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FOURTH DAY (CONTINUED) — TUESDAY, NOVEMBER 14, 2023

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SB 3 DEBATE - SECOND READING**(Jetton, Bonnen, Cain, DeAyala, Kitzman, et al. - House Sponsors)**

SB 3, A bill to be entitled An Act relating to an appropriation to provide funding for the construction, operation, and maintenance of border barrier infrastructure and border security operations, including funding for additional overtime expenses and costs due to certain increased law enforcement presence.

REPRESENTATIVE JETTON: Members, **SB 3** is similar to a bill that we heard and passed on the house floor during the last special session. It appropriates \$1.5 billion for the maintenance, operation, and construction of border barrier infrastructure. We've also added in \$40 million for the Texas Department of Public Safety for the border security operations.

REPRESENTATIVE WALLE: Representative Jetton, I understand that you've laid this bill out previously. We're on a fourth called special session, so we have to do this again. So let me just clarify because I want the public to understand. They've been aware, but because we are in the new special session—fourth special session in November, a week before Thanksgiving—it appropriates \$1.5 billion plus. Is that correct?

JETTON: It's \$1.54 billion is the total amount, yes.

WALLE: So that would pay for how much in border barrier?

JETTON: So the \$1.5 billion will allow the State of Texas to get to over 100 miles of border barrier infrastructure.

WALLE: That would include just specifically for the border barrier itself? For the purchase, I'm assuming, of the steel metal sheets that are going to go along the U.S.-Mexico border? Is that our understanding?

JETTON: It is for the maintenance, operation, and construction of border barrier infrastructure, yes.

WALLE: And we've appropriated another \$1.6 billion for this border wall in previous sessions, is that correct?

JETTON: That's correct.

WALLE: And how much have we built with that \$1.6 billion?

JETTON: I believe, based on our last conversation, it was around 11 miles.

WALLE: Okay, 11 miles. And then do we have an understanding of how much per mile—again this is testimony from the Texas Facilities Commission—how much per mile are we spending for the wall?

JETTON: Yes, we do have that number. I can find it exactly if you'd like it. I don't have the exact number right in front of me.

WALLE: As I understand it, it's about \$20 million to \$30 million per mile. Is that a fair assessment?

JETTON: That sounds about right, yes.

WALLE: Okay, and as I read the bill, it's \$1.2 billion for an additional 50 miles of permanent border wall construction and easement. So is this going to take into account eminent domain?

JETTON: So in the last legislative session, we added on the amendment, and in this bill, it includes the prohibition on using eminent domain or building this wall on land acquired through eminent domain.

WALLE: So the purchase of these properties are going to be on a voluntary basis with landowners that are along the border?

JETTON: That's correct.

WALLE: We talked specifically in the committee hearing in previous hearings related to this item—right now the effort was in four counties. Is that correct?

JETTON: That's correct.

WALLE: What counties were those?

JETTON: We're looking at Maverick, Starr, Val Verde, and Webb Counties.

WALLE: But the bill doesn't specify where they would go, but that's your understanding of where the border wall will be constructed?

JETTON: So out of that \$1.5 billion, \$1.2 billion goes towards what we would consider construction ready in terms of these are deals that are in conversations or have already had the land deeded over to build this border barrier infrastructure. This doesn't limit it to those counties, but this is where we've seen the need, and the landowners are working with us on the acquisitions.

WALLE: And then part of the walls—they're not continuous, right? Because we have 1,200 miles of border—a natural border with the Rio Grande, is that correct?

JETTON: That's correct.

WALLE: So these are going to go in—I guess there's not going to be continuity in the actual construction of the wall. Is that correct?

JETTON: It's going to be based upon the assessment of Operation Lone Star, DPS, that communication with Border Patrol, and making sure that we're hitting the areas we need to. Also taking into consideration where land can be deeded over. Yes.

WALLE: Do we know specifically where the wall relative to the river, the Rio Grande, how far set back that distance is? So you obviously have the Rio Grande, which is our natural border with Mexico. From the shoreline, or from the banks of the river to the wall, what is the distance between that?

JETTON: The nice thing about the State of Texas not using eminent domain is that we're able to work with those landowners, and so it's going to be based on what we can negotiate and work through with the landowners.

WALLE: So I also see that there is \$27.6 million for the maintenance and operations of the wall?

JETTON: You're talking about the ongoing costs?

WALLE: The ongoing costs. Is that a fair assessment? I'm just reading—I'm trying to understand the bill.

JETTON: That's what LBB came up with.

WALLE: And then \$272 million for flexible use for busing, buoys, and additional barriers depending on future migration surges. Is that—just going specifically to the bill itself.

JETTON: Going specifically to the bill. You're saying that it allows that within the bill?

WALLE: What I'm saying is that in your bill does it contemplate busing, buoys, and additional barriers separate from the wall?

JETTON: Border barrier infrastructure does include more than just the 30-foot walls that we're discussing. They can include the buoys and other things not including tactical barriers which would be like the c-wire and more temporary fencing.

WALLE: I'm sorry you said what wire?

JETTON: More temporary fencing is not included in this.

WALLE: I'm talking about the—

JETTON: The c-wire or the—

WALLE: Barbed wire that folks are getting stuck in.

JETTON: The barbed wire. It does not include that. Those are considered tactical barriers and not border barrier infrastructure.

WALLE: Okay. Let me ask you also—we talked about this in committee. This also authorizes \$40 million for the Department of Public Safety for Colony Ridge. What was the rationale for the use of \$40 million infused at DPS for Colony Ridge? What is the issue with Colony Ridge?

JETTON: More broadly, this appropriates \$40 million and provides the governor with the ability to transfer funding to DPS to cover border security operations, including overtime, as well as increased law enforcement in Colony Ridge development. So we're talking about one bucket. DPS originally estimated statewide overtime cost is \$16 million a month but has been spending closer to \$22 million. Because of this increase is why we're seeking the additional \$40 million in this bill.

WALLE: But you didn't answer my question. The \$40 million that is at DPS, how is that related to Colony Ridge?

JETTON: So there's been two security or two situations that have arisen during the special sessions—during the third and fourth special sessions—as needing additional appropriations. And that's been border security and Colony Ridge. So those have been named in this bill.

WALLE: Right, but I'm just trying to get an understanding. The \$40 million—I'm going to repeat this for the third time—the \$40 million for DPS. What is going on at Colony Ridge that we need to spend \$40 million there at Colony Ridge? What are the issues that have arisen?

JETTON: I think that you can look at—so there have been reports of additional gang activity and different activities occurring within Colony Ridge that right now DPS is able to handle. This allows over the next—between now and the next appropriation for additional security, additional overtime, to go towards securing Colony Ridge if it was needed. So this is precautionary because it has been brought up as a security concern during the special session.

WALLE: Based on, I think you've seen the statements by Colonel McCraw about Colony Ridge, it doesn't seem to appear that there is an issue at Colony Ridge other than an unincorporated part of rural Texas that so happens to have a majority of the folks that live there are people of color. Is that fair to say?

JETTON: I don't know about the last part of that statement. I can tell you this, we are leaving it with McCraw and DPS to have these funds available for whether it is for border security or Colony Ridge. And if Colony Ridge is not an issue and does not need these funds, it still goes toward border security.

WALLE: Colonel McCraw has mentioned specifically, publicly in several committees, that there are not any issues at Colony Ridge, so I'm just trying to understand.

JETTON: As of today. So this allows for that flexibility over the next—between now and the next appropriation. If those funds are needed, those funds could be used.

WALLE: How far is Colony Ridge from the border?

JETTON: I believe it is quite a ways.

WALLE: I beg your pardon?

JETTON: It's in the Houston suburbs, I understand. Liberty County.

WALLE: It's not in the Houston suburbs. It's actually over an hour from Houston.

JETTON: Houston metro. Liberty County.

WALLE: I'm sorry?

JETTON: Liberty County. I understand.

WALLE: Yeah, Liberty County. So how far is Liberty County from the border?

JETTON: I'm sure you have that number. I don't have the number in front of me.

WALLE: I'm just asking you. I mean, this is your bill; you have Colony Ridge stated specifically to spend \$40 million at DPS. What is the distance between Colony Ridge, Liberty County, and the U.S.-Mexico border?

JETTON: I don't understand how that correlates to the funding of \$40 million. We're talking about this being raised as a security concern, or a concern worth investing in, and so that's why we have appropriated \$40 million for Texas Department of Public Safety to use these funds towards border security and, if needed, Colony Ridge.

WALLE: Okay. Thank you very much.

REPRESENTATIVE RAMOS: Thank you, Representative Jetton. Regarding Colony Ridge, I had some other questions. Representative Walle asked how far it was from the border, and you said you don't think it's relevant. But actually these funds that are being allocated to Colony Ridge—this \$40 million—it specifically says in the bill that it's because of strained law enforcement and that there will be broad discretion to use these funds for alternative border-related expenses. Alternative border-related expenses would imply that this is a border-related expense, Colony Ridge. However, you just admitted that Colony Ridge is nowhere near the border. So there is either some miscommunication or misrepresentation in terms of Colony Ridge. Additionally, there was—I guess there was a dispute in the committee hearing in terms of the amount of individuals living at Colony Ridge. What is your understanding of the population there at Colony Ridge?

JETTON: Well, I first want to clarify, you know Subsection (b) talks about "the amount of appropriation of Subsection (a) of this section, the Trusteed Programs within the Office of the Governor shall transfer \$40,000,000 to the Department of Public Safety for border security operations, including paying for additional overtime expenses and costs due to an increased law enforcement presence to preserve public safety and security in the Colony Ridge development in Liberty County, Texas."

RAMOS: Okay, thank you. What is the population at Colony Ridge?

JETTON: I don't have that.

RAMOS: You don't know?

JETTON: I don't have that information in front of me.

RAMOS: So there was an average of different numbers, but we're talking about anywhere between \$500 to \$1,000—with this \$40 million that you're allocating to Colony Ridge. Between \$500 to \$1,000 per individual at that place. Now, many of us here, actually the majority of us here have apartment complexes, multi-family units, in our areas. So it does say that there is broad discretion in allocating this money. But there are apartment complexes and multi-family units and different areas where individuals live all over the state that are experiencing incidences of crime that would love to have \$40 million to improve the safety in their areas. How does somebody in my community apartment complexes or multi-family units in my community get access to this \$40 million to help the safety of the people in my community? Because we too, according to your

definition, are border-related in that we're about 300 or 400 or 500 miles away from the border. How do we get money? How does my community get access to these funds to improve the safety in our community?

JETTON: Sure. So first off, statewide, we're spending about \$16 million. DPS is spending \$16 million going towards overtime, and it's increased to \$22 million because of the increase needed for security, especially along the border area. That is the main bucket we're pulling from that can be used towards Colony Ridge, if necessary. This is not a separate bucket of \$40 million for Colony Ridge. It is a bucket for overtime by DPS for border security and, if needed, Colony Ridge. And if none is needed, then none is used. But statewide, we've already appropriated overtime for areas that need additional security, including in your community.

RAMOS: So it doesn't necessarily have to be Colony Ridge, but what we're telling Texans is that you too can have access to this money, even though you may not be Colony Ridge. But all over Texas, in our cities and in our rural communities, we can also have access to this money because we're talking about security and safety of our communities. So this money, how do we get access to it? Do we have to be on a certain radio station or TV station to raise interest, or is there somewhere that an individual—or do we call the Department of Public Safety to have access to this money to improve the safety in our communities?

JETTON: This appropriates \$40 million for overtime use on the border, for border security, or Colony Ridge.

RAMOS: Colony Ridge is nowhere near the border and neither are my units. So are we able to access that money as well?

JETTON: Not from this bill, no.

RAMOS: So it is only Colony Ridge?

JETTON: It is the border, money used—

RAMOS: The \$40 million allocated to Colony Ridge, where there's also broad discretion to direct additional funds for safety and alternative border-related programs. If we're saying Colony Ridge is a border-related program and it's nowhere near the border, then so is Dallas, Texas—our units in that area as well, correct?

JETTON: I think you can try and make that argument. I'm telling you what's in this bill, and the intent of this bill is to provide \$40 million for Texas Department of Public Safety—

RAMOS: Thank you.

REPRESENTATIVE TURNER: Thank you, Representative Jetton. I want to follow up with you on the Colony Ridge topic. We had, a few weeks ago, an informational hearing in the State Affairs Committee on Colony Ridge. Were you aware that we heard from the county judge, the sheriff, as well as Director McCraw in that hearing? Were you aware of that?

JETTON: Yes.

TURNER: Are you aware that in that hearing we learned that—you know, Colony Ridge has some growth challenges like a lot of fast growth areas of our state have—but in fact, Director McCraw stated to our committee that per capita there was not a higher incidence of crime present than any other part of the state, and that it was not anything unusual, I guess, to characterize his comments. Were you aware that that was his testimony?

JETTON: Yes.

TURNER: Okay, and then I'm sure you're aware the sheriff also indicated that they could always use more help, but most law enforcement agencies would say that. He thinks they're doing a pretty good job of managing their situation in partnership with the Colony Ridge homeowners' association, which is actually paying for some overtime from the sheriff's department. Were you aware of that?

JETTON: Yes.

TURNER: So in light of all that that we agree are the facts—why is the state going to appropriate \$40 million for Colony Ridge?

JETTON: Sure. I think that based on those statements that were made that you are stating here, I think you can find comfort in the fact that as of today these funds would not need to go towards that. This allows for funds, if necessary, between now and the next appropriation to go towards that. The other major part of this \$40 million goes towards additional overtime on the border and for border security efforts. And so I think that there's—I understand the wanting to get locked on to Liberty County and Colony Ridge, but there is a bigger use for these funds that includes the border security operations and allows for the flexibility over the next 400 and something days if something does change in Liberty County and Colony Ridge, then they have the opportunity to use those funds.

TURNER: The entire bill though is how much? Over \$1.2 billion? Is that right?

JETTON: \$1.54 billion.

TURNER: \$1.54 billion, all right. So part of that is for the border wall and other physical barriers, correct?

JETTON: \$1.5 billion of it goes toward the maintenance, operation, and construction of border barrier infrastructure.

TURNER: And then some is for overtime for border operations.

JETTON: Forty million of it, yes.

TURNER: I don't agree with that, but that makes sense what you're trying to do there. But is some of that border operation money going to go to Colony Ridge?

JETTON: There is a potential. This does appropriate and allow all those funds to be used for that.

TURNER: So my question is given that there's the potential—I interpret that to mean that's what's going to happen. So why should the taxpayers of Texas pay for law enforcement personnel in one neighborhood of one county? I'll restate the

question. Why should the taxpayers of Texas pay with our tax dollars for additional law enforcement in one specific community in one of our 254 counties?

JETTON: As things are today and in the appropriations act that we passed during the regular session, we already fund Texas Department of Public Safety to patrol all areas of the State of Texas.

TURNER: I understand that, and that's a legitimate function of the Department of Public Safety. They are our state police, and they provide valuable services throughout the State of Texas. However, we're providing additional funding for this one particular community, and I'm trying to understand why. I'm trying to understand how my communities, for instance, could petition the Appropriations Committee to get additional funding for their law enforcement efforts. I'm sure that my police departments in Tarrant County would love to have some additional resources to help combat various challenges they're dealing with, like gun violence, for instance.

JETTON: Sure, and I think during our regular appropriations act when we pass it every regular session those are things that are considered. During this special session, we can only consider what's been put on the call by the governor. This has been raised as a concern, and so this is why it's in this bill.

TURNER: So it's been raised as a concern. Can you state what that concern is that merits this appropriation?

JETTON: There have been security concerns brought forward. I'm not going to try and debate or litigate whether or not Colony Ridge is safe or unsafe or needs these funds today. I am telling you that in this bill we are appropriating \$40 million to go towards Texas Department of Public Safety to potentially use those funds for overtime use in Colony Ridge if things are needed there. That's going to be up to the director.

TURNER: And who will make that determination?

JETTON: I believe it will be Texas Department of Public Safety.

REPRESENTATIVE MARTINEZ FISCHER: Thank you, Representative Jetton. I know the answer to this, but for clarity for the body, in the **SB 3** that we have before us, it is clear that these funds will not be used to build any wall with a domestic state neighbor of ours. Correct?

JETTON: That is correct.

MARTINEZ FISCHER: Thank you for that. With regards to the resources, we had a brief conversation in committee, and it's my understanding that in Colony Ridge there are already law enforcement officials providing law enforcement services. Is that your understanding?

JETTON: That is my understanding, yes.

MARTINEZ FISCHER: And it's also my understanding that the money that is used to pay for those services is authorized by the local HOA. So in other words, there's not a public police entity out there that is being funded by tax dollars. It's actually through HOA dollars. Is that your understanding?

JETTON: HOA dollars couldn't be used toward the contract with the Texas Department of Public Safety. I believe they have local law enforcement that they have a contract with.

MARTINEZ FISCHER: Yes, sir. I guess where my line of questioning is when we were dialoguing is we all recognize that there is a shortage of state law enforcement personnel when it looks to the operations from Department of Motor Vehicles all the way down to operations on the border to Highway Patrol. And just like many other state agencies that have local agreements, TxDOT being one of them, the question I had was being able to use these dollars for local agreements with the department and the Colony Ridge law enforcement officials to provide state resources for this law enforcement in overtime. I don't know that there's a prohibition on that. I want to get your take.

JETTON: I'm not sure I completely understand your question. I think that, if I understand, you're talking about the HOA's agreement or the special district's agreement with local law enforcement. Those agreements would be with local law enforcement and not with the Texas Department of Public Safety. Texas Department of Public Safety patrolling within Colony Ridge wouldn't be funded or have anything to do with the local agreements between HOAs, MUDs, and the local enforcement.

MARTINEZ FISCHER: No, I understand that. I guess my question is let's say that there is a law enforcement urgency in Colony Ridge, but the department does not have the resources, bandwidth, or staff capacity to fill that need. And we have local law enforcement officials in Colony Ridge already providing that service. I don't see a prohibition on the use of these funds to just transfer by local agreement to Colony Ridge to allow them to maintain their law enforcement mission, expand their law enforcement mission, and provide the overtime for their officers. We do this a lot in TxDOT, where we let local governments take over state projects and flow the funds through, and I don't see a prohibition here. I just wanted to get your opinion on it.

JETTON: All right, I'm tracking now. I understand where you're going with it. I don't know whether that is something that's allowed within the Texas Department of Public Safety or the Trusteed Programs, but there is not a prohibition on it in this bill that I'm aware of.

MARTINEZ FISCHER: I guess for me and my understanding, if the objective is to just fund DPS, well, that's one matter. If the objective is to address a critical issue of a law enforcement presence and a protection and service aspect of what law enforcement does, well, then it would seem to me that the most efficient flow of those funds could be locally. Without there being any specific objection, I just wanted to see that local officials or local HOAs could have that dialogue with the department to see if that's possible.

JETTON: I guess one point of clarification on that, this does—we're looking at line 19, "including paying for additional overtime expenses and cost due to the increased law enforcement presence and to preserve public safety and security in Colony Ridge development in Liberty County." I don't know. Again, it seems like it may be more specific to DPS and their costs. So I don't know how that would apply to local agreements.

MARTINEZ FISCHER: But as far as your intent though, is your intent to just provide the resources to a state agency? Is it your intent to provide potential resources for a law enforcement response to an area that may need one?

JETTON: Since we don't appropriate to local law enforcement, the intent of this would be to provide Texas Department of Public Safety with these funds to, yes, maintain peace in those areas, and most likely with the use of their own law enforcement. But I understand there may be situations that take it outside of that, and that would be something between DPS and local law.

MARTINEZ FISCHER: If that's the intent though, just from our dialogue, there is no obstacle by way of **SB 3**—there is no text in **SB 3** that would prohibit the department from maybe having a dialogue about a local agreement to the extent that they think they need one. Is that correct?

JETTON: To the best of my knowledge, there is not a prohibition in this bill on that.

REPRESENTATIVE HOWARD: We're both on Appropriations, and part of our duty is accountability of the taxpayer dollars. Correct?

JETTON: Correct.

HOWARD: How often does the LBB generate a spending report on Operation Lone Star?

JETTON: I don't have that information in front of me.

HOWARD: They do generate reports that tell us how the funds are being spent. Do you have any idea when we might be able to see a report on how these dollars are being spent?

JETTON: I don't have that information in front of me.

HOWARD: Do you know the projected timeline for when the different projects of this wall building will be—the timeline for when they're supposed to be complete?

JETTON: Yes. So most of the wall—and we had a nice diagram put together by the Texas Facilities Commission—most of this will ramp up, I believe, in 2025 and continue through, I believe it's 2027. Just trying to recall off the top of my mind. The reason the funds are needed now is because these deeds are being acquired, and part of this process for them to be able to continue to move forward is the appropriation of funds now.

HOWARD: Over that period of time though, to determine whether or not the dollars are being appropriately spent, we need to have certain metrics in place, do we not? Metrics to determine if they're being effectively used?

JETTON: Sure.

HOWARD: And I think some of the things we've been hearing is that we get it both ways that when apprehensions are down, we're successful because we're deterring. When apprehensions are up, we're successful because we're capturing. Both ways, it seems like we have success, whether things are up or down. So I can't really understand how we're determining what the metrics are here as to whether or not this is being effective. Can you explain that?

JETTON: Sure, I believe so. What this is is a tool in the toolbox of many tools that the border security—whether you're looking at Border Patrol, Texas DPS, National Guard, Operation Lone Star as a whole—this is a tool in the toolbox for them to use to secure the border. In terms of apprehensions being up or down, that's not necessarily the metric that you go off of. You go off of—

HOWARD: So apprehensions being up or down is not a metric we would be using to determine whether or not the wall is effective?

JETTON: I think it's one metric, but I don't think it's the end-all be-all. At the end of the day—

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

REPRESENTATIVE BRYANT: Members of the house, if I could have your attention, I will be brief.

The 27 members of the Appropriations Committee had a hearing on this bill. We had witnesses come before the committee. We had witnesses from the governor's office, and of course we had the testimony of Mr. Jetton with regard to the bill. In questioning them about the most basic inquiry you can make on an expenditure of \$1.5 billion, I asked the governor's office, "Do you have any estimation or any data that would tell us what percentage of reduction in illegal entries will result in spending \$1.5 billion on this wall?" And the answer was, "No, I don't have that information." The question was asked, "Do you have any information or data that will tell us the quantity of people that will be stopped from entering illegally?" And the answer was, "No, I don't have any of that information." I asked Mr. Jetton, "Do you have a study that indicates the effect of this wall with regards to reducing illegal immigration?" And the answer was, "I don't have any study like that, and I'm not aware of one that indicates walls like this will stop illegal immigration." We had an expert come before the committee who is now a border sheriff—formerly was an official in the Border Patrol. I asked him, "How many miles of border out of our 1,200 mile border do not have a geographical barrier into crossing into the United States—into Texas?" And the answer was, "700 miles." Unless we are willing to build a 700 mile wall, this little stretch of wall is not going to do any good. That's what I believe. If I'm wrong, bring the data forward and show us information that would indicate spending this money would have any effect whatsoever. I've not been able to get that information because that information does not exist.

This amendment is very simple. It says the expenditure of \$1.5 billion is contingent upon the governor's office, pursuant to our Government Code, holding hearings—or a hearing—and the governor himself concluding that the data

indicates that illegal entries will be seriously impeded by the expenditure of this money. That's all it does. Enormous discretion is left to the governor, but he at least has to have a hearing and make a finding that this is going to have some impact.

Members, \$1.5 billion is a huge amount of money. That's 15 \$100 million rural hospitals for the 71 counties that have no hospital. I could go down a list of things it could be spent on. We're \$2 billion currently short of the money we need just to pay for the current level of special education being borne by our independent school districts. This is a huge amount of money. We shouldn't spend it unless we know that there is data that indicates it will impede illegal entries into Texas. I urge you to vote for the amendment.

JETTON: Members, during our many hours of testimony on this bill, we heard from experts that talked about this tool being an important tool to deterring and allowing for movement of migration to certain areas where we can use less personnel in those area where walls are to interdict people that come through the border illegally. This is a tool that has been deemed effective by both the federal side—Border Patrol, DHS—but also by Operation Lone Star, DPS, and the National Guard on our border. This is what they are asking for. This is what they say will help to protect our border, and so I'm asking you to vote against this.

REPRESENTATIVE FLORES: Did you say that there was testimony—there was an actual formal hearing of the Appropriations Committee, and you heard this testimony about this additional \$1.5 billion going in? Did I miss something?

JETTON: So we're talking about the \$1.5 billion part of the border infrastructure that was discussed in the previous legislative special session. There was testimony in that hearing that backed up the understanding that border barrier infrastructure helps to secure our border and is an effective tool for our law enforcement.

FLORES: So that occurred in the third called special session, not this special session. Was there a hearing this session?

JETTON: There was a formal hearing, yes.

FLORES: A formal hearing, and there was testimony taken at this hearing as well?

JETTON: There was not testimony at the formal hearing.

FLORES: Oh, I see. So you're just inferring from testimony taken at a previous session that it's applicable?

JETTON: That's how that works, and I don't think it's changed in the last couple weeks.

BRYANT: Well, members, you heard it directly from the horse's mouth. There is no study that indicates building this short piece of wall with \$1.5 billion is going to impede illegal immigration along a border that has 700 miles of permeable access. Now, if there is such a study someplace, no one managed to bring it forward. If there is data that indicates that somehow or another it's going to reduce the amount of illegal entries by a significant percentage, then surely the

governor can go and find it—have somebody come forward and testify in a hearing pursuant to our Government Code that that is the case. But to spend \$1.5 billion when even the author of the bill can't bring a study forward to indicate it'll be effective, when the governor's own witnesses can't tell us how much it's going to reduce illegal entries, would be under any measure of legislative responsibility be deemed irresponsible. I urge you to vote for this amendment.

[Amendment No. 1 failed of adoption by Record No. 6.]

[Amendment No. 2 by T. King, E. Morales, Ordaz, and Raymond was laid before the house.]

REPRESENTATIVE T. KING: Many of us in this room, if not all of us, have heard from our local folks at home that whatever we do, whatever the legislation is we pass over any issue, that we not pass another unfunded mandate on our locals. This bill sets up—and the next bill—sets up another procedure that is going to cost our locals a lot of money, and so in terms of enforcement on these provisions, in terms of law enforcement and that type of thing—I have been asked by many of the commissioners and judges that I represent in the six counties that we not pass another unfunded mandate on them. So all this amendment does is it says simply that the money can be used for the provision of assistance to local governments and local law enforcement agencies to alleviate costs associated with the enforcement and prosecution of criminal laws involving illegal entry into this state or illegal presence in this state and the detention of individuals alleged to have violated those laws. All it does is it's saying we have to use the money—if we're going to make them do this, then we need to help them pay for it. We need to pay for it and not pass another unfunded mandate onto our local officerholders and taxpayers throughout the State of Texas, particularly those counties south of San Antonio, Representative Lozano, that have incurred tremendous costs already.

Now, they will tell you that the governor's office has discretionary money, that he may or may not choose to use for this, and I think that's great. I also think it's better that we indicate that we expect him to use that money for these purposes that we expect him to reimburse our local officerholders and our local governments for the costs that are incurred. The legislature—the house and the senate—pass the laws in the State of Texas.

MARTINEZ FISCHER: Chair King, in Appropriations this actually came up in committee. I don't know if you were aware, but there was a panel of three sheriffs that were all in support of **SB 3** in terms of funding the wall and so forth, but they also made it very clear that they have tremendous needs that aren't being met. Is that what your amendment's trying to do?

T. KING: Well, that is an issue. I've heard from sheriffs—I've heard from democratic sheriffs; I've heard from republican sheriffs; I've heard from sheriffs across the spectrum. I've heard from county judges and county commissioners. Anybody that is tasked with the responsibility of taking care of local taxpayer funds is seriously concerned about this—Texas Association of Counties. A lot of

different groups are concerned. We shouldn't even be having a discussion about this. It is a known issue that needs to be addressed. It doesn't take away from the ability of the bill to do whatever they want to do. It doesn't take away from the governor's ability to build a border wall or not build a border wall or fund law enforcement or whatever. It's simply belts and suspenders, to use the lawyer terms, on what we think the money should be used for.

MARTINEZ FISCHER: You're right. It's not partisan. The panel was a combination of both republican and democratic sheriffs that are on the border that are dealing with this every day. One sheriff said that they are using patrol vehicles with 180,000 miles on their vehicles. They don't have the money to have equipment, to have infrastructure, to have the resources, but yet they have the obligation, the responsibility, to maintain that order. When I read your amendment, it's almost as if it's an extension of that conversation that we have to find a way—that if we're serious about law enforcement and we're serious about border security, the folks that are the lowest hanging fruit, the boots that are on the ground that are local law enforcement—and when I read that, that's what I'm getting. That's what you're trying to accomplish. It's to make sure they're not left out of the funding conversation. Is that correct?

T. KING: Absolutely. I mean, if you support your local law enforcement—and we say those kinds of things all the time rhetorically around here, but this one is real. Law enforcement has been asking us to do this. The local taxing authority has been asking us to do this. We need to do this to make sure that that money goes towards those expenses, in addition to the other ones the governor may want to use it for.

MARTINEZ FISCHER: Right. And I guess, to me, I have a hard time explaining that we would be willing to acknowledge in a senate bill that we would move law enforcement resources to an area that's a couple of hours, if not three or four hours, away from the border for potential law enforcement, but for the law enforcement needs that exist right along the border where the walls are being constructed, where all the immigrant crossings are taking place, and that we not account for that—I mean, all you're saying is let's put the money where the need is, right?

T. KING: This piece of legislation and some others that we might be looking at are going to increase the cost to our local law enforcement and our local courts dramatically—dramatically—in the near future, and we have to be sure that we fund that or we've simply done another unfunded mandate. That's the number one thing that we hear complaints about from our local representatives.

MARTINEZ FISCHER: And by that, in terms of resources, we're talking about law enforcement to provide the law enforcement security needs, courthouses to administer the justice, and capacity in county jails or other places.

T. KING: Transportation costs. You know the cost to hire a deputy to transport people from one place to another in order to be prosecuted. It just goes on and on and on.

MARTINEZ FISCHER: This sounds like, you know, actually putting the money where the need is. Is this amendment going to be acceptable?

T. KING: Well, there's a debate going on about that. Pretty severely, I guess. You can hear and see them behind me.

MARTINEZ FISCHER: Do you need to participate in that debate? Should I step away so that you can get to work? I have a few more questions, but I don't want to disrupt the flow of consensus.

T. KING: Well, it's certainly acceptable to the author of the amendment.

MARTINEZ FISCHER: I mean, this is exactly the conversation—and members of the committee said we never get to talk to sheriffs. I mean, we get to talk to associations and folks at 10,000 feet, but the ones that are doing it every day, we don't ever get to talk to them. They're the ones that are on the front lines.

T. KING: I didn't make this up. I didn't bring this up out of the clear blue. I mean, the law enforcement community, the commissioners, to repeat the county judges, they brought this to me. And there are several different forms of it around here; mine just happened to be the one that came up on this bill, but we need to do this. We all know that we need to do this. When the bill goes to the senate, if they choose not to keep it on there that's their business. But we need to put that on there, we need to make the statement that we support our local law enforcement and local taxpayers.

MARTINEZ FISCHER: It just seems to me we sometimes operate around here in sound bites. If you're pro-law enforcement and you're pro-border security, this amendment makes perfect sense, doesn't it?

T. KING: Yes.

REPRESENTATIVE SCHAEFER: The way this bill is written, it gives the governor broad discretion as to what to do with these funds. He could spend all of it for the border wall or he could spend none of it for the border wall, but he can spend it on border security operations. If you spend any time talking to law enforcement at the border, you know that the local governments, the local law enforcement are bearing a lot of the responsibility for what is happening. I don't think Mr. King's amendment really changes the bill much at all. It just confirms that if the governor wants to help local law enforcement with this money, he can. It's just confirming what is really already an inherent power that the governor has with these funds. For that reason, I'm going to support the amendment.

T. KING: Just to reiterate what my esteemed colleague, Representative Schaefer, said: This is something we need to do. I don't know why there's an argument about it, ladies and gentlemen, to be honest with you. This supports your local law enforcement, supports your local taxpayers. Let's vote for it. If the senate doesn't want to do it, well, then that's on them. But we're going to support our local law enforcement and our local taxpayers.

[Amendment No. 2 was adopted.]

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

REPRESENTATIVE GOODWIN: Today, as we deliberate on **SB 3** which proposes the allocation of \$1.54 billion from our general revenue for border security operations—

[Representative Vasut raised a point of order against further consideration of Amendment No. 3 under Rule 8, Section 4, of the House Rules on the grounds that the amendment changes general law through an appropriations bill. The point of order was withdrawn.]

[Amendment No. 3 was withdrawn.]

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

GOODWIN: I spent time this summer in South Texas. I kayaked the Rio Grande and spoke with local residents about their concerns. I saw just how beautiful South Texas is firsthand. Part of that beauty lies in the wildlife of South Texas. Did you know there are several threatened and endangered species in South Texas, including the whooping crane, bald eagle, brown pelican, northern aplomado falcon, and more? The existence of these species is precarious, and we must ensure we don't further endanger them by our actions. We in this body must act as the good stewards of our land.

My amendment would carry on that virtue of stewardship and make sure that the construction of this wall, which I disagree with, will not rob South Texas of endangered and threatened species. I don't think there's an inch of Texas that we in this body want to see damaged, degraded, or discarded. This amendment embodies that spirit. Specifically, members, my amendment requires that we refer to the Endangered Species Act to determine the ecological impact of the proposed wall and that the construction of that wall be augmented so it doesn't impact these endangered species.

Habitat loss poses the greatest threat to species. In building a wall, we will be removing habitat, which will have a negative impact on wildlife along the border. Habitat fragmentation is the separation of contiguous wildlife habitat into smaller and smaller pieces that may also be further and further apart. Creating a piecemeal of habitat patches subsequently renders it unsuitable for many wildlife species. I believe we have not adequately evaluated some of the negative consequences of building a wall, and that is something we should do. My amendment would allow for that evaluation.

JETTON: Members, I urge you to vote no on this amendment. We already follow all environmental laws when—

REPRESENTATIVE ZWIENER: Representative Jetton, as I understand it Representative Goodwin's amendment is simply affirming that we comply with the federal Endangered Species Act. What is the challenge in complying with the law and affirming that in this legislation?

JETTON: I think the bigger question is why would you need to reaffirm it in this legislation if it's already the law?

ZWIENER: Representative Jetton, are you aware of any instances where maybe the state government and the federal government are fighting over whether or not to follow federal law?

JETTON: Yes.

ZWIENER: I think that answers the question of why we think this is necessary. Representative Jetton, have you had the opportunity to visit some of the ecological sites in the border area?

JETTON: Yes.

ZWIENER: Do you think those sites are worthy of protection?

JETTON: Likely, yes.

ZWIENER: Again, so if you believe those sites are worthy of protection, why don't we affirm that yes, we will comply with the Endangered Species Act and make sure we protect jaguars, ocelots, aplomado falcons, sea turtles, and all of the other species that call our unique border region home?

JETTON: I believe the federal government consistently protects those endangered species as it is, and I believe the comptroller's office does that as well. So Texas Facilities Commission would follow all applicable laws in building this wall. I urge you to vote no.

GOODWIN: We just heard that there are sometimes friction between state and federal government. We don't always at the state level follow what the federal law says. So this is just reaffirming and reminding the state that we need to protect our endangered species. If you agree with that, you will vote for this amendment.

ZWIENER: Representative Goodwin, are you familiar with Proposition 14 that the Texas people just affirmed?

GOODWIN: Yes, a lot of money for state park land.

ZWIENER: Do you think the overwhelming vote that that legislation received in this chamber and the overwhelming support it received from the people of Texas reflects a desire from the people of Texas to support our wildlife and our open spaces?

GOODWIN: I think it absolutely does. That amendment passed overwhelmingly. And I think people know that we have a lot of beautiful land in this state that we need to preserve. But in addition to that, endangered species. You mentioned some of them: the whooping crane, the ocelots, the aplomado falcon. I think it's too easy to take them for granted, and we don't see them in our everyday lives. But at the same time, the vast majority of Texans want to make sure that we continue the biodiversity that we have in this state and protect them.

ZWIENER: Representative Goodwin, I thank you for your amendment. I think a vote for it is consistent with the values the people of Texas just expressed at the ballot box, and I thank you for it.

GOODWIN: I agree with that. I think that Texans have made it clear what they want, so I hope you will vote in favor of this amendment.

[Amendment No. 4 failed of adoption by Record No. 7.]

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

REPRESENTATIVE J.D. JOHNSON: Members, my amendment just simply says no later than December 1, 2024, that the Trusteed Programs within the Office of the Governor shall submit to the legislature a report of the effectiveness of the border of infrastructure constructed, operated, and maintained using money appropriated by Subsection (a) of this section in reducing the number of individuals unlawfully crossing into this state's international borders with Mexico.

This amendment just simply says that the money that we're about to spend, \$1.5 billion, that we look at how effective this \$1.5 billion has been used. This is not before, it is after. So I'm simply saying, as the fiscal conservatives that we all are—because we're all business owners or we all have budgets that we have in our own homes—we need to know. I think it's important that the taxpayers need to know how their money was being spent to effectively stop the migration into this state. I think this is a very fair amendment. It just simply says, let us see how the taxpayer dollars are being used. This is simply about accountability and transparency to make sure that we know that we spent taxpayer dollars properly.

JETTON: I urge you to vote no on this amendment. First of all, this metric is not the only metric that we're using to determine whether or not this is effective. Additionally, the next legislative session, when we come back for a budget to determine whether or not we want to invest more in this, is when we would talk with DPS, Operation Lone Star, and the governor's office to determine the effectiveness of it in the past and how effective it would be for the future. Those legislatures would make those decisions based on that testimony during hearings, so I urge you to vote no.

J.D. JOHNSON: There is nothing in place currently that determines how this money is going to be used effectively. We can't just simply say, "Oh, we're going to talk about it later." This is an opportunity to be transparent. This is an opportunity to see exactly what we're using the money for.

REPRESENTATIVE RAYMOND: Representative, I want to thank you. I think this is a very responsible amendment. Candidly, I think this is one that everyone should be comfortable with. One of the things that we have in government is spending that is oftentimes sort of lost. We don't know where the money went. We don't know how it's being used. I have always fought for transparency in funding, making sure that we know whose money is being spent. I think we need to do more of that, not just here but certainly in Washington, D.C. With respect, and I respect the chairman, but I think this is a good amendment. I appreciate it. Is that your goal, as well, is just to be transparent and show how effective the spending has been? What it's been spent on? What the money's been spent on and so forth? Is that what your goal is?

J.D. JOHNSON: That's exactly what the goal is. The fact is that my amendment is not trying to stop the money from being drawn down. My amendment just simply says after the use of the money that we will know the effectiveness of it. What is the accountability? What is the transparency? How was it being used? Did it stop the migration? It's just simply opening the door to make sure that we know we spent our money properly.

RAYMOND: For example, during the State Affairs hearing—and I'm on the State Affairs Committee—when we had this bill, Director McCraw, when I asked, said that he figured it would be about 88,000 arrests just by DPS. He couldn't really get into the local law enforcement arrests. But again to that point, I think it's important to find out how many arrests are being made, how many are being adjudicated, is this program being effective, and we're not just throwing money away. If that's what your goal is, I support that.

J.D. JOHNSON: That is exactly what my goal is and thank you. Members, if you are a fiscal conservative, and if you believe in transparency, and if you believe in accountability, this amendment just simply says that we know exactly how the money will be spent. Go back to your communities and say to your communities that we effectively spent \$1.5 billion. This is how it was spent, and here is what the effectiveness of it was. This does not stop the money for coming down, it just simply says when we spend it, we know exactly how we're spending it.

So again, if you're a fiscal conservative and if you believe in being a good steward of taxpayer dollars, you would vote for this amendment. And if you don't, then you don't believe in accountability, you don't believe in transparency, and you need to go back to your districts and say, "Hey, we just gave the governor \$1.5 billion to do whatever he wants, and we really don't care how he uses it and what he uses it for, but we're just going to give it." I'm asking that you take close consideration of this amendment that provides accountability and transparency of taxpayer dollars of \$1.5 billion.

[Amendment No. 5 failed of adoption by Record No. 8.]

REPRESENTATIVE M. GONZÁLEZ: Members, I proudly represent the eastern part of El Paso County, and in this beautiful part of this state, there are so many things that we need to support the communities that live there. We need clean water and wastewater infrastructure. We need access to health care. We need strong public schools. When we make investments as a state, these investments tell the people who we are. We are about to make a \$1.5 billion investment on an initiative that we know is not the most efficient way to do border security—not the most humane way, not the most compassionate way. This vote is a symbol of who we are as a legislature and as a people. Should we make sure that our communities feel safe? Of course. Should we misuse tax dollars in a way that we know is ineffective? Never. We have a responsibility to make sure that we are being efficient with people's money.

\$1.5 billion could build 40 hospitals. When we think about hospital closures across the state, this should be concerning for us. This bill, while I know that the author has some strong intentions, also has other concerns. \$1.5 billion without

any guardrails, without any checks and balances. \$1.5 billion when we know we've already spent \$1.5 billion to build 11 miles of border barrier when we have over a 1,200 mile border. You have to ask yourself, "Does this make sense?"

I used to live—I used to go to the river on the border and have picnics on the Rio Grande. We no longer live in a state that has this energy of neighbors to Mexico. We have made this conversation extremely partisan. And it really does make me sad because we could be having a different connection with Mexico that promotes trade, that promotes neighborly connection, and that really makes sure that our Texans are taken care of. Members, I know this is a partisan conversation, but just recognize that this vote—this \$1.5 billion—is saying a lot more than just border security. It is saying something about where we think our investments should be. Thank you, very much. I urge you to vote no.

REPRESENTATIVE WU: You know, the one thing that I thought was missing from this bill was a statement that we were going to rename Texas Mexico. Because ultimately this is what it's about, right? This is about building Trump's border wall. This is about satisfying a crazed, nonsensical statement in politics that has come to grow beyond its proportions and then taken on a life of its own.

In the past few legislative sessions, we've spent somewhere around \$10 billion on Operation Lone Star. We've put \$1.5 billion into the border wall—into Trump's border wall last time. We're putting another \$1.5 billion now. After a while, people are going to say that's real money. Over \$10 billion of taxpayer money—\$10 billion or more that could have been spent on education. Billions and billions that could have gone to workforce development, job skill training, providing care for veterans, to help our homeless population, to deal with the rising drug epidemic—the opioid crisis. We could have used it to take care of the million Texans who are working their butts off but can't afford health insurance because we refused to expand Medicaid. We could be using this to shore up our CPS system, that right now still has a 40 percent attrition rate among their investigators. We could have used this to help make community colleges affordable, even free, for our students so that our next generation of workers, of citizens of Texas, are taken care of and can actually do the jobs that they need to do for our state to be strong and vibrant. We could have used this money for any number of a thousand, maybe million, things instead of just placating a political narrative. This is a border wall that the feds don't want to build because they said it's ineffective because there are more effective ways to do this.

When we had the hearing on this bill, we talked about all the different things that cause people to cross in illegally. And we talked about the delays in the application process. We talked about the different problems in the application system. And we saw a lot of the people coming across illegally are simply doing it out of fear, out of desperation because they have no other good choice. It's either be killed, tortured, raped, or murdered by the cartels or come across the river. When there are young mothers carrying their infants crawling over barbed wire—that is the level of desperation. That is the level of humanity that is out there. All they want is to seek our country's help. And to those people, we could have spent this money differently. We could have made the application process easier. We could have helped the feds by increasing the number of application

stations, increase the number of workers who are doing the process. There are sensible, humane, and reasonable ways we could have spent this money and only have needed to spend a fraction of it, not the tens of billions. And the worse part—the worst part—you know what the worst part is? It is that this body who has spent incalculable time talking about accountability, talking about how we should be good stewards of the public dollar, talking about how we should be careful how we spend a single penny, much less over \$10 billion. Forty million dollars to Colony Ridge because of a lie. Because of a racist lie. Because any place that has a lot of Latinos must be a haven for the illegals. That is the statement set forth by this legislation.

This bill could not be more clear. With one vote, you are telling Texans their demands for education; their demands for health care; their demands for the support of their cities; their demands to fix our mental health system; the demand to fix our jails; their demand to fix our prisons; their demands to fix every other thing in this state is not important. Nothing is as important to this body as showing fealty to Donald Trump.

JETTON: Members, I appreciate the opportunity to lay out this bill today. I ask for your favorable vote to secure our border and keep our communities safe.

[**SB 3**, as amended, was passed to third reading by Record No. 9.]

SB 4 DEBATE - SECOND READING**(Spiller, Hefner, K. Bell, Hunter, Geren, et al. - House Sponsors)**

SB 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 certain related orders, including immunity from liability and indemnification for enforcement actions, and authorizing or requiring under certain circumstances the removal of persons who violate those prohibitions; creating criminal offenses.

REPRESENTATIVE SPILLER: Members, since you all just heard the layout of **HB 4**, now **SB 4**, in the third special session—we spent a little bit of time discussing it, if I recall, on the house floor. I assume it's still fresh on your mind. So therefore, what I'd like to do is just give my layout and explain to you primarily what is different from this version from what we talked about before in comparison.

It should go without saying—I do want to say that we still have a crisis at our southern border, none of that has changed. An unprecedented number of people, including a growing number of people, of documented terrorists, drugs, and weapons continue to illegally cross our southern border into Texas. We still know that the Biden Administration has failed and refused to enforce federal immigration laws and secure our border. None of those underlying facts have changed since we met last time. This version of **SB 4** addresses those problems head-on. It's a landmark bill that allows Texans to protect Texas, to send illegal immigrants back, and to prosecute and incarcerate those that refuse to leave.

Let's talk about the bill. This version of **SB 4** tries to incorporate some of the concerns raised regarding the prior version, specifically regarding certain locations where the enforcement of **SB 4** would be prohibited, and primarily relating to the due process concerns raised regarding application and implementation of **SB 4**. Section 1 of the bill amends the text of the Code of Criminal Procedure, providing that a peace officer may not arrest or detain a person for purposes of enforcing the newly created Chapter 51 of the Texas Penal Code if the person is on the premises or grounds of either: one, a public or private primary or secondary school for educational purposes; two, a church, synagogue, or other established place of religious worship; three, a health care facility if the person is receiving medical treatment; and four, a SAFE-ready facility if the person is on the premises for the purpose of obtaining a forensic medical examination or treatment.

Also included in Section 1 is the language dealing with an order to return to a foreign nation. Now, under this version relating to the criminal charge of illegal entry or illegal reentry, this bill provides that the person that's arrested for the charge is taken to a magistrate, and in lieu of continuing the prosecution or entering an adjudication, the charges may be dismissed and a written order issued that discharges the person and requires the person to return to the foreign nation from which the person entered or attempted to enter. The person would have to agree to that order. It assumes that the person has not previously been convicted of the offense and charged with another felony, and further, beforehand, the

arresting law enforcement agent would be required to collect all available identifying information of the person, including fingerprints or other applicable photographic and biometric measures to identify the person, and would cross-reference the collected information with all relevant local, state, and federal criminal databases and federal lists or classifications used to identify a person as a threat or a potential threat to the nation's security.

Likewise, Section 1 includes the same order to return language in the event the person does not voluntarily agree to return but is prosecuted and convicted of the offense. Upon that person's completion of the terms of confinement or imprisonment imposed by the judgment they likewise will be ordered to return in the same manner that we covered earlier. The order to return would also this time state the manner of transportation of the person to the port of entry and the law enforcement officer or state agency responsible for monitoring compliance with the order.

Section 2 of the bill describes the elements and affirmative defenses regarding illegal entry or reentry. It also describes the elements for refusal to comply with an order to return. Those provisions are all identical to the prior version of **HB 4**. Section 3 of the bill amends the Texas Civil Practices and Remedies Code. This time, it provides civil immunity for local government officials, employees, or contractors in state court, and indemnification subject to the statutory limits if in federal court. Immunity and indemnification does not apply if the local government official, employee, or contractor acted—as we dealt with before—in bad faith, with conscious indifference, or with recklessness. Likewise, this section also covers civil immunity for state government officials or state employees in state court and indemnification if in federal court. Again, that immunity and indemnification does not apply if the state government official or state employee acted in bad faith, with conscious indifference, or with recklessness. Lastly, Sections 4, 6, and 7 of the bill amend the Texas Code of Criminal Procedure and the Texas Government Code, basically providing that a person charged with illegal entry, illegal reentry, or refusal to comply with an order to return is not eligible for community supervision—which includes deferred adjudication—is not eligible for parole, and is not eligible to be released to mandatory supervision.

As I previously stated, in short, I believe **SB 4** is completely constitutional. It's not in conflict with the precedent set in *Arizona v. United States*, it's not preempted by existing federal immigration law, and it's not in conflict with federal immigration law. Texas has a constitutional right, authority, and ability to protect its borders. As I said previously, **SB 4** is a Texas solution to a Texas problem. It's a humane, logical, and efficient approach to a problem created and fostered again by the Biden Administration's failure and refusal to secure our border. There's nothing unfair about ordering someone back from where they came if they arrived here illegally. I applaud Governor Abbott again for adding this issue to the special session call.

REPRESENTATIVE NEAVE CRIADO: Representative, we've talked about how your bill is not just a border bill. It's a bill with statewide ramifications, correct?

SPILLER: Well, I do believe it's a border security bill, but yes, it has statewide implications.

NEAVE CRIADO: And so it's applicable—a law enforcement officer can apply this anywhere from Dallas to Houston to El Paso, correct?

SPILLER: If the officer believes that probable cause exists in that instance and that they can prove each and every element of the offense beyond a reasonable doubt, yes.

NEAVE CRIADO: I want to turn to the illegal reentry section on page 6 of your bill because we have to discuss and have serious concerns. We've talked to you about the concerns about the unconstitutionality of this. Specifically, for the illegal reentry, one of the key elements of the offense is that it applies to aliens as defined under the statute, correct?

SPILLER: Correct. Illegal reentry is patterned after 8 U.S.C. § 1326, yes.

NEAVE CRIADO: Right, and there's language that says if—and I hate to use that word, but you've included it and you've defined it in there, so that's why I'm using that term. It says "if the person enters, attempts to enter, or is at any time found in this state after the person," and then there are two subsections that explain if they had been deported in the past, correct?

SPILLER: That is correct.

NEAVE CRIADO: The part that says "at any time"—so if this person, this alien, this individual who was found at any time in the United States attempts—what does that mean, "at any time found"?

SPILLER: What it means is what it states there, which is exactly word for word the same wording because we didn't want to be in conflict with federal law. So it's the same wording that the federal government has used for decades.

NEAVE CRIADO: Let me ask you this, because you talk about conflict, and I think this section is very broad and actually in conflict with federal law for several reasons. One, we discussed in a meeting that this section does not have the same affirmative defenses as are listed out for illegal entry, correct?

SPILLER: You're correct.

NEAVE CRIADO: So if a person, let's say, under this illegal reentry charge, even if they had been deported in the past for whatever reason and were found at any time anywhere in Texas, even if they are now a lawful permanent resident, if they have legal status, they can be charged now with this Class A misdemeanor of illegal reentry, correct?

SPILLER: I don't know that that's what it says. They still have to—

NEAVE CRIADO: They have no defense—

SPILLER: You asked me the question. Let me answer it. It does define it as an alien, as that term is defined. The premise of the charge is that someone would still have to be defined as an alien under our law, as defined under federal law,

and as defined in **SB 4**. And the definition, when you look to that, I believe it's under 11.09, defines that as someone that is a noncitizen or a non-national. So someone that doesn't otherwise have the legal right to be there.

NEAVE CRIADO: Well, that's not what alienage means because you have specific affirmative defenses. In the affirmative defenses to illegal entry you specifically list people with a DACA, people who have a lawful presence in the United States. If they have this grant of federal authority, but they don't—even if the federal government grants an individual this specific lawful presence, your section regarding illegal reentry is conflicting with federal law because they can still be arrested under this state crime, correct?

SPILLER: I don't believe it is. With all due fairness, I think you're completely misconstruing the statute because that person would also have to be—when you look under Subsection 1 and 2—would have to be someone that's been denied admission to or excluded, deported, or removed from the United States or has departed from the United States while an order of exclusion, deportation, or removal is outstanding. Again, you would have to meet each and every element of the offense beyond a reasonable doubt. And here, we're only talking about people—when you take that in a vacuum and just say we're rounding up people that's at any time found to be in this state, that's a misinterpretation of that because clearly it says, "yes, but that person would have to have been denied admission, excluded, deported, removed previously."

NEAVE CRIADO: Right, but what if, Representative Spiller, the person adjusts their status and now has lawful status? If they're found at any time in Texas, they can be charged under illegal reentry, and that's my point. This is where this broad, sweeping component that they can be found at any time in Texas even if they adjusted their status, there's no defense for them under this provision of your bill. So why didn't you include those affirmative defenses to illegal reentry?

SPILLER: Because 8 U.S.C. § 1326 for reentry uses this definition. We tried not to stray from federal statute. We've applied that here in **SB 4** and it uses the same definitions. And so the facts are different. Under illegal entry, we're not talking about people that have previously been removed, deported, or excluded. We're talking about something completely different here. So the elements of the offense for illegal reentry are therefore different than they are for illegal entry.

NEAVE CRIADO: Is it your intent that "being found at any time in the state" is an attempt to indefinitely subject someone to punishment under this statute?

SPILLER: Well, as we've talked about before, the range of punishment for this, unless you get into an enhancement, is a Class A misdemeanor. That limitation period is two years. It's not indefinite. It's not 5 years, 10 years, 20 years. It's two years, and it is limited to people that don't have the right to be here who have already been ordered removed from our country.

NEAVE CRIADO: So to clarify, because I want to make sure we understand—if somebody who is found in this state after the two year statute of limitations for the Class A has run, are they subject to this offense?

SPILLER: It depends on the facts. It depends on the circumstances. What I'm saying is it makes it sound like it's something similar to what you're describing is what Arizona did when if you're here illegally—you know, the "show us your papers." If you're here illegally, we're going to round you up, and we're going to prosecute you. I want to be very clear again that **SB 4**—that is not the intent of **SB 4**. That is not what **SB 4** says, and to take something out of context with illegal reentry and somehow assert or imply that that is the standard, that is not the standard because you can't apply that without applying the rest of the statute, which means that these folks have already been ordered out of our country. And this has been the law. The same thing has been the law for decades under federal law.

NEAVE CRIADO: Let me ask you this: A person who is brought into the United States as a child, they're deported with their family, they grow up in their home country, and then that person marries a United States citizen. They go through the entire process to legally reenter the United States as a permanent resident. They would be criminalized under the illegal reentry statute?

SPILLER: I do not believe so. Do you want to know why?

NEAVE CRIADO: Yes.

SPILLER: Let me tell you why. Because the first thing, if you look in the definition of illegal reentry: "a person who is an alien." If that person has now obtained citizenship, gone through the correct port of entry, applied, and gotten citizenship in the United States, regardless of what happened before, this statute does not apply to them.

NEAVE CRIADO: Okay, let me ask you this: The illegal reentry offense—it contemplates a scheme where even if somebody has legal immigration status and they enter the United States lawfully, they could be criminally prosecuted and then required to be returned to a port of entry? This appears to be substituting the state's judgment for the federal government in terms of who belongs in the country. How is this not immigration enforcement?

SPILLER: That implies that we somehow have a definition here of legal immigration status and that is not what this bill talks about. It tracks the language of existing federal statutes and talks about it in terms of if someone is an alien. To the extent that if someone has legal immigration status, if they're not deemed to be an alien, then no, it would not apply.

NEAVE CRIADO: There are situations where the federal government sometimes allows a person to legally come back into the United States after a deportation. It's called a Permission to Reapply for Admission into the United States After Deportation or Removal. If that person is granted permission to come in legally, this section says that you can't come back even though the feds say you can. Under **SB 4**, as I mentioned, there's no affirmation defense. This appears to be substituting state judgment again. Can you tell us how that's not immigration enforcement?

SPILLER: I'm not aware of any claim that's been made at the federal level against 8 U.S.C. § 1326 that says this is illegal or it's improper because—so therefore, the same thing, just like it's upheld and valid law and has been for decades. The same should apply here. They are exactly the same elements.

NEAVE CRIADO: Let me ask you this: Attorney General Ken Paxton in the past has said that he hopes the Supreme Court rules differently from the *Arizona v. United States* case, which has already determined that states cannot enforce immigration, right? So you've heard AG Paxton say that, right?

SPILLER: I'm not advised.

NEAVE CRIADO: Or do you know that he made that stance or statement in the past?

SPILLER: I don't know that.

NEAVE CRIADO: But you're working with his office on this bill, correct?

SPILLER: We've communicated with many, many parties on the structure and implementation of this bill, yes.

NEAVE CRIADO: Yes or no? Did you work with Attorney General Ken Paxton's office on this legislation?

SPILLER: I just said yes.

NEAVE CRIADO: Thank you. Do you hope that the Supreme Court will overturn *Arizona v. United States*?

SPILLER: No. I'm not asking for that. This is not that. People have asked me that. Are you trying to overturn *Arizona v. United States*? And my answer to that is no. Whether *Arizona v. United States* was properly rendered or not is irrelevant because we have steered completely clear of what Arizona did in Senate Bill 1070 when they passed that in 2010 and the issues and problems that they had in the *Arizona* case.

REPRESENTATIVE WALLE: Thank you, Representative Spiller. You're familiar with the United States Constitution provision regarding ex post facto laws?

SPILLER: Somewhat.

WALLE: Under that provision, Article I, Section 9, Clause 3, it reads: no bill of attainder or ex post facto law shall be passed." You're familiar with that clause in the U.S. Constitution?

SPILLER: I mean, I don't have it here in front of me. I've got a lot of the Constitution and a lot of other stuff here in front of me. That's one I don't have.

WALLE: Okay. And in addition to that, that clause applies to states in Article I, Section 10, Clause 1, where it reads that "no state shall pass any ex post facto law or law impairing the obligation of contracts or grants of any title of nobility." Are you familiar with that portion of it, specifically?

SPILLER: I'm familiar with the concept. I've read it sometime, but it's been a while since I've looked at that, frankly.

WALLE: Fair enough. Are you also aware that the Texas Constitution, Article I, Section 16, talks about bills of attainder, ex post facto or retroactive laws? Are you familiar with that?

SPILLER: I'm somewhat familiar. I've looked at that, as well. In the practice of law, we've run across a lot of things. Ex post facto is not one we run across very often.

WALLE: And the theory about ex post facto laws are that once you pass a law that moving forward from the date of enactment that activity prior to that date does not get implicated in the future. Is that kind of the understanding?

SPILLER: In general, yes.

WALLE: In general, that's how it works. We pass a law here in the State of Texas, or anywhere in this country, and as it applies from that date on, we're not trying to implicate folks for actions that happened prior to the enactment of the law. Is that your understanding?

SPILLER: In general, I would agree with that. That Texas would attempt to follow its own Constitution and the U.S. Constitution. I understand that.

WALLE: As **SB 4** applies to individuals—now to get into the meat of your bill, as it applies to individuals who entered Texas through ports of entry. Does the bill contemplate any or reconcile constitutional issues with the bill with activity that's happened prior to the entry of that individual through a port of entry?

SPILLER: Does it reconcile it?

WALLE: Knowing that we have ex post facto laws. Well, I take that back. We have constitutional precedent on ex post facto laws or the enactment of those type of laws. And in reference to **SB 4**, how does **SB 4** apply to individuals who enter Texas between ports of entry prior to enactment of this bill in the next couple of days?

SPILLER: Well, the bill provides for an effective date from when it's passed.

WALLE: Correct.

SPILLER: But I think the principle elements of the offense would still have to be met. If we're talking about for illegal entry, illegal reentry, and order to return. So order to return is not going to be—let's eliminate them in reverse order. Order to return is not going to apply because that's only going to be applied in response to the enforcement of one of the other two provisions.

WALLE: I think that's what we need clarity on. Right? Because at some point you're going to have a date of enactment, and you have individuals that have entered the State of Texas through a port of entry, which would be not even a hypothetical. Not even a theory. It'd be a fact that they would have entered prior to the enactment of this—the date of enactment of this bill. So how do we reconcile as they entered through a port of entry at some time in the past. The enactment of this bill, **SB 4**—moving forward, how do we reconcile the two?

SPILLER: And what I'm trying to address, as I understand, are there are three separate criminal offenses set forth in **SB 4**, the last of which is the refusal to comply with an order to return to a foreign nation. That would not be applicable in the instance that you discussed because that could only be applied once someone is detained and ordered to return and if they refuse to do so. Number one, that would be exempt from it. The other one—the second one—having to do with reentry is a different process as well. I don't think that it would apply. The one on illegal entry—

WALLE: Yes, that's what I'm trying to reconcile with the bill. In reference to constitutional precedent, state constitutional precedent as it relates to your bill, and for actions that have happened prior to the enactment of the bill. We would potentially be criminalizing behavior that happened prior to the enactment of the bill. You see where I'm getting?

SPILLER: My understanding is that there would be no attempt to seek any retroactive enforcement of this as it relates to the elements of illegal entry. So if someone—I think that has to do with how it's applied and how it's filed on an individual basis. And I can't really speak to that completely, but I would be surprised if there would be an attempt to seek enforcement of this prior to its enactment. If that answers your question.

WALLE: That's what's unclear in the bill, because does the bill contemplate retroactive activity? Let's just ask it that way.

SPILLER: Not in my mind, it doesn't. But, yes, I understand the concern. But I think it has to do with the application of this on an individual basis. And certainly someone would be able to raise that defense if they felt that their actions that would otherwise constitute the elements of the offense were done before the effective date.

WALLE: So does your bill contemplate any language that protects that retroactivity?

SPILLER: Well, I think that's determined on an individual basis. And that's always—you know, the bill goes to great lengths to say that other defenses and other claims are not waived. All the other defenses that you would have in any criminal case, you still have those available to you. You can raise those at any time. So I understand your concern, but this bill is not focused on retroactive enforcement. This bill is focused on securing our border from the effective date forward.

WALLE: Let's talk particularly about for individuals like for individuals who've entered Texas years ago and have since built lives here. They bought homes here. They raised children here. Do they have any legal protections against this retroactive activity? Because what you're telling me is that—I guess what I'm hearing is that there's no protections in that. But for that individual that's already in essence built a life here, they could be implicated in this bill for activity that occurred 10, 15 years ago.

SPILLER: Number one, I don't think I said there were no protections. Number two, because I think I said just the opposite: That everyone still has all those rights that they would otherwise have in any criminal case that are afforded to them. Secondly, as I've made it very clear previously and I'll make it clear today if I haven't restated again today. **SB 4** is not geared toward people that have been here beyond the two-year limitation period or have been here for 3 years, 5 years, 10 years, or 20 years. That is not at all, and it can't be enforced that way under illegal entry because the limitation period for a Class B misdemeanor is two years. This is not—when the representation to the general public is, "Hey, the Texas House is about to pass something that's going to round up someone's grandmother that's been here all her life," that is completely false. That is completely incorrect.

WALLE: Can you guarantee that?

SPILLER: Can I guarantee what?

WALLE: Can you guarantee that somebody's grandmother—

SPILLER: I can guarantee that it's prohibited under this **SB 4**. The law—

WALLE: Can you guarantee that an abuelita, a tío, a tía, grandmother, aunt, uncle will not get implicated in this bill?

SPILLER: I can't make any guarantees about the enforcement of this bill. I can tell you that all the safeguards that you could have under the law to prevent that from happening are contained in this bill or our law already, such as the limitation period on every misdemeanor that I'm aware of in the Penal Code, and otherwise is two years. Two years only.

WALLE: Speaking of the penal code and judicial action—because as I understand the bill, somebody's going to be taken to a magistrate. Is that correct?

SPILLER: Correct. Well, they're taken to a magistrate, but as I understand, sometimes that's done remotely. Sometimes that's done through electronic means.

WALLE: Will judges get guidance on how to make a determination if somebody's here with or without documentation?

SPILLER: First of all, the fact that someone is here in our state without documentation is irrelevant to the prosecution of this offense. This is not a you have to have your papers, you have to show your papers. That's not what this is—

WALLE: That's precisely what this bill does.

SPILLER: —but the answer to your question on the training, yes. I believe judges receive training, I think, on an annual basis. And they generally try to keep up to date with new laws and new implementations. So I certainly think that would be proper.

WALLE: So will judges have discretion to make that determination?

SPILLER: I think the judges, as it's set forth in the bill, will make a determination if probable cause exists for further prosecution. If so, under this scenario for illegal entry they are given the option, after receiving all their rights read to them—and even if things that aren't read to them if the magistrate determines that someone needs a translator that will be provided.

WALLE: So they would have to show their papers, right?

SPILLER: No. That's not about showing papers. Showing papers is not in this bill.

WALLE: They would have to show some type—I mean, how would they disprove they're not in the country without papers—without showing papers? Or some type of document, some type of legal resident or alien resident card, a passport, or some type of document from immigration that indicates that they're in the country legally or without any papers?

SPILLER: They're not required to keep their papers on them that I know of.

WALLE: So how's a judge going to determine if they don't show some type of documentation?

SPILLER: The judge can determine if the officer that presents if there's probable cause that warrants further prosecution and if so, can move forward. They're read their rights. They are provided an attorney—all those type things. And again, if someone can articulate—they don't have to have their papers on them, but they can articulate that, "Hey, I'm here legally and here's why." That's why they're also afforded a translator if that's necessary.

WALLE: Okay. Turning to page 7 of the bill, in reference to Section 117.002, the civil immunity for an indemnification of local government officials, employees, and contractors. This whole clause, it's about maybe a page and a half—looks like maybe two pages. Line 22 talks about indemnification payments under Subsection (b) by a local government may not exceed 100 to any person or 300—\$100,000 to any one person or \$300,000 for any single occurrence in the case of personal injury or death, or \$10,000 for a single occurrence of property damage. What was the rationale for the use of these amounts, and why are we putting an indemnity clause inside this bill?

SPILLER: The rationale for those is that that is current law under the Texas Tort Claims Act under Civil Practice and Remedies Code. This is not more or less, this is what existing law provides. So those were restated here for clarity.

WALLE: Right, because there's always unintended consequences in implementing any such law. Is that correct?

SPILLER: Well, I've heard that that happens, yes.

WALLE: Things happen.

REPRESENTATIVE TURNER: Representative Spiller, we both sit on the State Affairs Committee. We heard your bill last week in committee. Do you recall from the testimony on the bill, were there any lawyers who specialized in immigration law who came before the committee in support of the bill and agreed that the bill was constitutional?

SPILLER: I don't recall if some of them were attorneys. They may have been or they may not have been.

TURNER: You don't recall any attorneys testifying before the committee last week?

SPILLER: I don't recall. What was the question?

TURNER: Do you recall any attorneys who specialized in immigration law testifying before the State Affairs Committee last week on your bill?

SPILLER: I don't know if some were attorneys or not. Some spoke with some authority, so I thought they might be, but I didn't ask them if they had a law license or not.

TURNER: I'll represent to you that several witnesses we heard from informed the committee in their testimony—their sworn testimony—that they were in fact attorneys—

SPILLER: Right.

TURNER: —and were in fact specialists in immigration law. You don't recall that?

SPILLER: Yes, I heard a lot of their testimony. I recall some of that testimony, yes.

TURNER: Good. Now that you recall it, did any of them say this is a bill that will meet constitutional muster?

SPILLER: Well, again, I heard from some people that may have been attorneys, and I really don't know whether they did or not. The ones toward the end of the day that said, "I'm an immigration lawyer," those people—no, I didn't hear any of them say they love the bill.

TURNER: The fact is that all the attorneys we heard testify in committee on this bill said it is without question unconstitutional.

SPILLER: Well, again, I can't say that because there may have been some that had a law license that are attorneys that testified earlier but didn't identify themselves as such, so I can't say that. But the ones that did say, "I'm an immigration attorney," I don't recall any of them saying that they love the bill, yes.

TURNER: And I recall that there were two witnesses in support of the bill. One from TPPF and another was a landowner in, I believe, in the Waco area. So let me ask you about some—with respect to asylum. Because I think this is really

important. What happens if, before or during an arrest under the provisions of this bill, a person tells a police officer that they are afraid to return to their country of origin and that they are here trying to seek asylum? What happens in that case?

SPILLER: It's a non-issue under our bill, this bill. Because, again, and I stated it before, but I'll state it again today. This bill does not want to interfere with anyone's ability to claim asylum. They can claim asylum. They can do that. They can do that right now. This bill does not say they can't claim asylum. This bill says if they cross illegally, then they can't come across and say, "King's X. I now want asylum, and you can't do anything to me." That's not what this bill does. This bill says we have laws—if passed—we have laws that are in line with federal law, and you don't get to use that as a defense. Now, if someone wants to come into our country, they have every right to do so legally. And they have every right to claim asylum, but not as a defense to criminal prosecution.

TURNER: So to go to my specific question, if someone is detained under the bill and they say to the arresting officer, "I'm here to seek asylum," basically you view that as a King's X? That is not going to be permissible under the bill. That person is still going to be arrested and brought before a magistrate. Is that correct?

SPILLER: That is correct.

TURNER: So what happens if, during an arrest or before an arrest, a person tells a peace officer they want to speak to a federal officer? If a migrant crosses over and immediately seeks out a peace officer and asks for asylum, is it correct to say that the officer under this bill—and I think you just answered this—would arrest the person and charge them with the crime of unlawful entry without any asylum determination? It sounds like that's what you volunteered in the last answer.

SPILLER: We don't want to be in the business—we don't want to do something unconstitutional, contrary to what some may think. And we don't want to be in the business of determining asylum status or anything. But you can't cross illegally and then claim asylum under this bill as a defense to prosecution. So we don't want to prohibit anyone from seeking asylum. We don't want to prevent anyone from coming across legally. We don't want to prevent anyone from speaking to a federal government official in regards to that. But this bill only prohibits illegal entry into our state at a place other than a port of entry. We're not getting into asylum. We don't want to get into federal law. We want to stay clear of that. So that's the purpose of this bill.

TURNER: Right, but by not getting into asylum, what you're saying is if someone tells a Texas law enforcement officer or local law enforcement officer that they want to seek asylum, you are not going to—under this bill, they're not going to be permitted to do that. They're going to be arrested and brought before the magistrate.

SPILLER: No, I'm not saying they can't do that. That's not what this bill says. The bill says they can't use that as a defense to criminal prosecution. It doesn't say you can't claim asylum. There's nothing in this bill that says you can't claim asylum.

TURNER: Will they still be brought before the magistrate? Will they still be brought to the magistrate under this bill?

SPILLER: Sure. I mean, that's our process. If someone's charged with a criminal offense, they're entitled to be taken to a magistrate.

TURNER: In my view, that would be a direct interference with the federal asylum process, but I think we have your answer, so I'll move on. I want to revisit the portion of the bill that talks about illegal entry. I believe it says "attempts to enter the state." Do I have that right?

SPILLER: Correct.

TURNER: Attempts to enter the state unlawfully.

SPILLER: Correct.

TURNER: What does that mean exactly? Attempts to enter?

SPILLER: That's a good question. I would assume that means—if technically, let's say, for example, someone comes from Mexico. We have the Rio Grande River. Let's say the middle of the Rio Grande River from this side forward is in Texas. But maybe they're not—but the land is over here. If and to the extent there's a determination that someone is not really on our soil yet, but is in the water but they are on our portion of the river—have they attempted to cross? Yes. Have they actually crossed? I don't want to be in the position of making that determination, but it could very well be that someone is on our side of the river—they're attempting to get over. They're apprehended before their feet hit the ground. That would be—they still could be charged the same way as if they entered, because that would be an attempt to enter. That would be the first thing that comes to mind as far as an attempt.

TURNER: That's what came to my mind too, and I want to make sure I wasn't missing something.

SPILLER: Great minds think alike.

TURNER: So someone literally swimming across or walking across the river, depending on the location, if they are in the water but on the U.S. side of the river that is—they could be caught up in the attempt to enter language in the bill and detained at that point.

SPILLER: And I have not researched, in all fairness, if that's considered entering versus attempting to enter. I'm just with you that that's the first thing that came to mind. Someone's attempting to do that, and they're apprehended. Or maybe they crossed, or I don't know, maybe they get over, and then they try to evade officers, and they apprehend them.

TURNER: What if they come over, and then they try to go back?

SPILLER: Don't know. Don't know.

TURNER: Well, I'm wondering why it's in the bill then. I mean if you're not sure why not just take that part out?

SPILLER: I think it's clear if someone attempted—I don't think that we can apprehend someone once they've gone back across if they're successful in doing that. I don't think we're going to follow them into Mexico. But to the extent that they've attempted to come in, and maybe they evade officers, but they're still on our side—if they haven't gotten on the ground, maybe they're just attempting and they hadn't gotten here. I don't know.

TURNER: So you could have a scenario, say, where someone is trying to get across maybe they run into those buoys there that the governor has installed there at Eagle Pass. They can't get across, but they're on the U.S. side. They could be arrested under this bill for an attempt to enter by virtue of the fact that they're in the river on the United States side. Is that right?

SPILLER: If they're on the U.S. side, the argument would be that they have entered, regardless of whether they're still in the water or they're not in the water. But, again, this bill—

TURNER: Are you suggesting that—you said something different there. Or at least I heard it differently. You're saying if they're in the river on the Mexican side—

SPILLER: No, on the Texas side.

TURNER: —that's an attempt to enter?

SPILLER: I'm not talking about if they're on the side that's on Mexico.

TURNER: But is it an attempt to enter if they're on the Mexican side coming across? Is that an attempt?

SPILLER: No. I think we're talking about crimes that occur in the United States. So that would have to be on the Texas side. I'm saying I'm not making a determination of if you're in the water versus on the land, whether that's entering or attempting to enter. But, again, this statute as written is exactly the same wording that's in federal law. That's why it's worded that way, so we're not in conflict with federal law under 8 U.S.C. § 1325.

TURNER: Understood.

SPILLER: So that's why it's worded that way. This is not some scheme that I devised to come up with here's what attempt means. That's current law and has been for decades.

TURNER: Well, I would argue that's not a great use of law enforcement resources to be trying to stop people in the water before they've even come ashore. But thank you for answering the questions.

SPILLER: Sure.

REPRESENTATIVE MARTINEZ FISCHER: Representative Spiller, I want to get in the real world. How does this work? I'm back on page 6, line 2. Crystal clear, if you're caught trying to enter the country, that makes a lot of sense to me. But this "or is at any time found in the state after the person has been denied," et

cetera. How does that work in the real world? Is there a standard? You mentioned probable cause, but I don't see probable cause in this bill. What is the standard to trigger that language on page 6, line 2?

SPILLER: Under statutory law in Texas and under case law, it's very clear you cannot arrest anyone without probable cause. And further, the officer would have to have reasonable suspicion or probable cause to make a stop. So the officer would have to believe—would have to have some good faith belief—before going further. And it has to be based on fact before going further to see whether they're going to arrest someone or not. So here this is not—there would have to be some evidence that the officer would need to have to move forward. So you would have to have probable cause.

MARTINEZ FISCHER: And we're a couple of old lawyers so it makes sense that that is your intent. Your intent is there initially has to be some reasonable suspicion that perhaps leads to a probable cause before you get to the Q and A as the whether or not you're in this country legally?

SPILLER: I think that's fair.

MARTINEZ FISCHER: All right, perfect. Because I was worried, you know, if somebody saw construction workers at a site or somebody saw a landscaping crew at the neighbor's house and they were to call the authorities that the authorities would have the ability to act under the language on page 6, line 2. That's not the case, according to this exchange.

SPILLER: I don't think law enforcement is doing that now. And secondly, if I walk to a construction site and I see construction workers, I have no probable cause or reasonable suspicion that anyone is here illegally, or that they got here or have been denied admission or been deported. I have no evidence of that whatsoever.

MARTINEZ FISCHER: I think we're not doing it now because there's no requirement to do it now. Now, there's an additional responsibility at some point upon somebody outside the border. That's why I just want to be clear that there is a standard. When we debated this a week or so ago, I had an amendment to require probable cause. It's refreshing to hear that, at least the way you see it as the author, that there has to be a reasonable suspicion that leads to some sort of probable cause. Thank you for that.

SPILLER: That's the law. I would agree with you. That's the law currently.

MARTINEZ FISCHER: Thank you. With regard to this new implication—we're on **SB 4** and it's just ironic because we have an existing **SB 4** that was passed several years ago that said to local law enforcement if you find yourself in this situation you have to cooperate with ICE. Is that law not working and we have to have something new? Or how do these two proposals work together?

SPILLER: I'm not really advised as to—I think that was before my time here in the legislature. So I'm not as familiar with that provision. But I know what this **SB 4** is—is to deter illegal entry into our country, into our state.

MARTINEZ FISCHER: I understood there. But what does an officer do, right? Because you weren't here, that's okay. I wasn't here either for that matter in '17. But an officer makes the scene. They have reasonable suspicion that leads to probable cause. Are they under an obligation to act pursuant to **SB 4**? Or do they have an obligation to act pursuant to this proposal if it's law? They can't do the same thing. Which one do they do?

SPILLER: Again, I can't speak to one that I'm not familiar with, so I can't speak to that. I can speak to the fact that law enforcement, on a daily basis, they work with the public and they deal with situations. And they make a determination based on a totality of the circumstances of what they do. If they feel that a criminal law has been violated, they can take someone to jail. They don't have to. Here there's nothing to prevent law enforcement doing the same thing that we're doing right now. And that's taking someone and turning them over to Border Patrol and letting them process them.

MARTINEZ FISCHER: Here's the concern. You don't know—you're not advised, and it's not a quiz—but we have two policies that direct local law enforcement to do two things. Currently, they're obligated to reach out to ICE. This proposal says, no, you take matters into your own hands. The problem with the existing **SB 4**, if local law enforcement does not cooperate with ICE, they can be sued by the State of Texas. They can be removed from office in the State of Texas. So we're talking about major consequences, and if it's not clear in this proposal and if you're not advised, I think we need to get advised. Because it could cost somebody their job.

SPILLER: Let me say this in response. My practice has been, and I've practiced criminal law for a number of years, is that there's nothing here that prohibits law enforcement from contacting ICE. If there's someone here illegally, law enforcement certainly has the ability to do that. If they have an obligation to do that, so be it. That's not covered under this **SB 4**. But if they have that obligation, that obligation to contact ICE didn't go away. What I have found is typically when someone is prosecuted and ICE is contacted and ICE may have a hold on them while someone is detained—when notified, they've got 72 hours to come pick them up and process them and do whatever. But typically, they may wait until the local authorities have finished with whatever they're going to do. And there's some sort of final disposition of that case before ICE will come pick them up. In other words, either they've served their sentence, they've plead to time served, whatever they may be, and at that point ICE will be involved. So there's nothing in this bill that says that ICE is not contacted by law enforcement.

MARTINEZ FISCHER: And if there's nothing in the bill—

[Representative Martinez Fischer moved to extend time. The chair ruled that the motion was not in order.]

MARTINEZ FISCHER: Did the chair say that the motion is not in order?

SPEAKER PHELAN: We've already had two extensions of time on the opening.

MARTINEZ FISCHER: Yes, sir. This senate bill, **SB 4**, has an eight-line relating clause. There are a tremendous number of issues that we are hearing for the first time. The implications are overwhelming. We are in the middle of a discussion about a conflict of two potential state laws on the same subject. If I cannot reassert a motion for an extension of time, I would ask for the chair's indulgence, as I believe the chair may have the latitude to allow debate as we move forward with these amendments to make sure that we have our points heard and preserved for the sake of this debate.

SPEAKER: Mr. Martinez Fischer, the next amendment will open this bill up for all the debate that I think you're interested in, sir.

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

NEAVE CRIADO: I bring this amendment before you for a vote to strike the enacting clause of **SB 4**. Because before us in **SB 4** is a state propounded immigration-related law that regulates immigration and immigrants against our state's jurisdiction to do so. **SB 4** is the broadest, most invasive piece of legislation to ever potentially challenge the very nature of our federal and state power.

The power to enforce immigration is unquestionably exclusively a federal power. Our Constitution, Article VI, Clause 2, of this principle founding document under which our state government claims legitimacy reads, "Th[e] Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding." It is not within our state authority to order the removal of persons unlawfully present. It is not within our state authority to prescribe laws that pertain strictly to our nation as a whole. The federal government, and the federal government only, has the power to classify and determine the admission and the expulsion of noncitizens. This legislation, **SB 4**, is a loophole. It is a hook thrown with the intent to unravel judicial precedent set out in *Arizona v. United States*. And the court made clear in *Arizona* that creating state crimes for the violation of a federal law is preempted by the United States Constitution.

We all know why we're here. **SB 4** intends to challenge the decade long holding of *Arizona v. United States* given the new makeup of the United States Supreme Court. A Supreme Court which we have seen has already overturned the 50-year long precedent of *Roe v. Wade*. This legislation, **SB 4**, expects to challenge precedent to be successful in the same way. But it is only through a misinterpretation of this Constitution that this legislation aims to succeed. **SB 4** is a usurpation of federal power, it is a condemnation of due process, and it is a repudiation of family values and family unity. It intends to charge thousands of our fellow Texans with an offense related strictly to their federal status, creating a direct conflict with federal law. And these conflicts in the bill—that are riddled all throughout **SB 4**—make compliance with both **SB 4** and federal law

impossible. "No man can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other." (Matthew 6:24)

We can look to the City of Farmers Branch, who attempted to regulate federal immigration enforcement. There was litigation from that suit, and they attempted to regulate—just as this legislation intends to do—and federal courts have recognized that the local ordinance was wildly out of bounds with federal enforcement practices. There are analogous things that we can draw from the federal case in Farmers Branch that we see playing out right before our eyes. There the city argued that the ordinance was not a regulation of immigration because it employed existing federal law to determine whether an individual was unlawfully present. And there, the United States District Court for the Northern District of Texas held that the ordinance, "though it was grounded in federal immigration classifications, it is an invalid regulation of immigration because it uses those classifications for purposes not authorized or contemplated by federal law."

Standing before you, Representative Spiller has—and in committee—consistently reiterated and argued that it doesn't violate federal immigration law because he says that it mirrors some components of federal law. That's exactly what the city argued with Farmers Branch that a court held was invalid, and this legislation is not based on the concurrent enforcement of federal law. So it is also, therefore, an invalid regulation of immigration because it uses those classifications for purposes not authorized or contemplated by federal law. **SB 4** collides with federal immigration law, and it leaves thousands of families in the wreckage. It's an impermissible regulation of immigration, it's a flagrant disregard for the Constitution, for the federalist principles that guide our lawmaking process, and in addition to violations of the Supremacy Clause, **SB 4** also violates our due process and equal protection provisions in our Constitution. Due process that it is owed to every single Texan within our borders, regardless of their citizenship status.

We have a constitutional requirement that no person be denied equal protection. So forcefully deporting families, potentially American citizens as we have raised before, to an unfamiliar country without the representation of an attorney or judicial review of a court violates Texas' procedural due process rights. Every Texan, regardless of their immigration status, is bound by our state, but they are not protected by it, and that is an injustice. Suddenly withdrawing all of these protections from thousands of families who have come to this country to put food on the table is textbook injustice. **SB 4** makes the daily activities of families punishable by separation, and restricting our access to life, criminalizing our sickness, our faith, and our connections to family and each other is unjust and reprehensible. Criminalizing everyday interactions of our undocumented neighbors won't solve the challenges we face at the border.

This extreme legislation is intentionally broad, overarching our state's jurisdiction over immigration, trespassing on the rights of all persons within our borders. It forcibly creates an underclass of Texans who will live in fear, who will not want to report crime, or drive down the street. Our power as a state begins

and ends with the securing of the education and the health care of our communities. Separating families over a federal category is beyond our constitutional obligations as a state. It is federal law that prescribes responsibility for deciding the judicial penalties of noncitizens. It is federal law that has discretion over the removal of noncitizens.

We form a part of a union, a union that is being perfected every day with legislation that this chamber produces. It is our union that keeps us whole. It is those laws prescribed by our union that keep our states in cohesion, and it is those laws that keep our states united. Alexander Hamilton warned our generation of lawmakers expressly if we violate the supreme law of our land, our laws would "be a mere treaty, dependent on the good faith of the parties, and not a government." I ask you to consider our membership in this union, the United States of America, and its requirements of us as lawmakers to maintain that strength of our government.

REPRESENTATIVE WU: Thank you, Chair Neave Criado. You're an attorney, right?

NEAVE CRIADO: Yes.

WU: I'm an attorney. When you became an attorney, the oath that you swore was to swear to defend the Constitution of the United States, correct?

NEAVE CRIADO: That's correct.

WU: Because that's the same oath that I took. When you became a state legislator, is that the oath that we swear to every single session?

NEAVE CRIADO: Yes.

WU: You know, I have an additional one too. When I became a citizen, I also swore to defend the Constitution of the United States, as did some of the other members in here when they became citizens. Now, the Constitution of the United States is the original Constitution plus the amendments, correct?

NEAVE CRIADO: That's correct.

WU: The Tenth Amendment, what we call the Federal Supremacy Clause, just flatly says anything that belongs that we say is in the purview of the federal government may not be touched by any of the states. Is that your understanding?

NEAVE CRIADO: Yes, that's my understanding. The *Arizona v. United States* case specifically talked about there are certain areas of law, such as immigration law, that are so broad that the federal government has to regulate in that area. Specifically, it preempts states from doing so for many reasons that are outlined, especially to maintain relations with other countries, federal diplomacy, recognition of treaties that a state could potentially supersede. What we see here in **SB 4** is just a complete repudiation and disrespect for the fact that the federal government has this authority.

WU: It's not even open to interpretation. The Constitution itself lays out that the job of the federal government is to deal with international treaties, is to deal with our borders, is to deal with the issues of citizenship. Is that correct?

NEAVE CRIADO: That's correct.

WU: So it's black and white—not open to interpretation that this is a power that is delegated solely to the federal government?

NEAVE CRIADO: Yes.

WU: Through this bill—this bill itself—the entire existence of this bill is to say that we are going to ignore the black and white lettering, the words on its face of the United States Constitution—just completely ignore it and do what we want to do. Is that correct?

NEAVE CRIADO: That's correct. I mean, since when does a state deport individuals? That's not a power that states have. That's a power that the federal government has for people after they go through due process hearings and are able to present their case in order for a court to determine whether they have asylum or other legal basis to remain in the United States, and this is completely circumventing that federal regulatory system.

WU: So the language of this bill not only violates the United States Constitution, right, in itself? But it also violates other aspects of federal regulation and federal law as well, right?

NEAVE CRIADO: Yes. There are programs like 287(g) where the federal government specifically delegates authority to local cities. Cities can opt into that if they choose to—and there are some that have, but it's there because it's an agreement between the state and the federal government. This is usurping even the 287(g) program and making it apply to the entire State of Texas.

WU: Earlier you asked the bill author about issues of people being previously deported, correct?

NEAVE CRIADO: That's correct.

WU: And the bill author seemed really confused because I'm not sure he understands that people are asked to leave a country but are readmitted or appeal their expulsion all the time.

NEAVE CRIADO: That's correct.

WU: There are people here today in our state, who are here lawfully, who were previously rejected from this country, correct?

NEAVE CRIADO: That's right.

WU: And under this law, the way it is drafted right now, that a person who was legally allowed to come back into the country—readmitted by the federal government—their immigration, whatever they did in the past was forgiven or it was appealed. They are now legally here as visa holders, as green card holders, or whatever. They would be in violation of this law.

NEAVE CRIADO: That's correct.

WU: And the bill author himself did not seem to grasp that.

NEAVE CRIADO: Right. We discussed it before. It's clear, black and white on the letters. It's jumping out that even if somebody has lawful status, you can be charged under the illegal reentry, even if you have lawful status, if you've been deported before.

WU: In fact, the author of the bill repeatedly said, "Well, it's not the intent of this bill to do all those things that people are afraid of." Correct? You've heard him say repeatedly, "Well, that's not our intent. That's not the intent of the bill. That's not my intent."

NEAVE CRIADO: That's correct, and he can't control the fact that there are going to be individuals who are going to use every word that's printed on this paper to arrest individuals.

WU: So despite the fact that his contention to this body is that it is not the legislation's intent, it is not his intent, it is not the senate author's intent, but that is what is clearly written on the black-and-white lettering of this legislation. Is that not correct?

NEAVE CRIADO: That's correct.

SPILLER: Members, I don't think this amendment's good for the bill. I respectfully oppose the amendment. Also, I heard some of the same testimony about the City of Farmers Branch in the State Affairs Committee. Let me just say to that point that was the City of Farmers Branch. I would fully expect that that might be unconstitutional. What we're doing here, in my view, is completely constitutional for the reasons I previously stated in my layout. We're not talking about a city ordinance, we're talking about the State of Texas. And the State of Texas, under its Constitution and under the rights granted to us under the Tenth Amendment in the federal Constitution, I believe that we have every right to secure our border. For those reasons and the many points raised, I respectfully oppose it.

MARTINEZ FISCHER: I know we're dealing with an amendment on the enacting clause—very broad. Just two lawyers getting ready for trial here. When we were talking about this—we have a proposal for a new law that says there are local law enforcement obligations that are being proposed that may lead to somebody going to a port of entry or going to a magistrate so they can determine whether or not they go to a port of entry. And then we have an existing law in **SB 4** that passed in 2017 that says local law enforcement must cooperate with ICE. Our dialogue was what does the officer do when they make the scene and establish, as we already established, the reasonable suspicion that leads to probable cause? They're trespassing or whatever, and the officer says, "I have to make a decision." We're either going to go the route of the current **SB 4** or we're going to call ICE. You said, "Well, there's nothing that stops them from doing both." Here's the question: If the officer making the scene establishes the probable cause, and then they just proceed to call ICE under **SB 4**, they have complied. Is that the way you see it?

SPILLER: Well, I'd have to look at the full requirements under cooperating with ICE, but I would assume that it has to do with cooperating with ICE relative to federal immigration law. So here, we're still doing that. I anticipate if this is passed into law, that we would still cooperate with ICE under federal immigration law. However, this is a state law, and I think that ICE would understand that we're going to prosecute our state law and we will work with them and we'll turn them over and we'll do whatever we need to.

MARTINEZ FISCHER: In the scenario an officer makes the scene, they don't get to sit here and debate it for 30 minutes. They've got to make a call, and they're trained already under the existing **SB 4** to call ICE. They call ICE, ICE says, "We're taking over." There's no liability on part of that local law officer because they have complied with the existing and previous version of **SB 4**. Does that make sense?

SPILLER: In my view, it's not a question of taking over. From what I understand, I haven't heard anything that puts us in conflict with existing law as far as cooperating with ICE. I think that we're going to need just as much, if not more, cooperation from ICE as what we currently have. I think that we will work with ICE. I've been assured by DPS that they will continue to work with ICE, will work with Border Patrol, and will do all those things that we are currently doing under Operation Lone Star. So I don't anticipate a problem. I don't anticipate a conflict. But I think that, certainly as Texas, we have the right if we have a state law. Just like we do if we have someone that comes across illegally, but they commit a felony offense or whatever it may be—it could be a misdemeanor criminal trespass—ICE is, it's my understanding, deferring to us to handle those state prosecutions now. Then they are notified when they have completed their sentence, and ICE will get involved, and they will take them and process them. So I don't anticipate any of that changing.

MARTINEZ FISCHER: Where I anticipate that it will change is if these requirements now are going to require local officials to house them and incarcerate them. When they're done, it's going to obligate them to give them a ride to the port of entry, and so it's going to be expensive. There is no appropriation for it, so I can easily see a scenario where local law enforcement says, "Hey, under **SB 4**, we're going to cooperate with ICE. Hey, ICE, we have one of yours, you take over. You house them, you transport them, and you deal with the stateside." The City of San Antonio was sued under the old existing **SB 4** because everyone else said, like you said, they don't anticipate a problem. The City of San Antonio spent \$1 million defending the chief of police successfully against a vigilante lawsuit that they are able to do under the law. If we're not advised on the existing **SB 4**, it enables individuals to file a lawsuit for the removal of local officials for not cooperating with ICE. This proposal tells me that if it passes I would encourage every local law enforcement official that finds themselves with reasonable suspicion and probable cause to just call ICE and hand them the keys to the handcuffs, and say this is yours. Because without the assurance that we're going to be protected, without the assurance that we're not going to get sued—everybody else is getting indemnified under your proposal,

but they're not if they don't comply with the existing **SB 4**. I think there's a real concern here that is not addressed, and I don't know—if you disagree with me, please do. If we just raised a good point, we need to think about a fix.

SPILLER: Right. I understand your concern, but I respectfully disagree. I don't think that there's a conflict. I don't think there's cause for concern. I think that certainly we're doing those things now, as far as state charges, whether they be misdemeanor charges or whether they be more serious felony charges or whatever that may be. I haven't heard of instances where we're not cooperating with ICE on those now. My experience is we've been doing that for years and we would continue to do that. But I think that ICE would also respect the fact that if we have state charges, and the state charges actually include for illegal entry and illegal reentry and order to return, so that is part of the state charges under **SB 4**. If so, I think ICE would recognize that and would adhere to that. And like I said, I understand your concern, but I don't really see it as it should be a valid concern.

MARTINEZ FISCHER: We can certainly disagree on the interpretations of one current law and one proposed law, but if there is no conflict for an officer to elect to pursue an apprehension pursuant to the existing **SB 4** or to pursue it in combination with this current law, that's a local law enforcement call. That's a local decision made between that officer and whatever the pattern and the practices with ICE in that community. Because I imagine it's much different on the border as it would be in Potter County or someplace that's far removed from the southern border.

SPILLER: Right. I've been in a position of advising governmental entities in the past, so I feel certain that they will get good advice and be able to reconcile what we're doing here with what existing law is and find a pathway to do that and comply with the law as we're doing now.

REPRESENTATIVE TALARICO: This past summer, the *Houston Chronicle* published an article on Governor Abbott's border policies. Are you aware the *Houston Chronicle* reported that DPS troopers were "ordered to push small children and nursing babies back into the Rio Grande"?

SPILLER: I heard some news reported—I mean, some things some time back, but I couldn't tell you specifically what that was.

TALARICO: Are you aware the *Houston Chronicle* reported that troopers were "told not to give water to asylum seekers, even in extreme heat"?

SPILLER: I don't even think we get the *Houston Chronicle* in Jack County, so I probably haven't read that, but I have heard something about it.

TALARICO: Are you aware the article reported a pregnant woman "having a miscarriage was found caught in razor wire, doubled over in pain"?

SPILLER: I don't recall.

TALARICO: Are you aware one of the troopers was quoted as saying, "I believe we have stepped over a line into the inhumane"?

SPILLER: I really don't recall that particular article.

TALARICO: Representative Spiller, when you previously brought this bill to the floor, you accepted an amendment from me prohibiting anyone from ordering troopers to push a child into the Rio Grande, deny a child access to drinking water, or deny a child urgent medical care. Is that correct?

SPILLER: Well, I think what I did was I offered my own amendment to my perfecting amendment that included some language that you had done, and that is correct.

TALARICO: And that's a fair characterization of the language in that amendment?

SPILLER: Correct.

TALARICO: But now that language has been taken out of the bill. Is that correct?

SPILLER: It is.

TALARICO: So you removed language prohibiting anyone from ordering troopers to push children into the Rio Grande, is that correct?

SPILLER: Well, I moved it from that draft. As you know, that bill died when it got to the senate, so we didn't—but we did look at it that night. We came up with a new draft, and I worked with Senator Perry, and we came up with a new draft that has several changes to it. Some of those were things that were suggested by members of this body that I thought were good ideas, and we did—we kept those in there. Senator Perry is great to work with. We were able to do that. The senate passed it in that format, and so I'm comfortable that there are the protections that we need to have in the bill. Some of those things I was told—as far as the provision that you're speaking of, that's already the law. We're not in the business of pushing children down or pushing children into the water. Or denying children water to drink—

TALARICO: Respectfully, Representative Spiller, that is the business we're in. The *Houston Chronicle* reported that just months ago those inhumane, monstrous practices were happening on our watch on the southern border. Do you not consider banning those inhumane practices one of the good ideas that should have made it into this draft?

SPILLER: Well, I think it's always a good idea to make sure that children are protected, but I don't draft legislation in response to what—with all due respect to the *Houston Chronicle*—with what they decide to report.

TALARICO: Representative Spiller, it's not the *Houston Chronicle*. The *Houston Chronicle* is just reporting what our own troopers have told us. Do you not believe our troopers that these inhumane practices are happening on our border?

SPILLER: Right, and I've been assured that that's not happening and won't happen. It's against the law already and so it would be duplicative to contain it in this.

TALARICO: Assured by whom?

SPILLER: I have visited, specifically with the language that you discussed, with representatives with DPS, the governor's office, and the attorney general's office. We've looked at all those things.

TALARICO: So I guess my question, is if it's not happening, what is the problem with codifying in state law that these practices that, according to our own troopers, were happening just months ago will never happen again on our watch?

SPILLER: It's duplicative, it's already in law. Those type of things shouldn't happen, they're against the law to happen in Texas. They don't really need to be part of this bill, in my view.

TALARICO: Mr. Spiller, where in law does it say troopers can't be ordered to push children into the Rio Grande?

SPILLER: There are laws that deal with children and children in custody. I don't have some of those right here with me.

TALARICO: Can you cite me in statute where this is prohibited?

SPILLER: Right now? No. I could research it for you and get it to you if you need it, but I don't have it right now.

TALARICO: Representative Spiller, this is your bill, not my bill. You agreed to language when it was on the floor a few weeks ago prohibiting any trooper from being ordered to push children into the Rio Grande. When you accepted that language, you said on the house floor, "This should go without saying. We're all about protecting children." But now you've removed that language from the bill, so I guess my question is, are you saying now you're no longer all about protecting children?

SPILLER: I think I'm still for protecting children, and that's not the purpose. We were trying to get the bill passed that night, and we did, and I appreciate your efforts, your concerns. You've been very diligent in that, and I respect that, but I don't think it needs to be in this bill. I think it should go without saying that none of us want children hurt or harmed in any respect, and so I don't think it needs to be in the bill.

TALARICO: You're saying none of us want that, but you're actively taking out language in the bill that would prohibit that from ever happening. Why would we remove that language if we're not trying to keep the door open to these inhumane practices continuing on our southern border?

SPILLER: We've worked the bill together, and I worked with Senator Perry, and we've improved it and made it as strong as we can but clear as we can. So I believe that all those concerns have been addressed, and I've been reassured that those provisions are already against the law in Texas and would be improper. And if the things that happened—if the things that happened that you are relaying that were reported by the *Houston Chronicle*—if that happened, that was wrong and they shouldn't have happened. But that's not part of this bill.

TALARICO: So if it's wrong, why is it not part of the bill?

SPILLER: Well, there are a lot of things that are wrong that aren't part of this bill.

TALARICO: Representative Spiller, you accepted this language just weeks ago. You thought it was a good idea to put this language in the bill to make sure these inhumane practices that our own troopers say are happening on our southern border never happen again. You said, "It goes without saying, we're all about protecting children" when you accepted the language. Now you're standing up here a few weeks later because you had conversations with someone, and that language has been taken out. The only way I can make sense of that is if someone is trying to keep the door open to these practices continuing.

SPILLER: I can talk to a lot of folks. I've talked to a lot of folks about the bill and the drafting of the bill—worked on the bill. I haven't talked to anybody that wants to harm children. We're all on the same page on that. I don't think it's proper to include that in this bill if we don't need to, because I've been assured—and I've looked at it—that it's prohibited under the law anyway—

TALARICO: But Representative Spiller, you can't tell us where it's—

SPILLER: I don't have it right here, no.

TALARICO: So you are comfortable taking the risk that we are opening the door to these inhumane practices continuing? You're comfortable with that?

SPILLER: You're assuming it's a risk, but I'm comfortable with the language that's in the bill now. I don't believe that there's any risk, and I don't believe my bill opens the door to children being hurt or harmed. That's not what **SB 4** is about at all.

TALARICO: Representative Spiller, you're my friend; you're an honorable man. This is beneath you, and it's beneath Texas.

SPILLER: I appreciate your perseverance.

NEAVE CRIADO: I just wanted to ask you, Representative, about the alienage—being an alien is a key element of each of these crimes, correct?

SPILLER: That's correct, and we use the definition under federal law. That's correct.

NEAVE CRIADO: And so an officer, when they pull over an individual or charge somebody with this crime, has to make the determination of whether the person is an alien under your bill, correct?

SPILLER: That is one of the elements of the offense, yes.

NEAVE CRIADO: And how does an officer determine whether a person is an alien?

SPILLER: Well, I would think that the officer would do that based on a totality of the circumstances or would have to have some knowledge that someone is an alien, has been or that they designate them as such, and they would have some evidence of that. There would have to be probable cause for them to believe that. So they can't just make accusations and arrests based on suspicion. There has to be something more than that.

NEAVE CRIADO: You would agree that the determination of alienage is a complex determination, is it not?

SPILLER: Not necessarily. Under the definition—I can pull it right now. I didn't bring it up here for this discussion. We can look at that, but when you look at the definition of someone that is not a citizen or someone that is not a national, as those terms are defined, I don't think it's that complex.

NEAVE CRIADO: But an officer, as they're making the stop, immediately has to determine whether that person is an alien or not. It's not going to be easy for him to determine whether they are an alien or not, correct?

SPILLER: Again, I want to be clear here; I don't want to mislead. We're not charging people with being aliens. We're charging people with illegal entry and all the other—I mean, yes, you would have to fall in that category, but you would have to have all these other elements of the offense met.

NEAVE CRIADO: Right, and assuming all those other elements of the offense are met—I'm just talking about the element of the alienage, that you have to be an alien. So in addition to the officer, this new bill has a magistrate—also would make a determination of alienage, correct?

SPILLER: There would have to be some sort of determination of that. Not—yes, correct.

NEAVE CRIADO: We discussed also that magistrates include non-lawyers, correct?

SPILLER: Magistrates could include judges that are lawyers, whether they be district courts or county courts at law. It could be a constitutional county court, a justice of the peace, or a municipal court judge. All of those are considered magistrates and some of those would be attorneys, and some may not be.

NEAVE CRIADO: And so the ones who are not attorneys would not be trained in the law to be able to determine whether an individual is an alien or not, correct?

SPILLER: Yes, I completely dispute that because, as I said earlier, these judges receive training on an annual basis. I talk to judges regularly. I'm very familiar with some of the training that they've received, and they get up-to-date training based on what new laws. And so certainly, I would think as part of that training that each and every judge that has to complete this mandatory training that there would be some data on this law were it to pass.

NEAVE CRIADO: But you know that even courts take months sometimes to determine whether a person in fact has lawful status or not, correct? It's not something that can quickly be decided. It's a complex determination is my point, right?

SPILLER: I don't know that it has to be that complex. I don't know why it would take months. It may take months and years to get to court. That's a whole different story, as far as immigration court's concerned, but I don't think it's that complex to determine if someone is an alien or if they're not.

NEAVE CRIADO: But you recall that immigration attorneys, many of them who came to testify, reiterated over and over about the complexity of even determining whether somebody is an alien, right?

SPILLER: I heard some of that.

REPRESENTATIVE FLORES: Just to clarify for me, because I'm afraid I'm not following this. My understanding is you're saying that there should be reasonable suspicion or probable cause in order for there to be an arrest? Quick question because you're saying there's elements for determining the probable cause for an officer who sees somebody. Short of seeing somebody entering from not a legal port of entry—other than seeing them maybe crossing the river or going under a fence or a border wall or something, what would give the officer, say in Dallas, a reason to believe that there has been the offense of being an alien committed?

SPILLER: Right. We covered a bunch of this a couple weeks ago, but I think the officer would look to a totality of the circumstances. The bill's certainly not written that someone has to actually see someone cross the river. It doesn't say that. But then none of our criminal laws require the officer—that I know of in the entire Penal Code, Health and Safety Code, and other provisions—require an officer to actually see something occur in order to be able to charge someone with it. We have all of our laws, that I know of, provide for that. There's some that officers—what you would call a plain view. If it occurs within their sighting they can see, they can charge based on that. But the vast majority, I would say, are not. I gave the example a couple weeks ago of if someone is charged with burglary of a building, for example, and said the odds are that in most of those cases, the officer is not watching them break into a building and therefore arresting them on the spot. It's put together by investigation, and they look at a totality of the circumstances. I found that they actually charge people with burglary of a building at times, and I find that people are actually convicted of that and found guilty beyond a reasonable doubt. So clearly, it doesn't require an officer to actually see someone cross a river to determine that someone crossed a river. There are other ways to determine that, and officers are trained to investigate and look at all aspects of it.

FLORES: So if somebody has been in Dallas for 10 years, but they possibly illegally entered the country, how is an officer going to determine that exactly? Just by looking at somebody? Or what line of questioning are they going to have to have? Am I going to have to be carrying my—not that I entered illegally, but would I, if I were stopped, have to carry my papers with me—my passport—at all times to say that I am a citizen of the United States and should not be detained, that I did not enter illegally?

SPILLER: Right. I've already addressed the issue about carrying papers. This doesn't require that at all. You bring up a valid point. The thing is, as I've said before, I think that probably 95 or so percent at least of the enforcement of this will happen—not that it's limited to that, because it's not. It's a statewide bill. It applies everywhere, but I think that 95 percent of it will probably be that the encounters for this offense will occur within 50 miles of the border. I will say,

admittedly, that the farther away you get from the scene of the crime—the site of whatever you want to call it—that you want to allege and prove that someone violated, say for example, the charge of illegal entry. You're going to have a more difficult time, because that's exactly the point. The officer may not know that, they can't tell that, and they certainly—you know, they would have to have some independent knowledge of that to a certain extent, and they don't have that. So I think to your point, you're not going to have a great number of arrests in Dallas County over this offense. I'm not saying it can't happen. I'm not saying you can't have one, but I'm saying it's going to be very difficult for an officer to prove that and for a magistrate to determine that probable cause exists that a crime has been committed.

FLORES: Okay. Well, with all due respect, I do think that this opens up the door for some racial profiling, and I'm concerned. I have an amendment that I'm going to bring up in awhile that I hope you'll consider because I think it would be helpful in this instance.

SPILLER: Sure.

REPRESENTATIVE GARCIA: Colleagues, I just heard that Representative Neave Criado's amendment was bad for this bill. But this bill is bad for Texas. It's bad for Texas in the aspect of moral obligation. It's bad for Texas in the sense of taxpayer obligation. And really, I'm confused because I'm not an attorney, but I am a veteran. The only woman veteran in this house who has served not only in Africa and Iraq and Panama, but on our own borders, in support of the humanitarian crisis that we're experiencing today. Rest assured that this bill is bringing forward punitive actions against people who are suffering. I refuse to believe that that's our intention, but that's exactly what's happening.

From 10 a.m. to 4:30 a.m. on this floor, we witnessed people laughing, commenting, and mocking when we're describing an 11-year-old with a tan and a backpack now being probable cause for search and asked for papers. Or even how the asylum process wasn't something that we cared about addressing in this bill. It's very heartbreaking to see something like this come to this floor. I'm really asking that we all come together and come up with something better than this because this is unconstitutional. It's un-American. What we're doing is we are empowering white supremacists to create their slave catching teams, because rest assured, that's exactly what this is. We've seen this all already before. History is repeating itself. We're mere moments away from having to tattoo our identification numbers on our arms so we don't get swept up and deported to a country that we've never been to. I'm asking that we all come together and come up with a better solution. A logical solution. Because throwing women and children in the Rio Grande is not a solution. Sending away women and children who have spent months in the belly of a ship from Africa to our United States is not a solution. When we ask the question, where do these people go when we kick them out, the answer was, we don't know. They've just got to get the hell out of here. And if that's not the most un-American and most unpatriotic thing I've ever heard.

I beg you all today to see that we can make a real, legitimate difference. Because one thing's for sure, we're being failed. We're being failed by our federal government right now. I just got a phone call from an immigration attorney who spends all her time on the border, and she says, "Josey, the process is just messed up." We need help from the federal government to take care of this issue. We're going around the world. We're providing humanitarian access and support to other countries, but when it comes to our own borders, we develop a slave catching team to go get them. Unconstitutional. Unmoral. I ask that we all come together, again, for a bipartisan solution to this issue because no end is in sight.

REPRESENTATIVE R. LOPEZ: I'm listening to your comments, and I can certainly recognize the passion that you're coming across with. You were in the military for quite some time, weren't you?

GARCIA: Yes, sir. Twenty years.

R. LOPEZ: Twenty years. You retired from there?

GARCIA: Yes, sir, I'm retired Air Force.

R. LOPEZ: So was I. And we took oaths, and we followed rules of engagement.

GARCIA: Yes, sir.

R. LOPEZ: Earlier, we heard Representative Wu talk about oaths that they take as attorneys and rules that they have to follow. So generally speaking, everybody has rules of engagement. Would you agree with that?

GARCIA: Absolutely.

R. LOPEZ: There apparently seems to be a consistent understanding that rules of engagement are incredibly important to any organization, especially those that carry a badge and a gun. Would you agree with that?

GARCIA: Absolutely.

R. LOPEZ: This particular bill actually—and I'll read from it—says "including immunity from liability, indemnification for enforcement or actions." Which means that while you and I were in the military, if we did something wrong—and I can tell you in my era, which was the Vietnam era, there were a few things that happened that were outside the rules of engagement—they were held accountable.

GARCIA: Absolutely. Prosecution under the UCMJ.

R. LOPEZ: Absolutely. Would you say that this is opening the door for that level of liability by virtue of putting this standard of language into it?

GARCIA: Absolutely.

R. LOPEZ: What are your thoughts on that?

GARCIA: Yes, sir, absolutely. We are seeing a lack of rules of engagement, as we witnessed with the last questioning from Representative Talarico. We're witnessing a deliberate omission of rules of engagement. When we asked at the last session addressing this very bill—we asked for training for our law

enforcement, our park rangers, our border patrol, and any law enforcement official that will now be empowered by this bill. We're asking for training on how to deal with the situations that they may come across. And we were told no. That was yet another example of a denial of rules of engagement being included in this bill.

R. LOPEZ: Thank you very much for your comments. I think we're on the same page, and I appreciate the level of support that you're giving this bill.

GARCIA: Thank you, sir. We understand there's an issue. We understand there's an issue. This whole country understands there's an issue. And we must protect our border, but we must do so humanely. I ask that you all vote yes in support of this amendment because we need to go back to the drawing board because we're better than this. Texas is better than this. And we need to come together for a bipartisan solution that supports humanity and reinvigorates the process to address these issues effectively.

[Amendment No. 1 failed of adoption by Record No. 10.]

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

REPRESENTATIVE MOODY: We had a little bit of a conversation a couple weeks ago about affirmative defenses and exceptions to prosecution. I've tried to figure out a different way to skin that cat, and that's with the amendment you have before you now. Because we all agree—and even the text of the bill tells you—that there are certain individuals that cannot be prosecuted under this statute because they are lawfully present here.

The way the bill addresses that in its current form is that it allows the defendant to raise those issues—there's four, but ultimately in this amendment there's going to be three. Someone who the federal government has granted lawful presence to, someone who has been granted asylum under 8 U.S.C. § 1158, or someone who has been given lawful status under the DACA program. Now, we know that the DACA program is bounded in time, and that's why you have a date of July 16, 2021, here. The bill makes those defenses to prosecution. So what that does in reality is charges are brought, trial goes forward, the burden is on the defendant, who, by definition, has done what they're supposed to do under the law to be here lawfully present and have been granted that status by the federal government. So you cannot prosecute them under this statute. But what this bill says is we're going to wait until the end of the road, and we're going to put the burden on the defendant, the individual who has actually played by the rules. And I've heard a lot of people say this when we're talking about immigration, "We just want people to play by the rules." These are people who played by the rules, and what they get in this bill—in **SB 4**—is an additional burden of proving up that they played by the rules. Again.

Now, a cleaner way to do this—and that's the amendment you have in front of you—is to just make this a definitional change. An alien, for purposes of this statute, doesn't include someone who the federal government has granted lawful presence to. It doesn't include someone who has been granted asylum under the federal code. And it doesn't include someone who has been given lawful status

under DACA. That's what this amendment does. It just changes the definition to say someone you can't prosecute anyway can't be prosecuted. This does no violence to the underlying purpose of the bill. It just makes more sense having it in the definition than as a defense to prosecution.

I think if you're going to ask people to follow the rules and to play by the rules, then they shouldn't have an additional burden on them at the end of trial. And if we want to talk about this in terms of judicial economy, I think that's important as well. These individuals just should be excluded at the outset. You're not putting a burden on the prosecution, you're not putting a burden on the defense, you're just saying definitionally we can't prosecute them because, guess what? We can't. So let's just say what we can and can't do. That's it. That's all this does. It takes language from another portion of the bill and adds it to the definition of what an alien is not.

REPRESENTATIVE GÁMEZ: I want to start off by saying I can truly appreciate from a legal standpoint your clarifying amendment here. We've heard an awful lot of discussion here from members and the bill author that, I believe, what they are stating is the intent of the legislature here is not to supersede or interfere with federal law. Is that correct?

MOODY: That's what I've heard.

GÁMEZ: And that's what I've heard as well. I just want to clarify that right now, the way the bill is written, would it not supersede the burden and the requirements of an immigrant, so to speak, who is facing an immigration issue in the federal courts?

MOODY: Yes. I mean, what you've done is you've taken someone who has gone through the process in these three very discreet ways. And these are not three things that I made up out of whole cloth. These three categories are already in the bill. They are in the bill, stating that people don't get prosecuted if they fall into one of these three categories. The difference is, I don't think you should put the burden on someone who has followed the rules to then again prove up why they followed the rules when they don't qualify as someone who should be subject to this prosecution to begin with. So let's just carve them out in a definition. This is the easier, cleaner way to do that. Let me be very clear: It gets you to the same point. It gets those people who shouldn't be prosecuted out of the system. The only difference is, it gets them out on the front end, puts no further burden on the state, and puts no further burden on the defendant—the person who has followed the rules.

GÁMEZ: So this amendment isn't attempting to weaken or lessen our border security by any means, is that correct?

MOODY: It doesn't change any of the provisions related to the state-related offenses, it doesn't change any of the—I may have amendments on that later, but this one does not change anything in relation to how those would be applied. It doesn't change the magistration process that we've talked about. It doesn't change anything across the board, it just says if you are legally lawfully present by virtue of these three categories—which we are already assuming in the bill as

it came to the floor, that we're not going to prosecute these people. It just puts it at the front end in a definition which judicially makes more sense and does no violence to the underlying purpose of the bill. Now, don't get me wrong. I do not think this bill is good public policy, but if you're going to do it, at least do it correctly.

GÁMEZ: And again, I would have to agree with you from the standpoint of judicial economy and judicial efficiency. For example, in Cameron County, our courts are already struggling. We are down three court interpreters who, if we hadn't mentioned at this point already, are approximately \$64,000 a head. And I know this bill isn't proposing to give any additional funds for the judicial expense that we're about to take on in our border court system, but I can appreciate your amendment trying to clarify at least that burden.

MOODY: Yes, and that same problem that you all are having in your county is something that we're encountering as well. And with the implementation of a bill like this, that problem will just be exacerbated, so why not just clear these things up on the front end? I think this is the cleaner way to do things. If we don't believe these people should be prosecuted—which the bill already says as it came to the floor—then let's just do it the right way. Let's not put it as a defense to prosecution and put some burden on an individual who has already played by the rules. I do not understand why we wouldn't just want to be clear about this from the outset.

GÁMEZ: Chairman, again I just want to finalize by saying I really appreciate you clarifying the date in your amendment, which would or would not apply to DACA individuals, because I do believe this is absolutely crucial and necessary if we are to have this legislative body believe that the purpose and intent of this law is not to interfere with, supersede, or override federal law. And I think in order to clarify that your amendment is crucial. Thank you for doing so.

MOODY: I appreciate that. I think it is important for us to do what we are saying. The words on the paper matter, and the words on **SB 4** as it came here today, said there are certain individuals that we don't think should be subject to this prosecution. We're not after them because they followed the rules, they played by the rules, and they're here lawfully. But the way it solves their problem is it gives them a burden in court at the end of the day, and that is not the efficient way to do things. I would argue that it probably would lead to legal challenges by placing that excessive burden on someone at the end of their trial when they're here lawfully. They've gone through the federal system in these three ways, but then all of a sudden they now have to re-up and reprove these things. I think this amendment would do—at least to this portion of the bill—would clarify some of the conflict in laws that exist.

REPRESENTATIVE A. JOHNSON: Chairman Moody, when we talk about asylum, we're talking about people that are here and seeking protection from persecution from things like race, religion, and nationality, correct?

MOODY: Yes, absolutely correct. And in the definition here in the amendment, we're talking about individuals, whom the federal government has granted asylum. They have gone through the process and been granted asylum, and the bill as is, without this change, is going to take that person who has been through God-knows-what and has been granted asylum for various reasons—which is not a small thing to do—and we are going to ask them to prove that up as a defense to prosecution. Which means—you and I know this—it means the burden falls on them and their counsel to put on evidence to that effect. Now, I've heard people say, "Well, that's not hard to do. They can put up the paper that they got." But why would we put any burden on someone who has gone through that process and already has been granted asylum? Any burden is too much of a burden for someone who has been through that.

A. JOHNSON: And Chairman Moody, as you mentioned, the cost—or the budget—and the manner in which this is going to be pushed down as an unfunded mandate to our local communities. When we talk about an affirmative defense, we still have all of the parties and individuals that are responsible for the origination of this provision as it goes in. Can you share with us why changing this definition, again would at least lessen the burden financially on local communities?

MOODY: Because you won't have to wait until the end of the judicial process. When a prosecutor is looking at cases—you're screening cases, and you know that you've got to meet the elements. You've got to have the right definitions, and the definition says this person couldn't have been granted lawful presence, couldn't have been granted asylum, and couldn't have been granted authority to be here through DACA. As a prosecutor, you're going to look and go, "All right, well does this person fit the bill?" Well, no. They have been granted asylum. You talk to the defense attorney, maybe even. You get all these things up front, and you're never going to push these cases through, nor should they be pushed through. The bill already says these people should not be prosecuted. That's what it already says. How we do that should matter.

A. JOHNSON: So again, when we talk about being prosecuted, you are saying that this person, that's already been determined to be here because they are fleeing religious persecution in another state then we are going to incarcerate them in our local system even after the fact?

MOODY: If we leave it as is, you can have someone who has gone through the asylum seeking process as you laid out in that particular circumstance who can still get arrested, who can still be charged, who can still be hauled into court, who can then be put through a trial, and only then by virtue of a defense to prosecution can they present this and be let about their business.

SPILLER: Members, I appreciate what Chairman Moody has done here and the drafting expertise that he has. He's done a great job reorganizing the bill, but I do want to say this: This bill has been highly negotiated with a lot of parties—with the senate and with others, and so we've had a period of time to do it in the third session—this session—and I don't think we need to restructure the bill. I think

the bill is good in this respect as it is. I don't fault Chairman Moody for the job that he's done and restructuring it. But I think we're good here. I really don't think it's necessary to do, so I would oppose it.

REPRESENTATIVE ZWIENER: Thank you so much, Representative Spiller. I know Representative Moody was discussing a lot the impact of this bill on the illegal entry provision, but I also wanted to talk to you about its potential impact on the illegal reentry provisions of the bill. So there is not an affirmative defense available under the illegal reentry provisions, correct?

SPILLER: Correct.

ZWIENER: As I'm reading this section, theoretically the illegal reentry provisions could affect somebody who previously was denied admission or removed from the country but now does have the ability to legally be in the country. Is that correct?

SPILLER: As I stated earlier, I believe you still have to fall within the definition—you look at the entire statute there—for reentry. And reentry, first of all, talks about someone being an alien. So we have to make a determination under what you're saying. Even if they've been granted the right to be there, are they still considered an alien or are they not?

ZWIENER: My understanding of the definition of alien in your bill right now is that an alien is someone who is neither a citizen nor a lawful permanent resident but is present in the country. That's what Representative Moody is trying to correct.

SPILLER: I don't know that that's the exact definition, but it's referenced in the bill under I think 8 U.S.C. § 1109—I'll have to look. Yes, § 1101. I'm sorry.

ZWIENER: So that definition of alien includes someone who's here on a student visa, a tourism visa, correct?

SPILLER: Yes. I would say we're trying to track with the language here. What Chairman Moody is trying to do is move things around in this amendment, in my view, and trying to apply the same defenses under illegal entry to illegal reentry. What I'm saying is that's not the way it's laid out under federal law, and so therefore, I don't want to stray too far away from what the federal statute is because I think it's proper so that we're not in conflict with federal law to make it constitutional. I think it's important that we track that language to the extent we can.

ZWIENER: Let me lay out a fact pattern for you. Tell me if this would be correct without Representative Moody's amendment. A visitor, an alien, overstays their tourist visa and is ordered removed by an immigration judge. They subsequently marry a United States citizen in their country of origin and then apply for a K-1 visa. They're still an alien at that point. Could they be arrested under this statute if they are present in Texas even though they are now lawfully admitted to the United States?

SPILLER: I'm not advised on the different types of visas there are. I was visiting with a member about that earlier today, but that's not really part of this bill.

ZWIENER: But it is because the language of your bill, quite frankly, is—I'm going to simplify just a little. You can be arrested if you are an alien or, I'm sorry—an alien commits an offense if they are at any time found in this state after they have been denied admission to the United States. That means if somebody applies for a tourist visa and is turned down because they don't have enough assets in the bank—which is a common reason to be turned down—and five years later applies again, is admitted, and is a tourist shopping at the outlets in San Marcos, they're arrestable under the words of this statute and don't have a defense. That seems to directly contradict federal law, correct?

SPILLER: I'm not saying that. I would say I'd have to look at the language on the different types of visas that you're talking about to properly answer that question. That's not part of this.

ZWIENER: It doesn't really matter what type of visa it is. The question is, if somebody was previously removed from the country or denied admission and later admitted legally, they're still prosecutable under this statute with the way the bill's written. That's what Representative Moody—part of what he's trying to correct.

SPILLER: To do that, you're making a determination that it doesn't meet the other elements of the—or that they would meet the elements of the offense, and I can't say that as I'm standing here under those facts if they have or they haven't.

ZWIENER: I'm giving you facts. To quote some of my law professors, please don't fight the hypothetical. Somebody was previously removed from the country, and they later are admitted legally. They have permission to be in the United States from the United States government. What keeps them from being prosecuted under illegal reentry?

SPILLER: You're saying under your scenario someone was here illegally, and for whatever reason, they were removed from our country. Then they came back into our country, and your question is if they got some form of visa?

ZWIENER: They were legally readmitted back into the country.

SPILLER: Right. Again, I would have to look at the different requirements on each visa and make that determination. There are different types. I can't—

ZWIENER: Why does it matter what type it is? If the U.S. government has said this person is admitted back into the state after being removed for a minor issue like a tourism visa overstay, why would we arrest them?

SPILLER: I would have to look at that particular wording for the type of visa that they have to determine if they would qualify here or wouldn't qualify here. If I've got it, if I could look at it, I would be happy to look at it.

ZWIENER: Representative Spiller, is it your position that the State of Texas cares why the United States government has granted someone legal entry?

SPILLER: I've been very clear that this bill is not to supersede or usurp the authority of the federal government. That is not at all what we're doing.

ZWIENER: Why would you need to know what type of visa? If they have a federal visa, they have a visa.

SPILLER: I don't know that I would, but I'd like to look at it. I'd like to read it before I can completely and fully and properly answer that question. I don't know. I don't have it sitting in front of me.

ZWIENER: Well, I think this issue has been raised with you multiple times, both today and before now. I mean, can we find a way to correct this so that we're not potentially subjecting people to arrest who have permission to be in the country from the United States government?

SPILLER: My position is that it doesn't need to be corrected. This law is in effect right now. This law is federal law in effect right now.

ZWIENER: And under federal law, someone can at some point be denied admission to the country and later be granted a visa. Do you dispute that?

SPILLER: I'd have to look at the circumstances, and I can't completely answer that question without looking at what you're referring to.

ZWIENER: I've got a stack of potential scenarios where someone can be denied admission or even removed from the country and later granted entry. Again, if you're removed for a visa overstay, and then later marry a U.S. citizen, you can be admitted back into the country on a temporary basis. You're still an alien, and the way this statute is written, you can still be prosecuted. Why not fix that?

SPILLER: I don't know how valid it would be to say that there's someone in our country that has been found to be here illegally, they are deported, and that they somehow qualify and come back in on a visa. You're asking me to make that assumption that that is happening and is common practice. Now, I can't say that it is.

ZWIENER: Your bill does not say just deported. It says has been denied admission or excluded, deported, or removed. You can be removed for a visa overstay and still be granted admission later. More commonly, you can be denied a tourism visa simply for not having enough money in the bank. Those B-2 visas assess people's financial stability before admission. So someone could be denied a visa and then five years later be granted a visa and be prosecutable under your bill. Why not fix that with Representative Moody's amendment?

SPILLER: I guess you want me to assume that that is proper now, and I can't make that assumption.

ZWIENER: I mean, Representative Spiller, if you're not sure on this, I'd suggest we slow down and do some research and fix this before it becomes the law of Texas.

SPILLER: Again, this is the law now in our country. It has been for decades. We're quibbling over something that's already the law.

ZWIENER: I would not agree with that statement, Representative Spiller.

A. JOHNSON: Mr. Spiller, if you can explain when you say this is already a violation of federal law, that means an individual that's violating that law gets taken into a federal facility, prosecuted by federal entities, and that expense goes on the federal government. I want to talk about how Chairman Moody is trying to undo the burden on our local government here to prevent people from equally having to now run through the local system. And so when somebody gets arrested, how do you anticipate and how do you envision that we're going to make this determination of whether or not they are a proper or not proper alien? What do you envision the process to be from the moment, let's say, an officer sees Victoria standing on the side? What is your expectation for local law enforcement when they see her to make a determination whether she's a citizen or not a citizen?

SPILLER: I think with any case, the law enforcement officer is going to have to make a determination that probable cause exists—that she has violated the statute, for example, of illegal entry.

A. JOHNSON: But how would you make that determination? How do we anticipate a law enforcement officer to make that determination? Do they look at skin color?

SPILLER: Many times, although it's not required of the bill, but many times they're going to observe it. They're going to see that happen, and so that's one way.

A. JOHNSON: You say they're going to observe the illegal entry?

SPILLER: Yes, many times. You're going to have many cases under this bill, if passed, where law enforcement, DPS, or whoever sees someone cross into our country illegally. It's not required that they see it, but I would say many, many instances are going to be based on personal observation. So you're going to have that. You could—

A. JOHNSON: But we're not limiting it. Because I heard you the other day in committee say, "Basically 50 miles from the border."

SPILLER: Right.

A. JOHNSON: So how are we going to make the determination? If somebody who looks like Victoria is standing 10 miles from the border, how are we going to make the determination whether or not she crossed it illegally or not?

SPILLER: I think the farther you get away from that scene, I think it's harder to prove. I would be the first to admit that. I think that law enforcement—I gave you the example the other day, if you're in Texarkana and you just come up on someone, law enforcement says, "You know, there's somebody. I wonder if—," whatever. Well, wondering if someone's in violation is not the same thing as having probable cause or reasonable suspicion to stop. I think that those—

A. JOHNSON: But Vice-chair González lives on the border, right? How do we make the determination if an officer just sees her walking near the border? How are they going to make the determination whether or not she legally crossed?

Let's say Mary and I are walking together near the border. Are they going to look at her skin color versus mine and make a determination that surely she needs to be investigated for potentially crossing?

SPILLER: I think clearly the officers are going to make—they're going to look at the entirety—

A. JOHNSON: This is not funny because my wife is Hispanic. And there is a difference. When I am driving a car, I see an officer, and I wave. There is a difference for people. Chairman Walle said it. We don't live in their skin. This is highlighting how we even start the process to make the determination, because you're not saying. There's not a portion in this bill that says, "If I see you cross the border." It's "I get to investigate whether or not I think you crossed the border."

SPILLER: Right. It doesn't. It doesn't require that, but I would say that many instances are going to have that element where the officer actually sees them cross. But it's not necessarily limited to that. And you can have prosecution under this case, as you know as a prosecutor, how you have countless prosecutions on cases—successful prosecutions on cases—where you don't actually see the crime occur, and you know that because that happens every day.

[Pursuant to Rule 5, Section 28, of the House Rules, Representative A. Johnson requested an extension of speaking time on Amendment No. 2. The extension of speaking time was not granted by Record No. 11.]

MOODY: I appreciate Mr. Spiller's words and the work done here whether I agree on the policy or not. I understand when things are heavily negotiated, but with all due respect, those are not negotiations that I have a seat at the table for. They are not negotiations for these folks that have been through the system; who have gained lawful presence here; who have done everything right. They don't have a seat at those tables either. So this is my opportunity, not just for the ideas that I've got, but to represent them because they need a voice in this process as well. I want to be very clear about what this amendment does and doesn't do. Without this amendment, very clearly, we are saying that you can be here lawfully present and be arrested and jailed. That is what the bill permits without this amendment. All I am simply saying is that these categories of folks that we have already decided shouldn't be prosecuted will also not be arrested and jailed. That's simply what we're trying to do with this amendment.

GÁMEZ: Chairman, I'm sorry I didn't have the opportunity to ask the author of the bill this question, but I hope I'll find another opportunity to do so. Absent your specific definition here of the term alien—that we are now attempting to utilize state law to determine—let's say that an individual is detained under this new law, is magistrated, is afforded their rights, is able to secure an attorney—whether privately or court appointed—and does take this issue all the way to trial. What is the jury charge as criminal defense attorneys? Absent your definition, what is the jury charge to be given to the jury?

MOODY: The definition of alien would take on the definition as it's already written in **SB 4** and would not be clear about who's not subject to it or not. What it would leave is a burden on the defendant to put on evidence to raise their defense to prosecution, and that evidence has to be of such a nature and quality that the judge then provides that to the jury. Then they have to make a finding on whether the defendant has met their burden to show that they were here lawfully. So we are leaving—for these people who have been through the system, who have followed all the rules, who have played how they're supposed to play—which is what we say we want people to do—we are leaving them at the mercy of a jury without a clear definition. Requiring them to put evidence on during the trial, as you laid out, I don't think that is a fair system.

I do think it conflicts and contradicts with federal law, and whether that's the intent or not, I don't know. But I know the net effect of what this will look like in the real world, and that is the situation that a person who is legally and lawfully here can be arrested and jailed. And to me, I would hope that my colleagues would see that—see it the way I see it. That it's unconscionable. We hear the word liberty a lot in this chamber and in our committee rooms. The idea of the government taking away your liberty is a big deal and should be. It is one of the largest powers that we confer upon the government—to deprive someone liberty. There's only one other thing they can do worse, and that's deprive you of life. But depriving you of liberty—depriving an individual who has followed the rules, who is here legally, who is here lawfully can be deprived of their liberty and be put in a position to then have to reprove their case to a jury. That can't possibly be the policy result that we want.

GÁMEZ: Thank you so much for reiterating that. I just want to make sure that this body understands that we are now going to allow a jury in county court to effectively—whether or not it's our intent—effectively interfere with, override, and specifically undo federal law. Thank you.

MOODY: I appreciate that. Look, let's put the shoe on the other foot. If an American was overseas and this happened to them when they were following all the rules of the foreign country they were visiting, it would be an international uproar in this country if someone was treated like that as an American in another country and that they had followed the rules. Think about that. Put that shoe on the other foot. That's what we're talking about here. This does not change the ultimate effect of the bill. If you want to go after people who are not here legally, lawfully you can. Even with this amendment. But what we're saying is if you've played by the rules, we're not going to put an additional burden on you, and we're not going to deprive you of your liberty at the front end without making this determination. It's a matter of fairness.

REPRESENTATIVE M. GONZÁLEZ: Representative Moody, I really appreciate your diligence and making sure that the house is passing good public policy. I think what we're seeing in the dynamics of this piece of legislation is that it's following along party lines. But do you believe that there is a way to approach creating better policy even though we may not agree with the policy outcome? Better policy if we work together in a bipartisan fashion?

MOODY: I find myself in this position quite often. I have lived my entire legislative career in the political minority in this chamber. I get that. If it were to come down on political lines, then there is not a vote here that I would ever be on the prevailing side of. There are policy decisions that we make as a body that I don't agree with quite often. But it is also my obligation to look at what the real world implications are, and even if I don't agree with the underlying policy, I can attempt to try and make sense of even a policy I disagree with and try to put it into the real world. When these things leave this chamber, they move to the real world and impact human beings, and whether I agree with the policy or not, I would like that to not impact people in an unfair or unjust manner.

These are folks that are going to be in our community by and large, and I don't see why we would not want to do right by those people who have followed the rules. What incentive are we giving people to follow the rules when we then say, "Just kidding. We're still going to put you in jail, and then we'll let you prove it up later." That is unjust and unfair no matter what political stripe you come from. If you followed the rules and you played according to them, I don't understand why you would want to then deprive someone of their liberty. It, to me, is antithetical to the things that the people in this body say they stand for. And like I said, I don't agree with the base policy here, but if we're going to do this and put this out into the world, can we at least be clear about how we're impacting people that have done no wrong?

M. GONZÁLEZ: So really what you're asking is for the house to be a commonsense body—for us to be aligned with who we say we are. Your amendment ultimately isn't going to change the policy, per se, or the goals of the author but just make sure we're being smarter legislators in creating policy that aligns with the Constitution and with the processes and procedures we have currently. Is that accurate?

MOODY: Yes, I mean, that's exactly right. I don't want to be here debating this for the 75th time, making the border a political football. That can have very dangerous outcomes for our community and communities across this country. I don't think we should be doing this. I voted to strike the enacting clause. But if we're going to go down this road, then let's at least put a construct in the law that makes sense and is fair and is just. There is no trickery here. This is simply making sure that those people who are lawfully present aren't arrested and jailed. I just don't think it's a leap too far. I know that politics and common sense don't seem to intersect as much as they used to, at least when I started. But we can do that here today. We can do that with this amendment, which, again, does nothing to undermine the ultimate policy goal of the author of this bill. Even though I disagree with it, it just makes the bill cleaner and makes it make sense.

M. GONZÁLEZ: So you're just trying to create good policy. The only thing I just want to add is that you talked a little bit about jailing people who shouldn't be in jail, especially if we don't add your amendment. Does that leave our state or our political entities up for potential lawsuits?

MOODY: I imagine so. This is an inevitable situation that will occur under this bill—that someone who should not have been arrested or jailed who is legally, lawfully present. In fact, I would go so far as this could impact in the real world because you're dealing with human beings who are fallible, making decisions on the fly. You could have a citizen be arrested and jailed under this bill. That's a whole other conversation, but as it stands, there are individuals who have gone through the process at the federal level, who have done what they're supposed to do and are still going to be subject—we are saying if this amendment doesn't go on we are saying we are okay with arresting and jailing those people.

[Pursuant to Rule 5, Section 28, of the House Rules, Representative M. González requested an extension of speaking time on Amendment No. 2. The extension of speaking time was not granted by Record No. 12.]

[Amendment No. 2 failed of adoption by Record No. 13.]

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

MOODY: This amendment is on the same topic and a different way to get at this issue. I would consider this a half measure as compared with the prior amendment, but going into the same topic. People that are legally, lawfully present here under these categories that we've talked about—the federal government has granted them lawful presence through one way or through asylum or through the DACA program. And what we're saying is that burden shouldn't be placed on them to prove. So what this does is it takes what is currently in **SB 4** as an affirmative defense—which means the defendant has the burden to prove it, take it up through the jury, and have them ferret that out.

This puts the burden squarely on the state and says that this is an exception to the application of the law. So when you have an exception to the application of the law, the prosecutor—and I've spent time screening cases—you have to affirmatively plead in your charging instrument that these situations don't apply. When you charge someone with illegal entry, you then as a prosecutor would also have to say affirmatively that this individual has not been granted lawful presence in the United States, one. This person has not been granted asylum under 8 U.S.C. § 1158. And this person was not approved for benefits under DACA. That's what we're asking a prosecutor to do. It is the bare minimum. And we should expect it from our state government before they move forward with the prosecution that they would make these affirmative statements in their charging instrument. They will have the access to this information.

Now, I do believe my prior amendment was a better way to do this, but if we're not going to do it that way, then we can still be efficient. We can still have some semblance of judicial economy by saying, "Prosecutor, before you bring this case forward, we want you to at least tick these things off the list and say they don't apply to this individual. Because we know that at the end of the day, you can't prosecute them anyway if they fit into one of these categories." So let's just have the prosecutor affirmatively plead them in their charging instrument. They do this day in and day out. This is what prosecutors do when they're in screening and intake. They look at the facts. They gather them up, and they figure out what crime has occurred, or in some instances, hasn't occurred. So what I'm

asking with this amendment is to simply make these things an exception to the application of the statute, which would place the burden on the state. Where, if we're going to have the burden anywhere, is where it should be because they are the ones that are asking to deprive someone of their liberty. This is the burden that should always sit with the state and not on the defense.

A. JOHNSON: Thank you, Chairman Moody. I keep thinking about when we talked about some of the immigration provisions. A gentleman that isn't from the United States ended up getting caught up in the system. I remember him saying, "Oh, when they were talking about going after illegal immigration, I didn't think they meant me. I thought they meant the other folks." So I, again, for those that maybe aren't totally getting this, we're talking about a population of people who are lawfully here or going through the right rules and the right process. And all you're saying is this amendment keeps them from being arrested, confined, and then proving their, in this instance, form of innocence later.

MOODY: Under this amendment, when you put this particular burden on the state to make a decision at the charging time, unfortunately as I said, this is not as good as what we talked about before because this individual still may be arrested and jailed at the front end. But that information is going to make its way to the prosecuting attorney, and the prosecuting attorney will then be able to look at these categories and say—and let me correct one thing. This isn't someone that's going through the process. These are people who have been through the process and have been determined to be legally here. So these aren't people that are on a wing and a prayer trying to get the feds to grant them some sort of presence. They have already gone through it and have been given that lawful presence. They're at the end of that road. And all we're saying is if those determinations have been made in these three limited categories, and quite honestly under DACA because it's time limited, it doesn't even really apply. The other two you can make those affirmative pleadings as a prosecutor and say they're not lawfully present here. A prosecutor at the state level has interface with the feds if they want it, and they can know whether someone has been granted lawful presence. They will absolutely know if someone has been granted asylum. They will know that. That's information that is readily available to them. And if the state is the one that's seeking to prosecute them and charge them, and under the terms of this bill, deport them either at the magistration level—whatever that construct is—or at the end of their confinement period, these are people that shouldn't be subjected to that process. And if the state is wanting to do that, they should affirmatively plead up front that these categories don't apply to this individual. This is someone who didn't play by the rules, and I'm going to prove it to you. And we should always hold the state to that burden of proof.

A. JOHNSON: Chairman Moody, if I can just—if we can clarify the burden that's being imposed. And when we talk about arrest—let's say, for example, in a larger county like Harris County, somebody may be detained and be brought into the inmate processing center. They haven't yet been changed out of their clothes, and

you are waiting for DA intake to make the determination. Even in that circumstance, under this amendment, you are still looking at the burden of having the state take somebody into custody to begin the process.

MOODY: Yes, unfortunately, because of how we voted on the prior amendment, the situation here is, in my opinion, still not ideal. But it is going to get someone who shouldn't be in the system fast-tracked out of the system because a prosecutor is going to look at this up front when they make a charging decision. And they have to make that charging decision efficiently. They're the ones that have the tools at their disposal to be able to make that decision quickly. To me, if we're going to have that burden rest anywhere, then it should rest with the state.

A. JOHNSON: Remind me, it's 24 or 48 hours that the state has to do their proper due diligence on that to move forward?

MOODY: Yes. We have protections in place for the—because look, whether we like to admit it or not, people are arrested for crimes they didn't commit every day. Every day. That is part of the system. It is obviously not a part of the system that any one of us likes or enjoys, but that is part of the system. And the point is you rapidly move those decisions up front because if someone is there and they didn't commit a crime, we need to let them go about their business. We don't need to be in the business of holding people unlawfully when they've gone through the process. Just take the example of any other crime where the elements aren't met. You've done this. You've looked at the packet that comes from the law enforcement agency, and they've brought it up as X charge. And you're like, "Well, this doesn't meet the elements of the crime. I'm going to decline it." Off they go. We want that decision made very quickly, and we have laws in place to force that decision quickly. The policy principle behind that is that we don't want to unlawfully detain someone or unlawfully hold someone that didn't commit a crime. So in this instance, in the way this amendment is drafted, it says you're not going to escape getting arrested and jailed because someone may believe you're here illegally. But very quickly thereafter, a prosecutor is going to be able to look at this case and is going to, in their charging instrument—they're going to have to do their homework and say they haven't been granted asylum. They haven't been granted some other sort of lawful presence in this country, or they're part of, like I said, the DACA program because it's time bound and doesn't really apply here. But the prosecutor in that instance would be able to make that decision quickly. It's going to force them to look at that information so that we don't have someone held up in this process when they've actually gone through the federal lawful process to be here.

A. JOHNSON: So in this circumstance, if we accept this amendment, there is still a burden. You're still detaining the individual. You're still effectively taking them into a building—

MOODY: Yes.

A. JOHNSON: —but you are putting the burden on the state who has the ability to communicate directly with the federal government to make that determination. If this amendment is not accepted, how long can it take and what would it put on the defendant to prove their ability to be here under the affirmative defense?

MOODY: Well, I assume that if the individual can afford an attorney they can maybe work through and get them some information and hand that over to the state. Or if they have one appointed to them, maybe that process goes a little bit slower. So that information can find its way to the state at some point, but I don't know. How much time is acceptable to unlawfully detain someone who's here legally? Let's just ask ourselves that question.

[Pursuant to Rule 5, Section 28, of the House Rules, Representative A. Johnson requested an extension of speaking time on Amendment No. 3. The extension of speaking time was not granted by Record No. 14.]

SPILLER: Members, we covered this amendment. Chairman Moody brought it last time on the other bill. I know it's a new bill, but it's the same concept. I understand what he's trying to do here. I respect that. But we have improved the bill, and we have added some additional due process in the bill from previously. People have the right to a court-appointed attorney and some other things, and so I would respectfully oppose the amendment.

MOODY: Again, I appreciate Mr. Spiller. He was kind enough to have some conversations with me about this particular construct and the different ways that I'm trying to address it here. So I certainly appreciate that. Respectfully, the changes in the bill that have been added dealing with magistration or this kind of odd construct in which we're having federal immigration proceedings in a magistrate court at the state level don't really address the issue here. They don't really speak to the issue here. The issue here is whether we think it is okay and to what extent we think it's okay to detain and hold somebody who is lawfully present in the country. So going back to what Representative Johnson was asking me when I unfortunately ran out of time: How much time are we okay depriving people of their liberty when they have followed the rules? When they are lawfully present? An hour? Is that acceptable? Four hours? Twenty-four hours? Forty-eight hours? I would suggest to you that the individual who has followed the rules, who has been arrested, who has been jailed, they would say one minute of their liberty being taken when they have followed the rules is too much. Imagine that situation for you. Where you have not committed a crime, and you are then asked to have the burden of proving it up.

All this simply does is say that the state is in control of these situations. They're the ones making the arrests. They're the entities that are holding someone in their jail. And the prosecutor ultimately is the person that makes the charging decision. And we should feel very comfortable having them make a determination on the front end that says this person doesn't meet these categories. This person hasn't been given lawful presence. This person hasn't been granted asylum, and they're not here under DACA. That's it. That's all we're doing with this amendment. It just says make this decision up front. We have already arrested and jailed this person. Even with this amendment, this person who is

here lawfully has already been arrested and jailed. All I'm saying is, let's make this determination quickly. Let's put that burden on the state where it belongs, and then let people go forward with these cases. If they don't meet these categories, then they can go forward with whatever else is under the bill. But if they meet these, they shouldn't be in court. They shouldn't be in jail. They shouldn't be taking a court-appointed attorney. They shouldn't be using those resources that are finite anyway. So let's just be smart with the limited resources that we have. I heard people in the senate say let's not throw money at stuff, let's just not say we're writing checks. So let's be smart with the funds that we have. Our courts are overburdened as they are, and this is certainly a mechanism that allows for judicial economy. And that's all it does. You know the old saying that you can beat the rap, but you won't beat the ride? That's essentially what's going to happen here. This person's going to take a ride, but because they followed the rules, the prosecutor is going to see that at the front end. And they're going to be allowed to leave. That's fair. I don't think it's as fair as it should be, but it is fair given the constructs of this bill.

M. GONZÁLEZ: Thank you, Representative Moody. So just for the record, immigration law is very complex. Yes? No? You're a lawyer.

MOODY: It's so complex that I've not gotten into it in my legal career.

M. GONZÁLEZ: And because there are so many layers of complexity and it is a federal statute area of law—for Texas to now be trying to do our own thing, you're just trying to make it more clear, more understandable, more fair considering that we're entering a space that is complex and usually federally overseen. Is that correct?

MOODY: I don't think it's a mystery that I don't think we need to be wading into this area as a state. I think it's within the purview of the federal government solely. And if all we did was come forward with a state level crime, you probably wouldn't see me up here talking very much about it. I think it's bad policy, but you probably wouldn't see me arguing over these points. But if we're looking at this bill as it comes forward and how it interplays with federal law, it's incumbent upon us to make sure that those—whether I like the policy or not—that those policies make sense in our current jurisprudence. And housing these categories in defenses to prosecution tells people unequivocally that we don't care if you follow the rules. We don't care. We're going to arrest you. We're going to jail you, and then we're going to make you prove that somehow this doesn't apply to you. And we're going to put that burden on you. That is fundamentally unfair. I don't think someone should be arrested and jailed in the first place. But if we're going to go down that road, at least put the burden on the state at the front end to make this determination, which is not a complicated determination. It's pretty straightforward. It's pretty simple. And any case that fits in and, by the way, I don't think there's going to be a million cases that fit in this category that I'm talking about. It's going to be a handful of people that have followed the process, have gone through in the way that they're supposed to do. All I'm saying is let's not subject them to prosecution. Let's not subject them to an additional burden of proving themselves up again. I think that, philosophically, if we stand here and

say we want people to follow the rules and then have yet another way to attack them for following the rules, then we're just not creating sound jurisprudence. We're not creating good policy. We're creating a mess of a system that is going to ultimately, in my opinion, be tossed out in the courts.

M. GONZÁLEZ: I want to bring up a really good, important point about our hometown of El Paso. So someone could be playing by the rules in New Mexico—which is literally right there—and then the rules change when they come into Texas. This is why we have federal immigration laws, not state-by-state immigration laws. By not doing what you're saying, what you're proposing in your amendment, we are in essence—again already a complex area of law and making it more complex. Especially because of the fact that we border a state with different policies. We're creating this very, very different process and procedure.

MOODY: I think you raised the broader point of why we don't need to be wading into this as a state. Because you can't have a mishmash of these laws. But if you're going to, then you should at least make sure that the two marry each other well. And by placing an additional burden on someone whose been through the federal system, whose gone through that—and being granted asylum is not a small process. Being granted lawful presence is not a small process. As much as we may think we know about it, it's a long and cumbersome process. If someone has gone through that, then why, on the back end of that in Texas, should they then be burdened and saddled with the additional requirement of proving that up somehow? At the very least, your state prosecutor—if we're going to do this—your state prosecutor should look at these and say these don't apply, and I'm going to make sure they don't apply before I charge this person with a crime. It seems like a very basic tenant, at least in my practice as a prosecutor, that if I don't have the elements and don't think someone committed a crime, then I need to ferret that out at the front end. I don't need this case to linger on and wait for the defense attorney to bring me something or wait for the defendant to get court-appointed counsel to bring me something. It should be on my lap to make this determination. I'm the one charging them. I'm the one saying they broke the law, so I should say whether they're here lawfully or not based on the federal law that exists and that they follow the rules. And if they don't qualify, prosecution moves forward. Nothing in here stops that. All it says is that someone who's here legally can't be prosecuted, and that we're going to take care of that on the front end rather than the back end. I don't see—I honestly don't understand the objection to doing this. It does nothing to circumvent the purpose of the bill. All it does is create a system that makes sense, that is fair, is streamlined, and will be efficient in handling these cases.

[Pursuant to Rule 5, Section 28, of the House Rules, Representative M. González requested an extension of speaking time on Amendment No. 3. The extension of speaking time was not granted by Record No. 15.]

[Amendment No. 3 failed of adoption by Record No. 16.]

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

GARCIA: Federal law allows every migrant the right to apply for asylum, regardless of how they entered the country, within their first year of arrival. However, **SB 4** currently contains no protections for asylum seekers. It clearly conflicts with federal law by allowing migrants to be detained, prosecuted, and ordered to be removed from the country before they can ever voice a credible fear that they will be tortured, killed, and otherwise persecuted if returned to their country of origin.

This bill allows migrants to raise their status as an asylee or DACA recipient as an affirmative defense to prosecution. Given the significant departure from federal law that this bill proposes and the widespread impact it would have on asylum systems nationwide, it is essential that we add an additional affirmative defense that allows asylum seekers to raise a reasonable fear of bodily harm if they are forced to return to their countries of origin. And rest assured, these bodily harm fears are not just fears, but they're substantiated. I know this as a fact because I have been informed by firsthand accounts. As I've shared with the body on numerous occasions, I've had the opportunity to serve as a humanitarian, not only as a member of our military but also as a citizen of the United States and a citizen of Texas. See, a couple years ago, CNN put on our radar that there was this huge influx, this huge humanitarian crisis where they attempted to criminalize and show that the migrants who were coming to our borders were criminals, rapists, drug dealers, and all these other types of labels. But what I witnessed were women and children and young adults who were fleeing from places that were embroiled in conflict. And this is conflict that is so deep and so ingrained in their countries or their islands of origin that their only recourse is to flee. Now, let's think about that. Let's think about us living our lives. We raise our children, and we work so hard to become what we are when we grow up, only to be faced with a government or with terrorist organizations that disrupt our lives as we knew it.

I witnessed this firsthand when I had my tour in Africa. I went to Cameroon, and this was in the 2000s. Cameroon and the close-by Niger were at war. It was a civil war. A civil war where warring tribes were committing genocide. Now, this was in 2000, but this wasn't the only time that this has happened. This is something that has happened throughout our history on a regular basis, and it just so happens that the federal government sends us there to fight against these different types of injustices. Now, when we're in these other countries and we're trying so hard to lend humanitarian aid—and I was there under a medical purview—we would witness women and children who have been victimized to the levels that probably aren't appropriate to mention on this floor. But I'll give you a little bit of an idea of some of the things that they endured. Simply for having a different religion, women were raped systemically, and their children were beheaded in front of them. Let's think about that. What would you do? What would we do as parents if this was the fate that was left for our children? I'll tell you what we'd do. We'd run like hell. We'd run like hell. We'd run for our lives. And that's what I witnessed happening. But I didn't just witness that. Every member of this floor has witnessed an atrocity of this sort whether it be through

media, whether it be through the *Encyclopedia Britannica*. And for those millennials, that's kind of like websites and the Internet in book form. But these wars and these fights are still happening.

I want to put a human face to this. I want to tell you about 22-year-old Fabi. Fabi, I met her on the border on the Ciudad Acuña side of Mexico. Fabi was a young 22-year-old mother who gave birth while walking on foot from Chile, South America, to our Texican border—as I like to refer to it. Fabi walked in flip-flops from Chile to our Texican border as she gave birth to her infant child. Now, on that trip, she experienced torture: She experienced rape, she experienced robbery, she experienced being beaten, and when I asked her if she would do it again, she said, "In an instant." Because what happened was that she wasn't always by herself. She came with her brother. Her mother was left in Haiti, her country of origin—her country of origin that has no active government. Her country of origin that when her brother was deported to Port-au-Prince, Haiti, he was met with gang violence, and he was murdered upon entry.

I'm sad to tell you that I received pictures of bodies of our migrants who were taken and sent back to their countries of origin that had absolutely no support for them. We've witnessed the bodies. Again, for those who aren't listening, we witnessed bodies because when they're returned back to these countries they are murdered. They are killed. You want to talk about reasonable fear of bodily injury? Try getting a picture of your brother who was assassinated the minute he stepped off the plane. This is a true reality. This isn't a Lifetime movie. This isn't a Hollywood movie. This isn't a Netflix, made-for-TV series. These are facts. People are walking on foot thousands of miles through the Panamanian jungles to our Texican borders because their lives are worth it. Because they're terrified of what awaits them if they do nothing. And what awaits them is certain death. So let's think about that when we're talking about laws that are meant to deter legal or illegal immigration.

You want to deter illegal immigration? Well, you're fighting against death. So let me ask you: If your family's facing death, do you take your chances on somebody else's border or do you look the Grim Reaper in the face? There's not one person on this floor that wouldn't take their family and run for their lives.

[Pursuant to Rule 5, Section 28, of the House Rules, Representative Wu requested an extension of speaking time on Amendment No. 4. The extension of speaking time was not granted by Record No. 17.]

SPILLER: I appreciate the amendment. What it does is it adds an additional affirmative defense to the charge of illegal entry. I believe that we've got sufficient of those listed. And also, I want to say, you know, if someone wants to claim this—again, **SB 4** is not attempting to interfere in existing federal law. They can seek asylum. If they meet the criteria for it, they seek asylum. They can do it from whatever country that they're in. They don't have to be in the United States. They can do it on their phone on the CBP One app. All of those things are available to them. Or they can come through a legal port of entry, go through the process there in person. Whatever they want to do. Again, we're not trying to

minimize that, and we're not trying to say what's happening is not a serious problem in whatever their country of origin would be. But I am saying it doesn't need to be part of this bill.

The other thing is, if you were to adopt this, it essentially guts the bill. We're not able to do what we're attempting to do, which is secure our border from people coming in illegally, because I think we can all guess what percentage of the population would make this claim when they arrive in the United States. One hundred percent. Although I appreciate the concern—I appreciate the thought, and I appreciate what is trying to be done here—I can't accept this amendment.

WU: Representative Spiller, I think you've said before you're an attorney, right?

SPILLER: I am.

WU: But you're not an immigration attorney?

SPILLER: Well, I feel like one after I've been going through this the last month or so, but no, I'm not. That's not my typical practice.

WU: Well, that's perfect. So part of maybe your education today is from the USCIS, the federal agency that has purview over immigration. And the USCIS webpage says specifically in application of the Form I-589—which is the application for asylum—it specifically states you may only file this application if you are physically present in the United States and not a U.S. citizen. Did you know that?

SPILLER: I know that one provision does say that, but I do know that number one, the *Arizona v. United States* case reaffirms—in the main opinion—reaffirms that you don't have to be in the United States to claim it. And also we know as a matter of practice that the United States government is not doing that. They're allowing people on their phone, on their app, to apply for asylum, and they're in Mexico.

WU: I understand that's your impression of it, but the requirement to apply inside the United States is not one of the requirements, it is the requirement. In fact, the USCIS continues, "At this time, the option to file an online Form I-589 is only available for certain affirmative asylum applicants." You basically have to be preapproved to file outside of the United States. Did you know that?

SPILLER: I'm telling you that as a matter of practice that's not what is going on, and that is also not what is reiterated in the *Arizona* case. The other thing is this bill does not interfere in any respect with anyone wanting to claim asylum. Again, this bill is not anti-immigration, it's anti-illegal immigration. If someone wants to claim asylum, they have every right to that. We encourage them to do that. People are doing that every day, but it just needs to be done correctly. Moreover, it doesn't need to be an affirmative defense to criminal prosecution for breaking the law.

WU: Now, I understand that that's your feeling on what your interpretation of the *Arizona* case says. But are you saying right now that the USCIS—that their information that they put on their public website for the entire United States public to see—that is incorrect and your interpretation of *Arizona* is the correct version of the law?

SPILLER: I can read to you in *Arizona* where it says that you don't have to be in the United States if you'd like me to, but I don't know that you're going to like that answer.

WU: So you're saying that the USCIS immigration service has misinterpreted *Arizona*?

SPILLER: I'm not saying that. I don't know to what you're referring, so I can't comment on that. I'm just saying I know, number one, as a matter of fact, under the law—under *Arizona*—it provides for it and says that they can do that. And as a matter of clear practice, that is happening every single day and has been for a long time.

WU: And the USCIS has said based on the *Arizona* ruling that the vast majority of asylum seekers must be in the United States. Only certain people who have already received affirmative applications are allowed to apply online and outside the United States. Do you understand that?

SPILLER: I don't have any reason, as I stand here, to dispute what you're saying. I don't know. I don't have that in front of me. But I also know that that's not really relevant to the amendment. The amendment has to do with adding an affirmative defense to this, and what I'm saying is asylum is not actually even in this amendment. I'm telling you—to the extent that this deals with asylum, if that's what we're talking about, or to address the issue that's concerned by the amendment—people can claim asylum, and they have every right to do that.

WU: I absolutely understand that's your perception of your legislation. You said over and over again that it is not your intent to catch up people who are lawfully here, correct?

SPILLER: No, not at all.

WU: Okay, and it's not your intent to go after asylum seekers? It's not your intent to go after people who have a rightful appeals process?

SPILLER: Right. The bill does not address any of those. It doesn't encroach on any of those areas, it doesn't violate federal law. We're not usurping the authority from the federal government in **SB 4**. That is not at all what **SB 4** is about.

WU: By your answer, I take it that over and over you are saying it is not your intent to bring in people who should not be brought in. The intent of the amendment is to correct a shortcoming of the bill itself. Now, while you may say that your bill does not intend to do all this stuff and it is not the desire of it, your bill is a very widely worded bill. It is very broadly worded, and we're telling you repeatedly despite your objections, that the way that it is worded so broadly would encompass and would take up people who are here lawfully, people who are here legally, people who are in the asylum process, people who are asking for

asylum protection, people who are applying for their appeals, and people who are seeking other courses of interaction within the federal immigration system that may not comply with exactly what you put in this legislation. Do you understand that?

SPILLER: I understand that's what you're saying. I would say that there must be some misunderstanding about this bill, but that's perpetrated by people that are telling everyone that the bill does something that it doesn't. This bill is very specific. It's not general. It's very specific in its criminal application about the elements of the offense for illegal entry. That has absolutely nothing to do with people that are in our country and have been here for a long, long time whether they're citizens or noncitizens—has nothing to do with that. This bill is very specific about the criminal charge, and I would respectfully disagree with your characterization otherwise.

WU: I totally understand. Of course it is your perspective that it does not affect this, but you said at the beginning you are not an immigration attorney. As you answered questions throughout much of this debate, you said, "I don't know. I'm not familiar with it. I don't know what kind of visa you're talking about." When people bring up a certain type of visa, you say, "I don't really know it." You're asking us to take your word in your interpretation of what this law does and how it would affect immigration law. You're asking us just to take your word for it that nothing will happen to all these other people although the plain language of the text says that it could.

SPILLER: I'm not asking you to take my word on anything. I'm asking you to read the bill. And if you read the bill—

WU: I have read the bill.

SPILLER: It doesn't say anything about rounding people up illegally, show us your papers, or all the stuff that I've heard. It doesn't say that. It never has.

WU: And that is part of the problem. Many of the amendments here are adding in things—adding in protections for things you say you don't intend to do. For things that you said you don't intend to include, this amendment provides safety, provides protections to protect against the things that you say you don't want to do. And instead of taking those protections, instead of taking the protections many of the other amendments offered, you say, "It's not my intent, but we're just going to leave it vague." For example, you say that this bill does not conflict and this amendment will help alleviate issues between asylum seekers and the application of this law. Your law would go after individual people unless they could show where their legality was, what their immigration status is. And people who are applying for asylum have up to a year of being in this country to apply for asylum, and during that time, they would fall within your legislation.

[Pursuant to Rule 5, Section 28, of the House Rules, Representative Wu requested an extension of speaking time on Amendment No. 4. The extension of speaking time was not granted by Record No. 18.]

GARCIA: Members, we're witnessing an attempt to circumvent federal law. We're witnessing and hearing that individuals on the border are able to use their little app to file for asylum. How privileged is it of us to think that young Fabi, 22 years old, who left Haiti to avoid being murdered has a cell phone? How privileged are we to believe that every migrant that's fighting for their lives has the ability to communicate through an app? How privileged are we to say that everybody who is illegally entering our country will claim this faux-asylum? What we're witnessing is the circumvention of a federal process.

One thing I'd like to share with you—you know, I'm not an attorney. I'm a dental technician and a dental hygienist by trade. But what I do know is that app that our migrants over the border are using—number one, it's not reliable. Number two, it takes months—months—for that app to even get them a place in the line to file for asylum. I want to ask you, especially those of you who are border residents, what do you think cartels are doing with these groups of migrants that are waiting and hoping to breathe air and to live their lives in freedom? What do you think is happening to them? Well, I'll tell you. They're being kidnapped. They're being raped. They're being murdered. They're being harmed. Their children are being raped. Their children are being kidnapped and put into sex trafficking. They're being turned into sex slaves, and we're facilitating it. We're facilitating it because we're not allowing them to apply for asylum because "everybody would apply for asylum." That is a right. It is a federal right, and we're denying that right.

I ask for you to accept this amendment because what we can't do is go against the system that is in place. That system allows for migrants to file for asylum, and as you heard Representative Wu state, that to reach the United States of America is one of the prerequisites in being able to file for asylum. With that, I ask that you vote yes for this amendment.

[Amendment No. 4 failed of adoption by Record No. 19.]

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

A. JOHNSON: This amendment deals with those individuals who are in the process of seeking an application for a U visa or a T visa. So let me explain. You just heard the amendment, which deals with those who are at risk of being trafficked in a foreign nation and are seeking some form of asylum in the United States. This amendment is very similar to the discussion that we had about a week ago, where we are talking about not deporting and getting rid of our witnesses in serious offenses.

A T visa is for trafficking. So T for trafficking—for those that are abused sexually or those that are forced into labor. That's the application for a T visa. A U visa is any violent offense in the United States. So unlike the last amendment, this is not an allegation of a crime that is occurring somewhere else. This about the ability to prosecute who is committing a crime in the United States. Under a U visa—these are the types of crimes that we need this person who was either the victim of the crime or a witness to the crime. The requirements for the U visa is that the crime has occurred in or violated our U.S. laws; that this individual has

specific, credible, and reliable information; and that this person was, is, or is likely to be part of the certifying agency in the detection, investigation, prosecution, conviction, and sentencing of the qualifying crime.

So what kinds of crimes are we talking about prosecuting that we want to keep the person here for purposes of prosecution? Abduction, extortion, female genital mutilation. For some of you, this is a big issue politically about gender mutilation. We are saying that under a U visa if somebody is the victim of, or has information about somebody that is committing female genital mutilation, that you want to be able to prosecute those people and need them to stay in the country for that purpose. Incest, kidnapping, manslaughter, murder, sexual assault, and trafficking—these are the kinds of offenses that we are asking that you not deport the potential witness or the victim who can testify against the person who is committing these serious offenses in the United States.

The reason that we need this amendment that says a person who is pending an application—because this doesn't happen overnight. It happens in conjunction with local law enforcement, with federal officials, and requires oftentimes the offense report from that person who is engaged. I have gotten to witness this firsthand. It is not something that anybody takes lightly. In fact, in my experience, it is really hard for people to get a U or T visa, and it takes a significant amount of time. It requires, just as mentioned, the credibility that they are a witness who is participating with our law enforcement in prosecuting a local perpetrator. So again, this amendment just clarifies we don't want you to commit violent offenses or sexual trafficking against people who may not be a citizen because it's a win-win. It's a get-out-of-jail-free card if the State of Texas purposely attempts to deport that individual without allowing them to go through the process to participate in lawful prosecution.

GÁMEZ: Thank you for your amendment. Again, I hate to beat a dead horse here, but we've heard an awful lot of discussion from the floor and the bill author that the intent of this legislation is not to interfere with and/or supersede the current federal immigration law. Is that correct?

A. JOHNSON: That's what we've heard.

GÁMEZ: And absent your amendment, is it your opinion that that is exactly what state law enforcement officers can do?

A. JOHNSON: Yes. It would not only offend and contradict established federal laws with regard to immigration, but specifically with regard to—if we don't take this amendment—the T visa and the U visa which is an absolute necessity, collaboration between both federal and local entities to be able to engage in prosecution of offenders of people that are committing crimes in the United States. Whether that's Texas, Kansas, Oklahoma—whatever it is—this would offend that T and U process that's the national standard.

GÁMEZ: So currently right now, it's my understanding that, for example, Border Patrol or ICE agency agents are all extensively trained in being able to navigate this very sensitive issue of perhaps an outcry of necessitating a U visa or the facts that necessitate a T visa. What training, if any, do you know does this bill provide

for any of the law enforcement officers that are now going to be granted this carte blanche authority to stop and detain someone for allegedly being an alien that will be in parity with the training that our federal agencies have to detect these issues?

A. JOHNSON: I'm not aware of any in the legislation. It contradicts and offends the entire sweeping movement of public policy that we've had over the last decade with regard to trafficking issues. And it also effectively says that under this bill, this entity and this individual have the unfettered power to override not only the State of Texas' interests within other conflicting areas of the penal code, but federal requirements that not only would affect national and federal laws, but think about how this would affect another state. Let's say that somebody raped somebody in Oklahoma, and that individual happens to be in Texas, and Texas says, "Well, I'm going to deport them." That would again violate it. This is somebody who is a witness to a crime in Oklahoma that is going through the proper federal process of a U visa. Then Texas, again, would be offending not only federal, but other states' ability to have their own sovereign immunity to protect against crime.

GÁMEZ: I completely agree with you. Now, moving one step further in this process. In this law that I'm assuming this body is going to pass here today, we understand that federal immigration judges—so law enforcement at the federal level—are trained to detect these fact scenarios. These fact scenarios are then relayed to an immigration judge, and the immigration judge at that point makes the determination on whether or not the facts qualify. Under this bill, absent your amendment, what training or discretion does the magistrate have here at the county level to comply with this law?

A. JOHNSON: I don't see any. And again, just as you say, it takes changing in this law and putting an unprepared, unqualified entity of individuals in an agency to make a determination that completely offends the already established processes under our federal and local governments to establish U and T visas for purposes of prosecuting violent offenders who have committed crimes in this state, any other state, or the United States of America.

GÁMEZ: Again, I want to thank you. I agree that whether or not it's the intent of the legislator in this instance, it most certainly has the effect of allowing magistrate judges to override and completely ignore and contradict the federal due process provisions provided to these victims of crimes and/or trafficked individuals.

A. JOHNSON: And let's just clarify what this is going to look like. Let's say that there is an 18-wheeler truck that is being brought in on a smuggling operation, and women are raped in that truck, right? That would be either potentially trafficking or at the very least sexual assault, of which what we would want is upon finding them, having them evaluated, and determining who the perpetrator is—we have all of these protections in our Constitution to allow for the person who is accused to then go to court. Maybe they get a bond, maybe they don't get a bond. They're entitled to discovery, and at some point we've got to go to trial.

That doesn't happen overnight. That can happen in 90 days, six months, or two years, and the whole goal of the U visa and the T visa is to stabilize the victim and the witnesses so that by the time that perpetrator's case comes to court, we have a live witness to testify. We are talking about human being offenses—violent offenses occurring against an individual. This is not a drug case where you can put a drug in a locker and you're guaranteed that it's going to show up to testify in the state's case. These are all cases that involve a person as the victim, and that's why you need either that person who is the direct victim of the crime or a witness to the murder that's able to show up.

And this just ensures—I mean this an amendment that just says somebody is properly going through the application process. And again, they don't take it lightly. You can't just call up and say, "Hey, I was a victim of a crime." The analysis, in my experience, that the federal government goes through to validate that this person not only is legitimately a victim of crime, but there's that key phrase: They are participating in the prosecution. If you just show up and make an offense report and then you bail and say, "I'm not showing up for court," that doesn't do it. This provision of a U visa requires that this is somebody who has participated with law enforcement from the beginning to the end of the process to get the perpetrator. So when we think about that idea of could somebody just cry foul or cry something happened, no. A U visa or a T visa is somebody that is being validated to continue to participate in the prosecution. This is not going to be some get-out-of-jail-free card. This is a unique provision in the U visa and T visa provision that says they're in for the long haul with local and federal law enforcement to prosecute the bad guys.

[Pursuant to Rule 5, Section 28, of the House Rules, Representative Gámez requested an extension of speaking time on Amendment No. 5. The extension of speaking time was not granted by Record No. 20.]

SPILLER: Members, I want to say first of all I think this is a very well-thought-out amendment. I appreciate very much what we're trying to do here. My concerns are really twofold. I'll be honest. I mean, my concerns are twofold. Number one is that what we're trying to do is prevent illegal entry into our state through places other than legal ports of entry. This bill—I mean, this amendment rather—does not do anything to address that. It's an affirmative defense—a potential affirmative defense that would be added to the offense of illegal entry. Number one, I don't know that that addresses the overall concern of illegal entry. We're talking about what are we doing with people that would apply that came across illegally, and how do we handle that. I appreciate that very much. I'm concerned with, first of all, the idea that I'm assuming they can apply and that they could do this from where they are now. They can come through legally, they can go through that process if they want to do it. I'm also concerned with the language of the amendment itself because, the way I read it, it talks about that the defendant has a pending application, and it doesn't say that they had that pending application at the time of commission of the offense. It says as an affirmative defense that they have a pending application. That could be done once they get here, and my concern is, in all fairness, not that we're providing a safeguard—my concern is that we're creating a loophole. That is my concern

because, the way I read that, they could make that application when they get here. And I'm not saying it's not warranted. I'm not saying that they're not entitled to it, I'm not saying that it couldn't be processed and all that. But I am saying it creates a potential loophole that could be abused. What we're trying to do here with **SB 4** is to stop and prevent illegal entry. Anyway, that's my position.

A. JOHNSON: Vice-chair Spiller, I appreciate very much you visiting with me about this earlier. I do want to take each one of these kinds of concerns as we talk about the amendment. One, what is the mens rea for the offense on this bill? Just to start with as a foundation for your bill? Because I may have read over it and I may have missed it, but I'm trying to clarify. What is the mens rea for the offense for the potential persons being deported?

SPILLER: I think it's a strict liability for someone coming in. They don't have to be intentionally—I don't know how you cross a border unintentionally but intentionally, knowingly, recklessly, or with criminal negligence. It's none of those.

A. JOHNSON: Okay, so if it is strict liability and we play this out—let's say that somebody is kidnapped on the other side in Juárez, and then they are brought into the United States, and they are continued to be kidnapped through the United States. Then, under your mens rea of strict liability, that individual would be in violation of your provision of **SB 4**, correct?

SPILLER: Well, they wouldn't be under attempt to enter because if they didn't attempt to enter—they were taken here.

A. JOHNSON: They entered.

SPILLER: Right. You're saying on the first—not attempt to enter, but actually enter.

A. JOHNSON: They crossed the border. They crossed the border illegally, and they did it because they were kidnapped or trafficked. Again, you're not asking the question: did somebody intentionally or knowingly or recklessly enter? As you said, this is strict liability. The body came over the border. They're now in violation of **SB 4**.

SPILLER: Right, and I don't necessarily disagree that that is strictly the way that the statute reads. You know, you've prosecuted cases. I don't know what prosecutor would want to take that case and say, "Hey, we're going to prosecute these folks and either put them in jail or whatever, when they were actually the victim of kidnap."

A. JOHNSON: But that's the point. I wouldn't want to prosecute the person that was bound up and put in the back of the truck and brought over because the perpetrator had the intent of trafficking them. I would want to prosecute the person that bound them up. You know what a guerilla pimp is. A guerilla pimp is somebody that takes you by force, throws you in a vehicle. And this stuff happens. I have seen it on cases where we've had undercover officers where they've tried to do it to the officer. It is real. So a guerilla pimp binds you up, takes you, throws you in the truck, and wants to drive you to Houston with the

intent that they're going to sell you on the track. I wouldn't want to prosecute the person that was bound and drugged and dragged, but under your bill, the officer that shows up would have to say, "Hey, you're not a citizen. You didn't cross at a legal point of entry, you've got to go." And that's why this amendment would say, no, they are potentially a victim of a U visa having been kidnapped or sexually assaulted, or even potentially a T visa. But those visas are not automatic. So I'm with you if you want to change the issue of pending and have something about pending and ongoing, but I can't get that authorization overnight to have that witness remain as witness against the perpetrator.

SPILLER: Right, and I would agree with you. If someone kidnaps, someone bounds them, or any of those things, yes, that's the main perpetrator. Those are the bad guys. Those are the folks that we want to go after. I would submit to you, no, that's not the subject of my bill, but there are countless other bills that we have in our state pending right now in the Texas Penal Code that would prevent that, and hopefully we could prosecute that if we could prove it.

A. JOHNSON: No, that won't prevent the deportation of the witness. That's my whole key. This was my same key last week. I'm asking you not to deport the witness. I get that there are plenty of offenses to go after the perpetrator, but if I don't have a live witness to show up and testify against that individual, it is an absolute get-out-of-jail-free card.

SPILLER: Right, and I've said before—maybe I haven't said it in the last two weeks here, but I'll say it today. Certainly, law enforcement has the ability to ascertain how they want to handle a particular situation. We know that there are situations where there are victims, there are children, there are women that have things that have happened, and that those people are currently processed. They're turned over to Border Patrol now, and they're processed through the due course of the federal system. Law enforcement still has the ability to do that in each one of those circumstances. This is not taking anything away from that. You're assuming—and I understand—but you're assuming that if someone is bound and kidnapped and brought over here, that they're somehow going to be prosecuted. I'm telling you, I would give credit to law enforcement to say that they've got the good judgment to decide who's prosecuted and who's not, and who's arrested and who's not.

A. JOHNSON: They don't. I didn't get to ask you about this a couple of weeks ago, but they don't have the good judgment. We just passed a bill that says that DAs can't say I'm not going to prosecute a certain crime, and now you're saying that some police officers can make the determination—I'm going to take this person in and deport them or I'm not. How do we make that determination? What is in your bill that gives instruction to La Porte ISD PD versus federal task force on child trafficking? What gives them the direction to say, if it's a 14-year-old that was raped in the back of the truck driven over a border, then don't apply this law. But if it's a 14-year-old whose jeans were too tight or was wearing a crop top and looked like she was into it, then do? Do you see how I'm showing the absurd nature of claiming that one law enforcement individual over another can make a determination in violation of the plain meaning of your strict liability statute?

SPILLER: Let me back up a second because I may have misspoken some. Yes, if someone doesn't meet the requirements of intentionally, knowingly, recklessly, or with criminal negligence. But Section 6.02 of the Penal Code provides that if there is no mens rea or nothing prescribed, that you use the standard of recklessness.

A. JOHNSON: Wait, because I don't want to put the wrong thing in the record because I think this is important. There is mens rea, but then there's still strict liability. So for example on trafficking of a child, you don't have to know that they're under the age of 18; it's a strict liability statute. And so here, when you say there's mens rea—there's always mens rea, but the mens rea would be, from my reading of yours, the body went from one point of the border to the other side of the border and didn't go through a legal point of entry.

SPILLER: Right.

A. JOHNSON: Is that accurate or not accurate because I do think that's a very important point.

SPILLER: What I'm saying is I think under the scenario that you've previously described—while I was thinking that it was strict liability, what I'm saying is upon further reflection that there would be a certain element of recklessness, and the victim—the person that is kidnapped, that is brought over, that you just gave the example of—would not have acted recklessly. There's nothing that that person did, so therefore, they would be exempt from prosecution based on your example.

A. JOHNSON: You've got to show me where that is before we get lost on this point because he's about to bang that gavel.

SPILLER: It's 6.02(c) of the Penal Code.

A. JOHNSON: But that's mens rea on the Penal Code. Where does that apply in here?

[Pursuant to Rule 5, Section 28, of the House Rules, Representative A. Johnson requested an extension of speaking time on Amendment No. 5. The extension of speaking time was not granted by Record No. 21.]

A. JOHNSON: Members, I'm confused as all get out, and that's part of the problem. I understand when he says there's a mens rea element in the penal code, but it's not in this law. It's not in this provision. So when, respectfully, Mr. Spiller says, "Hey, if that scenario shows up where it's a 14-year-old that was guerilla pimped in Juárez, put in the back of a truck, raped, and driven to Houston to be sold on the track, well, an officer can just make a different determination or not, I don't see that." One, how do you figure that out? Who do you trust, and where are we supposed to be in the law? Like I said, we've just said DAs don't get to make that call and say, "I want to prosecute some, and I don't want to prosecute others." We look at the plain language. We look at the black and white text, the words that are on the page and in here, 6.02 is not referenced anywhere in this bill. It basically says if your body crosses—and that's part of the challenge. In what way? There's no ability to look at the gray or the victim population that we

all know we need a T visa and U visa for. Instead, the great State of Texas is just going to say if you're not a citizen and you're a victim of a violent crime, whether it's sexual assault, trafficking, kidnapping, murder, or manslaughter, we're going to deport you. This is the most illogical thing for public policy, for prosecution, and for law enforcement. I just can't get my head around why we won't just take the amendment and say, "Sure, if you're a victim of a crime and you're cooperating with law enforcement to go after the perpetrator that's committed violent offenses in the United States, we would like to get that person off the street and in prison in the State of Texas and not deport our witness who can make that happen."

GÁMEZ: I know we were trying to get to this earlier with the bill author, but I think what you're referring to is Section 51.02(a) of the bill, which specifically states, "A person who is an alien"—and mind you, that's an undefined term in this section at least—"commits an offense if the person enters or attempts to enter this state directly."

A. JOHNSON: Correct.

GÁMEZ: Under that language where is the alliteration of intent?

A. JOHNSON: The standard thing you and I would look for, in either prosecution or defense, is if anybody here gets arrested for a DWI, it's going to ask, "Did you intentionally and knowingly operate a motor vehicle while under the influence or loss of normal use of your mental or physical faculties?" Intentionally or knowingly. That's not in here. And because that's not in here, it means it's strict liability. It means you entered. It doesn't say you entered sober, you entered voluntarily, or involuntarily. And that's the point of the amendment. The amendment catches up those individuals who may have entered, and in the course of it—because we talk about it all the time. If there's an 18-wheeler that gets picked up and there's a bailout, everybody tweets real quick about how you care about the border and human trafficking, and I'm just saying, "Hey, follow that through." Because now you're going to have to say, "I care about it, but by the way, immediately deport those witnesses so we can't prosecute the people who did it." I mean this is literally absurd. It's an absurd result.

GÁMEZ: Representative Johnson, I completely agree with you. I want to just go on a little bit further to the point that you made earlier, which was in light of the most recent legislation that this body has passed. What discretion does the district attorney have to now make this perhaps compassionate or intelligible option to not prosecute?

A. JOHNSON: Again, it's not just the DA. It's not the officer on the side of the road. Look, I voted with the majority on that DA bill. I took the vote with you because people if we say, "Hey, this is the law," people ought to follow it. I don't think you should have one county versus another county saying, "If you drive in here, we don't care about weed, if you drive over there, we don't care about that." If we pass a law that's a criminal violation, then everybody should follow it. That's what keeps driving me crazy. When I hear as a response to, "Hey, maybe we haven't quite baked this out or figured this out," that we're going to trust

individual law enforcement officers to make the judgment call on the ground that we can't make in here. If you can't vote for this, what makes you think some officer on the side of the road is going to get the complexities?

GÁMEZ: I know that at least you and I have squabbled with indictments being overly vague, with laws being unconstitutionally applied. It is my belief, and I hope you agree with me, that absent this clarifying amendment, indictments of this nature with fact patterns of this scenario would be subject to a constitutional as-applied challenge. Would you not agree?

A. JOHNSON: Yes. And not just in those circumstances where you have a case, but we're talking about the population of people that may be deported without due process in violation with the fact that there are federal laws. Not just for the federal government but for the other 49 states that want to convict their perpetrators in their state to keep witnesses here. So it really is—if we pass this without the amendment—acknowledging the realities, the existence, and the necessity for U visas and T visas. U visas and T visas aren't just a Texas thing, they're not just a federal thing. They are an Oklahoma thing, they're an Alabama thing, they're a Georgia thing. These are provisions of the federal government that protect the prosecution of offenders in 49 other states. So by not accepting this amendment, you're also telling those people, "Eh, we don't really care about your prosecution system locally because we've got an officer that may or may not make the right call." We can't even have the debate here to figure out what it is. If we can't get this down on paper now, what makes you think law enforcement—and a variety of law enforcement—are going to get it on scenes at 2 a.m. or 3 a.m. and not screw this up?

GÁMEZ: Thank you. And Representative Johnson, you've made several good fact pattern representations that perhaps individuals are—and this happens often in our county—trafficked on 18-wheelers. The way I read this section, and I'm just asking if you agree with me or not, is if a person enters or attempts to enter this state directly from a foreign nation at any location other than at a lawful point of entry.

A. JOHNSON: Correct.

GÁMEZ: Under that reading of the bill, would an individual who is trafficked or who unlawfully crosses at a point of entry—would they be exempt from this law the way it's written?

A. JOHNSON: Yes. So let's take this example of a U visa—abduction. If somebody is abducted and they are brought across the border, not at a legal point of entry, then potentially they are both the victim and the offender of this law. And so in that circumstance, you need to figure out which do you want to apply? That's what leads to an absurd result in the law. When you have an individual under a fact pattern where on one hand, we could say they are the victim of a crime of which we want to prosecute, but then on the other hand, say the exact same conduct results in their deportation. So extortion, false imprisonment, kidnapping, hostage. I mean, literally, the U visa spells out all of these scenarios: Somebody who is being tortured; somebody who is a slave; slave-trade stalking;

peonage, somebody that is in indentured servitude to somebody. In any of these categories, you can envision that any of these people that are brought over—I mean we're talking about domestic labor, we're talking about sexual labor, or we're talking about just straight up what we call serious offenses under a U visa. The fact pattern that leads to the necessity of the U visa would, in effect, also lead to the potential violation of **SB 4**, and that's what makes it absurd.

GÁMEZ: After your clarifying amendment here, which I believe is absolutely necessary for due process, what jury charge, if any, does this bill provide to ensure that—

A. JOHNSON: You never get there. You never even get to the idea of having a jury charge because you never get to the due process of getting to a jury. You get to this original determination where a magistrate or somebody may kick you. And when they kick you and you get deported, I don't see any mechanism in here of which you can say, "Hey, I want a jury trial for the jury to determine if the 14-year-old little girl that was gorilla pimped, gang raped, and brought over in the back of an 18-wheeler from Juárez into El Paso gets an opportunity to have El Paso prosecutors prosecute the offender." Right? I don't see in here where there is an appropriate mechanism other than the amendment, which again would say somebody is pending a proper application to do this. That's got to give validation that they're actually going through the process and continuing to cooperate with law enforcement. Other than that, you get the wrong officer, and they kick the witness out. And look, organized crime is organized crime. There's a reason we have a Public Integrity Unit, because sometimes there are bad police officers. If you just say, "Hey, we'll get the right cop"? What if you get the wrong cop? What if you get the wrong cop that's on the take for the cartel and says, "No, we're deporting this one back; that's too good of a case. That's too good of a witness; I'm going to ship that one out"? None of these safeguards are in here for either what's happening overseas or, more importantly, this is dealing with crimes that occur in the United States. Whether they start somewhere else and come over, it's in the United States.

[Pursuant to Rule 5, Section 28, of the House Rules, Representative Gámez requested an extension of speaking time on Amendment No. 5. The extension of speaking time was not granted by Record No. 22.]

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

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

REPRESENTATIVE MORALES SHAW: Members, this amendment is about how this bill would regard minors, which is a huge concern. So we don't know why minors come to this country, leave their homeland, and end up coming to our borders. But what we do know is that our local resources and authorities are not trained or equipped, nor is there the funding to be able to deal with these immigrant children. It's fundamentally harmful to blanketly criminalize kids, and frankly, our jails don't have the capacity. This bill purports to be modeled after an

8 U.S.C section and how it defines aliens therein. However, when you're looking at the federal code, it has multiple steps later about dealing with minor immigrants, whereas this bill does not.

For example, CBP and ORR—the Office of Refugee Resettlement—both of those are agencies and groups—professionals—that are equipped, that have training, that have facilities, and that have funding to be able to properly handle immigrant children, whether accompanied or unaccompanied. Starting with, for example, something as simple as determining their age. Because although you and I take that for granted—we have IDs, our kids go to school, and there's all kinds of documentation about how to understand their age—immigrant children may not have those types of things. So at a very basic level, just having the expertise and the tools to be able to determine a minor's age is something that these entities are equipped to do. Local officials, again, have zero capacity to deal with this and things like special needs of minor children and special medical services. Again, CBP and ORR are equipped to do this. I speak for many Texans when I say I don't want to be a Texas that blanketly hangs a criminal tag on children's necks. And that's what **SB 4** written the way it is would do. So this amendment makes an exception for children.

SPILLER: I was handed the wrong amendment. I thought, what in the world does this have to do with this bill? But now I have the correct one. And let me say this looks like that what we're trying to do is add an exception if the actor is 17 years of age or younger at the time of the offense. Well, I think what my bill does is just provide as it normally would under penal code provisions, and the age there is 17 or above. Seventeen or younger, I mean. Obviously, anyone under 17 would not normally be prosecuted absent some other extenuating circumstances, and so I'm just saying that I think we need to not tinker with the framework of the other applicable laws, deal with age and the applicability of that to criminal offenses in our current penal code. This bill doesn't attempt to do that. It doesn't deal with that in any respect, and so I understand we're not trying to prosecute or go after children. That's not the purpose of **SB 4**, but, again, juveniles and others would be handled under the existing law. That is not changed in any respect, so I would respectfully oppose the amendment.

M. GONZÁLEZ: Representative Spiller, I've heard you say this a lot: "It's not the intent of the bill." But if it's not the intent of the bill, shouldn't we just accept the amendment to ensure that we are not arresting children?

SPILLER: I get it. But there's no breakdown or different treatment for children under this bill. It is a criminal proceeding under illegal entry as a criminal charge applicable the same way as it would be to any adult under the State of Texas. It doesn't deal with children. It doesn't mention children. It isn't a separate statute dealing with children. It isn't a separate standard dealing with children. Children are—it's inapplicable to a group here that is the subject of this amendment.

M. GONZÁLEZ: I hear what you're saying, but again, because it's just a blanket law, and thus young people could be impacted by this blanket law and there could be unintended harms. Making sure that we are not prosecuting children who really didn't have much decision in where they are is really important. So I'm

guessing if you say that's not the intent and you're saying that's not—well not even. You're not saying it's not possible you're saying that's not the intent. It's not the intent. Accepting her amendment just protects children, especially in a moment in time when we know TJJD is at capacity, when we know that our counties are at capacity with youth—our foster care system. So making sure we're not hurting young people is the more compassionate, the more commonsense and, I would say, the better, policy approach.

SPILLER: Right, and from what I've communicated and heard from DPS, they are dealing with a number of issues with children—unaccompanied minors and things of that nature—and they have to deal with that situation how they're going to handle it. And certainly here, you know, I don't know of any instance really where we're prosecuting children. That's not created under my bill. It's not addressed in the bill because, in my view, it doesn't need to be addressed. That's general law anyway. I'm not saying that if a child, as that term is defined—not as it's defined here—but if a child has committed delinquent conduct or conduct in need of supervision on the provision of the Juvenile Justice Code as contained in the Texas Family Code, then that's a different matter. But here, that's not pertaining to this bill. And not only that, but actually the age as I understand it would be 17 and above. What this amendment is talking about is if an actor is 17 years or younger. So I'm just saying it's really not relevant to the criminal charge of what we have. I understand what you're trying to protect. We've already talked about children today. I know we certainly want to protect children, but my bill doesn't harm children.

M. GONZÁLEZ: Representative Spiller, I just have one last question. There's a lot of people who do have questions because the children aspect is really important to make sure that this is a very real thing that could potentially negatively impact kids. But how do children have an intent to enter?

SPILLER: I think first of all, if children are involved, then law enforcement is going to have to make a decision. They've already testified in State Affairs. Director McCraw has talked about—look we try not to, we don't generally separate children from parents, especially children from one parent. He made a distinction if there are two parents and so forth. We don't want to separate children, but the children have not committed any criminal act. They have not committed any criminal offense.

M. GONZÁLEZ: I guess my question is, if you're saying this, why not just add the amendment?

SPILLER: Right. The short answer is I don't think it's necessary because as I say this bill does not address anything with children. Children are not included in this bill, and it's not really germane to the bill.

M. GONZÁLEZ: I will say this, I feel that the bill does apply to children. And that's where my concern and I think other people's concern is. But that being said, I know people have other questions, so thank you, Mr. Spiller, for answering my question.

MORALES SHAW: Representative Spiller, I know you're saying that the bill isn't intended to affect minors, but they will be caught in this net because there is no exclusion for them. You've mentioned before that you're unwilling to make that because you think it's not necessary. Would you be open to adding an affirmative defense? So that if a child under the age of 17 gets caught in this net in which you said this bill is not intended to catch them, they will have an affirmative defense and they will be able to bypass the judicial system so that they are not criminalized inadvertently? As you say, this bill is designed not to criminalize them.

SPILLER: Well, respectfully, no. But the reason I say no is because a person that's 17 or older is subject to, generally—is subject to the criminal laws of the State of Texas. People—children—under 17 are not, generally, unless you fall within a strange category and are classified otherwise. So here, they would not be prosecuted. I understand that what happens here is affected by children. But the amendment talks about the application of the offense. The offense is not going to be applied to persons under 17 that I can foresee. It does apply to them if and to the extent that they are with an adult, whether it be their parent or whether it not be their parent. Just like the situation we had last week where you had adults and children, and the adults were not the children's parents. So things happen, and I understand that. But children are not going to be prosecuted under this offense.

MORALES SHAW: Okay. I think you're being very clear that this bill will not prosecute any immigrants under the age of 18—oh 17.

SPILLER: Right.

ZWIENER: Representative Spiller, I'm looking at the Family Code, Section 5103, Delinquent Conduct. And what I'm reading is that it's conduct other than a traffic offense that violates a penal law of the state or of the United States punishable by imprisonment or by confinement in jail. That's part of the definition of delinquent conduct.

SPILLER: That's my understanding, generally, of the definition of delinquent conduct as opposed to conduct in need of supervision.

ZWIENER: So you would agree that your legislation is creating new statutes in the penal code that are punishable by a term in jail and are not traffic offenses? Correct?

SPILLER: As you know, juvenile laws and so forth are not really—juveniles, generally, are not technically charged, in my understanding, with a criminal offense. They're charged under juvenile justice provisions under having committed delinquent conduct or conduct in need of supervision, which could be classified as an offense were they adults.

ZWIENER: So juveniles aged 10 to 17 absolutely could be prosecuted by local district attorneys under your law. Correct?

SPILLER: I don't know what you're asking me. Basically, if they were adults, but they're not. If they were adults, they have committed a criminal offense, and if they're a minor, as a child coming across, presumably with their parents or with

someone that's not their parents—you know they're not the age of majority where they can consent to certain actions that are done. I can't imagine a situation where we're actually prosecuting—

ZWIENER: So if you can't imagine it—

[Pursuant to Rule 5, Section 28, of the House Rules, Representative Zwiener requested an extension of speaking time on Amendment No. 6. The extension of speaking time was not granted by Record No. 24.]

MORALES SHAW: I do not agree with the author of this bill, Representative Spiller, that children will not be caught in this net from this bill. This is a safeguard to make sure that they will not be criminalized unintentionally. I do agree with the author of this bill that we should not be tinkering with federal law that is equipped to deal with immigrants and especially immigrant minors.

ZWIENER: Representative Morales Shaw, I feel like this got a little muddled while we were talking with the bill's author. I want to be absolutely clear. As this legislation is written right now, the offenses of illegal entry and illegal reentry could be used as a basis for juvenile delinquency and prosecuting minors. Correct?

MORALES SHAW: I'm a 21-year lawyer, my understanding from reading the plain language of the bill, especially because it cites 8 U.S.C. which resorts to that because of its definition of alien includes all people including minors.

ZWIENER: Representative Morales Shaw, I know the bill author said he didn't think this was his intent. He said that he did not believe DPS would pursue prosecuting minors. But the implications of this bill and its enforcement are not limited to DPS. Correct?

MORALES SHAW: Correct. The way it's written, on its face value, does not have any exception for minors, which is what my amendment would do. It would protect minors from being recklessly criminalized.

ZWIENER: So right now, we would hope that prosecutors using their discretion would generally not prosecute minors. But any prosecutor in the State of Texas could choose to prosecute an 11-year-old under this bill as written without your amendment. Correct?

MORALES SHAW: You and I both know that judges, magistrates, attorneys, prosecutors, DAs, and county attorneys follow the letter of the law, or that's what they're supposed to do. If they're following the letter of this law, they will incriminate minors.

ZWIENER: So you have a very clear option if we do not want to put 10 and 11-year-olds in jail for crimes which they really can't have intent behind. We should accept your amendment, correct?

MORALES SHAW: Absolutely.

ZWIENER: Thank you for this excellent amendment, Representative Morales Shaw.

NEAVE CRIADO: Representative Morales Shaw, thank you for your amendment. If the author just said that supposedly the children are not supposed to be included, then why else then would we include, on page 1, language to specifically exclude a public or private primary or secondary school for educational purposes if we weren't worried that minor children would be arrested under this bill?

MORALES SHAW: Exactly. There are other indicators besides that in the bill as well, like the affirmative defense of DACA which I appreciate the author adding that in. But there are a few different places in this bill that make us believe that minors were considered and their incrimination was considered.

NEAVE CRIADO: Thank you.

MORALES SHAW: But not excluded.

[Amendment No. 6 failed of adoption by Record No. 25.]

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

A. JOHNSON: Mr. Speaker and members, what this amendment does is it changes the punishment range from a third degree felony on page 6, line 10, to a state jail felony. I would ask that there are two considerations for why we may want to do this. One, you heard the scenario earlier about the strict liability nature of somebody that is across the border or brought across the border. That strict liability statute gives you little to no ability to make a determination as to the gray between victim and offender. So a state jail felony acknowledges a six-month to two-year period in prison for this act of coming across the border. Obviously, if you are a perpetrator and you are committing other offenses in conjunction with that, then you will also be prosecuted with those other offenses. And so in this respect, lowering this punishment range protects the potential individual who can be seen as both victim and offender because that may be the only violation that they have, which is the strict liability offense of coming across the border.

The second question that you get to ask is how much do you want to spend on this? Because we've already heard many times over that this is a federal provision. This is normally something that is prosecuted by the feds, and that means the feds foot the bill. We are now taking this on and saying, "Hey, let's go for it." So what do you want to pay for? Do you want to pay for somebody to be here as a consequence of six months to two years before they're deported? Or do you want to pay for them to be here for two to 10 years? So in that respect, the punishment is the same. You're getting deported. You've been convicted, but how long do you want to physically house an individual when you can make the same impact on a state jail felony-grade offense? So whether it's a victim or an offender, you have the opportunity to stack on different offenses if you need to for punishment purposes. But this ensures that the State of Texas is imposing the least amount of taxpayer burden on the citizens of this state since we're paying for it both in state and federal provisions now.

MOODY: Okay, so your amendment covers the offense of—this is the offense of illegal entry?

A. JOHNSON: Yes, this is the offense of illegal entry, 51.03, and it reduces it down to a state jail felony. In addition to what we talked about about potential victim status and others, I noticed that this provision under Section 1, that's on line 4, has been denied admission. There's no provision in there that tracks the federal immigration provision that says whether or not you have illegally entered, and we're going to put a bar of either three years or 10 years. So the state here is again—and not only a strict liability offense, but an indefinite, what I'm going to call a statute of limitations on the entry. Again, we may recognize this as more of a victim population.

MOODY: Okay. I want to pin that down because I know we touched on earlier strict liability, and that's what we're dealing with here. And so unlike other offenses—explain to me then, what is the difference when we talk about a strict liability offense, and would that be juxtaposed with other offenses with different mens rea?

A. JOHNSON: Typically, we would look at a mens rea, and we would set it out in the statute. Just as Representative Gámez read out earlier that the requirement here is that you enter illegally and not through a port of entry, so that means entering through the border. It doesn't say knowingly or intentionally, and we've talked about that before on knowingly or intentionally. I think last session I did the example with tossing the egg. And if we toss the egg, depending on where we are—if we intentionally throw it at somebody, we can look at the circumstantial evidence and our body language to say, "Okay, they intentionally and knowingly or recklessly." That's another standard that we might have under criminal law. I'm dancing wildly, right? I'm not paying attention to my circumstances. I'm intentionally dancing wildly, and I happen to strike somebody. Maybe that is an offense of assault. But here, a strict liability provision means the body entered the border. And so we talked about false imprisonment, kidnapping, being in the back of a tractor trailer—if you enter, there is no mens rea in my mind as the potential victim that I'm getting into the truck on purpose.

MOODY: You're here or you're here—strict liability. And the way that the penalty scheme works under **SB 4** is it begins as a Class A misdemeanor and then we have aggravating factors that bump it up, and they're straight to a third degree. So what your amendment would do, which is typical, and I want to stress—well, I guess I should ask questions. Is it typical, as we staircase up offenses, that we do make a stopping point at state jail felony depending on certain aggravating factors?

A. JOHNSON: Yes, absolutely. If we think about the staircase of punishment: Class B misdemeanor, Class A misdemeanor, state jail felony, third degree, second degree, first degree. Again, this is just applying to the issue of entry. If the person has committed another offense along with the entry, then whatever the appropriate punishment range is for those other offenses would also be applied. So this is just looking at the potential individual whose only offense is the entry.

MOODY: There is a provision where you have a bump up in the bill as it came in for an individual if they've been convicted of two or more misdemeanors involving drugs. Does this bill, as it came to the floor, define what level of misdemeanor, or would that include a Class C paraphernalia charge?

A. JOHNSON: Again, Mr. Moody, I read that as well. If you have the point—but I think you're right. If you say misdemeanor—a Class C misdemeanor could potentially qualify if it's not restricted to Class B or above.

MOODY: It also says crimes against a person. That could be offensive touching.

A. JOHNSON: It could be. Presumably, right? And that's part of the question.

MOODY: The policy initiative here is one that we encounter quite a bit when we work in criminal justice, which is rightsizing penalties and ensuring that, as we have aggravating factors, the penalty is commensurate with the aggravating factors. Would you agree with me that Class C misdemeanor offenses probably do not rise to the level of a bump from a Class A to a third degree felony?

A. JOHNSON: Correct. It's a high jump, and you do have an intermediary step that, one, is not only a state jail felony of six months to two years, but for purposes of what we would normally think about on immigration law, it's a felony. So there's no reason to jump over state jail to get to the third degree.

MOODY: That's a point that I think people should pay attention to. Felony is a felony. The repercussions for that individual are going to be the same either way. Which there's going to be consequences at the federal level one way or the other. All you're doing, though, by keeping it as a third degree is you're obligating the State of Texas to bear the brunt of that cost, which it's been my understanding that's something we're trying to avoid.

A. JOHNSON: You're going to pay for eight more years. You're potentially going to house for eight more years. Do you want to pay for eight more years? If the goal is to enforce the deportation and send them back, then why would you want a provision that says we're going to sit and house you for longer?

MOODY: Yes. I don't know if Mr. Spiller's engaged in this conversation yet, but maybe there's something—if you want to staircase into a third degree, maybe you want to say you were convicted of certain Class B or above misdemeanors involving drugs, crimes against persons? Because then you're talking about possession, you're talking about assault, or domestic violence. You are getting into the realm where maybe you can justify moving to a third degree felony. Whereas here, you are going to sweep up some fairly minor offenses because they're not distinguished between Class C and Class B, and still subject someone to third degree felony of which to your point, is going to put the burden on the State of Texas to continue to house these individuals for the entirety of whatever that sentence ends up being. Is that correct?

A. JOHNSON: Absolutely.

SPILLER: Members, I'm in opposition to this amendment. It's really a philosophical difference as far as what you think the proper range of punishment should be for an offense such as this. Let me put it in perspective from my view.

Normally, for illegal reentry, the charge would be a Class A misdemeanor. What we're talking about here are the enhancements—the enhanced punishment. We're not talking about the initial charge, the Class A misdemeanor. We're talking about the enhancement. Under my bill, it would be a felony of the third degree for which the range of punishment is two to 10 years if the defendant's removal was subsequent to a conviction for commission of two or more misdemeanors involving drugs, crimes against the person, or both.

First of all, probably when we're dealing with drugs, we're dealing with issues dealing with the Health and Safety Code. Crimes against a person—those could be assault, sexual assault, all those things under Title 5 and 6 of the Penal Code, or both. And so we're talking about folks that have other convictions. The second part of that, (B), is that the defendant was excluded. In other words, removed from the country because the defendant was excludable under 8 U.S.C. § 1182—1182(a)(3)(B), for whoever's keeping score. Those provisions had to do with terrorist activities. Okay, so these are people that have been excluded from the country for participating in and acting in terrorist activities. Lastly, the defendant was removed pursuant to 8 U.S.C. Chapter 12, Subchapter V, which is again alien terrorist removal procedures. So lastly, the defendant was removed pursuant to smuggling or harboring, which is already defined under the federal statute. All those things are very serious and a threat to our safety. I don't think it's unfair that those people, in addition to reentering our country again and having been found guilty of that, that the range of punishment shouldn't be stronger than a misdemeanor. And what the amendment here is asking is that it be reduced to a state jail felony. It's just a policy difference of what we think the punishment ought to be. But quite frankly, I think two to 10 years for folks like that that are terrorists and so forth—that have been removed for terrorist activities and they've reentered our country—there need to be consequences for that. So I'm in opposition to the amendment for those reasons.

A. JOHNSON: Thank you, Mr. Spiller. I saw the same and picked up the same U.S.C. statute, § 1182(a)(3)(B), which can be found on page 6, between 14 and 16. I don't know that I would necessarily disagree with you either that maybe a third degree there is appropriate for somebody that has been deported and removed for terrorism. But your provision here on 18, it's an or. I want to make sure we're not confusing and adding these as an and. These are separate, standalone paragraphs: (A), (B), (C), and (D), correct?

SPILLER: Yes. Heaven forbid we have somebody commit all four. Those folks probably need longer than a third degree. But yes, each one of those is a separate category.

A. JOHNSON: Your provision here is four different categories. I don't want to confuse them, but I was confused equally because I thought the same thing. I thought well, Section (B) is terrorism against the United States. That is obviously something we want to take seriously. But then under Subsection (D), it's nonviolent offense. I mean, that could be a DWI. To me, those don't equate to needing the same punishment range. Do they to you?

SPILLER: Under which section are you talking about?

A. JOHNSON: Under Section (D). So under U.S.C. § 1231(a)(4)(B), I looked it up, and it's a nonviolent offense. Because I looked at your same provisions and thought, what's the commonality in these four paragraphs? Because I was trying to figure out where you guys were going with it, and one is terrorism, one is a nonviolent offense, and the other in (A) could potentially, to Chairman Moody's point, be two Class C misdemeanors. I mean, those are drastically different potential underlying offenses.

SPILLER: My understanding of 8 U.S.C. § 1231(a)(4)(B) has to do with two different things. One, is the federal equivalent of smuggling. We have smuggling of persons, they call smuggling. And the other has to do with harboring, and so those are under the federal statute. That's my understanding.

A. JOHNSON: I don't want to get that wrong, so I'm going to look it up while you and I are talking. Would you be open to clarifying, under Subsection (A) where it says two or more misdemeanors involving drugs, crimes against persons, or both? As Chairman Moody said, it could be without clarification that you're talking about a Class B or a Class A. You could dip into Class C land. What are your thoughts on that?

SPILLER: So now we're back up to Subsection (A) of the enhanced punishment?

A. JOHNSON: Yes, under Subsection (A), page 6, lines 10 through 13. Presumably, those could be Class Cs, right?

SPILLER: You're correct. I don't know about Class Cs because—under drugs, you've got possession of drug paraphernalia. Is that involving drugs? I don't know that it is. A question there, but I'm assuming—we're talking about criminal offenses under as far as involving drugs, which I think would primarily be—although it's not necessarily limited to those items that I would think would be in the Texas Health and Safety Code. The others have to do with crimes against a person.

A. JOHNSON: Could we clarify that in an amendment to say that we are talking about offenses that can be found in the proper provisions of Penalty Groups 1 through 4—whatever it is? I want to clarify this because I'm looking up. I want to now jump back to three because I know I'm going to get hit with the gavel and they're going to say we can't extend the time to engage in this important discussion. When we look at 8 U.S.C. § 1231(a), "Detention, release, and removal of aliens ordered removed," and then I go down to (4), which is "Aliens imprisoned, arrested, or on parole, supervised release, or probation," and (B), "Exception for removal of nonviolent offenders prior to completion." Am I just reading it wrong? That's why I wanted to make sure. I don't read the fourth paragraph as dealing with human trafficking or smuggling. And again, if I'm reading the statute wrong—let me see—I might be reading it wrong, Mr. Spiller. I apologize. Hold on. I mean, now when I look at (4)(B), again, I'm not seeing under this provision where it's dealing with smuggling. And I apologize, but if there's a way to clarify whether or not this provision, § 1231(a)(4)(B), is actually getting to what we think.

SPILLER: I believe, under that Section (D) we're dealing with the federal offenses of smuggling and harboring. That's my understanding of § 1231(a)(4)(B). I can't put my finger on it right now, but that's my understanding.

A. JOHNSON: If we can look and clarify, because when I look at—and again, I'm going to Cornell Law School, law.cornell.edu, on where they've got the provisions of these federal statutes. And that's just one of the locations, so maybe there's something not right about the Internet. But I fear that this particular provision is not geared toward smuggling.

SPILLER: At the end of the day, we're still here. I understand you think it could be or should be reduced and that all these enhancements should be reduced to a state jail felony, which would be punishable under state jail provision under six months to two years—

A. JOHNSON: Day for day.

SPILLER: As opposed to—

A. JOHNSON: You know this. Folks don't like going to state jail.

SPILLER: What's that?

A. JOHNSON: I said you know this. As a criminal defense attorney, folks don't like going to state jail because it's day for day.

SPILLER: Well, yes. So I get it. But like I say, it's generally a philosophical difference where I think that we need to have a higher punishment—enhancement for some of these repeat offenders if they come in. If we're having to prosecute someone for reentry after they've already—

A. JOHNSON: Again, you've heard the dialogue with regard to the four subcategories under this provision that call for a third degree felony. A third degree felony is two to 10 years in prison. There is everything from the potential—because it just says misdemeanor, an offense against person. There's a way for us to clarify this and say we mean Class B or Class A on the misdemeanors as a prior. As I mentioned, there's a provision that talks about terrorism. Hey, I might get that where we talk about the issue of terrorism. But again, we've got some other provisions where maybe two to 10 is not an appropriate punishment range. And so a state jail felony offense accomplishes the goal of what I think he is trying to do here, which is to increase from a misdemeanor to a felony, and it is the intermediary step. It also has the benefit to us, as the State of Texas, that if this is somebody that you are saying, "I no longer want them here, and they need to go back to their home country," then what is the perverse incentive for then incarcerating somebody for up to 10 years in a state prison? It makes no sense. If the intent is to say go back, then why would you have these punishment ranges of third degrees or second degrees that would put us in a position of longer incarceration and more time and more expense? So again, when we talk about the challenge of—are we really talking about effective policy with regard to the border and perpetrators? Are we really giving tools in the toolbox for law enforcement to use? Or are we simply putting things out there

that maybe sound like we're doing something really good but maybe, in essence, creates a policy that contradicts the very things we're telling our voters? I would ask that you guys please vote yes on the amendment to change this to a state jail felony offense.

[Amendment No. 7 failed of adoption by Record No. 26.]

[Amendment No. 8 by A. Johnson was laid before the house.]

A. JOHNSON: We are now making our way to the next portion of the bill, which sets, again, a punishment range. And this time you're on the hook for 20 years. So it's the same question. Is this a population of people that you collectively are saying leave the country and go back to your place of origin because you have gotten here illegally? Do you want to house them for 20 years on taxpayer dollars? So again, I would say a state jail felony accomplishes the goal of sending a message for a state jail punishment which is going to be eligible for all the proper federal deportations aside from this provision. It puts the taxpayers on the hook for six months to two years, but it doesn't put us on the hook for two years to 20. Again, you're saying you don't want these people here. If you don't want them here, why do you want to pay to house them for 20 years? That's the amendment.

MOODY: To be clear, we're now moved into—as compared with your prior amendment, we're moving into another set of aggravating factors that lift what would have been a Class A misdemeanor to a second degree felony. Is that correct?

A. JOHNSON: Yes, and if I may, if you'll look at page 6, line 22—it's the second degree if you were removed subsequent to a conviction for the commission of a felony. So a felony could be possession of drugs. A felony could be a DWI. Again, it's not a violent felony. It's not, as we talked about earlier, the people we would presumably want to prosecute with witnesses under the U visa. It's any technical felony. And again, we may house somebody longer on this offense than we could have housed them because you could remove on a state jail felony.

MOODY: And I think we've encountered this certainly, but vape pens—possession of a vape pen, that's a felony, right?

A. JOHNSON: Yes.

MOODY: Okay, trace amounts—I know there's a number of trace amount cases out in Harris County, in your area. Those would be felonies.

A. JOHNSON: Nonviolent offenses—

MOODY: Because we're not actually limiting this to certain types of felonies. It's just anything.

A. JOHNSON: Yes, anything. So if you enhanced from a Class A to a state jail felony because something's within a zone or parking lot—if somebody has drugs in a parking lot. A low-level misdemeanor amount in a parking lot of a school—it now bumps it up to a state jail felony. Effectively that would comply with this

provision, and so again, you may have somebody that was deported for committing the grade level I'm telling you—six months to two years—but if they come back, you're now going to house them for 20 years.

MOODY: Yes, and I guess I'm going to come at this from two different directions. I'm trying to say that conduct is something that we should be dismissive of because this also gathers up any number of other felonies. My guess is if you were convicted of a serious felony you're probably going to still be incarcerated.

A. JOHNSON: You would hope, right? If they've committed a murder, you hope that they were sentenced to 40 years and they're serving out their time.

MOODY: That's sort of what I want to get to because the idea that dangerous felons are pouring over the border and doing all this—and we hear this rhetoric all the time. If you're convicted of these types of felonies, more likely than not you're serving a sentence now. And my guess is if you were here undocumented you probably have a federal detainer on you subsequent to that sentence being served out. Isn't that right?

A. JOHNSON: Yes. You are going to get deported as soon as you serve your sentence. And that's something that we as prosecutors take into consideration which is if you're going to leave, right, and the effect of the conviction is a deportation then why do I want to house you here any longer?

MOODY: And so those are decisions that is seems like we make today. I mean, you'd agree with me? Those are considerations as you look at someone's status and the crime that's sitting in front of you as a prosecutor knowing that individual's next trip is deportation, right?

A. JOHNSON: Correct.

MOODY: So what you're saying is really who you're going to grab with these are probably low-level felons because the other ones are going to be either still incarcerated or already deported. And we're going to bump that up and house someone for 20 years instead of with your proposal which would still be a felony conviction, which would still call for incarceration, which would still have deportable ramifications for that individual, but the cost to our taxpayers would be two years maximum.

A. JOHNSON: Correct.

MOODY: But all the other ancillary things that come with a felony conviction are still going to come along with that offender under your amendment.

A. JOHNSON: Yes. You're still going to take the course of conduct of the individual, and if the individual is committing other crimes then obviously this is going to be something that gets aggravated in punishment of whatever other crimes that they're doing. The amendment effectively just focuses on the only violation that the person is committing is their existence, their presence. They're not committing another crime except for being here. And for that, how much do you want to roll the federal tax burden on to the State of Texas on to our taxpayers? Because just as Mr. Spiller keeps saying, this is a federal crime.

You're not creating a new crime that doesn't already exist that the federal government can prosecute, can pay for, and can detain for. You're creating a whole other thing where you're saying—you're creating an additional tax burden on Texans. And not only are you incurring an original tax burden on us, but you want to have it play out for 20 years.

MOODY: I mean if I'm being devil's advocate, what would you say to somebody that says, "Well, you're just letting people off easy here. These are people that have been convicted of a felony before. Why wouldn't we want to ratchet up the penalty on them?"

A. JOHNSON: You need to figure out what the felony is. We don't do that in here and so, just as we mentioned you can be a 17-year-old kid in a parking lot outside of a school with what would normally be misdemeanor possession or somebody else's—you know, I can't remember which ones we've moved. But we did move Adderall or whatever else—prescription that some kid gets from their doctor and they have it in their pocket, and then they're a felon. Again, this is the kind of stuff that your kids could commit, right?

MOODY: Yes, so the way I see it as I said before, you've got two issues here. We're not breaking out the type of felony at all, so we're treating all felonies the same which is probably not wise policy. That's probably too broad a brush to paint with in this circumstance. You would agree with me? The other is when we do that we compound the problem by then bearing the burden of incarceration as Texas taxpayers.

A. JOHNSON: Correct.

MOODY: Would you agree, and maybe you could talk to Mr. Spiller about this, maybe an amendment to an amendment that would parse out the types of felonies. Because you know, maybe we get to a point where we say, "Look, even though we don't want these people incarcerated on the Texas dime, the offense they were previously convicted of is of such a nature that we also don't want to just send them off into deportation knowing that they could find their way back into the state and do more harm." You'd agree with me? Maybe there is some sort of breakdown of felonies that could warrant a higher penalty, but we don't do that here in this bill.

A. JOHNSON: Correct, and this is something that we talked about last week on the toolbox, the layers of the onion, the discretion as prosecutors. And when you simply say misdemeanor or felony—and I agree a felony sounds bad. But some of those fact patterns are not something that you would say—and I think a typical thing that you and I would look at is are they a violent offense? Are they 3G offenses? Are they crimes of moral turpitude?

MOODY: Yes, I think the conversation that you and I are having would be very different if there was a more thoughtful approach to how we've ratcheted up this penalty. Because as it stands now—

SPILLER: Let me just say this amendment was similar to the last amendment in that it deals with reentry and the enhanced punishments. This one's the greatest enhanced punishment, and what we're talking about here is if you have reentered you're charged with reentering our country—our state—under the reentry provision. You have already been removed from our state, from our country to another country, and this is based on the fact that you were removed because of the conviction of a felony. So these individuals are people that have already gotten here illegally, committed a felony, were removed, and now they're back again. And so it's really just a philosophical difference of whether you think that the penalty—the range of punishment for that—could be as little as six months in a state jail facility or whether you think it ought to be a second degree felony which is two to 20 years. I believe it ought to be the latter. I think there ought to be consequences for those actions, and I think if you've committed a felony and are ordered out of our country and yet you come back in then there needs to be consequences for that. So that's my opposition.

NEAVE CRIADO: With respect to this illegal reentry section that you're discussing, earlier you had mentioned that this mirrors the federal 8 U.S.C. § 1326, is that correct?

SPILLER: Yes. The pertinent parts of it, yes, as far as primarily dealing with the elements of the offense of illegal reentry.

NEAVE CRIADO: Okay, and are you aware that 8 U.S.C. § 1326 actually has an exception in the federal statute that is not in your version of the statute?

SPILLER: It may.

NEAVE CRIADO: I have the language here because I wanted to double check, and in fact the exception says that "unless the attorney general has expressly consented to such aliens reapplying for admission," and it has language in there. So the federal government set up this entire process to consider requests from people to be let back in, and the federal government then allows people to reapply to enter, so this charge doesn't apply to them. But in your bill it's not the same as the federal analog because under federal law somebody can still get reentry, but yours is not allowing that, so that contravenes federal law.

SPILLER: So are you saying that that's why this needs to be a state jail felony instead of a second degree felony?

NEAVE CRIADO: What I'm saying is that with respect to the illegal entry section you've stated and discussed language regarding this mirroring federal law, and as we're talking about the constitutionality of the bill this doesn't mirror the federal law because yours doesn't have the exception. So you're aware that it doesn't have the exception in the federal law, correct?

SPILLER: It's written somewhat differently, as far as the enhanced punishment. But I will say when I look here at 8 U.S.C. § 1326, under (b)(2), the removal "was subsequent to a conviction for commission of an aggravated felony," and you could be imprisoned for not more than 20 years. So again, the range of punishment—here we're talking about a felony. A prior conviction for a felony,

and this could be any felony—it could be something more serious than an aggravated felony, it's just any felony—and the range of punishment under the federal statute is up to 20 years. The proposed punishment for that same enhancement under my bill is a second degree felony which is two to 20 years. That seems pretty close.

NEAVE CRIADO: So the punishment mirrors it, other parts of the statute mirrors it, but it doesn't have the exception that the federal government has, correct? I just want to make sure that you're aware that your statute, **SB 4**—are you aware that yours does not have the exception that is in the federal statute that you said it mirrors?

SPILLER: Okay, and the section that you're—in my view, not that that has anything to do with the amendment, but the exception you're referring to is what? What is the number?

NEAVE CRIADO: It's 8 U.S.C. § 1326, subsection (a)(2). So you know how you have the language regarding if they were "denied admission, excluded, deported—"

SPILLER: Right.

NEAVE CRIADO: And then "or has departed" or even "enters, attempts to enter." So it's the first part of the statute as well, "at any time in the United States"—if they're found any time in the United States. The federal statute has an exception that says "unless (A) prior to [the] reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the attorney general has expressly consented to such alien's reapplying for admission; or" it has subsection (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act."

SPILLER: Okay, I see where you're reading there, but the operative provisions of illegal reentry in **SB 4** are tracked from (a)(1), not (2). And so it's tracked from (a)(1), but what we're talking about with this amendment is what the punishment should be for an enhancement for prior conviction. And so this is a prior conviction for a felony, and I hear what you're saying, but I don't see that that has anything to do with that. We're talking about on the amendment as far as whether we ought to reduce the punishment to as little as six months in jail. My personal preference is not no, but heck no.

NEAVE CRIADO: Well, it does have to do with it because it goes to the exception being in federal law that's not in yours. So I just wanted to find out if you are aware that that exception is not in **SB 4**, but it is in federal statute.

SPILLER: Yes, I've read it. I've read 8 U.S.C. § 1326 in its entirety, and I see the language that you're talking about.

A. JOHNSON: I mentioned this last week and I sincerely believe that we have legitimate discussions and things that we need to talk about on the border. I have walked the walk of people who have gotten here legally or illegally and committed crimes. I am probably the only person in this room who has actually

prosecuted—some of you may have arrested them—but I've actually prosecuted individuals who have violated these laws and put them in prison. I have been in your courthouses, and I have seen how this plays out, and poo rolls downhill. I have spent countless times in the courtroom dealing with unfunded mandates and the idea that we pass things that are expedient, but somebody has to implement these on the back end. And that is going to fall on your counties, your local entities, your local officers, your local police department, and then the taxpayers of Texas are going to pay the bill.

So if our goal is to say that we don't want these individuals in the United States because they didn't do it right, and we are sending them back home then how much of a contradiction is it to set a punishment range of two to 20? Because if you think that's a deterrent, it's not. The punishment range is not a deterrent. The punishment range oftentimes for criminal offenders is how long can I keep them removed from other people in society so that they don't commit or cause harm. In this circumstance, the population that you're catching up it says misdemeanor. It says felony. It doesn't distinguish between violent offense, nonviolent offense, and it doesn't allow you to make the determination, "Is this somebody that I'm mad at? Or is this somebody that I'm afraid of?" And that is an issue that we deal with all the time of trying to reach this balance of, "What is my goal and what is my fiduciary duty to taxpayers with regard to the criminal justice system? Where should I house people? Where should I put them in beds?" And if it's somebody that's going to hurt you, your daughters, your granddaughters, or somebody else that's where I should reserve our punishment. For those folks. But if it's somebody that's just making me mad because they can't get their stuff together—they've got an addiction issue or something else, and I'm just frustrated, then we ought to be smarter about how we address that issue. And this is one of those. You are literally taking a population that may be nonviolent offenders. We've created almost an impossible standard of how we can bounce between misdemeanor and felony without looking at the distinctions, and then you want to hand them a punishment of 20 years in state prison. If they've committed another crime, I promise you they are going to get popped for that crime. If they've committed a crime of which the federal government can go get them, then let them go get them. But if the only crime that they are committing is that we are mad at them that they have found a way across the border but they haven't done anything else, then why do you want to assess such a high burden on taxpayers? Six months to two years in state jail is a whole heck of a lot of an expense, and it's going to be the same deterrent that the other range will be. So I ask that you vote for this amendment.

[Amendment No. 8 failed of adoption by Record No. 27.]

[Amendment No. 9 by A. Johnson was laid before the house.]

A. JOHNSON: All right everybody we're on to the third punishment range. Do you want to house people for 20 years? Or do you want to put it as a state jail felony? I would ask that you vote for the amendment. Make it quick.

SPILLER: Members, I sound like a broken record, but I respectfully oppose the amendment under the same grounds that we did before. I understand what we're trying to do here, but I just think that the punishment for this needs to be where it is in the bill. So it's just a policy decision, and so I respectfully oppose it.

A. JOHNSON: Tell Texas taxpayers whether or not you want them paying for this in addition to the federal taxes that we're sending to the federal government. Or do you want to let the feds take on an obligation that they are already legally obligated to. You can put the cost on Texas taxpayers or not. That's the vote. I'm with Texas taxpayers. I don't want to spend more of your money. So join me. Vote yes on this amendment.

[Amendment No. 9 failed of adoption by Record No. 28.]

[Amendment No. 10 by Perez was laid before the house.]

REPRESENTATIVE PEREZ: Members, this amendment inserts language to Section 51.04 which allows a person to surrender to the U.S. Customs and Border Patrol or other federal officials located at a port of entry instead of prosecution.

SPILLER: I respectfully oppose the amendment. I think that we heard the effectiveness of the bill on the charge of refusal to comply with an order to return to a foreign nation. By adopting this amendment I think it weakens the purpose of what we're trying to do here—to deter illegal immigration, illegal crossings. So I respectfully oppose it.

PEREZ: Members, basically this amendment allows a person to claim asylum without being charged a second degree felony. So I hope you vote with me.

[Amendment No. 10 failed of adoption by Record No. 29.]

[Amendment No. 11 by Hernandez was laid before the house.]

REPRESENTATIVE 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 to return to denied them entry. **SB 4** provides that a magistrate or judge may, in lieu of continuing prosecution, dismiss the charge and order the person to return to the foreign country from which they entered. Failing to comply with the removal order is a separate offense that is a second degree felony punishable by two to 20 years in prison. This removal provision is unworkable. The majority of 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 the 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. **SB 4** would potentially leave thousand 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 a bridge floating in legal limbo with no option to enter either country.

SPILLER: Members, I appreciate what's trying to be done here, but I think the bill provides for this because it's creating, potentially, under this amendment, an affirmative defense to prosecution because someone attempted to comply but were not able to. The elements of refusal to comply with an order to return require an actual refusal to comply. So by definition, I'm not sure how you have—how if they attempted to do it, but through some unknown circumstances or outside circumstance were not able to do that, i.e., the receiving country did not cooperate. I'm not really sure how we—therefore the idea would be that if that person did everything they could that we therefore prosecute them because of refusal, when in fact they did not refuse. So I think, by definition, it's taken care of in the bill. I do appreciate the thought, and I appreciate what the author's trying to do.

ZWIENER: Representative Spiller, is refuse a term that is defined in Texas statute?

SPILLER: That I don't know. It probably is in some statutes somewhere, but I don't—as a refusal in the Penal Code, I'm not certain on that.

ZWIENER: Given that there isn't a clear definition for what refusal to comply means, could you see there being some confusion where someone could get prosecuted?

SPILLER: My understanding is, as far as Code Construction, would be the common if it's not otherwise defined—and I don't know that it's otherwise defined, at least not in the Penal Code—but that you would, under the Code Construction, use the common meaning. And by definition, if I refuse something, I'm making a conscious decision to not comply with something. So here, by definition—I see what we're trying to address here. But I don't think that it's necessary.

ZWIENER: Do you think that it's reasonable for us to be absolutely sure, both about what that definition is or to offer some clarity, if we're talking about locking people up for up to 20 years?

SPILLER: Well, it seems pretty clear to me. In my mind—I'm kind of a simple thinker, but in my mind, I don't think it's necessary. I think it's very clear here that—

ZWIENER: I'm sorry. So, to be clear, you don't think this is necessary. And you don't think this is necessary because you don't think the statute as it's written would allow somebody to be prosecuted if they were told to return to Mexico, and Mexico wouldn't take them.

SPILLER: I think, as with any case, a prosecutor would have to prove each and every element of the offense beyond a reasonable doubt. I'm trying to figure out how a prosecutor could prove that someone refused to comply when in fact they agreed to comply, attempted to comply, did everything asked of them, and yet the receiving country was the party that didn't cooperate. I don't really see how you prosecute someone for that.

ZWIENER: I'm sorry, Representative Spiller, because I think we're looking for clarity here. I think the reason Representative Hernandez brought this amendment was for clarity, and I asked you a clarifying question. And quite frankly, I got so many words I'm still not sure what the answer is.

SPILLER: Okay.

ZWIENER: So do you believe this is unnecessary because you think the statute as written does not allow the prosecution of someone who was ordered to leave the country and was unable to leave because Mexico would not receive them?

SPILLER: I think, as with every case, it's determined on a case-by-case basis—the facts are determined. Under the scenario that you gave—

ZWIENER: I think we just simulated it's a fact pattern.

SPILLER: Under the scenario you gave, if someone did everything that they were supposed to and said I agree to on the front end—well, this is on the back end on refusal to comply. But let's say on illegal entry that they come in, and then they take them to a magistrate and they say, "Look, we agree to go back, take us back." So we direct DPS, or whatever law enforcement authority, and make them take them to a port of entry. The people attempt to go, do go, and then, for some reason or other, something beyond their control is done, and they're unable to comply. But under your scenario, if they have done everything that they agreed to do when they agreed to go back and they're prohibited from going back, then do I see that as they've somehow committed a second degree felony? No, I don't.

ZWIENER: So your intent is that this statute should not be used to prosecute someone who in good faith attempts to return to the country they're ordered to return to but is not allowed to by the receiving country?

SPILLER: If they've stuck with their agreement and they've done everything—I don't want to say something here improper. But if they've abided by their agreement to go back and they did everything under their power—what they were asked to do and what they agreed to do. And they attempted to comply with that order to return and were prohibited from doing so, then they have not, under my view—they have not refused anything. They've done what they agreed to do.

ZWIENER: So I really appreciate that, Representative Spiller. And I appreciate that interpretation of the statute. I think my next ask here is we have 254 district attorneys in the State of Texas who are going to be interpreting this. Can we put that clarity into the bill so that they know that as well?

SPILLER: I appreciate the effort, and I do appreciate what the amendment attempts to do here. But as I've said, I think it's clear. It's very clear to me, and I think the bill's fine the way it's written in that respect—in regard to that issue.

ZWIENER: With all due respect, Representative Hernandez is an attorney. There are a lot of members on this floor who don't see that as very clear. And I know we discussed this last special session on the last day of Groundhog Day.

SPILLER: My experience has been you have two or more attorneys in a room you probably have differing opinions. So I get that. I respect that. But I think the bill's fine the way it is.

ZWIENER: So what would the harm be of adding this language to the bill?

SPILLER: I don't know that it would be harmful. I just don't think it's necessary—other than the harm that we're further delaying the crisis that we have on our southern border. You know my goal is to get this bill passed, get it passed cleanly, and get it on the governor's desk because every day—based on the month of September alone—every day that this process is delayed is approximately 9,000 people that enter our state illegally. Some are terrorists. We know that—169 from last year. That's more than the six previous years combined. My view and my task is to get this bill out of here and on the governor's desk as soon as possible. Because if I waste my time and know that it's going to be a delay, I'm going to have trouble sleeping at night, and I don't want that.

ZWIENER: Representative Spiller, I understand your sense of urgency, but again, we're talking about locking people up for 20 years. Not days. Years. Don't you think we owe it to them to get this right, and to make sure no one is convicted of something they don't deserve to be convicted of?

SPILLER: I would never want anyone convicted for something that they shouldn't be convicted of. But again, I think the bill addresses that. I think it's very clear. I don't think that's going to happen, and I think it's fine the way it is.

ZWIENER: We know we're going to be here until at least the end of the week. I think the senate has plenty of time to concur on this amendment.

SPILLER: Like I say, every day that goes by on average 9,000 people enter our state illegally. And my job is to get this bill to the governor.

HERNANDEZ: By Mr. Spiller's calculation, if 9,000 people are entering the state illegally each day, they are subject to this bill. They are subject—whether they're reentering—to be convicted to two to 20 years in prison. It is our taxpayers that are going to be footing that bill. This is simply saying that if they have been ordered to be removed and Mexico is not accepting them, we're asking them to do the impossible. Let's not convict them to 20 years in prison.

[Amendment No. 11 failed of adoption by Record No. 30.]

[Amendment No. 12 by Goodwin was laid before the house.]

REPRESENTATIVE GOODWIN: Members, our institutions of higher education are built on trust. A trust that exists between students and their teachers, coaches, peers, and law enforcement. This trust is a foundation. It's paramount for the education, healthy civic engagement, and growth of our students. We in this body encourage individuals, documented or otherwise, to enroll in workforce programs at community colleges for reskilling or upskilling. Our youth are urged to pursue college education and STEM degrees. We consistently advocate for our friends and family to obtain credentials and pursue education beyond high school. Campuses are not just physical spaces, they are environments where young minds learn, grow, and come into their own. They are spaces where workers reimagine

their careers and strive for a better future. We call upon Texans to enroll and trust that higher education will pay off. Unfortunately, **SB 4** threatens to undercut the very trust necessary for students to thrive and realize the promise of education.

This amendment aims to safeguard the trust between students and their campuses. Specifically, my amendment proposes the inclusion of institutions of higher education on the list of spaces exempt from the implementation of **SB 4**. By doing so, this amendment sends a clear signal to our students: The trust they place in their colleges should be preserved regardless of their immigration status. Specifically, my amendment would add institutions of higher education to the list of spaces where **SB 4** would not be implemented. In doing so, my amendment signals to our students that the trust they have in their colleges should be maintained, no matter their status.

SPILLER: Members, I oppose this amendment. I've tried to be fair and put in some safeguards for people, for situations. We've protected children as far as schools, and we've protected people as far as health care, medical care, victims of rape, and so forth. But when we open it up and say we've created on college campuses an ability to come and create a sanctuary, I cannot agree to that. I respectfully oppose.

ZWIENER: Are you aware that about 26 percent of American children have at least one immigrant parent?

SPILLER: I don't have any reason to dispute that.

ZWIENER: Are you concerned that, under this legislation, parents might be afraid to drop their kids off at their college dorm for fear of being arrested and removed from the country?

SPILLER: I don't think that that should be a valid concern. I think if there was not so much misinformation of **SB 4**, then we wouldn't be having this discussion. But I think there is a lot of intentional misrepresentation and misinformation about the effect of this bill, where it's characterized we're going to round everybody up and ship them back to some other country. That's not this bill. I'm not saying that some people don't have a fear or interpretation about the bill, but what I'm saying is it is not what some people have portrayed it to be. So no, I'm not that concerned. I don't think that's going to—I mean, that shouldn't happen. I don't see why we need to create an exception where there shouldn't have to be one.

ZWIENER: With all due respect, Representative Spiller, your bill, under the illegal reentry portion of the bill, says an alien who is at any time found in the country. That's not crossing, that is present after previously having been denied admission to the United States, or removed, or deported. So there is that situation where somebody could be rounded up at any place in the country.

SPILLER: You left out some critical elements of that. Yes, if they're in the country. But that they have been removed from the country previously, have been deported—

ZWIENER: Or denied admission. That's an or.

SPILLER: What I'm saying is when you take that portion out of context, yes, that doesn't sound good. But that's not the statute.

ZWIENER: But that's the bill. That is in the bill, Representative Spiller. You call it misinformation, but it's an or.

SPILLER: Well, twofold: Number one, that's not the full statute, so that's a misrepresentation. If that's the representation—that if you're here at any time illegally in our state that you're subject to criminal prosecution, that is not true.

ZWIENER: And previously denied admission. Yes, you can be prosecuted for a Class A misdemeanor.

SPILLER: And secondly, that is existing federal law right now and has been for decades. Have we had issues and concerns about this before? Why are we so worried about this?

ZWIENER: But federal INS doesn't usually hang out at Texas State dorms, whereas every university in the State of Texas that I'm aware of has law enforcement present on campus. And you're giving those law enforcement that ability to enforce this statute right now. Currently, they have no power to enforce that immigration statute. So what I'm asking you is do you think that our college campuses should be somewhere that our immigrant parents of Texas college students should be afraid to go? Because your bill will make them afraid to go there.

SPILLER: No one should be afraid to go to college. No one should be afraid to be in public. We're addressing illegal crossing into our state. I've already said 95 percent of this is going to be enforced on the border—within 50 miles of the border. It's a statewide bill.

ZWIENER: That five percent could be someone's mom.

SPILLER: I know that, but I'm saying is we are trying to combat a problem of illegal immigration. We are not trying to round up people at colleges and universities and put them in jails or the penitentiary. That is not the purpose of **SB 4**.

ZWIENER: Representative Spiller, if that's not what we're trying to do, why not—just like we did with K through 12 schools—exclude our colleges and universities?

SPILLER: Because, by definition, those folks presumably have not committed a criminal offense. Why are we addressing a problem that does not exist?

ZWIENER: Representative Spiller, I know you keep saying your bill only criminalizes actually crossing, but that's just not true. If we all look at the top of page 6, we can all read the lines about how it is a criminal offense to be in the State of Texas if you have previously been denied admission, removed, or deported. That describes a nonzero number of people in Texas, including people who now, after having been denied entry years ago, have been here decades. Those people have raised families. I have seen families separated in my district over minor offenses.

SPILLER: I've tried to be very straightforward about what this bill does and how it applies by being forthright and telling you that I think that the application of this bill, the vast majority, will be within 50 miles of the border. That's not a misstatement, that's the truth. I'm not trying to mislead anybody, but I am saying it's a statewide law. But you're trying to say that there's a problem at college campuses for fear that people can't go to college. And that's just not true under this bill.

ZWIENER: Representative Spiller, I would love to invite you to some of the college campuses around the state where we have the children of immigrants as well as Dreamers, organizing and worried about this issue. I'm asking you to hear them. If your intention is that this bill not come onto college campuses, let's put that in the bill. I mean, I really keep appreciating what you say about intentions, but I don't know how to square that with the actual language of the legislation.

SPILLER: Right. You know, I'd be happy to work with you if this passes, gets out of this house, gets to the governor's desk, and he signs it. I'll be happy to put out any kind of information sheet as the bill author to every college and university in our state. I'm happy to do that. I'm happy to put out just a fact sheet about this bill. I'm happy to cooperate in every way that I can. I'm committing to you, I will work to do that. I just don't think that this amendment needs to be in this bill.

ZWIENER: So Representative Spiller, if this amendment isn't quite it, could we amend it to say that university police departments don't enforce this?

SPILLER: I don't think it's necessary. I've kind of addressed that, but I'm willing to work with you, and I'm willing to address concerns upon the passage of **SB 4**. I'm happy to address any concerns with you and get word out any way that you want me to do. I'm just not good with this amendment.

ZWIENER: I mean, Representative Spiller, we usually address concerns by amending the bill, and you've pretty much told us that you're not going to take any amendments.

SPILLER: Well, I'm telling you, I'm not going to take this one.

ZWIENER: Well, the last one you told me you wouldn't take it for timeliness issues.

SPILLER: I haven't taken too many today that I know of, so I respect that. And there have been some very thoughtful approaches and good approaches and I don't fault members for doing their best. You know me, and I'm willing to, typically, work with people. I worked with people the last time. I've worked this process when it's in the committee in between time, and I'm willing to do that. My position now is I want to get this thing passed.

ZWIENER: All right. Thank you, Representative Spiller.

SPILLER: You bet.

GOODWIN: Members, if you agree that our college campuses and community colleges should be a safe place for our students to go and learn and not be concerned about being picked up, not be concerned about law enforcement and what they might be doing there other than providing for safety, then vote with me on this amendment.

[Amendment No. 12 failed of adoption by Record No. 31.]

[Amendment No. 13 by Wu was laid before the house.]

WU: Members, this amendment would simply prohibit state-sanctioned immigration sweeps at places of business to protect our workforce at their workplace or at off-site work locations. People migrate to the United States for job opportunities. And Texas business owners employ them, oftentimes exploiting them for minimum pay and, in some cases, forcing them to work in unsafe working conditions.

The practice of workplace raids was meant to target employers who drive the demand for illegal immigration through the offer of cheap wages in bad-condition jobs that Americans will not take. But many fleeing violence, starvation, murder, torture, or rape often have no choice but to take. However, in practice, workplace raids have served primarily to terrorize workers and their communities, with minimal consequences for employers. As the author has repeatedly stated, the purpose of this legislation is not to address employers and employees of businesses who employ undocumented immigrants. As the bill author has said repeatedly many times, he does not believe that this law that he's about to pass would affect people who have been in the country for more than two years—which would be a lot of the people who are working in places now. Thus, the allowance of workplace raids serves no purpose.

This is especially true considering that the author has repeatedly stated over the last two months that this bill is meant to target illegal entry and not undocumented presence by itself. Considering the miniscule likelihood that a person that is already at a workplace has just walked across the border straight to their employer's place of business, the practice of workplace raids would serve only to target those who are presently in this country without papers and has nothing to do with illegal entry. This amendment, at the very least, would protect workers who come here to contribute to our economy and support their families from being arrested on the job as they are providing for the Texas economy, as well as ensure this legislation is in practice keeping with its intent.

SPILLER: I understand what we're trying to do here with this amendment, and I've been very diligent. In fact, I even expanded some of the places where we couldn't do this from the last time that we met. I've tried to be very considerate of what we can do and what we do to protect life and keep people safe. This exception is beyond what I'm comfortable with, and I respectfully oppose it.

WU: For the record, again, the author of this legislation repeatedly, both now and in the previous time we were on the floor in the last legislative session, has said that it is not the intent for this legislation to address this type of activity; that their only intent is to address illegal crossings. We could have addressed that in many

ways by limiting where this bill could take place, where it could be in effect, what counties can be used as prosecution. We didn't do that. We spread this legislation across the entire state. And therefore, by spreading this legislation across the entire state, we have rounded up schools, we have rounded up colleges, we have rounded up women's shelters, we've rounded up all these different things. And what we are attempting to do here with this amendment is, piece by piece, try to match the intent that the author has stated repeatedly with the actual text of the legislation. This amendment does not destroy this legislation. This amendment puts this legislation exactly in line with what the bill author has stated is his intent. If you are voting no on this legislation, you are saying that what he is saying as his intent is not actually correct.

[Amendment No. 13 failed of adoption by Record No. 32.]

[Amendment No. 14 by Howard and M. González was laid before the house.]

REPRESENTATIVE HOWARD: I'm going to try to do this in a way that you can understand me with my limited voice, but I also have Representative Mary González here to back me up if I lose it totally. This amendment would ensure that anyone seeking health care services or survivors seeking support at a SAFE-ready facility for a sexual assault forensic exam could do so without fear of being separated from their family.

I do want to thank the author for including a prohibition of enforcement of this bill here at schools, houses of worship, health care facilities, and SAFE-ready facilities. Unfortunately, it limits it to only the person who is seeking those services in health care. Just to give you an idea what this actually means—if a child breaks their arm, this amendment would ensure that a parent who is undocumented can take their child to the hospital. If a sexual assault survivor is seeking a forensic exam at a SAFE-ready facility, their loved one who is undocumented should be able to accompany them. All this amendment does is says that it strikes the language that says it has to only be the person who is seeking the health care. And I want you to try to imagine if you have children yourselves or grandchildren, or even if you don't, just imagine a child who has been injured. A child who has a severe health care need and needs to go to the hospital. A family member who has been raped and needs to go get a forensic exam, and you are undocumented. You have to make a choice then. Do you go and support your child or leave your child alone at the hospital because you might be deported? And think about what that choice is.

It's really a nightmarish kind of Sophie's choice. Because you're choosing to abandon your child there in the hospital and not be present to support them through whatever is going on with their medical situation versus being potentially deported and permanently separated from your child and being able to be there to take care of them. Imagine it's your family member who has been raped and is traumatized and needs to go have that forensic exam. And you are there to support them and take them and hold their hand through this very invasive

four-hour procedure. And yet, you're undocumented. You have to make a choice. Do you go there with your family member? Do you risk being deported and being separated totally from that family member?

Nobody should have to weigh the costs of being a parent or supporting a loved one against deportation. Adopting this amendment should not be a question of politics but rather a question of affording basic human decency to immigrants and those trying to help them. I urge you to support this amendment and ensure that these health care facilities continue to be a safe haven for healing and are not weaponized to support a harmful policy. And contrary to what I keep hearing over and over again—the intention is not to harm children—if we do not allow the parent to be with their child in health care emergencies, children will be harmed. All this is doing is saying do not separate. Do not force separation of children from their parents, who may be undocumented. Do not use a health care facility as a place to separate families, rather than allowing these families to be together. Allow a parent to make the decision to provide the health care necessary for their child.

SPILLER: Members, I respectfully oppose this amendment because what we're doing when we limit it this way—well, I just think it, I think that we—let me put it this way. I think that we provided enough adequate protection here under the exceptions, and so I don't think it's necessary. We've tried to be fair. We've tried to be open, and I think that we properly addressed it. Sufficiently addressed it. And so I respectfully oppose it.

M. GONZÁLEZ: First I want to thank my colleague, Representative Howard, for her beautiful introduction of this very important amendment.

Members, if you do not live on the border—while this bill is statewide, it has a higher impact in our border communities. Our border communities are full of very beautiful and compassionate families that are, in many instances, mixed families. If you're a parent or a grandparent, ask yourself, "If my child had an emergency and I could not be with them in the hospital, how would I feel?" I understand there is an energy to pass this piece of legislation, but our job as legislators is to protect the most vulnerable. And here we are talking about children—children who are in a hospital who we know might need their parents. We are just asking for some consideration. Not everything has to be a partisan vote. On some level, we should be able to look beyond partisan politics and say, in this instance, there should be some nuance because leadership is about nuance. Leadership is looking at the moments and saying maybe there should be something different. So just to be very clear, all this amendment does is say in hospitals that we are expanding it not just to say the individual who's getting care, but to their immediate family. That is a very fair request. Especially if you live in a community where you know families are going to be impacted, you should be looking at this amendment. Members, we know this bill is going to pass. And if we know this bill is going to pass, please be sure you're not hurting children. Thank you, Representative Howard, for filing this very important amendment. I really hope the author will reconsider.

HOWARD: Members, I realize that the author is not planning to accept any amendments. I assume that's just so this thing can move through regardless of what's in it. I know he respectfully is not doing that, but I'm respectfully saying that this is going to hurt children and families. This is going to separate families. This is going to prevent children from getting the health care that they need. This is going to prevent people who have been raped from getting the forensic exam because their family member cannot be there with them. And that is a horrific thing to have to go through. So we're willing to send a bill that has this damaging impact without considering adding this amendment, even if it means it delays things a bit. I can't quite understand that. I respectfully disagree with that premise. I hope that you will consider voting for this amendment and ensuring that our children get the health care they need, that they're not separated from their families, and that we don't weaponize our health care facilities.

[Amendment No. 14 failed of adoption by Record No. 33.]

[Representative Patterson moved the previous question on passage to third reading of **SB 4**. The motion for the previous question was seconded and prevailed by Record No. 34.]

NEAVE CRIADO: Members, what we're dealing with right now is a complete deviation than what is normally dealt with on this floor. As we debate bills of such magnitude and statewide ramifications, our voices are being silenced. The voices of millions of our constituents that we represent are being silenced, and we're not able to layout amendments on key issues facing our state, key issues facing our constituents to try to protect them.

For example, individual survivors of domestic violence. Why were we elected if individuals who are proposing this bill cannot even stand up here and defend the amendments? They cannot defend the bill because you're moving to call the question. What courage do you have? Why are you elected if you can't even stand up here to defend a bill impacting millions of Texans? Why are we elected if you cannot even wait for hours because you're worried about your flight home? Why are we elected if you don't even have los cojones para defender esta propuesta de ley—this legislature, a body that is meant to debate and discuss legislation impacting our constituents? We as members, that's why we're asking you to vote no, so that we can have a discussion—it's only 6:14 p.m.—on a statewide bill impacting millions of Texans. Violating our Constitution. Violating the Supremacy Clause of the United States. Violating the 14th Amendment. Violating the Equal Protection Clause. And as we have amendments to try to protect our people, to try to mitigate the damage that we are causing to millions of Texans through **SB 4**, you are silencing voices by supporting an amendment.

I want to know who signed this motion and who's asking for strict enforcement on this motion to call the question because we need to know who has the courage—or who doesn't have the courage—to stand here and debate devastating and overwhelmingly unconstitutional pieces of legislation like **SB 4**. We won't be able to have an opportunity to lay out key amendments because you're cutting off our time. You're cutting off our hands. You're cutting off our

feet. You're trying to silence our voices on legislation that will essentially create ICE officers and deputize them all across the state so that our community can now be rounded up, arrested, and sent back to a border or a port of entry where another country may not even accept our community. And then they will face third degree felonies because of that.

REPRESENTATIVE PATTERSON: Members, today hasn't been too long of a day, but this is the same bill that we debated until 4 a.m. just a couple of weeks ago. Hours and hours of debate on a bill that is critically important to the future of this state. Our constituents sent us here to ensure that we secure the southern border, and that's what we're going to do with this bill.

NEAVE CRIADO: How many times during the regular session of the 88th Legislative Session has a motion to call the previous question been brought before the house?

SPEAKER: That is not a proper parliamentary inquiry.

SPILLER: Members, it's been a long day. I appreciate the discussion. I want to say this—I understand that there are some that don't like this bill and I understand and I respect your positions, but I feel it's important that we pass the strongest border security bill that we can. I think we're on the verge of doing that twice in this Texas House. The strongest border bill in the history of our state and our nation. Members, I thank you for your time, and I move passage.

[**SB 4** was passed to third reading by Record No. 35.]