

To Build Community Trust, Law Enforcement Must Refuse To Enforce Bad Law

Executive Summary

Harris County is home to a vast international population where 1 in 4 people in Harris County is an immigrant.¹ Allowing laws like Texas SB 4 - 88(4): “Illegal Entry” (hereafter TX SB 4 - 88(4)) to be enforced in Harris County is not only bad for the community but also erodes any ability to build trust with law enforcement.

Critical to highlight - TX SB 4 - 88(4) would not exist without Operation Lone Star (OLS). In March 2021, Governor Abbott created OLS - a state-led immigration enforcement program criminalizing migrants, backed by billions of dollars in state funds.² Since then, Texans have watched as the radical right increasingly dehumanized migrants and people of color by fabricating a narrative about an invasion at the Texas/Mexico border. Governor Abbott’s invasion rhetoric led to the 2023 legislative session which passed a slew of anti-immigrant legislation. During the fourth special legislative session, the Texas Legislature codified and expanded OLS with the passage of TX SB 4 - 88(4) by creating three new crimes: 1) illegal entry into Texas, 2) illegal re-entry into Texas, and 3) refusal to comply with order to return.³ TX SB 4 - 88(4) authorizes and instructs Texas peace officers⁴ to arrest non-citizens suspected of entering Texas outside of a port of entry from a foreign nation, or re-entering Texas after being found in Texas at any time after being denied admission, or deported, removed or excluded, or after departing the U.S. with an outstanding order of removal, deportation or exclusion. Further, the law requires state judges to issue orders to return to Mexico, and makes it a felony to refuse to comply with that order.⁵

Put plainly, TX SB 4 - 88(4), is not only unconstitutional and illegal; it is bad law. Currently, this law is being challenged in federal court and it has not been allowed to go into effect because of these constitutional concerns while the litigation is pending. TX SB 4 - 88(4) is unconstitutional because it seeks to implement state immigration laws, a power that is exclusive to the federal government. Secondly, TX SB 4 - 88(4)’s logic and legal barriers are impossible to overcome as the law envisions deporting all migrants to Mexico, irrespective of their country of origin, and Mexico has stated they will not accept non-Mexican citizens if Texas tries to deport them there. Third, TX SB 4 - 88(4) creates a burden on Houston and Harris County’s criminal legal system capacity and budgets that are already stretched thin. Finally, laws like TX SB 4 - 88(4), that lead to racial profiling and target community members, will make Houston and Harris County less safe by exacerbating distrust of law enforcement among community members. Laws like TX SB 4 - 88(4) further a chilling effect which results in, among other things, survivors of crime hesitating to seek law enforcement assistance.

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Harris County Sheriff's Office and City of Houston Police Department

1. Issue a prioritization memo authorizing officers to exercise discretion regarding enforcement of TX SB 4 - 88(4).
2. Implementation of a probable cause checklist for arrests under TX SB 4 - 88(4) to ensure the arrests are based on probable cause supporting the elements of the offense and not on national origin, immigration status, ethnicity or race.
3. Implementation of a reasonable suspicion checklist for detentions including stop and frisk to ensure that the basis for detention is based on reasonable suspicion at the time of the stop and not on national origin, immigration status, ethnicity or race.
4. Implementation of an approval system for arrests of noncitizens and survivors of crime. Deputies conducting a custodial arrest of noncitizens or survivors of crime shall immediately contact their supervisor and obtain approval prior to making the custodial arrest.
5. Implementation of an approval system for arrests of noncitizens and survivors of crime at or near Protected Areas, as defined under the ICE and Customs and Border Protection (CBP) memorandum issued on October 27, 2021. Protected areas include: pre-school, primary or secondary school, institutions of higher education and vocational or trade schools; medical or mental healthcare facilities; places of worship or religious study; places where children gather such as playgrounds, recreation centers etc.; social service establishments; places where disaster or emergency response/relief is being provided; places where funeral services, graveside ceremony, weddings or other religious or civil ceremonies or observances occur; and places where there is an ongoing parade, demonstration, or rally.
6. Implementation of a policy that requires misdemeanor arrest violations to be effectuated in the presence or view of the arresting deputy in accordance with Texas Code of Criminal Procedure Article 14.01.
7. Implementation of a policy that ensures that decisions about arrests of noncitizens are not made using information furnished solely by a spouse, parent, other family member, dating partner, or other individual who has subjected that person to violence or extreme cruelty, similar to 8 U.S. Code § 1367, which prohibits immigration enforcement actions against survivors based on information furnished by an abuser.⁷
8. Ensure Know Your Rights information is available and accessible in the top 5 languages spoken within Harris County and posted in writing within all jails within Harris County, City of Houston and at Magistration. If someone is unable to read or understand the Know Your Rights information because of a language barrier, provide translation of the material in the person's preferred language.
9. Commit to regularly engaging with community members and coalitions like Houston Leads.
10. Commit to maintaining and updating the data on the arrests listed above and ensure the public has access to this data within a reasonable amount of time.

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1. Exercise prosecutorial discretion in cases pertaining to the enforcement of TX Penal Code 51.02 and 51.03, **pre-charge**, like it has done already through the Misdemeanor Marijuana Diversion Program.⁸
2. Ensure an admission of guilt or stipulation of facts shall never be required for participation in diversion programs, and shall not be noted anywhere in the diversion agreement, defendant's file, or court record.
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5. Ensure that when agreeing to post conviction relief for noncitizens, the vacatur language indicates that the conviction is "vacated on the ground of legal or procedural invalidity," so that it is recognized under immigration law. In a case where prejudicial error may exist but is not clear from the record, the prosecutor will individually review each case and decide whether to oppose the motion.
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Magistrate Judges

1. Invite organizations working directly with immigrants and specializing in immigration and criminal law to conduct annual trainings and refreshers of guidance to all Magistrate judges to ensure that attorneys present in Magistration hearings provide proper advice to defendants on the risks of agreeing to an order to depart the U.S. under TX SB 4 - 88(4).
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Introduction

In 2023, the Kinder Institute found that nearly 30% of Houston area residents labeled crime and safety as the biggest problem facing people in the region today, outpacing the economy, cost of housing, traffic, health, etc.¹⁰ As our law enforcement agencies, through your missions and the oaths you have sworn to, you commit to making our communities safer, protecting the trust of the people, and working cooperatively with the public to reduce fear. There is no law enforcement or public safety without the people's trust. This requires empathy and compassion to uphold values of justice and freedom. Our justice system is founded on the principle that we are innocent until proven guilty. It is our actions, not our skin color, appearance, or language that we speak that should determine our culpability.

Houston Police Department Mission Statement: “The mission of the Houston Police Department is to enhance the quality of life in the City of Houston by working cooperatively with the public and within the framework of the U.S. Constitution to enforce the laws, preserve the peace, reduce fear and provide for a safe environment.”

Harris County Sheriff's Office Mission Statement: “To enhance the safety and protect the trust of the citizens of Harris County by enforcing the law with integrity and professionalism.”

Harris County District Attorney's Office Mission Statement: “making our community safer through evidence-based prosecution and equal justice for all.”

Introduction

Texas SB 4 - 88(4) would not exist without Operation Lone Star (OLS). In March 2021, Governor Abbott created OLS which is a state-led immigration enforcement program backed by billions of dollars in state funds.¹¹ Since its inception, migrants and people of color have been apprehended and charged with “trespassing.”¹² There is mounting evidence that Texas law enforcement agencies in counties where OLS is operative are fabricating these charges.¹³ For example, numerous accounts detail how law enforcement officers direct migrants to enter private property, only to later arrest them for trespassing.

Further, as part of OLS, the Texas Department of Public Safety (DPS) conducts pretextual traffic stops for which there is evidence of racial profiling and discrimination against Latinx drivers.¹⁴ Despite a Texas District Judge ruling OLS unconstitutional,¹⁵ the discriminatory arrest practices continue as migrants are placed in state prisons and deprived of due process.¹⁶

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Introduction

Following in the footsteps of its predecessor, OLS, TX SB 4 - 88(4) authorizes and instructs “peace officers”¹⁷ to arrest non-citizens suspected of entering Texas outside of a port of entry from a foreign nation, or re-entering Texas or after being found in Texas at any time after being denied admission, or deported, removed or excluded, or after departing the U.S. with an outstanding order of removal, deportation or exclusion. Further, the law requires state judges to issue orders to return to Mexico, and makes it a felony to not comply with that order.¹⁸

TX SB 4 - 88(4) undermines the missions of Houston’s and Harris County’s law enforcement agencies and puts them at risk of violating both the U.S. Constitution as well as state and other federal laws if enforced as written, and causes panic and fear for residents in a diverse and vibrant community. Houston’s and Harris County’s immigrants and mixed-status families need a strong message from their local government that they are safe and welcome here.

Background and Issue

In 2023, 44.8% of the population in Harris County spoke a language other than English at home and 26.2% were foreign-born, almost double the national average.¹⁹ Studies show that cities with high numbers of immigrants have stronger community bonds and are actually safer than those without.²⁰ TX SB 4 - 88(4) will lead to discriminatory arrests (as documented under Operation Lone Star),²¹ detentions, and deportations, with no basis in public safety. It will lead to family separation, possible ensnarement of Lawful Permanent Residents and even U.S. citizens, and destabilization of Houston and Harris County’s children, almost half of whom have at least one immigrant parent.²²

TX SB 4 - 88(4) is unconstitutional

Despite extensive public testimony from immigration law practitioners and scholars in opposition, Texas enacted a bill creating state level crimes of “Illegal Entry”, “Illegal Reentry”, and allowing state peace officers and judges immigration enforcement powers. Should this bill be enacted, TX SB 4 - 88(4) will introduce a patchwork of immigration enforcement across the 50 states, curtail or eliminate long-established federal rights and protections, create confusion around immigration enforcement, severely impact foreign relations, and lead to impermissible racial profiling in its enforcement.

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Intentionally Designed to Challenge the U.S. Constitution

Over 150 years of legal precedent prevents states from legislating and enforcing immigration law.²³ However, high-level Texas officials implied TX SB 4 - 88(4) is a vehicle to challenge the Supreme Court case *Arizona vs. United States*, which restricts state power to create immigration crimes and enforce immigration law.²⁴ It is evident that what Texas seeks to do with the passage of TX SB 4 - 88(4) is beyond what is permissible under the law. Even the Solicitor General of Texas in oral arguments at the 5th Circuit Court of Appeals admitted that “maybe Texas went too far”²⁵ with designing TX SB 4 - 88(4). At the time of this writing, this law has not been able to go into effect pending litigation as to its constitutionality.

TX SB 4 - 88(4)'s logistic & legal barriers are impossible to overcome

TX SB 4 - 88(4) mandates that people who are issued an order to return do so to the foreign nation from where they entered Texas, i.e. Mexico. However, Mexico has publicly stated that they will not accept non-Mexican citizens that the state of Texas attempts to deport.²⁶ This leaves people who are deported by the state of Texas no choice but to be charged with refusal to comply with an order to return, which carries a possible sentence of up to 20 years in prison. It also puts federal Border Patrol agents in an impossible situation, managing a humanitarian crisis while stuck between Texas law enforcement on one side, and the Mexican government on the other.

Harris County is in the interior of Texas. It is physically impossible to determine whether someone did not enter through a port of entry in our county. Determining probable cause for an arrest for Illegal Entry and Illegal Re-entry in the interior of the state is rife for racial profiling²⁷ as we saw occurring under Operation Lone Star.

Federal immigration law is commonly referred to as the most complex body of law in the United States, even more complicated than tax law.²⁸ From citizenship determinations to adjustment of status adjudications, to admission into the U.S., even trained federal officers often make mistakes. We cannot ask local law enforcement, prosecutors, and judges to become experts in an entirely new area of law when their responsibility is state criminal law. Yet, we also cannot allow our local law enforcement to engage in the deportation of U.S. citizens and those with lawful status granted by the federal government, nor to violate the due process rights of all residents of Houston and Harris County regardless of immigration status.

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Survivors and TX SB 4 - 88(4). Currently, the federal government recognizes that survivors of crimes should be protected and not further victimized by immigration enforcement actions.²⁹ Under the current directive, should ICE officers encounter someone who has a pending survivor-based application with the United States Citizenship and Immigration Services (USCIS) or could qualify for one, they will refrain from taking civil immigration enforcement action against the survivor absent exceptional circumstances.³⁰ Under TX SB 4 - 88(4), a survivor could face removal despite having a pending survivor-based application with USCIS because such an application is not one of the three specific defenses to prosecution under TX SB 4 - 88(4).³¹ Further, if a survivor is found anywhere in the state of Texas after having been ordered removed, they could also be prosecuted under the Illegal Reentry prong of SB 4-88(4) to which there are no defenses and could face up to 20 years in prison.³² As SB 4-88(4) is written, it would be in direct conflict with a federal directive. Allowing state court judges to issue immigration orders in contravention of federal immigration enforcement policies contributes to chaos and mass uncertainty about applicable law and jurisdiction.

Enforcement actions in or near sensitive areas and TX SB 4 - 88(4).

On October 27, 2021, Guidelines for Enforcement Actions in or near protected areas were published and are the current federal guidance.³³ Under these guidelines, ICE and CBP are to refrain from enforcement of certain locations that are deemed protected. Under this directive, Secretary Alejandro Mayorkas defined protected areas as places where community members “access essential services or engage in essential services.”³⁴ ICE and CBP are to refrain from enforcing in protected areas such as: pre-school, primary or secondary school, institutions of higher education and vocational or trade schools; medical or mental healthcare facilities; places of worship or religious study; places where children gather such as playgrounds, recreation centers etc.; social service establishments; places where disaster or emergency response/relief is being provided; places where funeral services, graveside ceremony, weddings or other religious or civil ceremonies or observances occur; and places where there is an ongoing parade, demonstration, or rally.

Under TX SB 4 - 88(4), peace officers are allowed to arrest individuals anywhere except in four locations: 1) public or private primary and secondary schools; 2) churches and established places of worship; 3) healthcare facilities, but only if there to receive treatment and 4) SAFE ready facilities but only if there to receive treatment. As TX SB 4 - 88(4) is written, arrests made in protected areas that are outside the four exceptions would run afoul of the federal guidance and create a chilling effect that will further erode community trust in law enforcement.

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Overwhelming cost burden of TX SB 4 - 88(4)

Houston and Harris County's criminal legal system capacity and budgets are already stretched thin. We have seen at least 62 people³⁵ die in jail custody from unnatural causes between 2012 and 2022. The Harris County jail remained out of compliance³⁶ with Texas minimum safety standards as of August 2023. Cases snaking their way through the Harris County court system face a two-year backlog. Appeals can languish for years.³⁷ The additional cost to jail, prosecute, and deport people under TX SB 4 - 88(4) will spiral with conservative estimates determined for a similar bill (TX HB 4 - 88(3)) from Harris County officials **reaching \$184,000,000 annually.**³⁸

DPS Director McGraw testified before the Texas legislature that TX SB 4 - 88(4) will result in an **additional 75,000 arrests annually.** With Houston and Harris County budgets spread thin, where will the money come from? Houston and Harris County residents have critical needs such as public health, community development, and public safety that should not be sacrificed in order to cover the cost of both the implementation of TX SB 4 - 88(4) and indemnification of local government officials who face liability for improper enforcement.

| Additional annual estimate cost to jail, prosecute, and deport under TX SB 4 - 88(4)* | City of Houston Police Department FY24 Budget | Harris County Justice and Safety FY24 Budget |
|---|---|--|
| \$184,000,000 | \$1,600,000,000 | \$1,500,000,000 |

TX SB 4 - 88(4) -> ~6% increase in combined law enforcement budget pulled away from critical services

*Determined for similar bill (TX HB 4 - 88(3)) from Harris County Intergovernmental & Global Affairs²⁷

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TX SB 4 - 88(4) makes Houston & Harris County less safe

Authorizing and instructing local criminal law enforcement agencies to engage in immigration enforcement further destroys trust that law enforcement has tried to build with immigrant communities. Immigrants in the U.S. are more vulnerable to violence due to lack of legal protection and limited resources for social mobility. They are also less likely to report their victimization to the police, due to fear of immigration enforcement. Deterrence and criminalization do not work; rather, every time there is a push to criminalize immigrants, it further destroys trust in government institutions and drives immigrants into hiding. A 2013 study in Chicago found that 70% of undocumented immigrants and 44% of Latine residents were less likely to report crime to the police because they feared that police would enforce immigration laws.³⁹

In Houston, following the change in ICE enforcement priorities in 2017 and the passage of the TX Legislature's 2017 SB 4 - 85(R), the Chief of Police disclosed that the department saw the **number of Latine residents reporting rape decrease by 42.8 percent from the previous year**, while those **reporting other violent crimes registered a 13 percent drop**, compared to an **8.2 percent increase of non-Latine victims reporting rapes and 11.7 percent increase of non-Latine telling police about violent crimes** during the same period of time.⁴⁰

During the same period, the Houston Area Women's Center saw an increase in calls by Latine survivors of domestic violence and rape seeking services.

Law enforcement agencies across the entire criminal legal system report that cooperation with or engaging in immigration enforcement makes their jobs harder. A 2018 survey by the ACLU and the National Immigrant Women's Advocacy Project surveyed law enforcement judges, court staff, prosecutors and advocates across all 50 states. They found that changes in immigration enforcement in 2017 caused immigrant crime survivors to be less likely to help in investigations, interfered with police ability to protect crime survivors, and had adverse impacts on officer safety.⁴¹ A similar study in 2019 of advocates working with immigrant survivors of gender-based violence found that survivors were less likely to contact the police, less likely to attend court, and more likely to drop civil or criminal cases due to fears of immigration consequences.⁴²

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Entangling criminal law enforcement with immigration enforcement leaves immigrant survivors of crime vulnerable to further violence and too afraid to access support. In 2023, advocates in California testified before the U.S. House Committee on the Judiciary’s Subcommittee on Immigration Integrity, Security, and Enforcement, reporting that as immigration checkpoints increased along a road leading to a local rape crisis center during the first half of that year, the center saw a significant decrease in services provided to immigrant survivors of sexual assault.⁴³

PARTNERS



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Solution & Action

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Conclusion

As the Texas Legislature continues its assault on Texans by creating laws to further criminalize all aspects of our lives, it is the responsibility of our local elected officials to protect our community. We call on our local elected officials and law enforcement to work with advocates on the ground to develop policies and implement them in ways that keep us all safe.

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