

# [***Is Texas Being Invaded? Founding Fathers Would Say 'Yes' | Opinion***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BR4-HY71-JBR6-900G-00000-00&context=1516831)

Newsweek.com

April 5, 2024 Friday 12:35 PM EST

Copyright © 2024 Newsweek Inc. All Rights Reserved



**Length:** 1115 words

**Byline:** Justin Haskins

**Highlight:** There's no denying that there's a crisis at America's southern border. Even many of Joe Biden's most ardent defenders will admit that.

**Body**

There's no denying that there's a crisis at America's southern border. Even many of [*Joe Biden*](https://www.newsweek.com/topic/joe-biden?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships)'s most ardent defenders will admit that. But several questions remain: what can and should be done about it, and by whom?

The state of Texas and the Biden administration are currently fighting in federal court over some of the proposed answers to those questions.

Fed up with the administration's unwillingness to enforce existing federal law, Texas passed [*Senate Bill 4*](https://www.foxnews.com/politics/biden-admin-texas-head-back-appeals-court-anti-illegal-immigration-law-hours-scotus-ruling) in November 2023. The law gives Texas police officers the authority to arrest people suspected of entering the United States illegally. It also allows Texas state judges to order deportations to Mexico and adds "improper border entry" as a state criminal offense.

The Biden administration and the state of Texas are currently fighting over the constitutionality of the law in the Fifth Circuit Court of Appeals. Regardless of what that court decides, the fate of [*Senate*](https://www.newsweek.com/topic/senate?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships) Bill 4 will ultimately be determined by the U.S. [*Supreme Court*](https://www.newsweek.com/topic/supreme-court?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships), which so far has [*refused to weigh in on the merits of the legal dispute*](https://www.foxnews.com/politics/federal-appeals-court-puts-texas-immigration-law-again-back-hold-hours-after-supreme-court-approved).

Although much of the media coverage of the legal battle between the White House and Texas has focused on illegal immigration, the heart of the issue is whether Texas has the *constitutional authority* to defend its citizens from the negative effects of having hundreds of thousands or even millions of people illegally cross its border each year.

In other words, the real dispute is about states' rights, not immigration. This makes it a vitally important issue, no matter what you think about immigration policy.

Under most circumstances, the Constitution grants the federal government the exclusive right to regulate immigration and declare war. However, the Constitution does make exceptions.

In [*Article One, Section 10*](https://www.law.cornell.edu/constitution-conan/article-1/section-10), the Constitution declares, "No State shall, without the Consent of [*Congress*](https://www.newsweek.com/topic/congress?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships)...engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay."

The whole constitutional battle comes down to the meaning of the word "invasion."

The state of Texas argues that the ongoing flood of illegal immigration qualifies as an "invasion," and thus it has the constitutional authority to defend itself if the federal government refuses to provide the necessary assistance.

The federal government says the word "invasion" cannot be used to describe what's happening in Texas, and thus Texas must adhere to whatever federal authorities decide, regardless of the potential harms.

Today's pundits, legislators, and voters might disagree about what constitutes an "invasion," but in the era of the Founding Fathers, when that clause of the Constitution was written, the word had a clearer meaning. To the Founders, an "invasion" [*referred to any unauthorized entry that includes even a slight degree of hostility*](https://www.texaspolicy.com/wp-content/uploads/2022/11/2022-11-RR-SST-CompactClause-JoshuaTrevino-paper5-.pdf).

Constitutional law scholars Robert Natelson and Andrew Hyman have proven this case beyond a shadow of a doubt in a [*scholarly article published earlier this year*](https://i2i.org/wp-content/uploads/War-final-published.pdf).

Following a detailed historical analysis of the meaning of the word "invasion" prior to, during, and after the writing of the U.S. Constitution, Natelson and Hyman concluded, "The constitutional term 'invasion' denotes an unauthorized and uninvited intrusion of any size across a border, where the intrusion causes, or threatens to cause, detriment beyond the fact of the intrusion itself."

This claim is supported by a wealth of historical evidence. One example involved a conflict that arose between citizens of Connecticut and Pennsylvania over much of the second half of the 18th century. During this period, settlers from Connecticut emigrated to lands claimed by Pennsylvania. Many Pennsylvanians openly regarded these moves as an "invasion," even during periods when relations were peaceful.

For instance, Benjamin Franklin, a Pennsylvanian, wrote in 1754 about a plan to stop citizens of Connecticut from continuing their emigration into the region, suggesting it would "divert the Connecticut Emigrants from their Design of Invading this Province." Note that Franklin viewed this largely peaceful emigration as an "invasion," not merely trespassing.

The conflict between citizens of Connecticut and Pennsylvania dragged on for decades. In 1784, after the Revolutionary War had ended, Pennsylvania's legislature passed a resolution declaring the Connecticut settlers "[*invaders of the State*](https://i2i.org/wp-content/uploads/War-final-published.pdf)."

Pennsylvanians weren't the only ones to use "invasion" to describe non-military acts of unauthorized entry. In the Federalist Papers, which were written to convince Americans to support the adoption of the Constitution, James Madison argued that a navy would be important to the new nation to prevent "pirates and barbarians," whom he referred to as "[*daring and sudden invaders*](https://www.texaspolicy.com/wp-content/uploads/2022/11/2022-11-RR-SST-CompactClause-JoshuaTrevino-paper5-.pdf)."

The association between "invasion" and piracy is important, because there are strong similarities between the massive number of drug cartels that pour across Texas' border every year and the piracy of the 18th and early 19th centuries. Both cases involve non-government, violent groups that cross national borders without permission but that have no interest in conquest or overturning governments.

If pirates were considered "invaders" when the Constitution was written, then at the very least drug cartels and other violent criminals who cross America's border every year are likewise "invaders." If the federal government refuses to take the steps necessary to stop them, then Texas has the constitutional authority to do it.

Other scholars have come to similar conclusions, including [*Joshua Treviño*](https://www.texaspolicy.com/wp-content/uploads/2022/11/2022-11-RR-SST-CompactClause-JoshuaTrevino-paper5-.pdf) at the Texas Public Policy Foundation, who published a lengthy article on this subject in November 2022.

In that article, Trevino concluded, "The presence or threatened presence of hostile criminal groups, such as the Mexican cartels, raises different questions. An analogy between some of these groups, if large or harmful enough, and the pirate bands whose incursions were held to constitute invasions by one of the leading architects of America's constitutional order, may be warranted."

Reasonable people can disagree about whether the Founding Fathers would have considered all forms of modern illegal immigration akin to "invasion." However, the evidence is absolutely clear that the Founders believed that those who cross America's borders and commit other crimes, especially violent ones, were invaders, and thus, the federal government has a responsibility to stop them. If it refuses, states can and should take matters into their own hands.

*JustinHaskinsis a New York Times bestselling author and the director of the Socialism Research Center at The Heartland Institute.*

*The views expressed in this article are the writer's own.*

[*Link to Image*](https://d.newsweek.com/en/full/2374224/texas-national-guard-soldier.jpg)

**Graphic**

Texas National guard soldier

John Moore

EAGLE PASS, TEXAS - MARCH 17: In an aerial view, a Texas National Guard soldier stands atop a barrier of shipping containers and razor wire while guarding the U.S.-Mexico border on March 17, 2024 in Eagle Pass, Texas. Texas National Guard troops have fortified the U.S.-Mexico border with vast a amount of razor wire as part of Governor Greg Abbott's "Operation Lone Star" to deter migrants from crossing into Texas. The U.S. southwestern border stretches nearly 2,000 miles, from the Gulf of Mexico to the Pacific Ocean and is marked by fences, deserts, mountains and the Rio Grande, which runs the entire length of Texas. The ***politics*** surrounding border and immigration issues have become dominant themes in the U.S. presidential election campaign.

**Load-Date:** April 5, 2024

**End of Document**