the attorney general? I'm just rephrasing it.

LEACH: Yes.

ANCHÍA: Okay. And ultimately, as we heard in committee, criminal complaints from the Texas Workforce Commission. I was able to confirm with Executive Director Serna that they are making criminal complaints, or referring criminal complaints, to local district attorneys. Is that your recollection?

LEACH: That is. Yes.

ANCHÍA: In addition to potential monetary penalties which are set up as \$10,000 under your bill. Is that correct?

LEACH: Yes.

ANCHÍA: Is that \$10,000 per occurrence or violation?

LEACH: Yes, so this is one of the amendments that we put on—that the house is going to put on the senate version of the bill as it came over. We have instituted a straight \$10,000 penalty instead of up to \$10,000. In that regard, Representative Anchía, the house is strengthening the fine provisions—or the provisions relating to the fine, I should say—in the bill. We've also changed the senate bill in that

we've given the Texas Workforce Commission rulemaking authority to enforce the bill itself. So when you asked me what potential fines—if the \$10,000 fine applies to an incident, applies to an employee—I don't remember the exact language of your question—but that rulemaking authority under the terms of the bill would be given to the Texas Workforce Commission.

ANCHÍA: Since we're asking intent questions, it's your intent that it would be per incident?

LEACH: I am trusting the Texas Workforce Commission. Representative Anchía, this is what they do. They specialize in this. For instance, in terms of unemployment insurance they investigate, they do their fact finding, and they make a determination as they're allowed to do under the terms of Texas statutory law. This bill is no different in that respect. I don't want to say one way or another whether it should be per incident or per employee. We've given that rulemaking authority to the Texas Workforce Commission.

ANCHÍA: It's your intent that they'll sort that out in rulemaking? You don't want to say at this point whether it's per incident or in total. You'll let them sort that out?

LEACH: We, together, are asking for them to sort that out.

ANCHÍA: Okay.

LEACH: It would be my—as the author of the bill who believes very strongly that someone shouldn't be fired for deciding not to get the COVID-19 vaccine—intent, as the author of the bill, is that the Workforce Commission would take an approach that would deter companies from enforcing or adopting these policies.

ANCHÍA: Fair enough. I want to get at your further intent because as we put this bill out into the world, employers are going to have to react to it and come up with interventions for their employees to keep them safe and at the same time balance the tenants of this bill. I want to just go over—and I've given these to you in advance. We've been talking in lieu of carrying an amendment that would create safe harbors, I asked if you would prefer that we do legislative intent, so that's why I'm here at the back mic.

Let's just say that there's a COVID-19 outbreak; COVID-19 mutates again; we have a new form of it. There is a local or statewide public health disaster emergency that is called. People are getting sick. I own a meat processing plant and I want to ask an employee who is unvaccinated to take a leave of absence during—a paid leave of absence—during the state or local public health disaster. Can the employer take such action under your bill? It would be paid leave.

LEACH: I have your list of questions here and I'm happy to walk through these. This is one of the questions that I'm going to say, definitively, what I as the author of the bill think. I do not believe that an employee at a meatpacking facility should be fired, terminated, and/or otherwise not hired and/or forced to take a leave of employment, as your question is—

ANCHÍA: Paid leave.

LEACH: —for their decision not to get the vaccine. Importantly, this bill does not create a private cause of action held by an employee against an employer. In the situation where an employee may be fired for not getting the vaccine, in violation of this bill, we've given the Texas Workforce Commission and the attorney general's office the authority to pursue that employer. We've not given a private cause of action, which I believe is very important policy for us to protect, to the employee.

ANCHÍA: Okay. So stipulated that the employee is not fired. I raise this hypothetical because it's really not a hypothetical. In May of 2020, a woman who worked at a Texas meat processing plant in Lufkin died after a COVID outbreak at the facility. In fact, 50 of the 107 people at the facility in Angelina County got sick and there were deaths among these people. As an employer who is supposed to keep their employees safe, if I say to that employee, "Hey, we have a local health emergency. You're not going to be fired. You're not going to be docked pay, but you need to stay home during the pendency of this outbreak. Because you're unvaccinated you can both spread and contract and I need to keep my employees safe." Is that permissible under the bill?

LEACH: I don't believe so. Again, we've given rulemaking authority to the Texas Workforce Commission. They're the fact finder. I would trust them to make the right decision. I do want to make this point. Let me make—

ANCHÍA: Can I just ask real quick?

LEACH: Sure.

ANCHÍA: You don't think it is prohibited by the bill or you don't think it is permitted by the bill?

LEACH: Employers are still allowed to and authorized to, and I would say we desire for our employers to do everything they can to keep their employees safe.

ANCHÍA: Okay.

LEACH: We have numerous laws at every level—federal, state, and local—that protect employees in the workplace. Employers still have the ability to do that. But the legislature, by way of this bill, is putting a line in the sand that says one of those things cannot be requiring a vaccine. Importantly, and members, this is a really, really important point that all of us need to realize and many of us may not. If an employer, under current law, requires you, Ed Thompson, Jarvis Johnson, James Frank—if your employer requires you to get the vaccine and so you say, under threat of losing your job, "God, I don't want to get the vaccine. My doctors maybe told me not to get the vaccine or I have a reason of conscience or medical reason not to get the vaccine, but I want to keep my job especially during COVID, so I'm going to go get the vaccine." If you get the vaccine because your employer forced you to and you get sick you have no right of recourse against your employer. None. None whatsoever. So not only are you going to get fired, but if your decision because you don't want to lose your job to

get a vaccine causes you sickness or death, which has happened—undeniably has happened—you have no recourse against that employer. I think that's wrong policy.

ANCHÍA: I appreciate that and I hope you would reserve your advocacy for something unrelated to my question for outside of our intent period because I have limited time and I'm just trying to get some parameters for the bill. Let's stipulate, Jeff. You're not firing the person and your not requiring them to get the vaccine. As an employer during an outbreak at your facility, can you ask the employee to stay home with full pay?

LEACH: You probably, arguably, under the terms of the bill, you probably could do that.

ANCHÍA: Okay, so you could do that.

LEACH: But hold on, that employee, Representative Anchía, is going to have a really hard time basically getting paid for no work, getting to stay home, and then saying I'm going to file a complaint with the Workforce Commission. I think that that's just a fundamental—that's just common sense.

ANCHÍA: Good. Because the current standard is reasonableness, so I'm glad you're suggesting that that is a reasonable approach by an employer. Can a person who is not going to be fired and is not vaccinated be reassigned to a different part in the physical space, like to an office rather than a cubical, without any dock in pay or change in responsibility?

LEACH: I believe that the terms of the bill on page 1, line 11, the definition of "adverse action" is clearly defined. If the Texas Workforce Commission investigated and found that under that scenario that was determined to be an adverse employment action—this is why it's so difficult to have this exchange because these are highly specific facts-based scenarios. That employer could say, "I want you to work in the room next door, right across the hall." And that would probably be acceptable. But if that employer says, "We're going to make things really hard on you because, really, I can't do it under the law, but I don't want you working here, so I'm going to send you to a whole other building in a dark closet somewhere." That probably is an adverse employment action.

ANCHÍA: See that's the challenge—

LEACH: It is the challenge.

ANCHÍA: —Chairman Leach, because you're creating a reasonableness standard here. Reasonableness is based on the totality of the facts. What we're trying to give Texas employers here is some predictability that if they are not requiring the vaccine and not firing somebody or requiring the vaccine and not firing somebody for it that they can actually reassign them, put them. If there's an outbreak in my company and I say, "Hey, I know you're unvaccinated. I've got an 80-year-old employee here, a 70-year-old"—which is an actual fact in my company—I can go ask you to work in an office rather than a cubicle. That's all I'm asking. Is that reasonable?

LEACH: I think you could probably do that, but you know, Representative Anchía, come on—

ANCHÍA: Can I ask them to wear a mask?

LEACH: Representative Anchía, you know. Let me list for you the multitude of statutes we have on the books that are based on a reasonableness standard. Too many to count. We trust our courts. In this case, we trust the Workforce Commission, to make those determinations based on the facts and the law.

ANCHÍA: Okay. Can I request that an unvaccinated employee, with no termination, no change in employment, wear PPE in the office?

LEACH: Yes.

ANCHÍA: Okay.

LEACH: Now, you can require them to put a mask on. I think that you could probably still do that. Can you require them to wear a HAZMAT suit? Probably not reasonable.

ANCHÍA: I agree with you.

LEACH: But, you know, I trust the Workforce Commission to figure that out.

ANCHÍA: Depending on the type of employment, I agree with you. And certainly not in an office environment. What about—and this happened in our company—what about during COVID for an employee that was not vaccinated that we asked that employee to not come into the office during the state of emergency and instead work from home with no change in responsibility and no change in pay. Is that reasonable?

LEACH: My personal opinion is—I'm just giving you my personal opinion on it—

ANCHÍA: I was just asking for your intent.

LEACH: That is so highly fact specific because you might not be able to do your job effectively from home. I cannot answer that question. I can tell you what I think. I can tell you that there's a multitude of Texans who would probably love to work from home, but there might be some people who don't want to work from home and who want to be around their employees and want to go into the workplace. If they feel, and if the reasonableness standard that we've given to the Texas Workforce Commission determines, that that's an adverse employment action based on those facts then under the bill that would not be allowed.

ANCHÍA: You think then—just to recap because this is important—you think that an employee who is unvaccinated during an outbreak cannot be asked by their employer to work from home? That that actually could be considered an adverse action?

LEACH: You know, the more we talk about this—and I think that this is probably a longer discussion that we need to have in subsequent legislative sessions—the more that you and I go back and forth, the more I'm troubled by employers inquiring so deeply about someone's vaccination status. To me that seems like a

severe violation of my fundamental constitutional rights to either get a vaccine or not. If my doctor—and this is just Jeff Leach's opinion—I just want to pass the bill and go home. My opinion is that employers shouldn't be asking these questions. It should be between me and my doctor and if there's a medical reason or religious reason or a reason of conscience for me not to get a vaccine, under most circumstances, that's none of my employer's business.

ANCHÍA: Let's say that the employer, as most employers did, had a waiver on getting vaccinated for people who had an objection, a religious reservation, or some other reason—adverse health—and they ask that employee to stay home. Again, this is during the height of a COVID outbreak, right?

LEACH: Representative Anchía, I understand. But I am increasingly, even as we stand here right now and have this conversation, I don't want Texas employers to be determining whether they believe that my religious views are sincerely held. These are going to be litigated ad nauseam and I certainly don't want certain courts in this state to inquire and through discovery investigate me and my religion or my relationship with my doctor. That's none of their business. My decision whether to get a vaccine or not should be protected.

ANCHÍA: But you would agree that it is the business of a business to protect its employees, would you not?

LEACH: Sure. We do that all the time. You've got to wear a hard hat on construction zones, we don't tolerate sexual harassment. But it's very different than a vaccine that remains in your body forever.

REPRESENTATIVE BUCY: Listening to your layout, I think one of the things some of us that are hesitant to support this bill are struggling with is trying to understand the scope of the problem we're solving here. Outside of social media and Twitter, I'm not hearing about a lot of business practices having these restrictions even during the height of COVID here in Texas. Is this a rampant problem happening in the State of Texas?

LEACH: Well, rampant I don't know. But I think that one employee who loses his or her job because of his or her decision not to get a vaccine is enough for this legislature to act and set forth the policy of this state. We, during the COVID pandemic—this body, all of us—remember those moments where we had to make public policy decisions some of which looking back on were right and some of which looking back on I think we would do differently.

BUCY: Sure. I agree with that.

LEACH: And allowing policies in the state for either public or private employers to be able to fire employees for not getting a vaccine—I don't think that should be the policy of the state. I don't know if it's rampant, but we have an opportunity here to set forth what the policy of this state is.

BUCY: I appreciate your point that we would do things different in hindsight, but what we're talking about right now is during an emergency outbreak people have to act quickly. So, yes, in hindsight we would do things differently but this

bill—if I'm understanding it correctly—will tell small businesses and private businesses that they no longer have the right to act quickly to protect the rest of the people in their community space.

LEACH: That's not accurate.

BUCY: It's not?

LEACH: Again, I don't want to get into a discussion here about the vaccine itself and its effectiveness at preventing the spread of COVID or protecting someone from transmission, but those conversations are reserved for the experts. But I will tell you that I'm equally troubled about Texans losing their right to work during a pandemic. When the economy was shuttered—we shut down businesses. We shut down, in parts of this country, churches. We told people you cannot worship.

BUCY: Well, this won't take away executive action right to do that will it?

LEACH: We so severely and substantially violated the constitutional rights—allowed, I should say, the constitutional rights of American people to be violated that it's incumbent upon us—

BUCY: Mr. Leach, wouldn't the executive still have the ability to do that?

LEACH: Let me finish. It is incumbent upon us now to set forth the policy of the state.

BUCY: I'm trying to ask you a few questions from the back mic. Wouldn't the executive still have the ability to do that? When you're talking about an emergency situation I'm saying—and I agree with you, in hindsight we would do things differently. But we're talking about emergency breakouts and we're talking about protecting all of the people in the workspace because somebody's actions in this case aren't living in a bubble. It will infringe the rights of others. So a business wants to protect the individual rights of others and this bill takes away that authority of local business, does it not?

LEACH: I don't believe it does. I believe employers are still fully capable and able to protect their employees under the terms of this bill.

BUCY: So as Representative Anchía was pointing out, they'll be able to send people off—they won't be able to do that under this? If I have a medically fragile employee—

LEACH: Mr. Bucky, you've got to let me answer your question.

BUCY: Yes, sir.

LEACH: Employers will not be able to take adverse employment actions against employees who decide for whatever reason not to get a vaccine.

BUCY: Sure. I run a small business, if I have a medically fragile employee and the only way that I can keep them safely there is to make sure everyone else is safe by getting a vaccine. In a situation like this I lose the right to protect that employee under this bill? Is that correct?

LEACH: That is not correct.

BUCY: They're medically fragile, they're not able to get the vaccine so that's an exception so I need to protect them.

LEACH: In a small business setting under your hypothetical—you've flipped the script. You absolutely flipped the script. Hold on, one person who is not able to be vaccinated so you're going to require all the other employees to be vaccinated in order to keep their jobs?

BUCY: Yes, because it's a medically fragile employee. They're the one that needs to be protected in this case and they don't have the choice and you're saying that someone that doesn't—

LEACH: I don't believe that needs to be the policy of the state.

BUCY: —and has the choice should infringe on their right, is that not correct?

LEACH: No. Patently on its very face, no.

BUCY: So it's okay to infringe on the medically fragile person's rights?

LEACH: Absolutely not. You can do both. You can protect your employees and protect their fundamental rights and liberties as well.

BUCY: So I can protect the medically fragile employee by sending the well—

LEACH: Can you speak up?

BUCY: Yeah, I'm sorry.

LEACH: Thank you, Representative Bucy, I'm just having a hard time hearing.

BUCY: No I understand, Representative Leach. I just want to make sure that I'm going to understand because with all due respect, when we get on social media this seems like Texas has a crisis going on with this. But as you saw in committee, the Texas Workforce Commission said in the last year they've only received seven complaints in a state of 30 million. So I'm just trying to understand is this truly a crisis that rises to our level that we need to be taking more seriously? Or is this just something with a lot of chatter around the world, one? And two, I'm concerned about protecting my employees and that one person's actions infringes on the rights of others, and I won't be able to keep a place that protects all employees under this bill.

LEACH: You just hit the nail on the head. Protect all employees.

BUCY: Yes.

LEACH: Not just the vaccinated ones. Not just the unvaccinated ones. Protect all of them.

BUCY: But you want to now say that I no longer have the right, under this bill, to protect the medically fragile employees.

LEACH: That is not accurate. It's not accurate. You just can't require someone to get a vaccine that will stay in their bodies for the rest of their lives potentially with very harmful results and repercussions for them for which they have no recourse. All this bill says is you can't do that in Texas. That's it.

BUCY: Well, it does more than that though because now as an employer I can no longer protect that vulnerable employee. So then I have to adversely impact them because they don't have a right to protect this employee that you're choosing to pick and choose in this battle, right? About who has the rights over the others. Where currently the system with only seven complaints in a state of 30 million doesn't seem broken. And right now as a private business I get to make those private decisions to ensure the rights of all of my employees.

LEACH: This bill protects the rights of all employees. And it protects employers' rights to keep their employees safe.

BUCY: I definitely hear you when you say that your intent is to put an individual's choice of an employee over a private business's choice to protect all employees.

LEACH: That is not accurate. That is absolutely fundamentally not accurate and I don't appreciate that misrepresentation of what I said. I've been very clear about what this bill does. Employers can still protect their employees—they should. Not only are they allowed to, but everybody in this room agrees that they should.

BUCY: Representative Leach, go back to my scenario—

LEACH: Representative Bucky, I'm sorry but you've got to let me finish my comment. You just have to.

BUCY: Go for it.

LEACH: I've been respectful and I'm letting you start and stop—

BUCY: I just need to understand how I do that as a small business owner—

LEACH: At the same time that those employer's rights are protected, we are not going to allow an employer to fire an employee for not getting the COVID vaccine. Period. If you disagree then vote against the bill.

BUCY: Sure, but it's beyond firing right? I can't tell that employee that refuses to get the vaccine to work in another room, right? To work from home, right?

LEACH: You just can't take an adverse employment action against them.

BUCY: Would that not be considered adverse? If I change their shift? If I change their work schedule?

LEACH: That's not our job here. That's not our job here to list every single hypothetical.

BUCY: But we're writing the law that defines it.

LEACH: Man, I cannot have a constructive debate and discussion with you if you don't allow me to answer your questions. I've been very clear about what the bill does. I can't help you if you won't allow yourself to be helped.

BUCY: I agree about your desire for the bill. I'm saying that's not what the bill does.

REPRESENTATIVE HOWARD: I assume you know that right now hospitals that require employees to be vaccinated against the COVID-19 vaccine can and do offer exemptions for those who do not want to be vaccinated. In fact, the Texas Health and Safety Code allows for exemptions for medical reasons, prohibits discrimination or retaliatory actions against exempt individuals, allows hospitals to provide exemptions for reasons of conscience including religious beliefs, and subjects hospitals to administrative and civil penalties for violations. That is what currently exists, so what I'm trying to figure out here now is why are these exemptions already in place insufficient that they would need to be included in this bill?

LEACH: So you correctly stated the law. The problem with the current law—and I think it's a deeper discussion we need to have in this body—is those exemptions are routinely denied. Routinely. Those exemptions are routinely denied by employers and so what is an employee left to do when you, as my employer, tell me that my religious belief is not sincerely held or the medical advice that I got from my doctor to make this decision is not right? I shouldn't have to go hire an attorney and pay a bunch of money to protect my constitutional rights. That's what like bill is meant to protect.

[Amendment No. 1 by Harrison and Schatzline was laid before the house.]

[Representative Zwiener raised a point of order against further consideration of Amendment No. 1 under Article III, Section 40, of the Texas Constitution on the grounds that the subject matter of the amendment is not included in the governor's proclamation. The point of order was sustained, and the ruling precluded further consideration of Amendment No. 1.]

[Amendment No. 2 by Harrison, Schatzline, Tinderholt, and Toth was laid before the house.]

REPRESENTATIVE HARRISON: Texas must protect all Texans from these tyrannical COVID vaccine mandates.

[Representative Zwiener raised a point of order against further consideration of Amendment No. 2 under Article III, Section 40, of the Texas Constitution on the grounds that the subject matter of the amendment is not included in the governor's proclamation. The point of order was sustained, and the ruling precluded further consideration of Amendment No. 2.]

[Amendment No. 3 by Cain was laid before the house.]

REPRESENTATIVE CAIN: We'll find out how this works, but the idea, guys, was to try to make something broad enough to include students—nursing students, medical students, and those that are here in those medical facilities. Of course, we're restricted by the rules. I know the sponsor of this bill, Representative Leach, has worked really hard on trying to find a way to make that everybody's protected. Of course, as you know, we have rules and right now it can only apply to private employers. So what this amendment does is defines the term contractor for that bill as a person who undertakes specific work for an employer in exchange for a benefit without submitting to the control of the

employer over the manner, methods, or details of the work. Of course the benefit doesn't have to be financial gain. That benefit could be a diploma, a certification, rotations, clinicals, and other things for those that are working there in the medical schools.

LEACH: This amendment by Chairman Cain is well-intentioned and this is an issue that is very important. It's an issue that I've been working diligently on over the past couple weeks to try to figure out a way to include medical students and nursing students in the bill. If this bill passes as is in front of you now, without this amendment, I think it's arguable—I could be wrong about this, but I think it's safe to say that the only population of Texans remaining subject to COVID vaccine mandates would be medical students and nursing students. I don't think that should be the policy of the state. I think our medical students and nursing students should be protected. And I've been working really hard with our senate counterparts and many of you and, importantly, the governor's office to achieve that policy. At the same time, we have house rules that the vast majority of us, including Representative Harrison, voted for. And I see no amendments to our house rules from Representative Harrison and others seeking to clarify this provision of the rules. So these are the rules that he supported, which he did not seek to amend, and we have to follow our rules. When a bill or an amendment violates the call of the governor in a special session, which previous amendments did, then we have to follow our rules. But I appreciate Representative Cain in his infinite wisdom in getting creative and figuring out a way to do this. And that's what this amendment does. So I'm going to—I would accept the amendment, but there's a standing request for record votes so we're going to be voting on this. I'm going to be voting for this amendment.

[Representative Zwiener raised a point of order against further consideration of Amendment No. 3 under Article III, Section 40, of the Texas Constitution on the grounds that the subject matter is not included in the governor's proclamation. The point of order was withdrawn.]

LEACH: Members, we're about to vote on the Cain amendment. I would accept the amendment, it's a good amendment and I agree with it. But we're going to take a record vote on it. I'm going to be voting yes and would encourage you to do the same. I am committed to working with our senate colleagues—with you and with the governor's office—to get this language right. Let me just leave it at that. I'm going to be a yes on the amendment and we're going to work to fine tune the language and get this right before final passage on a conference committee report.

REPRESENTATIVE ZWIENER: Representative Cain, is it your intention with this amendment to create legal ambiguity that will be used to generate lawsuits against Texas hospitals?

CAIN: No ma'am. The intent of this amendment, as you can see, it's purpose is based right there in the text.

ZWIENER: Do you anticipate that this language will apply to people that do not meet the common use of the language contractor?

CAIN: You can read it just like I can. I think it's going to apply to anybody. Again, it means a person who's instructed by an employer to complete a task pursuant to any written or oral agreement which provides a benefit from the employer to the person.

ZWIENER: All right. Thank you.

[Amendment No. 3 was adopted by Record No. 8.]

[Amendment No. 4 by Turner was laid before the house.]

REPRESENTATIVE TURNER: Members, this amendment is designed to provide some important balance that I think is needed in this bill. Specifically, what this amendment does is it allows health care and child care facilities to require their employees to be vaccinated for COVID-19 if they believe it is in the best interest of their employees and those in their care. This amendment is about protecting Texans, especially the most vulnerable Texans among us.

Think of the cancer patient or the heat attack victim at a hospital. Think of a 90-year-old Texan, one of our parents or grandparents possibly, in a nursing home. Think of a woman with a high-risk pregnancy. Think of the youngest among us. It's also about protecting the health of those workers who care for vulnerable Texans because we can't afford for them to be sick and miss work. During the height of the COVID pandemic, some of our most vulnerable, elderly Texans were living in nursing homes with shared rooms, communal spaces, and staff moving from one patient to another. The consequences of this, I don't need to remind you, were catastrophic. At the height of the pandemic in 2020, nursing home residents were 108 times more likely to die from COVID-19 than members of the general public. I'll repeat that—108 times more likely to die.

Health care workers care for all of us when we're sick or hurt and at our most vulnerable. Doctors and nurses often come into close contact with people with weakened immune systems, including patients fighting cancer, recovering from organ transplants, and fighting chronic diseases. These immunocompromised patients require a higher level of care. It's expected for a health care provider to take additional measures to protect their lives. It's their mission. These measures aren't new or foreign to any of us. Measures that include hand washing protocols, instrument sterilization, protective equipment—PPE—and the prohibition of smoking, in addition to, yes, vaccines. It's not new.

So why is this bill singling out vaccines? I'm not a doctor and that's why I listen to medical professionals, the people who are public experts in the field of public health. What public health professionals will tell you is that the COVID-19 vaccine has proven to be effective in preventing the mass hospitalization and death of individuals across this country. In fact, within the first 10 months that this vaccine was made available they saved more than 200,000 lives and prevented more than 1.5 million hospitalizations in this country. If experts are telling us that the COVID-19 vaccine will allow them to care for their patients more safely with increased chances of better outcomes, why would this legislature tie their hands? Health care workers are the experts in healing and saving lives and we must allow them to continue to have the trust,

respect, and flexibility to manage vaccine requirements in their own facilities. I would add that—specifically to hospitals—by prohibiting hospitals from making these decisions, we are likely to cause their quality rankings to decrease which could cost them valuable federal Medicare payment dollars.

Members, lives of the most vulnerable Texans will be at risk if we pass this bill as currently written, so I would encourage the members to adopt this amendment to provide some necessary balance in this bill and protect the most vulnerable Texans in our state.

HOWARD: Thank you for reminding us about the fact that the health care providers are the ones who have the expertise here and who are in place to provide care to all of us and to protect those that they work with and those that they serve. I remember when COVID was full force going in our state and we had "Heroes Work Here" banners all over the place for the people that were going to work everyday while we were waiting for a vaccine and, as you point out, that was very effective in curbing the spread. Right now, I think you pointed this out, research indicates that the COVID-19 vaccine was more than 90 percent effective at preventing mild, moderate, and severe disease symptoms. If you recall, Governor Abbott actually mandated hospitals to not provide nonemergency surgeries and procedures because we had no capacity in our hospitals. The vaccine allowed the hospitals to get back to regular functioning by preventing the severity and the hospitalizations that were occurring during the peak. Would you not agree?

TURNER: I would absolutely agree. We have seen and, unfortunately, continue to see the aftereffect of what happened during the pandemic where nonessential surgeries, procedures, and tests were postponed indefinitely just because the hospitals were just crushed by the volume of COVID patients. A lot of folks went for a long time without necessary screenings or other treatments that maybe weren't an emergency like COVID was at that time, but still very important for their health. We continue to see the aftermath of that, Representative Howard.

HOWARD: Absolutely. Despite ample research to the contrary, allegations that the vaccine isn't safe have dominated the conversation. Data from tens of thousands of participants in clinical trials showed that the vaccines are safe and effective at preventing serious disease or death due to COVID-19. Can you speak about the safety of the vaccine?

TURNER: Sure, Representative Howard. You're exactly right. The COVID-19 vaccine is safe and it is the best defense against COVID-19. There's no dispute about that. People have raised some various safety concerns. One of them is we don't know what's in the vaccine. Well, we do know what's in the vaccine. In fact, the ingredients in the vaccine are found in many other medicines that we've taken for a long time—ingredients that are found in the food that we eat. The fact is the technology used to develop the vaccine has been in development for years prior to the pandemic and that's why the manufacturing process, fortunately, was ready to go at the beginning of the COVID-19 pandemic.

HOWARD: You mean with Trump's Warp Speed?

TURNER: Operation Warp Speed, absolutely. And the speed at which the vaccine was developed and approved to go to market is indicative of how far, thankfully, medical science has evolved and what can be achieved when government does cut unnecessary red tape and allows researchers and scientists to do their job to save lives.

HOWARD: So rather than perpetuating falsehoods, should we not be focused on getting people more access to the vaccines that can actually protect public health?

TURNER: That's exactly what I think we should do. At the very least what we should not do is say to a nursing home, a hospital, or a child care center that you do not have this vital tool to protect the health and safety of your patients or those in your care.

HOWARD: If you look at what the Department of State Health Services has here on their website that between March 6, 2020, and May 10, 2023, Texas had 92,378 fatalities related to COVID. During the peak of COVID, we had up to 386 deaths a day. The fact is that we have Texans who have lost their lives to this disease and but for the vaccine more would have done so. Is that not correct?

TURNER: That's absolutely correct. In the conversation with the bill author when we heard this in the State Affairs Committee last week, we talked about the fact that the pandemic peaked in January of 2021, incidentally the month we came into regular session here. As the vaccine began to be widely distributed in the first part of 2021, that's when we began to see the pandemic abate.

HOWARD: Exactly.

TURNER: That's when people started feeling safe to go out to eat again and people stopped wearing masks all the time. It's because the vaccine was successful in stopping the rapid spread of COVID-19. Thankfully, while it's still with us, no doubt—that's why it's important to take a booster shot if you haven't already. I know you have because you're a nurse. Thankfully, thanks to the vaccine, the pandemic is nowhere near the public health threat it was three years ago or two and a half years ago.

HOWARD: Let me just also clarify that we're actually referring to the COVID vaccines now as a shot just like a flu shot because it's not really a booster of what you got before. It's evolving with the variants that come out just like every year we get a flu shot based on what the flu variants are.

TURNER: That's exactly right.

HOWARD: Let me just also say people look to their hospitals for all kinds of experiences. Not only to treat their illnesses, but it's also where joyful experiences occur normally with the birth of babies. Thank you. You've got a good amendment. I want to protect our hospitals.

LEACH: I appreciate Representative Turner bringing this amendment. The language as is has been carefully crafted with stakeholders including our important stakeholders in the medical community—doctors, physicians, experts,

virologists, our hospitals, and many of you. So I'm going to oppose this amendment, members. I'm going to ask you to stick with me on the amendment and vote no on this. We like the language as is. I ask you to support the language as is that's been carefully crafted in conjunction with those stakeholders.

REPRESENTATIVE COLLIER: Chair Leach, earlier you said employers can still protect their employees. This amendment would exclude certain health care providers and child care facilities. Is that what your understanding is?

LEACH: That's my understanding of the amendment, yes.

COLLIER: When you said that employers can still protect their employees—or the contractor—my question is surrounding the type of protection that can be provided. Because in the State of Texas they're not permitted to mandate masks, right?

LEACH: Who is they?

COLLIER: Employers. Can employers require their employees to wear masks?

LEACH: I don't—I understand the intent of your question. I don't want to say definitively yes or no because that's not the current bill that we're on, and I don't want to say something that's wrong. I believe that hospitals—and actually under the terms of this bill as is—hospitals and medical institutions and facilities can still require PPE, but they can't require the vaccine.

COLLIER: Just wanted to clarify then. So it's your understanding because you said employers can still protect their employees—and we're talking about the health care facility and the child care facility. If one of the protective measures that they come up with is to require those who do not have vaccinations to wear a mask, would that be in violation of the provisions of this bill?

LEACH: The bill as is—that's a great question. The bill as is on page 2, lines 10 through 25, relates specifically to a health care facility or health care provider including a physician. Those terms are defined, and it says what a health care provider, facility, or physician may establish. They can enforce a reasonable policy that requires the use of PPE but not a vaccine. The answer to your question is yes.

COLLIER: Yes. Yes, they can require masks. What about COVID testing? If an employer wants to require employees to be tested for COVID-19, is that permitted under the provisions of this bill?

LEACH: That is not the subject of this bill, and I don't believe that this bill affects that.

COLLIER: So they can still require testing?

LEACH: I'm not saying that. I'm just saying that this bill does not affect that.

COLLIER: Then the follow up to that particular question—the one we're talking about. If the employer is not allowed to mandate a vaccine for COVID-19 if they are testing, which would not be prohibited under this bill—if they are testing and that person does test positive for COVID-19 would the employer, in order to protect their employees, be allowed to send that employee home from work?

LEACH: Representative, this bill, again, thank you for your question, this bill does not affect that one way or another. This bill specifically relates to vaccine mandates. In the context and under the structure of the bill it bans vaccine mandates.

COLLIER: Okay, so then that's the protection in terms of sending someone home, a mask, or testing would still be allowed because they're not covered in this bill?

LEACH: Representative, this bill does not affect that.

COLLIER: Thank you.

LEACH: Thank you for your questions. Members, I ask that you stick with me. Let's protect the carefully crafted language of **CSSB 7** as is which protects the ability for health care providers, institutions, and facilities to protect their employers and importantly their patients, including vulnerable populations and the immunocompromised. With that members, I'm going to vote no and ask that you join me.

TURNER: Members, I appreciate the body's time on this, and I'll be brief in my closing. I just want to share a couple of key statistics because, again, this is about protecting the most vulnerable Texans—your most vulnerable constituents, your most vulnerable family members, and friends.

I want to talk specifically about senior citizens for a second. Senior citizens, as I think everyone knows, are the most vulnerable to COVID-19. In fact, between January and August of this year senior citizens accounted for more than 62 percent of all COVID-19-associated hospitalizations, 61 percent of ICU admissions, and 88 percent of in-hospital deaths. Obviously, as we've already covered, nursing homes are incredible opportunities for COVID to spread which is why we need to do everything possible to protect those very vulnerable, and for the most part elderly, Texans. Furthermore, people with serious health problems—we're talking about people who have a heart or lung condition, a weakened immune system, even obesity or diabetes—they're also at a higher risk of developing dangerous complications from COVID-19. I would just ask you to think about those Texans, those people that we all represent, we all have people in our districts who fall in these categories, and they need every bit of help they can get in fighting against a disease that while for most of us is not real serious if we get it anymore, but for some of us is, potentially, a death sentence. I would ask you to do everything you can to protect them. You can do that by voting to adopt this amendment.

I'll say that the bill author said that he had worked with stakeholders, which I totally don't doubt at all. I know he does a good job of that. But what I would say to you, members, is that each one of you is a stakeholder. We are the definition of stakeholders. We are elected representatives for nearly 200,000 Texans. You have a stake in this process. So just because some other stakeholders met privately to negotiate the language in the bill does not mean you don't have a voice in this process. You do have a voice and for those of you worried that this may be a politically tough vote, I would just say I would love to

understand how someone can attack you for voting to save someone's life, voting to save an elderly Texan's life in a nursing home, in a hospital, saving a child's life in a day care center. I don't know how that can hurt you. I think it can only help you. I know it will help the people of Texas. I would ask that you vote yes on this amendment.

[Amendment No. 4 was failed of adoption by Record No. 9.]

[Amendment No. 5 by Anchía was laid before the house.]

ANCHÍA: I appreciate the dialogue that Chairman Leach and I had previously regarding activities by an employer that would not be considered an adverse action. We had these discussions in committee, as well. It's important as employers are trying to deal with protecting the health and safety of their employees, complying with federal law, complying with state law, and at the same time dealing with the prohibitions in this bill that we give them clear guidelines. I think the one thing that Representative Leach and I would agree on is that people should not be fired for refusing to take the vaccine—fair. This bill goes far beyond that. It applies to contractors. That contractor definition has been expanded now via amendment by Representative Cain, so that creates a lot of uncertainty for Texas employers. As an entrepreneur who has 50 employees, I think it's really important considering the possible adverse consequences for Texas businesses. We dealt with this in the back and forth. Any of you who are entrepreneurs and employers understand, potentially, the consequences of the current bill. In fact, an employer who runs afoul of provisions of this bill would be subject to adverse actions or complaints from the Texas Workforce Commission, penalties associated therewith—currently \$10,000, I know there's some proposals to increase that—injunctive relief by the attorney general, and most difficult for employers is a possible criminal referral. We had Ed Serna, the head of the Texas Workforce Commission, tell the State Affairs Committee that in fact there are criminal referrals that are sent to local DAs for prosecution from the Texas Workforce Commission for violations of bills like these. That's pretty serious for Texas employers. What this amendment seeks to do is provide some safe harbors so that Texas employers are not subject to the vagaries of a reasonableness standard. We want to be very explicit here and say in the law these things are not considered adverse actions and all of them fall short of termination and far short because that is the one part of this bill that I think the bill author and I agree on.

So I just want to detail them for you. If you look at FAS, you'll see them specifically in Subsection (b). The following actions taken by an employer with respect to an employee or contractor—and this is important—to protect the health and safety of individuals at the employer's worksite. So there has to be an original litmus test that you're engaging in these activities to protect the health and safety of employees at your worksite. These will not be considered adverse actions under the bill.

First, offering the employee or contractor the opportunity to work remotely. This is reasonable. We see Texas employers doing it all the time. We did it in our company.

Number two, asking the employer or contractor to used PPE. I'm very, very pleased that in the dialogue, which has now been reduced to writing, with the bill author he and I are both in agreement in our intent that his bill does not prevent employers from asking employees who are unvaccinated to use PPE. I think that's positive. We would be including it as a safe harbor in this amendment.

Number three, moving the employee's or contractor's work space to another area of the employee's or contractor's current worksite. Remember during the height of the pandemic, members, when there were outbreaks potentially in many of your work places that were getting people very, very sick? You may have colleagues that are immunocompromised, that are senior citizens and in the highest risk group, and that you just may not want an outbreak in your company. Why? Because it deals with your bottom line. If you have an entire department that is wiped out by COVID you are less profitable, right? Your sales department, your accounting department—if people are sick en masse in your company and you have been prevented from moving them to other parts of your business that deals with your bottom line. That makes you less profitable and that, really, is a burden for Texas businesses. So reassigning an employee's or a contractor's work responsibilities without adversely affecting the employee's or contractor's compensation or benefits, that should be allowed as well. We should be able to tell Texas businesses very clearly that these things are permissible and will not give rise, not only to a TWC workforce action, but also to a criminal complaint.

Finally, if you look under Subsection (5) of the bill, if during a statewide or local public health disaster declaration or a regional public health emergency—and again, we don't know what COVID's going to do in the future, how it's going to mutate, how it's going to impact populations. If at that time you offer an employee or a contractor a leave of absence, paid with full benefits, during the period of the disaster that is also a safe harbor and allowed.

Members, these are very reasonable, but they're also providing predictability to our business community statewide so that they can act under their legal obligation to keep their employees safe and, at the same time, not be subject to TWC action or criminal referral to their local DA. That is what our businesses are going to be dealing with under this bill. We should be explicit in allowing them to take these reasonable measures in statute. With that, members, I appreciate your time and attention and I move adoption of the amendment.

LEACH: Members, I appreciate Representative Anchía bringing this amendment. It's an important discussion. That said, the language has been carefully crafted with stakeholders and with our senate colleagues, including Senator Middleton, the author of the bill. While I appreciate the intent of the amendment and am committed to continuing this conversation, I'm going to oppose the amendment and ask that you would stick with me and vote no.

ANCHÍA: You know the great part of being in the legislature is despite the fact that stakeholders who are outside this body may have worked on this we actually get to offer up our ideas just like Representative Cain did previously in an amendment that the author supported. So I consider it an incomplete objection to this amendment to simply say "Well, this has already been crafted," because we've already changed the bill here on the house floor. The balance that you need

to offer up here, members, to the rest of the State of Texas and Texas business is are we going to create safe harbors for employers so that they are not dragged before TWC or subject to criminal complaint or subject to attorney general injunction, right? These are very, very reasonable measures. These are things that employers can do without impacting the employment, right? In none of these cases are people fired. I agree with the author that people should not be fired for refusing to get vaccinated for COVID-19. I think that's fine, but we are going to give very bright lines to employers to say that if you engage in these activities they will not subject you to adverse action by the state and they are not considered adverse action against employees.

Members, this is very straightforward. Any of you who consider yourselves pro-business, we're giving our business community bright lines so they are not subject to this bill. I urge you to vote in favor and I move adoption.

[Amendment No. 5 failed of adoption by Record No. 10.]

[Amendment No. 6 by Toth, Schatzline, Harrison, and Tinderholt was laid before the house.]

REPRESENTATIVE TOTH: This amendment increases the administrative penalty for violating this bill. I had a giant medical center this past year tell me, "Representative, you have your laws. We have our laws." So let's remove any confusion. We're elected to create the law. That is a serious matter and the purpose of good law is to protect and preserve natural rights. And so this amendment takes the administrative penalty from \$10,000 to \$50,000.

LEACH: I'm proud to stand up here with my colleagues Representative Harrison, Representative Schatzline, Representative Tinderholt, and the author of this amendment which I just saw, Representative Toth. We have in front of us, as is, the strongest COVID-19 mandate ban bill in the entire country. The senate sent over a bill that would have allowed—with a very weak penalty provision, frankly—that would have allowed a fine of only \$1. One dollar. This house, by way of the bill that was passed out by the State Affairs Committee has the ability to increase that to \$10,000. This reckless, unfounded, and frankly I think bordering on ridiculous and silly amendment increases that fine to \$50,000 and jeopardizes the bill. I think it's very likely that if this amendment goes on that things will be delayed so substantially in the senate that it could kill the bill, members. It is very likely to do so. Senator Middleton—I've communicated with him about this—he is opposing this amendment and I would ask you to stick with me and Senator Middleton to protect this bill. The strongest COVID-19 vaccine mandate bill in the country and vote no on the amendment.

HARRISON: You made reference to the senate author of the bill as well as your communications with him. Are you certain that you want it to be your position that the senate author of this bill would oppose this amendment? And have you discussed this amendment with him today?

LEACH: Well I talked to Senator Middleton about the bill as is, Representative Harrison. We had communicated earlier and are committed to protecting the bill. I haven't talked to him specifically about this amendment, but they sent over a

bill out of the senate that would allow a \$1 fine. So in communications with the senate we agreed on \$10,000. Ten thousand is a strong fine and it's going to deter this activity in the future and I would ask that we be strategic and smart about a bill that can withstand judicial scrutiny and actually be effective and enforceable.

HARRISON: I appreciate that. I don't expect the answer to the next question to be yes, but are you aware that I have spoken to the senate author of this bill about this exact amendment today and that he let me know he fully supports this amendment and that it would pass in the senate?

LEACH: Okay, so I've been doing this long enough to know when there are efforts underfoot, and I see you. There seems to be an effort underfoot, right now, that I can see for a vast majority of you to vote yes on this amendment because you want to kill the bill. So what I'm going to do is—we're going to vote on it. I'm going to vote yes on the amendment and I'll ask you to join me so that we can save the bill. And then I'll work with Senator Middleton who's been working with me very collaboratively and many of you, as well, on getting this right and we'll get a bill back to you that is still, I promise, the strongest COVID-19 vaccine mandate ban in the country.

REPRESENTATIVE WU: We're asking you to vote three—PNV—on the amendment.

TOTH: At the end of the 87th Session, I actually had a hospital in my local area upon refusing to allow a counselor in to see a patient after we had just passed legislation enabling that to happen, said "Representative Toth, you have your laws and we have our laws and we choose to disregard your law." Even after I had taken this bill, printed it out with the governor's signature on it, they had the audacity to say, "you have your laws. We have our laws." Please pass this amendment.

ZWIENER: Representative Toth, my understanding of the underlying legislation is that it applies to employers of any size. Is that your understanding as well?

TOTH: Correct.

ZWIENER: So that means if somebody has one employee or one contractor this legislation applies to them?

TOTH: Correct.

ZWIENER: We've had a lot of conversations in this chamber about concerns about whether or not smaller employers are capable of complying with complex regulations. I know the standard still in Texas is that rules against racial discrimination don't apply unless you have 15 or more employees. Are you concerned that you raising this penalty to the amount of \$50,000 is going to create an unreasonable burden on small Texas businesses?

TOTH: I'm concerned about the unreasonable burden it causes on anybody to lose their job when they are told that a vaccine was potentially dangerous to them and so they didn't do it and then they lost their job.

ZWIENER: So you're okay with your language putting potentially small—

TOTH: I guess I'm more concerned about the small employee than I am about the employer, yes, ma'am.

ZWIENER: May I finish my question? So you're okay with the state of law in Texas becoming such that a small business with one or two employees could get put out of business because of misunderstanding our COVID rules when the same business would be subject to no consequences whatsoever for firing somebody for being Black?

TOTH: I'm concerned about somebody losing their job and losing their home. Yes, I'm concerned about that.

ZWIENER: I'm sorry, I couldn't hear you because you were talking at the same time I was. Could you restate your answer?

TOTH: I'm concerned about anybody losing their job and then losing their home. Yes, that concerns me.

ZWIENER: You are fine if this legislation drives small businesses out of business?

TOTH: I own a small business. I have a dozen employees. Do you have a small business? Do you employ anybody?

ZWIENER: I do not employ anybody.

TOTH: Okay. Well, let me tell you what it's like. It's difficult. It's challenging. But at the end of the day, I have to follow the law, and I do follow the law. So any small business, whether you have one employee or 5,000 employees and are considered a large business, you have to follow the law.

ZWIENER: Representative Toth, do you think it's possible for small businesses to become confused by changing governmental regulations and make a mistake in their compliance?

TOTH: No, I don't. I stay on top of regulation changes. In fact, the reason why I ran for the Texas House was because this chamber, in 2007, passed a law that almost put me out of business. So, yeah, I'm sympathetic to overreach by this chamber.

ZWIENER: And yet, you are pushing an amendment that would create a mandatory \$50,000 fine for any violation—mandatory fine. I want to say that's not discretionary. This could be something the employer tried to fix and they could still get hit with this mandatory fine that could put that business out of business.

TOTH: Not if they follow the law.

ZWIENER: What if the employer themselves is immunocompromised?

TOTH: They'll follow the law.

ZWIENER: There are so many challenges in this bill and quite frankly, it is startling to see folks who tell us that we can't—

TOTH: Just don't mandate COVID vaccines. It's very simple. This is not a very difficult or complex situation.

ZWIENER: I'll just let you tell me when it's my turn, Representative Toth. I guess it's now. I find it startling and I'm really confused, and maybe you can explain this to me, why this body has said no to more protections against racial discrimination, why it was an uphill fight to get more protections for sexual assault—

TOTH: This bill is about banning COVID mandates, so I'm not quite sure what your questions has to do with my amendment.

ZWIENER: Why are we willing to treat this differently than every other type of regulation we put on small businesses?

TOTH: The only thing that's before us right now is this amendment.

ZWIENER: Why are we willing to use this particular hammer to drive people out of businesses when we're not willing to do the same in other important areas of protections?

TOTH: This speaks to vaccine mandates and that's what I'll answer questions about.

ZWIENER: Okay. Why are vaccine mandates more important protections for employees than racial discrimination protections?

TOTH: I'm not going to address racial discrimination. We have laws—good laws—against racial discrimination and people should follow them.

ZWIENER: They don't apply to employers with 15 or fewer employees.

REPRESENTATIVE MARTINEZ FISCHER: Representative Toth, this looks like a tax to me. Is this a tax?

TOTH: This is not a tax. Of course not.

MARTINEZ FISCHER: This is a collection of revenue from the government against private individuals. What is it?

TOTH: It incentivizes businesses to follow the law and to not hurt people that refuse to take this vaccine.

MARTINEZ FISCHER: And could you tell me anywhere else in code where we impose a \$50,000 fine on private employers for anything?

TOTH: I'm not advised and that's not before us today. What's before us today is this amendment and this bill.

MARTINEZ FISCHER: And just relative to the idea of coming up with the amendment, is that just a number you made up? Or is that based on some sort of—

TOTH: It shows that we're serious about this and relative to the issue that I raised before, Mr. Martinez Fischer, it shows the fact that if we're going to take this seriously then there has to be a serious penalty to keep people from doing this to people—businesses from doing this to people.

MARTINEZ FISCHER: I appreciate that. Just in looking at this amendment—

TOTH: You do appreciate that?

MARTINEZ FISCHER: I do appreciate that.

TOTH: Thank you.

MARTINEZ FISCHER: Looking over the amendment and talking it over, it seems like it's a tax like it's a COVID-19 tax. Is that your intent? To impose a tax?

TOTH: It's not a COVID-19 tax. If you don't want to do this, just follow the law. It's very simple. Don't put a mandate in place if you don't want to pay the fine.

MARTINEZ FISCHER: Is the fine a mandate?

TOTH: The fine is there to make sure that people follow the law. We do that here, don't we? That's what we do. I mean we put laws in place and we want to make sure that they're followed as opposed to putting hollow laws in place that never have any penalty.

MARTINEZ FISCHER: Right. And I guess when I say this is a mandate or a requirement and you say that it's an incentive, does an employer have the option to not pay it if they don't want to?

TOTH: The employer has the option of not mandating COVID-19 vaccine mandates.

MARTINEZ FISCHER: We're speaking about the amendment which is about your fine or your tax. So my question is if it's not a mandate, if it's not required that they pay the fine, then there is no penalty for them to not pay this?

TOTH: This is a self-imposed fine. If you choose to violate the law, you are choosing to pay this fine.

MARTINEZ FISCHER: What are the consequences for not paying the fine?

TOTH: My amendment doesn't speak to that, Mr. Martinez Fischer.

MARTINEZ FISCHER: Well it should because we are about to put a fine on any private employer that may disagree with what you are doing and that may be their choice. Just like it's your choice—

TOTH: If they choose to disregard the law, that's their business. If they choose to disregard the law, then they will—I mean just before you were up here, Ms. Zwiener had said what if they don't know about it? Now what you are saying is they do know about it, but they simply choose not to follow the law.

MARTINEZ FISCHER: I'm just trying to understand the intent. If the intent is there is going to be a fine. I said, is it a mandate? Are they required to pay it? You said it's an incentive. I said okay, well, if they're not required to pay it, then what are the consequences for an employer, pursuant to your amendment, if they just say "I'm just going to ignore this"?

TOTH: Mr. Martinez Fischer, this was a \$10,000 fine. It's going to \$50,000. We had talked with the senate about it. They approved it. They liked it. So that's what we're doing. We're not removing it. This is still going to be there.

MARTINEZ FISCHER: I can ask the question again. What are the consequences if an employer chooses to not pay this fine? You're having trouble hearing me? I'm just saying, what are the consequences? We have a fine. Whether it's \$10,000, \$10, or \$50,000, what are the consequences if an employer says I'm not paying that fine? This is a Texas, pro-business, low-regulatory environment. For that regulatory certainty, what happens if an employer doesn't pay the fine?

TOTH: The purpose of government is to protect and preserve natural law. You have rights. I have rights. Ms. Zwiener had talked about racial discrimination and living free in this state.

MARTINEZ FISCHER: We don't have to be up here very long. We are Texas. We are pro-business. We're a low-regulatory state and we believe in regulatory certainty. You have proposed an amendment now that will fine Texas employers \$50,000 for each violation of this proposed Act.

TOTH: Correct.

MARTINEZ FISCHER: My question for the fifth time is what are the consequences? What happens if an employer refuses to pay the fine?

TOTH: The bill doesn't address that nor does the amendment. Do you know of anybody that's lost their job, Mr. Martinez Fischer, as a result of not getting this vaccine?

MARTINEZ FISCHER: I know many employers that I represent in San Antonio—

TOTH: I have a friend that flies for United Airlines. He was told by his doctor not to get the vaccine because of medical issues that he had, and United made him do it anyway. Do you think that's right?

MARTINEZ FISCHER: What I think—

TOTH: Is that pro-business? Is pro-business mean more than this man's right to life?

MARTINEZ FISCHER: What I think is right—

TOTH: Does that sound right to you? Does that sound right and reasonable?

MARTINEZ FISCHER: What I think is right is that if you're going to propose an amendment to put a fine, or a tax, a mandate, or an incentive—

TOTH: Pocket change. That's what \$10,000 is to a large corporation that has mandated somebody that could lose their life if they got this vaccine. Does not matter to you?

MARTINEZ FISCHER: Representative, unlike your district, I don't have a lot of big corporations. I have a lot of mom and pops, and \$10,000 is a lot of money, \$50,000 is a heck of a lot of money. Now you just gave me an answer that you said the legislation does not address the repercussions of an employer not paying a fine—

TOTH: You can address Mr. Leach with that. I think that's proper.

MARTINEZ FISCHER: Sir, you're the author of the amendment.

TOTH: I'm not the author of the bill. The bill prescribes a \$10,000 fine. Whether it's a \$10,000 fine or a \$50,000 fine, I think Mr. Leach can address what the repercussions are of not paying the fine.

MARTINEZ FISCHER: Well, I appreciate that, but I have you here with your amendment. You have chosen voluntarily to exceed this fine limit to \$50,000. You have my attention now. I'm paying attention now. Fifty thousand dollars is a lot of money. I think it's a tax. I think it's a mandate. You said it's not.

TOTH: That's nice and you get to put that in the record after we're done with our discussion and you can ask to have that committed to the journal.

MARTINEZ FISCHER: Sure. Just like you can use words to not answer this question. We can put those in the journal, too.

TOTH: You bet.

MARTINEZ FISCHER: So again, if there is no requirement that the employer pay the tax then what are the consequences of not paying the fine? That's all I want to know. Are there none? You could just say none.

TOTH: There is a \$50,000 fine or a \$10,000 fine depending on if this is accepted or not. And you can ask the bill's author what the consequences are for not paying the fine.

MARTINEZ FISCHER: Sure. And now that you have this amendment, you have now become an author—

TOTH: I guess if there is no consequence for not paying the fine then you don't have anything to worry about, do you?

MARTINEZ FISCHER: I just want to hear it come out of your mouth. If there are no consequences, just say so.

TOTH: My amendment has nothing to do with that, Mr. Martinez Fischer, but if you'd like to see us add an amendment to it to make a more prescriptive penalty, then we can do that as well.

MARTINEZ FISCHER: No, sir. I just want to know—

TOTH: You sure?

MARTINEZ FISCHER: If your amendment goes on, and a constituent mom-and-pop business in the district I represent violates this Act and doesn't pay the \$50,000, what—that's the question—what are the consequences?

TOTH: It's the same thing if they don't pay the \$10,000 fine.

MARTINEZ FISCHER: And that is what?

TOTH: It says here on page 4, line 20, and this is directed at the Texas Workforce Commission—it says, "the commission shall adopt rules as necessary to implement and enforce this chapter." How's that? Move passage.

MARTINEZ FISCHER: Mr. Toth, I've not finished my questions, I'm sorry. So you said the commission will adopt rules. So they'll adopt rules to decide what to do with this fine?

TOTH: These rules have nothing to do with my amendment, Mr. Martinez Fischer.

MARTINEZ FISCHER: I think anytime anybody imposes a tax, or a fine, or a mandate—

TOTH: My amendment has nothing to do with line 20 of page 4. You should direct that to the bill's author.

[Amendment No. 6 was adopted by Record No. 11.]

[Amendment No. 7 by Tinderholt, Harrison, and Schatzline was laid before the house.]

[Representative Zwiener raised a point of order against further consideration of Amendment No. 7 under Rule 11, Section 2, of the House Rules on the grounds that the amendment was not germane to the bill. The point of order was sustained, and the ruling precluded further consideration of Amendment No. 7.]

HARRISON: I rise in support of **CSSB 7**, and I want to thank the bill author, Senator Mayes Middleton, who has been an incredible partner in the fight against COVID tyranny for well over a year now. And I thank the Texas Senate for repeatedly passing bills to ban all COVID vaccine mandates in Texas. I want to thank also every grassroots advocate for medical freedom whose persistence and relentless pressure on their government has led us to this victory today. And I know that the majority of you in this chamber have wanted to ban all COVID vaccine mandates for a long time. So for each of you to each of you thank you very much. That's right. It is unfortunate that we were not allowed to ban COVID vaccine mandates against one of the groups most affected by them, all of our students—college students, nursing students. No, it didn't. All of our students—medical students, nursing students, and college students—our future doctors and nurses, I'm sure you agree, deserve medical freedom too. The majority of Texans want to protect them. The majority of this body wants to protect them. The majority of the senate has repeatedly passed bills to protect them in **SB 177** and **SB 1024** to protect everybody including students. That notwithstanding, the senate has sent us a very good bill today. Texans value freedom and liberty deeply, and I truly believe you cannot have freedom without medical freedom. Since the number one role of government is to protect our god-given liberties and freedom I strongly encourage all of you to join me today in support of **CSSB 7**.

REPRESENTATIVE A. JOHNSON: When I was a little girl, I remember being in first or second grade in a public school and there was another student who had really, really long hair. Not only did she have really long hair but there were times in which the teachers would say that she was going to be in one area or we were going to be careful about being around her because for religious reasons she was not vaccinated. I remember talking to my parents about the uniqueness of that student in our class and why was she different and why were things not the same for the rest of us. My parents explained to me it was her family's religious belief that they didn't do what I did which was to go the pediatrician and get the vaccinations that I needed to go to school and that was their right to do that, but she was probably going to be okay. She was probably going to be okay because the rest of us, as a community, were doing our part to allow science to address the issues of disease. Or in the times when she was sick or we were sick, I remember my parents wouldn't send me to school. I didn't go because they were thinking about that little girl that didn't have all of her vaccinations. It really was about us being a community of taking care of the vulnerable.

This bill is the exact opposite. This bill is not a need of a priority of which we should be here in special session. We've got real problems. We've got the highest rate of uninsured kids in the nation. We've got real issues with other dire circumstances. Why are we here? Well, Mr. Harrison's been tweeting while we've been up here. He's been tweeting against the speaker while we've been up here. I bet that he's prepared for his speech to go out on his next cycle or *Newsmax* and he's got his appointment for later. I'm certain that's part of the reason we're here. I'm also certain that while we're sitting here on this bill, the governor has sent me an e-mail to ask about whether or not we want to join on this poll for this legislation. This is the epitome of pure political propaganda of which welcome to the party, corporate America. You thought you were free from the drumbeat of politics, but welcome to the party. You're up. Because for the last decade, whether it's been gun issues or whether it's been women's health, our colleagues have told us, "I just need this little thing. If you give me this little thing, I can go home and run in my primary and will be fine. They'll be satisfied." Then here you are, 10 years later, with devastating impacts on public policy because years ago somebody decided that this would play well in a primary mailer. Welcome to the party, corporate America. You just saw that my republican colleagues upped the tax on you from \$10,000 a violation to \$50,000. I understand they're going to try to strip this out in conference, but don't think you won't be back here in 2025. It's like that movie *Gremlins*. Whatever it is, feeding or watering it, you just keep feeding or watering it.

The people that elected us elected us to represent all Texans, not just your perceived primary voters, not just the people that can pay \$50 a tweet for people to rally up against you, but to take care of all Texans. I am so grateful to represent the medical center. I remember, just like you when you were a kid, learning about Jonas Salk, the man who invented the vaccine to make polio no longer a debilitating and deadly disease—somebody that we value. I remember President Bush giving the Presidential Medal of Freedom to Dr. Fauci. These folks that today will be vilified. And science will be vilified. There's a reason we're

standing here without masks and most of us are here, and it's because of the folks in the medical center who came up, created vaccines, and by God, when people got sick, kept them from dying. We should be praising them and being grateful to them, but instead they're getting chased down on social media and chased down at their homes. This is the political environment that is being created not only for our medical community, but now our businesses. Remember when people tell you they're pro-business, figure out how they vote on this bill. I'm voting no.

ZWIENER: I am speaking on this bill today because, I'll be frank, I don't have a lot of hope of changing anyone's vote, but I want to talk about the forces that are driving this bill and ask y'all to keep them in mind. The forces driving this bill are people who have made an industry out of lying to parents about the effects of vaccines on their children. I want to be really clear, vaccines are medical miracles. My great-grandmother, my gigi, I called her, had to spend a lot of extra time shopping for shoes because she had polio when she was a little girl and it got in the growth plate of one of her legs and that foot stopped growing. The leg also stopped growing, so she had to wear shoes in two different sizes and then would take one shoe to a cobbler to lift it up to try and minimize the limp she walked with for her entire life. That's because she had contracted polio, a disease that's now just about unheard of in the United States because of remarkably effective vaccination campaigns. This legislation is limited to the COVID vaccine and I'm very grateful for that because the COVID vaccine is not their real long-term target, it's every day-to-day childhood vaccine. The folks who are trying to attack the efficacy of these vaccines and trying to spread lies about potential impacts of vaccines. They are preying on scared parents who are worried about the future of their children. I've seen people in my own family be pulled in because of being worried about a child and trying to grasp, desperately, for answers. I want to ask all y'all to please keep that in mind as you talk about this legislation, as you promote this legislation, as you vote on this legislation, that vaccines play an integral role in keeping our communities healthy from things that 50, 100 years ago regularly killed children—things like measles, whooping cough, polio. We don't want those back in our communities, and I hope you will help push back against the lies that are being told against vaccines in our communities.

WU: As of today, the current number is 1,184,691 Americans have died from COVID-19, this includes the roughly 93,000 Texans. Nearly 10 percent of the whole nation's death from COVID-19 happened here. These are the numbers from not only the CDC, but our own Texas Department of State Health Services. These are our numbers. This legislation is on this floor today with the presumed luxury that COVID-19 is over and done with and it won't slaughter tens of thousands of Texans tomorrow. That is the belief here. If people were still dying by the hundreds an hour, we would not be carrying this bill right now. We would not be dealing with this bill right now if so many Texans were still dying. But you believe that because you hope that it's all done with, you pray that this is the last time we'll have to deal with it. But it's not. Go talk to your doctors, go talk to your medical professionals. COVID deaths in the United States have gone up four percent in the last few days. The virus is continuing to expand, to mutate, to

change, to grow, and to evolve. The virus that comes this winter may be dramatically different than what hit us in 2020, 2022, and for parts of 2023. But it will still be COVID-19 and our state will not be able to deal with it because we've passed provision after provision limiting not only our government's ability to deal with this, but now today we're going to say private people, private businesses who want to take proactive measures to protect your own employees, to protect your business, to make sure that the minority of people who choose not to have a vaccine, that they don't end up causing the hospitalizations and deaths of others.

The thing is, just like Representative Zwiener said earlier, the real concern is not even this bill. The real opposition of this bill is what is to come because we know that this is cracking the door open. We know that this is just the first thing that we're going to do. We will get to bills that ban other childhood vaccines, other necessary vaccines. Right now in Texas, whooping cough, measles, mumps, rubella, they're all making a hard comeback. Diseases that we thought had been eradicated from this nation are back and they're back in force in the State of Texas. Every time we do this, every time we pass legislation like this, we send a very clear message to the public. We reinforce misinformation. Look at the news articles right now. For those of you that are farmers and ranchers, the number of people not vaccinating their pets for rabies has gone up dramatically. If you work with animals you know what rabies does. You know that if a person gets bit by an animal that has rabies it is a 99.9 percent fatality rate. There is no hope. Yet we continue to pass legislation like this that reinforces misinformation. That people out in the public will look at this and say, "Yeah, you know, I think the crazy people are right. Because the legislature's passing this stuff, they must be right." There are real consequences for this and just because those consequences are not on your desk at this moment does not mean that our state is not going to have to face them sometime in the future. That future might be coming really soon because our herd immunity rates for many, many diseases throughout our urban areas are not being met. We're going to see massive outbreaks in other diseases. I urge you to vote no.

REPRESENTATIVE GOODWIN: I am very concerned about the expansiveness of this bill particularly after the amendment to it. We don't know what variants are coming with COVID-19. It's easy to say, "Well, the worst has passed," but we don't know that. As a small business owner, maybe you might say a microbusiness owner, the \$50,000 fee—fine—is very concerning. So just imagine a scenario which is one that I work within. I am a real estate broker. I hire an administrative assistant under a contract. In casual conversation I ask if she or he has been vaccinated because in one of our meetings that person will be coming into my home where I may have a family member with cancer or an infant there at that particular time. I realize it's not working out with this administrative assistant and I say I'm going to end the contract. That administrative assistant gets upset and says, "She asked me if I had been vaccinated. She let me go. I'm now suing her for \$50,000." That's a lot of money for a small business. This could crush our small businesses. So I think that, in

addition to all the other reasons that have been laid out before, that we should be thinking about the impact and the unintended consequences of this bill. Thank you.

LEACH: Members, I appreciate the vigorous debate on **CSSB 7**, and I am proud to have in front of you for final passage the nation's strongest ban on COVID vaccine mandates. I want to be very clear—

REPRESENTATIVE DUTTON: I thought I heard you say earlier that there had been a significant number of people who died as a result of the vaccine. Is that right?

LEACH: I think the studies I've read, the science that I've been apprised of, the physicians—including some in this house—that I've spoken to lead me to believe that there is a substantial question as to whether many deaths and serious illnesses have been either wholly or partially caused by the COVID vaccine. I think it's undebatable that there have been deaths as a result of the vaccine. I don't know what that number is but I think we should figure it out.

DUTTON: I'm not sure I've seen those studies myself. I've not seen studies that indicate there have been a number of people who died as a result of the vaccine. There has always been suggestions—but let me ask my final question. Are you concerned at all that the perception of this bill is that democrats are pro-business and republicans are anti-business?

LEACH: No, I fully expect at least one probably more democrats to vote for this bill Representative Dutton. To clarify my answer to your earlier question, for the record, the American Association of Physicians and Surgeons released a statement recently calling, again this is the American Association of Physicians and Surgeons, calling for a moratorium on the COVID-19 shot mandate. They said COVID-19 injections are under emergency—they were—under emergency use authorization. They said they should be considered experimental. They further went on and said that informed consent is a bedrock principle of medical ethics, yet millions of people have taken the vaccine under duress. They said that all mandates, including requirements for school attendance or work, should be withdrawn. So that's a professional association of physicians and surgeons releasing a public statement. Again, not calling into question whether someone should or should not take the vaccine, that's not our job in this body—but to protect the rights of Texans to decide.

DUTTON: I'm sorry, but it doesn't say that somebody died from the vaccine.

LEACH: Well, that wasn't the purpose of their statement.

DUTTON: I know, but I thought you said somebody died.

LEACH: Somebody died of the COVID vaccine.

DUTTON: And then you were using the study to justify that.

LEACH: Well, that's not the purpose of this bill. That's not the intent of this bill. It's to, again as I said in my opening, have a debate about what vaccines are good or bad, Representative Dutton. As I made very clear and will make clear again,

this bill is about who should decide. And I don't believe that your constituents who are working hard, supporting their families, and putting food on the table should be deprived of their right to work because of an employer who said either you get the mandate or you're fired. I believe that is a violation of theirs and mine and all Texans' fundamental constitutional rights and liberties. And I think this body should take a stand against it.

DUTTON: I agree with that even when it comes to not only the vaccine, but people's color. But I don't think the question I asked responding to your statement that people died from the vaccine—I just wanted to understand that because I had not seen that. And the study you just mentioned doesn't say that either, but what it does say is that there have been some health concerns related to the vaccine.

LEACH: Members, under Speaker Phelan's leadership, this body is about to pass the nation's strongest COVID-19 vaccine mandate ban. I appreciate the speaker. I appreciate Calendars Chairman Burrows and the members of the Calendars Committee for getting this bill and other important bills to the floor for a vote. I ask that you would join me in supporting this. I'm so grateful to have led the charge in this in the house, to have Senator Middleton help me out on this. I'm grateful to have your support and your vote. Members, this is something that this house can stand proudly behind. I hope that the senate will agree with us on this. Again, Texas citizens should not lose their right to work and should not have their fundamental liberties and freedoms violated because of COVID-19 vaccine mandates.

[CSSB 7, as amended, was passed to third reading by Record No. 12.]

SB 4 DEBATE - SECOND READING**(Guillen, E. Morales, J. Lopez, Raymond, Holland, et al. - House Sponsors)**

SB 4, A bill to be entitled An Act relating to the punishment for certain criminal conduct involving the smuggling of persons or the operation of a stash house; increasing criminal penalties.

REPRESENTATIVE GUILLEN: Members, **SB 4** squarely addresses the issue of smuggling and the operation of stash houses in our state. It targets the perpetrators of the crime, the smugglers—or the coyotes as we call them. Not those that are being smuggled, but instead those who endanger the smuggled and our fellow Texans in their pursuit of this criminal activity. This bill escalates the punishment for such acts ensuring that Texas sends a strong message of zero tolerance against human smuggling. It provides law enforcement with the necessary tools to target and to prosecute these criminals while also considering nuances such as family ties and the degree of cooperation with the authorities. In alignment with Governor Abbott's emergency items and his border security initiatives, **SB 4** is a significant step forward in fortifying our state's defenses against this type of criminal activity.

REPRESENTATIVE NEAVE CRIADO: I wanted to ask some questions of the author to make sure we have a clear understanding of this bill. This bill is not just limited to the border, correct? It has a full statewide impact, is that right?

GUILLEN: Right.

NEAVE CRIADO: Okay. It also applies to American citizens. It's not just people who are undocumented, correct?

GUILLEN: To smugglers, yes.

NEAVE CRIADO: Well it applies to any American citizen who could be arrested under this law, correct?

GUILLEN: Who's a smuggler, yes.

NEAVE CRIADO: One of the key issues that we've discussed relating to the bill is this real evisceration of judicial discretion. Can you tell us—because we elect judges to make determinations based on the facts before them. Can you tell us why you think that our judges cannot fairly determine who deserves severe punishments and who doesn't?

GUILLEN: The thrust of this bill is to set a mandatory minimum sentence for smugglers. I mean that's the whole basic idea of the bill.

NEAVE CRIADO: Right, but you are taking away a judge's power to determine. Because normally they can determine how much time that they give to a defendant who's convicted under the statute, right? So why is it that we're taking away the judge's power to determine the punishment?

GUILLEN: Because we want to make a deterrent. We want to deter people from smuggling. And so increasing the punishment and putting a mandatory minimum is our way of doing that.

NEAVE CRIADO: Have you put any evidence before the committee or before this body that mandatory minimums are deterrents? Because isn't it true, in fact, that the federal government has dissuaded mandatory minimums, correct?

GUILLEN: I'm not sure about that.

NEAVE CRIADO: Let me ask you this because also we want to get an understanding of how it works. So let's say that you have a preacher or a priest who's picking up individuals for a church service and some of them happen to be undocumented. Can you explain how folks in this particular situation are protected from a 10-year mandatory minimum jail time? How would the preacher be protected?

GUILLEN: First of all, we are not changing to definition of smuggling and so whoever it is that would get charged for smuggling after this bill passes would also be subject to it before this bill were to pass. So you talk about a priest potentially getting charged—in order to get convicted of smuggling, a person would have to commit an offense. They would have to encourage or induce a person to enter or remain in this country in violation of federal law. This is already in statute. This it not in the bill. So they first have to encourage or induce a person to enter or remain in this country in violation of federal law. They'd also have to conceal, harbor, or shield a person from detection and then they would have to do those things knowingly. There's already a high bar, in my opinion, in statute to convict somebody or to pursue charges against somebody for smuggling.

NEAVE CRIADO: The part that you are referring to is Subsection (2) of Section 20.05 of the Penal Code, but there's also another section under 20.05 Subsection (1), that says "a person commits an offense if the person knowingly uses a motor vehicle." And there's another section—so they could technically be charged for driving somebody. A priest could be charged for driving a van load of folks who don't have papers to mass, is that correct?

GUILLEN: They had to have knowingly—if they unknowingly are transporting somebody to the store or something like that then they would not be subject to this.

NEAVE CRIADO: Let's say they are knowingly transporting a person that doesn't have papers. You have a priest who is knowingly transporting somebody that they know doesn't have papers and is taking them to mass. They could be charged under the smuggling statute and get 10 years mandatory minimum jail time, is that correct?

GUILLEN: Well, if you are correct, they could be charged today. They could've been charged 10 years ago. They could have been charged last year for that. We're not doing that—we're not changing that in this bill.

NEAVE CRIADO: Right, but what you are changing is the 10-year mandatory minimum and so that's our point. That if you have a priest who's driving somebody—let me give you another example. You have an Uber driver who is picking up somebody who is undocumented and they don't know they are undocumented. Would they face a 10-year jail time?

GUILLEN: Absolutely not. I mean it would be very, very difficult to prosecute someone like that who didn't know what they were doing.

NEAVE CRIADO: What if you have a Good Samaritan who is driving somebody? They're trying to help them, and they pick them up on the side of the road, and that individual doesn't have papers. Would they be facing the 10 years?

GUILLEN: If they would, you would've heard about the story already because that's the statute. It's already there. The language in the statute is already there. This bill doesn't change that.

NEAVE CRIADO: But there's no language protecting Good Samaritans though, right?

GUILLEN: Yes, there's two sections in the code that deal with necessity—there's one that deals with necessity and another one that deals with duress. These are, again, already in the code and not touched by this bill. So those chapters—those sections of the code—would help folks like what you're talking about.

NEAVE CRIADO: Okay, let me ask you this. What if an individual is taking somebody who they know is undocumented, doesn't have papers, to the doctor? Could they be charged? They are knowingly taking them knowing they don't have papers. They can be charged and face a 10-year mandatory minimum jail sentence, correct?

GUILLEN: I believe the section on necessity would keep them from being charged or convicted.

NEAVE CRIADO: What if they are taking them to class? That may not be viewed as a necessity instead of the doctor. They could face a 10-year jail time?

GUILLEN: The way I read it they would still need to not only knowingly, but they would also need to encourage or induce the person to enter or remain in the country, and they'd also have to conceal, harbor, or shield them. So yes, if they meet all of those criteria, then yes they can get charged.

NEAVE CRIADO: Let me ask you this. Your bill also applies to a stash house, correct?

GUILLEN: Right.

NEAVE CRIADO: And a stash house—the statute refers to "uses or permits another to use any real estate, building, room, tent, vehicle, boat, or other property owned by the person or under that person's control to commit these offenses." So could somebody who is renting to somebody that they know doesn't have papers be charged with the stash house and face this 10-year mandatory minimum penalty?

GUILLEN: I think a prosecutor would have to prove that they knowingly concealed, harbored, or shielded or that they knowingly encouraged or induced them to stay.

NEAVE CRIADO: And if they do that, they'll face 10 years mandatory minimum jail time under your bill, correct?

GUILLEN: If they did that, they would currently be subject to the crime of smuggling and yes, under this bill, we would elevate the penalty.

NEAVE CRIADO: Okay, and let me ask you this. As you know we don't have a mandatory minimum jail time for murder. We don't have a mandatory minimum jail time for rape, and the federal government doesn't even provide as nearly a harsh penalty. In fact, the U.S. Sentencing Commission says the federal government issues on average around a 15-month sentence for smuggling. The 10-year sentence seems really arbitrary. Can you tell us how you decided that it would be 10 years and not seven years or five years or three years?

GUILLEN: First of all, it started with the governor's emergency item at the beginning of the regular session. So that was the inspiration of it and we drafted the bill from there.

NEAVE CRIADO: So the governor said 10 years?

GUILLEN: He was proposing a 10 year minimum, yes. So we started with that idea and we've been working with stakeholders and members of both chambers since.

NEAVE CRIADO: There's no mandatory minimum for murder, so can you tell us what the logic is in saying that this offense is worse than murder?

GUILLEN: There's plenty of other mandatory minimums in the law.

NEAVE CRIADO: But not for murder.

GUILLEN: I'm not sure about murder, but there is something. I think sexual assault. There's several others, I think.

[Amendment No. 1 by Moody was laid before the house.]

REPRESENTATIVE MOODY: This amendment would strike Section (1) of the bill which relates to stacking sentences. I do want to talk about this. I think it highlights some of the problems that Representative Neave Criado and Representative Guillen talked about in the opening of this. Not changing the underlying offenses, which may be problematic in and of themselves, but we start taking away discretion and putting in mandatory sentences. And then also in Section (1) is giving the ability to stack.

So stacking provisions are not normally used in criminal law. There's very narrow cases that we ask and give permission to stack. Those are intoxication cases with multiple dead bodies and certain crimes against children. The basic idea is if you do one thing and there is one criminal episode then you get one sentence. What stacking does is allow multiple sentences for a single act that we are carving up into multiple offenses. It's really a bad way of making laws because it actually thwarts our legislative intent. We decide as a legislature what

punishment is suitable for a crime. Stacking can turn what many of us may see as a low-level offense into the kinds of punishment ranges that we see for murders and rapes. But more importantly, the concept of mandatory minimum—especially exacerbated by stacking—is something that we have been retreating from in criminal justice for years because it's wrought untold misery in our system with no real benefit. In fact, you saw changes even under the Trump administration in 2018 to these very types of policies. People are retreating from this on the left and the right side of the aisle because there is no benefit to doing this. The concept of stacking can lead to the idea of huge exposures for individuals in our court system. Innocent people will plead guilty instead of risking trial. Criminal defense lawyers will sit with their clients and they will say, "Look, I think you've got a good case here, but if they get you on the back end of this, then you are looking at 50 years." So you are going to incentivize innocent people pleading to sentences that they shouldn't be pleading to because of the huge exposure that stacking creates. That is not a just system. This also leads to massively disproportionate sentences. Here we're talking about things like trespassing or leading officers on a foot chase. We're also jacking those up to third degree felonies with 10 year minimums. With stacking on top of that, we're going to put those all together so 20, 30, 40, 50-year minimums for crimes that in other circumstances may actually be misdemeanors—thwarting our legislative intent when we set the penalty range for these offenses.

Ultimately, if your goal is to nail the big-time traffickers and smugglers with these provisions, you are not going to get them. This law will not touch them. What this law will get is the 20-year-old kid who took \$200 from the kind of person you don't say no to anyway to drive someone from one side of town to the other. That's who you're going to ensnare with ill-thought provisions like this. We should reject this. This provision in and of itself takes away our legislative ability to set punishment ranges, and it gives no discretion in offenses that we have determined are low-level offenses and is a vast departure from what we do in criminal law across the board. We should be very weary of changing the philosophy on stacking for this purpose when over decades and decades and decades only very narrow exceptions, like I said before, where there are multiple dead bodies or where there are victims that are children where we've allowed stacking. This bill with this provision will not hit the big-time folks that you think you're going to hit. It is going to hit hard those folks that are grabbed up in this process innocently and without real education about what's going on. That's what this provision would do in reality on the front lines. Taking this out and leaving everything else in place—if we want to have mandatory minimums, if that's the track we want to go down, I don't agree with it, but if that's where we're going to go down that's one thing. Taking it and adding stacking to it exacerbates what is already a bad policy and is a vast departure from what this body has done for over decades of criminal jurisprudence.

GUILLEN: This amendment would reduce the deterrent effect of the bill by giving criminals a free ride on other crimes they commit while smuggling. The damage and harm that these criminals do to everyday Texans would go unpunished with this amendment and we need to hold these criminals

accountable for their actions. This amendment also already failed in the senate and I want to also point out that we currently already do this type of stacking for a bunch of crimes, including invasive visual recordings. So I ask that you vote no on the amendment to ensure that these criminals don't get away with additional crimes while smuggling. Vote no on the amendment.

MOODY: I guess the basic question I've got is how? How does this let people get away with a crime? Are they not still able to be charged under this statute without stacking provisions? So they can be charged?

GUILLEN: Yes, because all of these other crime would have a lesser sentence than smuggling would. Therefore if they're not stacked they don't get additional punishment for the additional crimes.

MOODY: Do you understand the concept that when crimes are committed in the same criminal episode that we have a punishment that we've assessed for those offenses and then judges run those consecutively because they're part of the same criminal episode? It has not been the practice of this legislature to divest ourselves of our legislative intent to set sentencing or set punishment guidelines for offenses in which what could be a two year offense then becomes exacerbated to 20, 30, 40, 50 years.

GUILLEN: I would argue that there are some areas where—

MOODY: Very narrow exceptions. Sex crimes, you mentioned some of those. Multiple dead bodies in an intoxication manslaughter. What we're talking about here—

GUILLEN: Human trafficking, which is very similar to smuggling.

MOODY: What we're talking about here, though, in the underlying offense of smuggling when you talked about it earlier about encouraging or those types of actions that you're going to then take everything within that criminal episode and not only create a mandatory minimum for the other offenses, but then permit stacking on top of that. I know you're a rock rib republican and have been so for years, so I know that you're aware of the Trump Administration backing off on these types of policies. Are you aware of that? That there was an expanded legislation under the Trump Administration to start peeling some of that back because of judicial economy. It's an argument that's been held on both the left and the right side of the aisle. Are you aware of that conversation in criminal justice reform?

GUILLEN: Yes, but I think that's the next amendment that you're going to propose.

MOODY: We're going to talk about this for awhile.

GUILLEN: Okay.

MOODY: I guess my question still is—because when you got up there and said this would allow people to get away with crimes. How does someone get away with a crime if they are convicted and sentenced to time in prison for an offense? Because that could still happen without stacking.

GUILLEN: In the case that you're describing, they would commit the crime of smuggling, they would get punished for the crime of smuggling, they would commit other crimes, and then they would be served continuously or consecutively, I'm sorry. Therefore, not get an additional penalty for those additional crimes, and that's what we're addressing in the bill.

MOODY: Do you think being convicted of a crime is not a penalty?

GUILLEN: Obviously, it's a penalty for the crime that you're being punished for, but if you don't have to serve any time for the additional crimes then you're not paying for those additional crimes. You're only paying for one crime.

MOODY: When you're booked on offenses like this, you're serving all of that time. Time is time. And when you do the crime you got to do the time. The point is that when we legislatively state that an offense should be subject to X penalty and then we lob on top of it a stacking provision, like I said, which is outside the norm of what we do in criminal law—when we're talking about the same criminal episode—

GUILLEN: It's not outside of what we do entirely.

MOODY: It is way outside the norm of what we do. There are very narrow exceptions in which we have changed that.

GUILLEN: We're already doing it for human smuggling which is very similar to smuggling. I mean for human trafficking rather. Human trafficking.

MOODY: Do you think it's fair for a 20-year-old kid who took \$200 to drive from one end of town to the other to have offenses stacked on top of them?

GUILLEN: If he doesn't know what he's being paid \$200 for, if he thinks it's just being paid \$200 to drive from point A to point B and he doesn't know that he's trafficking someone because they're stuck somewhere in the trunk I don't think he's going to be able to be prosecuted.

MOODY: Well, there was a witness who came to testify when this bill was up in committee and that witness said he was prosecuted for that. He was prosecuted for that and by the work of his lawyer he was able to get a different sentence. However, when you do these things and you create such an exposure for clients—and I know you don't practice in the legal world, but when we're advising clients, even if they have a decent case the conversation is, "We think you have a decent case, but the exposure has now been exacerbated to such an extent that the risk is way more than I can advise a client to take." So that young man in that situation who had his lawyer be able to talk to someone and walk them back from that charge is going to be in a completely different scenario now if this structure is in place because the risk calculation is very different when you have stacking sitting in front of you. Do you think that is a fair system to put in place?

GUILLEN: What we're trying to do with this bill is deter smuggling. We're upping the mandatory minimums and we're throwing the book at them. We're trying to deter smuggling. I understand your position, and I just have to agree to disagree.

MOODY: Do you have some statistics on the deterrence effect of these laws?

GUILLEN: There was a 2022 Federal Sentencing Commission study that found that for federal offenders that were released the odds of recidivism were lower for federal offenders sentenced to more than 60 months rather than those that were sentenced to less.

MOODY: The studies that we've seen in this state on the deterrence effect of what we do—because there is no deterrence effect for these people like I just described where they are in a pinch and are offered some money to drive someone from one place to the next and all of a sudden they are wrapped into a situation in which they are staring at 20, 30, 40, 50 years for something that this legislature in some instances has determined to be a misdemeanor, be that trespass or something else. Because it's not just the smuggling that you can stack on top of this. It's everything that is part of that criminal episode. You're exacerbating all of that under the bill. Do you understand that's what this does?

GUILLEN: The entire thrust of the bill is to elevate the mandatory minimums and to elevate the punishment to deter this kind of criminal activity.

MOODY: And my proposition to you is you can do all of that without creating a grave injustice and a bad situation for a lot of cases around the state where people are going to be wrapped up in a very high sentencing range—people that may actually be innocent of those crimes, but are going to end up pleading guilty because they know that the risk of going to trial is now sitting at 50 when that was nothing near what it would have been under the prior law. So when you say that someone is going to get away with a crime I put it to you, someone is going to get convicted of a crime that they didn't commit. That's what happens when we do these one-size-fits-all just ill-advised policies. This is what happens. It's happening around our state right now under current laws and in the country. And there's been a retreat generally, even under republican administrations, to get away from this type of practice.

GUILLEN: If you're right you should propose a bill to change the definition of smuggling.

MOODY: I have been fighting that battle since 2013, Mr. Guillen. We often say that we need to be smarter on justice issues and what looks tough on paper doesn't always equate to a tougher result in the real world. The bad guys that you think you're going to grab with this are never going to be grabbed by this. They're not. The people you're going to ensnare in this are like that kid that came and testified in committee. He's going to be looking at something much more serious, and he's going to end up pleading to a case that he has no business pleading to. And that person is then going to go into the prison system and likely find themselves in and out of there for the rest of his life because that is the way the system works. That is the net result of encouraging policies like this. And I'm not just creating this out of whole cloth. This is a story, not just in Texas, but across this country. It is why both republicans and democrats have moved away

from this type of one-size-fits-all approach because it does not do justice in reality. It sounds tough, but what it is is unfair and unjust and it's going to lead to bad results that no one in this chamber will be proud of.

[Amendment No. 1 failed of adoption by Record No. 13.]

[Amendment No. 2 by Flores was laid before the house.]

REPRESENTATIVE FLORES: This amendment would bring this bill to its full intent because the intent of **SB 4** is to punish those who engage in human smuggling operations. This bill, though, is drafted way too broadly, and it threatens to ensnare Texans who are just living out their everyday lives attempting to be good friends, family members, compassionate community members, and particularly those who are doing what Lord Jesus would want them to do.

So what does this amendment do? What it does is it moves the language of the intent of gaining pecuniary or financial gain from transporting folks if they know that they are doing it to smuggle them. What it does, basically—this amendment—is it makes "the intent to obtain pecuniary benefit" a basic element of the crime. Therefore, it would capture anybody—smugglers—who are intending to make money out of transporting humans who they know they are not supposed to be or that they are trying to smuggle into the country. We want to make sure, as the previous amendment said, that we don't make this an overly broad bill. We want to make sure that innocent folks are not captured in the net, but we are not taking away the intent of the bill. We're basically saying that anybody who intends to make financial gain and knowingly does so and transports somebody will then be found guilty of that offense. What it does do is it moves that definition away from the enhancement elements, but it does not remove it as an element of the crime. We just want to make sure that if you have a priest that's taking somebody to church is not caught or a family member who is driving somebody to an appointment, and they're not doing it for financial gain, that they are not entrapped with this bill. So members, it's an easy thing. I hope it's acceptable to the author.

GUILLEN: This amendment significantly alters the burden of proof on the state against criminals committing egregious crimes. Cartels do not write payment receipts or issue W-2s to smugglers who do their dirty work. This would make smuggling very difficult to prosecute. Therefore, I ask that you vote no on this amendment. This amendment also already failed in the senate. I ask you to vote no on the amendment.

FLORES: It would not remove smugglers from being prosecuted, it would just protect those folks who do not have the intent to be smuggling and are not getting a financial gain by transporting people to and from places that they need to be. This bill, in fact, makes it an offense if you knowingly and intentionally make money in transporting a person. It lays out all the elements if it's in a motor vehicle, aircraft, watercraft, or anywhere—or if you're attempting to conceal or

flee from a peace officer. This amendment really does not help smugglers, this just helps innocent people who are trying to be good citizens, good friends, and family members. I ask that you please vote for this amendment.

[Amendment No. 2 failed of adoption by Record No. 14.]

[Amendment No. 3 by Perez was laid before the house.]

REPRESENTATIVE PEREZ: The current version of **SB 4** creates a new mandatory minimum sentence for smuggling of 10 years, but also provides a downgrade that reduces that sentence to five years if a person is related to the undocumented person within three degrees of consanguinity or affinity. Third degree includes aunts, uncles, nieces, nephews, great-grandparents, and great-grandchildren. The proposed amendment recognizes the close-knit nature of the diverse communities of our state and expands the downgrade mentioned above from the third to the fourth degree. Fourth degree would include great-grandparents, great-aunts, uncles, first cousins, and grandnieces and nephews. The most notable group that would be protected under this amendment would be first cousins. Latinx communities are close-knit, as are communities of other cultures and ethnic groups that call Texas home. Many Latinx families rely heavily on extended family members, including cousins, uncles, and aunts. This means that first cousins often act more like a sibling. For instance, relying on each other for rides to and from work and to medical appointments.

GUILLEN: Members, this amendment adds fourth degree family members to the modulation section or the sentence reduction section of this bill. The bar to prosecute smuggling is already set high, in my humble opinion, as you'd have to prove they encouraged or induced to enter or remain in the country and that they concealed, harbored, or shielded the person from detection, and that they knowingly did it. We also already have the modulation in the bill for third degree family members and so therefore, I ask that you vote no on the amendment.

PEREZ: This is a very simply amendment. All it does is allow for cousins to be included in that downgrade to the mandatory minimum. This amendment will also allow our law enforcement officers to focus not on families but on real perpetrators of human smuggling.

[Amendment No. 3 failed of adoption by Record No. 15.]

[Amendment No. 4 by Hernandez was laid before the house.]

REPRESENTATIVE HERNANDEZ: My amendment would extend the affirmative defense for prosecution of the offense of smuggling to individuals related within the third degree of consanguinity or affinity. The amendment would also extend the affirmative defense at the punishment stage for individuals related within the fourth degree of consanguinity or affinity, which includes cousins. Current statute already includes an affirmative defense for individuals related within the second degree, like brothers, sisters, grandparents, and grandchildren. However, many of us have large families and are very close. In the Latino community, specifically, we tend to be tight-knit and often live in multigenerational homes with aunts, uncles, nieces, and nephews. We also tend to

be close to our cousins and often refer to them as our primos hermanos, which roughly translates to siblings cousins to demonstrate the strong familial ties. Unfortunately, these relationships would be criminalized under **SB 4**. An aunt could receive a five-year term of imprisonment for taking her undocumented niece to school or church or a soccer game. This bill would also give a 10-year term of imprisonment for cousins in mixed immigration statuses that were in the same home or were carpooling together.

That is not smuggling; that is not justice. We should not be criminalizing our communities for coming together and being close-knit. My amendment would extend the affirmative defense to prosecution of smuggling to individuals related within the third degree and would also reduce the punishment to five years for imprisonment for individuals related within the fourth degree of consanguinity or affinity. This would allow our communities to live or carpool with undocumented family members like cousins without fear of a mandatory 10-year term of imprisonment.

REPRESENTATIVE A. JOHNSON: Thank you, Vice-chair Hernandez. I just kind of want to clarify because the room is loud. I know we're at that stage. Unfortunately, we may be at that stage where we're getting into some hyper-partisan votes, so I just want to ask that you clarify this when we talk about third degree versus fourth degree. What you're saying is the bill already allows an affirmative defense for certain family members within the second degree and all you're doing is expanding that out one layer to acknowledge those, again, family members, just like we're talking about siblings, here we're talking about cousins. But you're not expanding this out to unknown, you're expanding this into the family circle. Would you, again, just clarify when we talk about this degree of consanguinity, just as we did last session in protecting elected officials and their relatives, why is it so important that we just expand this if people want to get this passed into law?

HERNANDEZ: Thank you for that question. It's important, especially in the Latino community we tend to have large families and are very close-knit. We come together for quinceañeras, bautizos, which are large family gatherings. We don't go around asking, "Are you documented, undocumented, tienes papeles, no tienes papeles?" No. So this bill would criminalize our family and our ability to come together and to be able to have that close-knit relationship. The second degree of consanguinity includes grandchildren, brothers, sisters, and grandparents. It does not include nieces or nephews or aunts or uncles. That is a family gathering when we come together for special events. This bill would be criminalizing our families for doing that.

A. JOHNSON: Again, all your amendment is doing is taking the already recognition of Chairman Guillen's bill, that that nucleus of family is not going to be caught up in criminal law. It's just recognizing that in many communities that close-knit family expands to our cousins, nieces, and nephews.

HERNANDEZ: Exactly. Protecting the small families and the large families, not discriminating between the sizes of families or your relationship with different family members.

A. JOHNSON: So what if I wanted to claim my play cousin fits into the circle? Would your amendment allow me to just say, "Hey, she's my play cousin, we're that close, you can't go after her"?

HERNANDEZ: No, it would not. It would not apply to that situation just like, unfortunately, it wouldn't apply to my godmother, my godparents, because they are not within that degree of consanguinity even though that is a very important role. Whenever you select a godparent for your child it's very important and you would want that to be included as well, but unfortunately, that's not included within these degrees of consanguinity or affinity.

A. JOHNSON: Again, a perpetrator could not manipulate a situation or a description of family entity to make them fit into your amendment? Your amendment just recognizes the necessary expansion of the existing bill?

HERNANDEZ: That is correct.

A. JOHNSON: Would you also go through with us again, as a lawyer, on an affirmative defense? You're not saying that the police officers have to walk away? An affirmative defense still means people can get filed on and you get them in the court process and then you just legitimately have to prove this familial connection. That you are, again, just correcting to acknowledge the existence of our social family unit and how we actually get around together, not just with our grandparents and our parents.

HERNANDEZ: That's correct. It wouldn't be on the spot someone saying, "Hey, this is my cousin. Everything is okay." No, it would be an affirmative defense after they've already been in the procedure, in the prosecutorial.

A. JOHNSON: After they've already been arrested, after they've already been charged, and after, maybe, they've already gone to court. We're just saying that this acknowledges that you can still do the immediate intervention you say you're seeking, but we don't convict family members in this circumstance?

HERNANDEZ: Absolutely. We do not convict family members for being close-knit and spending time together.

A. JOHNSON: Thank you for the amendment.

GUILLEN: Members, this amendment would expand the affirmative defense to prosecution for the crime of smuggling to family members in the third degree of consanguinity or affinity and it would shift the modulation of the penalty for smuggling from a third degree to the fourth degree of family members. It's very similar—half of it is similar to the previous amendment that we just voted on. We already have a reduction in the bill for third degree family members. I'd also point out that in my humble opinion the bar to prosecute smuggling is already set high as you'd have to prove that they encouraged or induced, that they concealed, harbored, or shielded, and that they knowingly did it. We already also have protections in statute and in the bill for family that is within the first and second degree of consanguinity and affinity. So I ask you to vote no on the amendment.

A. JOHNSON: Chairman Guillen, we all know that today is going to be an incredibly emotional day, potentially, right? When we talk about these issues? For example, this amendment that Vice-chair Hernandez talks about. She can feel it because she knows how this is going to impact her family, right? My in-laws—the appearance of being brown means that you might be subjected to new laws being passed in the State of Texas, correct?

GUILLEN: I would point out that we're not changing the definition of smuggling. We're just elevating the penalty.

A. JOHNSON: I understand that.

GUILLEN: So if you did something that would currently or—before this bill were to pass, if you were to do something that would get you charged and convicted, that doesn't change under this bill.

A. JOHNSON: But we are changing laws that have already existed, correct? You're doing something different, right?

GUILLEN: Yeah, we're elevating the penalty.

A. JOHNSON: Are you aware that in the last hour a story has broken on *Texas Tribune* about some of the folks that are trying to push the house and the senate to pass some of these changes to our laws?

GUILLEN: No, I'm not aware.

A. JOHNSON: Are you aware that the *Texas Tribune* is reporting that the leader of anti-immigration group Texans for Strong Borders also runs an anonymous, hate-filled social media account, which is again connected to Nick Fuentes?

GUILLEN: No.

A. JOHNSON: You weren't aware that a prominent anonymous figure in Nick Fuentes' white supremacist movement is also the leader of Texans for Strong Borders, a well-connected group that has recently emerged as an influential voice of the Texas GOP and pushed lawmakers to crackdown on legal and illegal immigration?

SPEAKER: Members, please confine your remarks to the amendment before the house.

GUILLEN: I'm not sure what this has to do with the bill—or the amendment, rather.

A. JOHNSON: Because your colleague standing next to you, regardless of our partisan divide, has a very legitimate amendment to make sure that relatives of folks are not wrongfully incarcerated under the idea of "smuggling." Are you open to the amendment being offered by your colleague who you know knows how detrimental this will be to many Texans? That the policy does matter and that if it wasn't going to do something different, you wouldn't be pushing to change the law. So if people weren't going to be affected, you wouldn't be here.

GUILLEN: We have language in the bill that modulates the third degree family members. And of course, we have language in statute that gives an affirmative defense to prosecution for family members in the first and second degree. We are doing many of the things that y'all are calling for, but we're also trying to be tough, and we're trying to send a message that smuggling is not going to be tolerated anymore.

A. JOHNSON: So if it works for my sibling, why can't I be protected from my cousin? If you don't want my sister prosecuted, then why do you want my cousin prosecuted?

GUILLEN: That's already in the statute. We're not changing that in the bill.

A. JOHNSON: I don't think that your colleague agrees. If it's already in statute, what's wrong with accepting her amendment that just confirms it would be in statute?

GUILLEN: Again, we believe we already have enough protections in the bill for family members—in the statute and in the bill—for family members. The goal of the bill is to deter smuggling in Texas, and we believe that this will achieve that.

A. JOHNSON: Again, if you're in communication and saying you're already doing it, would you be willing to accept Vice-chair Hernandez's amendment?

GUILLEN: No. We have protections in the law and protections in the bill already for family members.

REPRESENTATIVE CAIN: Mr. Guillen, I heard a few questions asked by Representative Ann Johnson. Just to clarify, did you visit with that loser named Chris Russo to draft this bill? Probably not.

GUILLEN: With who?

CAIN: Some guy named Chris Russo. She was asking about people with Texans for Strong Borders. They didn't write this bill, right?

SPEAKER: Members, let's confine our remarks to the amendment before the house.

GUILLEN: No, absolutely not.

CAIN: Border security is the number one issue in Texas, is that correct?

GUILLEN: I would think so, yes.

CAIN: Great bill. That's all.

GUILLEN: Vote no on the amendment please.

HERNANDEZ: I appreciate that Mr. Guillen recognizes the importance of family members and including that in the current law in his proposed legislation. I'm just saying, our families aren't that small. The only thing that's included right now for an affirmative defense or in the sentencing stage is first degree and second degree, which would be children, parents, brothers, sisters, grandparents, and grandchildren. What's not included would be nieces, nephews, aunts, uncles,

great-grandparents, and cousins. I don't know how many of you all get together with your family, but we have family gatherings that includes those degrees of consanguinity. I'm just asking, please do not criminalize my family.

REPRESENTATIVE WU: Representative Hernandez, part of the reason that you're putting this amendment is that the originating legislation—the original smuggling statute—is a statute that is written with very vague language. Would that be fair?

HERNANDEZ: I believe so, yes.

WU: The language could cover a little or it can be interpreted to cover a lot of stuff. Would that be fair?

HERNANDEZ: Yes.

WU: So even someone who is just riding in a car, right? If an officer says, "We think they were trying to evade us because they turned left when they should have turned right." That could be interpreted as smuggling, potentially.

HERNANDEZ: It could, yes.

WU: The point of your amendment is to say, "Hey, if this is a family member, somebody that is related by blood, that we should not go that hard on them" because—as it happens with Latino families, as it happens with Asian families, as it happens with a lot of families—we have large, extended families and we take care of each other and we give each other rides and we help each other go to school and we help each other go to work and we do all these things. Is that fair?

HERNANDEZ: Yes.

WU: And the current bill, as it is in its current form, only covers to the third degree of blood relation. Is that correct?

HERNANDEZ: That is correct.

WU: Second degree would get us moms and dads, right? Then third degree would only get us grandparents, but would not touch anybody outside of our immediate family, correct?

HERNANDEZ: Correct.

WU: Your amendment to add fourth degree only adds in people related by blood who are your brother's kids, your nephews, your nieces, and people like that, right?

HERNANDEZ: Right. The fourth degree would include your cousins, people that you grow up playing with when they come over to visit you.

WU: Again, these are your family members by blood.

HERNANDEZ: That is correct.

WU: Your amendment doesn't even excuse them from the charge, does it?

HERNANDEZ: No. This is only in the punishment stage of the trial.

WU: This is only to say five years instead of 10 years.

HERNANDEZ: Unfortunately, yes, it's not even saying that—

WU: And even five years in itself is extreme compared to what the feds do.

HERNANDEZ: That is correct. For having a gathering with your cousins.

WU: Your amendment only seeks to protect people that you grew up with, that you live with, that you play with, that you spend family outings with, that you travel with?

HERNANDEZ: That is correct.

WU: Thank you.

[Amendment No. 4 failed of adoption by Record No. 16.]

[Amendment No. 5 by Garcia was laid before the house.]

REPRESENTATIVE GARCIA: Colleagues, one out of every eight Texans who have been arrested for smuggling under Operation Lone Star are between the ages of 18 and 19. According to an analysis by the Human Rights Watch, at least a dozen teenagers as young as 14 have been detained for the offense over the last two years.

To serve in this house, for me, is something that I never thought would be possible. The reason for that is because as a young, young girl—I come from a very impacted community. A community where my very existence was viewed as an issue, a problem at home. Sometimes I found love and acceptance from older people in the streets. Sometimes I found a place to sleep at night from older people in the streets. Sometimes I found food from older people in the streets. Sometimes I received my love from older people in the streets. But that love didn't come without consequence because I was expected to do things sometimes that I would not have done had it not been for those people who convinced me. I'm asking that we please put into consideration the demographic of people that are used to be "smugglers." The demographic of people that are used to be smugglers because rest assured it's not the bad guy that's going to get caught human trafficking. It's not the bogeyman that's going to get caught human trafficking. It's the children that they use to do their bidding for them.

REPRESENTATIVE SHERMAN: Representative Garcia, why are you offering this amendment this morning—or this afternoon, now?

GARCIA: I'm offering this specific amendment, sir, because with the increased penalties that we're trying to impose right now, I would like for there to be an exception for children and young adults under the age of 20. Why? Because they're not the masterminds. They are simply pawns who are used to do the bidding of the bad guy. I know this to be a fact because, as a veteran—as an Iraq war veteran—when we do training overseas we are taught that the number one person we have to look out for are the children. Why is that? Why as a mother, when I served in Iraq, I had to be cognizant and afraid of the kids? Why did I have to do that? Because the bad guys use children to do their bidding. I'm asking that we please, please file an exemption, allow for an exemption so that these

kids don't spend 10 years of their lives in prison for a nonviolent offense. A nonviolent offense. A 15-year-old who is doing the bidding of the bad guys. As you heard Representative Moody state, you can't just say no. They tell you to get in a car and go pick somebody up? You tell them no and you risk losing your life.

SHERMAN: Representative Garcia, you stand in the hope and understanding that Representative Guillen would be open to you providing this provision, this amendment, to protect the children?

GARCIA: Yes, sir. Absolutely. Because one thing that I know for a fact, I know that everybody in here loves Texas. I know that for a fact. What I do know is that we do have a crisis. Rest assured, we have a major crisis happening on the Texas borders. There's also laws in place already to address those issues. If the laws have not caught the bad guys yet, then what makes us think that adding more time is going to make any difference? It's really not. All it's going to do is ensure that children end up incarcerated in the most formative times of their lives. It's ensuring that by the time that they serve their time and are released they are already middle-aged people who won't know how to navigate the current world. They're used as pawns and I know that is not the intention of Representative Guillen. It's not his intention to criminalize our children who are being used as pawns on the border. That is the reason why I'm asking, I'm begging, I'm appealing to all of you to please, please accept my amendment allowing for an exemption when it comes to those under the age of 20.

SHERMAN: So this is for those under the age of 20? That's the only exclusion you're asking?

GARCIA: Yes, sir. Absolutely. It's not saying that there's not accountability for people who are caught doing crimes that have victims involved. Any violent crime—there's already statutes in place. These are, specifically, nonviolent crimes perpetrated by children that I'm asking and pleading for an exemption on.

SHERMAN: Thank you, Representative. I hope that Representative Guillen is open to your amendment.

GARCIA: Sorry. I get a little passionate. Forgive me. This amendment would intend for our youngest members to be allowed to live their lives. A lot of times the bad guys are victimizing our kids. They're going on social media, they're telling them all this great stuff that they'll provide for them. That's what's driving these children to be a part of these scenarios. They're unwilling participants in a much larger crime.

GUILLEN: This amendment gives an arbitrary break to individuals under 20 years of age. We already have a reduction for family members in the bill, and it's important to point out that the bar to prosecute smuggling is already high as you have to prove that you encouraged or induced, that you concealed, you harbored, or you shielded and that you knowingly did it. Colonel Wilson just came up to me and reminded me that many of the soldiers that he had in his unit were under 20 years of age. If we can send them off to war then they should be subject to the criminal penalties we have as well.

GARCIA: Thank you so much, Representative Guillen, for mentioning our soldiers that we send to war who are under the age of 20. These individuals—I was one of them, actually I was 16 years old when I signed up for delayed enlistment. And one thing that was beautiful about that is that I knew I could trust the people that were supporting me. I knew that I could trust my chain of command. I knew that with the amount of time in basic training teaching me how to navigate as an airman overseas during these issues, with my continuing education, with my firearms training, as well as with the extensive legal training we get as members—I know with all of that we are better prepared and we are prepared. And we are also volunteers of war. What I'm asking for here are for children who are not volunteers. And my question, sir, is are there any provisions or safeguards within this bill to protect children?

GUILLEN: If they don't knowingly do it, if they don't know that they're breaking the law then I would argue that yes. For example, let's say somebody pays them to move a vehicle from point A to point B and they don't know what is in the vehicle. It's a situation that they might not know what is in the vehicle, then I would argue that the current statute would not allow them to be prosecuted or it would make it very, very difficult for them to be prosecuted.

GARCIA: Representative, do you believe that a 13-year-old who gets into a car and drives from point A to point B and knows that there might be somebody in his car that's undocumented deserves to serve 10 years of his life in prison simply for driving a car from point A to point B with a passenger?

GUILLEN: The purpose of this bill is to deter this kind of criminal activity, to deter smuggling. And we believe that by increasing the penalty—by putting a mandatory minimum—that we are going to deter that kind of criminal activity. And so I believe that it's important, and I think the majority of Texans believe it's important, and that's what we're doing in this bill.

GARCIA: Sir, do you believe that a 13-year-old who is incarcerated for 10 years is going to affect the grand scheme of an operation of the cartels or the bigger picture bogeyman that we are describing here today? Do you believe that a 13-year-old doing 10 years in prison is going to change the operations at all?

GUILLEN: I believe that when smugglers get sentenced to 10 years in prison that it will be a deterrent, yes.

GARCIA: Unfortunately, sir, I do disagree with that. I know for a fact that all that will happen is they'll find another 13-year-old. Thank you.

GUILLEN: Members, I ask that you vote no on the amendment.

GARCIA: Colleagues, you heard that a 13-year-old can do 10 years in prison for driving a car from point A to point B. We also all know because I know we have common sense, that that 13-year-old going to jail is not going to stop the bigger picture from finding another 13-year-old to do his bidding. I ask that you please, please, vote yes for this amendment.

[Amendment No. 5 failed of adoption by Record No. 17.]

[Amendment No. 6 by Moody was laid before the house.]

MOODY: Just to continue a little bit of the conversation we had earlier, you have the base construct of this bill is the mandatory minimum sentencing. The amendment that you have in front of you now would ensure that **SB 4** does not subvert our court's fundamental duty to serve the interests of justice by requiring judges to impose unwarranted mandatory minimum penalties with no regard for even the most exceptional extenuating circumstances. You heard it said in this debate, "Well, if that's the case, then I'm sure someone will figure it out. The prosecutor won't charge it or this other situation won't occur. I'm sure it will all get worked out." Well, as someone who's worked in the court systems when everyone else turns a blind eye, I guarantee you, it doesn't get sorted out. That's why this bill needs this amendment because it ensures that the neutral arbiters, the judges, are able to look at any extenuating circumstances in a case. They would prevent judges from being forced to impose sentences that are disproportionate to the crime at hand. Crimes that, when punished with the mandatory minimum, would result in unconscionable harm to the offender and unjustifiable cost to the state when mitigating factors make it obvious that a 10-year prison sentence is improper and unethical.

As a former federal judge, Paul Castle, a George W. Bush appointee who chaired the criminal law committee of the Judicial Conference of the United States, stated, "Mandatory minimum sentences mean one-size-fits-all in justice that require judges to put blinders on the unique facts and circumstances to that particular case." That being said, this amendment would not, however, give judges total discretion to ignore the will of the legislature if **SB 4** is actually enacted. What it would allow them to do would be to impose a sentence below the minimum only after considering the nature and circumstances of the crime and the history and character of the defendant and making written findings for the record that the reduced penalty would maintain public safety and would not depreciate the seriousness of any offense. As you've heard said, we want to take these offenses seriously. So with this amendment, you allow judges to have this discretion to make a deviation downward, which is something that multiple states have done—both republican and democrat. Because as I stated before, the disastrous policy of mandatory minimum sentencing has been rejected up and down the political aisle, including in 2018 under the Trump administration.

These are the types of policies that if we blindly enact them they will lead to grave injustices across the system. This amendment does no violence to the underlying purpose of this statute because if the facts warrant it and the minimum sentence is what needs to be imposed, I trust those judges are going to impose it. And if there is that case that we've described here of that kid who picked up a couple hundred bucks to take a person from one place to the next and the judge gets to look at their history and gets to understand the facts and circumstances of that case and they're not the big, bad smuggler that you all think you're going after, the judge can say, "I'm going to make written findings on the record." Those judges, who are accountable to the voters in their community, they're going to make that determination and deviate downward when appropriate. But in

every other instance, the mandatory minimum will be instituted. This is a very narrowly crafted way to ensure that justice in those very unique circumstances is not subverted by a mandatory minimum sentence.

A. JOHNSON: Mr. Chairman, I just realized part of the reason, again, Representative Flores had offered that amendment of "with intent to obtain a pecuniary benefit" is because we'd recently, again, made changes to the smuggling statute and taken out that important element. So again, what we know with the expansion of this existing statute is not only will we potentially catch up family members, but we may just catch up kids—mules. We just saw Representative Garcia's attempt to recognize children in their level. What will the impact and the burden be on the finances and the budget of the State of Texas to increase this mandatory minimum for potentially very low-level offenders within the chain of this organized crime—if it is?

MOODY: Look, I don't have exact numbers, but I don't need them to tell you when you take this authority away from judge and jury to decide that, yes, there's some culpability here, but the culpability rises to probation. The culpability rises to the level of some time behind prison bars, but when you expand that to say it must be a 10-year minimum, the costs are going to go up and up and up.

A. JOHNSON: If the costs go up and we don't live in flush times to make more beds, then effectively people get let out on parole earlier and earlier and it actually diminishes the deterrent impact of the crime because it doesn't get taken seriously at all, correct?

MOODY: Yes, that is exactly correct and you are reciting history. This is not Ann Johnson telling people that maybe something might happen if we do this. This is the history of what happens with mandatory minimum sentences. It is why both republicans and democrats have wholeheartedly rejected expanding them and, in fact, tried to figure out ways to curtail them because what happens is you have an overburdened population in the prison system and then you have a revolving door and whatever big bad deterrent effect you thought you had is now gone because these people are just going to revolve in and out. The mandatory minimum will mean nothing because you have jammed it full of everybody no matter what the facts and circumstances of their case was. Individualized sentencing is always the best and smartest way to do things. That means that you can take the people that you feel are dangerous and you're scared of and make sure they are punished appropriately and kept out of society in that way. And those people who have made mistakes—criminal mistakes—are held accountable, but in a different way that fits for them. You and I, when we were prosecutors, took oaths to see that justice is done. There's no definition of what that is. That means every single case justice can be different. It can be a dismissal. It can be some type of pretrial diversion. It can be probation. It could be prison. It could be the death penalty. It runs the gamut. But when you hamstring people and you go justice just looks like this in this case you're doing a grave disservice to the system as a whole and to everybody that interacts with it.

A. JOHNSON: Let's also talk about—you and I have probably experienced this as prosecutors which is sometimes the legislature can help a little too much. Because when you set the floor too high there are times when the jury knows what the floor will be and when you're in jury selection I can't even get through the fact that regular folks can't anticipate why that minimum would come up and, oftentimes, it keeps me from getting a jury that would be a good jury in evaluating the facts to determine a full range of punishment. Tell them about that.

MOODY: Qualifying a jury on punishment is going to become a lot more difficult and when that happens, guess what? Nothing. You don't get any justice in these situations because you can't impanel a jury, you can't try the case, or you've got to try it multiple times which means more resources and more time in a overburdened system. We do this time and again and I won't belabor the point because I get it. I understand it. But we do this time and again. We say something's a problem. We say it's a crisis. And we go, "Well, let's just jam it over here in the criminal justice system. Oh, it's not harsh enough? We'll do a mandatory minimum. I don't need to know the facts. It's too complicated. I don't want to dive into it. I don't want to understand the complexities of the environments that some of these situations are happening in. So I will make the simple, uneducated decision to just say this is a one-size-fits-all approach and I'll walk out of this building and I won't care about what this does in our communities and the way it impacts our jail and prison systems." Because that works a disservice to all of us. If those systems aren't working in an efficient manner in a way that works and moving people out that need to be out and keeping people in that need to stay in, that's a safety risk for all of us. Mandatory minimums are being rejected across this country, up to and including the Trump administration in 2018 who actually expanded language very similar to this. Eligibility for a judicial safety valve. That's what this is called. This is not a concept I came up with. I wish I could claim it. But this is something that exists in law elsewhere because it's smart. It allows the toughness that everybody thinks they want to have, but it also allows people to understand the individual facts and circumstances in any case, because any person that walks through that door has a different story that brought them into that door. If you don't reflect that in your sentencing, you are doing a grave disservice to your community.

A. JOHNSON: Chairman Moody, I know you and I are both democrats, but we've also had—

MOODY: Some people think I am.

A. JOHNSON: We've also had the experience of actually being law and order, prosecuting, holding people to account, and actually walking this walk of acknowledging that there are reasons to have criminal laws and that we enforce them. You and I both probably sat in those CLEs after the session where district attorneys across the state will shake their head and say, "Boy, I wish you guys would stop trying to help me." While it may seem like we're trying to tell them something that is some partisan thing, we're actually trying to speak up for

prosecutors across the state to say, "Hey, you may take this to a point that has the countereffect of what you say you want." So maybe give us a bone on this amendment.

GUILLEN: Members, the intent of the bill, again, is to increase the penalty for smuggling—to have the severity of the sentence deter this type of criminal activity. This amendment would give judges the discretion to override the legislative intent of this bill. Thereby, this proposed amendment defeats the purpose of the bill. It guts the bill so please stay with me in opposing the amendment and vote no on the amendment.

MOODY: I guess my question would be if this becomes part of the law—which it is in other states and on the federal side—what gives this discretion that in no way subverts the intent of the legislature? Because I'm asking us to give them that discretion.

GUILLEN: The intent of the bill.

MOODY: The intent of the bill is to, my understanding, create—you've got some enhanced penalties and stacking and some other provisions with stash houses and with smuggling. You've had a lot of discourse on this front and back mic about different cases that may present themselves with different fact scenarios. Do you agree that maybe justice looks different for someone like that kid I described before as opposed to someone who is nefariously going out and smuggling people intentionally? Do you not think those are different scenarios?

GUILLEN: Obviously different scenarios.

MOODY: So don't different scenarios deserve different treatment or different consideration?

GUILLEN: In general, yes.

MOODY: But in this bill without this amendment we're going to treat them all the same. Correct?

GUILLEN: Correct.

MOODY: Are you aware of what happened in the '80s and '90s when mandatory minimum sentences became the norm across the country, under democrat and republican administrations? In fact, this state was not immune from doing that at the time under democratic control. Are you aware of the results of that experiment?

GUILLEN: Vaguely.

MOODY: Mr. Guillen, what I ask you to think about is the net effect of this. If the goal is to make sure that we are hammering the folks that deserve it and using our resources wisely then a safety valve in very narrow circumstances like this would allow us and our judges to at least take that into consideration. Does this amendment in any way remove the mandatory minimum?

GUILLEN: I believe it does, yes.

MOODY: Can you point me to the portion in the amendment that removes the mandatory minimum?

GUILLEN: By giving the judges the discretion it would remove the mandatory minimum.

MOODY: Does it make them?

GUILLEN: It gives them the discretion.

MOODY: So a court can impose if they make findings on the record?

GUILLEN: It gives the judges discretion to choose.

MOODY: You represent a whole lot of counties, right? You've got a whole lot of judges I'm sure that you deal with across that district. Is there any reason why you wouldn't want to entrust those judges who have the particularized knowledge of that case in front of them to say the mandatory minimum is the right fit for this case or not?

GUILLEN: In this case, we're setting the mandatory minimum to deter this crime. We're making a statement. We're putting our foot down and saying "Hey, we're going to put a mandatory minimum, we're serious. We're going to throw the book at them to deter this kind of crime."

MOODY: What I'm telling you is that under these statutes you would agree with me as its been discussed in this dialogue and debate on this bill there are a number of potential scenarios that fit under smuggling and they vary in degree of severity, do they not?

GUILLEN: I guess I could agree with that.

MOODY: Would you agree with me though that even when faced with a varying set of scenarios, if a judge is given a mandatory minimum they do not have a choice to consider any mitigating factors?

GUILLEN: I agree, that's what we're doing in the bill.

MOODY: It is your position that the right public policy would be to ignore mitigating factors and individualized facts in a case?

GUILLEN: In this case, yes.

REPRESENTATIVE ROMERO: Members, I'm pretty sure that when the author drafted this bill he was real careful to make sure that he sends a loud and clear signal to anyone in this industry—if you want to call it an industry—that's moving humans across our borders and into our state that they want to throw the book at them. And I think if you were listening, and I'm not sure that many of you were, to the discourse between the front mic and the back mic. But you should have, especially when you have prosecutors up here that are telling you that judges make the right decisions. Without this amendment, you're taking that away completely. So I imagine your decisions are made, but I don't think you're putting a face on who these "criminals" are. They're the smartest of our kids. Do you think these criminals are not targeting the smartest kids to drive those people? They are. And if you think, "Well, it's easy to throw the book at them,

because they should just know better," you don't realize how it works. For many of these kids, drugs have been pushed onto them and they've made them users. Many of these kids might be some of those people that have been caught up in sex trafficking. Many of them might even be U.S. citizen kids—boys and girls, like Representative Garcia talked about—that are 18 years old that might have parents on the other side of the border. And their parents might be held, their nephews might be held and being threatened that they'll kill them and you're not even listening because you don't care about that kid because you don't see his face. Well, that face of that son or that daughter could be your own son or your own daughter. I think that when we all agreed—when we swore that oath to do the best for all of our citizens of Texas, you really should be thinking about those kids. You should be listening to Representative Moody and this amendment.

This amendment makes sense. You can continue to vote them all down, but if there's one you're going to vote for this is it because this is going to save lives. Without it, you are absolutely ruining lives. And it's not just some little Mexican kid. These are Americans because that's who those traffickers target—the smart kids, the kids that otherwise are doing well but maybe are having a little trouble at home and have found themselves homeless. Vote in favor of this amendment, you can save some lives.

MOODY: Let's be very clear. Nobody in this body takes human smuggling lightly. But there are many crimes for which we do not impose a 10-year mandatory minimum sentence. It was talked about earlier and people didn't know the answer. I'll tell you the answer. The minimum prison term for first degree felony, including murder, is five years. Five years. That's what's on the books now.

More importantly, this amendment is not about every single smuggling case. It's about the exceptional cases where a 10-year sentence is contrary to the interests of justice. I'll close with a short story. A friend of mine from church called me out of the blue and he said, "I need to talk to you about my son." And I said, "Okay, what's going on?" He said, "Well, he's got himself in some real big trouble." He got offered some money to drive some people out of El Paso over into New Mexico. He's an 18-year-old kid, and now he's looking at serious federal consequences for his actions. No criminal history. He comes from a good family, but was short on cash and thought there's not a big deal to it. If you are telling me that is the same scenario as the nefarious smuggler who is preying on people left and right in our communities, then I don't think you're thinking very hard about this. Justice is not a one-size-fits-all approach. When you do that, you do ensure one result: a failed criminal justice system.

[Amendment No. 6 failed of adoption by Record No. 18.]

[Amendment No. 7 by Ramos was laid before the house.]

REPRESENTATIVE RAMOS: Members, I bring this amendment to clarify that **SB 4** includes employers, one of the greatest drivers of immigration who knowingly entice and benefit from undocumented labor. As **SB 4** is written it could easily jail a family member innocently driving their extended cousin to church in my neighborhood which is over 500 miles north of the border.

However, on the other hand this bill will leave unscathed the businesses here in Texas who entice undocumented workers into this country and take advantage of their cheap labor.

When you look at the section of the code that we're addressing, "smuggling of persons," a smuggler includes "one who is encouraging or inducing a person to enter or remain in this country in violation of federal law." We know that describes many of our employers in Texas. The missing piece of this puzzle in this immigration conversation is the enormous attraction of our labor market. Our demand for undocumented labor drives immigration through the roof. It is wrong for our innocent Texans to be penalized for driving their abuelita to the grocery store—their grandmother—when at the same time these businesses knowingly exploit undocumented labor for inhumane wages and they go unpunished. Let me be clear when I say this, America needs these workers. As we face an unprecedented labor shortage, Texas needs more legal immigration.

Many of you may or may not know what New York is doing. New York is giving work authorization to TPS individuals from a certain country, Venezuela, so that they reduce the burden on homeless shelters, and these individuals contribute to society while their asylum applications are being processed. It expires within 18 months and it's only for those individuals that came to America before July 31, 2023. This is how New York is addressing their problem. In addition to that, they're using their national guard to help process these applications. That is addressing the labor shortage. That is addressing undocumented immigration. What we're doing here does neither.

Instead of giving them—the immigrants—10-year mandatory minimums, let's allow them to contribute to our workforce, as many already do, but legally and under the protections of federal law. So many workers across this state and nation are living in the shadows leaving so many vulnerable to underpaid wages, no recourse when injured on the job, and no labor rights whatsoever. Undocumented workers are what helps keep our state running. They put their lives at daily risk. And every single one of you in this chamber and watching benefits from undocumented labor. The reason you're salad at McDonald's costs \$7 and not \$17 is because undocumented labor is providing those in that workforce that's drastically needed in this state. Every single one of you are benefiting, but they are the ones getting punished and our employers are not.

What I'm saying is in my amendment—what I'm saying is employers need to be held accountable. The reality is what is driving this immigration is supply and demand. Our employers are demanding it. You are demanding it. And these immigrants are supplying it. That is the baseline of what we're talking about. What I'm saying is we need to hold these employers accountable who are the ones who are driving this immigration coming into this country. Thank you.

GUILLEN: Members, this amendment clarifies that there's no defense to prosecution for businesses. But there's currently no defense to prosecution for businesses in the statute or in this bill. Therefore, it is unnecessary, and I ask that you vote no on the amendment.

RAMOS: The author of the bill and I did have this conversation. And once again if in fact the author of the bill is saying we should and we shall go after businesses who are supplying the demand for the undocumented labor then we do need to go after our businesses and hold them accountable.

Members, we know the **SB 4** strategy doesn't work. Let's focus on the root causes of immigration and work on real solutions like holding businesses accountable and vastly expanding legal working status for these families. We also know that in this chamber nothing is a coincidence. It is not a coincidence that this bill, **SB 4**, was filed on October 9, three days after Nick Fuentes came to Texas that Friday. That is not a coincidence. Nick Fuentes comes to Texas and this bill is filed three days later. You vote yes on this bill you vote with Nick Fuentes and against Texas families.

[Amendment No. 7 failed of adoption by Record No. 19.]

NEAVE CRIADO: Today, as we deal with this onslaught of immigration-related bills we find ourselves on the precipice of the complete erosion and destruction of family values that we claim to hold. Do we value separating families? Do we value incarcerating our aunties—our tías—for taking our nieces to the park? Do we value punishing our cousins for going to school or to church or a shopping mall with their undocumented family members, knowingly? Is it the intent of this legislature to convene for the purposes of tearing families apart? Because **SB 4** is written to do so. **SB 4** is ill-fitted to address the needs of our state.

This legislation extends these penalties and imposes incarceration far beyond its stated purpose. **SB 4** robs 10 years from the lives of Texans for this offense. Under this legislation, the families would be criminalized and lose a decade of their lives to incarceration as punishment for caring for undocumented aunts, uncles, cousins, nieces, or nephews; a decade of their lives driving family members to the grocery store, to the doctor, to the church or school; a decade of our lives for simply living our lives.

The heartless consequences of forcing families apart will ripple throughout our state. Our men and women in blue already have to keep us safe with extremely limited resources and extreme levels of responsibility. Instead of solving the problem of smuggling or trafficking, this legislation is going to create more problems for our communities and eviscerates judicial discretion. Parents without children, children without parents, American citizen children without homes, churches without believers, landlords without tenants, small businesses without their workforce, and make no mistake, this bill applies statewide. Make no mistake, that this bill applies to American citizens, their children, and grandchildren. There's no mandatory minimum for rape. There's no mandatory minimum for murder. Yet, there's a mandatory minimum for being born outside of Texas. Make it make sense. The only way to make it make sense is to vote no on **SB 4**.

A. JOHNSON: I am pretty certain I am the only person that has actually prosecuted this crime. I am certain I am the only person that has had law enforcement call and say, "Hey, Ann, you're the new human trafficking prosecutor. Tell me what you can do under this scenario where the feds can't

prosecute, but I have a car that just bailed out and everybody took off." I have been in that position. I have filed where state law is appropriate against people who have committed crimes, and I will tell you that you have a massive toolbox. If somebody bails out from the car, Representative Frazier, I say, "Did you tell them to stop?" And they say, "Yes, we told them to stop." Well, that's at least an evading, right? If they bail in the car and they take off, well that's a state jail felony evading. And then we talk about, "Well, where'd you get the money?" Were they asking about a pecuniary benefit? Well, then that's smuggling under Section 20.05. And then what about if they're already in a stash house? They're in the stash house and they called the family and they said, "I know you guys paid \$500, but we want \$500 more." Well, hell, that's kidnapping. And now, Representative Frazier, do they have a gun? Have they used a gun on you? Now that's aggravated kidnapping.

I've been there, I have done this. I have done this in conjunction and connection with the federal government when it is right. And I'm going to tell you that I don't know any prosecutors that would ask you to do this. I don't know that there are any of us that are on the front lines and in the courtrooms trying to legitimately figure out the layers of the onion. Because when we're talking about organized crime, you're right. There are bad guys. There are bad guys that will take advantage of kids to act as mules in many circumstances—drugs, smuggling, whatever it is. But you give me as a prosecutor a toolbox to cut the onion and figure out which layer deserves which punishment for their conduct. You're taking away the onion. There's been a slow drip of taking away the onion and my ability with prosecutorial discretion to do what we think is right.

Let me tell you where this is going. We know why this is coming up. I promise you there's a day that's going to come when you're not going to be in this building and we will regret that the tail is wagging the dog on setting this policy. So let's talk about burglary of a motor vehicle. Y'all are going to find out. If you've got a friend that gets their \$80,000 car broken into, they're going to say, "Wait, that's only a Class A?" That used to be a third-degree. It used to be two to 10 in prison and then you got too many people there and you didn't have enough money for prison, you didn't have enough money for beds, and by God that's a victimless crime. It's not rape or murder. So you had to get those people out and you know what you did? You changed it to a Class A. You are pushing this crime, just as Chairman Moody and I said. We can see the future because we've lived the past. We did this with drugs. You had to pass 12.44(a). And I know everybody is glazing over and saying, "Ann, I don't have any idea what the hell you're talking about." Well, I do because I've been in your criminal court system and I've been in the position of people having to go to prison for conduct that was wrong. I'm telling you I am against smuggling. I am for protecting people from crime, I am for protecting people from being used, and I understand that we have to have logical conversations about what's happening on the border. And this doesn't accomplish it.

This bill does nothing more than to exacerbate misinformation. And I guarantee you not only will it cause harm to families, but it will create a policy that one day somebody else is going to have to try to have the political courage to

correct because you're setting us up for a prosecutorial failure. I don't think you guys had prosecutors come ask you to do this, so I'm asking you to listen to one. This doesn't accomplish the goal you say you want, so please vote no on this legislation.

REPRESENTATIVE ANCHÍA: Members, I sat through the testimony on this bill and it became crystal clear to me that this bill misses the mark substantially on what the proponents of the bill are trying to achieve. I think the narrative has us thinking about these really nasty criminal gangs in Mexico—cartel members. Real frightening bad guys. The kind of guys you might see on *Narcos* if you follow those series. And the proponents of this thinking say "Wow, if we just make the law tougher it'll deal with the problem." But when we really think about it that's not the case. Yes, there are push factors in places like Cuba, Venezuela, and Guatemala that send people here. There's no question instability, severe weather, and climate change is pushing migration. No question there are push factors. But what few people really want to admit is that dirty little secret that we have here in Texas and that is that insatiable appetite for immigrant labor and undocumented immigrant labor that happens in everyone's district in this chamber. And in fact I was really glad to hear Representative Ramos look directly at the language of the smuggling statute. Right? Because that's what we're talking about. We're talking about Texas Penal Code 20.05. And if you look at the language very, very clearly in Subsection (2) it says if you knowingly encourage or induce a person to enter or remain in this country in violation of federal law you're a smuggler.

How many people in your communities do you know—a rancher, a farmer, a soccer mom—who knows that the person that they employ is unauthorized, is undocumented. "Yeah, yeah, but Rafael we just pay them under the table. We just pay them in cash." Construction workers, the people who painted your home, the people who made your bed at the hotel today, who cooked your meal, or who was in the back in the kitchen and washed your dishes. That's the dirty little secret that nobody wants to talk about today is that all of that is smuggling. It's all part of it if you read the statute directly. But nobody, from our tough talking attorney general know or to any DA in your community is actually ever going to prosecute any of those people who induce a person to remain in this country. Why? Why do you think that is? Because deep down we know that immigrants are good for Texas. We know that the Texas miracle is not just low taxes. It's not just our business climate. It really is the fact that we're in the North American continent and we share a border with Mexico that provides willing employers in the United States with willing workers at scale. At scale.

It was really funny because in committee we had a group that was like farmers and ranchers who were for this bill and I asked them—when I went through the definition with them I said "Hey, what if we started giving your members mandatory minimums of 10 years? What if we did that to you farmers and ranchers?" And they acknowledged yes some of their workers would qualify as undocumented, sure. They're unauthorized. "Do you use E-Verify?" "No, no, no, no, no we don't." They're the ones who are creating the demand. And it's in every sector, I don't mean to single them out. But when I put it to them do you

want your members serving 10 year mandatory minimums? Oh no. Then they just want to talk about comprehensive immigration. "Well, we need to create a safe and legal way to match willing employers and willing workers." And that really is the only way that we get out of this conundrum.

Because you're just going to pass this bill. You're just going to—I was reading a newspaper article about the people who are the smugglers. They're not the people from *Narcos*. They are folks in your community. They're a high school kid. They're a college kid. They're U.S. Marines that were busted for smuggling. They are people who were late on their child support. They are people who need money to buy diapers. Those are the people that you're going to hit with 10-year mandatory minimums. And you will do nothing to deal with the underlying problem. Because any of us who has taken first year college economics knows that if there is a demand products or services will find their way to market. That's the dirty little secret that nobody wants to confront in this body and certainly not in congress that allows this situation to persist over and over and over again.

So can you pass this bill and raise—create a mandatory minimum? Yes. Will it be completely ineffective in dealing with the problem? Absolutely. Are you going to hurt a lot of people along the way, Ann Johnson? Oh heck yes. We can see the future today. So while you may vote on this and you may feel really good about it. Until people are willing to have a serious conversation about what drives our unauthorized immigration—yes, there are push factors, but it's mainly pull. Because we tell people, "Hey, if you survive the Darién Gap and you survive getting through Mexico and you cross that border there are plentiful jobs waiting for you." Because we need immigrants. We need immigrants in the United States. And we also need a safe and legal way for these immigrants not to be exploited and not to be smuggled and for people not to get caught up in the web of this bill. But if we just keep doing what we're doing now—onesies and twosies, little bills like this—we're going to be back here again, and there will be another failed tactic to try to deal with the problem. Instead, I think it would be far more productive for us to talk about the dirty little secret, surface that part of the Texas miracle and that is our immigrant population that breathes life into and is the oxygen for not only our communities, but for our economy in this state. So members, I urge you vote no and instead lend your collective voices to urging congress to fixing the problem.

GUILLEN: Members, this bill will deter smuggling by throwing the book at those that commit the crime. It's bipartisan as it's joint authored by members of both parties in both houses, including Senator César Blanco and Representative Morales here in the house. It passed the senate 29 to 2. This exact bill passed the senate 29 to 2. I urge you to vote aye.

[SB 4 was passed to third reading by Record No. 20.]

HB 6 DEBATE - SECOND READING

(by Jetton, Bonnen, DeAyala, et al.)

HB 6, A bill to be entitled An Act relating to making an appropriation for the construction, operation, and maintenance of border barrier infrastructure.

REPRESENTATIVE JETTON: Members, there's an ongoing humanitarian and public safety crisis occurring at the southern border. With record amounts of illegal crossings, narcotics, and weapons coming across into Texas on a daily basis we are facing unprecedented volumes of apprehensions, drug seizures, human trafficking, and other forms of criminal activity. **HB 6** provides critically needed funding for the continued construction of border barrier infrastructure and helps further our shared goal of protecting Texans and their private property and keeping communities safe.

HB 6 makes a one-time \$1.5 billion appropriation of which \$1.2 billion will immediately go towards construction-ready border wall projects. The remaining funds will be spent on additional wall projects as land easement agreements are finalized. These funds will allow the pace of construction to match the pace of land acquisition, and we will see the peak construction of these wall-miles before the next appropriation bill is passed. Funds in **HB 6** will be used to prioritize the most heavily trafficked and at-risk portions of the border and will provide additional water barrier infrastructure in Maverick, Starr, Val Verde, and Webb Counties. These areas are identified by the Department of Public Safety who work directly with the Texas Facilities Commission to target areas of greatest need. The wall design and engineering firm that Texas is using mirrors the standards set out by the U.S. Customs and Border Patrol Facilities Management. Without disclosing sensitive law enforcement information, the wall structure consists of concrete footing and steel barriers 30 feet tall. These funds will expand our existing border wall program, allow more than 100 miles of wall to be built, and fund the cost of operating and maintaining the wall along with associated technology costs.

The Operation Lone Star mission is to prevent, detect, and interdict transnational criminal activity between the ports of entry. The wall is one part of the larger OLS strategy and one that will greatly leverage the efforts of federal, state, and local boots on the ground and ultimately reduce the reliance on human resources. Members, it is our responsibility to defend innocent landowners and keep our community safe from dangerous drugs and weapons and provide all Texans with the support and protection they deserve.

REPRESENTATIVE MORALES SHAW: When I first looked at this bill, the logical question that came to mind—it's a ton of money, \$1.5 billion. It's a huge ask. I know we had a lot of surplus of funds, and I think about all the needs in the State of Texas—child care needs, we haven't given teachers their pay raises, people having to work two or three jobs because they still work minimum wage because we haven't raised the wages for over 10 years, the need for hospitals in hospital deserts, and on and on. I thought, well yes, we all want secure borders. We want effective immigration law which is the jurisdiction of the federal government. So when I think about the \$1.5 billion I think about the taxpayers

because it's their money and I think they have a right to transparency and to know where this money is going. I look back and I know that \$3 billion has already been budgeted to Operation Lone Star—to the border, to the Texas border. There was so much allocation of funds by the governor during the last three or four years. But when I went to look for that to justify asking the taxpayers to give up another \$1.5 billion that could be used in many different places I couldn't really track what the governor's trusted fund—where it goes very specifically. If I couldn't find it—and I'm a legislator and a 21-year lawyer and I can't find it quickly and easily, I can't imagine that the public could.

So if you would not mind telling the public a little bit more about the governor's trusted fund? It looks like a bunch of money goes there—and I'm not sure who makes the decisions of how it gets allocated, if there's an appointed board or something under that fund, but there's certainly not a clear record of where the \$300 billion, or whatever number it is up to date, has gone already. Now, I've heard some reference to how there was supposed to be 100 miles of wall built on the Mexico-Texas border, but there have only been 11 miles built in the last few years. Yet we're going back and asking for so much more money, so I know there was a compounding question in there, but I'm asking about the governor's trusted fund for which I don't see the transparency. Can you tell me how the public can find out where all the billions of dollars that have been allocated already have gone? And then if you could tell me a little bit more about my second question, I'd appreciate that.

JETTON: Sure. You had mentioned a lot of stuff there. I'll address how the money gets spent first. When you look at **HB 6**, it's a pretty short bill, the money does go to the Trusted Programs within the Office of the Governor. We're appropriating \$1.5 billion of that for the specific purpose of "construction, operation, and maintenance of border barrier infrastructure." That is done through the Texas Facilities Commission, that money goes to the Texas Facilities Commission to construct, operate, and maintain the border fence—border barrier infrastructure. And so I'm not sure that completely makes sense. All the money over the last decade that Texas has spent on border security has not all been within the Trustee Programs within the Office of the Governor. They've gone to DPS, it's gone to TDCJ, and to a lot of different agencies within the state for handling border security. So this one specifically would go towards the Texas Facilities Commission to spend \$1.5 billion on the construction, operation, and maintenance of border barrier infrastructure.

MORALES SHAW: And is the Texas Facilities Commission then allocating subsequently to the Border Patrol or to the Texas Military Department or the National Guard? Where are they allocating it to? Are they hiring private contractors to build this wall?

JETTON: Texas Facilities Commission manages the dollars. They do the regular state procurement process and find vendors. Those contractors are the ones who construct, maintain, and operate the border barrier infrastructure.

MORALES SHAW: Okay. Then my overarching, more important question was if we are looking for a track record of success of how billions of dollars have already been spent towards this very same cause how can the public easily find that record of what has been done? And how can we account to our taxpayers where all that money has gone so far and its effectiveness?

JETTON: Okay, so I want to keep this to the border barrier infrastructure part and so what we're talking about is the roughly \$900 million that was appropriated in the 87th Legislative Session and about \$650 million during this regular session. About \$1.6 billion has been appropriated right now for the border barrier infrastructure. TFC currently have 47 miles of easements that they're moving on right now for the building of the border barrier infrastructure. Another 80 miles of easements is in discussion and working toward more border barrier infrastructure which is why we're asking for the additional \$1.5 billion of which \$1.2 billion is prepared for land that easements are almost all required on. When we talk about the effectiveness of it, we don't need to just look at what Texas has done with border barriers. When we talk about border barriers over the last two years—the two sessions—you can actually look back to prior federal administrations going back to Bill Clinton who started building border barriers.

MORALES SHAW: Okay, my time's going to expire, but it doesn't sound like there's a clear transparent way for the public—the taxpayers—to find out where their dollars have been spent so far and that makes it uncomfortable to allocate another \$1.5 billion. Thank you for taking the time to try to clarify.

REPRESENTATIVE WALLE: Representative Jetton, during the Appropriations hearing for your layout—that was held on Monday? Is that correct?

JETTON: Yes.

WALLE: I asked you a series of questions regarding the costs associated with this bill. Is that correct?

JETTON: I believe so, yes.

WALLE: We asked specific—I guess I asked you for specific data. Now you've had a couple days to review. I wanted to asked you some follow-up questions now, if that's okay. Is that okay with you?

JETTON: Sure. Yes.

WALLE: How much has the legislature in the 88th Session allocated to border security?

JETTON: Towards border security as a whole or just the—

WALLE: Border security as a whole.

JETTON: I believe it was in the \$3 billion range.

WALLE: I guess from testimony that we've heard from the governor's office and during the appropriations process, I understand that it's \$5.1 billion in border security monies for the 88th Session.

JETTON: Okay.

WALLE: Are you aware of that?

JETTON: I know it's in the multiple billions, yes.

WALLE: So the Office of the Governor has spent how much on the border wall with the existing dollars that they have?

JETTON: When you look at the \$1.6 billion, I think the best way to answer this because I don't have their balance sheet—

WALLE: Okay.

JETTON: They have the \$1.6 billion currently between the two legislative sessions, right? The two regular sessions. We're adding an additional \$1.5 billion.

WALLE: You had some in the 87th which was close to a billion dollars—

JETTON: That's correct.

WALLE: And then I understand \$650 million for the 88th Session?

JETTON: That's correct.

WALLE: Your number is correct, \$1.6 billion is my understanding for the border wall construction. Of that \$1.6 billion, how many miles have been spent or how many miles have been built with those \$1.6 billion?

JETTON: It's hard to say how much has been spent. The reason I say that—

WALLE: That's my clarifying—

JETTON: For procurement, right?

WALLE: Of the \$1.6 billion allocated, how much has been built with the existing dollars that we have? Meaning how many miles?

JETTON: I believe when we were in session there were somewhere around I believe it was just a few miles that were built during session.

WALLE: Is it the Texas Facilities Commission that's constructing and going through the leg work of procurement, purchasing, letting contracts out? Is that our understanding?

JETTON: That's correct.

WALLE: The Texas Facilities Commission as I understand it and from testimony from Monday is that 11 to 12 miles have been built with that \$1.6 billion. Is that what we heard on Monday?

JETTON: I believe it's 11.34 miles. Yes.

WALLE: If I'm doing my math correctly with using their own numbers, for each mile built that it's costing the Texas taxpayers about \$25 to \$30 million. Is that a fair assessment?

JETTON: That's correct, yes.

WALLE: Would you agree that federal immigration policy—let me backtrack, would you agree that immigration policy is a federal matter?

JETTON: Yes.

WALLE: It has been the purview based on our constitutional construct that it is a federal issue and has been a federal issue, correct?

JETTON: Immigration and the security of our country lies with the federal government.

WALLE: Correct.

JETTON: In the absence of that, which there has been an absence of that, Texas will step up.

WALLE: Let me follow up. How has there been an absence of that?

JETTON: There's been no border barrier built by the federal government in the last four years.

WALLE: Would you be surprised that there's about 400 to 500 miles of border barrier built along the whole international border?

JETTON: And this was brought up during the hearing, that we have some 1000 or 1100 miles across the southern border that needs protection and this is going toward an additional 50 miles of border barrier.

WALLE: Are you aware that there are funding proposals at the federal level to address U.S. and Mexico immigration and border security? Are you aware that the White House has requested close to \$15 billion in resources for border security? Are you aware of that?

JETTON: I am aware. Yes.

WALLE: Okay and in that \$15 billion, are you aware that the administration is asking for more border agents? Are you aware of that?

JETTON: I have heard the request has been made.

WALLE: And you're aware that he's also requested installation of new inspection machines at the border? Are you aware of that?

JETTON: I think it is great that the federal government is now investing in the border crisis that has gone on for many years now.

WALLE: Are you aware that the Border Patrol—hiring and staffing up a border patrol—has increased over time? Is that your understanding? These are according to CBP numbers.

JETTON: Sure and CBP is having to ask for more and more personnel because of the increased number of migrants illegally crossing into the United States.

WALLE: Precisely why the Biden administration is asking for more border security dollars. Are you aware, now, there is now finally a speaker candidate in the U.S. House that can help the president pass border security measures. Is that your understanding, as of today?

JETTON: As of today, that's my understanding. Yes.

WALLE: What is the ultimate goal along with your \$1.5 billion to construct this border wall? What is the ultimate goal? Obviously, you have to maintain the wall. Is that correct?

JETTON: That's correct. Yes.

WALLE: So there are costs associated with maintaining the wall? Is that my understanding during the layout?

JETTON: That's correct. Yes.

WALLE: You're going to put cameras on that wall?

JETTON: That's correct. Yes.

WALLE: You're going to have to operate staff and folks to monitor those cameras, I guess, when they get a hit. Is that your understanding?

JETTON: The technology on those cameras is to whenever there is a movement, that those images are sent to OLS.

WALLE: During the layout of the actual bill on Monday—these properties, are they being taken by eminent domain?

JETTON: They are not being taken by eminent domain.

WALLE: So the \$1.5 billion—one is not being taken by eminent domain, but what's the total amount of mileage that we're anticipating being built with this \$1.5 billion?

JETTON: It's an additional 50-plus miles that's part of the \$1.2 billion that is allocated in there. The additional \$300 million would go toward future projects.

WALLE: It's probably a 15 to 20-line bill. Is that correct?

JETTON: That's correct.

WALLE: Excluding your name on the bill. Is that correct?

JETTON: Likely, yes.

WALLE: It's asking this legislature in the special session for \$1.5 billion. Is it the ultimate goal to come back in subsequent sessions and ask for more dollars to build a wall along the Rio Grande?

JETTON: The \$1.5 billion is what the Texas Facilities Commission and the Office of the Governor have determined that they can spend over the time period between now and the next time we get to appropriate. Operation Lone Star, DPS, and working with the Border Patrol, they determine what the needs are on the ground to deter and interdict illegal crossings and that's the direction that we're going to use for future decisions when it comes to funding border security.

WALLE: To be clear, the question I was asking was is it the intent to continue to build a border wall along the U.S.-Mexico border with Texas?

JETTON: As long as that is an effective tool in the toolbox for our border security law enforcement, yes.

WALLE: So is it your testimony today then as you lay out your bill today is there's about 1200 miles of international border we share with Mexico. Is that our understanding?

JETTON: That's our understanding.

WALLE: Your intent is from El Paso to Cameron County in Brownsville, Texas, that we would have a wall all along that corridor?

JETTON: No. As was discussed during the hearing, there are areas along the border that the terrain—it's not necessary to have a border wall. Our goal in this legislature is to make sure that our law enforcement has the ability and has all the tools in the toolbox that they need to secure our border and this is one of them.

[Representative Ortega raised a point of order against further consideration of **HB 6** under Rule 4, Section 32(c)(1), of the House Rules on the grounds that the background and purpose statement in the bill analysis is substantially or materially misleading. The point of order was withdrawn.]

[Amendment No. 1 by Jetton was laid before the house.]

JETTON: This amendment clarifies two things that were brought up during the HAC hearing. The first concern raised was whether eminent domain will be used to acquire land. This is a voluntary program. Texas Facilities Commission is not using eminent domain. The amendment implements the same safeguards we adopted two years ago prohibiting the use of these funds to acquire land for the wall with eminent domain or to build wall on land acquired from eminent domain. The second concern raised was whether these funds would be used to build a wall between Texas and New Mexico. That is not the intent of the Facilities Commission, but to address the concern my amendment will prohibit the use of these funds to build a barrier between Texas and New Mexico or any other states—only between Texas and Mexico.

REPRESENTATIVE MARTINEZ FISCHER: Thank you, Representative Jetton. Thank you for listening. I know you said these issues of eminent domain and whether or not we build barriers or walls with our state neighbors. We understood the intent to be that we weren't going to do that but yet we had not reduced that to writing and is this what your amendment is attempting to do?

JETTON: Yes.

MARTINEZ FISCHER: And with respect to purposes of intent now, if your amendment goes on then the eminent domain speaks for itself. None of these funds that are on the table in this proposal will be used for that purpose? And that's correct?

JETTON: The \$1.5 billion that's in question in **HB 6** could not be used with eminent domain.

MARTINEZ FISCHER: Perfect. Then the second part of the \$1.5 billion won't be used to erect any barrier between this state and any other U.S. state. So that's New Mexico in your example, but that could be another state that borders us. So any state that we border we won't be building any barriers. Is that correct?

JETTON: None of these funds will be used to build a wall between us and another state, yes.

MARTINEZ FISCHER: I know because the border barrier infrastructure is not defined and we've discussed in committee that includes walls, buoys, and the C-wire. That's correct?

JETTON: It does not include C-wire. There's tactical barriers and there's the barrier infrastructure. The barrier infrastructure is the actual wall and potentially the buoys.

MARTINEZ FISCHER: So just to be clear then when we adopt this amendment it speaks to the barriers being buoys and walls? Not a trick question.

JETTON: Yes, those are the only two that I'm aware of, and I don't want to say definitively. Maybe there's some other barrier infrastructure that we use. Those are the two barrier infrastructures that have been discussed and I'm aware of that these funds would go towards.

[Amendment No. 1 was adopted by Record No. 21.]

[Amendment No. 2 by Martinez Fischer was laid before the house.]

MARTINEZ FISCHER: I want to thank Representative Jetton for working with us on the Appropriations Committee. A lot of that prior amendment that was adopted was a result of a dialogue in Appropriations raising issues about how we utilize this money. If you're keeping score—and I've been keeping score here lately—we have now appropriated or intend to appropriate over \$6 billion to border security. And most of that, a lot of that is going to be used to go towards building fences, acquiring easements, building walls—

[Representative Vasut raised a point of order against further consideration of Amendment No. 2 under Article III, Section 40, of the Texas Constitution on the grounds that the subject matter of the amendment is not included in the governor's proclamation. The point of order was withdrawn.]

[Amendment No. 2 was withdrawn.]

[Amendment No. 3 by Hinojosa was laid before the house.]

REPRESENTATIVE HINOJOSA: This amendment moves the money to school security.

[Representative Cain raised a point of order against further consideration of Amendment No. 3 under Article III, Section 40, of the Texas Constitution on the grounds that the subject matter of the amendment is not included in the governor's proclamation. The point of order was withdrawn.]

[Amendment No. 3 was withdrawn.]

[Amendment No. 4 by Martinez Fischer was laid before the house.]

MARTINEZ FISCHER: Members, this is an amendment—if you want to look at your screens—that deals with just recent developments in the news. I worry about us going home and it's always that law of unintended consequences. This amendment says that if you are contracting or as these funds are used to build this wall, the governor may not contract with any known group that is anti-Semitic,

white supremacist, or other known hate group to construct, operate, or maintain border barrier infrastructure for which money is appropriated under Subsection (a) of this section. I hope it's acceptable to the author.

[Amendment No. 4 was adopted by Record No. 22.]

[Amendment No. 5 by J. González was laid before the house.]

REPRESENTATIVE J. GONZÁLEZ: This amendment would ensure that none of this funding will go towards river buoys like the ones currently in the Rio Grande River. For those of you who may want to ignore the facts surrounding these death traps, let me remind you that these buoys are lined with razor wire and specifically placed in shallow areas of the river to increase the risk of drowning by pushing human beings into the most dangerous points of the river with stronger currents or to inflict severe or deadly injuries by forcing that person's body directly into the razor wire.

It's monstrous that we would purposely injure and drown innocent kids and women. One known victim was a pregnant woman who tragically suffered a miscarriage when becoming entangled in the razor wire. Even worse, the state is actively investigating claims that DPS troopers were instructed to physically push human beings into the river where they could likely risk injury or death. Moreover, there's no evidence that these river buoys even deter border crossings.

Look, democrats have always stood firm in making sure Texas families are protected and they're safe and understand the potential for new policy regarding our Texas-Mexico border. It may help us further that goal if we actually work together to accomplish that. But how many more lives need to be lost or permanently disfigured in order to carry out a political agenda riddled with empty promises? The author of this bill, in committee, stated that these funds appropriated by this bill could very well be used for these harmful purposes. Members, these river buoys are not just risky they are inhumane, immoral, and likely unconstitutional and will harm our foreign relations with Mexico. For a legislative body claiming to be pro-life this should be a no-brainer for y'all. So please join me in supporting this amendment and ensure that no funds get allocated towards these death traps.

JETTON: I am speaking against the amendment. The buoys have been seen as an effective tool and a lot less costly than barrier infrastructure or barrier walls. So I'm in support of keeping the river buoys on there. I'm not aware of any razor wire on the buoys. I was down at the border yesterday and did not see any razor wire on there. The report of drownings revolved around bodies that were caught up in the buoys, but not necessarily caused because of the buoys. They are a deterrent. They are used to prevent—I oppose the amendment.

REPRESENTATIVE GOODWIN: I think Representative González mentioned razor wire, but it's actually more like a saw blade that's between the buoys—the balls. I had an opportunity to kayak on the river and see them up close, and I could see somebody reaching for the ball and falling onto the saw blade. Doesn't that seem inhumane?

JETTON: I'm not aware of razor blades on the buoys.

GOODWIN: So the amendment would say that we couldn't use buoy barriers partly because of the inhumanity of the saw blades in between them and how that can harm somebody. It seems like something you might want to clarify.

JETTON: I think it's important to note that I visited the border yesterday. I saw the buoys. There are no saw blades in between the buoys and I have confirmation now from DPS that there are not saw blades between the buoys. I don't know any other way to put that. This has been deemed an effective tool. I think the courts will make a decision on this soon. We need to make sure that our border security—our Operation Lone Star—has every tool in the toolbox necessary to secure the border.

GOODWIN: Well, I also went down and was in a kayak and up close to them and there are saw blades in between, or at least at the time I went.

[Amendment No. 5 failed of adoption by Record No. 23.]

[Amendment No. 6 by Thierry was laid before the house.]

REPRESENTATIVE THIERRY: Members, our great State of Texas has always prided itself on its commitment to respecting the sovereignty of or neighboring states. Building a wall between Texas and New Mexico would be a direct interference with New Mexico's sovereign rights and would run counter to our principles of cooperation and goodwill among fellow states. This amendment would clarify that any new border wall funding would be used solely to construct a barrier between our international border of Texas and Mexico, not New Mexico. As you heard earlier from Representative Jetton, he assured us through his perfecting amendment the funding will not be utilized to build an additional border between Texas and neighboring states. I want to thank the author for working with me and us and as such I'm withdrawing the amendment as the objective has been accomplished.

[Amendment No. 6 was withdrawn.]

REPRESENTATIVE RAYMOND: Chairman, **HB 6** as written appropriates funds to the governor's office for the construction, operation, and maintenance of border barrier infrastructure, is that correct?

JETTON: Correct.

RAYMOND: It's also your understanding that DPS will work with them on these projects including mapping or imaging that is needed for the projects. For example, to avoid flood risks, et cetera. Is that correct?

JETTON: That's correct, yes.

[**HB 6**, as amended, was passed to engrossment by Record 24.]

HB 4 DEBATE - SECOND READING
(by Spiller, Hefner, Hunter, K. Bell, et al.)

HB 4, A bill to be entitled An Act relating to prohibitions on the illegal entry into or illegal presence in this state by a person who is an alien, the enforcement of those prohibitions, and authorizing the removal of persons who violate certain of those prohibitions in lieu of arrest; creating criminal offenses.

REPRESENTATIVE SPILLER: **HB 4** is a landmark border security bill that provides a Texas solution to a Texas problem. **HB 4** creates a state offense for entering or attempting to enter the state illegally.

[Representative Zwiener raised a point of order against further consideration of **HB 4** under Rule 8, Section 1(a)(1), of the House Rules on the grounds that the bill caption failed to give reasonable notice of the subject of the bill. The point of order was withdrawn.]

SPILLER: Members, we have a crisis on our southern border. An unprecedented number of people including a growing number of documented terrorists, drugs, and weapons continue to illegally cross our southern border into Texas. Governor Abbott, the Texas Department of Public Safety, and the Texas National Guard continue to work together to secure our border and to prevent, detect, and interdict transnational criminal behavior between the ports of entry. Since the launch of Operation Lone Star, the multiagency effort has led to approximately half a million illegal immigrant apprehensions, approximately 35,000 criminal arrests, and more than 31,000 felony charges reported. In the fight against fentanyl alone, Texas law enforcement has seized over 429 million lethal doses of fentanyl. Texans know that the Biden administration has failed and refused to enforce federal immigration laws and to secure our border. Mexican drug cartels continue to traffic fentanyl and other legal drugs into our state and our country and continue to traffic men, women, and children to be held in servitude to them. Our cries for help and enforcement of our existing federal immigration laws have been ignored by President Biden. We have had enough.

HB 4 addresses the problem head on. **HB 4** is a landmark bill that allows Texans to protect Texas—to send illegal immigrants back and to prosecute and incarcerate those that refuse to leave. Under **HB 4**, for the first time ever, Texas will subject people to detention and arrest for illegal entry into our state from a foreign nation. All licensed law enforcement officers in Texas will be authorized to arrest or remove any person who illegally enters the state with penalties of up to 20 years in prison for refusing to comply with an order to return.

Let me take a moment, if you will, to explain the bill. There have been a lot of questions. **HB 4**'s specific provisions are summarized as follows: Chapter 51 is added to the Texas Penal Code. That section, 51.01, defines alien and port of entry as those terms are defined under existing federal law. Section 51.02 provides for the offense of illegal entry from a foreign nation stating that a person who is an alien commits an offense if the person enters or attempts to enter this state from a foreign nation at any location other than a lawful port of entry. The first offense is a Class B misdemeanor. This language, by the way, is

nothing new. That tracks existing federal law 8 U.S.C. 1325. Additionally, so as not to conflict with existing federal law, this section provides an affirmative defense to prosecution if the federal government has granted the defendant lawful presence in the United States or asylum. The defendant's conduct does not constitute a violation of 8 U.S.C. 1325 or the defendant was approved for benefits under DACA, the Deferred Action for Childhood Arrivals program. However, under Subsection (e) of the provision a peace officer may, in lieu of an arrest, remove a person detained for a violation of the section by collecting their identifying information, transporting the person to a port of entry, and ordering the person to return to the foreign nation from which the person entered or attempted to enter. This process is similar to existing federal law providing for removal under 8 U.S.C. Section 1225. Then, under Section 51.04, a refusal to comply with an order to return to the foreign nation from which they entered or attempted to enter is a second degree felony punishable by two to 20 years. Further, Section 51.03 provides for the offense of illegal reentry by stating that a person who is an alien commits an offense if the person enters or attempts to enter or is at any time found in this state after one, being denied admission to or excluded, deported, or removed from the United States. Or two, having departed the United States while an order of exclusion, deportation, or removal is outstanding. That offense is a Class A misdemeanor but provides for an increased penalty based on prior convictions or removals. Again, this language is nothing new. It tracks existing federal law 8 U.S.C. Section 1326. Section two of the bill amends the Civil Practice and Remedies Code by adding Chapter 117 dealing with indemnification relative to enforcement of these rules. That's at the local level. And then again Section 117.003 provides the same indemnification language relative to state officials. And lastly, 117.004 provides for a civil action brought under either of those provisions an appeal must be taken directly to the Supreme Court of Texas.

Now, why **HB 4** and why is this bill structured this way? First, I believe **HB 4**, unlike some other prior proposals, is completely constitutional. It's not in conflict with the precedent set in the *Arizona v. United States* case. It is completely distinguishable from the statute that Arizona passed and is not preempted by existing federal immigration law. What Arizona attempted to do is completely different than what Texas is doing under **HB 4**. Second, **HB 4** is not preempted by federal law because it's not in conflict with federal law. To quote from the majority opinion in the *Arizona* case: "State laws are preempted when they conflict with federal law, including when they stand as an obstacle to the accomplishment and execution of the full purposes and objectives of congress." **HB 4** goes to great lengths to avoid that. Third, **HB 4** is the first time ever Texas will subject people to detention—excuse me. Lastly, well let me say this—Texas has a constitutional right and authority and ability to protect its borders. And fourth, **HB 4** is a Texas solution to a Texas problem. It is a humane, logical, and efficient approach to a problem created and fostered by the Biden administration's continued failure and refusal to secure our border. Not only does it not overburden our criminal justice system, it should be less costly than

detaining many people that we are currently expending funds to house. There is nothing unfair about ordering someone back from where they came if they arrived here illegally.

HB 4 tracks existing federal immigration law—law that's been in place for decades. Further, **HB 4** protects and supports our Texas law enforcement and gives them the tools and authority they need to help keep us all safe. I applaud Governor Abbott for adding this issues to the special session. Texas needs **HB 4**.

[Representative Ortega raised a point of order against further consideration of **HB 4** under Article III, Section 40, of the Texas Constitution on the grounds that the subject matter of the bill is not included in the governor's proclamation. The point of order was withdrawn.]

[Representative Neave Criado raised a point of order against further consideration of **HB 4** under Article III, Section 40, of the Texas Constitution on the grounds that the subject matter of the bill is not included in the governor's proclamation. The point of order was overruled.]

REPRESENTATIVE NEAVE CRIADO: Mr. Spiller, at the hearing in State Affairs on this legislation, there was no witness testimony from a lawyer that stated that **HB 4** was constitutional, correct?

SPILLER: I can't recall. I did not invite any lawyers to come and give their opinion, but I can't recall.

NEAVE CRIADO: Well, I can tell you that there was no attorney that said that the bill was constitutional. In fact, every practicing immigration attorney stated that **HB 4** likely had constitutional violations. I want to discuss a certain provision of your legislation. The deportation section starting on page 2, line 17. It states that in Subsection (e) a "peace officer may, in lieu of arrest, remove a person detained for a violation of this section" and then it goes through three different provisions. Correct?

SPILLER: Yes.

NEAVE CRIADO: And "peace officer" would include DPS, or county officers, local city police officers, even down to a school resource officer. Is that correct?

SPILLER: Yes. It's all law enforcement officers as that term is defined under, I believe, the Code of Criminal Procedure.

NEAVE CRIADO: And that discretion of those peace officers to take this action of removal is entirely at the will of the peace officer. Correct?

SPILLER: Yes. I assume that they would have discussions with other law enforcement officials. I can't imagine those decisions being made in a vacuum but, yes, they have that ultimate authority.

NEAVE CRIADO: Okay and your bill doesn't have any specific language or provisions regarding when the peace officers would need to take that action or make that choice of either arrest or removal. Correct?

SPILLER: Correct. They would make that determination presumably after discussions with others—maybe prosecutors, maybe DPS, maybe other law enforcement authorities—to make a determination of what they do in this particular instance. The good thing about this bill is that it gives law officers discretion and the ability to make choices, whether they seek to have someone removed or they want to have them prosecuted, or whether they choose not to prosecute at all.

NEAVE CRIADO: I think you hit on a significant point because you said that it would be generally after consultation with either prosecutors or other experts, right?

SPILLER: I would think so.

NEAVE CRIADO: Because the determination that they're going to make about alienage on the first page, which is one of the elements of the offense, is a complex determination, right?

SPILLER: Well, I think it's a decision that's made on an individual one-on-one basis. You may have a situation where you have someone, a parent and a child—you could have some—certainly they need to check into it and see. Look for these folks that are here, if they have previous criminal histories, if they're documented terrorists, if they are on the FBI terrorist watch list, or if you have a child—would the child and the parents certainly together be returned? So all those things I think would be made by law enforcement, and I trust them to make those decisions.

NEAVE CRIADO: Right. So it wouldn't be an easy decision that they could maybe make on the spot? Right?

SPILLER: They could make it on the spot or they could certainly go to some law enforcement facility. I don't think decisions have to be made on the side of the road if that's where they encounter them or crossing a field, if that's the instance. But I think certainly at some location they can make those determinations. Yes.

NEAVE CRIADO: But there's a lot of factors for them to determine whether a person is an "alien" under your statute, correct?

SPILLER: Correct and I think law enforcement generally makes judgment calls in the field, or certainly after a stop or a detention, in virtually any instance and makes a decision. Do we charge this person? Do we not? Do we take them into custody? Do we write them a ticket with a promise to appear? There's any number of things that they may take into consideration.

NEAVE CRIADO: Right. They may not make that decision right away. Let's say that you have a United States citizen who doesn't have proof that they are a citizen. Like they don't have their passport with them, or they don't have a copy of their birth certificate with them. What happens in that circumstance when you have an American citizen who an officer suspects may be violating this new sweeping state crime?

SPILLER: Okay. I don't know of a single instance where a U.S. citizen has been, even under federal law under 8 U.S.C. 1227 or under 8 U.S.C. 1225, that has been removed from the State of Texas or this country unlawfully.

NEAVE CRIADO: That wasn't my question. My question was what happens if a United States citizen is stopped by an officer who suspects—and they cannot prove that they are an American citizen—and then an officer has to make a determination of whether this person that's stating they're a citizen is actually a citizen or not? What happens in that circumstance to a United States citizen?

SPILLER: I'm just saying I doubt seriously that that's going to happen. People who are citizens can usually say, "Look, this is my driver's license number, this is my date of birth, this is name, this is where I live, this is where I go to school, this is where I work." This bill is not directed toward deporting or removing U.S. citizens. I don't think that's the purpose of the bill at all.

NEAVE CRIADO: But the problem is while you cannot imagine it, it has happened before. United States citizens that cannot prove their citizenship have been detained, and so you have potential violations of the United States Constitution that United States citizens can claim which I figured is why you have those indemnification provisions. To protect the counties, right? If something like that were to happen from all the lawsuits that can be filed in those circumstances?

SPILLER: I would say, first of all, under the federal statute the federal government removes people that are here illegally on a regular basis. As a matter of fact from 2016, 2017, 2018, and 2019, the federal government averaged 328,000 removals a year.

NEAVE CRIADO: But those weren't my questions.

SPILLER: I don't know a single instance where any U.S. citizen was wrongfully removed from our country.

NEAVE CRIADO: May I remind you about Operation Wetback where American citizens were deported by the thousands back to Mexico by the federal government? So this has happened. It's an open sore and an open wound for people of my community which is why we are raising these concerns. But I do want to talk about another issue. What happens if Mexico does not accept the return of a non-Mexican migrant at the land port of entry?

SPILLER: What I think is—just like we have 50 states, Mexico has 32 states. Four of those border Texas and our governor has memorandums of understanding on border security where they have agreed to fully cooperate with us in border security matters. My understanding is that they will abide by that. They will comply with our requests and that won't be an issue. If it is, then we'll deal with it accordingly. We have every indication, based on Governor Abbott's memorandums of understanding with each of those states, that they will cooperate with us.

NEAVE CRIADO: I'm glad you brought up the MOUs because that was raised at the hearing. We researched and looked into this and in fact these MOUs with the Mexican states of Chihuahua, Nuevo León, and Tamaulipas have no language accepting migrants from Texas. And, in fact, were you aware that any such type of agreement would be required by the Mexican federal government? They have laws that cannot be negotiated by the State of Texas with these border states. Any type of agreement where a country is going to take migrants has to be negotiated between the federal government and the federal government of each state, of Mexico and the United States. So those MOUs, with all due respect Representative, do not give the authority and would not be able to give the authority. That's a big, big issue that we have to address about what's going to happen to these Mexican migrants or non-Mexican migrants that are not accepted by Mexico.

SPILLER: Let me say this. I respectfully disagree. Under the Tenth Amendment to the U.S. Constitution, Texas reserves and has certain rights to contract with and to work with states of other governments, and I believe that Governor Abbott has full authority to contract and do a memorandum of understanding. I've read those agreements and I frankly believe that it is done in the spirit of cooperation. They have pledged to assist us in border security matters. No, I don't think the idea of removal and then accepting—we didn't have **HB 4** at that time. I think those agreements will be revisited, but I don't have any doubt that Governor Abbott will be able to work that out with those folks.

[Representative Morales Shaw raised a point of order against further consideration of **HB 4** under Rule 4, Section 32(c)(1), of the House Rules on the grounds that the background and purpose statement is substantially or materially misleading. The point of order was overruled.]

[Representative C.J. Harris moved to limit amendments to **HB 4** to those pending on the speaker's desk.]

REPRESENTATIVE MARTINEZ FISCHER: Representative Harris, there are members that have amendments in certain phases of being drafted right now, and I'd hate to cut them off. I know I have one that I'm working on, and we've submitted it 30 or 45 minutes ago, and we're just waiting. So under your motion would you give allowance for people who have amendments already at TLC's desk and are just waiting for drafts to get back and get them filed?

REPRESENTATIVE C.J. HARRIS: The motion as it's made—I don't think it's an amendable motion. What we're talking about is the amendments currently on the speaker's desk. There's, I think, 46 amendments that have already been filed, and so I would imagine that there's plenty of opportunity to have the full debate on this bill with that many amendments.

MARTINEZ FISCHER: This motion, if it were adopted, would this motion apply to amendments to the amendment?

SPEAKER PHELAN: Mr. Martinez Fischer, it would not apply to amendments to the amendment.

MARTINEZ FISCHER: Okay, so just original new amendments. Okay, thank you. Representative, I would ask you—whether it's an amendable motion or not, I don't know—but perhaps if you'd be willing to maybe just pull this down for a few minutes? We can talk about it and you can certainly reassert it if you're not persuaded to allow the members who have put the time to get their amendments drafted to get those filed.

C.J. HARRIS: I appreciate your request, but at this time I don't think I would agree to it.

NEAVE CRIADO: This motion is a surprise motion and let me say this is one of the most sweeping bills that is going to try to circumvent the United States Constitution. It is a piece of legislation that is going to detrimentally impact millions of our fellow Texans. To have the opportunity to amend these bills cut off when—let me say that the legislative council—we have submitted amendments in the past to the legislative council. They are short-staffed. They do not have the same amount of staff to be able to draft the amendments that we need. We hear new arguments today as the author is laying them out. We're going to continue to hear arguments and we want an opportunity to amend to protect the people of Texas. This motion is going to be devastating. And let me say if this body is trying to circumvent or challenge the *Arizona v. United States* Supreme Court case, this is going to I believe contribute to showing the courts that this body did not fully entertain every single opportunity to address this massive, sweeping piece of legislation.

REPRESENTATIVE TURNER: Representative Neave Criado, you're the chair of the Mexican American Legislative Caucus, is that correct?

NEAVE CRIADO: That's correct.

TURNER: Are you telling the body you had no advanced notice that Mr. Harris was going to bring this motion before the body?

NEAVE CRIADO: No, and we have in good faith attempted to have discussions on this legislation. We know the impact of this legislation. Legislative council has not even given us all the drafts that we requested on significant pieces of this bill that are creating entirely new crimes. It's not something that's just being amended. This is a new body of law that is unprecedented in this country.

TURNER: Representative Neave Criado, are you aware that in the past when we've had contentious bills on the floor and there have been a lot amendments that at times there has been perhaps some agreements reached? But that's only been once there's been some good faith discussion between leaders on both sides of the bill. You are a leader on one side of this bill and that has not happened in this case. Is that correct?

NEAVE CRIADO: That's correct.

TURNER: I hope if Mr. Harris is listening—and I believe he is—that he would reconsider. Perhaps have a discussion—pull down this motion, have a discussion with you, and negotiate something as to those amendments that you mentioned

are still in drafting that members have been working on all day, perhaps for several days. If he was willing to do that would you be willing to have that discussion with him?

NEAVE CRIADO: I'm ready, willing, and able to speak to him about the impact of his motion.

TURNER: Thank you, I hope he'll reconsider.

[The motion to limit amendments prevailed by Record No. 25.]

NEAVE CRIADO: Does Rule 7, Section 3, of the Texas House Rules govern motions that are allowed during debate?

SPEAKER: That is correct, Ms. Neave Criado.

NEAVE CRIADO: What is the procedure whenever a motion that does not fall within Rule 7, Section 3, is considered?

SPEAKER: Ms. Neave Criado, that list is not an exhaustive list.

NEAVE CRIADO: The list of the 10 does not include a motion that was made by Mr. Harris, is that not correct?

SPEAKER: That is correct.

NEAVE CRIADO: Where is the list of other potential motions that could be brought? And where in the rules does it state that this list is not exhaustive?

SPEAKER: Ms. Neave Criado, Rule 11, Section 10, specifically provides for a motion to limit amendments.

NEAVE CRIADO: Does Rule 11, Section 10, fall within Rule 7, Section 3?

SPEAKER: Rule 11, Section 10, is a specific exception to Rule 7, Section 3.

MARTINEZ FISCHER: Listening to the discussion, I'm aware of Rule 11, Section 10, as it relates to the motions to limit amendments as a rule pertaining to amendments. I think the inquiry is the order of when that motion would be in order and pursuant to Rule 7, Section 3, it seems to limit the motions that can be made during a debate which is what we're doing right now. So the inquiry is not that Rule 11, Section 10, doesn't exist or isn't applicable—it certainly exists, it's certainly applicable—it's just not in order during a debate pursuant to Rule 7, Section 3, otherwise it would be in there.

SPEAKER: Mr. Martinez Fischer, in response to your inquiry, Rule 11, Section 10, Subsection (c), the motion to limit amendments if adopted shall not in anyway cut off or limit debate or other parliamentary maneuvers on the pending proposition or propositions or amendments including within the motion. The sole function of the motion is to prevent the chair from accepting further amendments to the proposition to which the motion is applied.

MARTINEZ FISCHER: I follow 100 percent that explanation as it pertains to a motion that is made pursuant to Rule 11, but under Rule 7, Section 3, every subsection within Section 3 is a motion that's in the rules in other places. In other words, pursuant to Rule 7, Section 3, the only motions that are in order are

exclusive to those that are listed in Rule 7, Section 3. When we're not in debate on a matter then obviously Rule 11 would apply at any other time, not just during the debate that we were in is what I'm trying to understand.

SPEAKER: Mr. Martinez Fischer, there is no other time in which the opportunity to limit debate would apply than during the debate.

NEAVE CRIADO: Did the speaker say that there were 25 signatures in support of the motion?

SPEAKER: There were 26, Ms. Neave Criado.

NEAVE CRIADO: Can you please state the names of those 26 signatures for the record?

SPEAKER: They will be printed in the journal.

REPRESENTATIVE RAMOS: I'd like to read the names into the record so that our peers will know. As we know, strict enforcement was called—

SPEAKER: Ma'am that is not a proper parliamentary inquiry. The names will be printed into the journal for public record.

RAMOS: We would like to inspect the signatures of the names of the individuals who signed this document. It appears that some of these individuals are not here today.

SPEAKER: Please confer with the journal clerk on those signatures and we will verify whether or not they're in attendance today.

RAMOS: Is there a particular reason we cannot name the names of these 26 individuals who are cutting off debate on the most sweeping anti-immigrant legislation that this body has introduced?

SPEAKER: That is not a proper parliamentary inquiry.

REPRESENTATIVE WALLE: I'm trying to comprehend the functionality of what just occurred. Representative Cody Harris' motion, the net effect, was that to—just to repeat—end all amendments that have been filed on the speaker's desk? Is that the net effect of what's happened? I'm just trying to understand what has happened.

SPEAKER: It is to limit the amendments that are currently on the speaker's desk. I believe there's 47 amendments. So further debate will be limited to the 47 amendments on the desk plus amendments to the amendment. Or the amendments to the amendments to the amendment.

WALLE: Fair enough, but as members who—all of us have the ability as members to file debate. So the members that have requested amendments being drafted with the legislative council as the bill was laid out or before—all those amendments have been cut off? Or to use the chair's words limit those amendments from being laid out for a full debate on this bill?

SPEAKER: If they have not been filed with the chief clerk by the time we take this vote, they will not be admissible to the body, correct.

WALLE: I'm trying to comprehend based on the rules, based on precedent, and the journal—when has this type of amendment or this type of motion—the Cody Harris motion—when have we actually done that on a bill to, in essence, cut off debate? Because that seems like what I'm—it appears like that's the net effect of what has happened.

SPEAKER: The chair is not advised of when the last time this occurred, but it definitely has occurred before in the house.

WALLE: It's happened before, but is it fair to say it's rare? Particularly on this type of bill of such significance on the house floor?

SPEAKER: Mr. Walle, that is not a proper parliamentary inquiry.

REPRESENTATIVE DUTTON: You may have said this and I couldn't hear it, but under Rule 7, Section 3, as headed by motions allowed during debate it lists certain motions but it also says that none other. Does that prohibit any other motions from being made during debate?

[At 6:24 p.m., the house stood at ease. The speaker called the house to order at 9:34 p.m.]

[Amendment No. 1 by Neave Criado was laid before the house.]

NEAVE CRIADO: We've been here for hours on one of the most consequential bills that is attempting to create sweeping new law that's going to circumvent our United States Constitution. We heard here earlier from the author that United States citizens would not be swept up into this legislation. But the fact is that this legislation isn't just an immigration bill, it's a bill that is going to impact American United States citizens as well. In fact, ICE has deported as many as 70 United States citizens in the last five years. There was one United States citizen that was detained by ICE for over a month, and he is now getting a \$150,000 settlement.

This legislation is so fraught with issues left and right. We'll start with one—law enforcement. Our law enforcement, after we had a brutal fight on the floor of this house in 2017 on **SB 4**, left our communities—despite y'all's denial that there's no discrimination, that there's no impact to the community. In my district, we had hundreds of parents show up lining the walls concerned about being separated from their children. Just at the mere conversation of the passage of **SB 4** in 2017. Just because of the mere anti-immigrant rhetoric that Donald Trump was spewing from his mouth and because of the rhetoric that spewed from this chamber. These parents worried about what's going to happen to them if they get separated from their children—if they are driving down the street to take them to a park and their taillight is out and they get stopped and can't prove their citizenship. We're back here again. That was for some of us our first session and for others that had been here for years they saw what happened to this chamber and saw what happened to this state because of legislation like that.

Since 2017, our law enforcement has worked hard day and night to rebuild those damaged community relations. To rebuild the trust so that family violence survivors would be willing to come forward and report that they were getting beat up by the person that they were with. We heard from the Texas Council on

Family Violence earlier. We have heard from survivor advocates that women who are abused, who are in situations will not be reporting to the police making our communities less safe because of legislation like this. Our law enforcement that works hard day and night—we ask them to be CPS workers. We ask them to be homelessness liaisons. We ask them to be mental health counselors. And now we are asking them to be immigration officials while we have a shortage of law enforcement, a crisis of a law enforcement police shortage in our state.

For what? For us to be able to claim that we're tough on our border? When this bill, in fact, is not restricted to the border. It impacts every single one of our districts from Dallas to El Paso to Houston to West Texas. And for many of us that are standing up here, we know certain cities that we cannot drive through because of the color of our skin because we know that we are going to be pulled over. For some of you, that doesn't matter because of the color of your skin. For some of us, and our constituents, we live it every single day. To damage those police community relations—it's going to be exacerbated and we are going to be taken back to 2017.

This legislation is also bad for business. We know and we've heard how you individuals are okay taking advantage of immigrant labor at a cheap cost. We know that we have a shortage of workers in so many different industries in this state, but we are now empowering law enforcement to go into a place of business to question people about their citizenship. So we're now going to empower local police to be able to do ICE raids in local businesses. You think about every single industry whether it's construction, medical, agriculture—so for those employers, get ready to potentially lose workers.

We also heard testimony during the committee hearing about family separation. Moms who, whether they cross the border or they have their children in places like my town in Dallas or Houston, can now under this law be separated from their children. We saw in concertina wire—razor wire—moms risking their lives to try to bring their children to a better life, having miscarriages in barbed razor wire because of the cruelty of this state. Moms separated from their children who are put into the hands of a foster care system that we know is fraught with issues.

Finally, we know what this is trying to do. We know that this is trying to circumvent our Constitution and long-standing principals of the Supremacy Clause. It's a preemption so that Texas can try to flex its muscle with the power that it does not have. There is a reason that our federal government is the one responsible for determining whether someone is a citizen or not, because those are not easy determinations to make. Those are complex determinations which is in the hands of the federal government. We also heard about MOUs between Texas and Mexico. And while some of those memorandums of understanding may apply to local issues, they do not have the power. The MOUs that are in place right now do not address what happens when a state is going to be giving individuals back. These are conversations that must take place at a diplomatic level between federal government and federal government.

The fact is we know why we are here. Y'all saw the articles today and I'm sure others will speak to a lot of the truths and the reasons that we know that we are here. This is another attack, not just on people of color—another attack on Latinos, another attack on our Black brothers and sisters—it's an attack on our Constitution. It's an attack on the basic principles of freedom that our state should be priding itself on. It is an attack on our families. That's why we're asking individuals to support this amendment.

SPILLER: I'll just be brief. I respectfully disagree with the representative, and as I stated in my layout, Texas needs **HB 4**. This is a very humane and logical approach to the problem that has been created and that we are trying to solve. I respectfully oppose the amendment.

REPRESENTATIVE WU: Members, I'm asking you to support this amendment to strike the enacting clause and let's go home. This piece of legislation—outside of its violently unconstitutional nature, outside of the general incompetence, the hamfisted way of how this approaches law enforcement—to say that we're going to pick people up and randomly take them to a port of entry and leave them there without any regard to where they're from, where they came in from, or where they need to go instead? Besides the fact that this bill has parts in it that make absolutely no sense whatsoever, at the end of the day if the intent is to provide public safety for our communities, if the intent is to assist law enforcement, then this legislation does the opposite.

I've said it time and time again and I'll say it again now. This legislation, while it may be targeted to people who are undocumented, this will affect all immigrant communities. Whether they are undocumented, whether they are green card holders, whether they are American citizens this will affect them. This will affect me and this will affect my family. Because right now in my own community we've experienced time and time again crime directed at our community—at the Asian American community, at immigrant communities, at the Latino community because perpetrators of crime believe that we're an easy target. They believe that we're an easy target because they believe that we won't go to the police, that we're scared of the police, and that we won't report things even if we become victims. This bill is going to help fulfill that. As much as immigrant communities are fearful of talking to law enforcement, as much as immigrant communities are already distrusting of government, this legislation will announce to the whole world that immigrant communities will not go to the police. Because you'll set up a system where instead of a police officer coming to the scene and asking, "Who's hurt? Are you all right?" Their first question is now going to be, "Show me your papers. Prove your status." We've taken community caretakers and turned them into immigration officials. It doesn't matter if your local police department says, "You know what? We're not going to do this." It doesn't matter. You have sent a clear message to the entire state through this legislation. You have sent a clear message that the priority for law enforcement is not public safety, it's immigration status.

And you know what? Immigration status is a complicated thing, especially in my district. Because we have people from all over the world with all different kinds of statuses. Some people are here without papers, some people are here

with papers, some people are here with paperwork that has expired temporarily, some people didn't fill it out the right way and needed to redo it, and there are some people here that are on their pathway to citizenship. But the one thing that unites them all is nobody knows what their status is just by looking at them. But you know what? When people look around the room I know who they're going to point out as the immigrants. They're going to point to me. They're going to point to the Latinos in this room And without anything other than that the public is going to say, "Those people. Check those people." An officer who is not looking to be the best community liaison is going to say, "I'm going to mess with those people." It doesn't matter.

This legislation is an open attack on the immigrant community. This legislation is an open attack on the Asian community and it's an open attack on the Latino community. It's an open attack on any group that's going to be made to fear talking to the police, made to fear cooperating with the police, and made to become victims a second time. I ask you to support this amendment and let's go home.

REPRESENTATIVE MOODY: I remember standing right here talking with all of you after a murderer came to El Paso and shot 45 of us. He was there because of racial hatred and quite frankly the language in his manifesto was no different than what I've seen some supporters of this bill use outside of this building.

Let me be clear, I don't think anyone here has those kinds of beliefs. I really don't. But the tensions we've seen even just tonight show how legislation like this hits many members in many communities. I'm asking earnestly of those supporters of this bill to just sit with that and to think about how we're receiving it and why. Bills like this have an effect that goes far beyond the words that are on the page.

I want to talk about both what this bill does and what it means and why we need this amendment. I hear that **HB 4** is just creating a state-level illegal entry crime. If that's all it did, I'd say it's a bad approach that will waste tax dollars, but that's about all I'd have to say about it. However, this is much more. Look at the affirmative defenses section. It's a list of ways a noncitizen can lawfully be in the United States, but an affirmative defense is something you raise after you are arrested, held in jail, and eventually get to your trial. Let me put that another way—**HB 4** allows officers to arrest someone who is lawfully in this country. **HB 4** allows officers to jail someone who is lawfully in this country. **HB 4** allows officers to prosecute someone who is lawfully in this country. **HB 4** says that only then, months or years later, does that person have a right to say, "I did everything right. I'm here lawfully." How can that possibly be our law?

And as wrongheaded as that is, at least we can claim it's some due process. The removal piece doesn't even pretend to offer that. **HB 4** says that any cop anywhere can skip arrest, skip a judge, skip even booking or a report or any kind of record at all. Just take them to the border and tell them to get out. Again, that includes people who are lawfully here. And when mistakes happen I guarantee we're going to see even United States citizens forced across the border. I guarantee it.

When I worked on red flag laws, I was told that a live hearing in front of a judge with sworn testimony wasn't enough due process when our Second Amendment rights were concerned. Here there's even more at stake and suddenly some deputy constable gets to make that call at gunpoint on the side of a road with no process and no paperwork. As you stand here right now, I know you're all thinking it could never happen to you and I get that. If you thought for a second that it could, this removal idea would be called for what it is—outrageous and tyrannical.

That brings me to the message this bill is sending. Again, it's not about the immigration process because people lawfully here can be arrested and forced into Mexico. It's not about the immigration process because this removal process is decided by one lone officer at a time. And it's not about the immigration process because the people wielding this new law like a weapon are above the law. Indemnification for civil and criminal liability makes it clear that we know—we know—that civil and human rights will be violated. That's not only okay, but it is encouraged under this bill. We recently saw a private prison warden shoot people he suspected were here undocumented out near El Paso. Under **HB 4**, the State of Texas would have had his back. So this isn't just a state-level immigration crime, this is the kind of border invasion idea that got so many people in my hometown killed. When I stood up here after that, I told you that unless we acted mass shootings like that were coming to your hometowns. That was a heartbreaking truth, and it came to pass. But **HB 4** isn't coming to most of your hometowns, it's coming to mine. It is coming to mine and it's coming to other border cities. It's coming for people who look like us. I hope now you can understand why we see that message as the point of this bill.

No one, especially people like me who live on the border, will tell you that the federal immigration system is working just fine. There are real problems to deal with and we should actually be working on them. This is not the way. This does not do that. What it will do is something none of us will be proud of in the end.

WALLE: Chairman Moody, as I read the amendment—this is striking the enacting clause? Is that my recollection?

MOODY: Yes, sir, that's correct.

WALLE: Let's walk through the net effect because under the bill as drafted **HB 4**—just so the public knows—**HB 4** creates state offenses for already established federal immigration offenses. Is that correct?

MOODY: It does and then more.

WALLE: Okay. And it also authorizes any state or local police officer to enforce those immigration offenses in the bill. Is that—

MOODY: It does. It does. And it affords them the opportunity to make a decision on their own like they're judge, jury, and executioner.

WALLE: At a stop?

MOODY: At a stop.

WALLE: Okay. **HB 4** creates state offenses for illegal entry from a foreign nation and reentry by certain noncitizens. Is that you're understanding?

MOODY: That's correct.

WALLE: Under **HB 4**, it's also a Class B misdemeanor to enter the state from a foreign nation from anywhere other than a lawful port of entry. Is that also, in the text of the bill, is that not true?

MOODY: Yes, that is the way it is constructed.

WALLE: Okay, let me go a step further. A second illegal entry is a state jail felony. Is that correct?

MOODY: Yes, sir.

WALLE: **HB 4** also makes it a Class A misdemeanor for illegal reentry by an "alien" or noncitizen. Is that true?

MOODY: Yes, sir.

WALLE: It also denies admission to those that may or may not be deported from the U.S. or have been deported from the U.S. Is that not true?

MOODY: That's correct.

WALLE: **HB 4** also authorizes a peace officer to transport persons detained for, again, illegal entry to a port of entry and order them to return to the foreign nation that they come from. Is that your understanding?

MOODY: Yes, and in my opinion in gross violation of any concepts of due process. I've heard the term due process a lot from a lot of people that I don't think know what it means. This is what is zero due process.

WALLE: And also, for refusing to comply with the order, it's a second degree felony.

MOODY: Yes, so we're giving that power to the officer to make that decision in lieu of arrest. By the way, I think we're encouraging them to do it instead of taking someone to their local jail. They're going to say, "Well, why book up my local jail? I have the authority to take this person straight to a port of entry and kick them out myself, and if they don't listen to me, I'm going to rack them up for another charge."

WALLE: I will end my point here. Lastly, **HB 4** directs state and local governments to indemnify—to your point at the end—or pay damages for officials enforcing the bill's provisions in good faith. Is that your understanding?

MOODY: It does in two different ways. It has civil indemnification and criminal indemnification. It means if you commit a crime and are charged with it—ostensibly enforcing this unconstitutional law—we're going to have your back as taxpayers and we're going to pay for your defense team. Nowhere in our law do we make determinations like that on anything other than indigency. But in this case we're telling people and incentivizing them to not care about how they

violate people's civil and human rights because in the end we will take care of the financial bill and put that on the backs of taxpayers. That is unconscionable that we have that here. In the realm of criminal law it is absolutely unheard of.

REPRESENTATIVE HERNANDEZ: It is with a heavy heart that I rise today to speak in opposition of these immigration bills. Immigration and all that it encompasses is an important issue for me and a very personal one because as those illegals are quite often at the center of our debate I, too, was once an undocumented immigrant. A former undocumented immigrant, a former "illegal alien" is your colleague standing before you today. I was born in Reynosa, Mexico, and brought to the United States as an infant child like so many other young adults throughout our country. Also like many other families, my parents came to the U.S. with the hope and dream of a better life and opportunities for their two daughters. My family and I entered the country with the visitors visa and overstayed our visas. We lived in undocumented status for eight years until the Immigration Reform and Control Act of 1986. We became legal permanent residents, and at age 18, I became a naturalized citizen.

The discussion regarding laws affecting undocumented immigrants like the ones we are discussing today are not hypothetical for me. It's something that my family and I have lived. Something that many families in the United States continue to live each day. During the time that we lived in undocumented status, and although I was just a little girl, I remember the constant fear my family lived with each day. The fear my parents experienced each day as their two little girls went to school not knowing if there would be an immigration raid that day and they wouldn't be there to pick up their daughters from school and not knowing who would take care of them if they were deported.

My parents worked hard to provide a better life for my sister and for me. My mother worked the day shift and my father worked the night shift to make sure one of them would always be there for us. The daily task of going to the grocery store to buy food for your family may seem like a simple task, but for my family it meant risking the chances of encountering an immigration raid at the grocery store and having our family separated. I vividly remember as an elementary school student I would shy away whenever my classmates discussed where they were born. I knew I wasn't a U.S. citizen and feared the reactions of my classmates if they knew I was not a citizen. I see myself in many of those students now that share the same fear of being deported or having their parents deported. Wondering what's going to happen to them if their parents are deported—who's going to pick them up from school, where will they go, and where will they live. Some say that immigrant children are a drain on our public schools and institutions of higher education, but I don't consider myself a drain. I graduated at age 16 with honors, earned my bachelor's and law degree, and was elected to the Texas House of Representatives eighteen years ago at the age of 27. I know there are many other immigrants out there like me waiting to be given the opportunity that I was given to achieve the American dream.

I know firsthand the impact that these immigration bills will have on many families that are currently in the same legal status in which my family once was. Mothers that will be afraid to even go to the store to buy groceries for the family

or to volunteer at their children's school. I know how these bills will push immigrants into the shadows, making our communities less safe as immigrants will be reluctant to report crime or provide evidence and testimony in the prosecution of criminal offenses. As a mother now, I have a better appreciation for the sacrifices my parents made for me to leave a country they called home and come to a country where they didn't know the language. Carrying with them nothing more than a suitcase containing the entire family's belongings and a heart full of dreams for a better life for their family. Honestly, I would do the same for my son. There is nothing I wouldn't do to protect him or to provide for him. This is the third time I speak before this legislative body to share my story and it never gets easier, but I do it proudly because it is my duty to stand up for what is just and be the voice for those who cannot speak for themselves.

As you consider these bills, I ask you to think of the unintended consequences and of all the families that will be harmed by these bills. Families that are only here in search of a better life just like mine. I ask you to think of all the children that will be in fear of having their parents deported just like I was. I urge you to vote against this bill.

REPRESENTATIVE RAYMOND: Members, we are here today on this issue because it's an important issue—the issue of illegal immigration to the United States of America. In part, we're here because in two and a half weeks some of us who are going to run for reelection get to file for reelection and it's a big political issue. I get that. This bill, however—my good friend Mr. Spiller knows I feel this way—is very unartfully written. I don't think he wrote it by himself. I choose to believe, knowing all of you—I choose to believe in my heart that none of you would want to pass legislation if you knew that United States citizens would be discriminated against, would be unjustly arrested, and treated in ways that a United States citizen should not be treated—or someone who is here legally like a legal resident. I really believe that, that none of you would really want that. But inevitably I think, you've heard in the comments and if you read the legislation and you think about it, it is very likely to happen. So I don't think it is a good bill the way it's written. Mr. Spiller knows that. It's not written very well in many different ways.

But what I want to say is this—I saw a little while ago earlier today that the United States House of Representatives elected a speaker of the house—Mike Johnson, right? Mike Johnson. Speaker Johnson who was born and grew up about two and a half hours from our speaker. Shreveport, Louisiana, is where he's from. I say this to Speaker Johnson: I listened to you. I listened to your remarks today. You said immigration—doing something about illegal immigration was important. I have news for you, Mr. Speaker. You have the majority. You can do something. You can pass legislation.

This legislation, and everybody in here knows this, this issue must be addressed by the United States Congress, by the United States Senate, and by the president of the United States of America, but they haven't done it. They haven't really done it since Ronald Reagan was president. A lot of you liked Ronald Reagan. Remember him? They passed a bill in 1986—passed and signed by a republican president. But since then we haven't had—we've had democratic and

republican presidents. Two of our former members, Pat Fallon and Randy Weber are members of the United States House. Randy, Pat, talk to the new speaker, talk to your majority, and pass legislation because that's where it needs to come from. You can do it.

The fact is in the United States 90 percent or—I'll pull a Donald Trump—97 percent of all the people who come into this country illegally come here because the United States citizens are giving them jobs. If I asked every one of you individually, I'm willing to bet that every one of you knows someone who has hired someone who is here illegally. I'm guessing even maybe some of you have, but at least I know that you all know someone who has done that. You do it because you need that labor. The United States Congress can pass the bill and the president can sign a bill that says let's expand the worker visa program. Let people come in here and work legally because we need them. So many of your supporters, so many of the people that we represent need that labor force because United States citizens either can't do those jobs or won't do those jobs. That's the driving issue here.

But Congress, they don't do anything, but I know they will now with Speaker Johnson. We're calling on you, Speaker Johnson. But they haven't done anything and so this political pressure emerges that something's got to be done here at the state level. And so we have these unartfully written bills that do have unintended consequences that I don't believe are going to work well. By the way, some of the folks—I talked about this in the State Affairs Committee—some of these people, these immigrants, who come from Honduras or El Salvador or countries like that, Guatemala. They come from such dire circumstances that if you threaten to put them in jail for up to six months, give them three square meals a day, give them health care, give them dental, some places are going to have TV, other places are even going to have Wi-Fi. Do you think that's a deterrent? From where they're coming from that's heaven. And by the way, when I say it's unartfully written, if you keep them in there six months and then let them go, guess where they go? They go to ICE. You've got to turn them over to ICE. You know what they do after they say I'm here to apply for asylum? Then ICE releases them into the United States of America to go get one of those jobs that some United States citizen is going to give them.

I don't expect this bill to do much good. I am concerned, as others are, that it will do bad. I really believe that none of you want that to happen, but inevitably I believe it will. So members, I understand the frustration, but I hope that every republican here will take time to pick up the phone call that new Speaker of the House in Washington—or at least send him an e-mail and say you've got the majority, show some leadership. You said today in your speech that immigration was an important issue, do something, speaker. You got the votes for speaker, pass legislation in Congress today. Send it to Joe Biden. Send it to him and then, Mr. President, I ask you to sign that bill. If it can get out of Congress, you can sign it and you should so that we don't have to be dealing with issues that the United States Congress and the president of the United States should be doing. They ought to be doing their job.

[Amendment No. 1 failed of adoption by Record No. 26.]

[Amendment No. 2 by Spiller and Schatzline was laid before the house.]

SPILLER: Members, this amendment is a perfecting amendment. I do appreciate the feedback and the input that I've received from many parties—many individuals, many stakeholders, counties, cities, and others. What this amendment does is try to address some of those concerns. Let me explain that.

One is there was some concern that we need to tighten down the language on the illegal entry, so where someone gets here directly from across a border illegally. The other has to do with collecting available identifying information and saying that may include the use of photographic and biometric measures that are cross referenced with all relevant local, state, and federal criminal databases. Lastly, in the second part of the bill it strikes both of the paragraphs for local government and for state about any ultra vires protections. That's stricken entirely. Also, we waived the caps on damages for cities, counties, local governments, and so we put the caps back in place. Those are itemized and listed in the amendment that provide for the same things under the Texas Tort Claims Act. That's basically what this amendment does.

[Amendment No. 3 by Spiller was laid before the house.]

SPILLER: This amendment to the amendment addresses a couple of issues that had been raised—one by Representative Rose and the other by Representative Talarico. I appreciate their input and their insight. It deals with children. First of all, the portion dealing with Representative Rose deals with the enforcement of this bill would be prohibited in a public or private primary or secondary school, a church, synagogue, or other established place of religious worship, or a hospital licensed under Chapter 241 of the Texas Health and Safety Code. Also, there's some things which certainly law enforcement would not be doing anyway, but this is a belt and suspenders approach to say that in the enforcement of this you wouldn't push a child into the water, deny a child access to drinking water, or deny a child urgent medical care. That should go without saying, but certainly we're all about protecting children and so I would likewise move adoption.

[Amendment No. 3 was adopted.]

[Amendment No. 2, as amended, was adopted.]

[Amendment No. 4 by Garcia was laid before the house.]

REPRESENTATIVE GARCIA: The United States of America is a proud home to many immigrants, more than any other country in the world. It's baked into our national identity that this is a country where those in need can succeed. With hard work and determination and with their contribution to society they can add prosperity for all of us. The bedrock of this principle is our asylum system which allows immigrants, regardless of their status, to seek protection from credible and significant threats to their lives after going through an extensive vetting process. The international community guarantees the rights from prosecution to all people through the UN's Universal Declaration of Human Rights, which came in the aftermath of World War II and the atrocities of the Holocaust. During the war, many western countries, including the United States, turned away tens of thousands of Jewish refugees from Europe, likely leading to their deaths. The

asylum process we have today is a reflection of this history and our attempts are to not repeat it. **HB 4** does just that by prohibiting the abatement of a prosecution by the courts for the offense of undocumented immigration while the federal government determines the individual's immigration status.

Two years ago, I served as a humanitarian on the border of Texas—Del Rio to be specific in Ciudad Acuña, Mexico. I witnessed and met women and children who walked on foot from Chile. My geography is a little bit rusty, but if you know Chile is in South America then you'll know that these women and children walked on foot—on foot—to seek a better life for themselves and their children.

I just want to share with you some stories from these women that we met when we were in Ciudad Acuña. What they faced were atrocities that you would never imagine. They were raped, they were beaten, they were robbed, and many were killed—only to reach our borders. I met a woman who literally carried her four-year-old daughter who had a severe case of hydrocephaly. Her, along with some good-willed strangers along the way, helped carry her baby to the United States where doctors at the border—forgive me for not quoting their name correctly—they were able to find this child lifesaving help.

These people are leaving countries that often times no longer exist. One country I want to point out to you is Haiti. Because one thing that we aren't realizing is that there's a mass influx as well of Black refugees from Haiti, a country that is in despair. It's torn apart, it has no government, and it's run by gangs. We've kept in touch with some of the people who tried to come here as they were taken and shipped back to their countries. I personally received pictures of bodies of people who once helped us translate at the border. This is the fate they're being sent home to.

What I'm asking is for this amendment to exclude women and children from this law. Because women and children have been facing some of the most horrid experiences of their life to find freedom here in the United States. Every time we talk about this, as a veteran I think "send me your weak and wretched masses, yearning to be free." That's not what we're modeling today. I ask that all of you please put into account that women and children are not threats, they just want to live.

SPILLER: Members, I appreciate the purpose and the intent of the amendment, but with all due respect, this bill and the legislation is to deter illegal crossing into our state. That's the focus of it. It is not to punish women or children. This bill is not about that at all. It's to deter people coming into our state illegally for all the reasons that I previously spoke. So I would, respectfully, oppose this amendment.

GARCIA: I appeal to all of you to show an ounce of compassion tonight, please. There's no better place in this world to thrive as a human being than the United States of America. I know this because I've seen many of those countries that go through being shipped in a crate from Africa because we also helped a family that left war-torn Burkina Faso. There's a civil war and because of what tribe they come from they're executed. They're leaving genocide, they're leaving genocide and finding their way to our borders to find life. Please show some compassion for these women and children and pass this amendment.

[Amendment No. 4 failed of adoption by Record No. 27.]

[Amendment No. 5 by C. Morales was laid before the house.]

REPRESENTATIVE C. MORALES: A sexual assault nurse examiner is a registered nurse who has received special training so that they can provide comprehensive care to sexual assault victims. In addition, they are able to conduct a forensic exam and may provide expert testimony if the case goes to trial. This amendment will ensure that if someone goes to a sexual assault nurse examiner unit or a rape crisis center, they are not at risk of being transported to a U.S. port of entry based on a law enforcement official's interpretation of immigration law. We must ensure that victims of sexual assault feel safe to seek health care, treatment, and legal support.

SPILLER: Members, I appreciate what we're trying to do here. I understand the purpose and I don't disagree with that at all. The concern I have is that a SAFE-ready facility, as that term is defined under Texas law, is very broad and can be created in a short time period at any time, any place. I feel like there would be abuses to this such as some of these would be created to bypass the purpose of **HB 4**. I do greatly appreciate what the representative is trying to do here, but I would, respectfully, oppose the amendment.

REPRESENTATIVE A. JOHNSON: You just said that you thought this process would be abused. What do you think, people will get raped so they can stay here?

SPILLER: No.

A. JOHNSON: Can you explain what you mean by her amendment would lead to abuses within the system?

SPILLER: My concern is that just as with cartels and what's going on in Mexico and how they coach up people and how they tell people—we have information that cartels are going through the process even through ports of entry and reporting back about how to game our system and how to take advantage of that. The concern is here that there will be others that would, likewise, coach folks through the cartels and explain to them here's what you need to do to bypass the effects of **HB 4**.

A. JOHNSON: But if you say coach—having sperm show up in your vagina or bruises or evidence that would be found by a SANE nurse—that's not something somebody can coach, right?

SPILLER: No. I would further say, in that regard, yes, most women that are coming across, to my understanding from my discussions with DPS and with others, is that probably most women have been abused or have been raped and whatever that are coming over here illegally. The whole purpose of **HB 4** is to deter that and to deter that type of activity. But the concern here is not to apprehend women at one of these facilities. That is not it at all. The purpose here is to not create unfair and overbroad safe places for people to take advantage of this system.

A. JOHNSON: I find it illogical to say that her amendment would create an unintended loophole, a slippery slope of a concept of a safe haven for illegal entry when her amendment talks about the fact that somebody is going to see a SANE nurse. You may know, seeing a SANE nurse is rare.

SPILLER: I understand, but again—

A. JOHNSON: Those are in hospitals.

SPILLER: Right.

A. JOHNSON: I couldn't even get one in the juvenile jail to assist kids because it's hard for us to get SANE nurses.

SPILLER: Right.

A. JOHNSON: So we're talking about Memorial Hermann or other hospitals where somebody is taken for rape. We don't want them to be illegally sent out without any due process, as has already been brought up by Chairman Moody, because we want to catch the perpetrator that just raped them, right?

SPILLER: I understand that but I also say that some of these facilities, we're not talking about—in my perfecting amendment, or the amendment to the amendment, we included hospitals, health care facilities, and several other places, but these particular things that we're talking about here—I had to look up what a SAFE-ready facility was myself. The concern is that those can be created at any location—they're not necessarily by hospitals—and get approved and done. My concern is that it would be unfairly abused as far as this process and people would be coached to go there. I'm not—

A. JOHNSON: I can tell that Representative Howard has additional questions, and I don't want her to lose her opportunity to get on the record the important information that we both individually have. I can say getting a rape victim to actually be willing to undergo an exam is key evidence that the State of Texas desperately needs in eliminating rape and going after perpetrators. It is the most vital, most important piece of evidence because it corroborates not only the assault, but many times it leads to that unbelievable world uniqueness of DNA to say not anybody else accused but that guy did it. It is the most critical piece of evidence. All she's asking—because we know this is going to pass—all she's asking is that you have an amendment that says somebody who is going in for a rape exam knows that that's a safe space because that's good public policy for the rest of us so that a rapist doesn't go free because he happens to pick somebody who may not be a citizen of the United States. I thought we were all for eliminating rape?

SPILLER: I'm very much for eliminating rape. In fact, I think that the purpose of **HB 4** is to eliminate the countless rapes and abuses that are going on crossing our border because we've allowed an open border because our federal government has failed to secure our border. That is why it is perpetuating some of this.

A. JOHNSON: We have tons of state laws to discourage the rape of women, sexual assault, human trafficking. As far as, do we need another law on the book to discourage rapists? We have plenty, but we don't have a law on the book that

says if you're a rape victim and you happen to not be a citizen, well, we're going to catch you when you come in the door. This is the first law I can think of that we're going to pass that targets the victim of rape from disclosing to law enforcement the information that the rest of us in this room need to protect us from the actual rapist.

SPILLER: All right. Again, the purpose of **HB 4**—

A. JOHNSON: Move on? No, we can't move on. We can't move on. This is what you got earlier.

SPILLER: I'm not asking us to move on.

A. JOHNSON: I know you're not, Mr. Spiller. But whoever mouthed off "move on," this is the point. This is the point of the policy that we know is coming that we can't even have a rational conversation about the fact that you—not you, not you. This is a simple amendment that just says, look, whatever you're saying you intend—if you happen to be a rape victim that shows up to undergo a rape exam, that you're not going to fall under this provision which will chill an already unbelievably chilled population from coming forward to law enforcement.

SPILLER: Right.

A. JOHNSON: So that's why I'm asking, please consider the amendment and accept it and if not, men, vote for it. You really want to create a safe haven for rapists? That if they pick a noncitizen it's a get-out-of-jail-free card because we've got to get this bill passed because we've got to move on?

REPRESENTATIVE HOWARD: I sincerely do not have any further questions or comments other than what Representative Johnson just said and asked. She said it perfectly. This is absolutely unbelievable that we would be here talking about allowing rapists to use this law to actually rape or sexually assault someone and then be able to get out of jail free.

SPILLER: Do you want me to respond?

HOWARD: Go ahead and respond to that.

SPILLER: I don't think that's what the purpose of that is. What this law—

HOWARD: Maybe not the purpose but what will actually happen as a result of it. Do you know what is involved in a SANE exam? Do you know what a woman has to go through to have a forensic exam? A four-hour, at least, very intrusive exam of her private parts. It's extremely intensive. It's extremely difficult. We're talking about women who have been through a sexual assault. One of the most egregious things that can happen to someone's body. Respond.

SPILLER: I can't dispute that. I'm not going to dispute that, and I'm not going to say I understand because I can't understand. But I will say that the purpose of this bill is not to help rapists. That is not at all what this is. If anything, it's to the contrary.

HOWARD: What is the purpose?

SPILLER: The purpose is to prevent the abuses that are happening across our border—

HOWARD: How does it do that?

SPILLER: —including women being raped.

HOWARD: How does it prevent that?

SPILLER: Because we're trying to prevent people from coming across our border illegally. It is because of—

HOWARD: You're talking about a woman being at a SAFE-ready facility. How does it prevent? She's at the SAFE-ready facility. She has been abused. How does it prevent?

SPILLER: I'm talking about preventing and being a deterrent to crime and the other things that are occurring.

[Pursuant to Rule 5, Section 28, of the House Rules, Representative Howard requested an extension of speaking time on Amendment No. 5. There being objection, the request was not granted by Record No. 28.]

A. JOHNSON: I appreciate that people are now saying, "Hey, wait, can you tell me further?" Let me tell you further. We've already heard Chairman Moody when he made the point that you're going to have an officer on the side of the road that's become judge, jury, and executioner, and they can take them to a port of entry and say go back.

As law enforcement, you will be shipping my witness out without the opportunity to collect witness testimony. One, that's the first thing. If you say this applies to people who show up in a SAFE-ready facility, that I know Representative Howard was getting in to, somebody that shows up for a physical sexual assault exam is rare. This is just another chilling impact. Somebody else, earlier in the day—I think Representative Romero talked about the fact that the minute you say people who are not citizens don't get the protection of law enforcement, then they become targets and they become a higher victim population.

I can appreciate—we can talk about this all day long—human trafficking our actually domestic minors, a lot of our CPS kids. But of course, there is an international population. So if we care about, as we keep saying, human trafficking, people being brought over and people being sexually assaulted—do you really want to tell them that when they show up for the SANE exam that an officer that doesn't go through deportation can take them to a port of entry and say leave? This violates all of the provisions that we already have in place to not only protect victims of sexual assault, but also under the federal provisions that protect them as victims of assault because we want to encourage them to be here to be the witness against the rapist.

If you create these bridges to have our witnesses show up against our rapists, and you create this massive cavern in this provision that says an officer, absent of any other determination, can just march you back to an entry. And I see some state representatives on the republican side that do this kind of work looking at

me because you get it and you know I'm telling you the truth. You are going to create a circumstance of which you are, one, going to ship our witnesses out and, two, worse, keep them from showing up for a SANE exam that will just encourage perpetrators. If you're going to rape somebody, pick somebody that's not a citizen because the State of Texas doesn't care about them anyway. That is, literally, what you're going to say.

I'm not trying to be hyperbolic. I am asking you. You know this bill is going to pass, but at the very least, this is the kind of amendment you ought to have the courage to cross over the line on and say, by God, I'm not going to create a safe haven for rapists by keeping women from showing up for SANE exams. Please vote for this amendment. This is a smart amendment for everything we say we care about for women and human trafficking victims.

REPRESENTATIVE ZWIENER: Thank you so much, Representative Johnson, for speaking up so passionately for sexual assault survivors. I just wanted to chat with you about some of the evidence we've seen. We all want sexual assaults to be solved. Were you aware that in 2015, Texas solved about 38 percent of rape cases that were reported, but by 2019 that number had dropped to 23 percent, below the national average?

A. JOHNSON: I was not aware of the exact number. Thank you for sharing it. I believe you.

ZWIENER: I know I certainly wonder if some of that precipitous drop is because of this fear of ICE enforcement that has turned into people not reporting or not fully cooperating with law enforcement.

A. JOHNSON: We passed last session legislation that protected women who were involuntarily intoxicated and said, look, we're not going to prosecute you because we want you to show up. No matter what it is, this recognition that we missed addressing SANE exams and protecting women who come in, it is that kind of broad discussion that impacts all women in reporting. So when we talk about victimization we should be doing more to tell women that we protect them and that we need them as society to go submit to this SANE exam because it is better for community good. Rapists don't rape one and move on, they rape multiples. So the idea that you're going to have a potential victim and you're going to keep them from coming in to get solid DNA evidence that can then go into CODIS and track them—as law enforcement, that's gold.

She's right. I didn't catch it. You caught it, you're absolutely right. This is not a deterrent and it's very real. So now that we recognize it, even though we're in the last hour and it's late and some folks are tired and I get it. This is a problem we need to fix. Accept the amendment or vote it on and then fight for it in the senate. And say, "You know what? It doesn't make sense to tell women don't show up because if you show up you might get somebody that will take you to a port of entry." Because if they are a victim, they're going to meet all the exceptions to stay anyway. It makes no sense that we would have this threat or that we would send them away when realistically, if the right folks get involved ultimately we need them to come back and testify against the perpetrator.

ZWIENER: Thank you, Representative Johnson. I'm really startled by the disregard that has been accorded to both you and Representative Morales on this issue so far tonight. Are you aware that in your home—

A. JOHNSON: Look, I don't want to say disregard. Nobody came in here thinking they were working on a bill that was going to help rapists. I know Representative Spiller. That is not what he came in here to do. I am just saying the opportunity to correct this error is short now, and we need to do it and we need to fix it. There is nobody in this room that has ever come up to me and said the work you did on helping sex assault survivors was a total waste of time. That is not who we are. We are at a point where we are trying to get this solved and I hope we can solve it. Whoever's listening that can do this, say, "Boy we missed that." Absolutely. Take the amendment. We do not want women not showing up for SANE exams when they've been raped to collect the DNA evidence against the rapist because of this law.

ZWIENER: Thank you, Representative Johnson. Are you aware that we have some solid evidence that fear of immigration enforcement does decrease reports of sexual assault?

A. JOHNSON: Absolutely.

ZWIENER: That Houston reports dropped 42 percent in 2017?

A. JOHNSON: Absolutely. And it doesn't even have to be real fear, right? You can even say to people as victims, "Hey, this doesn't apply to you. I'm really here to protect you." But when there is a fear of authority or law enforcement, that's a barrier we have to break through. So yes, even when it doesn't apply, the fear is real. Don't forget, people who are victimized in sexual assault—many of them are victimized in sexual assault because they're already vulnerable. They are told things to make them think that they did something to deserve it and we're just saying as the State of Texas, don't add a chip to that rapist's card to say, "And oh, by the way, have you heard about **HB 4**? Don't you dare go and report it." That is what is likely, right? It really is. Just fix it. Take the amendment. Vote the amendment on.

C. MORALES: Members, I want you to see how simple this amendment is.

NEAVE CRIADO: Representative Morales, thank you for bringing this amendment, and thank you to all of the women who are standing up for rape survivors who have worked throughout the years. Did you know that on average there are about 18,000 rapes that occur every single year in our State of Texas?

C. MORALES: I'm shocked and saddened by that number.

NEAVE CRIADO: And those are just the ones that are reported. We know that many are not reported, right? If this legislation passes without your amendment, essentially are we going to be creating two classes of rape survivors—those that are American citizens who don't have to worry and then we're going to be having a class of women without papers who could be subjected and asked about their citizenship status in a hospital?

C. MORALES: I can only imagine how horrific it is to be in the situation and then have to deal with that, as well.

NEAVE CRIADO: It's one of the most traumatic. And we've heard from family violence shelters. We've heard in the past, in 2017, from organizations and subject matter experts that deal on a daily basis with survivors of rape and domestic violence about the fear of reporting to begin with. If these women are not going to be willing to come forward because their citizenship status is going to be questioned after going through this traumatic event, what then happens to the rapist?

C. MORALES: He's set free.

NEAVE CRIADO: He's set free because the crime is never going to be reported and the evidence may or may not be tested. Is that creating a safe Texas for all women?

C. MORALES: That's true.

NEAVE CRIADO: This state is supposed to be a leader on these issues and what we're doing today by not accepting—if individuals do not vote for your amendment, if we do not get this amendment onto this bill that has sweeping mass consequences, are we not then going to have women without papers—whether they are Latina, whether they are from another country—not coming forward to the police to report that they are a victim or survivor of rape?

C. MORALES: That is exactly what's going to happen if we do not pass this amendment.

NEAVE CRIADO: And what message does that send to the women of Texas? What message is this body going to send if they were to reject your amendment?

C. MORALES: If they reject this amendment, we are telling the women of Texas that we don't care about them, and we're not here to protect them.

NEAVE CRIADO: Thank you for your amendment.

C. MORALES: Members, I want you to take a look at this amendment and how short and simple it is. There's no pulling the wool over anybody's eyes. A vote yes on this amendment is to protect rape victims, women. A vote no is to protect rapists.

[Amendment No. 5 was withdrawn.]

[Amendment No. 6 by Goodwin was laid before the house.]

REPRESENTATIVE GOODWIN: **HB 4** would allow any peace officer in Texas to detain and move an undocumented Texan to a port of entry. There's a lot of different classifications of peace officer: sheriffs and deputies, constables and deputies, marshals, municipal police and those under the DPS, Texas Highway Patrol, and Texas Rangers. There are a lot of other categories in addition to those such as school district police. Do we really think that our school district police should be able to pick up and take undocumented people to a port of entry? What

are our school district police for? They are there to ensure safety on our school campuses. If kids are worried about being picked up and taken and deported, how is that going to affect them in our schools—in our classrooms—on a daily basis?

Okay, so that's one example. Cap Metro and transit police—they are supposed to be there to ensure safety on our buses and trains. Are those the kind of folks that we want to be picking up, determining if someone is undocumented, and taking them to a port of entry? Think about this, our city parks and recreation security officers. Are they going to be picking up and deporting people as well? What about our water control and improvement districts? They have officers as well. Our hospital district officers, county park rangers—there's a lot of categories of peace officers in Texas.

So what my amendment does is it simply clarifies which ones we are allowing to carry out this law. Like I said, the amendment would limit the scope of peace officers authorized to carry out **HB 4** to sheriffs and deputies, constables and deputies, marshals, municipal police, and those under DPS. This list includes the majority of the nearly 80,000 peace officers in Texas. While the peace officers listed in my amendment may also lack the training, facilities, and/or ability to effectively carry out **HB 4**, my amendment's primary goal is to protect our more field-focused peace officers from the potential harm that **HB 4** might put them in.

SPILLER: This amendment limits law enforcement. The purpose of this bill is to make sure that all who are peace officers are allowed to enforce our laws and that is technically defined in Article 2.12 of the Texas Code of Criminal Procedure. There's a laundry list of folks there that are included. So we're not wanting to tie law enforcements hands with this bill. We need to give them all the tools and protections that they need, so I respectfully oppose this amendment.

GOODWIN: Members, I just want to point out once again that if our school district police are allowed to enforce this then they could be potentially asking students about their status and taking away the relationship that they have built to build trust with students. This would have a detrimental impact. Same thing for all of the list that I went through—transit police, city parks and recreation security officers. This is not really their primary focus and therefore I think it makes sense to limit who can carry out this bill to a specific list of peace officers that make more sense.

[Amendment No. 6 failed of adoption by Record No. 29.]

[Amendment No. 7 by Flores was laid before the house.]

REPRESENTATIVE FLORES: Members, this is a simple but very important amendment that would allow people seeking safety from domestic violence to know that they will be protected and not thrown back into situations that they're fleeing. Not only is this amendment doing the right thing to protect those in unfortunate circumstances, it's tailored to very specific places that provide very specific services—that is protection against domestic violence and domestic abuse that's under Section 51.002 in the Human Resources Code.

Currently, federal agents refrain from enforcing in locations that provide essential services. This amendment seeks to clarify on one of those most essential services and that is protection for folks who have gone into places that protect them from domestic violence. Furthermore, many immigrants may feel scared to leave violent situations and we know that sometimes they may feel threatened with their status to not seek protection or try to flee the situation. By doing so, they are allowing abusers and others to stay out and we fail to bring justice to real criminals. We just also heard an amendment that has officers refraining from enforcing this bill in schools where children are. These domestic violence shelters provide protection for women and children. So I hope that my colleagues can find it in their heart to accept this amendment to offer protections to those seeking protection from domestic violence.

NEAVE CRIADO: Thank you, Representative, for bringing this amendment. This amendment is similar to the one that we just discussed to try to protect rape survivors. We also want to protect family violence survivors. Is that correct?

FLORES: Correct. It's very important.

NEAVE CRIADO: You just heard us talk about how on average there are about 18,000 rapes every year. Did you know that in Texas there are over 200,000 domestic violence cases reported every single year, just in Texas alone?

FLORES: That's a terrible statistic to listen to, but thank you for sharing that.

NEAVE CRIADO: And of those 200,000 domestic violence cases that are reported, we know that also domestic violence survivors don't always report as well. Is that correct?

FLORES: That's correct.

NEAVE CRIADO: And that's for a wide variety of reasons. It could be socioeconomic. Domestic violence—it doesn't matter what your immigration status is or what neighborhood you grew up in or you live in, you can still be a victim of family violence. Correct?

FLORES: That's correct.

NEAVE CRIADO: It's important to accept your amendment because we also want survivors—individuals who are abused, who are beaten, who are going through really terrible times in their lives to report to law enforcement. Don't we?

FLORES: Yes, we do. We fought very hard back in 1979 when I worked for Representative Irma Rangel to pass the first domestic violence legislation in this state to protect women, mostly, but all victims of domestic violence. I know back then there were no protections and now we do have those in Texas, so they're very important.

NEAVE CRIADO: Thank you. We know that our family violence centers all across the state work hard day in and day out to support those women—majority women—who go through this terrible situation, correct?

FLORES: That's really true.

NEAVE CRIADO: So all you're asking in your amendment is to similarly, like we want to protect rape survivors, that we want to protect family violence shelters where people go in some of their toughest times in their lives? To have that excluded from the purview of this legislation, correct?

FLORES: That's right. We want to help the most vulnerable people who are experiencing these very terrible abuses to feel safe and to be protected. So we need to make sure that they aren't being targeted in these spaces.

NEAVE CRIADO: Thank you for your amendment.

REPRESENTATIVE J. JONES: Representative Flores, I'd like to thank you for filing this amendment as I am a survivor of domestic violence. I'm extremely lucky to be alive. Do you know that when we are being abused by the person that we love that it's very, very, very hard to sometimes have the resources necessary to take care of yourself and your children?

FLORES: Yes, that's right. That's why it's so important to have these shelters that can take in victims who are suffering from this abuse.

J. JONES: Do you know that shelter is the most important thing you can have to live life and that if we make a decision to leave the comfort—or actually danger of our home—that domestic violence shelters provide a safer space?

FLORES: That's right. When you're that vulnerable you need some place where you can feel that you're being protected.

J. JONES: Do you know that most of us, when we go to domestic violence shelters, we take our children with us?

FLORES: Absolutely. Now they're allowing pets as well because sometimes they're held hostage by those perpetrators as well.

J. JONES: If police come into a domestic violence shelter to remove someone, is this meant to stop the mothers and their children from being, I guess, dropped off at some point of entry?

FLORES: You know, I can't imagine the trauma that would impact those trying to be forcibly removed from a place of safety, but also what that impact would have on women and other victims who are vulnerable and they're in a safe space and can see that people are being forcibly removed.

J. JONES: But do you understand that domestic violence shelters provide more than just a safe space? They provide the services that we need, right? So if we escape with our lives and the lives of our children, that domestic violence shelters will provide sometimes law enforcement that actually will give us our papers and our documentation. So for example, if we have to rush out with our children because we were going to die and we couldn't bring our children's shot records, we couldn't bring our children's enrollment papers, we couldn't bring our identification—that they provide those services for us to try to move on and have a safer life. Do you understand domestic violence shelters do that?

FLORES: Yes, that's a very important point because they are providers of some very important social services. The federal government refrains from enforcing in these types of places as well.

J. JONES: Do you know that domestic violence shelters provide us with the counseling that we and our children need in order to get through this very traumatic experience? Do you understand that?

FLORES: I do understand that.

J. JONES: Is that why you're trying to protect domestic violence shelters?

FLORES: Yes, I am because they're important places in our communities and in our state that will provide these services and will provide safety for victims who are being abused. We need to keep those spaces sacred and safe and make sure that folks who are in there seeking services are not taken out forcibly.

J. JONES: I'm presuming that you understand that children who grow up in abusive households are more likely to have a lot of problems, like little boys that grow up in households where their dads are beating up their moms, they're more likely to beat up women. And that little girls who grow up in that same environment are more likely to believe that it's okay to be beat up by the person that loves you. You understand that? So domestic violence shelters take these children out of those situations so that they can learn to be in healthy relationships. Do you understand that?

FLORES: I absolutely do understand. They break the cycle of violence, they help people heal, and they help them move on with their lives.

J. JONES: Very often when we flee for our lives, we leave with nothing. We don't even have clothes. You understand that domestic violence shelters actually provide clothes for the people that are there and food that they might not have at home. You understand that?

FLORES: I do, in fact, understand that. I served on the board of our local domestic violence shelter here. We do provide those services because often times, as you said, women or victims of domestic violence leave with just what they have on their backs because they're fleeing for their lives.

J. JONES: I really am thankful that you have filed this because domestic violence victims need to be protected from their abusers and not abused by the State of Texas, so thank you.

FLORES: Thank you, and I wholeheartedly agree. I hope, again, that the members of this chamber will have the compassion and will consider, please, and adopt this amendment because all it does is protect.

SPILLER: Let me say this, again, I'm against family violence. But this bill is not about that. My concern is when you look at the definition of a family violence center under the code and how it's defined, the truth of the matter is, I could go back to my laptop and create one in 30 minutes. All you have to do is set up a nonprofit for \$25 and you can set it online through the secretary of state's website. I don't even have to own any property. I can lease as many places as I

want and claim that. The concern is, again, we are creating problems and loopholes to get around what we're trying to accomplish by **HB 4**. So I respectfully oppose the amendment. I appreciate what you're trying to get done here, but—

NEAVE CRIADO: Mr. Spiller, if I'm understanding you correctly, part of your argument for refusing to accept this amendment is because you're saying that family violence shelters can just immediately be popped up in 30 minutes, correct?

SPILLER: I can say that they're operated—you have to set up a private or a nonprofit organization and I've done that many times. It wouldn't take me—I say 30 minutes, I could probably get it done in 15 minutes. The truth is it's an issue for abuse, again, and an obstacle to enforcement of **HB 4**.

NEAVE CRIADO: So it's an obstacle to enforcement, if I'm understanding you correctly, if we include family violence shelters, domestic violence shelters—if we include those, that is an obstacle to enforcement of this legislation where you can arrest and deport people, correct?

SPILLER: What I'm saying is, unlike some of these other entities, and just like I agreed to the amendment to the amendment on hospitals, schools, churches—you know, there's certain places that we want to allow, but this is not governed by or overseen by any agency whatsoever. You don't have to get approval of anyone, you just have to say I created one. I understand what they're attempting to do and I don't want to paint anyone in a poor light or poor picture here. I would say most, if not all, currently all of these family violence shelters are doing God's work and they're doing a great job helping victims of family violence. What I'm saying is if you make this an exception in this bill, you're creating a problem for the enforcement of **HB 4** because there will be abuses of this and the creation of some of these that aren't true, in fact, family violence centers.

NEAVE CRIADO: I agree with you, Mr. Spiller, that these family violence shelters that are existing right now are doing God's work. We've seen them day in and day out, especially in areas like ours, be there for women who are going through—by the time you get to the point of asking for help you probably have been abused multiple times and not reported any of those. Are you saying that existing family violence shelters would likely be using their facilities to exploit this law? Is that what your concern is?

SPILLER: I'm saying that there will be abuses either through the cartel or others that they would create safe houses for people, call them family violence centers when, in fact, that's actually not how they're operating or how they're structured. That's a concern.

NEAVE CRIADO: So cartels are now going to create fake family violence shelters so that undocumented people cannot be charged with this crime? Is that what you're telling us?

SPILLER: I'm saying if you think the cartels aren't already involved in stash houses and things like that, you're kidding yourself if you think that they won't do the same with these types of facilities.

NEAVE CRIADO: We're not talking about stash houses here, Representative, we're talking about family violence shelters—

SPILLER: Right.

NEAVE CRIADO: —where women who are coming to seek help to stay in a place, which is often a private, confidential location so that their abuser cannot track them down; places where moms come with children so that they can be safe from a person who has been beating them multiple times, over and over; a place where women have to use makeup on a daily basis to hide the abuses that they are going through.

SPILLER: Right. I understand what they do. I've said they serve a very valuable purpose. My concern is if we put this in this bill, they're going to be abuses and creation of these that are not true to the ones that are now operating. That's my concern.

NEAVE CRIADO: So is your message then to existing family violence shelters who are working hard that there are going to be abuses if family violence shelters are excluded from this bill? Is what you're saying—there's going to be abuses by family violence shelters?

SPILLER: Family violence shelters are not in this bill.

NEAVE CRIADO: We're trying to get them in this bill through this amendment, correct?

SPILLER: Correct.

NEAVE CRIADO: We're trying to get them excluded. So you're saying that there are going to be abuses by family violence shelters who are trying to protect women if this amendment is passed?

SPILLER: I'm not saying that. I'm saying that there are bad actors, there are bad folks out there, and there are cartels that we're dealing with. Some of this crime involved in this is very sophisticated. You wouldn't have to be a rocket scientist to figure out here is a way that we can get around this enforcement of **HB 4**. That's my concern. It's not about family violence centers or victims of that. I appreciate the job that the existing ones are doing. I have absolutely no information that those that currently serve that purpose are not doing a fantastic job and are not doing, like I say, God's work. But if you put this in this bill you're going to have, in my view, abuses of that. That's my concern.

NEAVE CRIADO: Then let me ask you this, Representative, if you have no issue with the work that existing family violence shelters are doing, would you take an amendment to the amendment where it says only existing family violence shelters would be included and no new family violence shelters which would

address your concern that these new fake family violence shelters will be propped up by cartels? That would, hopefully, address your concern. Would you take an amendment like that for existing family violence shelters?

SPILLER: You make a very compelling argument, but I would respectfully decline. I just think it's fraught with potential for abuse. Even if you had a center, what's to keep someone else from operating the same—they're not the same owners, they don't have the same intention? Like I say, I appreciate what you're trying to do. I really do. But I don't think it needs to be part of this bill.

NEAVE CRIADO: I think for the family violence workers, the social workers, the individuals who are working hard to protect our sisters, our moms, and our family members who have gone through a tough time, the message that we are sending to them—I hope they are listening loud and clear to what's happening on the floor of the Texas House today and the message that is being sent to family violence shelters all across Texas.

REPRESENTATIVE SCHOFIELD: Mr. Spiller, is this the third amendment we have had tonight that would make a safe harbor out of a building that would protect from the arrest under your bill? Am I counting them right? The first one was your own perfecting amendment where you accepted some for churches and hospitals. In that amendment, you didn't have to be a patient. Anyone who ran into a hospital would have a safe harbor, right?

SPILLER: That is true.

SCHOFIELD: So if I have a border hospital anyone who runs into my hospital is going to be free from arrest regardless of whether they're sick or not?

SPILLER: They would be free from any enforcement of **HB 4**, yes.

SCHOFIELD: So our hospitals end up being targets where people fleeing the border know if they can get into that hospital they're safe from arrest?

SPILLER: Well, I hope not. That's certainly not the desired intent, but sometimes you do things and you have unintended consequences. Just like with this proposed amendment, I think that you would have unintended consequences.

SCHOFIELD: And then the second one, which dealt with the—I forget the terminology, ready safe or whatever it's called—it did not limit it to rape victims or anybody who was getting tested. If rape tests were done in that building, anyone, any illegal alien, who ran into there was home free, including a rapist, correct?

SPILLER: That amendment in its current form—that would be, potentially, the outcome.

SCHOFIELD: Now, that brings me to this amendment. Because we have had a lot of debate about rape and domestic violence and none of those are actually what is affected by the amendment, are they? It is making a building a safe harbor regardless of who the person is. So let me read you the amendment. "Notwithstanding any other provisions of this chapter, a peace officer may not arrest, remove, or otherwise detain a person"—not a domestic violence sufferer, a

person—"for purposes of enforcing a provision of this chapter if the person is on the premises or grounds of a family violence center, as defined by this section." They don't have to be a victim of domestic violence. Any illegal alien who runs across the border and gets his way into one of these shelters would be safe from arrest if this amendment passes. Is that not correct?

SPILLER: And that is exactly my concern.

FLORES: Members, you've heard some pretty imaginative expansions on what this amendment would do. It's a simple amendment that would protect victims of domestic violence who are currently in a shelter getting services, and it would ask that peace officers refrain from detaining or taking people from these shelters where they are seeking protection. All of these "would be" scenarios—

J. JONES: Representative Flores, you heard the questioning that just took place before you stood up there?

FLORES: Yes, I did.

J. JONES: Are you aware that domestic violence shelters don't just let anybody in? Did you know that?

FLORES: I do know that.

J. JONES: Did you know that there is security at domestic violence facilities? Did you know that?

FLORES: I absolutely do know that and their locations are oftentimes secret.

J. JONES: But did you also know that you actually have to be vetted for them to determine that you're an actual victim of domestic violence—and your children?

FLORES: Yes.

J. JONES: And did you also know that domestic violence shelters are secret? You literally can't tell anybody where you are because victims are more likely to be murdered when they leave? Did you understand that?

FLORES: I absolutely do know that. That's exactly right and that's the whole purpose of that is to provide protection so yes, they are secretive and they're very secure.

J. JONES: And in fact, did you know that when a victim of domestic violence discloses the location to their abusers or anyone else that they're actually kicked out of the facility? Did you know that?

FLORES: I do know that.

J. JONES: So you understand drug traffickers can't go into a domestic violence shelter because it's just not set up like that? Did you understand that?

FLORES: Absolutely.

J. JONES: And is that why you filed this amendment?

FLORES: Absolutely.

J. JONES: Thank you.

[Amendment No. 7 failed of adoption by Record No. 30.]

[Amendment No. 8 by Hinojosa was laid before the house.]

REPRESENTATIVE HINOJOSA: As written today, this legislation allows criminal charges anywhere in this state for an offense that can only occur at the border. Proponents of this bill claim that the effects of this bill will be limited to border counties. Unfortunately without this amendment, members, we have no guarantees of that. My amendment makes clear that the provisions of the bill apply only to border counties by requiring an officer to witness the offense occurring. This is a reasonable request that will focus resources on where the offense can occur. It will also greatly reduce the chance that people will be targeted simply because they look like a suspected undocumented person. Because right now, members, as this bill is written it is a racial profiling bill.

RAMOS: Thank you, Representative Hinojosa. Your amendment specifically states that they have to visually observe the offense, is that correct?

HINOJOSA: That is correct.

RAMOS: "They" as in the peace officer?

HINOJOSA: That is correct. Currently the legislation says it's illegal if they unlawfully enter the country. But how do you know if someone has unlawfully entered by looking at them unless you see them unlawfully enter the country. That is the only way you can know they are in violation of the law in that way. And so this amendment clarifies that the officer, who in this case under this legislation is judge, jury, and executioner for some—sending them to a country that perhaps they do not know. Perhaps sending an American citizen who does not have identification with them to a country they do not know because this officer is making a determination without seeing them cross the border. So this amendment clarifies they have to be seen crossing the border.

RAMOS: So currently as it is written this bill allows a peace officer to detain an individual for unlawfully entering this country without actually knowing if in fact that individual did. You represent Travis County. Is there a port of entry or a border in Travis County?

HINOJOSA: There is not.

RAMOS: I represent Dallas. We are about 500 miles away from a border, yet this bill allows these individuals—these peace officers—to come into my community and detain somebody if they entered illegally through a port of entry. Is there anything in this bill that allows for there to be any actual knowledge—of a peace officer having that knowledge in Travis County or Dallas County? That somebody came illegally through a port of entry?

HINOJOSA: There is no way for an officer to know that you came illegally unless they saw you come illegally. That is the only way they can know. So right now in my district here in Austin—here downtown—somebody can be picked up, taken to a border because maybe they don't have ID to show they're an American citizen. If I'm exercising, I'm jogging in Austin, I don't have ID with me. So let me tell you, I get calls in my office that say go back to where you came from,

right? So if somebody sees me and thinks because of what I look like, because of the color of my skin, that I am here unlawfully or that I unlawfully crossed the border and didn't cross at a port of entry then they can take me, an American citizen, to the border? I mean this bill—because we indemnify everybody who does it there are no consequences to doing that wrong, to getting it wrong. And there's no way to know you're getting it right unless you see somebody unlawfully cross the border.

RAMOS: The bill's author continuously says that this issue is supposed to address undocumented immigration. However, giving powers to individuals who have not witnessed there actually being any illegal entry or entry into this country without authorization there's essentially no actual way that any peace officer in my community or your community will know that this is the case unless they are racially profiling or specifically selecting individuals of a certain race, or color, or another national origin. Is that correct?

HINOJOSA: That's correct. There's no requirement that the officer get confirmation from federal immigration officers, from any kind of database, to show they are in this country illegally. There is no requirement of that in this bill. This bill is a racial profiling bill because there is no way to know somebody came into this country illegally. What will happen because what already happens is that people will be suspected of being here unlawfully because of the color of their skin. I have an affidavit here from a DPS officer, right? Somebody who ostensibly should be trained in this kind of thing because they are all at the border right now, right? But I have a sworn affidavit from Kinney County here that is a DPS officer who wrote that he identified a "smuggler" because the smuggler had in the front seat of this car a person who he identified the smell as an odor that is associated with human smuggling. "Undocumented aliens," this is direct quote from his affidavit—"undocumented aliens emit a distinct odor due to sweat and being exposed to the environment." So here is an officer, a DPS officer, who already is making some kind of crazy assumption that someone is here unlawfully because of the way they smell. I can only imagine that when you expand the scope of officers who now are judge and jury and decide your fate with no judge hearing evidence or weighing evidence, that all sorts of decisions like this will be made erroneously. And they will based on nothing more than ethnicity and race.

RAMOS: So what you're saying is that without visual proof, a DPS officer, a Texas peace officer can "identify" an undocumented—in their mind—an undocumented immigrant that merits questioning their validity or their ability to be in this country based on a smell. That is a statement from a DPS officer based on the way an individual smells. In their mind, they can identify whether the person is here with or without status in the country? Is that right?

HINOJOSA: That is an affidavit from a DPS officer on June 19, 2022, in Kinney County.

RAMOS: The unfortunate thing, Representative—are you familiar with Operation Wetback?

HINOJOSA: I am not.

RAMOS: Operation Wetback happened in this country during the Eisenhower administration where U.S. citizens were rounded up, including undocumented immigrants. But records say up to a million U.S. citizens or 100,000 U.S. citizens were also rounded up. So we have a history in this country where they rounded up U.S. citizens. Many at that time that looked like you and me. During the committee hearing, we heard also from our Asian community, from our Arab community, from communities all over the country of this racial profiling. So it is your understanding that something like this without visual proof that an individual crossed the border without status, without legal entry—is it your understanding that these peace officers will use this as a free ticket to implement a new form of Operation Wetback in Texas? Because the likelihood of you being stopped versus the bill's author being stopped varies tremendously. Is it your understanding that this would be something similar to that? Where we had the roundups of U.S. citizens after World War II being deported because they no longer wanted their labor and they grabbed people like you, like me, like our families who are U.S. citizens but just on the way they looked? Is that your understanding? The likelihood that you versus some other members in this chamber will be detained?

HINOJOSA: It's not just my understanding that that's what will likely happen, it is my sincere belief that's what we are encouraging to happen. When we are saying an officer does not have to take you to a judge to decide, to weigh the evidence. An officer can just pick you up and you don't have an ID to show you are an American—pick you up in Austin, Texas, take you to the border, to the Mexican border, and drop you off there. Yes, because of the color of your skin. Because how else would anyone make a determination that you are here unlawfully, that you crossed the border unlawfully unless they saw you cross when they're not required to get that confirmation from any kind of federal database?

SPILLER: This amendment—and I appreciate what it is trying to address, I do. It does two things. One is it says, for the criminal offense under illegal entry and also for illegal reentry it requires the officer to visually observe the person engaging in the conduct. Like I say, I understand the concern, but I've been practicing law for 37 years—criminal law—and I don't know that I know of a single statute in the Texas Penal Code that requires any law enforcement officers to actually physically observe the commission of the offense. And so I think, again, that unduly ties law enforcement's hands. Law enforcement officers know how to look at a situation when they make a probable cause or reasonable suspicion detention or stop and they look at a totality of the circumstances. Here for the same example, if you have burglary of a building I would venture to guess that very few law enforcement officers actually see somebody burglarize a building.

HINOJOSA: Mr. Spiller, you say you know of no other circumstances where an officer has to see that event occur. But do you know of any other scenario in law where an officer has the authority to make a decision to take you back? To take

anyone to another country, to a border and order them to cross the border? Has the sole authority to make a determination about that? So he's not just arresting an individual. He is making a determination as to that individual's ultimate fate.

SPILLER: You are correct. And I do not know of any other that authorizes that. This bill would be the first of its kind in the state and in the nation to my knowledge. I do think that this bill gives officers discretion to either do that or to charge someone or they don't even have to do that. They could—if they feel that something hasn't been committed—they could turn them over as they normally would to border patrol. So they have several options.

REPRESENTATIVE GÁMEZ: I can certainly appreciate and respect that. And thank you so much for saying that you practiced criminal law for the past 37 years and I know you and I have—

SPILLER: I started when I was 14.

GÁMEZ: Little bit of a head up on me. With that being said, absent this amendment by Representative Hinojosa, what in your mind would classify as probable cause to pull someone over to detain them based on this offense?

SPILLER: Well, you give the example of a traffic stop. It could be a traffic stop. It may not. But whether it's probable cause or reasonable suspicion, law enforcement officers could make a stop. It would be based on presumably a number of factors, including just their general observations if something doesn't look right. If you have people crossing—

GÁMEZ: What doesn't look right that would lead an officer—

SPILLER: Maybe, for example, if you are close to the border—very close to the border—you see individuals crossing some private property in the middle of a field in the middle of the night and they have just a backpack traveling through or something that looks extremely suspicious. And law enforcement has the ability to stop and make a detention and ask questions as they would in any circumstance.

GÁMEZ: I'm so glad you said that. Speaking of backpacking, are you aware that—at least in my district in Brownsville, Texas, The University of Texas RGV—Rio Grande Valley—is actually located less than a football field away from the actual river? The actual Rio Grande. And there are kids walking around every day with backpacks because not all of them can afford transportation to school. So based on that, what you just stated as potentially backpacking or walking near the river, what protects these students who go to this beautiful university right next to the river?

SPILLER: Well, there are a number of protections. One is the punishment. The actual punishment for the offense of illegal entry is—

GÁMEZ: I'm talking about what protects them from the traumatic confrontation, potential first altercation that they're going to have with a peace officer in their life? Not knowing their rights, not knowing that they have the right to actually refuse to engage in this altercation at all. What protects them from being stopped at all on this bill?

SPILLER: Again, I'm not a trained law enforcement officer. They know much more about that than what I do, but I trust them. They've been, you know, if they're in that profession they've been doing that for awhile. I would guess there are certain clues and things, indicators to them, that if it appears that a violation of the law—any violation of the law—not just this bill, but anything, that they have the ability if they believe there is, not so much probable cause, I think you can have reasonable suspicion and you could make a stop. It doesn't mean that anyone is arrested for that. It doesn't mean that they've broken the law, but they certainly have the ability and that happens every day in our state.

GÁMEZ: I know you didn't write this. And sometimes in theory these things sound really wonderful, but on the ground in its application, what protects our Hispanic students in our district from—I guess what qualifies as reasonable suspicion to stop them when they are walking to school in our district?

SPILLER: I think there a number of factors that law enforcement looks at—much more of a laundry list than what I can provide here tonight. But certainly the focus of this bill is not to target individuals that are here legally. That is not at all the purpose of this bill or the focus of this bill. It's to protect us from illegal immigration. Immigration that comes from other than our ports of entry. So that's the purpose, that's what the focus is. It is not to just round up folks, especially round up U.S. citizens. Again, what I was going to say is this is a Class B misdemeanor. There's a two-year limitation period on it. If the officer can't understand and have a good faith belief that this thing occurred, that they crossed and they did it. And they would have to know, I would think, some sort of reasonable time frame within which they crossed that border. And they did it within two years, then that's a unprosecutable offense. And I don't think that prosecutors want to waste time. I don't think that law enforcement wants to waste time on things that are not qualifying as a criminal offense under **HB 4**. So that's my thought on that.

GÁMEZ: Do law enforcement officers, for example UT-RGV police, have any obligation to act to refuse to prosecute this potential law?

SPILLER: Well, I think that they use their best judgment and determine if a violation of the law occurred. If they believe it has not then they won't prosecute it. Prosecutors, the ones I deal with on a regular basis, they're pretty busy. Their dockets and their case loads are pretty backed up and the last thing that they want to do is waste time on something they can't prove. I don't look for there to be abuses of this. That's not the desired results certainly.

GÁMEZ: And I really appreciate that. I understand what the intention is of the author. I just hope that the body can appreciate that what we are trying to do is protect our citizens—our lawful citizens—from these unnecessary, potentially traumatic, first-time encounters with peace officers. Whereas before they might never have been subject to this short of simply being a different color or ethnicity and walking with a backpack near a river that we live next to. Thank you so much.

RAYMOND: Representative, I just want to make sure that I'm clear on your amendment. So your amendment were it were to pass would allow peace officers if they visually observe someone crossing illegally, to then return them, I guess, to Mexico. Is that right?

HINOJOSA: It would require that the only way they can return someone to Mexico is if they visually observe them crossing.

RAYMOND: Right, and I asked that because during the State Affairs' hearings on these bills, a committee of which I'm a member, that was sort of thrown out by some of the republican members as an idea. So I want to be clear because I think this is what they were talking about. Your amendment would be—if it were to pass—that law enforcement if they saw somebody crossing illegally, under your amendment, they would be allowed then to take that person back to the bridge to Mexico. Is that right?

HINOJOSA: That is correct.

RAYMOND: Thank you.

HINOJOSA: So let me just reiterate. Mr. Spiller, we all know him to be a reasonable legislator. He is himself a lawyer who is talking about probable cause, prosecutorial discretion. There is no requirement of probable cause here. An officer can pick you up and take you to another country, to the border of another country, and order you to cross. There is no requirement for probable cause. There is no determination by a judge. This is the sole discretion of all sorts of officers now that we are now authorizing to have this broad power that could destroy a life. It is illegal, under Mr. Spiller's bill, for a person who is an alien if the person enters or attempts to enter this state from a foreign nation at any location other than the lawful port of entry. That's what's illegal. Entering other than at a lawful port of entry. How do they know? They have no idea. There is no way for them to know. There is no requirement that they get sign off from some federal database that they know you crossed illegally. So this is a racial profiling bill as it stands. I cannot think of any other purpose for this bill unless you're going to say you see them crossing illegally and then you give officers the power over unlawful immigration. But if you don't see them cross, you don't know.

WU: Thank you, Representative Hinojosa. A part of the issue of this legislation that's being proposed is that the directives it gives to police officers is very vague. Would that be fair?

HINOJOSA: That is correct.

WU: And what actually happens once a police officer starts down the pathway of this bill—there is a lot of discretion up to that officer. Would that be fair?

HINOJOSA: Complete discretion.

WU: Complete discretion. In fact, there's almost no standards in this to tell officers what they're supposed to do. It just throws out a lot of things they could do. Is that fair?

HINOJOSA: That's right. No standards. No training.

WU: And in fact what your amendment is trying to do is trying to keep officers on the pathway of maintaining constitutional actions. Right?

HINOJOSA: Correct.

WU: What we don't want them to do is have officers in one part of the state randomly choose to do one thing and another part of the state randomly choose to do another thing. There needs to be some consistency, especially consistency in not using racial basis as the basis of enforcement.

HINOJOSA: That is never appropriate.

WU: Just like Mr. Spiller came up here and answered when he was asked what kind of thing would actually give an officer reasonable suspicion that someone crossed illegally if they did not see it themselves, and his answer was, I don't know. Is that a problem?

HINOJOSA: That is a problem. His answer was something like if they see them walking in the dark with a backpack—you know what, all day long question that person. That is an officer's right and job to do. But now we're giving that officer not just the right and power to do that, but to take that individual—with no adjudication as to that person's status—take that individual who cannot prove their citizenship to the border and order them to cross into a foreign country.

WU: And the thing is, I've done criminal law long enough to say if an officer tells a judge that all they saw a person do was walk around with a backpack at night a judge would laugh them out of the courtroom. You know that? If we say that was the pure basis for an arrest, that person's getting released. Just walking down the street at night with a backpack is not a crime. But the fact is that the officer could stop that person and be forbidden from arresting them, but still could involuntarily take them to a port of entry with no due process. Even if that person says, "I'm a U.S. citizen. I'm a permanent resident. I live here." That officer could just simply choose to ignore it. There is nothing in this legislation that says if somebody tells you that they are a citizen, or someone tells you that they are a green card holder, or someone tells you I have a visa that you have to listen to it at all or that you have to provide them with due process. There's nothing in this bill like that.

HINOJOSA: That is correct.

WU: Right? So officers are guessing when they meet somebody in Dallas, they meet somebody in El Paso, they meet somebody in Fort Worth, they meet somebody in Houston, or Austin, or San Antonio. They're guessing that they are here illegally, right?

HINOJOSA: They are issuing a verdict on your life whether or not you are authorized to be in this country. They are issuing that verdict and then they are delving out the punishment by taking you to the border and ordering you to cross it.

WU: Even if you protest and say, "No, no, I am a permanent resident here. I am legal." The officer can simply just choose to ignore you. There's nothing in this bill that provides you with any due process?

HINOJOSA: That is correct.

WU: And what you are trying to do is say "Look, if you are not going to allow people to have due process, you're not going to allow people to challenge their detention, and you're not going to allow people to challenge you taking them to a port of entry then at least do it only in circumstances where the officer knows for a fact that they have personally witnessed this person enter illegally."

HINOJOSA: That is correct.

WU: Isn't that the point of your amendment?

HINOJOSA: That is my amendment.

WU: That is a right and proper amendment.

HINOJOSA: Thank you. Members, I urge that you vote against racial profiling. You vote for requiring evidence when the stakes are this high.

[Amendment No. 8 failed of adoption by Record No. 31.]

[Amendment No. 9 by Moody was laid before the house.]

MOODY: I don't want to get into kind of the nuts and bolts of prosecutorial terminology, but we're going to be forced to do that because of some of the terms used in **HB 4**. I do want to go over this because it touches on some of the things I talked about earlier. In this bill, on page 2, "We afford individuals an opportunity to raise an affirmative defense to prosecution." So that says in a criminal matter someone can be arrested, jailed, charged, and ultimately comes to trial. And under Section 2.04 of the Penal Code they would then be afforded to say, "Hey, this doesn't apply to me because I have been granted lawful presence in the United States by the federal government. I have been granted lawful presence because I am an asylum seeker. My conduct does not violate federal law." Or that individual was approved for benefits under DACA. That's the way the bill is constructed. We are going to wait until that moment in time to allow them—and it is a burden upon them, someone who is lawfully present in the United States.

This bill purports to be talking about illegal aliens—those that are coming here unlawfully. This amendment talks about people who have been determined to be here lawfully who have followed the rules, who have complied with the rules and the very generous—I say that as sarcastically as possible—the very generous thing we've done here is say we'll only arrest you, jail you, and take you to trial. And then you can prove to a jury beyond a reasonable doubt that you're here lawfully.

What this amendment does is it says let's figure this out at the front end. Let's do this in an orderly fashion. Let's not let people game the system, but let's make this an exception to prosecution. An exception to prosecution means very simply this—the prosecuting attorney must negate the existence of these factors when they charge someone with the crime. They have to affirmatively say this person is not here lawfully. The federal government hasn't deemed them lawfully here. They haven't granted them asylum. They haven't been given DACA benefits, and they haven't violated federal immigration law. We're saying let the

prosecutor who is in the best position possible to determine whether these facts exist or not to prove that up in their case. And if they can't prove it up and someone's here lawfully I don't think they should be in trial to begin with.

So this not some big glaring hole that we're going to create in the bill. This says rather than affirmative defense for someone who's lawfully here to go through the process, let's put the onus on the prosecutor to say before I bring charges let me make sure that this person is not lawfully present in this country by virtue of these sections. I didn't make up these sections, they're in the bill as it is. The only thing this amendment does is it takes the burden away from the defendant who's lawfully here. And it says to prosecutors you're going to do your homework and make sure that this person is actually in violation of the law, which is what we say we're wanting to do under this bill.

GÁMEZ: Representative Moody, would you please describe the difference between an affirmative defense and an exception to prosecution?

MOODY: Well, for those people following at home they can read Penal Code 2.04 or Penal Code 2.02. For those people here in the chamber that are listening attentively because this policy actually matters, I will tell you this—the affirmative defense means that someone who is charged with a crime is not going to escape arrest, jailing, charging, or trial. They are going to have to bring those pieces of evidence forward and prove them through evidence in trial and then have them submit it to the jury and then prove them beyond a reasonable doubt. In this case, what we're talking about—because these already exist in the bill—we're talking about scenarios in which someone is lawfully present in the country, not illegal, someone who is lawfully here. We're saying, "We'll give you the big favor of proving this up at trial."

GÁMEZ: Representative Moody, doesn't this affirmative defense actually suppose this individual could afford an attorney, competent counsel, and/or is appointed counsel who is aware of this statute?

MOODY: For those of us who take our duty seriously, whether they're hired or appointed cases, you'd hope that you would look through these things and make sure that you're doing your job correctly. My point is if someone has followed all the rules and the federal government has granted them—I'm reading this right out of the bill, "The federal government has granted the defendant lawful presence in the United States or asylum or that their conduct doesn't constitute a violation of federal law or that they've been given benefits under DACA." I'm just saying, why in the world would we put the onus on the person who has followed the law to go all the way through to trial to prove to a jury beyond a reasonable doubt that they're here lawfully when at the front end the prosecutor has all this information at their disposal? If these facts aren't present, then plead it. Put it in your pleadings. This person hasn't been granted lawful presence in this country, they haven't been granted asylum, they haven't shown that they didn't violate federal law in coming into this country, or they haven't been granted DACA benefits. Those are all verifiable facts that the prosecutor has that are disposable, so before

we go forward with the trial, before we go in front of a jury just do the homework. And if any of these things exist, that's an exception to prosecution which means you can't charge the case.

GÁMEZ: Representative Moody, I think your amendment is particularly important in light of Subsection (f) in this bill which could conceivably confuse courts and counselors alike in that Subsection (f) states, "A court may not abate the prosecution of an offense under this section on the basis that a federal determination regarding the immigration status is pending." Under that directly conflicting statute in the bill, isn't it possible that there could be a scenario where an individual meets his or her burden and affirmatively proves up their defense, yet the court will find themselves in a conundrum stating even though you did that, I can't abate this proceeding absent your amendment.

MOODY: No, I think the abatement provision exacerbates the problem because the point here and the reason why the abatement provision is here is we want to rush forward with these state-level prosecutions. We want to move them as fast as humanly possible. The problem that is going to present is someone could be here lawfully, could have an asylum case that is vindicated, could have any one of these benefits, but because we're not going to allow the court to say, "Hey, let's just hold on to see what's going on. Maybe they do have federal lawful presence." The way that (f) interplays with this section, we're just going to run right through the system. My point is there's no harm in doing this analysis up front. Here's the thing, it actually doesn't stop someone from being arrested. It doesn't stop someone from being jailed. Potentially, and hopefully, if they are lawfully present they won't be charged with this crime.

GÁMEZ: So they're still going to ride the ride, so to speak?

MOODY: Yes. Unfortunately, there's no real way to ferret this out before jailing. So someone who's accused of this or is suspected of this is still going to be arrested, they're still going to be jailed, but at the time that a prosecutor is going to look at this case and evaluate it they would have the burden on them. We've talked about burdens in here all the time and how important they are, right? And how we need to take our time with decisions.

GÁMEZ: Representative Moody, thank you so much for this amendment. I believe it clears up any ambiguity and conundrums that will be placed on the courts across the State of Texas with Subsection (f) and for shifting the burden of proof back to where it should be, which is on the state.

MOODY: I appreciate that. I just think it is, to me—

SPILLER: Let me just say I appreciate what the representative is attempting to do here. I do. It would change it from an affirmative defense to an exception to application. However, that creates a much greater burden on the prosecutor. It's an additional adjudicatory process that would have to be enacted and gone through to make a determination before law enforcement could fulfill what they need to under **HB 4**. That's an unnecessary process. I'm going to explain why. Because the affirmative defenses here are pretty straightforward. The federal government has granted someone lawful presence in the United States. Clearly, if

someone has been granted that presence they would know that and they can relay that to the officer. Or they've been granted asylum and there are ways to verify that, document that. The other thing is if they qualify under DACA. The thing with DACA, either someone would be qualified for that—but the reality of it is that issue doesn't really make any difference because the cutoff for DACA under our federal law was July of 2021, which is beyond the two year time period of the statute of limitations for a misdemeanor offense for prosecution of this case. Again, it's just an additional unnecessary hurdle. And I respect the representative and what he's trying to do here and I appreciate the safeguards, but what I'm saying is it's not necessary, it's costly, and it's a hindrance to the enforcement of **HB 4** and the purposes for which it seeks to achieve.

MOODY: Do you think it's more costly to arrest, jail, and take someone all the way to a jury trial to prove up that they're lawfully present here or for a prosecutor to ferret that out at the front of the prosecution?

SPILLER: Okay, well, we're talking about two different things.

MOODY: Because that's the difference here.

SPILLER: What I'm talking about is the application of **HB 4** as far as illegal entry and returning them to a port of entry and ordering them to return. The charge is not filed or anything like that. Here, the reality of it is they would much rather not prosecute this as a Class B misdemeanor and move forward. That's what we do because that's what's currently under federal law. All these things, as you know, have been federal law. The statutes here pretty much have been in place for decades, so this is nothing new. But the reality of it is that most people—nobody wants to go through the cost and expense to prosecute someone for this unless they can keep from it because it's an expensive process and it's a lengthy process. My understanding, from being with DPS, with border prosecutors, and with judges is that 99 percent of the time these people that are actually charged with one of these offenses plead to time served and they're released. In the meantime, we're spending money prosecuting them and in return it's not a deportable offense under 8 U.S.C. 1227. So what happens is those folks are turned over to ICE, Border Patrol, and then assimilated into the population. So the purpose of **HB 4** is not to just put more people in jail. The purpose is to return people from which they came, if they got here illegally.

MOODY: Hold on, this provision has no application if some law enforcement office under your bill chooses to, in my opinion, violate someone's due process rights and shoot them back across the border. It doesn't apply because there's no prosecution. What I'm talking about is that you have at least recognized, isn't this correct, that there are certain circumstances where we shouldn't prosecute or someone shouldn't be convicted of these crimes if certain factors are met? You've laid those out in this affirmative defense section.

SPILLER: Yes.

MOODY: So those people don't deserve to be convicted of these crimes because why?

SPILLER: Well, I mean certainly, just like there are different criminal charges under the Texas Penal Code, sometimes they have affirmative defenses.

MOODY: Sure.

SPILLER: And those apply. A defendant raises those and then the court will adjudicate those.

MOODY: I get that. I've been in those courts—not as long as you. Here, the affirmative defense to prosecution is stating that I am lawfully present in the country. I am here lawfully. I have not violated any laws.

SPILLER: Well, that's not the way I read it.

MOODY: And the position you have put people in, and correct me if I'm wrong. I just want to lay out the way I read this. The position that you've put people in is they've got to go prove that up in a jury trial beyond a reasonable doubt because the construct is an affirmative defense not an exception. Why should this burden not be on the prosecution? Why does this burden lie with someone who's lawfully present in the country?

SPILLER: Well, first of all, I respectfully disagree with your interpretation of that statute.

MOODY: Please tell me why.

SPILLER: Because when you said that they can claim that they're lawfully present in the United States that's not what the bill reads. The bill says that the federal government has granted the defendant lawful presence in the United States.

MOODY: Does that not mean they're lawfully present?

SPILLER: I'm not sure what that looks like.

MOODY: If the government says they're lawfully present are you saying that they're not? I'm confused.

SPILLER: The bill is drafted so that there could be some circumstance, and I'm not really familiar with what that would be, quite honestly, where the federal government has granted someone the lawful presence to be in the United States. It doesn't say asylum. Asylum is a separate deal.

MOODY: That's a different one.

SPILLER: But what that could also be if someone's here for a work visa, they have a green card, they have whatever.

MOODY: Sure, they have the right to be here. U visas is another one. So there's other different ways that the federal government can grant someone lawful presence.

SPILLER: I think there are a number of things that fall within that category.

MOODY: Yes, including being a victim of crime. My point is if that is a process that someone—my understanding of why this legislation is being proposed is that the federal government isn't doing enough to address these issues at the border

and we have to somehow handle this and create a state level offense to do one of two things. Prosecute people here or ship them back across. That's the way the bill is constructed, right?

SPILLER: Well, I don't think it's that we have to do this. I believe that Texas has a constitutional right and ability to do this and the authority to do this. So it's precipitated by the fact that the federal government won't do their job. That necessitated the bill, but I don't think it's just because we have to. I think it's because we actually can. Under the *Arizona* case we're able to, and under the preemption law and federal immigration laws we can.

MOODY: You couldn't possibly disagree with me if someone has gone through a process and the federal government has granted that person lawful presence here, or they've granted them asylum, or they've made a determination that they haven't violated federal law, or that they've been approved for benefits under DACA, and I know that the timing of that maybe doesn't apply to this particular amendment, but in those circumstances you would agree with me that those people have rights too?

SPILLER: Absolutely.

MOODY: So why are we putting the burden on them to show that they're lawfully present when they have gone through the process to already get that done? Why would we not say, "State of Texas, do your homework and make sure these situations don't apply before you bring a charge"?

SPILLER: I understand your concern, and I appreciate your concern. I think it's a higher level than what we typically would require, but I think also that the burden—when you're talking about on the defendant—to raise those issues, I don't think you have to get very high to get there. If someone has been granted asylum that should be pretty simple. I can't imagine if somebody's been granted asylum that the prosecutor is going to prosecute anybody.

MOODY: Exactly. It should be very simple, and the prosecutor is in the best position to know that and so they should do it at the beginning because when you make it an exception, the prosecutor in their charging instrument has to negate the existence of that factor. I've been through the screening department and you go, "Okay, I'm checking my boxes. Is this person here lawfully present?" I have the ability to figure that out as a prosecutor. I can interface with the federal government. By the way, they interface quite frequently. They will tell you whether this person meets any of these check marks. So why wouldn't we just do that at the front end? That's the only difference, the only difference. Because in the bill—the bill itself right now says we don't think someone should be convicted of this crime if they meet these factors. The only difference in the amendment is let's shift that forward in the process to expedite it. Let's not waste time, energy, and effort, and let's put that burden on the state. Because ultimately, you don't think we should go through a jury trial for someone that's here lawfully in the country, do you?

SPILLER: I get it. I understand what you're trying to do. I'm just saying that I know a lot of prosecutors and deal with a lot of prosecutors—

MOODY: I'm just trying to protect people's rights. Look, this is a very minute change. This is just shifting the same decision from one point in the process to an earlier point that creates more efficiency and that's it. It doesn't get anybody off the hook.

I want to thank Mr. Spiller for the discussion because I think it is important just to understand where we're making the decision. That's all this is. This isn't changing the decision making metric or matrix under **HB 4**. This is saying if someone's here lawfully, then they shouldn't be convicted of this crime. Which I hope we can all agree with is probably a good policy. All this does is say we're not going to go through the entire legal process to jury trial, putting the burden on someone who has followed the law to prove this up. It's just a functional thing. In the real world, what Mr. Spiller's saying is correct. These will likely be ferreted out at the front end, so let's just make the law say that. Any prosecutor worth their salt isn't going to bring someone through the system if they're lawfully present if there's an affirmative defense at the end of the rainbow. They're not going to do that, so let's just make the law reflect reality. I'm not saying the sky is falling without this, but why would we not write the law in a way that makes sense in reality? This is just conforming things with the way the system will work and making the bill look right.

Whether I agree with the underlying policy or not, let's at least get the verbiage right. That's it. It's very simply, change's nothing. If someone is here illegally, they're still going to be subject to all the stuff that you want them to be subject to. If they're not, they shouldn't be going through this. Why subject someone who has followed the law? We hear that all the time. Follow the process, follow the law. We don't want to go after people that follow the law and respect the process. That's why these are affirmative defenses already under the bill. All I'm saying is let's make it make sense and move it to an exception rather than an affirmative defense.

[Amendment No. 9 failed of adoption by Record No. 32.]

[Amendment No. 10 by C. Morales was laid before the house.]

C. MORALES: As you remember earlier, my amendment would ensure that victims of sexual assault feel safe to seek health care treatment and legal support.

[Amendment No. 11 by C. Morales was laid before the house.]

C. MORALES: This amendment to the amendment simply clarifies the purpose of obtaining the forensic medical examination. This amendment is acceptable to the author.

[Amendment No. 11 was adopted.]

C. MORALES: I believe this is acceptable to the author.

[Amendment No. 10, as amended, was adopted.]

[Amendment No. 12 by Tinderholt, Schatzline, Toth, and Harrison was laid before the house.]

REPRESENTATIVE TINDERHOLT: This amendment removes the provision in the bill that being admitted to the DACA program during a specific date range is not a defense to prosecution.

[Representative Moody raised a point of order against further consideration of Amendment No. 12 under Article III, Section 40, of the Texas Constitution on the grounds that the subject matter of the amendment is not included in the governor's proclamation. The point of order was sustained. The ruling precluded further consideration of Amendment No. 12]

[Amendment No. 13 by Ordaz was laid before the house.]

REPRESENTATIVE ORDAZ: Members, this amendment would save taxpayer dollars and valuable state and local resources by limiting this legislation to only allowing commissioned DPS officers to detain people for the purpose of this bill. Members, there are currently 35 categories of peace officers in the Texas Criminal Code—everything from law enforcement agents of TABC to officers employed by Parks and Wildlife to investigators employed by the Texas Racing Commission.

Under this bill, these peace officers would now have the authority to enforce federal immigration laws. Agents of TABC, Parks and Wildlife officers, even security officers at dentists' offices will now have the ability to enforce immigration laws where they have no business doing so. It makes absolutely no sense. It was also acknowledged during the committee layout that there would be significant training required to enact this bill and it would come with a significant cost to taxpayers. This unfunded mandate to train sheriffs, marshals, constables, rangers, and 30 other categories of peace officers would take time and precious resources from already strained budgets and many of these peace officers would agree they are not qualified to detain people. If this is an action we want to take as a state, let's put the onus on our commissioned DPS officers who are already overseeing Operation Lone Star.

SPILLER: This amendment is similar to one that we looked at earlier as far as restricting the peace officers that could enforce the provisions of **HB 4** as, again, that's defined under Article 2.12 of the Texas Code of Criminal Procedure. It's drafted that way so it includes all certified peace officers—all peace officers as defined. So I respectfully oppose the amendment.

WU: Mr. Spiller, what is the Texas State Board of Dental Examiners doing enforcing immigration law?

SPILLER: I don't think that the bill was designed specifically to include that particular group. There are several, quite frankly, that are included in the definition of peace officers in the Code of Criminal Procedure.

WU: What about the General Services Commission?

SPILLER: You know I think that certainly, if they're peace officers and they see a violation, just like they could with any other violation of law, they have the ability, the authority, and the knowledge to handle a matter like that. I don't think that they would operate in a vacuum. I think, quite frankly, you would have,

obviously, less of some of the folks that are listed as peace officers under that article that would be enforcing this. Obviously, the vast majority would be DPS and DPS-related folks. Quite frankly, even though it's a statewide bill, most of the time I would guess that it would be close to the place of the violation which would be—I would think the vast majority of these occurrences and encounters would be within 50 to 100 miles of the border.

WU: Does your bill say that this bill only applies to 50 or 100 miles of the border?

SPILLER: No, it does not because we need protection throughout the state. Again, it gives all law enforcement the ability.

WU: Why doesn't your bill say 50 or 100 miles to the border if that is your intent?

SPILLER: Well, that's not my intent. I'm just saying, from a practical standpoint that's probably—I would guess that would be where most of the encounters would occur. Common sense would say that. But that doesn't mean that the bill is limited to that. I didn't mean to limit it to that.

WU: Now, I understand the enforcement of regular criminal laws, right, because these are all licensed officers, they're all trained to enforce regular criminal statutes. Would that be fair?

SPILLER: Yes, I mean—

WU: Now, the General Services Commission actually is not an agency that even exists anymore. Do you think that if they had officers—the General Services Commission—why would they have purview or training over immigration issues?

SPILLER: Because they're certified peace officers in the State of Texas. This bill is not limited to just DPS, it's not limited to just commissioned officers of DPS. It applies to all peace officers to give everyone that's a peace officer the ability and the authority to enforce this just like they would with any other provision whether it be in the Penal Code, the Health and Safety Code, or any of the codes that apply—Penal Code and criminal provisions.

WU: You keep mentioning the Penal Code and the Criminal Code and all of this other stuff. Officers through TCOLE are trained on general law, but they're not trained on immigration law. You know that, right?

SPILLER: Well, I feel certain that they get the training that they need and it may very well be that DPS and others may look at providing additional guidance and training.

WU: Is there anything in your bill that provides them with training?

SPILLER: This is not a training bill, so that's not contained in my bill.

WU: Is there anything in your bill that provides funding for training?

SPILLER: I don't know. We put a lot of funding in Operation Lone Star. I would assume that some could be allocated for that if it was necessary.

WU: Do you know if state law enforcement in Texas has access to any kind of special system where they can check on someone's immigration status?

SPILLER: I don't know the answer to that question. I would assume that they could. It certainly would be available to them if the need arises. You know, certainly peace officers have the ability to stop anyone and at any time that you have reasonable suspicion of probable cause that a criminal offense has occurred and they're entitled to and they do on a regular basis to inquire into those matters.

WU: Earlier, we had this conversation about officers viewing criminal acts. You kind of ask the question when is it ever that we require that an officer actually see the criminal act occur? But that in fact is actually how a lot of people get arrested, a lot of people get charged. The officer actually sees the criminal act, they know the criminal act has occurred, and therefore they make the arrest. If you're going to say that someone is going to enforce immigration law and say, "You entered illegally and I'm going to charge you with illegal entry", how do these officers, one, have the training to do it and, two, actually know? Because the dental board's not on the border, the General Services Commission is not on the border, the Lottery Commission is not on the border.

SPILLER: Right.

WU: How do they know, other than the color of somebody's skin, that this is an undocumented immigrant?

SPILLER: You know as well as I do that there are certain criminal offenses that are on view that any peace officer sees it occur. Obviously, you don't have too many traffic stops or DWIs that happen in a vacuum and happen on what someone else told someone. The vast majority, I would think, of many criminal cases are not seen and viewed—

WU: Representative Spiller, your legislation that you are filing right now, that you are proposing to this body—you are creating a criminal offense based on immigration law. Is that correct?

SPILLER: I wouldn't call it a state immigration law. I don't believe that Texas necessarily has the authority, in my personal opinion. I may be wrong, but I don't know that we have the authority to make state immigration law. Immigration law is—

WU: So it is your statement right now, as the author of this bill that the State of Texas does not have the authority to create immigration law? Is that what you're—

SPILLER: I did not say that. I said I don't know that they do. That's not really the purpose of this bill. This bill is not deemed a state immigration law. It's Texas creating a criminal offense for illegal entry and for illegal reentry. Certainly, we have the authority to do that. As you know and as I've stated earlier the laws under the federal system have been on the books for decades.

WU: Illegal entry into what? You're saying that you're not making immigration law, but you have an offense called illegal entry. Illegal entry into what?

SPILLER: Into the State of Texas from a foreign country.

WU: Is the State of Texas its own nation? Are you putting this legislation on with the belief that Texas is its own nation and has its own immigration laws?

SPILLER: No. They're probably some that would like me to say that, but I'm not saying Texas is its own nation.

WU: As an attorney would you say that?

SPILLER: No, we are a republic.

WU: Okay, so the illegal entry that I assume you are talking about is entering into the United States of America. Is that correct? Not just the State of Texas?

SPILLER: Texas is a part of the United States of America—

WU: Yes. It is.

SPILLER: The last time I checked.

WU: Despite the objections of some of our colleagues. Does the State of Texas have its own immigration law?

SPILLER: This is not Texas creating its own immigration law.

WU: I didn't ask that. This legislation aside, does the State of Texas have its own immigration law?

SPILLER: Not that I'm aware of. Not that would meet the definition of immigration because, generally, that would be under the federal scope.

WU: So the only laws that say who is or is not here lawfully is federal law, correct?

SPILLER: I don't know that that's correct.

WU: Does Texas have its own immigration law?

SPILLER: It's irrelevant if we pass this bill. We certainly have this bill to rely on.

WU: So the intent of this legislation is to create Texas immigration law?

SPILLER: No. You keep wanting me to say that and I keep giving you the same answer that I'm not saying whether Texas has the right to do immigration law. Frankly, my personal opinion is that we don't. That's not the purpose of this bill. The purpose of this bill is to pass a state criminal statute that prohibits illegal entry and illegal reentry.

ORDAZ: Members, again, it makes no sense to have agents of TABC, Parks and Wildlife agents, and as Representative Wu mentioned, security officers for the State Board of Dental Examiners and the state lottery board to enforce immigration laws.

WU: Representative Ordaz, you know that despite Mr. Spiller's answers that there is no system that state officers can look up someone's immigration status. Do you know that?

ORDAZ: That's correct.

WU: So if any state officer is trying to enforce either federal immigration law or Texas' own immigration law, they would have to do it just on what they can see. Is that fair?

ORDAZ: That's fair.

WU: Because they have nothing. There's no computer system they can query, there's no phone number they can call, and they don't have access to federal immigration information.

ORDAZ: That's correct.

WU: So how are dental examiners going to witness somebody committing a Texas immigration law violation?

ORDAZ: I mean, even to go a step further, officers under the pharmacy board is another one. You have, like I mentioned, Parks and Wildlife Commission. You have the State Board of Dental Examiners.

WU: The Lottery Commission.

ORDAZ: Lottery Commission, Texas private security board investigators, there's 35 categories of peace officers.

WU: Racing Commission.

ORDAZ: The Racing Commission. Frankly, they don't want to enforce immigration laws. They don't want to detain people. That is not what they signed up for. It makes no sense.

WU: In fact, it makes their job harder. If somebody is there to do inspections. If someone is there to make sure dentistry is being done the right way, they want people to talk to them, don't they?

ORDAZ: Absolutely.

WU: They need people to talk to them. And if people are scared to talk to them, does that do a disservice to the rest of the state?

ORDAZ: Yes, of course.

[Amendment No. 13 failed of adoption by Record No. 33.]

[Amendment No. 14 by Goodwin was laid before the house.]

GOODWIN: Members, I want to be clear that this amendment does not make this bill a good bill. What it does is it makes the bill somewhat less dangerous. Texas has 31 separate ports of entry all across the state. They're in Lubbock, Amarillo, Midland. Some of these ports are filled with oil tankers and cruise ships, like Port Lavaca's or the Houston seaport. Others require a series of documents—tickets—and advanced planning to utilize, like the Austin-Bergstrom International Airport.

HB 4 currently allows a peace officer to drop off an undocumented Texan at any of these ports of entry and order them to return to some other country. That's dangerous. Returning a person to a land port along the U.S.-Mexico border is equally as dangerous, but it doesn't introduce a new set of confusion and danger

associated with dropping a Texan who overstayed their visa at a seaport, for example. Moreover, and maybe most importantly, my amendment aligns the scope of the bill with its author's intent. Representative Spiller stated in committee that this is the intent, this is what the desired result of the bill is: to return people back to Mexico. The author was clear and the amendment clarifies the author's intent. Let's have a slightly less dangerous bill. My amendment will do that.

SPILLER: Members, I do agree and believe that most of the time if someone is returned to a port of entry, that port of entry is going to be on the border, but it doesn't have to be. My understanding of the Code of Federal Regulations is that there are 21 different ports of entry in the State of Texas, some of those are international airports. More and more we're having problems with people that may be illegal that arrive here at an airport, so I just think that this proposed amendment, although well-intended, unfairly restricts law enforcement's ability to get them to a port of entry and let them be processed wherever that might be.

ZWIENER: So Representative Spiller, as I understand your intention, the law enforcement officer has the discretion to choose whether or not to make an arrest or order removal of the individual, correct?

SPILLER: Yes.

ZWIENER: And they can take that individual, if they choose removal, to any port of entry and order them to leave, correct?

SPILLER: Yes.

ZWIENER: So if they take them to the Austin-Bergstrom airport and tell them to get on a flight and that individual does not have the funds they need to purchase a ticket, does that individual now have a second degree felony coming against them for refusal to leave?

SPILLER: I'll be honest with you, I don't know that they can order them to get on a plane. Anytime I fly internationally, they require me to have a passport. That may be a violation of our existing federal law to allow someone and to fly someone to another country. Even if they agree to do it, I don't know that they're allow to do that. So I can't answer that question, but I think—

ZWIENER: But then how does that work? I mean, what happens if a law enforcement officer under your bill chooses to order the person to leave the country, as we both agree, they have the power to do under this legislation and, as we agree, they can take them to any port of entry. What happens if they take them to a port of entry that is an international airport? How does that resolve?

SPILLER: I would think that, ultimately, that individual would end up at a port of entry that's on the border. That would be the most practical thing, and I think that would be the most common thing.

ZWIENER: Isn't that what Representative Goodwin's amendment is trying to limit it to?

SPILLER: I'm not trying to restrict or limit the bill and restrict law enforcement's authority. It may very well be that they want to fly someone from an international airport, but this bill just says—the Code of Federal Regulations doesn't distinguish on ports of entry whether they're on the border, not on the border, or based at international airports. It's just a defined term as ports of entry. So I think the purpose here is to comply with existing federal law and get them to a port of entry. Now, that very may well be that DPS picks someone up at an international airport and drives them to a port of entry that's located on the border. I don't know the answer to that. But again, that gives law enforcement one of those tools and to let them make that determination as to the best way to get that person back to the country of origin.

ZWIENER: Representative Spiller, I appreciate this dialogue, but I think our concern is, and I think part of why Representative Goodwin brought this amendment is the bill as written would allow law enforcement to take someone to an airport, order them to leave, and then if they don't—either because they can't meet the federal rules you're mentioning, they don't have their passport, maybe they don't have money for a plane ticket—it would allow them to be prosecuted with a second degree felony for refusing to comply with a removal order.

SPILLER: Right. That's not at all the way that I read the bill. It's only if they refuse to comply.

ZWIENER: But what if they can't comply? Is that a refusal?

SPILLER: I think if they can't comply there is a problem in that there's already been an election made to not prosecute someone, to return someone. So I don't know the complete effect of if the receiving country—we covered this earlier in the day about that. Currently we have memoranda of understanding with those bordering states.

ZWIENER: But we're talking about a situation where you've acknowledged if somebody doesn't have a passport, somebody doesn't have travel documentation, somebody doesn't have money to buy a plane ticket and there's nothing in this legislation that would require the State of Texas to buy them that plane ticket. How does that resolve without this person getting prosecuted for a second degree felony for not complying with an order they were unable to comply with?

SPILLER: Again, we're talking about two different things—unable to comply and refusing to comply. The requirement for being prosecuted for a second degree felony is if they refuse to comply. Them not being financially able or some other hindrance for them being able to do it is a different matter.

ZWIENER: With all due respect, Representative Spiller, if you don't pay a parking ticket they're going to say you refused to pay it whether you had the money or not.

SPILLER: They can say that but that's not the facts. The fact is if someone is willing to comply and they attempt to comply, they're not refusing to comply. And the refusal to comply is the key component to refusal for the second degree felony. So I don't think you get there and I don't think any prosecutor is going to

go after someone if they didn't refuse to comply. That's a key element of that offense. They would have to prove, as in any criminal case—any prosecutor knows you have to prove each and every element of the offense beyond a reasonable doubt. If someone was willing to comply, that's not the same thing as refusal to comply. They cannot prove that case. They would not be prosecuted for a second degree felony.

ZWIENER: Representative Spiller, I wish I shared your confidence that this legislation wouldn't be used in this way. I mean, given that you agree that it's unreasonable to take someone without travel documents or funding for a plane ticket to a federal port of entry at a U.S. airport and tell them to leave, could we clean this up?

SPILLER: I get your point, but you're making a lot of assumptions.

ZWIENER: This is big, impactful legislation, could we clean this up so that people aren't being dropped off at places that are logistically impossible for them to leave from and told to leave?

SPILLER: Right. I get your point, but you're making a lot of assumptions. There's nothing about plane tickets in my bill. That's not included in there. There's no discussion of that whatsoever.

ZWIENER: But it says a port of entry—

SPILLER: It is a port of entry.

ZWIENER: As defined, that include airports.

SPILLER: It doesn't mean someone is going to hop on a plane just because you took them to a port of entry at an international airport.

ZWIENER: How else are they supposed to leave the country from an international airport?

SPILLER: I've been known to drive away from airports before so, I mean, certainly that's a possibility.

ZWIENER: So now we're renting them a car?

SPILLER: I don't think just because someone is delivered to a port of entry at an international airport requires the State of Texas to fly someone to where they want to go in another country. I don't think it works that way.

ZWIENER: I think all Representative Goodwin's amendment is asking for is that if we are going to say that law enforcement can take someone to a port of entry and tell them to leave, that that port of entry at least be one they can logistically leave from. I can imagine scenarios where the correct answer is an airport, but that involves that being feasible for that particular migrant and we're leaving all of this discretion in law enforcement's hands without putting some conditions on when that's appropriate.

SPILLER: I understand your concern, but taking someone to a port of entry on the border where they can walk across is completely different than taking someone to a port of entry at an international airport and making arrangements to fly someone to wherever—I'm not saying we couldn't do it, but I'm saying it's not very practical.

ZWIENER: Representative Goodwin is trying to limit it to the former. That's what her amendment is trying to do is limit the ports of entry that are on the border and someone can practically leave from, correct?

SPILLER: I don't know that we're doing that now. I don't see that would be the standard protocol. I think more often than not they would be taken to a port of entry on the border, but this bill doesn't require them to do that. I know that this amendment seeks to restrict that, but that's not the purpose of what I'm trying to accomplish with this bill. I think law enforcement and primarily, in this instance, we're probably talking DPS, but any law enforcement needs to have the authority and the ability to do what is necessary under the circumstances presented. Just like they make judgement calls and make decisions based on the totality of the circumstances based on a stop, they would use the same ability to determine how to best get those folks back to where they came. So I'm not saying they couldn't put them on a plane and fly them, but I don't know that would be the most practical way.

ZWIENER: Some of my concerns here, Representative Spiller, is, as we've discussed at length today, the impact of this bill is statewide. It also penalizes people who are found without proper documentation potentially anywhere in the state under the improper reentry crime. So if somebody is found in Dallas County, a Dallas County sheriff is probably not driving them to the border. Their closet port of entry is that airport.

SPILLER: I want to be very clear about one thing: this bill is not about just rounding folks up that are here illegally and sending them back to the country from where they came. That is not this bill. That's what Arizona tried to do in Senate Bill 1070 in 2010. That portion of the bill was held unconstitutional. Technically, being an illegal alien in the State of Texas or in our country is not—

ZWIENER: Page 3, line 2, says you can get people under the offense of proper reentry for being present here.

GOODWIN: Well, I'm thoroughly confused right now, and I think our peace officers are going to be thoroughly confused as well. What do they do? Take somebody to an airport? The person doesn't have a passport, doesn't have documentation to get on a plane, or doesn't have the money to get on a plane. So what then? This amendment would simply say that if we are going through with taking people and trying to deport them, we should be taking them to where they can get across the border. An airport seems unfeasible and it leaves a lot of confusion. The peace officer takes them there, drops them off, and then what? It seems like this was not very well thought out. I hope that you will vote for my amendment.

[Amendment No. 14 failed of adoption by Record No. 34.]

[Amendment No. 15 by Ortega was laid before the house.]

REPRESENTATIVE ORTEGA: This amendment removes our city airports as ports of entry under this bill. All discussion about the intent of **HB 4** has focused on unlawful entry or unlawful reentry and it's dealing with the Texas/Mexican land border. Airports should not be included in **HB 4** and therefore they should be removed by this amendment.

SPILLER: I would oppose this basically on the same reasons that we just discussed on the previous amendment. I appreciate what's trying to be done, but respectfully I oppose the amendment.

ORTEGA: Repeating what I just said, airports should not be port of entry in terms of the application of this law. It's a very simple, straightforward amendment and I urge members to vote in favor of it. Again, the intent of this bill has been focused on the Texas/Mexican border.

[Amendment No. 15 failed of adoption by Record No. 35.]

[Amendment No. 16 by Goodwin was laid before the house.]

GOODWIN: Members, this amendment simply has the peace officer taking someone to the nearest port of entry. So **HB 4** allows any peace officer, anywhere in Texas to detain and move an undocumented Texan to any of the 31 ports of entry in this state. If a trooper in El Paso chooses to take an undocumented Texan on an 11-hour drive to the port of Houston or Hobby International Airport, this bill allows them to do just that. While my amendment doesn't turn **HB 4** into a good bill, it does cut down the potential for unneeded and possibly cruel treatment of undocumented Texans. Specifically, my amendment would require that if a peace officer chooses to detain and move an undocumented Texan to a port of entry, they must move them to the closest port of entry.

SPILLER: For the same reasons as the last two amendments, I would respectfully oppose this amendment.

GOODWIN: So this one is a little bit different in that it's suggesting that they take the undocumented person to the closest port of entry which seems to be very logical and I'm not really sure why it's opposed.

[Amendment No. 16 failed of adoption by Record No. 36.]

[Amendment No. 17 by Wu was laid before the house.]

WU: My amendment is similar, but one of the things that my amendment is trying to do is deal with this issue of the vagueness of where a person is supposed to be taken. Time and time again we keep hearing this issue. If an officer chooses to take somebody to a port of entry, how does that actually work?

Earlier, I said this bill is hamfisted. I think that is a misstatement. I think this bill is beyond hamfisted because hamfisted is just clumsy, this is intentionally made so it does not work. This legislation simply does not work, and I think it was intended to be that way. What we're trying to do here is actually make it functional. If you say you're going to take someone to a port of entry, what exactly does that mean? There are 31 international ports of entry in this State of

Texas. They include airports, they include land bridges, they also include shipping ports. Exactly what are you supposed to do? There's no limitation of which port you're supposed to take people to, which port you cannot take people to. Earlier, you heard Mr. Spiller talk about how if we take somebody to the airport that might actually be a violation of federal law because you're asking somebody to go into an airport, go into a secured area, and they don't have permission to be there. They don't have a ticket, they don't have any ID because they took their ID from them. What are they supposed to do? Are you supposed to take them to a shipping port? And more important than that, as we have discussed time and time again, the immigration patterns in the State of Texas and to the United States have changed over time.

In the past, a lot of the immigrants coming through and a lot of the undocumented immigrants coming through were Mexican and it was easy to return them to a port of entry to Mexico. But a lot of the immigrants that are coming today are coming from Central America, they're coming from South America, they're fleeing the horrors in Venezuela, they're trying to survive their lives from Haiti, they're coming from Africa, and they're coming from Asia. What is the right port of entry for them to go home? This bill doesn't talk about it, this bill doesn't consider it, and because of that, functionally, this bill does not work. You're essentially writing a law that is intended to create chaos because you're telling officers, point blank, that they have the power to do something, but not the mechanism to actually carry it through all the way.

All this amendment says is that if you're going to take someone to a port of entry, it should be a point of entry through which the person is reasonably able to return to the foreign nation from in which the person entered or attempted to enter. So if you have somebody who is undocumented and they're from Canada, you don't take them to the Mexican border. That doesn't make any sense, just like this bill. It doesn't make sense.

SPILLER: For similar grounds as before, I respectfully am opposed.

WU: Mr. Spiller, in all these amendments you keep saying there's no problem. If you don't accept this amendment, and this amendment doesn't go on the bill and your legislation only says port of entry, if an officer takes a person to the Port of Houston, is that appropriate?

SPILLER: Is it appropriate? Again, it provides law enforcement the authority to take them to a port of entry. This bill, quite frankly, doesn't say if you cross the Rio Grande. Someone could violate the provisions of this bill by coming in through the Houston seaport. It may very well be that the Houston seaport is the most appropriate place if that is a port of entry, so I don't want to restrict—

WU: What ship should they go back on?

SPILLER: I don't know. They would be returned to the country that they came in the most appropriate and presumably the most cost efficient manner.

WU: Does your legislation provide any funding for them to return?

SPILLER: This is not a funding bill, no.

WU: Does your bill require ships to take on passengers?

SPILLER: My bill does not talk about ships—ships or planes or anything else.

WU: It doesn't have any requirement that they have to accept the people that the officer is trying to return as passengers, correct?

SPILLER: My bill doesn't address that, no.

WU: Your bill doesn't address it at all, right?

SPILLER: We don't talk about the modes of transportation to get someone from a port of entry to the country from which they came.

WU: Does that not appear to you to be missing a significant portion of the process that needs to happen?

SPILLER: Not in my mind it's not.

WU: Okay. If an officer takes a person to a port of entry and just leaves them there, that's perfectly acceptable?

SPILLER: If you opt—in the in lieu of language as the prosecution and you take someone to a port of entry, the whole purpose is to order them back to the country from which they came. Obviously, that may not be feasible if they're at the Houston seaport unless they came on a ship. We're talking about hypotheticals that probably aren't going to apply here, but I don't know. It just depends on the circumstances. We keep trying to tie law enforcement's hands and I don't want to do that. Law enforcement, they know how to do their job, but I don't want to tell them how to do their job.

WU: Mr. Spiller, I'm not trying to tie law enforcement's hands. I'm trying to provide law enforcement with actual guidance and process of how to do this. If a Houston Police Department officer takes a person that they believe is undocumented and has violated Texas law—violated Texas' immigration law—and they take them to the Port of Houston and say, "Well, this is where you say you came in. This is where I'm leaving you." Is that okay? Is that acceptable? Because that is the end of the process in your bill.

SPILLER: The whole point of the bill and that portion of the bill to return someone is to order them back to the country from which they came. The example that you gave makes it very difficult to do that if there's no mode or process by which they get to that country, so I don't know how to answer that question. It's really inapplicable the way that I look at it.

WU: But Mr. Spiller, that is a situation that happens all the time. People stow away on ships. If they come here, they get caught. The ships that they stowed away on aren't going to want them back on. Is that fair? So what is the mechanism? If you take this person back to the port of entry, what is the mechanism for them to get back on the ship?

SPILLER: Well, quite frankly, that may be the instance where you don't return someone. Maybe you prosecute them under the Class B misdemeanor that it provides for and that assumes that they're not otherwise—you couldn't charge them with something more serious than a Class B misdemeanor if they're

stowing away on ships. I don't know. But again, I don't want to sound like a broken record, but law enforcement needs to have the tools and the wherewithal to make those determinations because the whole purpose of this bill is not to incarcerate more people, it's to turn them back and get them back to where they came before they got here illegally.

WU: Thank you for your answer. I appreciate that. You know, we serve in here with former officers, we serve in here with a lot of former prosecutors. I'm a former prosecutor. I've wracked my brain on if I was still in the office, what I would tell an officer to do based on the law that you've written and I have no idea. I have no idea. If someone gets off a plane and then later we discover that they're here unlawfully, like their visa expired and they're now undocumented and you wanted to return them, where should they go? Where should an officer take them?

SPILLER: Again, I trust law enforcement and, quite frankly, the input of prosecutors who I value their judgement and their input. I trust them to make the proper decision based on a case-by-case basis and a totality of the circumstances.

WU: Let's walk through that. Let's try that out. Let's pretend you and I are both officers. We have a person right here who needs to be taken back. They got here on a plane from Haiti, they overstayed their visa, they're now undocumented. Let's, you and I, work out what port of entry they should be taken to.

SPILLER: You're assuming that I'm qualified myself to make those determinations.

WU: You're an attorney.

SPILLER: I claim a lot of things, but I don't claim to have that knowledge and that understanding.

WU: If you, as an attorney, cannot think of a reasonable way for this person to be returned how do you expect the tens of thousands of officers in this state who have to deal with this law—who have to deal with your law—how would you expect them to do it?

SPILLER: Well, I trust our law enforcement. They make those decisions on a daily basis. I don't. I'm not qualified to do that, but I trust them to make those decisions. And I want to give them the ability to make a decision on a case-by-case basis.

WU: Mr. Spiller, do you know if law enforcement officers get special training on how to deport people?

SPILLER: I don't know that.

WU: Should you have found out before carrying this bill?

SPILLER: Not necessarily. Again, I trust DPS and other law enforcement to make those decisions

WU: I don't really expect Mr. Spiller to take this amendment and I don't expect y'all to vote for it. I know it's going to go down the same way it's gone down how many times? Sixteen times before. The point of this amendment, the point of

many of the amendments we have before you is to show the court that this legislation is not serious. This legislation was never intended to work because if it was intended to work, if it was intended to be lawful, if it was intended to be enacted, you would put in provisions on how to do these things—how to actually achieve goals that you set out, that the author of the bill laid out that these are the stated goals. Whenever we pass legislation, we say our goal is to get to x and then we will lay out, bread crumb by bread crumb of how to get there. This legislation has nothing. It just has an end goal, a criminal penalty, and that's it.

[Amendment No. 17 failed of adoption by Record No. 37.]

[Amendment No. 18 by Moody was laid before the house.]

MOODY: What this amendment would do is, I think, goes to what I see as probably the most problematic provision in **HB 4** as it came to the floor. This is what I referenced earlier—is the ability of a law enforcement official, anyone in the state, to make a decision on sight to be judge, jury, and executioner. To say that rather than go through the process, rather than take someone to a judge, rather than present charges, rather than create any documentation whatsoever, "I am going to take this person to a port of entry and tell them to get out." This provision will be the provision that strikes down the statute in the courts because it violates all notions of due process. There is no due process here. And when I tell you that lawful citizens will be presented at a port of entry for removal, I am not trying to spook you. I am telling you that is going to happen because it's happened before and when you give people this authority and you give them indemnification on the back end for anything they do, that is what's going to happen.

Removing these provisions—if you want to create state level offenses, if you want to try and figure out how to get your arms around some of these issues at the border, I don't think the bill itself is the way to do that. I've been very clear about that. But if you're going to do that, removing this provision is what's going to allow it to stand constitutional scrutiny because, otherwise, you're depriving these individuals of any semblance of due process.

SPILLER: This amendment completely guts what we're trying to do with the bill. I respectfully oppose it.

ZWIENER: Representative Spiller, thank you for taking the time to answer a few questions. Representative Moody's amendment, as we just heard, would excise the removal portion of this bill—the part that says a law enforcement officer can take someone to a port of entry and tell them to leave. He just stipulated that he believes we have a strong history of people who are lawfully present in the country, including citizens, being removed historically and likely to being removed again under this provision. So what I wanted to ask you is let's imagine for a second that what Representative Moody believes will happen and what I believe will happen, happens. Someone who is entitled to be in the United States—green card holder, DACA recipient, citizen is taken. A law enforcement agent doesn't believe them, believes they are in the country unlawfully. Maybe

it's a case of mistaken identity, maybe it's a case of somebody making bad assumptions, but takes them to a port of entry and tells them to leave. What happens next?

SPILLER: Well, you assume that that's going to happen, and I don't believe that it will happen.

ZWIENER: I'm going to be real frank, Representative Spiller, we have cases of that happening. I'm asking you just to assume with me for a second that it might happen. What would happen next? What recourse would be available to that person?

SPILLER: I'm not advised on that. I don't know.

ZWIENER: We have indemnification provisions. Do you think that person would be entitled to sue the person who removed them and the government agency that's behind them? Is that why the indemnification provisions are in the bill?

SPILLER: You know, we haven't talked about it much, but the bill does provide in Section 2 about recourse through claims under the Civil Practice and Remedies Code and the damages provision and so forth. We have courts—we have the ability to seek redress in court when people are wronged or things that happen. We certainly hope that they don't happen and we don't plan for them to happen, but if something does we have a process and a judicial system that provides for some sort of justiciable response.

ZWIENER: How is that person supposed to avail themselves of our justice system when they have been removed from the country?

SPILLER: I don't have the answers to all those questions as far as how people—lawsuits are filed every day. So I don't see that as a problem.

ZWIENER: What happens if this person who's removed, who has a legal right to be in the United States happens, as often does, to fall into the hands of a cartel because they are kicked out over the border with no resources?

SPILLER: Well, that is a concern. That's why we filed this bill, primarily because of the cartels—

ZWIENER: To turn people over to cartels?

SPILLER: —and what they're doing. Certainly that's a concern, but the scenario that you're describing, I don't believe is going to occur.

ZWIENER: Representative Spiller, why do you believe that won't occur? What protections are there when you make one person—give one single individual the power to decide somebody is not legally in the country and to remove them from the country?

SPILLER: I think there are enough safeguards in this bill, **HB 4**, to provide—

ZWIENER: Where? What are the safeguards to provide for this removal?

SPILLER: There are certain things that law enforcement needs to make a determination based on the contents of the bill of whether they try to return someone—

ZWIENER: Could you show me where in the bill they're required to make that determination and what resources they're required to check?

SPILLER: I think, yeah, where there are some safeguards they collect any identifying information, we've already had the amendment where they can do DNA and other sorts of sophisticated testing.

ZWIENER: But that's a may. My understanding of that amendment is it's more about trying to cross reference people for potential crimes than verifying their immigration status.

SPILLER: I think the entire process is geared toward determining whether someone is here illegally or not.

ZWIENER: Does the legislation require that the law enforcement officer crosscheck possible databases to determine if this person's in the lawful—do they have to contact Immigration and Customs Enforcement?

SPILLER: It requires that they collect any identifying information from that person and that may include a number of things depending on the circumstances.

ZWIENER: You're saying may, so my understanding is there is no requirement.

SPILLER: I'm not saying may. It's not may. They are required to collect identifying information from someone. That is a requirement.

ZWIENER: Which you then said may include information relevant to the immigration status or may not.

SPILLER: It may include additional—biometrics, I mean other types of information that's included in the statute, much more sophisticated than stuff I'm used to dealing with, to identify people. And so they can do that, they have the ability to do that, and they may be doing that to a certain degree right now today.

ZWIENER: Representative Spiller, I don't understand why you're pointing to other statutes because you're creating a novel process to remove people from the United States under this bill.

SPILLER: People here illegally.

ZWIENER: I don't think we have any other provisions in law related to that removal because it's never existed before.

SPILLER: I would agree. We don't. We are the first in the country.

ZWIENER: So what are these other safeguards in statute for removal? Your bill is the whole story on the safeguards for removal and I don't see any safeguards. What are the safeguards?

SPILLER: Again, if you look at on the removal portion it talks about collecting any identifying information and we all know that law enforcement and peace officers in the State of Texas, typically, are used to—they do these types of stops everyday and they're used to questioning people, interrogating them, finding the truth, and here, finding the best thing they can to move forward.

ZWIENER: The law enforcement officers in my community are not used to trying to determine people's immigration status everyday.

SPILLER: No, but they're used to questioning people, that's what they do.

ZWIENER: We've had law enforcement speaking up about that concern. Under what you're saying is that if a law enforcement officer encounters somebody—let's say this person doesn't speak English as a first language, let's say this person is undergoing some sort of mental health crisis, they're not very good at trying to articulate their status, and the law enforcement officer finds no identifying information on them. Is that law enforcement officer justified in taking that person to a port of entry and telling them to leave without any documentation whatsoever?

SPILLER: Based on the scenario that you just gave, I don't know how that law enforcement would prove that someone crossed illegally and did so within the two year time frame.

ZWIENER: Where does your bill require them to prove it?

SPILLER: So the answer to that question would be no, they haven't met that threshold because they don't have that information sufficient to otherwise prosecute someone for that offense.

ZWIENER: Where does the bill require them to prove the offense?

SPILLER: No, it's based on the offense—in lieu of prosecution for that offense, so you have to look at the elements of the offense. The officer knows how to question people, knows how to look at that, he'll see what the elements are. It's very clear that he can look to see can he make a case. If he can, then fine. If he can't, then he's going to do something else.

ZWIENER: Representative Spiller, what is the standard officers use to make an arrest?

SPILLER: To make an arrest, I would think, typically, that they have probable cause.

ZWIENER: Probable cause. What is the standard a jury uses to convict someone?

SPILLER: Proof beyond a reasonable doubt.

ZWIENER: Would you agree that an officer is used to using that much lower probable cause standard and not beyond a reasonable doubt?

SPILLER: I've said before, this bill is not about trying to incarcerate more people. That is not what this bill is about. We have criminal trespass—

ZWIENER: We're talking about removal. An officer is used to using a probable cause standard. I don't know about you, but I don't want people kicked out of the country on probable cause. That is definitely a recipe to get citizens and other people who are lawfully present in the United States removed under this legislation. What is the protection?

SPILLER: I have more faith and trust in our law enforcement to make the right decision based on the totality of circumstances—

ZWIENER: Representative Spiller, this isn't about the credibility of law enforcement. There's not a single human being in the world who I think is qualified to be law enforcement, judge, jury, and executioner.

SPILLER: Right.

ZWIENER: So where are the safeguards? How do we know that this person they're removing is not entitled to be in the United States?

SPILLER: Again, you can look at their identifying information, you can communicate with the people, you can look at a number of other factors. Are there more than one person or are they—you know, what other information, whatever documentation, whatever articles that they may have with them. I could go on all night long, but we don't want to do that. You know, there are a number of things that they can look at under those circumstances and make a determination.

ZWIENER: Where in this bill does it require them to confirm the person's immigration status?

SPILLER: It doesn't talk about immigration status.

MOODY: I think Mr. Spiller stated very quickly, if this bill isn't about locking folks up, then I guess the illegal entry and illegal reentry provisions that provide for prosecution are not really the crux of it in this very novel process of removal with zero due process is the point. So if that is the point, that is going to create an enormous problem with individuals who have not been charged. They have not been brought before a judge, they have not been explained their rights under the law, and they are taken directly to a port of entry and asked to leave.

If they refuse, which I certainly would do if I had some lawful right to be here, they are then subject to a new crime we're creating under this bill as well, "refusal to comply with order to return to foreign nation." So what we've done here is set up a scenario in which an officer at any random stop believes that someone is committing this crime, doesn't have the obligation to look further and can, in lieu of arrest—and Mr. Spiller used the phrase "in lieu of prosecution." Let's be very clear, this is in lieu of arrest, not in lieu of prosecution. This is instead of an officer going, "I'm going to take you into the jail and let the process go forward under the other terms of the bill. I'm just going to decide myself. I'm going to make that decision myself that I've got enough here to take you to a port of entry and ask you to leave and if you refuse, then I'm going to arrest you for that." So like I said the bill itself is riddled with problems. The biggest being the removal provisions in which no rights are respected—

FLORES: Just one question out of curiosity: When they say collect their information or their identification or whatever, are they required to give it back when they take them to a port of entry or are they going to leave these people without their identification and, therefore, stranded in another country if they are a lawful citizen here, but don't have any identification to get back?

MOODY: There was an amendment that tweaked whatever information is supposed to be gathered by the person. I don't know whether there's any provision that talks about what happens with that individual's identification. Under the bill as filed, it talked about collecting any identifying information that the person may have and it's silent as to the rest. There was an amendment early on in the process that tweaked that, but I don't actually think it addressed the issue that you're speaking of.

FLORES: Thank you. It seems like it's pretty unreasonable.

MOODY: Look, if you want to get people into the process and you want to say we're addressing this as a state, then run people through the process. Put them in the process and if they're here unlawfully, then the bill's provisions are going to run them through that process. Whether I think that's a wise decision or not for the state to do, it's neither here nor there because it doesn't have to do with this amendment. This amendment says affording officers the opportunity to be judge, jury, and executioner in these cases is a misstep that is going to lead to people who are citizens and otherwise lawfully present in this country being shoved out of the port of entry.

That is going to happen. That will be the net effect because we are giving people authority to do things that they do not have the ability to do in a way like our formal criminal justice process does. This just says if we want to address this as a state level crime, then let's do that. But let's use the current mechanisms and constructs we have and keep those in place. Otherwise, I assume we'll see this part in court.

[Amendment No. 18 failed of adoption by Record No. 38.]

[Amendment No. 19 by Turner was laid before the house.]

TURNER: Members, as you've heard over these last several amendments and the discussion on this bill, I think we would all agree there's a lot of confusion about how this part of the bill is going to work with respect to returning someone to a port of entry. I think there's been a lot of really good questions asked from the back mic and I don't think there's any clarity, really, that any of us can have about how this is going to work.

This amendment is another attempt to try to provide some clarity for this return provision. This amendment would require a person to be turned over to federal authorities if the country they are returned to denies them entry. As written, **HB 4** allows a peace officer to remove a person who has crossed our border illegally by permitting the officer to transport them to a port of entry and order them to return to the nation they entered from which, as you've heard discussed, would be Mexico in most cases under what the bill author has told us.

Realistically, this part of the bill will cause more chaos and uncertainty for both immigrants who would be directly impacted, and for law enforcement on both sides of the border. What if the individual ordered to return to Mexico is not from Mexico? What if Mexico does not allow the individual to enter their country? When this bill was heard in the State Affairs Committee last week and this question was posed to the bill author, Representative Spiller said, "what

Mexico does with them is their business." Well, what is to stop Mexico from simply prohibiting individuals from entering or reentering their country? There's nothing, obviously, that we can do to affect their decision on that. So if they do that then it becomes our business again.

This amendment corrects this oversight in the bill by stipulating if a person is unable to comply with an order to return to Mexico because they have been denied entry to Mexico, the peace officer shall transfer them to an appropriate officer of the U.S. Department of Homeland Security. Because immigration is already the responsibility of the federal government, Homeland Security has officers that are qualified for this responsibility.

Members, if the State of Texas is going to push forward and insert ourselves into a constitutional federal role, the very least we can do with this legislation is to ensure that we're not adding even more chaos and uncertainty to the situation and that immigrants are not unfairly caught between the United States and another nation, and that they aren't punished for trying to adhere to the law. This amendment will help law enforcement, provide them some clarity about what they're supposed to do in these situations that are certainly going to arise if this bill is enacted.

SPILLER: Members, this amendment just defeats the purpose of the bill. I respectfully oppose.

TURNER: Thank you, Representative Spiller. We talked about this some in the State Affairs Committee last week and we asked what would happen in this situation and you said it would be Mexico's business in this case where we'd be returning someone to Mexico. So what happens if a law enforcement officer takes an immigrant to a port of entry along the Texas-Mexico border and Mexican authorities say, "No, you're not permitted to enter or reenter our nation" whichever the case may be? Then what?

SPILLER: Well, first of all if that happens and hopefully it wouldn't because we have memorandums of understanding with each of the four states, but if it would that would certainly change the scope of the bill. Probably once that happened there would need to be an understanding between Texas and that particular state, but you know I certainly think that defeats the purpose of what we're trying to accomplish with this bill.

TURNER: It would defeat the purpose. I agree, which is why I'm trying to, with this amendment, simply provide a backup, if you will, to say that if that happens the Texas law enforcement officer is directed to transfer that immigrant to federal authorities. What is the objection with handing off someone who is here unlawfully to the Department of Homeland Security? What is the downside of doing that?

SPILLER: I think the whole purpose is that's not what we're trying to do. If someone got here illegally—if they wanted to go to a port of entry and come to the United States legally they would have, certainly, that ability, that option. They chose to do something else. That might be the default that could happen in one or a few circumstances, but I don't want the bill to say that that's what has to

happen. That's the reason that I oppose the amendment. I get what you're trying to say here and you make a very valid point—what if? And we've dealt with a lot of what-ifs tonight. I get the concern, but I'm opposed to that being in the bill.

TURNER: So if it's not going to be in the bill and a law enforcement officer returns an immigrant to a port of entry, Mexico denies that person entry into their country, then what happens? Is the law enforcement officer then still responsible for doing something with that person or is the person just, kind of, on their own and can go wherever they want? I mean, what happens in that case?

SPILLER: I'm not advised because I don't know what the particular circumstances would be in that instance, so I can't answer that question.

TURNER: Well, I think it's a really important question to answer because—and I heard you earlier tonight raise the issue of these agreements that the governor of Texas has with the governors of several Mexican states. But those agreements—correct me if I'm wrong, but I believe those agreements were agreements that were adopted more than a year ago and related primarily to commercial truck inspections and were, frankly, not anything particularly new that the Mexican governments were going to be doing, but they simply memorialized some responsibility on the part of the Mexican states to do a more robust job in inspecting commercial traffic coming over the international boundary. So I don't know why any of those agreements would have any bearing on this case because this is a novel concept. This is new legislation that wasn't in effect and wasn't even contemplated, as far as I know, when those agreements were struck. So I don't know what impact those agreements are going to have on this very novel concept of a law enforcement officer returning an immigrant to a port of entry.

SPILLER: I've read those agreements. They deal with a lot more than trucking. They deal with, primarily, with the commitment that the folks of each of those states has made to the governor of Texas about that they will cooperate with regard to the enforcement of border security and help fight illegal trafficking back and forth. So that's contained in those agreements. Certainly, I would think they would continue with the spirit of cooperation and work with us as they have committed in those memorandums of understanding.

TURNER: So if a person has immigrated from say Venezuela and has traveled north, crossed through Mexico and then into Texas—you would agree that scenario happens fairly frequently right now, right?

SPILLER: Okay.

TURNER: Then the Venezuelan immigrant is apprehended by Texas law enforcement and returned to a port of entry, say in Eagle Pass.

SPILLER: Right.

TURNER: What if Mexico says this is not a citizen of Mexico, they're not legally authorized to be in Mexico, we are not going to take them. Don't you agree that is a very real possibility?

SPILLER: Like I answered that earlier, I'm not advised. I can't tell you exactly what would happen in that particular circumstance. I just don't know. I feel confident that—

TURNER: I don't know either. I think that's why we need this amendment to say what is going to happen. Because we don't know what is going to happen in that situation, so isn't it our responsibility to provide some clarity as to what should happen in that type of situation?

SPILLER: I think we'll have some clarity soon enough, but I can't answer your question—the hypothetical that you propose based on the information that I have at this time.

TURNER: Again, I think that this is a very real situation that is going to arise very quickly if this bill becomes law. I think we would be doing our law enforcement officers a great favor if we're going to give them all these new responsibilities and obligations under this law to at least provide as much direction and clarity as possible. That's all I'm trying to do with this amendment. I think a hand off to the Department of Homeland Security is the responsible way to do that.

SPILLER: And I understand that and I respect that. I just don't necessarily think that this amendment needs to be in my bill, but thank you.

TURNER: Members, I hope you were listening to the dialogue. I think the dialogue between the bill author and myself proves why we need this amendment. Because there's going to be a lot of confusion in these types of situations and they are going to arise if this bill is actually passed into law and is implemented.

Why would we not provide some additional clarity for law enforcement officers about what to do in those types of situations where the country of Mexico declines to accept someone that we're trying to return to Mexico because they may not even be a citizen of that nation? In that case—cases, because they will arise—why would we not simply say to Texas law enforcement, "You need to hand them to the Department of Homeland Security and let the federal government take it from there"? I think it's a commonsense amendment; it doesn't contradict the purpose of the bill and I think it would be a vast improvement of the bill to provide the additional clarity for our law enforcement officers. So I would asked that you vote for this amendment.

[Amendment No. 19 failed of adoption by Record No. 39.]

[Amendment No. 20 by Bucy was laid before the house.]

REPRESENTATIVE BUCY: We just had Representative Moody's amendment to cut out the sections about the inhumane actions of kicking people out. This is saying that if we're not going to do that, if we're going to keep that in this bill, then let's at least verify the immigration status of the individuals before we do that. That's all this does. It says make sure you get it right. The bill author has

said it's not going to happen to a citizen. Let's verify the status. This is saying do that. Let's verify it before you take the inhumane act of kicking people out—potentially an American in the process.

SPILLER: I appreciate this amendment, but my bill is not about immigration status or however that term may be defined. That's not the purpose of the bill, that not what we're asking for. So I respectfully oppose it.

BUCY: With all due respect, we are going to be removing people, pushing people out of this country. This is saying verify their status before you do that. Make sure you know the status of the individual and that they don't have a right to be here. Check on that before you push them out of the country and you forcibly remove them and order them back to wherever they came from. So let's make sure we get it right. Please vote with me and stick with me. Vote yes.

[Amendment No. 20 failed of adoption by Record No. 40.]

[Amendment No. 21 by Morales Shaw was laid before the house.]

GARCIA: **HB 4** creates new criminal offenses which would require peace officers to interact with immigrant populations with which they may not be familiar from all backgrounds. Section 1701.253(c) in the Occupations Code requires that the Texas Commission on Law Enforcement, or TCOLE, establish a statewide comprehensive education and training program on civil rights, racial sensitivity, and cultural diversity as part of the minimum curriculum requirements. In order to avoid any violations, this amendment requires a peace officer who is authorized to remove an immigrant to complete the training program on civil rights, racial sensitivity, and cultural diversity that TCOLE has established. The Texas Supreme Court has consistently said that this legislative intent is determined by the words in the statute. This amendment shows the Texas Legislature's intent that peace officers must complete the training program.

SPILLER: I appreciate the amendment, but I respectfully disagree with her requirement to provide that type of training for every peace officer. So I'm opposed.

GARCIA: Members, if we're expecting peace officers who are not TCOLE-trained law enforcement officers to perform the duties of a law enforcement officer, then I think it's very important that they also be trained in accordance with that. With that, I ask that you please vote yes on this amendment.

[Amendment No. 21 failed of adoption by Record No. 41.]

[Amendment No. 22 by Garcia was laid before the house.]

GARCIA: Members, tonight I mentioned how the United States is a country of immigrants. Few nations in the world can say that they accept those from other countries to the extent that we can say that. We've prospered greatly as a result of this immigration. Our asylum system allows migrants who are facing life threatening consequences—as I mentioned earlier, one of the individuals who was returned to Haiti and subsequently killed. If they return home to find life

threatening consequences in their country, they qualify for asylum. When they come to our country and they're able to pass through a comprehensive process of criminal background checks, interviews, and often years of legal proceedings.

HB 4 would undermine this entire asylum system in our state by prohibiting the abatement of a prosecution for the offense of undocumented immigration even while the federal government is still determining an individual's immigration status. I am offering this amendment to provide an exception to the rule that if a defendant has applied for asylum and is currently waiting on their determination of their immigration status that they be permitted to wait for that status. Federal law is clear. A person has the right to apply for asylum, regardless of how they enter the country within the first year of arrival. Allowing the prosecution of asylum seekers for undocumented entry clearly conflicts federal law and is unconstitutional. More importantly, recognizing the rights of asylum seekers and not forcing them to return to a country where they face significant risk of persecution or death, which is often imminent, is a fundamental basis of who we are as Americans. It is a fundamental aspect of respecting that all people, regardless of race or national origin, are deserving of basic human dignity.

This amendment would ensure that no one is subjected to prosecution for crossing the border to protect their lives if they applied for asylum protections in a timely manner and a determination regarding their case is still pending in the federal court system.

[Amendment No. 23 by Gámez was laid before the house.]

GÁMEZ: Very briefly, this amendment addresses the issue we've been discussing all night, mainly in allowing our courts, our fact finders, and the individuals on the ground to be able to address these cases on a case-by-case basis and save our taxpayers the unnecessary and cumbersome burden of continuing to house these individuals. In particular, this amendment simply strikes the word "not" in Subsection (f) on page 2 of the bill. It simply allows the courts to exercise discretion when addressing the issue of abatement. It does not require abatement, it simply allows discretion in discussing the matter.

SPILLER: My bill deals with asylum, but it doesn't prevent anyone from seeking asylum. They certainly have the right to do so. This does not affect that at all and so I respectfully oppose the amendment to the amendment.

GÁMEZ: Members, once again, this amendment does nothing to detract from the heart and the intentions of the bill. It simply places the discretion of the abatement of the matter in the hands of the fact finder, the individual most astutely poised to make the call. Thank you.

[Amendment No. 23 failed of adoption by Record No. 42.]

SPILLER: For the same reason as the amendment to the amendment, I oppose the amendment.

GARCIA: Members, this is just simply protecting the constitutionality of applying for asylum. That's all it's doing. All it's saying is that while you're in the process of seeking asylum, that you are permitted pending the results of that system.

[Amendment No. 22 failed of adoption by Record No. 43.]

[Amendment No. 24 by Ramos was laid before the house.]

RAMOS: Mr. Speaker and members, this amendment provides essential information to those being detained under **HB 4**'s illegal entry provisions. This amendment very simply requires an officer to identify themselves to the detainee and provide them essential written information translated in the most spoken languages in Texas, which are English, Spanish, Vietnamese, Chinese, Tagalog, German, and Arabic. This information includes not only written identification of the officer—we want to ensure that there's transparency and accountability with the individuals detaining these alleged undocumented immigrations. But it not only includes written identification of the officer and the criminal charge, but also a written manual detailing their rights and information on seeking asylum translated into the aforementioned most spoken languages.

If in fact we are trying to address illegal entry into this country, then at the very least we would want to provide information on how to do it and process it the right way. It does not mean these individuals can stay here. It informs them of their rights. Included in the manual would also be the essential right to invoke a power of attorney to secure temporary care of their children. Oftentimes, those who cannot speak English have no idea who is detaining them and thereafter have no record of the interaction. Imagine in these high-pressure, high-impact interactions there should be accountability and it should be handled with complete transparency of who the individuals are interacting with. Requiring peace officers to provide their personal information and records of the interaction keeps them accountable and ensures that they carry out their duties with transparency and respect for the rights of those they detain.

When we draft policy, we have the duty to ensure there are mechanisms that are sensible, efficient, and fair. Our policy should not encourage hostility and bad government, but instead should promote harmony and reduce conflict within our communities. These provisions ensure that law enforcement interactions are well documented and transparent. In addition to requiring the officer at hand to provide identifying information, this amendment also requires an informational manual be provided with guidance on how to seek legal entry.

Once again, we're saying we want to stop illegal entry. Well, let's provide the information on how to pursue so legally. This manual would be created by the Texas secretary of state in consultation with the federal Immigration and Customs Enforcement agency. It would cover essential topics, including asylum in the U.S., legal entry, the process, and granting custodial power of attorney. Once again, we have talked about how they don't want to separate families, but that is, in fact, what is going to happen. In this state, in all of our districts, there are individuals who are without status who do have children who are U.S. citizens and without providing a recourse for those individuals to have a power of attorney or allocate another individual—next of kin—to provide custody and guardianship over the child while these unconstitutional interactions are happening. We need to ensure that these children are not caught up in our foster

system and, once again, lost. The penalization for illegal entry should go hand-in-hand with providing accessible information on how to take the legal path.

Unfortunately, it is very common for individuals who are deported to just return through illegal means again. This is especially true when they forcibly leave behind their children, families, and established working lives. Any one of us and any individual would want to come back and protect their child. By offering guidance, we can discourage repeat offenses and promote a more orderly immigration system.

[Amendment No. 25 by Zwiener was laid before the house.]

ZWIENER: This is a simple amendment to expand some of the protections in the Ramos Amendment. What this amendment to the amendment does is it affirms that a person charged with an offense under this chapter is entitled to legal counsel appointed by a court.

Members, **HB 4** creates new offenses that must be addressed within a criminal court. We all believe in the United States Constitution here—at least I hope so—and the United States Constitution does require that criminal defendants have the opportunity to a defense. So to avoid a violation of the U.S. Constitution, this amendment requires a state court to provide a person facing criminal charges with legal representation.

Members, this is a building with many attorneys in it and I know many of y'all are criminal attorneys. We all know exactly how important having access to representation when someone is facing criminal charges is, especially with some of the complications we've talked about on this floor where a defendant may have to assert an affirmative defense—something that those of us who aren't attorneys on this floor don't know a lot about. So these folks need representation if we want to demonstrate that we support the U.S. Constitution and that we support full constitutional rights for every criminal defendant of the United States. I ask you to vote yes. I ask you to take an affirmative vote for this amendment to the amendment to support the United States Constitution and representation for criminal defendants under this chapter.

[Amendment No. 25 failed of adoption by Record No. 44.]

RAMOS: Where there is fear the best answer is to have a plan and be prepared. We can provide that empowerment to the individuals faced with forced removal through this amendment. If you believe in basic accountability, the right of individuals to be informed about their civil liberties, the protection of Texas children caught in the crossfire, and reducing burdens on the state, vote yes for this amendment.

SPILLER: A lot of information in this amendment, but I don't think it's necessary to include that in the bill. I respectfully oppose.

RAMOS: Thank you, members. I ask that you support this amendment and that you protect our children. This includes our U.S. citizen children from being forcibly removed from their parents and for the parents to have that information

so that they can put the child in the care and custody of somebody who can take care of their child while they are being processed through this bill. I ask that you support our Texas children and you support this amendment. Vote yes, please.

[Amendment No. 24 failed of adoption by Record No. 45.]

[Amendment No. 26 by Walle was laid before the house.]

WALLE: This is a very simple amendment. As the amendment's being pulled up on your computers, on page 4, between lines 7 and 18, this amendment adds the following language, "A peace officer may not detain a person under 11 years of age in connection with the investigation of an offense under Section 51.02 or 51.03." That's the amendment.

My amendment would ensure that the State of Texas isn't in the business of putting children under the age of 11 in jail. If you recall from the previous regular session, I offered a very similar amendment to **HB 7**, authored by Chairman Guillen. And Chairman Guillen graciously accepted that amendment because I don't think the body wanted to be in the business of putting babies in jail. That's the amendment.

SPILLER: There's some safeguards that we want to make sure—that there may be circumstances where a young child may be with someone that is not their parent. Could be with a cartel member, could be something else. I do appreciate very much the representative looking out for children. This bill is not about punishing children, but I would respectfully oppose.

WALLE: Members, we need to speak with some moral clarity. I don't think that this body wants to be in the business—again, let me repeat—I don't want this body to make a decision on this amendment without again listening to what I just said.

All this amendment does is prevents, prohibits, the incarceration of children under the age of 11. I'm going to repeat—incarceration of children during this investigation under the age of 11 from being in a jail. I don't know about you, but it would be very traumatizing for an 11-year-old to be caged up through no fault of their own. The long-term trauma for that child to be locked up in a cage—again, through no fault of their own. I think this type of amendment would prevent a human rights catastrophe. Because you would have—again, let me repeat for the fifth time—children under the age of 11 from being jailed. So all this amendment does is it prevents those children from being put in cages.

[Amendment No. 26 failed of adoption by Record No. 46.]

[Amendment No. 27 by Hernandez was laid before the house.]

HERNANDEZ: My amendment would provide an affirmative defense to prosecution if an individual failed to comply with the removal order because the foreign country they were ordered removed to denied them entry.

HB 4 provides that a peace officer may remove a person in lieu of arrest if a police officer detains them for a violation. While these removal provisions violate both the U.S. and Texas Constitutions, they are also unworkable. Many of the migrants entering the United States at the Texas-Mexico border are not Mexican

citizens. They do not have the right to return to Mexico and do not have to be granted admission back into a country from which they entered. Allowing people to be subject to two to 20 years in prison for failure to follow an order that was impossible to comply with is a grave miscarriage of justice. **HB 4** would potentially leave thousands of people in an impossible situation. They could not return to Texas without facing harsh criminal penalties, but they could also not return to Mexico legally. They would essentially be left in the middle of the bridge, floating in legal limbo, with no option to enter either country.

My amendment would address this flaw in the bill by establishing that it is an affirmative defense to prosecution for failure to comply with the removal order that the person was denied admission to the country from which they entered the U.S. at a port of entry.

SPILLER: Members, this amendment just adds an affirmative defense that I'm just not comfortable with under the bill. So I oppose it.

ZWIENER: Thank you so much, Representative Spiller. And I'm sorry, I wasn't hoping to come back here tonight, but when you and I were discussing an earlier amendment, you told me that you didn't think being unable to leave the country equaled a refusal. Is that correct?

SPILLER: I'll tell you what, let me just cut to the chase. I'm concerned with what could happen in Mexico if someone is returned to Mexico and how it would be affected by this amendment. That's my concern. I don't necessarily have a problem with the concept of the amendment, but I'm just getting to the point of it. I'm concerned with something that someone may show up with something from Mexico that says, "Well, we tried but we're here again."

ZWIENER: Well, in that case the law enforcement officer could just arrest them.

SPILLER: Right.

ZWIENER: Correct?

SPILLER: Yes, I get it. I'm concerned with the wording.

ZWIENER: This is about the second degree felony that somebody would be charged with if they refuse to leave. In our earlier conversation, you said you didn't think being unable to comply with an order to leave was the same as a refusal. That's what you said. Do you agree?

SPILLER: Right.

ZWIENER: So this is doing that. This is creating that clarification that being unable to leave is an affirmative defense to being prosecuted for a refusal to leave.

SPILLER: I understand that. If those were the circumstances, I don't think the prosecutor would be able to meet his or her burden of proof of each and every element of the offense for refusal to comply beyond a reasonable doubt. So I don't think they could do that. I don't think we need the affirmative defense. I understand what you're trying to do, but I'm not comfortable with adding it into the bill.

ZWIENER: So your position is the bill, as it stands, means that somebody could not be prosecuted for being unable to leave when being ordered to leave?

SPILLER: I think you could have a dispute about whether someone being unable to leave or not leaving, but I—

ZWIENER: Well, in that case, the provision is necessary.

SPILLER: Again, I'm trying to answer this as best as I can. I'm not comfortable with the wording of this. I just think the prosecutor still has to prove their case. They may be able to; they may not be able to. But I'm not comfortable with the wording of this particular amendment.

ZWIENER: Well, this amendment's been filed for hours. Could we clean up the wording so you are comfortable and we get the clarity we're seeking?

SPILLER: Not really. I just don't like the idea of adding what you're wanting to do as an affirmative defense. I don't think that's necessary. I think either they can prove their case or they can't. I don't think it's proper to do it in this format. I appreciate what you're trying to do, but I don't—

ZWIENER: Okay. So I just want to be clear that I understand. Where we ended is we think it's possible that somebody could get prosecuted for refusal to leave who was unable to leave. We think that's possible, not necessarily will happen, but possible. But we're not going to try and clarify that—or you would not like to try and clarify that in the bill. Is that accurate?

SPILLER: I'm not going to say it's not possible to prosecute someone. I think they're going to have a hard time proving their case, and I can't think of too many prosecutors that want to do it if they can't prove their case.

ZWIENER: Okay. I guess we're leaving it as it is possible for somebody to be prosecuted even if they were unable to leave unless we accept the Hernandez amendment. Thank you.

HERNANDEZ: There are other provisions in the bill that do provide for affirmative defense, so this would just be applying this to the situation where someone is ordered removed to Mexico and Mexico is not accepting them, that they not be subject to the second degree felony. It would provide an affirmative defense in that situation.

[Amendment No. 27 failed of adoption by Record No. 47.]

[Amendment No. 28 by Ramos was laid before the house.]

RAMOS: This amendment discusses the relationship, and a better understanding of the relationship, between individuals and between immigrants that we have in our country and in our communities. When we craft policy, we need a robust cultural understanding of the issue at hand. And unfortunately, many people don't understand the cultural nuances because—for many reasons. Many times you're just not interacting with these immigrant communities. But I can attest that sometimes and oftentimes Latino family households—and not only Latino family

households, but our Asian American, Arabic American households—include nieces, nephews, uncles, great grandparents, and others within the fourth degree of consanguinity or affinity.

As a reminder, consanguinity as defined by Texas code is the status of being descended from one another or sharing common ancestor. When we're talking about degrees of consanguinity, we're asking how close of a relative are we to the mother. Degrees of affinity is the same concept, except it includes relationships through marriage. These relationships are deeply cherished and play a significant role in the cultural fabric of our immigrant communities. And by the way, many times in Latino communities which is 40 percent of the total population of Texas.

This amendment ensures that our Texas families are not shattered and ripped apart. Many children who live in undocumented households or multi-status households have primary guardians that are not under their first degree of affinity. Imagine a mom leaving her regular late night shift at Walmart, tired and exhausted. A matter of fact, one of our colleagues earlier expressed to us a common scenario in her family. And on her way home this mom gets stopped for making an incorrect U-turn. This mom is in charge of caring for her three children and also her sister's newborn grandchild because her sister is not allowed in this country. My amendment would protect this mother and also her great niece within the fourth degree of consanguinity from being removed from this country. Multigenerational households like these are common in our immigrant communities, and they deserve protection.

The now authorized officer in this bill has the authority to determine that she is an undocumented because she can't understand him and is unable to provide a Texas form of identification. In this bill, she is forcibly removed from her car and ordered to return to a port of entry and not only are her children left without a guardian, but also her nieces and nephews. This kind of wide-ranging consequence will happen under this bill. Thousand of families will be left without key members of their family who they often rely on heavily for financial survival.

This amendment stands as the testament to our commitment to respecting the diverse family dynamics that make up our great State of Texas. Our colleague shared with us earlier—Representative Hernandez discussed how in school she would be scared that her parents would be removed from the country, and they would not have parents when they got home from work or from school or what have you. And it is a real fear that we are imposing on our children, especially passing legislation like this. One thing Representative Hernandez mentioned is when she went to school she would be scared to say where she's from. And I imagine that is exactly what's going to happen. Children are going to be scared to be free to be children for fear of being detained or deported or drawing attention to their families. And it reminds me and I'd like to share this book with the author of this bill.

Part of what we do in our community we go and read to the children. With "Reading with Ramos" during Christmas we encourage children to read during the Christmas holiday. This book talks about multigenerational households and how they make tamales. But not only Mexicans make tamales, but Asians make a form of tamales. Different countries from all over the world make different forms

of food and they share in their beauty and their diversity and their unity. And what this book talks about is those multigenerational households. It is very clear, it is very common in our communities. And unfortunately, the way this bill is drafted it does not respect and it does not recognize those cultural nuances of multigenerational households that we all have in all of our communities.

What I'm asking from you all is to support this amendment. Support children. Do not tear them apart from their caretakers. At the end of the day we are all here for the future of Texas which are these children. So I ask that you support this amendment and do not rip these children away from the caretakers that are in their care today.

[Amendment No. 29 by Talarico was laid before the house.]

REPRESENTATIVE TALARICO: Members, I taught Dreamers as a teacher in San Antonio. These are the kids who were brought here as babies. They have known no other country except the United States. They're Texans in every sense of the word. Under this bill, when DACA is resumed law enforcement would deport these young people back to Mexico, Central America, or other countries they may not even remember. My amendment simply gets rid of the dates restricting when someone has to have received DACA to be protected from deportation under this bill. We've already recognized that DACA recipients should not be subject to deportation in this bill. I ask that we extend those same protections to any future DACA recipients.

SPILLER: This amendment to the amendment attempts to invalidate the judicial restrictions that have been placed on DACA and the time periods accordingly. So I would respectfully oppose it.

TALARICO: Like I said, we've already recognized in this bill that DACA recipients shouldn't be subject to deportation. This is just saying that when DACA is reinstated, those future recipients won't be subject to deportation.

[Amendment No. 29 failed of adoption by Record No. 48.]

SPILLER: I am respectfully opposed to the amendment because it's a further restriction on the enforcement of the bill. As I said, I'm opposed.

RAMOS: During the committee hearing, the bill's author could not guarantee or could not commit the fact that the children would not be separated from their parents. There was no clarity. There was no absolute affirmation that this would not happen—which we know in fact it will happen. Children will be separated from their caretakers, from their parents, from their family members. This is exactly what's going to happen if this bill is passed. My amendment says if at the time of the commission of the alleged offense the person was accompanied by a minor child related to the person then that child would be protected and not be separated from their family. I ask that you support our children. Don't flood our foster care system that is already overloaded, over flooded, and protect our children from continuing to be traumatized by this harmful legislation. I ask that you support my amendment and vote yes.

[Amendment No. 28 failed of adoption by Record No. 49.]

[Amendment No. 30 by Ortega was laid before the house.]

ORTEGA: Members, this amendment requires that in order for peace officers to exercise the expanded authority authorized under **HB 4** to detain and remove an individual, they must first be trained in immigration and civil rights law. While peace officers and law enforcement who have experience in border apprehensions may already have this type of training, peace officers from other areas of the state likely do not. Because **HB 4** is not currently limited to border counties, any peace officer may now assist in deportation. It is critical that all officers fully understand how to protect the civil rights of the individuals that they may encounter and arrest. A vote for this amendment is this legislative body acknowledging that anyone in this country, regardless of citizenship or immigration status, is protected under the Civil Rights Act.

SPILLER: This is similar to another amendment or two that we've had that I've opposed. I oppose this one on the same grounds.

ORTEGA: This is a very different amendment than the previous one that was considered. This, specifically, is for training that is essential. Anything we do nowadays requires training, and if you are going to be out there enforcing immigration laws—that is something new to state law enforcement officers—then we need this kind of training. Not only do they need training on how to arrest, but obviously need to know the Civil Rights Act and what they are doing, and how they are handling the arrest. So this is a common sense amendment and I would urge you to vote in favor of this amendment.

[Amendment No. 30 failed of adoption by Record No. 50.]

[Amendment No. 31 by Martinez Fischer was laid before the house.]

MARTINEZ FISCHER: We've had some debate earlier. There seems to not be a standard when it comes to how we're going to enforce this law. It concerns me. It's very similar to "show me your papers." There was a dialogue earlier in this debate about "Well, how do you know when you're going to approach somebody and ask them to identify themselves or their status?" The response was "Well, you know, maybe if you see a couple of people walking in a field at night and they have some backpacks on." And of course the response from Representative Gámez was "Well, we have a college campus right by the Rio Grande. We have lots of kids who walk with backpacks, sometimes at night, and now we're going to make them susceptible to this proposal."

All this says is—anybody who's ever practiced law, anybody who's ever seen an episode of *Law and Order* would recognize that there has to be a standard before you detain and inquire about whether there's a suspicion that somebody is breaking the law and that's probable cause. So this amendment just says before you can inquire into the immigration status of anybody you detain, you have to have probable cause. Very much like we have for pretty much every single criminal law we have now. We're talking about, in some instances, penalties in this proposal that come with a prison term of up to 20 years. If we are going to threaten people with prison for up to 20 years, we better have something more than a hunch. More than "I just don't think that person looks right." We're not

going to get that done based on those sorts of observations. We need a legal standard and that standard should be probable cause and that's what this amendment does. I hope it's acceptable to the author.

SPILLER: Members, my bill doesn't deal with immigration status. I don't want to open the door to get into issues dealing with immigration status. I respectfully am opposed.

MARTINEZ FISCHER: The only thing you are opening the door to is a huge challenge as to the rights that we have in this country. This proposal is purported to be aimed at the undocumented, but the reality is this could actually impact U.S. citizens that have rights just for being born in this country.

On the one hand, the arm of the state is going to say that we believe that this is so bad that we're going to send you to prison for up to 20 years if you don't do what we tell you to do. But on the other hand, we can just pick whoever we want out of the thin blue sky and have no justification for it and we can say, "You, identify yourself. Tell me who you are. Are you a citizen of this country?" It doesn't work that way. It really doesn't. So if you're opening up the door to anything, it is a huge challenge as to whether or not the State of Texas has the right to treat United States citizens like that. I think the law is pretty settled on that. That's why we have probable cause for pretty much everything we do. This just glosses right over that. I think it's a big mistake, and I think that we have the opportunity to get it right, and that's what this amendment does. So rather than open the door to a huge legal and constitutional challenge, let's just accept probable cause as a standard that we already have for all our criminal laws in this state and I ask you to vote yes on the amendment.

[Amendment No. 31 failed of adoption by Record No. 51.]

[Amendment No. 32 by C. Morales was laid before the house.]

C. MORALES: This amendment will mandate reporting on the removal of any person, or the attempted removal of any person under this bill by law enforcement. This body is debating and enacting a wide, sweeping law that would allow law enforcement to remove individuals that they suspect have entered unlawfully without any system to track the direct actions this bill is enabling. The required reporting will ensure that we know where law enforcement is removing individuals, how many individuals have been removed by law enforcement, and what members of law enforcement are removing individuals.

SPILLER: I'm not comfortable with the mandates for reporting that are required in this amendment, and I respectfully oppose it.

C. MORALES: I don't understand how we can pass this bill and not have any reporting on what it's doing. So I ask that you vote yes.

[Amendment No. 32 failed of adoption by Record No. 52.]

[Amendment No. 33 by Turner was laid before the house.]

TURNER: This amendment deals with county jails. One of the provisions in this bill that became clear as we heard the bill in committee—in the State Affairs Committee last week—is that a couple different things can happen if a law enforcement officer apprehends someone that they believe is in the country unlawfully. They can return them to a port of entry, as we've had a lot of discussion about this evening. Or they can simply be arrested and charged with a Class A misdemeanor, in which case they'll spend time in a county jail.

Members, we have a lot of county jails in our state—and my county is one of them—that already have a lot of challenges that they're facing. Some of these county jails are not in compliance with state jail commission minimum standards. And additional counties, like my own, have been plagued with understaffing, inmate deaths, and having to outsource jail beds basically to other counties, to other jails because they simply don't have the capacity either because of overcrowding or because of staffing shortage or other issues.

So my goal with this amendment is to not further add to the challenges—the very real challenges these county jails are currently facing—by putting more prisoners into those jails when they clearly are not doing a good job of managing the jail population that they have currently. So members, I think it's important for the membership to know the county jails that are currently as of, I guess now, yesterday the Texas Commission on Jail Standards has on its website a list of noncompliant jails. And briefly I'll just share with you. It's Brazos County, Bosque, Cameron, Clay, Liberty, Llano, Midland, Mills, Runnels, Denton, Galveston, four jails in Harris, Stonewall, Tyler, and Washington. In my county, Tarrant County, it shows that we are in compliance which is somewhat surprising to me because just two months ago in August, Tarrant County approved an \$18 million contract with another jail to move 432 inmates because of staffing shortages and maintenance issues. There are persistent staffing shortages and even more worrisome, Tarrant County has had a real problem with inmate deaths over the last several years. At least 56 people have died in custody in the Tarrant County jail since 2017. Clearly, we have a county jail in Tarrant County that is very poorly managed by our sheriff. And I don't want to give our sheriff additional responsibilities when he's not able to meet his current responsibilities of running a good jail operation.

So that's what this amendment would do—simply saying those prisoners or those people who are apprehended who would then be prisoners cannot go into county jails who meet this limited set of criteria that is outlined in the amendment. Earlier in my discussion with Mr. Spiller, he expressed some openness to this so I'm hoping he's deemed it to be acceptable.

SPILLER: I just don't want to get into mandating what jails can and cannot be utilized, so I respectfully oppose it.

TURNER: You and I had a discussion about this amendment earlier in the evening, did we not?

SPILLER: We did.

TURNER: Yes, and you indicated at that time that this would be something that you'd be amenable to accepting?

SPILLER: I'm less opposed to this than I am some others. I have since visited with some folks about the status of some county jails, and I do have some concerns about the implementation and adoption of this and the effect that it would have on this bill.

TURNER: What changed since you and I talked? When we talked, it sounded like you were open to accepting the amendment.

SPILLER: Yes.

TURNER: Now you are opposed to it.

SPILLER: I did consider it, but the more I've considered it, the more I'm concerned about it. What I don't want to do is tie law enforcement's hands here. I don't know—my understanding is that there may be a number of jails that may fall within the categories here and are operating in that capacity and in that way. I just want to stay out of the jail-choosing business. I think that that's inappropriate for this bill. The more I looked at it, the more I understood it, and the less I was comfortable with that. But I do appreciate the amendment, and I appreciate your efforts. And I do appreciate what you are trying to do here. I'm just not comfortable enough to agree to add that to my bill.

TURNER: So you think it's better for us to add to the considerable burden that this list of jails that I read, plus Tarrant County which I am concerned with, are already experiencing before this bill is enacted and we're going to add to their workload, to their burden?

SPILLER: Yes. The purpose of this bill is not to incarcerate more people, it's to incarcerate less. And some of those that we're handling now through criminal trespass, hopefully there will be less of those and more folks handled under this bill, if this passes. So the idea would be that it would be less financial burden to counties. Also Operation Lone Star has a number of facilities. They have bed space available. They're actually utilizing—currently, there's about 2,200 additional beds available in some TDCJ units that are serving as state jails that could detain people, if necessary.

TURNER: How many extra beds?

SPILLER: Two thousand two hundred.

TURNER: Two thousand two hundred. Mr. Spiller, do you recall Director McCraw's testimony in our committee last week?

SPILLER: I've slept since then and probably need some more sleep right now. So I probably can't. Once you refresh my memory—

TURNER: Do you recall we asked the director how many arrests he anticipated, potentially under this bill if it passes, each year?

SPILLER: I can't recall exactly what he said.

TURNER: So he said that he would project that more than around 72,000 arrests per year and that roughly, you know, some percent of those would be handled in different ways, but it would be easy to contemplate 30 to 35,000 people apprehended each year under this bill statewide.

SPILLER: His testimony in that regard was not on this bill was it? Wasn't it on the other bill?

TURNER: Well, this bill is more expansive than the other bill we heard.

SPILLER: Well, my position is the other bill didn't—and I don't want to get into comparing bills here—but the other bill didn't have any provisions for returning folks to the border.

TURNER: That's true.

SPILLER: Mine does and so the idea is that we have less folks incarcerated and more folks returned. So I think under my bill we actually would end up with a cost savings rather than an additional cost to counties.

TURNER: Well, I can appreciate that argument, but I would also add that—and you may be right that it was in connection with the other bill, but that other bill also was limited to law enforcement witnessing someone crossing the border. Your bill is much more expansive than that. It does not require someone to witness someone crossing the border.

SPILLER: My understanding is they were working on a committee substitute that would have that language, but I've not seen that language.

TURNER: Either way it's a considerable number of arrests, potentially.

SPILLER: Yes.

TURNER: My concern again is Tarrant County, where I live and represent. If someone is detained under the provisions of this bill, what's going to be the quicker solution for that law enforcement officer? Is it to detain them locally in a county jail or is it to figure out how to transport them several hundred miles to the U.S.-Mexico border? What I don't want to have happen is that we overburden our already overcrowded, understaffed, frankly dangerous, jail in Tarrant County.

SPILLER: I do appreciate the concern and I appreciate the thought there. I do think that the vast majority of incarcerations, if any, are going to be closer to the border. Therefore, closer to the Operation Lone Star facilities and the beds that they currently have available. The further you get from the situs of the criminal trespass, so to speak, or illegal entry, the less jail space it is going to require. Because in my view you're not going to have that many, relatively speaking, detentions or charges.

TURNER: I'm disappointed that Mr. Spiller's unable to accept this amendment. I was hopeful based on a previous conversation that he would be able to.

Look we have a lot of challenges in a lot of our jails around this state. These are small county jails, big county jails. I don't think we should add to their burden particularly when jails are not meeting minimal standards, that they are understaffed, that they're overcrowded, particularly in the case like Tarrant County where you have a high number of documented inmate deaths—an unacceptably high number, any number is unacceptable, but just a ridiculously

high number of inmate deaths in Tarrant County. I don't know why we would want to add more burden to that overburdened jail. That's why I think this amendment is an improvement to the bill, and I would ask that you vote for it.

[Amendment No. 33 failed of adoption by Record No. 53.]

[Representative Shaheen moved the previous question on passage to engrossment of **HB 4**, as amended. The motion for the previous question prevailed by Record No. 54.]

SPILLER: Let me just say I appreciate the input. I appreciate the opportunity to work with some folks to try to have a better bill. I'm always about that and I appreciate the input we had getting to this point. I acknowledge that it's been a difficult subject, it's been a difficult issue. We have differing opinions on how to best deal with the problem. I think we all acknowledge that there's a problem. But I also want to acknowledge that we've taken quite a bit of time today with a number of hours that we've gone through, hours of discussion, hours of private meetings trying to make amendments work. I want to acknowledge also I was, as a result of that, able to take some amendments and do that. I appreciate everybody's time.

DUTTON: Why do most of these people come to Texas across the border?

SPILLER: Well, I haven't done any surveying, but Texas is the greatest state in the country, and I can't imagine people not wanting to come to Texas for many reasons.

DUTTON: Would it be fair to say that they come for a job?

SPILLER: Certainly, we have the best state for business in the country and have for a number of years. Absolutely.

DUTTON: I assume that's a yes.

SPILLER: Yes, sure.

DUTTON: Is there anything in your bill that deals with people who hire them?

SPILLER: No, it doesn't and it doesn't for a reason. There were some things that Arizona did. We've talked about the *Arizona v. U.S.* case and what Arizona attempted to do relative to employment. So we've stayed clear of that in trying to make sure that this bill is constitutional and in compliance with federal immigration law.

DUTTON: So you thought it was unconstitutional?

SPILLER: There were some provisions of Arizona bill 1070, that three of the four provisions were found to be unconstitutional. One of those had to do with employment and I can get into details, but I don't think we want to do that.

DUTTON: So it's your opinion that having something that—or creating a third degree felony for people to hire them was unconstitutional?

SPILLER: Yes, that's not the subject of my bill. In fact, as I said, because Arizona dealt with that and they dealt with it improperly and the Supreme Court ruled on that matter. We've tried to stay completely clear from that in my bill.

DUTTON: But I don't think that Arizona one just simply created a criminal statute for hiring those folks, did it?

SPILLER: I'd have to look at the case. I've looked at it a bunch, but I can't recall specifically, but it did place restrictions on it.

DUTTON: Right, but I don't think it created a criminal penalty for that. And so I just wondered when I looked at the bill, you create a number of penalties—second and third degree felonies for immigrants, but the reason they come is to get a job and we don't do anything about that. We don't do anything about the people who try to hire them.

SPILLER: The *Arizona* case said that was completely preempted. That was one of those areas that was preempted and they gave reasons for why it was. So those were things that we have tried to steer clear of in this bill. Those are things that the federal government has determined, or the U.S. Supreme Court said are under federal domain. There's no question that there needs to be some form of immigration reform. I don't know that there's anyone that would disagree with that. The more I've learned and the more I've studied from this I would agree with that, but that's not proper, in my view, for us to deal with here, and it's certainly not proper for me to have included it in this bill for the reason I stated.

DUTTON: Well, if the whole bill is designed to stop or halt immigration and the reason—

SPILLER: No, no, no. The purpose of the bill is to stop illegal immigration, not immigration.

DUTTON: Correct. And if the reason illegal immigration is happening is because they're coming to get a job, then it seems to me we ought to do something about the people who hire them.

SPILLER: Again, that's addressed in the *Arizona* case, addressed in federal immigration law, and I don't think it's a subject of my bill. Certainly, you know, we don't deal with it in my bill.

DUTTON: Well, I don't think Arizona ought to set the pace for Texas. I think Texas ought to set the pace for Texas.

[**HB 4**, as amended, was passed to engrossment by Record No. 55.]

