



## SCR 29

### Testimony Before the Texas Senate Committee on Border Security

*By Melissa Ford Maldonado, Policy Director, Secure & Sovereign Texas*

Dear Chairman Birdwell, Vice Chair Flores, and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Concurrent Resolution 29, which demonstrates Texas' unwavering commitment to protecting its citizens by stepping up to secure the border. My name is Melissa Ford, and I am the policy director for Secure & Sovereign Texas, an initiative of the Texas Public Policy Foundation.

The ongoing crisis at the border represents a grave and imminent threat to the safety and well-being of families and communities in Texas. The Foundation is grateful for Senator Creighton's and your committee's leadership on the urgent and necessary border-security effort envisioned in this resolution.

In my role as policy director, much of my work focuses on the violence in Mexico, and the reclamation of Texas' sovereignty under the Constitution. Our extensive research, which you have in front of you, provides a deep dive into [the meaning of invasion under the Constitution's Article I, Section 10](#), and [the collusion between the Mexican state and Mexican cartels](#).

For many years, the federal government has failed to fully execute its constitutional duty to secure the border. However, that failure does not mean Texas is left defenseless.

Fortunately, Texas possesses the constitutional authority, sovereignty, and ability to protect its border. One of the principal tools in the kit is the ability of the state to declare an invasion under the U.S. Constitution's Article I, Section 10. It is important to understand what "invasion" means in the constitutional context, and how a declaration is applied.

In the Founders' vision, there are two criteria for an invasion: *entry* and *enmity*. In an invasion, *entry*, or physical trespass, must be accompanied by *enmity*, an intent to overthrow sovereignty, even if on a limited or temporary basis.

Furthermore, the Founders envisioned three distinct entities or actors as prospective invading powers in their concept of invasion:

- A foreign state, nation, or government.
- A foreign non-state actor or criminal conspiracy.
- Indian tribes or nations, as understood by the Founders.

This entry plus enmity framework, combined with the understanding of invading powers, allows us to discern what illegal border-crossing is and isn't an invasion. In short, an individual migrant crossing illegally to seek work is unlawfully present, but as he has no intention of overthrowing or opposing lawful authority—and therefore sovereignty—he is *not* invading the United States. On the other hand, a Mexican cartel that opposes the sovereignty of lawful authorities in the United States by reason of its criminal activities, and enters the United States animated by that purpose, *is*.

In fact, the operations of Mexican drug cartels meet the standard of invasion in more ways than one.

As our research establishes, there is irrefutable evidence of extensive collusion between the Mexican state and criminal cartels at all levels of government. Together, they are conducting a deadly export trade, trafficking in fentanyl, corruption, and worst of all, literally millions of fellow human beings who are held in de facto servitude by them—not just in Mexico, but in the United States.

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Mexican cartels not only meet the criteria of both entry and enmity, but they qualify as both foreign non-state actors and as part of the foreign state.

Here are a few examples of how Mexican drug cartels are attacking our way of life and sovereignty:

- Estimates show that [drug cartels control between 35% and 40% of the Mexican territory](#)—and they control the border with Texas.
- Border Patrol agents are [increasingly assaulted](#) doing their job. Since October 2022, [208 Border Patrol agents](#) have been assaulted according to Customs and Border Patrol.
- DPS [has seized more than 360 million](#) lethal doses of fentanyl since the beginning of Operation Lone Star in 2021.
- Texas border communities are living with dangerous [high-speed car chases](#) in their normally peaceful towns, as well as the [littering](#) and [destruction](#) of their property.
- Cartels are [recruiting American teenagers on social media](#) to drive migrants throughout the country, facilitating human trafficking and putting our youth in danger.
- Cartels are not only smuggling and trafficking migrants, while using them as a diversion to overwhelm Border Patrol, but they often [violently assault or rape them](#).

Although these examples are not of invasion, they illuminate the urgency of the crisis at the border, and there are several attacks that have occurred at or beyond the U.S.-Mexico border that are well within the bounds of what the Founders would have called an invasion in the constitutional sense.

In conclusion, we support SCR 29 for two reasons:

- Mexican drug cartels meet both criteria of entry and enmity. Therefore, the situation at the border fits the definition of an invasion under Article I, Section 10, of the U.S. Constitution.
- The collusion between the Mexican state and organized crime is unlikely to lead to a reliable border security partnership between Texas or the U.S. and Mexico.

Mr. Chairman and committee members, Justice Antonin Scalia once wrote, “[W]hat most would consider the defining characteristic of sovereignty [is] the power to exclude from the sovereign’s territory people who have no right to be there.” We agree. A polity that neglects to defend itself and its citizenry is one that lacks both legitimacy and meaning.

I would like to end by recognizing that a state invoking an invasion is not an unlimited state power. Our research shows that Congress must be appealed to, and we affirm the principle that Congress decides matters of peace and war. This resolution does just that—demands that Congress act.

That’s why SCR 29 is profoundly necessary *now*, for the defense of Texas against the state-cartel nexus that increasingly controls Mexico. For all these reasons, we support the intent and purpose of this resolution.

Thank you for your time. I am grateful for your leadership, and I am happy to answer any questions you may have.

**Melissa Ford Maldonado** is the policy director for the Texas Public Policy Foundation’s Secure and Sovereign Texas campaign, which strives to keep our nation safe and free. Melissa’s work and expertise is focused on policies that secure the border and restore the rule of law as we fix and improve legal immigration to the United States. Melissa writes about foreign policy, public safety, drug cartels, and organized crime.

