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Political Crystal Ball: Immigration Possibilities Following the Election

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RECENT AND EMERGENT TEXAS IMMIGRATION LAWS, POLICIES AND LITIGATION

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Background

Even though the federal government controls immigration laws, in recent years, Texas has increasingly taken immigration enforcement into its own hands, enacting several laws and policies that control, restrict, and criminalize immigration. The laws and policies have shifted from prohibiting “sanctuary cities” in 2017, to declaring a “disaster” at the U.S.-Mexico border and launching “Operation Lone Star” in 2021, to enacting new state immigration criminal offenses in 2023. In addition, the Texas Office of Attorney General has investigated and filed lawsuits requesting that courts close organizations that shelter, advocate and provide services to immigrants. These actions reflect Texas’ ongoing efforts to challenge the federal government’s primary role in shaping immigration policy and have resulted in ongoing litigation involving varying issues between the state and federal government and against nonprofit organizations that serve immigrants.

Anti-Sanctuary Cities Law 2017

In 2017, Texas passed its anti-sanctuary city, known as Senate Bill 4 (85th), which banned “sanctuary cities” across Texas by prohibiting all local governments and law enforcement agencies from enacting policies that would limit cooperation with federal immigration authorities under Texas Government Code Chapter 752 and Texas Local Government Code Chapter 370. Law enforcement officers are required to ask about the immigration status of detained individuals and local jails are required to comply with ICE detainer requests under Chapter 2 of the Texas Code of Criminal Procedure. Local officials who refuse to cooperate with federal immigration authorities regarding detention requests can face criminal and civil penalties.

Operation Lone Star 2021

On March 6, 2021, Operation Lone Star (“OLS”) was officially launched by Texas Governor Greg Abbott to “combat the smuggling of people and drugs into Texas” in response to a perceived increase in illegal immigration. On May 31, 2021, Governor Abbott issued a disaster proclamation certifying under Section 418.014 of the Texas Government Code that “the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster.” This “disaster declaration,” which has been renewed every thirty days since the initial declaration, has enabled Texas to institute a series of actions under OLS aimed at curbing immigration into the state.

Key Components of Operation Lone Star

Deployment of State Law Enforcement and National Guard to Border for State Arrests and Prosecutions of Misdemeanor Criminal Trespassing and Human Smuggling

Using this disaster declaration, the Governor deployed the Texas National Guard and the Texas Department of Public Safety to the border and in July 2021, began arresting migrants at the border *en masse* under the guise of a state criminal trespass charge. More than a dozen states have also been sending their own National Guard troops to Texas to support its border security mission at the request of Governor Abbott.¹ In addition, state law enforcement was mobilized to assist local law enforcement agencies in the investigation into human smuggling near the Texas-Mexico border. Temporary processing centers were constructed in Val Verde County and Jim Hogg County to magistrate individuals arrested under OLS and Texas Department of Criminal Justice prisons were “repurposed” to house OLS detainees. OLS also created specialized OLS courts, prosecutors and defense attorneys to adjudicate OLS offenses. Since its launch, Texas has spent over \$11 billion dollars on OLS, arresting and prosecuting thousands of individuals, with nearly 70% of those arrests involving misdemeanor criminal trespass.²

Militarization of Certain Portions of the Border and Construction of Border Barriers

In addition to law enforcement efforts, Texas has set up a militarized zone in Eagle Pass Texas and has initiated its own construction of physical border barriers in the form of fencing, concertina wire and river buoys. Governor Abbott has used state funds and solicited private donations to build segments of a Texas border wall, modeled after the border wall projects initiated during the Trump administration. In 2024, Texas began construction of a permanent military base in Eagle Pass – Forward Operating Base – which will be a base camp to house over 2,300 soldiers.³

Taxpayer Funded Migrant Busing Program

Another component of OLS involved a busing program where taxpayer-funded buses transported migrants from Texas to “sanctuary cities” across the country, spending \$221 million dollars to transport nearly 120,000 migrants out of Texas.⁴ Governor Abbott has stated that the program is aimed at easing the burden on Texas border towns and also to bring national attention to what he sees as a federal failure to secure the southern border. The busing program has been on pause since June 27, 2024.

Senate Bill 4 (88th-S3) – Enhanced Human Smuggling and Operation of a Stash House Criminal Penalties

SB4 (88th-S3), which passed in the Texas 88th Legislature 3rd Special Session, modified the existing criminal statutes of Human Smuggling under Texas Penal Code 20.05 and Operation of a Stash House under Texas Penal Code 20.07 to create mandatory minimum sentences of 10 years of imprisonment and 5 years of imprisonment respectively. Under Texas Penal Code 20.05, the offense of Human Smuggling makes it a crime to Use a motor vehicle, aircraft or watercraft to transport a person with *an intent* to conceal the person from a peace officer; or to encourage or induce a person to enter or remain in this country in violation of federal law by concealing,

¹ <https://www.texastribune.org/2024/07/15/texas-national-guard-border-other-states-deployment/>

² <https://www.kvue.com/article/news/local/texas/operation-lone-star-dps-defends-program-drop-in-illegal-crossings/269-95a764ba-80d5-42d0-92c5-97f0f8e2560c>

³ <https://www.texastribune.org/2024/02/16/texas-border-national-guard-base-eagle-pass/>

⁴ <https://www.washingtonexaminer.com/policy/immigration/3141777/texas-busing-migrants-border-costs/>

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