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Texas is Being Invaded

I was recently elected as the County Attorney for Kinney County, Texas, which is adjacent to the Mexican border. Our county is being bombarded by hundreds of illegal aliens on a daily basis. Our local law enforcement is overwhelmed with illegal alien smuggling activity and high-speed pursuits occurring along our highways and within the residential streets in our small town. These individuals, who unlawfully enter our county, originate from many different countries from around the world, including the Middle East. I highly doubt most Texans, or their elected representatives, fully comprehend the magnitude of the situation. Our homes are being broken into in the middle of the night. The main street of our small town is now the place of high-speed car chases. Walking outside on our own property after dark is no longer safe. The residents of our county no longer enjoy the comfort and safety of their own home. Words cannot adequately describe the conditions on the ground and the vast number of illegal aliens that are flooding into our county. All of this has resulted in the deaths of several people and tremendous amounts of property damage, which will certainly become worse in the coming months if no action is taken to prevent it. Make no mistake, our great state of Texas is being invaded by thousands each day.

States Have the Power to Protect Their Borders

The U.S. Constitution does not grant the federal government the exclusive authority to enforce its immigration policies along its borders. As such, the State of Texas, as a sovereign political entity, has the *concurrent authority* to enforce its own borders and protect the health, safety, and welfare of its citizens. An examination of the U.S. Constitution establishes that the only exclusive power granted to the federal government concerning aliens is the power “*to establish a uniform rule of naturalization.*” This authority was granted exclusively to the federal government because the authors of the U.S. Constitution wanted to ensure that the qualifications for becoming a citizen would be uniform throughout the several states. A straightforward interpretation of this text limits the scope of this exclusive authority to the legislative function of Congress in creating a uniform set of laws, but does not go so far as granting an exclusive authority in border enforcement. The U.S. Constitution addresses the enforcement of State borders under Article IV, Section 4, which “*guarantees*” that the federal government shall protect each State of the Union against “*invasion*”. This constitutional guarantee is not a voluntary undertaking which the federal government can choose to ignore. To the contrary, it is a constitutional mandate that guarantees the protection of its citizens, of all the States within the Union. Recognizing the importance of such a guarantee, the authors of the U.S. Constitution also granted the States the concurrent authority to act in times of “*invasion or imminent harm*” under Article I, Section 10, Clause 3. It is only logical to conclude that the authors of the U.S. Constitution granted this concurrent authority for states to act on their own behalf as a contingency for when the federal government is not able, or willing, to uphold its guarantee of protection under Article IV, Section 4.

Texas Must Act

Due to the current administration's lack of concern and utter failure to uphold its constitutional obligation and protect our borders from invasion, Texas is experiencing an unprecedented wave of illegal immigration, the likes of which has never been seen before. With no aid coming from the "leadership" in Washington D.C., the people of Texas are now looking to our own elected representatives in Austin to step in and uphold those protections guaranteed by the U.S. Constitution.

Texas should act on its own accord to enforce its border with Mexico and protect its citizens with the concurrent authority granted to States in the U.S. Constitution. It is my opinion that an emergency declaration by Governor Abbott or the Texas Legislature would authorize Texas to take certain steps in the enforcement of its own borders and the protection of its citizens' health, safety, and welfare. It is imperative that Texas acts to protect those constitutional rights of its citizens that are guaranteed under Article IV, Section 4 of the U.S. Constitution. Such actions should include the enforcement of current federal immigration law that has been enacted by Congress, despite any unconstitutional executive orders to the contrary.

Texas should act by aiding law enforcement in this current border crisis and amend Section 20.05 of the Texas Penal Code (*Smuggling of Persons*). To successfully prosecute a smuggler of illegal aliens under the Texas Penal Code, the State must provide evidence that the suspect carried out the smuggling for their own "pecuniary benefit" (e.g., money). This is exceedingly difficult when those persons being smuggled are illegal aliens who have been released into the public with no way of locating them for testimonial evidence. Removing this "pecuniary benefit" element, or altering the evidentiary requirements for establishing the same, would aid our Texas courts in more successful prosecutions of illegal smuggling of persons. To further exacerbate the situation, the State mandated spacing requirements that jails must comply with due to COVID-19 has resulted in the release of many known smugglers and illegal aliens into our communities. Unfortunately, the high-speed chases that occur on our border routinely involve smugglers who have been apprehended in the past, but not prosecuted due to the unavailability of witnesses or evidence establishing that such was done for the pecuniary benefit of the driver.

If our state representatives lack the fortitude to act in protecting the constitutional rights of Texans, other possible solutions should be pursued on a county wide basis. The County Sheriff is vested with a tremendous amount of constitutional authority to protect his or her residents. Kinney County residents are thankful that their Sheriff, Brad Coe, places a high priority on their protection. However, the limited resources of one county alone will not successfully address the current border crisis. If our state representatives fail to act, a coalition of counties should combine their resources and coordinate their activities to successfully protect their own residents.

I write this letter to inform Texans of the current crisis we are facing on our border, and ask that we come together in forming a solution. The constitutional rights of Texans must no longer be ignored and violated by our elected representatives in BOTH Washington D.C. and Austin. It is important to realize that we are only 3 months into a 4-year Presidential term. The current status quo of our border is NOT sustainable. The border crisis that Texans are facing demands action NOW.

Respectfully,

Brent Smith
Kinney County Attorney