

GOV & POLITICS

SB 4: Political Aims, Personal Consequences



BEKAH MCNEEL

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ROCÍO GUENTHER / RIVARD REPORT

Councilman Rey Saldaña (D4) embraces a supporter during a press conference in support of the City's effort to join a lawsuit with MALDEF against SB 4.

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Lawmakers and press have described the debate over the state's new "sanctuary cities" law, or Senate Bill 4, as chaotic. To truly understand the forces at work one would have to watch archived footage of the debate on the House floor — all 16 hours, said State Rep. Diego Bernal (D-123).

At one point, Bernal can be seen motioning to add an amendment to the bill while being overtly ignored by his House colleagues.

Representatives cried, fasted, and even threatened violence.

<https://www.nytimes.com/2017/05/29/us/texas-protests-sanctuary-cities.html>

Legislators often disagree, and disagree passionately, on political and social issues. However, SB 4 is personal for many in Texas, where demographers expect the Hispanic population to exceed the white population by 2050 if not sooner. At the heart of the law is an identity issue – that of the “illegal immigrant”– and it is deeply stained with political, practical, historical, and moral implications.

Political Agendas at Play

For all the emotion it has stirred, SB 4 is criticized as an irrelevant political maneuver, since none of Texas' largest cities meet the federal definition of a sanctuary city. Actually, there isn't an agreed upon definition, said Erica Schommer, an immigration attorney and clinical assistant professor at St. Mary's University School of Law. A sanctuary city is generally understood as one that limits cooperation with the federal government on immigration matters to one degree or another. That being the case, Schommer said, SB 4 and similar laws target an attitude toward immigrants more than specific actions.

“We've seen this push to criminalize sanctuary cities, or any policies that could be perceived as ‘pro-undocumented people,’” Schommer said.

Nonetheless, the City of San Antonio (<https://therivardreport.com/san-antonio-sues-to-stop-sanctuary-cities-law/>) and Bexar County (<https://therivardreport.com/bexar-county-joins-lawsuit-to-block-sanctuary-cities-law/>) decided to join a lawsuit filed by the Mexican American Legal Defense and Educational Fund (MALDEF) to stop SB 4 from going into effect on Sept. 1. On Monday, June 26, U.S. District Judge Orlando Garcia will hear the City's case for the injunction.

Republican Party of Bexar County Chairman Robert Stovall claims that MALDEF's lawsuit, and much of the outrage over SB 4, is politically engineered to give the Democratic party a rallying cry in upcoming elections.



SCOTT BALL / RIVARD REPORT

Bexar County GOP Chairman Robert Stovall introduces Republican candidates at the County Line Barbecue the day before the November elections in 2016.

“Coming from a political standpoint, I do believe that this is a political issue that the far-left wing [of the Democratic party] wants to push through in the hopes that they would get their people rejuvenated,” Stovall said.

San Antonio City Councilman Rey Saldaña (D4) has been a leading local voice in opposition to SB 4. He acknowledges that often the issue of undocumented is “hijacked by unfocused calls for compassion.” At the same time, the word “illegal’ has been used to pour gasoline on the genuine fears people have about a changing America. There [are] these apocalyptic visions of a nation with no borders,” Saldaña said.

The fight began in the political arena when Travis County Sheriff Sally Hernandez campaigned on a promise to refuse to honor all ICE detainment requests, making Austin the state’s first major sanctuary city.

ICE detainers are not warrants, Schommer explained. They are requests to hold someone already in custody for additional days while they are subject to an ICE investigation. Because ICE investigations are not criminal, Hernandez was not obligated to honor them, she said. Hernandez, like all law enforcement, continued to honor warrants, as well as detainers for those accused of violent crimes or felonies.

Once elected, Hernandez pursued policies to make good on her campaign promises, and saw \$1.5 million pulled from her budget by Gov. Greg Abbott. SB 4 passed shortly after.

With the new law in place, Hernandez said she plans to comply.

“It is unfortunate that fear and misinformation enabled SB 4 to pass,” she stated in a release issued by her office. “It should be obvious that my implementation of a policy, meant to meet our community’s need, did not violate any law. Otherwise, the Texas Legislature wouldn’t have felt compelled to make a new one. “

Though he admits that he hates to see laws created to enforce other laws, Stovall, insists that SB 4 is necessary and blames former President Barack Obama’s policies.

“I think this is something we’re dealing with from a previous administration that insisted on showing that we have open borders,” Stovall said.

(Im)Practical Matters

Both sides agree that SB 4 has been subject to plenty of misinformation.

“The law came about in response to a lot of cities and jurisdictions that said, ‘Regardless of what the federal government does, we are going to continue to do what we do,’” Schommer said. “Local law enforcement had never been concerned with immigration status before, because it wasn’t relevant to what they do.”

SB 4 makes it illegal to create policy that keeps officers from inquiring about immigration status, which MALDEF attorney Celina Moreno said raises concerns about “vigilante” officers.

“You are taking away police chiefs’ ability to set their own law enforcement priorities, and leaving it up to every person with a badge to make that call,” Moreno said.

Concerns that police may sympathize with anti-immigrant groups are not without foundation. In San Antonio, a group of SAPD officers donned red “Make America Great Again” caps during a Trump campaign visit. The Trump campaign was characterized by anti-immigrant rhetoric.

That mistrust, Stovall said, is due to the kinds of bad actors that are already tarnishing the reputation of local law enforcement. Those intent on abusing power are not looking to a law like SB 4 for legal cover, he said.

“You’ve got good cops and some that are not as good,” Stovall said. “If someone wakes up and makes it their mission [to discriminate against people], there’s not much you can do about it.”

Stovall said that most people in South Texas, law enforcement included, harbor no ill will against immigrants, documented or not. He sees it as a safety concern.

"I don't understand the opposition. I don't like more laws on the books but I have a hard time arguing against an elected official who wants to make our streets safer," Stovall said. "I don't want this to be an overreach or an attack on immigrants."

However, law enforcement officers across the state have expressed concern that fear of police officers who could ask to see immigration documents at any time will inhibit officers' abilities to do their jobs, which would make cities less safe.

"We want people to interact with us. We want them to help us solve crimes," San Antonio Police Chief William McManus said in a May 8 press briefing. "With this bill in effect I don't and my colleagues across the state don't believe that folks will be willing to interact with police for fear of being asked about their immigration status."



SCOTT BALL / RIVARD REPORT

San Antonio Police Chief William McManus presents his year in review statistics.

Saldaña, too, is concerned about the detrimental

effects on the community. When he sits in church on Sunday morning, he said, he knows that about one-quarter of the people around him are personally affected by the rhetoric coming out of Washington, D.C. and Austin.

"The problem I'm trying to solve is that these people – business owners, workforce, and parents – could shut off and turn off from contributing to our community," Saldaña said.

The biggest allies for the immigrant communities are "Bibles, badges, and businesses," Saldaña said. Churches, law enforcement, and local business all benefit when the immigrant community participates. If they no longer feel safe, all of those institutions will feel the strain, he said. "I'm too pro-family and too pro-police to support SB 4."

Whatever the unintended consequences, for Stovall it is ultimately a matter of right and wrong.

"The fact of the matter is that if someone from another country comes here and commits a crime, they've screwed up, that's that, he needs to go back," Stovall said.

The oversimplification of legal versus illegal ignores the complexity of the immigration issue as a whole, Schommer said.

The emotional response to the word "illegal" seems to imply an intentional, even malicious transgression of U.S. law. In reality, many children in the country without documentation do not even realize what their immigration status is until they try to apply for a job or for college. Others become stuck in limbo while they wait for green cards and visas to process.

The ways in which a person's immigration status can qualify as illegal are numerous.

Being in the U.S. without documentation is not a crime; it is a civil infraction. Crossing into the U.S. illegally is a crime, but not everyone enters that way, Schommer explained. "A lot of people are technically out-of-status at any given time because one status has expired and the extension or change in status has not [yet] taken effect."

Asylum cases are particularly lengthy. "It's not unusual for an asylum case to take two to five years. If there are appeals it can take up to a decade. During that time, the person doesn't have status," Schommer said.

Moreno agrees that current immigration laws are in need of reform.

"I think people have a very unrealistic idea of how broken our legal immigration system is," Moreno said. "There are extremely limited avenues for legal immigration."

The current immigration system favors wealthy immigrants from countries with a low demand for U.S. visas, Moreno said. If someone comes from a high-volume country like Mexico and doesn't have \$1 million to invest, the line is prohibitively long.

Many legal immigrants have spoken out against those without documentation. However, Schommer said, they may mistakenly be comparing very different processes. Immigration laws have changed dramatically since 1996. It is far more difficult to gain status through a family member.

"There's this idea that it's willful on the part of people who are here without status when the reality is that if you are poor and uneducated it's very hard to legalize your status or come here legally in the first place," Schommer said.

Immigration attorneys need to do a better job of educating the general public on how complicated and onerous the process is, Schommer said.

Proponents of the law claim that enforcement will target criminals, not people whose only infraction is illegal residence.

"It's not like this law is saying 'Round everybody up,'" Stovall said.

However, because the law is not written to reflect this intention, opponents say that people of Hispanic origin will be more likely to be targeted for random traffic stops and detention for minor infractions.

"SB 4 is much broader than a law regarding immigration," Moreno said. "This is a law that is going to affect people who look foreign."

Lessons from History

Legal and illegal, historically speaking, are fluid terms, especially when it comes to immigration. Recent immigrants might have followed some sort of law, but looking further back, this was not the case, St. Mary's University history professor Teresa Van Hoy said. In fact, the historical characters we consider heroic settlers were often "illegally" making home in a new land. Texas' own heroes of the Alamo were in violation of Mexican law from 1830 banning immigration from the U.S.

"Those who condemn 'illegal immigration' and fancy that their families' own immigration was legal might be chagrined to learn that much of the occupancy and possession of territory in the United States is in violation of our own treaties with Native American nations," Van Hoy said. "That is to say, we not only broke the law to invade and immigrate into Native American nations, but it was our own U.S. law that we broke."

At the very least, Van Hoy's examples point to the fact that legal immigration is not a law intrinsic to the land. Legal processes have been shaped over time and reformed time and time again toward a better understanding of justice.

"Those of us who have the law on our side do well to consider who makes the law," Van Hoy said. "Laws have a long history of privileging some at the expense of others. Slavery was once legal. Beating women was once legal. Our own Constitution had to be amended to grant African-Americans and women the right to vote. Legality does not guarantee us a

hard-won place on the moral high road. If the moral high road is mapped and paved by those who share our assumptions and secure our privilege, we will need to confirm that our choices are not only legal, but also just.”

Answering to a Higher Law

At its core, immigration is a moral issue, not a legal one, said Rev. John Garland, pastor of San Antonio Mennonite Church.

“No human being is illegal. Human beings were made in the image of God. To call a human being illegal is like calling God illegal.”

Garland’s Mennonite congregation played a critical role in [caring for a group of immigrants](https://therivardreport.com/migrants-released-from-detention-continue-to-pour-into-san-antonio/) (<https://therivardreport.com/migrants-released-from-detention-continue-to-pour-into-san-antonio/>) released from South Texas detention centers without warning.



KATHRYN BOYD-BATSTONE / RIVARD REPORT

A young girl plays between the pews of the San Antonio Mennonite Church after she was released from an immigrant detention center in South Texas.

In April 2013, the *Associated Press* [banned the use of the word “illegal”](https://blog.ap.org/announcements/illegal-immigrant-no-more) (<https://blog.ap.org/announcements/illegal-immigrant-no-more>) to describe people, as opposed to actions. However, in casual conversation references to “illegal immigrants” or even “illegals” are still widespread.

“In order to pass a discriminatory law like SB 4 there has to be some level of ‘othering,’” Moreno said.

This should be troubling to the very people claiming to believe in “the laws of nature and nature’s God” as the Republican Party platform states, Garland said. The party platform is full of references to God, as are many of the nation’s founding documents. Many of the most conservative members of the Texas Legislature, those who authored and fought for SB 4, lean heavily on the evangelical community for support.

“If you think the Bible underpins our laws, [immigration policy] has to be part of it,” Garland said. He points to passages in the Bible that specifically mandate hospitality to foreigners (Leviticus 19:33) and equate oppression of foreigners within a country’s borders to adultery and perjury (Malachi 3:5).

Equally problematic for Garland is the characterization of all SB 4 supporters as xenophobic or racist. While his church hosted refugees, Garland saw acts of kindness from individuals who approve of laws like SB 4. At heart, he said, the image of God in each of us draws us toward kindness and compassion, in spite of political differences.

"We try to cover over that image of God a lot – with materialism, with pride, etc. – but it's there," Garland said.

For Christians who struggle with the idea of "breaking the law," Garland recommends getting to know a person living in the U.S. illegally. "Then ask yourself how to balance law and compassion."
