UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

City of El Cenizo, Texas, Mayor Raul L. Reyes of City of El Cenizo, Maverick County, Maverick County Sheriff Tom Schmerber, Maverick County Constable Pct. 3-1 Mario A. Hernandez, and League of United Latin American Citizens, *Plaintiffs*, v. State of Texas, Governor Greg Abbott (In His Official Capacity), and Texas Attorney General Ken Paxton (In His Official Capacity) *Defendants*.	Civil Action No. 5:17-cv-404-OLG

APPLICATION FOR PRELIMINARY INJUNCTION

Plaintiffs hereby apply to the Court for a preliminary injunction enjoining all Defendants from enforcing Texas Senate Bill 4 ("SB 4"). The application is made on the basis of declarations and Memorandum in Support of Plaintiffs' Application for Preliminary Injunction filed herewith.

As set forth in detail in the Memorandum, Plaintiffs have established that they are likely to succeed on the merits of their claims that SB 4 violates the Constitution; that Plaintiffs will suffer irreparable harm if the Court does not enjoin SB 4; that the Defendants will suffer no harm if the Court preserves the status quo pending adjudication of this matter on the merits; that the balance of hardships tips strongly in Plaintiffs' favor; and that a preliminary injunction in this case advances the public interest.

For these reasons and the reasons detailed in the accompanying Memorandum in Support of Plaintiffs' Application for Preliminary Injunction, Plaintiffs respectfully request that the Court grant their Application.

Dated: June 5, 2017

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Luis Vera, Jr., hereby certify that on June 5, 2017 copies of this Application for Preliminary Injunction were electronically filed via the Court's CM/ECF system.

Dated: June 5, 2017

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City of El Cenizo, Texas, Mayor Raul L. Reyes of City of El Cenizo, Maverick County, Maverick County Sheriff Tom Schmerber, Maverick County Constable Pct. 3-1 Mario A. Hernandez, and League of United Latin American Citizens,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 5:17-cv-404-OLG
State of Texas, Governor Greg Abbott (In His Official Capacity), and Texas Attorney General Ken Paxton (In His Official Capacity)	:	
Defendants.	:	

MEMORANDUM IN SUPPORT OF PLAINTIFFS' APPLICATION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Plaintiffs are the Texas State League of United Latin American Citizens ("Texas LULAC") and its members, the City of El Cenizo, the City's Mayor, Maverick County and elected officials of Maverick County, including its Sheriff and Constable. They respectfully seek a preliminary injunction of Texas Senate Bill 4 ("SB 4") because the law is patently unconstitutional on numerous grounds and the balance of harms strongly militates in favor of preserving the status quo. The public interest also weighs heavily in favor of an injunction to prevent the law from going into effect on September 1, 2017.

SB 4 is an extraordinary intrusion on Plaintiffs' ability to govern the City and County in the manner they deem best for their residents. Every day, these elected officials have to carefully weigh the facts, then make difficult decisions about the best allocation of their limited police resources, to ensure the safety and well-being of their communities. These officials have also spent years building trust with their communities and fostering a sense of inclusion. SB 4 undermines all of this work, not to mention similar work in communities across the entire state.

SB 4 is not directed at enforcing *state* law. Rather, under SB 4, local entities must enforce *federal* immigration law and must do so regardless of whether such enforcement will divert resources away from more pressing police needs, or place their officials and employees in jeopardy of being sued by individuals whose constitutional rights are violated. Critically, moreover, SB 4 imposes severe penalties on local officials who are deemed to violate it: thousands of dollars in civil monetary penalties, removal from office, and even potential jail time.

Making matters worse, SB 4 is written in such vague and ambiguous terms that local officials will inevitably be left to guess whether any particular action or policy violates the law.

If they guess wrong and do not engage in full-bore immigration enforcement (such as asking every single motorist about their immigration status), they risk massive penalties and removal from office. If they choose instead to avoid even the possibility of incurring these penalties by engaging in immigration enforcement at every turn, they will have to divert scarce resources away from more pressing police needs and will create a community of fear and anxiety, with the inevitable result that individuals (including Texas LULAC members) will be profiled and unlawfully detained.

The Court should preliminarily enjoin SB 4 so that it can engage in a deliberate assessment of the law's legality. Doing so will prevent irreparable harm to Plaintiffs and their communities. In contrast, the State will suffer no harm from a preliminary injunction; no legal void would be left. The status quo will simply remain in place, with local jurisdictions retaining the authority they have always had to choose how best to police their own communities, and leaving the *federal* government with the responsibility for enforcing *federal* immigration law.

BACKGROUND

A. SB 4's Effect On Plaintiffs

Plaintiffs are the City of El Cenizo and Maverick County, and members of their leadership—the Mayor of the City, and the Sheriff and Constable of the County—and the Texas LULAC.

The people of the City of El Cenizo have chosen Plaintiff Raul Reyes to lead them as Mayor for over a decade. Declaration of Raul Reyes ("Reyes Decl."), ¶¶ 1-2. Under the Mayor's direction, El Cenizo and its police department have adopted a set of policies to protect and serve its community, which will be directly curtailed by SB 4. *See id.*, ¶¶ 11-28. Plaintiff Sheriff Tom Schmerber spent 26 years with the United States Border Patrol before being elected

Sheriff of Maverick County, where he supervises 34 deputies. Declaration of Tom Schmerber ("Schmerber Decl."), ¶¶ 1-2, ¶ 11. Plaintiff Constable Mario Hernandez has served in law enforcement for more than a decade, most recently as elected Constable of Maverick County. Declaration of Mario Hernandez ("Hernandez Decl."), ¶¶ 1-3. These officials, to varying degrees, limit participation in federal immigration enforcement and use their lawful discretion to place local needs ahead of federal demands by determining how and when they will participate in federal immigration enforcement efforts.

These elected officials have chosen their policies and practices carefully, in light of tight local budgets and a desire, and need, to foster community trust in policing. SB 4 will remove the discretion they need to work for and with their communities, and alienate immigrant and minority community members who will now equate local police with immigration agents. They also fear being penalized or removed from office. All have been outspoken in their criticism of SB 4. And all are unclear as to how to comply with SB 4, given its vague and incredibly broad edicts.

Plaintiff Texas LULAC was founded to provide opportunities for Latino veterans who faced discrimination after returning home from war and has since expanded to advance the needs and interests of the Texas Latino population more generally. Its offices are in San Antonio, as are 1,000 or so of its members. Texas LULAC's members—in San Antonio and around Texas—fear the discriminatory environment that SB 4 will create, including the increased risk of racial profiling by local police officers who, due to their lack of training, may use skin color or language as a proxy for immigration status—a possibility that SB 4 actually encourages because of the onerous consequences it imposes for failing to toe the line on its broad edicts.

The fears of all these Plaintiffs are consistent with the views expressed by others, including the Texas Major Cities Chiefs and the Texas Police Chiefs Association:

> SB 4 requires local law enforcement to take a more active role in immigration enforcement; this will tear down what we've worked so hard to build up. Officers will start inquiring about the immigration status of every person they come in contact with, or worse, only inquire about the immigration status of individuals based on their appearance. This will lead to distrust of police, less cooperation from members of the community and will foster the belief that they cannot seek assistance from police for fear of being subjected to an immigration status investigation. This is a lose-lose situation for everyone.

Art Acevedo & James McLaughlin, *Police Chiefs: SB 4 Is a "Lose-Lose' for Texas*, THE HOUSTON CHRONICLE (Apr. 30, 2017) (attached as Ex. C to Alexis Warren Declaration ("Warren Decl.")).

B. Cooperation Between the Federal Government and Local Law Enforcement

The Constitution assigns the federal government primary responsibility for regulating immigration. U.S. Const. art. I, § 8, cl. 4. State governments and local officials may not "achieve [their] own immigration policy," *Arizona v. United States*, 132 S. Ct. 2492, 2507 (2012), but they may "cooperate" in the voluntary enforcement activities that Congress has authorized. 8 U.S.C. § 1357(g)(10)(B). These cooperative efforts generally happen directly between federal and local officers.[1]

Federal-local cooperation on immigration enforcement can take many forms. Federal officers sometimes ask for local volunteers to join enforcement task forces and help carry out

[1] *See, e.g.*, 8 U.S.C. § 1357(d) (providing for direct interaction with a "local law enforcement official"); *id.* § 1357(f)(2 (same); *id.* § 1357(g)(1) (limiting cooperation "to the extent consistent with . . . local law"); *id.* § 1357(g)(9) (participation by a "political subdivision" is voluntary); *id.* § 1373(a)-(c) (same); *id.* § 1101(1)(15)(U) (same); *id.* § 1103(a)(10) (authorizing local arrests with the consent of the local law enforcement chief); *id.* § 1103(a)(11)(B), (c) (providing for a "cooperative agreement" with a "unit of local government"); *id.* § 1226(d)(1)(B) (requiring a federal "liaison" to "local law enforcement"); *id.* § 1522(c)(1)(C) (providing for "consultation with local governments").

arrests. They often ask to enter local jails to interrogate inmates. Local agencies can also apply for a program through which the federal government can individually deputize local officers, after training and under supervision, to perform certain functions of federal immigration agents. 8 U.S.C. § 1357(g)(1) (the "287(g) program"). By congressional design, these and other forms of cooperation leave a significant amount of leeway for local law enforcement agencies to adapt their involvement to local needs and priorities.

Local agencies' discretion to structure their own participation is crucial. Immigration law is notoriously complex, and local officers generally receive no training on the fine distinctions among lawful status, lawful presence, removability, and deportability. *See* Declaration of Roxana Bacon ("Bacon Decl.") ¶¶ 8-20 (describing the extreme complexity of immigration law and the indeterminacy of whether an individual is lawfully present, in violation of immigration laws, or subject to being removed or arrested, and explaining why local officials cannot make such determinations); *Padilla v. Kentucky*, 559 U.S. 356, 377-81 (2010) (Alito, J., concurring in the judgment).

As a result, local enforcement of immigration law has repeatedly led to a number of constitutional problems. It has led local officers to stop and arrest those they perceive to be "foreign," subjecting entire communities to racial profiling. *See* Declaration of Vanita Gupta (former head of the Civil Rights Division of the U.S. Department of Justice) ("Gupta Decl.") ¶ 10 (explaining that "removing the ability and discretion of local law enforcement leaders to limit when and under which circumstances their officers may inquire into immigration status will create the risk of racial profiling" and that "without proper training, supervision, or resources, police will rely on racial proxies for immigration status and screen minorities and those who 'look' foreign"); *see also, e.g.*, *Melendres v. Arpaio*, 989 F. Supp. 2d 822, 865-79 (D. Ariz.

2013); Trevor Gardner II & Aarti Kohli, Warren Institute, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program* (2009), available at https://www.law.berkeley.edu/files/policybrief_irving_0909_v9.pdf; Danyelle Solomon et al., *The Negative Consequences of Entangling Local Policing and Immigration Enforcement*, Ctr. for Am. Progress, Mar. 21, 2017, available at https://www.americanprogress.org/issues/immigration/reports/2017/03/21/428776/negative-consequences-entangling-local-policing-immigration-enforcement/; Michael Barajas, *Texas' Big-City Police Chiefs Hate The "Sanctuary Cities" Bill*, SAN ANTONIO CURRENT (May 1, 2017) (attached as Warren Decl., Ex. D) (quoting San Antonio Police Chief William McManus's concern that "'[i]n order for me to identify someone who I don't think is from here, it's either skin color, language or accent. And in order to do that I'm profiling.").

Unregulated local enforcement has also resulted in unjustified stops and extended detentions. *Melendres,* 989 F. Supp. 2d at 906-07; Gupta Decl. ¶¶ 11, 12; *see also* Suzanne Gamboa, *ACLU: Tucson Traffic Stops for Immigration Checks Violating Rights* (attached as Warren Decl., Ex. B) (reporting on ACLU of Arizona findings that immigration status inquiries pursuant to Arizona's SB1070 have resulted in large number of unlawfully extended stops, based on analysis of Tucson police records).

Unlimited local participation can also imperil local budgets and public safety. Holding people in jail is very expensive, and the federal government does not reimburse localities for honoring detainers. 8 C.F.R. § 287.7(e); Edward F. Ramos, *Fiscal Impact Analysis of Miami-Dade's Policy on "Immigration Detainers,"* available at https://immigrantjustice.org/sites/immigrantjustice.org/files/Miami%20Dade%20Detainers--Fiscal%20Impact%20Analysis%20with%20Exhibits.pdf. Many police forces are short-staffed, and lack the personnel to designate officers from their local pool for federal immigration assignments. *See* Reyes Decl. ¶¶ 16-17 ("Resources are very limited and the city cannot afford to hire additional police officers."); Hernandez Decl. ¶¶ 6-7; Schmerber Decl. ¶¶ 11-13 ("Given the lack of staff and large population and coverage area in [Maverick] County, our resources are already overly stretched."); Gupta Decl. ¶ 7.

At the same time, in many Texas communities, the reality is that large portions of the population—immigrants, along with their citizen parents, children, neighbors, and others—will not engage with police if local officers are too deeply involved in federal immigration enforcement. As the Mayor of El Cenizo explains, "the new law's requirements will create an environment of fear and members of our community will no longer feel comfortable seeking city services or participating in civic life." Reyes Decl. ¶22; *see also* Declaration of Lupe Torres ("Torres Decl.") ¶¶ 11-16; Hernandez Decl. ¶ 15 ("I believe this will also lead people to . . . avoid interaction with me for fear that they will be subject to immigration enforcement"); Gupta Decl. ¶¶ 8-9. The Sheriff of Maverick County's view is that the legislation will thus harm his office's community policing efforts. Schmerber Decl. ¶20.

Local agencies must therefore structure their participation to account for their own capabilities and the needs of their constituents. *See* Reyes Decl. ¶¶ 18-21 ("I have developed a deep understanding of the needs of the community and of the best ways to ensure public safety."); Schmerber Decl. ¶¶ 12-18 (explaining that SB 4 removes his ability to "properly allocate my resources by deciding when, and when not, to cooperate with [federal] immigration efforts"); Gupta Decl. ¶¶ 7-12.

C. Senate Bill 4

Before SB 4, Texas law enforcement officials were empowered to determine how best to serve their constituents and accomplish their law enforcement missions. A police chief could tell his officers not to inquire about immigration status during traffic stops—when, for example, such inquiries would impede an investigation or divert limited resources or when there was concern that such inquiries would create distrust with the community and prevent effective policing. Gupta Decl. ¶ 9. A sheriff whose deputies were busy investigating violent crimes could say no if Immigration and Customs Enforcement ("ICE") asked for volunteers to join a task force. *See* Schmerber Decl. ¶¶ 12-13. And a jail could insist on a neutral determination of probable cause before re-arresting detainees, who would otherwise be released, for federal immigration purposes. *See id.* ¶¶ 14-16.

SB 4 eviscerates those judgments. Now, any elected local official who does one of those things could be removed from office, fined thousands of dollars, or possibly thrown in jail. *See* Reyes Decl. ¶¶ 13-14. So could anyone who speaks out against unlimited immigration enforcement. *See* Schmerber Decl. ¶ 9; Hernandez Decl. ¶ 10. It is hard to overstate SB 4's intrusion on local democracy. The statute will turn local officials and employees against the communities they serve. With its tangle of undefined commands, backed by crushing penalties, SB 4 hijacks the local political process in a way that neither Texas nor any state has ever attempted before.

The law's severity is matched only by its breadth. The law applies to a "local entity" which it defines as any local "officer," "employee," or "governing body." Texas Gov't Code § 752.051(5) (effective Sept. 1, 2017) (amendment pursuant to Article 1 of SB 4).[2]

Two sets of provisions in SB 4 are at issue in this lawsuit. The first are general "anti-sanctuary" provisions governing local enforcement of federal immigration laws. The second set of provisions involve immigration "detainers."

1. The Sanctuary Provisions

SB 4 prohibits local entities—which, again, includes every local employee in the state—from limiting their immigration enforcement activities in numerous ways. For a single violation, even an accidental one, a sheriff or constable can be removed from office, with the removal action initiated at what amounts to the discretionary power of the State's Attorney General. *Id.* § 752.0565.

There are many layers of prohibition. First, local entities and employees may not "adopt" or "enforce" a "policy," including an "informal" or "unwritten" policy, which "prohibits or materially limits the enforcement of immigration law." *Id.* § 752.053(a)(1); *id.* § 752.051(6). Second, local entities and employees may not even "endorse" that kind of policy. *Id.* § 752.053(a)(1). Third, local entities and employees may not engage in any "pattern or practice" that prohibits or materially limits immigration enforcement. *Id.* § 752.053(a)(2). Notably, the statute nowhere defines what it means to "endorse," what it means to "limit" (as distinct from "prohibit"), which limits are "material," or what actions might constitute a "pattern or practice" (as distinct from an "informal, unwritten policy"). *Id.* § 752.051(6)

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[2] It even applies to campus police departments. *Id*. §§ 752.051(5), 752.053(a). *See also Univ. of the Incarnate Word v. Redus*, 2017 WL 1968030 (Tex. May 12, 2017). It exempts hospitals, religious organizations, and grade schools. *Id*. § 752.052.

The statute then lists a number of actions that may never be limited, including that local entities may not stop their employees from (1) "inquiring into the immigration status of a person under lawful detention or arrest," (2) "assisting or cooperating with a federal immigration officer as reasonable or necessary, including providing enforcement assistance," or (3) permitting immigration officers to access local jails. *Id.* § 752.053(b)(1)-(4). The statute does not define what it means to "assist" or "cooperate," or what assistance is "reasonable" or "necessary."[3]

Local employees who violate any of these commands, even once, face steep penalties. Any employee who intentionally does an act that violates the sanctuary provisions is subject to a civil fine of up to $1,500 for the first violation and up to $25,500 for each subsequent violation. *Id.* § 752.056(a). For a continuing violation, each day triggers a new penalty of up to $25,500. *Id.* § 752.056(b). Elected and appointed officials who violate the sanctuary provisions—even once, intentionally or not—are subject to immediate removal from office. *Id.* § 752.0565.

2. The Detainer Mandate

SB 4 requires officers to honor federal immigration detainers issued to local entities to hold an individual in their custody for ICE. *See* Tex. Code Crim. Proc. art. 2.251(a) (effective Sept. 1, 2017) (amendment pursuant to Article 2 of SB 4). To Plaintiffs' knowledge, no state has ever enacted that kind of mandate with these penalties.

SB 4 defines an "immigration detainer request" as any "federal government request to a local entity to maintain temporary custody of an alien." Tex. Gov't Code § 772.0073(a)(2) (effective Sept. 1, 2017) (amendment pursuant to Article 1 of SB 4) (including both requests from ICE using the federal detainer form, I-247, *and* informal requests). When a local officer

[3] One provision purports to block officers from asking victims and witnesses about immigration status, but its many exceptions swallow the rule. *See* Tex. Code Crim. Proc. art. 2.13(d)-(e) (effective Sept. 1, 2017) (amendment pursuant to Article 6 of SB 4). Most notably, officers may ask about immigration status to provide information about visas. *Id.* art. 2.13(d)(2).

receives a detainer request from the federal government, SB 4 requires her to determine whether the subject of the request "has provided proof," to the officer's satisfaction, "that the person is a citizen of the United States or that the person has lawful immigration status." Tex. Code Crim. Proc. art. 2.251(b). If not, SB 4 requires the officer to "comply with, honor, and fulfill *any* request made in the detainer request." *Id.* art. 2.251(a)(1) (emphasis added).[4] There is no exception if the individual cannot produce evidence deemed satisfactory by the official, nor is there is an exception if the local official has doubts about whether the federal government has probable cause to support the detainer request. There is likewise no exception for even the most minor crimes. *See* Syracuse Univ., Trans. Records Access Clearinghouse, *Few ICE Detainers Target Serious Criminals*, Sept. 17, 2013 (explaining that, in FY 2012 and 2013, *half* of all ICE detainers targeted people with "no record of a criminal conviction, not even a minor traffic violation"), *available at* http://trac.syr.edu/immigration/reports/330/.

The penalties for violating this detainer mandate, even once, are severe. A single knowing violation by a sheriff, police chief, or constable is a Class A misdemeanor, Tex. Penal Code § 39.07 (effective Sept. 1, 2017) (amendment pursuant to Article 5 of SB 4), which is punishable by up to one year in jail and a $4,000 fine, *id.* § 12.21. The official is also subject to immediate removal from office. *See* Tex. Loc. Gov't Code § 87.031(c). The violation may also lead to civil fines if it falls within the statute's sanctuary provisions. Tex. Gov't Code § 752.056.

[4] The statute gives two examples of what might constitute such proof, *see* Tex. Code Crim. Proc. art. 2.251(b) ("Texas driver's license or similar government-issued identification"), but does not otherwise specify how local officers should make this determination or what standard of proof they should apply.

STANDARD OF REVIEW

To obtain a preliminary injunction, a party must show:

> (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) the threatened injury to plaintiff must outweigh the threatened harm the injunction may do to defendant, and (4) granting the preliminary injunction will not disserve the public interest.

Piedmont Heights Civic Club, Inc. v. Moreland, 637 F.2d 430, 435 (5th Cir. Unit B Feb. 1981). The decision whether to grant a preliminary injunction "rests in the sound discretion of the district court." *Vision Ctr. v. Opticks, Inc.*, 596 F.2d 111, 114 (5th Cir. 1979).

ARGUMENT

I. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS.

SB 4 is unconstitutional in numerous respects. The law (A) is preempted by federal law, and thus violates the Supremacy Clause, in that it conflicts with Congress's considered decision to allow local officials the discretion to decide how and when to enforce federal immigration law; (B) is unconstitutionally vague because it does not provide local officials with clear guidance on how to conform their conduct to the law's requirements, and thus subjects local officials to harsh penalties for failing to guess correctly about the law's scope; (C) violates the First Amendment because it prohibits speech on the basis of one's view about the wisdom and legality of local officials enforcing federal immigration law; (D) violates the Fourth Amendment because it requires local police to detain individuals regardless of whether there is probable cause for the detention; and (E) violates the Equal Protection Clause of the Fourteenth Amendment because it singles out noncitizens (and those perceived to be noncitizens) and bars localities from preventing harm to that group and only that group. In addition, the unprecedented nature of SB 4 raises serious Tenth Amendment-type concerns and also has profound voting rights implications.

A. SB 4 Is Preempted By Federal Immigration Law.

State laws are preempted when they "stand[] as an obstacle" to the "full purposes and objectives of Congress." *Villas at Parkside Partners v. City of Farmer's Branch*, 726 F.3d 524, 529 (5th Cir. 2013) (en banc plurality) (quotation marks omitted). This conflict occurs when a state law deviates from Congress's "decision about the right degree of pressure" to apply to a regulated entity, *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 380 (2000), or when a state law imposes a different "method of enforcement" than the federal scheme. *Arizona*, 132 S. Ct. at 2505.

SB 4 conflicts with the federal immigration scheme in two respects. SB 4 generally upsets the careful balance Congress has struck between encouraging local assistance and preserving local discretion. And SB 4's specific detainer mandate requires local officers to make their own final determinations about people's immigration status, which invades the federal government's exclusive control over immigration.

1. SB 4 Generally Conflicts with the Federal Scheme For Cooperative Enforcement.

Congress has paid close attention to the role of local law enforcement officers in the federal immigration scheme. *See supra* note 1 (listing instances where the Immigration and Nationality Act ("INA") regulates federal engagement with "local law enforcement," "local government," "political subdivisions," and "local law"). In designing that scheme, Congress has carefully calibrated the amount of pressure it uses to induce local participation in immigration matters. With one limited exception, it has chosen to preserve their discretion to decide what kinds of enforcement activity are consistent with local safety, resources, and rights.

SB 4 fundamentally alters that balance. It obliterates the local discretion that federal law preserves, it adds its own sanctions for violations of federal law, it imposes restrictions that

Congress has considered and rejected, and it introduces new penalties—heavy fines, removal from office, and jail time—that stand starkly at odds with the cooperative regime Congress has created. A "conflict in technique can be fully as disruptive to the system Congress erected as conflict in overt policy." *Arizona*, 132 S. Ct. at 2505 (quotation marks omitted). Accordingly, SB 4 must be enjoined to restore the balance Congress created.

That balance is reflected in numerous federal provisions. On one hand, Congress has created several tailored opportunities for local officers to participate in immigration enforcement. *See* 8 U.S.C. § 1357(g)(1)-(8) (program for local officers to receive training and act as immigration officers); *id.* § 1357(g)(10) (permission to voluntarily "communicate" and "cooperate" with federal officers); *id.* § 1103(a)(10) (limited local arrest authority "with the consent of the head of the department"); *id.* § 1252(c) (same); *id.* § 1324(c) (same). On the other hand, Congress has taken great care to preserve local judgments about whether and how to participate. It has made the 287(g) program purely voluntary for "political subdivision[s]," 8 U.S.C. § 1357(g)(9), and ensured that the program is carried out "consistent with . . . local law," *id.* § 1357(g)(1). It has made immigration detainers purely voluntary. *Id.* § 1357(d); *Galarza v. Szalczyk*, 745 F.3d 634, 639-42, 639 n.3 (3d Cir. 2014). It has acknowledged the toll that immigration enforcement can take on local resources. *See* 8 U.S.C. § 1231(i) (limited reimbursement for "a political subdivision"). It has empowered local officers to protect victims and witnesses from deportation. *See id.* § 1101(1)(15)(T), (U) (visas for otherwise-deportable victims and witnesses after local certification). And it has ensured that, even in an emergency, local participation occurs only "with the consent of the head of the department." *Id.* § 1103(a)(10).

The one exception where Congress has cabined local discretion is in the Section 1373 context, a statute that requires a "local government entity" to allow officers to share information about citizenship and immigration status *where they have it*. *Id.* § 1373(a)-(b). Section 1373 does not compel local officials to inquire about immigration status to obtain that information in the first place.

SB 4 dramatically upends this scheme in two ways. First, one provision duplicates Section 1373 (sharing information already in the possession of a locality), but imposes new and different state penalties, and is thus clearly preempted by Congress's calibration of the level of appropriate sanctions for a Section 1373 violation. Second, and more fundamentally, SB 4 covers activity that falls outside of Section 1373, activities that Congress has chosen to leave purely voluntary.

(a) SB 4 attaches its own separate and severe state penalties to violations of Section 1373. Yet, in federal law, Congress chose not to penalize violations of Section 1373. As the Supreme Court has repeatedly made clear, a state or local jurisdiction may not impose different penalties than Congress has chosen. *Arizona*, 132 S. Ct. at 2502.

Specifically, while Section 1373 carries no sanctions of its own, SB 4 imposes penalties of up to $25,500 and even a single violation can result in removal from office. "Permitting the State to impose its own penalties for the federal offenses here would conflict with the careful framework Congress adopted." *Arizona*, 132 S. Ct. at 2502-03 (describing this as a "further intrusion" beyond field preemption). This duplication would usurp federal enforcement discretion by allowing Texas to decide when and how the federal statute will be enforced. SB 4's vastly escalated penalties also directly conflict with Congress's choice of remedies. "Conflict is imminent when two separate remedies are brought to bear on the same activity."

Crosby, 530 U.S. at 380 (quotation marks omitted); *see id.* ("[T]he inconsistency of sanctions here undermines the congressional calibration of force."); *Farmer's Branch*, 726 F.3d at 529.[5]

(b) In addition to imposing different penalties for violations of Section 1373, SB 4 also removes local discretion in areas *not* covered by Section 1373, in clear conflict with Congress's decision to limit the Section 1373 mandate to sharing information already in a locality's possession.

Specifically, SB 4 extends to enforcing detainers, Texas Gov't Code § 752.053(a)(3); Tex. Code Crim. Proc. art. 2.251, interrogations about immigration status, Texas Gov't Code § 752.053(b)(1), undefined "enforcement assistance," *id.* § 752.053(b)(3), local jail access, *id.* § 752.053(b)(4), and literally anything else that might be said to "limit the enforcement of immigration laws." *Id.* § 752.053(a), (b). Thus, local officials will now be regularly required, among other things, to allow motorists to be questioned about immigration status by local police.

Notably, Congress has repeatedly considered and rejected attempts to prohibit additional forms of non-cooperation by state and local entities—the very restrictions SB 4 now imposes. *See, e.g.*, CLEAR Act of 2015, H.R. 2964, 114th Cong. § 5 (2015); SAFE Act, H.R. 2278, 113th Cong. § 114 (2013); CLEAR Act of 2003, H.R. 2671, 108th Cong. § 105 (2003); Stop Sanctuary Policies and Protect America Act, S. 2146, 114th Cong. (2015); Enforce the Law for Sanctuary Cities Act, H.R. 3009, 114th Cong. (as passed by House on July 23, 2015). SB 4 thus represents "an untenable expansion of the federal [sanctuary] provision." *Farmer's Branch*, 726 F.3d at 531 n.9 (en banc plurality) (quotation marks omitted). Texas cannot now enact these same

[5] Similarly, in *Whiting*, the Court held that an Arizona statute requiring employers to use E-Verify "did not conflict" with federal law because "the consequences of not using E-Verify under the Arizona law *are the same* as the consequences of not using the system under federal law." *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 608 (2001) (emphasis added). This could not be further from SB 4. Moreover, the Arizona law only regulated private employers, not local governments.

restrictions in the face of Congress's determination that they would disserve the federal enforcement scheme. *See Crosby*, 530 U.S. at 378 n.13 (finding preemption where "Congress repeatedly considered and rejected targeting a broader range of conduct"); *Arizona*, 132 S. Ct. at 2504 (finding preemption where "Congress made a deliberate choice not to impose" penalties that the state had imposed).

Section 1373 represents Congress's "deliberate effort to steer a middle path." *Crosby*, 530 U.S. at 378-79 (quotation marks omitted). Texas is not free to reject "the federal decision about the right degree of pressure" to apply to law enforcement agencies. *Crosby*, 530 U.S. at 380. SB 4 would obliterate the voluntary federal scheme and replace it with a system of unregulated enforcement, divorced from local judgments about safety, resources, and rights. It would force sheriffs, constables, and line officers to permit maximum enforcement activity, lest they violate SB 4's expansive terms and trigger its harsh penalties. No longer could they require reasonable suspicion before interrogating people about their immigration status. Texas Gov't Code § 752.053(b)(1); *but see Arizona*, 132 S. Ct. at 2507-09 (upholding status verification provision that required reasonable suspicion). Nor could they even prevent their officers from carrying out civil immigration arrests, because that would surely "limit the enforcement of immigration laws." Texas Gov't Code § 752.053(a)(1), (2); *but see Arizona*, 132 S. Ct. at 2505-07 (striking down provision that authorized such arrests). "This is not the system Congress created." *Id.* at 2506.

Congress's decision makes sense, moreover. Local involvement in immigration carries many pitfalls. Local officers are generally not trained in the "significant complexities involved in enforcing federal immigration law." *Arizona*, 132 S. Ct. at 2506. *See* Bacon Decl. ¶¶ 7, 14-19; Gupta Decl. ¶ 7; Reyes Decl. ¶17; Hernandez Decl. ¶14; Schmerber Decl. ¶¶18-20. Their unregulated involvement risks "unnecessary harassment of some aliens" and "may lead to harmful reciprocal treatment of American citizens abroad." *Arizona*, 132 S. Ct. at 2506, 2498 (quotation marks omitted). At the same time, indiscriminate local participation can drain local resources, jeopardize individual rights, and sever links between law enforcement and victims, witnesses, and other constituents. *See* Gupta Decl. ¶¶8-9; Reyes Decl., ¶22; Hernandez Decl., ¶15; Torres Decl., ¶¶11-16; Schmerber Decl., ¶¶20-22. The interplay between compulsion and discretion implicates all of those interests. Congress is entitled to balance them without Texas's interference.

Texas cannot claim any sovereign right to increase its subdivisions' engagement in immigration enforcement. That much is clear from *Arizona*, where the Supreme Court struck down a statute that empowered local officers to make immigration arrests. *See* 132 S. Ct. at 2505-07; *see also Crosby*, 530 U.S. at 367, 377 (striking down state's statute that "restrict[ed] the authority of *its agencies*" to engage in certain economic activity, because "Congress manifestly intended to limit economic pressure . . . to a specific range"). Congress is free to preempt such attempts. While states have an absolute right to refuse to participate in federal regulatory programs, *see Printz v. United States*, 521 U.S. 898, 935 (1997), they have no affirmative right to engage in immigration enforcement.

Nor does any case law support SB 4's precipitous expansion of Texas immigration enforcement. In *Arizona*, the Court upheld a provision that instructed officers to contact the federal government to verify detainees' immigration status. 132 S. Ct. at 2507-10. Crucially, though, the provision only applied if there was "reasonable suspicion" that a person was unlawfully present, only required verification "when practicable," and only required a "reasonable attempt" to verify status. *Id.* at 2507. SB 4, by contrast, would *prohibit* law enforcement chiefs from imposing the exact same limitations, *see* Tex. Gov't Code §§ 752.053(a)(1)-(2), and imposes crushing penalties where Arizona's law imposed none. *See Crosby*, 530 U.S. at 380 (inconsistent penalties preempted). SB 4, which extends way beyond status checks, would thus induce far more local enforcement with far less local discretion.

In short, SB 4 conflicts with the system Congress designed. Through its many efforts to preserve local discretion, its many refusals to expand Section 1373, and its many decisions to reject a more compulsory local role, "Congress manifestly intended to limit" its mandates on local jurisdictions "to a specified range." *Id.* at 377. SB 4 fundamentally clashes with this Congressional design.

2. The Detainer Mandate Impermissibly Relies on Local Determinations of Immigration Status.

SB 4 requires law enforcement agencies to honor all immigration detainer requests where the subject of the detainer cannot "provide[] proof" of citizenship or "lawful immigration status." Tex. Code Crim. Proc. art. 2.251(a)-(b). A sheriff, police chief, or constable who knowingly fails to honor a single detainer is subject to a Class A misdemeanor, *see* Tex. Penal Code § 39.07, which carries a sentence of up to a year in jail, *id.* § 12.21.

The detainer mandate is preempted because it relies on local officers making unilateral determinations of immigration status. The "federal immigration scheme . . . leaves no room for a determination of immigration status" by state or local officials. *Farmer's Branch*, 726 F.3d at 559 (Owen, J., concurring in part and dissenting in part). In *Farmer's Branch*, the Fifth Circuit struck down an ordinance that placed a "determination [of lawful presence] in the hands of state courts," because the state determination "open[s] the door to conflicting state and federal rulings on the question." 726 F.3d at 536 (en banc plurality).

In the face of these clear instructions, SB 4 conditions compliance with federal detainer requests on whether the local officer thinks a "person has lawful immigration status in the United States." Tex. Code Crim. Proc. art. 2.251(b). Placing that determination in a local officer's hands contravenes the principle that "the power to classify non-citizens is reserved exclusively to the federal government." *Farmer's Branch*, 726 F.3d at 537. This role is reserved for federal officers because they, unlike local officers, are trained in the many "intricacies of immigration law." *Padilla*, 559 U.S. at 377-81 (Alito, J., concurring in judgment); Bacon Decl. ¶¶ 7-19. And while SB 4 lists one example of what might establish lawful status (a Texas driver's license), it provides no guidance as to what standard of proof the officer should apply. *See* Tex. Code Crim. Proc. art. 2.251(b).

As explained below, SB 4 mandates this impermissible status determination while also *forbidding* local officials from declining a detainer request when they have doubts about whether the presence of probable cause justifies the continued detention. *See infra* Part I.D. (explaining SB 4's Fourth Amendment violations). Those two determinations are not the same: Probable cause does not necessarily exist simply because the person cannot affirmatively prove their own immigration status on the spot. Thus, instead of allowing law enforcement to ensure that arrests comply with the Constitution, SB 4 forces local officers to make an impermissible final determination of immigration status.

B. SB 4 is Unconstitutionally Vague.

Three of SB 4's punitive anti-sanctuary provisions (Texas Gov't Code §§ 752.053(a)(1), (a)(2), and (b))—and the entirety of the detainer requirement (Tex. Code Crim. Proc. art. 2.251(a), (b); Tex. Penal Code § 39.07)—are unconstitutionally vague and must accordingly be invalidated.

1. SB 4 Is Subject to Heightened Vagueness Scrutiny Because It Impacts Constitutional Rights and Is Both a Criminal and Quasi-Criminal Statute.

A "stringent" vagueness test applies where, as here, a statute "threatens to inhibit the exercise of constitutional rights," and where the law is criminal or "quasi-criminal" in nature. *Vill. of Hoffman Estates v. Flipside*, 455 U.S. 489, 498-99 (1982).

Here, SB 4's detainer and anti-sanctuary provisions impact constitutional rights, and accordingly the "stringent" vagueness standard applies. The stringent standard also applies because SB 4 is a criminal and quasi-criminal statute. SB 4's detainer provision imposes criminal penalties, Tex. Penal Code § 39.07, and the anti-sanctuary provisions are "quasi-criminal." A quasi-criminal provision is one that imposes "significant civil and administrative penalties, including fines and license revocation." *Women's Med. Ctr. of Nw. Houston v. Bell*, 248 F.3d 411, 420 (5th Cir. 2001). SB 4 imposes significant financial penalties for violations of the anti-sanctuary provisions,. *See* Texas Gov't Code § 752.056(a)(1) (fine of $1000 - $1,500 a day for a first violation); (a)(2) ($25,000 to $25,500 for every subsequent violation); and (b) (treating each day of a continuing violation as a separate violation). And elected officials also face *removal* from office. *See* Texas Gov't Code § 752.056. These penalties are at least as severe as those found to be quasi-criminal by the Fifth Circuit. *See Women's Med. Ctr.*, 248 F.3d at 422 (finding that civil administrative penalties of $100 to $2,500 per day and loss of medical license are "quasi-criminal").[6]

[6] Indeed, the vagueness in the anti-sanctuary provisions is so pronounced that these sections would be unconstitutionally vague even under the more lenient test that applies to civil regulations of merely economic conduct. SB 4 "commands compliance in terms 'so vague and indefinite as really to be no rule or standard at all'" and "is 'substantially incomprehensible.'" *Ford Motor Co. v. Texas Dep't of Transp.*, 264 F.3d 493, 507 (5th Cir. 2001) (internal quotation marks and citations omitted).

Accordingly, the heightened standard for assessing vagueness applies here. Under this heightened standard, a law is unconstitutionally vague if it "(1) fails to provide those targeted by the statute a reasonable opportunity to know what conduct is prohibited, or (2) is so indefinite that it allows arbitrary and discriminatory enforcement." *Id.* at 421. SB 4's anti-sanctuary and detainer provisions fail both parts of this disjunctive test.

2. SB 4's Anti-Sanctuary Provisions Are Unconstitutionally Vague.

The anti-sanctuary provisions contain numerous unconstitutionally vague terms that, singularly and combined, fail to provide Plaintiffs with a "reasonable opportunity to know what conduct is prohibited" and are "so indefinite" that the law "allows arbitrary and discriminatory enforcement." *Id*. Its vague terms include provisions that local entities may not "materially limit" federal immigration enforcement Texas Gov't Code § 752.053(a)(1); may not engage in "patterns or practices" that "materially limit" federal immigration enforcement, *id.* § 752.053(a)(2); and must provide "assistance" and "cooperation" to federal immigration officers unless doing so would not be "reasonable or necessary," *id.* § 752.053(b)(3).

As result of these vague terms, Plaintiffs are in a bind. They may either fail to act when SB 4 requires it, or take action not compelled by SB 4 that harms their constituents and subjects them to lawsuits. On the one hand, Plaintiffs may mistakenly guess that SB 4 does *not* prohibit a particular action, policy, or endorsement, and thereby face severe penalties and removal from office.[7] On the other hand, they may assume that SB 4 applies or that the severe penalty of

[7] Notably, removal from office contains no scienter requirement. Tex. Gov't Code § 752.053. The monetary and detainer penalties do require that an employee intentionally perform an act that violates the law. Tex. Gov't Code § 752.056(a); Tex. Penal Code § 39.07. But this intent requirement cannot alleviate the vagueness of the statutes, as the prohibited acts are themselves unclear. A scienter requirement "cannot make definite that which is undefined." *Screws v. United States*, 325 U.S. 91, 105 (1945) (plurality opinion); *see also Colautti v. Franklin*, 439 U.S. 379, 395 (1979); *Kramer v. Price*, 712 F.2d 174, 178 (5th Cir. 1983)

failing to comply poses too great a risk. That, in turn, will cause them to over-enforce SB 4's provisions and thereby lead to conduct that exposes Plaintiffs to liability for violating the Fourth Amendment or prohibitions against racial profiling. Mistaken compliance out of the fear of penalties would also undermine Plaintiffs' relationship with their communities, create fear and anxiety in those communities, and divert scarce resources to federal immigration enforcement at the expense of solving violent crimes or other pressing safety issues. *See* Reyes Decl. ¶¶16-22; Schmerber Decl. ¶¶12-20; Torres Decl. ¶¶11-16; Hernandez Dec. ¶¶6-7, ¶10, ¶15.

(a) The term "materially limit" used in sections 752.053(a)(1) and (2), 752.053(b) is not defined and cannot possibly guide local entities with the tough decisions they must make in allocating scare resources on difficult policing issues, especially given that some of those decisions must be made under significant time constraints. *See* Schmerber Decl., ¶13, ¶16. As the Fifth Circuit has made clear, terms like "materially limit" provide no meaningful guidance to local entities and their employees. *See, e.g.*, *Int'l Soc'y for Krishna Consciousness of Atlanta v. Eaves*, 601 F.2d 809, 832 (5th Cir. 1979) (holding that proscription on actions that "hamper or impede the conduct of any authorized business at the airport" is unconstitutionally vague because countless actions near business may be considered to "hamper" or "impede" its conduct).

For instance, Plaintiffs cannot know whether, in light of SB 4, they are required to instruct their deputies to inquire about immigration status every time they detain an individual. *See* Schmerber Decl. ¶ 13. Local entities may instead wish to instruct their deputies that they should inquire about immigration status during traffic stops *only* where they have reasonable

("[s]pecifying an intent element does not save [the challenged law] from vagueness because the conduct which must be motivated by intent, as well as the standard by which that conduct is to be assessed, remain vague"), *vacated as moot after repeal of challenged statute*, 273 F.2d 1164 (5th Cir. 1984).

suspicion that the individual is in the country unlawfully *and* there is objective evidence to support that suspicion. Yet, after SB 4, that type of sound policy decision may be deemed by the State to "materially limit" the enforcement of immigration law, because the State wants full-on immigration enforcement, with individuals being asked about their immigration status when stopped or detained. Plaintiffs may likewise wish to instruct their deputies that they should not spend time inquiring about immigration status if it would lengthen the detention, or would divert them from more pressing tasks concerning public safety. *See* Schmerber Decl. ¶¶ 12-13, 19; Hernandez Decl. ¶15. But again, under SB 4, the State may very well deem that policy decision to "materially limit" immigration enforcement.

Similarly, ICE may request local assistance in a task force. If Plaintiffs decided that they cannot help because of the need to deploy their officers on more pressing local matters, or because Plaintiffs do not want to undermine public trust in policing, that decision could be deemed by the State to "materially limit" the enforcement of immigration law. *See* Schmerber Decl. ¶13. The same is true of less formal requests by ICE. As Sheriff Schmerber notes in his declaration, he has in the past received calls from immigration agents requesting police backup for immigration enforcement actions. *See* Schmerber Decl. ¶13-14. He has had to decline some requests because of a lack of resources. *Id.*, ¶14. Yet now, in light of SB 4's vague language, he will have to consider whether the State would construe such declinations as "materially limit[ing]" the enforcement of immigration law. *Id.* Thus, even simple, day-to-day decisions regarding how a city or county allocates its scarce police resources will be fraught with uncertainty and potentially lead to significant penalties.

Moreover, the law does not define what is meant by "assisting or cooperating" with federal immigration officers. Tex. Gov't Code § 752.053(b)(3). Virtually anything could fall within those terms, depending on how expansively the State chooses to interpret them. For example, the law provides local entities with no guidance on whether it is reasonable or necessary to refuse cooperation where they believe federal agents are using excessive force or are failing to comply with Fourth Amendment search requirements. Nor does the law provide guidance on whether it is reasonable or necessary to decline cooperation where the investigation of a local crime demands an officer's time and additional police resources. There are countless scenarios in which this confusion will interfere with urgent local matters or embroil local officials in unnecessary disputes not of their making.

In short, Plaintiff officials cannot reasonably anticipate which of their many policies or actions will be deemed by the State to "materially limit" immigration enforcement. Every day, local entities make decisions about where and how to allocate resources to best serve their communities. They now will have no idea whether they are violating the law and subjecting themselves to financial penalties or removal from office.

(b) The vagueness of the "materially limit" language is compounded by other vague terms in the statute. The law, for example, penalizes a "pattern" or "practice" of materially limiting immigration enforcement. *Id*. § 752.053(a)(2) It is not clear whether this means, for example, only a consistent practice over months or years or would also include some number of instances by the same officer or unit. The State could also conclude that an officer who fails a handful of times to check the immigration status of a motorist may have a pattern of limiting immigration enforcement. That officer's superior, as well, may be in violation, for failing to affirmatively order an end to the "pattern or practice."

Additionally, SB 4 broadly and ambiguously defines the term "immigration laws" as any state or federal law "*relating* to aliens, immigrants or immigration," and not simply limited to the "federal Immigration and Nationality Act" or any specific statutory or legislative provision. Texas Gov't Code § 752.051(2) (emphasis added). Consequently, local entities are prohibited from adopting or endorsing policies and practices that "materially limit" enforcement of the myriad laws that arguably *relate* to noncitizens, which could (in the State's view) include virtually anything (housing, marriage, or benefit laws, for instance). *See, e.g.*, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, §§ 401-51, 110 Stat. 2105, 2260-77 (1996) (governing noncitizens' eligibility for welfare benefits outside the INA).

SB 4's combination of ill-defined terms thus leaves Plaintiffs in the dark on even basic duties: Is every deputy and officer required to ask about immigration status at the time of every stop or arrest? Are they required to do so even for deputies and officers who are not trained in immigration law, and where the time and resources will come at the expense of other, more pressing policing tasks? Plaintiffs legitimately and reasonably fear that they will not be able to stay within the bounds of the law given these vague terms. *See* Schmerber Decl. ¶¶ 13, 16-17, 20; Hernandez Dec. ¶¶ 11-14; Reyes Decl. ¶¶ 23-26.

Critically, moreover, the vague provisions do more than create uncertainty among localities. They grant the State an unprecedented amount of discretion to dictate local policies through the selective application of civil penalties. The threat of arbitrary enforcement is a real one: Texas has already chosen to sue those jurisdictions and individual officials who are "publicly hostile" to the policies of SB 4. *See* Complaint for Declaratory Judgment, *Texas v. Travis County, et al.*, 1:17-cv-00425, ¶¶ 3-5 (W.D. Tex. May 7, 2017), (No. 1). These twin harms—the impossibility of anticipating and avoiding prohibited conduct and the potential for "arbitrary and discriminatory" administration of the law—are precisely what the constitutional prohibition on vagueness is designed to prevent. *Women's Med. Ctr.*, 248 F.3d at 421.[8]

3. The Detainer Mandate Is Unconstitutionally Vague.

The detainer provisions expose Plaintiffs to *criminal* penalties and are unconstitutionally vague. The provision states that local officials need not honor a detainer request if they determine that the individual is a U.S. citizen or has a "lawful immigration status," Tex. Code of Crim. P. Art. 2.251(b), but the law does not define the term "lawful immigration status." It is impossible for officers to administer this exception properly because federal law does not define the term. Bacon Decl. ¶¶ 9-10 ("The [INA] does not contain a definition or category that establishes when an individual has 'lawful immigration status' that could be used in the administration of SB 4."). Rather, federal immigration law creates myriad immigration statuses. Some—like Lawful Permanent Resident status—grant a non-citizen formal immigration status. *See generally* 8 U.S.C. § 1255; Bacon Decl. ¶ 10. Others provide lawful authorization to be present in the United States but do not provide a formal immigration status. Bacon Decl. ¶¶ 10-13.

For example, some noncitizens are given a status of "deferred action" that allows them to work and remain in the United States, but they have no formal lawful immigration status. Bacon Decl. ¶ 13. Likewise, an individual seeking asylum may have permission to work and remain in the United States while her asylum claim is being adjudicated, but will have no formal lawful immigration status. *See* 8 U.S.C. § 1158(d)(2); 8 C.F.R. § 208.7, § 274a.12(c)(8); Bacon Decl. ¶

[8] SB 4 effectively gives the Texas Attorney General enormous discretion about which local officials to target with an enforcement action for whichever local SB 4 infraction he chooses to perceive at the time.

12. Other lawful statuses allow a person to be in the United States but do not authorize employment. *See* Bacon Decl. ¶ 67.

SB 4 does not make even remotely clear how local entities are supposed to administer the law in the absence of clear guidelines. The law states only that a person can attempt to show lawful immigration status with certain kinds of documents, such as a Texas drivers' license. But not everyone will have a drivers' license, for various reasons that are unrelated to status. *Veasey v. Perry*, 71 F.Supp. 3d 627 660 (S.D. Tex 204), *aff'd in part, vacated in part, rev'd in part on other grounds, Veasey v*. Abbott, 832 F.3d 216 (5th Cir. 2016). More fundamentally, there is no one government document that proves "lawful immigration status" because there is no single federal definition of lawful immigration status. Bacon Decl. ¶ 16. Thus, because SB 4 does not define "immigration detainer request" or "lawful immigration status," it is an unconstitutionally vague criminal provision.

C. SB 4's Prohibition Of "Endorsement" Violates The First Amendment.

Under SB 4, no local official may "endorse" a policy that "materially limits the enforcement of immigration laws." Tex. Gov't Code § 752.053(a)(1). The prohibition on endorsements patently violates the First Amendment because it (1) involves viewpoint discrimination, and (2) is overbroad and vague.

1. The Endorsement Ban is Unconstitutional Viewpoint Discrimination.

SB 4's ban on endorsements is a ban on speech. Indeed, it is not only a ban on speech, but a ban on speech on a matter of vital public interest. It thus targets political speech that lies at the heart of the First Amendment. *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964) ("debate on public issues should be uninhibited, robust, and wide-open"). Even more egregiously, the ban bars political speech on the basis of the speaker's *viewpoint*—a local official can endorse immigration enforcement, but cannot endorse limitations on enforcement. *See* Webster's Third New Int'l Dictionary 749 (1981) (stating that "endorse" means "to express definite approval or acceptance of," "vouch for" or "underwrite"). *See Turner Broadcasting System, Inc. v. F.C.C.*, 512 U.S. 622, 641 (1994) (noting that viewpoint discriminatory laws impermissibly seek "to suppress unpopular ideas or information or manipulate the public debate through coercion rather than persuasion."). Viewpoint discrimination—particularly discrimination against statements by elected officials—is subject to the highest scrutiny and must be narrowly tailored to a compelling government interest. Where "the State chooses to tap the energy and legitimizing power of the democratic process . . . it must accord the participants in that process . . . the First Amendment rights that attach to their roles." *Jenevein v. Willing*, 493 F. 3d 551, 557-58 (5th Cir. 2007) (explaining that an elected government employee is granted full First Amendment protections because his "'employer' is the public itself").

Texas has offered no valid justification, much less a compelling governmental interest, to justify its endorsement ban. Nor could it. *See Wood v. Georgia*, 370 U.S. 375, 392 (1962) ("[T]he role that elected officials play in our society makes it all the more imperative that they be allowed freely to express themselves on matters of current public importance."); *Republican Party of Minn. v. White*, 536 U.S. 765, 778 (2002) (invalidating state supreme court's canon of conduct, which prohibited candidates for judicial election from announcing their views on disputed legal or political issues, as a content-based regulation of speech).[9]

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[9] The endorsement ban is also facially overbroad, because "a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 472–73 (2010) (citation omitted). Indeed, here it is difficult to imagine any legitimate applications.

In short, Texas cannot ban local officials from speaking on a topic of such vital interest to Texans and the Nation. That is especially so where Texas prohibits speech on one side of the debate only. *Garcetti v. Ceballos*, 547 U.S 410, 419 (2006) (stressing that the First Amendment protects the right of all public employees—even those who are not elected officials—to speak as "citizens about matters of public concern" and recognizes "the importance of promoting the public's interest in receiving the well-informed views of government employees engaging in civic discussion").

2. The Endorsement Ban Is Also Unconstitutionally Vague.

In addition, the endorsement prohibition is unconstitutionally vague. Under the First Amendment, statutes that regulate expression must be "set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest" in free and open expression. *Broadrick v. Oklahoma*, 413 U.S. 601, 608 (1973); *see also Hobbs v. Thompson*, 448 F.2d 456, 459 (5th Cir. 1971) **(**"Lack of fair warning to actors or lack of adequate standards to guide enforcers also may lead to a 'chill' on privileged activity."). No reasonable person can determine what type of action or speech constitutes an "endorsement" of a policy that "materially limits" immigration enforcement.

D. SB 4's Detainer Mandate Violates The Fourth Amendment.

SB 4's detainer mandate will force law enforcement officers to violate their constituents' rights. It prohibits what the Fourth Amendment requires—a particularized determination, in each case, that probable cause supports the detention. The detainer provision should therefore be enjoined.

SB 4 forces law enforcement agencies to honor all immigration detainer requests for detainees who cannot affirmatively prove that they are citizens or have lawful status. *See* Tex.

Code Crim. Proc. art. 2.251(a), (b). The statute defines "immigration detainer request" broadly to include not just formal I-247 requests, but *any* "federal government request . . . to maintain temporary custody of an alien." Tex. Gov't Code § 772.0073(a)(2). SB 4 thus requires officers to honor informal detention requests as well, such as a phone call.

Honoring a detainer constitutes "a new seizure for Fourth Amendment purposes," and must therefore be supported by probable cause. *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015); *see id.* at 217 n.3 ("courts have uniformly held that probable cause is required" for an immigration detainer); *accord Mercado v. Dallas Cty.*, 2017 WL 169102, at *5-6 (N.D. Tex. Jan. 17, 2017). Immigration detainers must also comply with the INA, which only allows warrantless arrests when an immigration officer has "reason to believe" that the arrestee is "likely to escape before a warrant can be obtained." 8 U.S.C. § 1357(a)(2) (2006); *Moreno v. Napolitano*, 213 F. Supp. 3d 999 (N.D. Ill. 2016) (enjoining issuance of detainers without either warrant or individualized "likely to escape" determination); *Orellana v. Nobles Cty.*, 2017 WL 72397, at *8-9 (D. Minn. Jan. 6, 2017) (holding that county lacked authority to honor detainer issued in violation of § 1357(a)(2)).

The across-the-board detainer arrests that SB 4 compels will violate these requirements. First, arrests will violate the Fourth Amendment when the detainer is issued without probable cause. *See, e.g.*, *Morales v. Chadbourne*, No. 12-301-M-LDA, 2017 WL 354292, at *5-6 (D.R.I. Jan. 24, 2017) (holding that ICE had issued detainer without probable cause of removability); *Miranda-Olivares v. Clackamas Cty.*, No. 3:12-cv-02317-ST, 2014 WL 1414305, at *11 (D. Or. Apr. 11, 2014) (county lacked probable cause based on detainer that conveyed absence of probable cause). Second, informal detention requests, if not expressly time-limited, will force local officers under SB 4 to hold people for longer than 48 hours. *See Cty. of Riverside v.*

McLaughlin, 500 U.S. 44, 56-67 (1991) (suspects arrested without warrant must be provided probable cause within 48 hours of arrest); *Roy v. Cty. of Los Angeles*, 114 F. Supp. 3d 1030, 1033 (C.D. Cal. 2015) (immigrants held on detainers for 6, 18, and 89 days); *Miranda-Olivares*, 2014 WL 1414305, at *9 (discussing immigrant held on detainer for two weeks). Third, ICE has admitted that it fails to comply with the INA's warrantless arrest provision, because it issues detainers without any "individualized determination that" a person is "likely to escape" before a warrant can issue. 8 U.S.C. § 1357(a)(2); *Moreno*, 213 F. Supp. 3d at 1005-06.[10] Arrests in any of these situations are illegal. And yet SB 4 forces local officers to arrest and detain anyway.

The statute's exception for people who can prove citizenship or lawful status does not cure its defects. Among other things, the exception would not prevent detentions from lasting longer than 48 hours. Nor does a person's inability to affirmatively prove their immigration status establish probable cause that they are removable. Hundreds of thousands of *citizens* in Texas do not have a driver's license or similar identification. *Veasey*, 71 F. Supp. 3d at 660 (expert testimony that over 600,000 registered voters in Texas did not have driver's licenses or other voter ID); *see also id.* at 671 (noting that Texas's "suspension of more than a million driver's licenses . . . disparately burdened . . . Latinos"). And it is not clear what other

[10] Although ICE has recently announced that it will address this deficiency by issuing administrative warrants along with detainers, s*ee* U.S. Immigration & Customs Enforcement, Policy Number 10074.2, at 2, Mar. 24, 2017, it is too early to know how many errors will occur. *Cf.* Complaint for Injunctive and Declaratory Relief and Damages at 24-26, *Roy v. Cty. Of Los Angeles*, CV 12-9012-RGK (Oct. 19, 2012) (noting that ICE "routinely issue[d] immigration holds for the initiation of an investigation without probable cause to believe a person in removable form the United States"); Am. Immigration Lawyers Ass'n, *Immigration and Customs Enforcement's Detainer Program Operates Unlawfully Despite Nominal Changes* 3-4 (2017) ("in the ordinary course of their duties, ICE officers routinely issue detainers requesting extended detention without any sworn, particularized statement of probable cause or review by a neutral magistrate.").

documents will prove status, even if local officials could make that complex determination. *See* Bacon Decl. ¶ 16.

The Court should therefore enjoin SB 4's detainer mandate in full. *See City of Los Angeles v. Patel,* 135 S. Ct. 2443, 249-51 (2015) (listing facial invalidations of statutes on Fourth Amendment grounds). For every arrest, the Fourth Amendment requires the officer to decide whether there is probable cause. This requires a "particularized" assessment, in each case, that probable cause supports the arrest. *Maryland v. Pringle,* 540 U.S. 366, 371, 373 (2003). SB 4 would thus render every arrest it commands invalid, because the statute forbids officers from undertaking any particularized assessment, even though the Fourth Amendment requires a particularized assessment for each arrest. *See Patel*, 135 S. Ct. at 2451-52 (invalidating statute because it authorized searches without the opportunity for the pre-compliance review that the Fourth Amendment required for every search).

Facial invalidation is also necessary to protect law enforcement chiefs from the catastrophic penalties SB 4 imposes, even for unintentional violations. The penalty of removal from office has no scienter requirement and no good-faith exception. *See* Tex. Gov't Code § 752.0565(a). A sheriff who instructed a deputy on a single occasion, based on a mistaken immigration status determination, not to honor a detainer would be subject to removal from office. *See id.* § 752.053(b)(3) (sheriffs may not prohibit deputies from "providing enforcement assistance"). That is an intolerable burden to place on law enforcement officers, whose first duty is to protect the rights of those they serve. U.S. Const. art. VI (oath to uphold the Constitution); Tex. Const. art. 16, § 1(a) (oath to "defend the Constitution and laws of the United States"). It will force officers to carry out arrests despite uncertainty about probable cause or compliance with the INA. *See Patel*, 135 S. Ct. at 2452-534 (facially invalidating ordinance because "the ordinance create[d] an intolerable risk that searches authorized by it" will be unlawful).

Law enforcement agencies have used a number of approaches to seek to ensure that their detainer arrests do not violate the Constitution. Some require that a "neutral magistrate" determine probable cause. *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). Others take things case by case. Schmerber Decl., ¶ 16. Officers should not have to face fines and prosecution for declining detainers that lack probable cause or statutory authorization. *See Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 490 (2010) ("We normally do not require plaintiffs to bet the farm by taking the violative action before testing the validity of the law.") (internal quotations marks and citations omitted). The Court should enjoin Texas from applying SB 4 to these policies, or to actions taken under them.

E. SB 4 Violates Equal Protection.

SB 4 prevents local policies that are necessary to prevent specific, concrete injuries on the basis of race and alienage. Relatedly, it comprehensively removes basic local protections from non-citizens (and those who are *assumed* to be non-citizens), and no others, targeting a group that states have no constitutional interest in treating differently from other residents.

1. As explained above, unregulated local immigration enforcement often leads to stops and arrests targeted at those perceived to be "foreign," particularly Latinos. *See Melendres*, 989 F. Supp. 2d at 903-04 (attributing racial profiling in part to agency's "failure to monitor its deputies' actions for patterns of racial profiling"). This occurs when local officers, untrained in the complexities of immigration law, use other proxies for immigration status like race, language, national origin, and alienage. *See* Reyes Decl., ¶ 28; Schmerber Decl., ¶ 20; Torres Decl., ¶¶ 11-13; Gupta Decl. ¶ 10.

To prevent this problem from occurring, law enforcement agencies in Texas and across the country structure their practices in a variety of ways. Some limit inquiries about immigration status, so officers do not seek out opportunities to ask those questions. Gupta Decl. ¶ 8, 10, 12. Others regulate when officers can honor detainers or seek to remove incentives for their officers for overzealous attempts to stop and arrest people who look foreign. Gupta Decl. ¶¶ 10-12. Still others choose not to participate in task forces or the 287(g) program, whose track record of racial profiling is well known. *See, e.g.*, Dep't of Homeland Sec., Office of the Inspector Gen., *The Performance of 287(g) Agreements*, OIG-10-63 at 25-27 (2010) (describing reforms needed "to address civil rights issues"); Gustavo Valdes & Thom Patterson, *Feds Accuse North Carolina Sheriff's Office of Racial Profiling*, CNN (Sept. 20, 2012), http://www.cnn.com/2012/09/20/justice/north-carolina-justice-immigration/ (reporting that ICE terminated 287(g) agreement because of a "pattern of racial profiling aimed at searching for illegal immigrants") (internal quotation marks omitted).

SB 4 wipes out these efforts to ensure local compliance with the Constitution. Under SB 4, a law enforcement chief cannot prevent racial profiling by limiting when her officers can ask about status. This kind of state law has long been impermissible. As the Supreme Court recently reaffirmed, the Equal Protection Clause does not permit states to preempt local efforts to "address or prevent injury caused on account of race." *Schuette v. Coal. to Defend Affirmative Action*, 134 S. Ct. 1623, 1636 (2014) (plurality opinion) (Kennedy, J.); *see id.* at 1638 (noting that states cannot enact "political restriction[s]" that are "likely to be used[] to encourage infliction of injury by reason of race"). The Court has therefore struck down state laws that prohibit local desegregation policies, *see Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457 (1982), and local housing anti-discrimination ordinances, *see Reitman v. Mulkey*, 387 U.S. 369

(1967). SB 4 is no different. By disabling policies meant to address specific, concrete injuries on account of race, SB 4 "operate[s] to insinuate the State into the decision to discriminate." *Schuette*, 134 S. Ct. at 1631.

In fact, SB 4 goes further than the statutes struck down in *Reitman* and *Seattle*, because they only preempted local efforts to address discrimination that did not violate the Constitution. *See Seattle*, 458 U.S. at 474 (noting "the absence of a constitutional violation"); *Reitman*, 387 U.S. at 381 (ordinance only prohibited "private racial discrimination"). Because SB 4 creates a "serious risk" of causing these "specific injuries on account of race," *Schuette*, 134 S. Ct. at 1633, the statute must be enjoined.[11]

That SB 4's contains a boilerplate statement that local entities "may not consider race . . . except to the extent permitted by the United States Constitution or Texas Constitution" is of little value. Texas Gov't Code § 752.054. This simply authorizes officers to consider race to the maximum extent permitted by the Constitution, but otherwise adds nothing beyond pre-existing constitutional limits and does not validate the policies that police and sheriffs use to "*prevent* injury caused on account of race." *Schuette*, 134 S. Ct. at 1636 (emphasis added). Nor will this provision alone reduce the "serious risk" of "injuries on account of race." *Id.* at 1633. Under SB 4, limiting involvement in immigration enforcement can lead to jail, fines, and ouster from office, whereas violating the anti-discrimination provision carries no penalty at all. *See also Melendres*, 989 F. Supp. 2d at 848 (systematic racial profiling despite official policy that "[r]acial profiling is prohibited and will not be tolerated").

[11] *See also e.g.*, *Hernandez v. Texas*, 347 U.S. 475 (1954) (striking down Texas's systematic exclusion of persons of "Mexican descent" from jury service); *LULAC v. Perry*, 548 U.S. 399, 439 (2006) (recounting Texas's "long history of discrimination against Latinos").

Local officials, like Plaintiffs here, know better how to ensure that discrimination does not occur. Yet, in clear violation of equal protection, SB 4 prevents local entities from taking preventive steps to avoid the "serious risk" of violating the Constitution. *Schuette*, 134 S. Ct. at 1633 (Kennedy, J.).

2. SB 4 also effects a "[s]weeping and comprehensive . . . change in legal status" for millions of non-citizens in Texas, as well as those who may *appear* to be non-citizens to those who make incorrect assumptions). *Romer*, 517 U.S. at 627. Whereas all others groups can petition their local jurisdictions to adopt policies that protect them from discrimination, unlawful stops, and other constitutional harms, non-citizens are now broadly disabled from seeking such policies. Instead, "no matter how local or discrete the harm," non-citizens (and those perceived to be foreign) must now convince a statewide electorate that their rights are worthy of protection too. *Id.* at 631 ("the amendment imposes a special disability upon those persons alone").

States may not enact these kinds of "targeted" burdens. *Schuette*, 134 S. Ct. at 1632. For instance, in *Seattle*, a *state* law blocked *local* officials from enacting *local* desegregation policies. The Supreme Court struck it down because the law "place[d] special burdens on the ability of minority groups" to seek protective *local* policies. That is precisely what has occurred here. SB 4—a state law—prevents *local* officials and residents from enacting *local* policies to protect non-citizens and minorities who may be profiled.

Similarly, in *Romer v. Evans*, 517 U.S. 620 (1996), a *state* law blocked *local* residents and officials from adopting *local* anti-discrimination policies that protected gays and lesbians. The Court struck it down, emphasizing that the law "impose[d] a special disability upon those persons alone" in preventing them from enacting *local* laws to prevent discrimination. *Id.* at 631; *cf. Hunter v. Erickson*, 393 U.S. 385, 391 (1969). SB 4 similarly violates the Equal Protection Clause by singling out a discrete, vulnerable group and taking away their local protections against concrete harms.

The special burden imposed by SB 4 is even less defensible than the "special disability" imposed in *Romer*, because there the state had not targeted any suspect class. 517 U.S. at 632. Texas, however, has targeted non-citizens, whom states have no valid interest in treating worse than anyone else (and the law will inevitably have a disproportionate effect on minority groups). *Cf. Graham v. Richardson*, 403 U.S. 365, 372 (1971) (holding that state "classifications based on alienage . . . are inherently suspect and subject to close judicial scrutiny," because "[a]liens are a prime example of a 'discrete and insular' minority for whom such heightened judicial solicitude is appropriate") (citation omitted).

SB 4 cannot stand under these principles. Just like the laws in *Romer*, *Seattle*, *Hunter*, and *Reitman*, it "withdraws from [non-citizens and those appearing to be non-citizens], but no others, specific legal protection from the injuries caused by discrimination [and unlawful arrests], and it forbids reinstatement of these laws and policies." *Romer*, 517 U.S. at 627. Equal protection does not allow that kind of targeted burden.

F. SB 4 Has Serious Implications For Voting Rights And Tenth Amendment Principles.

1. SB 4's removal provisions raise serious voting rights concerns because of the removal provisions. The Fourteenth Amendment protects the right to vote as a fundamental political right. *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966); *Reynolds v. Sims*, 377 U.S. 533, 562 (1964); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). It is well established that "a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." *Dunn*, 405 U.S. at 336. The Equal Protection Clause protects against laws that discriminate between similarly

situated individuals, or groups of individuals, in the exercise of their fundamental rights.

Mayor Reyes, Sherriff Schmerber, Constable Hernandez, and individual members of LULAC are registered electors and voters in the state of Texas and in their respective municipalities and counties of residence. Local Gov't Code Sec. 24.023 entitles each voter in a Type C General Law municipality, including El Cenizo, to vote for a mayor of the municipality. Texas law also entitles each voter to vote for a Sheriff and Constable for the county in which he or she lives. SB 4 violates the Equal Protection Clause by diluting the equal right to vote to residents in municipalities (including El Cenizo) and counties (including Maverick County) that have passed a sanctuary city-type resolution or ordinance. SB4 conditions the right to continue serving as an elected official—including in the elected offices of mayor, sheriff, and constable—upon officials' perceived unwillingness to enforce detainer requests or respond to notification requests from the federal government, regardless of the legality of the requests. It effectively revokes Plaintiffs' fundamental right to vote on an equal basis with other Texas residents by stripping authority from duly elected local officials in Sanctuary Cities.

2. The Tenth Amendment protects state and local governments from being commandeered to administer federal regulatory programs. *See Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144, 174-183 (1992). This protection applies not just to states, but also to local officials. *See Printz*, 521 U.S. at 931 n.15 (holding that county sheriffs, not just state entities, were protected from federal commandeering). As a result, local officials have their own "prerogative to reject" the unlawful imposition of federal duties "not merely in theory but in fact." *Nat'l Fed. of Indep. Business v. Sebelius*, 132 S. Ct. 2566, 2605 (2012) (plurality opinion of Roberts, J.) (quotation marks omitted).

The State of Texas, moreover, cannot preemptively waive its localities' anti-commandeering rights. In *New York*, the Court rejected the federal government's argument that "state officials [had] consented" to press their own agencies into federal service. 505 U.S. at 180-82 ("[T]he departure from the constitutional plan cannot be ratified by the 'consent' of state officials."). It explained that commandeering protections do not exist "for the benefit of the States or state governments as abstract entities." *Id.* at 181. Instead, state officers are protected from federal control "for the protection of individuals," *id.* (quotes omitted), because decentralization "reduce[s] the risk of tyranny and abuse." *Id.* (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991).

SB 4 seeks to waive Plaintiffs' anti-commandeering rights. It orders local law enforcement agencies to "fulfill *any* request made in [a] detainer request provided by the federal government." Tex. Code Crim. Proc. art. 2.251(a)(1) (emphasis added). It likewise forbids local law enforcement agencies from rejecting demands made by federal immigration officials. *See* Texas Gov't Code § 752.053(b). Texas may not subject local entities to plenary federal control in the manner in which SB 4 operates, thereby blurring the lines of accountability that the Tenth Amendment serves to protect. *See Printz*, 521 U.S. at 930 (holding that local sheriffs should not be forced "to absorb the costs of implementing a federal regulatory program" or "put in the position of taking the blame for its burdensomeness and for its defects"). Doing so denies local communities "the liberties that derive from the diffusion of sovereign power." *New York*, 505 U.S. at 181 (quotation marks omitted); *see also Printz*, 521 U.S. at 922 (warning of "the risk of tyranny and abuse" if the federal government could "impress into its service . . . the police officers of the 50 States").

II. SB 4 Will Cause Irreparable Harm to Plaintiffs.

There can be no dispute that Plaintiffs will suffer irreparable injury should SB 4 go into effect. As Plaintiffs have shown, SB 4 will violate their constitutional rights in numerous ways, which, "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion) (addressing First Amendment harms). Where "'an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.'" *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2948.1 (2d ed. 1995)).

SB 4 also threatens numerous other irreparable harms to Plaintiffs, including incarceration, loss of employment, and fines. Mayor Reyes, Sheriff Schmerber, and Constable Hernandez therefore face grave consequences for exercising their First Amendment rights or ensuring that their localities comply with constitutional standards.

Moreover, SB 4 intrudes on localities' reasoned judgments, based on their superior understanding of local contexts, about how best to distribute their scarce resources. *See* Hernandez Decl., ¶¶ 12-15; Reyes Decl., ¶¶ 15-17, ¶ 24; Schmerber Decl., ¶¶ 10-14. SB 4 also undermines their efforts to build community trust in law enforcement. *See* Reyes Decl., ¶¶ 18-19, ¶¶ 21-22; Schmerber Decl., ¶¶ 21-22. If SB 4 goes into effect and destroys that trust, no after-the-fact judicial remedy can restore it.

Plaintiff Texas LULAC's individual members also face irreparable injury in the form of unlawful stops, arrests, and extended detentions. Indeed, the legislation's mere passage, combined with the state's public messages on immigration enforcement, has already begun adversely affecting Texas LULAC's Latino members. *See* Torres Decl., ¶¶ 11-18.

III. The Balance of Hardships And The Public Interest Favor A Preliminary Injunction.

The balance of hardships weighs heavily in favor of a preliminary injunction. The status quo is that localities can choose how and when to use their scarce resources to enforce federal immigration law. An injunction will simply leave that status quo in place until the Court can make a deliberate decision on the legality of SB 4.

Moreover, any injury to the State pales in comparison to the numerous and serious harms that Plaintiffs will suffer should SB 4 go into effect. Plaintiffs' requested relief would not prevent Defendants from promoting their stated goal of increasing cooperation with federal immigration authorities; it would merely require them to do so in compliance with the Constitution and federal law.

The public interest also supports preliminary relief here. SB 4 would require localities and police departments to divert their limited personnel away from their existing law enforcement efforts, and toward immigration enforcement activities that they are ill-equipped to handle. *See* Reyes Decl., ¶ 28; Schmerber Decl., ¶¶ 18-20. Thus, SB 4 will make their communities less safe, not more. And "the public interest always is served when public officials act within the bounds of the law and respect the rights of the citizens they serve." *Nobby Lobby, Inc. v. City of Dallas*, 970 F.2d 82, 93 (5th Cir. 1992) (quoting district court below).

CONCLUSION

For the foregoing reasons, the Court should preliminarily enjoin SB 4.

Dated: June 5, 2017

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Luis Vera, Jr., hereby certify that on June 5, 2017 copies of this Memorandum in Support of Plaintiffs' Application for Preliminary Injunction were electronically filed via the Court's CM/ECF system.

Dated: June 5, 2017

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

City of El Cenizo, Texas, Mayor Raul L. Reyes of City of El Cenizo, Maverick County, Maverick County Sheriff Tom Schmerber, Maverick County Constable Pct.3-1 Mario A. Hernandez, and League of United Latin American Citizens,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 5:17-cv-404-OLG
State of Texas, Governor Greg Abbott (In His Official Capacity), and Texas Attorney General Ken Paxton (In His Official Capacity)	:	:
Defendants.	:	

<u>DECLARATION OF ROXANA C. BACON</u>

I, Roxana C. Bacon, hereby declare:

I make this declaration based on my own personal knowledge, and if called to testify, I could and would do so competently as follows:

1. I served as the Chief Counsel for the United States Citizenship and Immigration Service (USCIS) in the Department of Homeland Security (DHS) from October 2009 until December 2010. As Chief Counsel, I managed the USCIS lawyers throughout the United States, provided counsel to the Director of USCIS, participated in policy discussions among DHS immigration agencies, and drafted memoranda regarding administrative/executive options to statutory reform, including DACA-type discretion.

2. I received my Bachelor's degree from the University of California at Berkeley, and my J.D. from the University of California at Berkeley Boalt Hall School of Law. My C.V. is attached as Exhibit A.
3. Prior to serving as Chief Counsel for USCIS, I spent over thirty years practicing immigration law at various law firms.
4. I have been teaching immigration law since 1979; I have taught at the Arizona State University College of Law as well as at the University of Miami Law School. I now teach immigration law at the University of Miami School of Law.
5. The Plaintiffs have asked me to provide my opinions concerning SB 4 and the immigration status determinations that local law enforcement officials will be required to make. I have read and reviewed SB 4 and related provisions of the Texas code.
6. SB 4 increases local law enforcement involvement in determinations of immigration status in two ways. First, SB 4 forbids local government from prohibiting officers from investigating an individual's lawful status during stops and detentions. This will lead to more status investigations and may lead to policies mandating such status investigations. Second, SB 4 requires officers to determine if a person is a U.S. citizen or has "lawful immigration status" as a prerequisite to complying with requests from the federal government to detain an individual.
7. Allowing local law enforcement officers, during routine traffic stops or other infractions and during arrests, to inquire about and investigate place of birth and immigration status will lead to unnecessary delays and prolonged and wrongful detention, inevitable errors in identifying immigration status and rights, and an

increased likelihood that local officers will rely on impermissible factors, such as race or ethnicity, in making such determinations.

8. As explained in detail below, there are several reasons why SB 4 is problematic with regards to immigration status determinations.

9. **First**, there is no one definition that establishes when an individual has "lawful immigration status" in the United States.

10. The Immigration and Nationality Act (INA) does not contain a definition or category that establishes when an individual has "lawful immigration status" that could be used in the administration of SB 4. In federal immigration practice, an individual's "immigration status" is generally understood to refer to particular federal immigration classifications under which an individual was admitted. This applies, for example, to individuals admitted as "non-immigrants," or those admitted temporarily for reasons defined by statute; those admitted as "immigrants," or permanent residents (generally known as "green card holders"); and other, more limited classifications established by federal law (i.e., temporary protected status, or TPS). Even when a noncitizen lacks formal immigration status, it does not necessarily mean that their presence in the United States is unauthorized. This is because our federal immigration system distinguishes authorized presence from formal immigration status, and treats them as distinct.

11. **Second**, there are a variety of different circumstances where a person may be in the country without a formal immigration status without being subject to removal and may also not have documentary evidence of that fact. Many individuals are permitted to remain and work in United States, despite the fact that they may not have a

recognized immigration status or classification. Furthermore, there is no federal immigration classification that covers all individuals who the federal government has allowed to remain in this country in the course of the proper administration of the immigration laws.

12. For example, people with pending applications for asylum or adjustment of status may be authorized by DHS to remain in the United States and granted employment authorization although they lack status. The same is true of certain survivors of domestic violence who have filed petitions under the Violence Against Women Act (VAWA). Individuals required to be released from indefinite detention have no formal status under federal immigration law, but have a constitutional right to remain undetained in the United States. Other individuals may obtain deferral or withholding of removal in under the Convention Against Torture, allowing them to stay in the United States without a formal immigration status.

13. Deferred action operates in a similar manner: individuals who receive deferred action have no formal immigration status, but they have received permission by the federal government to remain in the United States for a given period of time. They have, in effect, *per se* legal authorization to reside in the United States. Deferred action allows the federal government to authorize the presence of individuals who would otherwise be subject to removal. For example, the federal government may grant deferred action for a period of one year to an undocumented immigrant whose testimony is required for a criminal prosecution. This serves to authorize the individual's presence for the given period and enables the government to move forward with the prosecution of a crime.

14. **Third**, determining whether an individual has lawful immigration status is a complex legal inquiry, governed by a wide range of federal statutory and regulatory provisions.

15. The determination of an individual's immigration status is a convoluted determination that local law enforcement officers are unable to make. Requiring local officials to make this determination can lead to the wrongful detention of individuals who, for a variety reasons, may not be able to demonstrate or prove that they have some immigration status or are not subject to being removed or arrested for immigration violations, including, for example, lawful permanent residents; individuals with non-immigrant visas, such as employment visas; U-visas and T-visas; individuals who are in the process of adjusting their status; and other individuals who may be in the United States lawfully due to TPS, parole, orders of supervision, deferred action, VAWA, release after prolonged detention, withholding, and asylum.

16. In many cases, individuals will not have clear documentation to demonstrate their status and local officials are not trained to make determinations based on immigration documentation. Certain immigration documents would not provide an untrained official with evidence that they are lawfully present, and may instead convey to an untrained official that they are removable. Further, citizens are not required to carry proof of citizenship, increasing the risk that citizens suspected of being present unlawfully will be detained.

17. **Fourth**, federal immigration officials also exercise discretion in determining who is subject to being removed or detained, and in the general administration of immigration law. Local law enforcement officials do not have the authorization or

training to determine whether or not a person should be subject to removal or detained or arrested for immigration violations.

18. What follows is a non-exhaustive and more detailed explanation of the complexities of immigration law and why it is impractical for local law enforcement officers to assess status accurately.

19. My conclusions are based on a number of factual and experience-based factors which will be discussed separately in order to show both the stunning and bewildering complexity of the laws that law enforcement officers would have to understand at an expert level to interpret the responses to any interrogation about immigration status.

20. Furthermore, there is no one database in which all immigration information is contained. Different federal agencies have access to different systems and databases, whereas local law enforcement officers do not. Even upon contacting federal officials, there is no one database that can be quickly accessed in order to determine if there is any basis on which the individual is lawfully present or potentially in violation of federal immigration laws.

21. **SB 4 creates the risk of the wrongful detention of U.S. citizens.**

22. United States citizens are not required to carry proof of citizenship under U.S. or Texas law. In addition to persons born in the U.S., certain persons born outside of the country are citizens under an intricate scheme of naturalization and derivative and acquired citizenship. *See generally* Daniel Levy, *U.S. Citizenship and Naturalization Handbook*, § 1.1 (Charles Roth ed., 2016–17 ed.).

23. For example, persons born abroad may naturalize to obtain citizenship. *See* 8 U.S.C. § 1421 *et. seq.* (2012). In fact, there are more than a dozen ways that a non-citizen may naturalize. Levy, *U.S. Citizenship and Naturalization Handbook*, § 1.1

24. Others may acquire citizenship through one or both of their parents. *See* 8 U.S.C. § 1401. Acquired citizenship depends on the year the citizen was born, whether one or two parents is a citizen, the marital status of the parents, and their length of residence in the U.S. In border states such as Texas it is not unusual for persons to have acquired U.S. citizenship from their grandparents through the chain of grandparent to parent to child. *See* Lee J. Teran, *Mexican Children of U.S. Citizens: "Viges Prin" and Other Tales of Challenges to Asserting Acquired U.S. Citizenship*, 14 The Scholar: St. Mary's Law Review on Minority Issues 583, 587–88 (2012).

25. Still others may derive citizenship through the citizenship or naturalization of one or both parents. 8 U.S.C. § 1431.

26. In all of these cases, the citizen who is stopped or arrested may not even be aware of his or her acquired U.S. citizenship, even though absolute legal protection from any DHS immigration action is guaranteed by citizenship.

27. A person is not required and normally would not carry her birth certificate, U.S. passport, naturalization certificate or certificate of citizenship with her, much less the chain of birth certificates and residency records to prove U.S. citizenship through more than one generation, so providing proof on the spot is unlikely.

28. Given these complexities of citizenship status, a law enforcement officer could easily, albeit mistakenly, prolong detention of a U.S. citizen after learning that she was born in a foreign country.

29. **SB 4 creates the risk of the wrongful detention of individuals with legal immigration status.**

30. The Immigration and Nationality Act, 8 U.S.C. § 1101, *et. seq.* sets up a bifurcated system of immigrant and non-immigrant categories. In addition, the statute and related regulations create numerous other complex, temporary categories and statuses that allow persons to be lawfully in the United States, as discussed below.

31. This myriad of options for foreigners reflects the fact that Congress uses immigration laws to support U.S. policy across many national interests, including international trade, economics, education, politics, anti-discrimination, religious freedom, scientific research, the arts, national security, family relationships, humanitarianism, and even the consequences of environmental changes. To reduce those policy options to a quick assessment of immigration status by untutored officers and single dimension systems is akin to asking one's DNA code based on eye color. It is so simplistic that it guarantees major errors.

32. Lawful permanent residents, commonly referred to as "green card" holders, are considered immigrants under the immigration laws. They are issued an I-551 laminated document as proof of status. The card is valid for ten years, but the status is permanent. While producing an I-551 permanent resident card may satisfy a Texas officer, not every green card holder has the document. During the time USCIS renews the document, the person may only have a receipt or may be waiting to receive a receipt. Further, the filing fee to renew, replace a lost card or obtain a new card because of a name change is $540.00 with additional charges for photographs, a cost that can be prohibitive for some permanent residents. In addition, USCIS has its

own problems with renewals, including delayed processing times that increase the chances of lost filings and receipts.

33. Currently it takes approximately seven months to obtain a new card. The processing times vary greatly depending on allocation of resources within USCIS, but they are growing longer. During the renewal period, the only proof of lawful status is a receipt from USCIS, that may be printed or electronic, and that makes no reference to legal status or an extension date. A person who does not carry the receipt (not required by law) or have access to an electronic filing notice might be subject to prolonged detention by a confused local law enforcement officer attempting to discern immigration status.

34. The critical fact for SB 4 purposes is that even though the permanent resident card expires every ten years and even if the permanent resident fails to renew or loses her card, she continues to be a lawful permanent resident, regardless of whether she has proof of status.

35. Major additional problems occur with lawful permanent residents who apply for permanent resident status abroad. Numerically, this is a larger group than those who are able to "adjust their status" to permanent residents without leaving the U.S. The largest U.S. Consulate that processes immigrant visa applications is located in Ciudad Juarez, where all Mexicans must apply for permanent residence status. In 2016, the Ciudad Juarez Consulate issued 89,428 immigrant visas. Department of State, *Summary of Visas Issued by Issuing Office Fiscal Year 2016*, https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableIV.pdf (last visited June 1, 2017). Lawful permanent

residents who obtain their status at a U.S. Consulate enter the U.S. with an immigrant visa stamp in their foreign passport, not with the laminated I-551 document.

36. A permanent resident granted status at a U.S. Consulate is given a visa stamp generally valid for six months when she presents herself for entry at the border. A request is sent by the admitting DHS officer to USCIS to manufacture the I-551 permanent resident card. That process can take months, often longer than the temporary stamp date. Regardless of DHS bureaucratic issues, or the lapse of the stamp date, the individual is lawfully in the U.S. Neither a Texas officer nor an ICE officer would necessarily know about these seeming details that are actually dispositive of status.

37. Additionally, errors in the name on the I-551 are frequent, especially in Hispanic cultures, since any change in marital status results in a name change in which some of the maiden name remains while a new "last name" is taken. Given the common surnames in Hispanic culture, the loss of a "Gonzales" or the addition of a "Rodrigues" with the first name of "Juan" or "Maria" can lead to hundreds of false responses when checking any immigration database. Similarly, the legal names of children born of two Hispanic parents incorporate both parents' names in a sequence not used in non-Hispanic culture. While I was USCIS Chief Counsel, the name confusion was highlighted as a chronic issue in both developing and maintaining databases.

38. The complexities continue. Lawful permanent residents who obtain status based on a marriage of less than two years duration to a U.S. citizen obtain conditional permanent residence status. 8 U.S.C. §1186a. This status is only valid for two years,

and the I-551 permanent resident card has a two-year expiration date. Upon expiration, the conditional permanent resident must apply to remove the conditions on her permanent resident status. The filing fee for the application to remove the conditions of conditional residence status is $680.00, a cost that at times is beyond the reach of the immigrant so that removal requests are not always timely.

39. While the conditional resident is filing to remove the two-year limitation, a process that currently takes more than eight months, she only has a receipt from USCIS to show that the application has been filed and that status has been extended for a year. A line ICE officer, who has no role of any kind in the processing or adjudication of any petition or application for permanent resident status, would not be familiar with these conditional removal documents.

40. Similarly, a lawful permanent resident who obtained her "green card" through an EB-5 investment (one of the "employment-based" immigration categories) has a similar conditional resident status period and is subject to the same prolonged procedure for removing the conditions. 8 U.S.C. § 1153(b)(5). Although there are thousands of individuals in the "EB-5 conditional removal step," a Texas officer would have little exposure to them, since they have absolutely no contact with the filing, processing, adjudication or follow-up of EB-5 status.

41. A Texas law enforcement officer could easily prolong detention of a permanent resident after learning that a person was born in a foreign country in an attempt to understand the person's immigration status or even to alert immigration officials. Escalating the issue to ICE is not a guarantee of either a quick or accurate response since permanent resident processing is not within ICE'S jurisdiction, expertise or

authority. There is no "hotline" between USCIS and ICE to escalate questions of a person's status, and the USCIS internal escalation process to make a definitive conclusion regarding status can take more than a month. In addition, other Cabinet-level agencies (DOL, Health and Human Services, OITR) have their own databases that include immigration-related information not accessible to ICE but that impacts the lawful presence of an individual migrant.

42. **SB 4 creates the risk of the wrongful detention of individuals with non-immigrant visas who are lawfully present in the United States.**

43. Millions of foreign-born persons are in the U.S. at any given time with non-immigrant visas. There are twenty-three non-immigrant visas that allow non-citizens and their spouses and children to enter or remain in the U.S. for varying lengths of time. 8 U.S.C. § 1101(a)(15)(A)–(V). Each category has separate rules and guidelines for their grant, maintenance, and termination, and jurisdiction for such adjudications lay primarily with USCIS, with a small percentage under the authority of the Department of State (DOS). ICE is not involved in a non-immigrant visa holder's status processing, adjudication, extension or termination. To make matters more complicated, even after the original period for a non-immigrant visa ends, non-immigrant visa holders may remain in the U.S. lawfully while they pursue an extension of stay or a change of status to another non-immigrant visa category. 8 C.F.R. §§ 214.1, 248.1. Under this provision, the person receives permission to remain in the U.S. without having to obtain a new visa from a U.S. Consulate abroad. While this process is pending, the non-immigrant's date of authorized stay noted on her immigration document (Form I-94) is not extended, although she still has lawful

status by operation of regulation. Frequently, USCIS, which is exclusively in charge of all extension and change of status requests, has processing times in excess of six months. Even longer delays have been known to occur, and with the current reduction of USCIS personnel are likely to become commonplace. However long the processing time, and however faulty the underlying receipts, the person seeking the benefit is considered by law to be in status, i.e., lawfully present in the U.S.

44. A Texas or ICE law enforcement officer, unfamiliar with these complicated rules, could erroneously conclude that a person awaiting an extension or change of status was in the country unlawfully.

45. Other non-immigrant categories do not have a clear expiration date on their immigration documents. For example, F-1 visa holders (students), J-1 visa holders (exchange visitors), and M-1 visa holders (vocational students) are admitted for "duration of status," an administrative convenience which allows them to remain in the U.S. for the period of time necessary to complete their studies or activities. 8 C.F.R. §§ 214.2(f)(5)(i), (j)(1)(ii), (m)(5). Their I-94 entry or status document contains no expiration date, but instead is annotated as "D/S." Even after completing their course of studies, by regulation, these visa holders are allowed an additional 30–60 days to depart the United States**.** 8 C.F.R. §§ 214.2(f)(5)(iv), (j)(1)(ii), (m)(10)(i). Further, some students can obtain automatic work authorization related to their studies and others can obtain permission to work on campus. Some work authorizations require a separate USCIS document and others do not. Some extension or status decisions are made by the Department of and some are not. Only

a seasoned expert can decipher the validity of a student status in all but the most ordinary circumstances.

46. Canadians present another perplexing set of rules. Canadian citizens may enter the U.S. as visitors for pleasure or for business without obtaining a visa from a U.S. Consulate. 8 C.F.R. § 212.1(a); 22 C.F.R. § 41.2(a). They are automatically admitted for a period of six months, but are given no immigration document to prove their status or their entry and required departure date. Again, Texas ICE officers are not likely to be familiar with the unique rules regarding Canadians although there are many in Texas, especially during winter.

47. The most frequently used of the non-immigrant temporary work categories, known as H-1B, presents many unique problems for verifying status. First, the employer identified on the receipt may not have the same name or address as the employer where the immigrant works each day. Associations, holding companies, partnerships, even labor contracting agencies are all eligible to sponsor the H-1B immigrants, and second them to certain co-employers. Indeed, this aspect of the H-1B category is managed by yet another Cabinet-level federal agency, the Department of Labor, Alien Employment Certification (AEC). The AEC also manages the labor pool testing for H-2A and 2B temporary worker categories; neither USCIS nor ICE plays a role in determining what employers are properly included under the primary employer's umbrella. A Texas officer would not know such nuances, and an ICE officer, who by law does not process and of the "H" petitions, would also see the different employer information and likely conclude that an impropriety has occurred. This erroneous assumption would cause delay, irrelevant inquiries, and even possible detention.

48. Not only may H-1B non-immigrants have different employers noted on their key documents, but those who have spent an extended period of time in the U.S. and whose employers are considering filing for permanent resident status for them are granted the right to change employers (known as "portability") within the same job family without prior USCIS or DOL approval. Such a seeming anomaly would not be within either the Texas or ICE officer's knowledge base.

49. Non-immigrant status based in part on international treaties pose especially tricky assessments. A Canadian in Texas under NAFTA has a non-visa status, known as "TN," issued at the border. She does not need the same level of supporting documents as an H-1B temporary worker, but is entitled to live and work in the U.S. indefinitely, in grants of one or two years. The document she presents may vary from a passport notation to an entry document that has no "visa category," and no expiration date. Further, she may change employers without notifying USCIS; she can simply leave the U.S. and re-enter with a new sponsor. None of this information would be familiar to a Texas officer or even ICE since ICE does not handle any aspect of immigrant or non-immigrant visa/status processing.

50. While NAFTA includes immigration provisions for both Canadians and Mexicans, Mexicans under NAFTA are treated entirely differently from Canadians in terms of immigration benefits, filing procedures, and evidence of status. Their processing is akin, but still different than, H-1B procedures. Again, such variations are not likely to be known to Texas officers or ICE, but they do occur, and make immigration status verification knotty, if not impossible.

51. Two other categories of non-immigrant visas depend on international treaties that can be changed by the DOS or the Office of the United States Trade Representative (USTR), yet another Cabinet-level agency with authority over aspects of immigration, without changing the underlying immigration statute. Such visas automatically involve the other nation signatory to the treaty, and questions about a person holding such a visa raise issues that are handled by USCIS, DOS, or USTR, not ICE or a Texas law enforcement officer. These "E Visa" categories concern treaty investors or traders, and their employees. Only citizens of certain countries may hold such visas, and their designation is integrated into our international treaties of Trade Commerce and Friendship. 8 U.S.C. § 1101(a)(15)(E); 8 C.F.R. § 214.2(e). These categories have a variety of authorizations for what their holders may do and for how long. Without knowledge of the treaty category and its specifics, it would not be possible to identify whether the person is operating within the allowed framework or not. No ICE or Texas officer would have that knowledge and could not acquire it in any general training course, and yet because the category concerns international relations and persons investing significant sums in the U.S., it is a complex inquiry where investigative delay is especially offensive.

52. Similarly, the J visa category, 8 U.S.C. § 1101(a)(15)(J), is so complex private practitioners consider it a specialty that is often done to the exclusion of other types of immigration law. J visas are also based on treaties with other nations, and are available to scholars, researchers, professors, students at advanced and undergraduate levels. It is also the exclusive path for foreign doctors, except for certain exemptions for Canadian doctors, to obtain licenses and ultimately visas that allow them to

practice medicine in the U.S. Each of these sub-categories has separate rules and requirements, some of which are managed by yet another Cabinet-level federal agency, the Department of Health and Human Services (HHS), some by state health organizations and some by universities. None of the underlying information necessary to evaluate status is readily available to ICE, nor within their expertise, much less that of Texas law enforcement officials, and yet Texas has thousands of scholars, professors and physicians holding J visas.

53. U visas are another complex visa category, available for victims of certain criminal activity who have been or are likely to be helpful to law enforcement. 8 U.S.C. § 1101(a)(15)(U). By law, there are only 10,000 visas available each year in this category. If the annual 10,000 visa cap is reached, the applicant is placed on a waiting list, provided a Notice of Conditional Approval, and granted either deferred action or parole, statuses discussed below in this affidavit. 8 C.F.R. § 214.14(d)(2). This Notice is proof of lawful status, although there is little chance that Texas officer or even an ICE officer would be familiar with it. U visa applicants who have final orders of removal may request a stay of removal that should be considered favorably by DHS. Memorandum from Peter S. Vincent, Principal Legal Advisor, U.S. Immigration and Customs Enforcement to OPLA Attorneys (Sep. 25, 2009), https://www.ice.gov/doclib/foia/dro_policy_memos/vincent_memo.pdf. Arresting or detaining someone who is in a U visa process likely would be catastrophic to the criminal case or on-going investigation as well as to the individual.

54. Victims of severe trafficking, who comply with law enforcement's request for assistance in prosecution or investigation of trafficking crimes, are eligible for T

visas, a category rife with complexity. 8 U.S.C. § 1101(a)(15)(T). Even before approval of the visa, if USCIS determines that the application is *bona fide*, the agency will automatically grant an administrative stay of removal until final adjudication. 8 C.F.R. § 214.11(d)(1)(ii). Information regarding the applicant is confidential and may only be disclosed to law enforcement in a manner that ensures the confidentiality of such information. 8 C.F.R. § 214.11(p); 8 U.S.C. § 1367(b)(2). This confidentiality provision further complicates a state officer's interrogation about immigration status. Only 5,000 T visas may be issued each year. If this annual cap is reached, applicants are issued a written notice and placed on a waiting list. 8 C.F.R. § 214.11(j). This Notice operates as permission for the person to stay lawfully in the U.S., a fact that would not be readily known by a Texas or ICE officer since they are not the processing or issuing sub-agency.

55. For obvious reasons, U and T visa categories (victims of crime or informants for law enforcement) are subject to specific confidentiality requirements that further complicate open discussions with Texas or ICE officers, neither of whom is the adjudicating agency for either category. 8 U.S.C. § 1367.

56. **SB 4 may cause the detention of individuals who are legally in the United States pending adjustment of status.**

57. Persons who are in the process of applying for lawful permanent residency through adjustment of status, 8 U.S.C. § 1255, a large category numerically, pose an especially difficult group for determining immigration status. Such persons are allowed to remain in the U.S., pending an adjudication of their application, even after their non-immigrant status and their I-94 immigration document have expired. Not

all of these persons would have proof of their lawful status in U.S., and those documents that they do possess may be unfamiliar to ICE officers as well as local law enforcement officials. For example, they might only have a filing fee receipt (Notice of Action) with no additional information and because it is their only proof of lawful status, they would not be likely to carry this document with them for fear of loss or theft. The delays in processing the underlying "green card" or employment authorization card, pursuant to a pending application, can exceed one year. Again, however long the bureaucratic delays, the applicant is lawfully present in the interim, but without any easy way to prove that fact.

58. Another common scenario involves applicants for permanent resident status based on employment with a U.S. company. Often such persons have a valid non-immigrant category but are applying for permanent residency. Changing from such non-immigrant categories as student, visiting scholar, or temporary worker is allowed, even encouraged, in the law. Documenting the applicant's lawful presence in the U.S. during the processing of such an "adjustment of status" is, however, not easy. Due to the esoteric features in each category and the long processing times, the underlying documents proving the person is lawfully in the U.S. are multiple, confusing, and at times inconsistent. For example, a common problem occurs when the non-immigrant category document, often an H-1B form, shows a different employer than the one sponsoring the green card. That is a perfectly lawful situation, but one that perplexes those not steeped in the non-deportation side of U.S. immigration law. Further, an immigrant may hold a valid H-1B or J visa while simultaneously holding receipts and work authorizations for permanent resident

status. The number of authorizations, and the fact that they confirm simultaneous immigrant and non-immigrant status, would confuse a line ICE officer trying to make an assessment of lawful presence in the U.S., and simply be beyond the reach of a line Texas officer. Yet from a real-life immigration perspective, on any given day there are several hundred thousand H-1Bs alone in this “adjustment” category.

59. Thus, a Texas or ICE law enforcement officer, unfamiliar with adjustment of status procedures would be unable to ascertain a person’s status, which could lead to prolonged detention.

60. **SB 4 may also cause the detention of individuals with other lawful statuses.**

61. There are many other lawful statuses that fall outside the statute’s 23 enumerated non-immigrant visa categories. Each of them presents complex to impossible problems for a Texas officer or an ICE officer responding to the Texas officer’s inquiries. The most common of these categories are “temporary protected status,” or “TPS,” “orders of supervision,” “parole,” and “deferred action.”

62. Temporary Protected Status (TPS) is a lawful status granted to citizens of designated countries because of a natural disaster or armed conflict. 8 U.S.C. § 1254a. DHS normally designates these countries (usually at the request of the other foreign nation involved in the situation) for a period of eighteen months. TPS is a category that involves international relations and policy at the highest levels of U.S. government. If DHS extends TPS for an additional time period, applicants must re-register for TPS.

63. However, because of the volume of applications, DHS automatically extends TPS status for six months during the re-registration period. The extension is published in

the federal register and on the DHS website. Thus, the TPS holder has an expired immigration document, even though DHS has extended her stay during the re-registration period. This Administration's recent actions in regard to TPS Haitians are particularly difficult for any Texas or ICE officer. Although agreeing to extend TPS for Haitians again, the decision was to extend for only six months. Since the blanket "grace period" is six months, it is not clear how overlapping extension requests and automatic grace period grants will be identified or what documents will suffice to prove lawful presence. ICE is not a part of those considerations; they reside with USCIS.

64. A local law enforcement officer would be unfamiliar with this automatic extension process, published only in the federal register and on the DHS website. In addition, the delays in extending TPS for all designated countries are growing.

65. "Parole" is a decision by DHS, usually involving USCIS national headquarters but sometimes allowed at the more regional level, to admit a person into the U.S. who has no valid visa but who has an exigent circumstance that, in an exercise of discretion, warrants the admission. For example, paroles are granted for immigrants to care for sick children or close relatives, to attend funerals, to appear in court cases, to settle legal matters, to secure release from detention: all are within the domain of this discretionary power. Once given, parole can be extended by a local immigration office. Documentation about parole can include an I-94 entry document or, in some emergency cases, merely a letter. Grants of parole are seldom entered into any comprehensive database.

66. "Orders of supervision," 8 C.F.R. § 241.5, and stays of removal, 8 C.F.R. § 241.6, are similar to parole; they are used when a removal order is in place, but there are equitable reasons not to execute it. In the case of undocumented immigrants, they may have to appear before ICE officers periodically for "check-ins." The documentation to prove the status can be minimal and may or may not include an employment authorization document.

67. In addition, through regulations and internal policy directives, other categories of non-citizens may still reside lawfully in the United States with or without permission to work. For example, deferred action allows a non-citizen to remain in the U.S. for a period of time designated by USCIS or ICE. Deferred action is not explicitly provided for under either the statute or the regulations. *See, e.g.*, 8 C.F.R. § 274a.12(c)(14). "Deferred action" is the ultimate prosecutorial tool, allowing DHS to grant a variety of relief to those who would otherwise be subject to immigration enforcement.

68. President Obama used deferred action to craft relief from deportation for certain children whose presence in the U.S. began in childhood. His action is known as the DACA program. Currently over 200,000 persons in Texas hold DACA status. USCIS, *DACA Statistics FY2016, Q3*, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_performancedata_fy2016_qtr3.pdf (last visited June 1, 2017).

69. DACA beneficiaries may be issued an employment authorization document for a period of two years. They may renew their status upon filing an extension application

and paying a filing fee of $495.00. During the renewal period, the only proof of lawful status is the filing fee receipt, known as the Notice of Action.

70. While DACA involves an application process, prosecutorial discretion itself typically does not. Rather, it can occur informally, based on such immediate factors as Congressional or other political intervention, media pressure, compelling equities. Even immigration judges can find their orders for deportation halted by prosecutorial discretion, a situation that is seldom included in any database.

71. Survivors of domestic violence may apply for permanent resident status under the Violence Against Women Act (VAWA). 8 U.S.C. § 1101(a)(51); 8 U.S.C. § 1154(a)(1) *et. seq*. They are also granted deferred action pending the final adjudication of their cases. Proof of their deferred action status is a USCIS document that again may not be part of an ICE-accessible database, due to confidentiality protections for battered, and vulnerable, spouses. 8 U.S.C. § 1367. VAWA recipients may, but need not, apply for an employment authorization document. Few ICE officers are familiar with this process or documentation, and probably no Texas officers.

72. **SB 4 may cause the detention of individuals who are eligible for Employment Authorization Documents.**

73. Some non-citizens are eligible to apply for an employment authorization document (EAD) based on their immigration status. 8 C.F.R. § 274a.12 *et. seq*. The EAD, a laminated card, contains a photo of the applicant and an expiration date, usually between one and two years, depending on the underlying non-immigrant category. However, there is no requirement that a person eligible for an EAD apply for one.

Further, its issuance and extensions are often delayed and depend upon the underlying qualifying non-immigrant category being extended.

74. To extend an employment authorization document, the non-citizen must pay a filing fee of $495.00. Because of the delay in adjudication, DHS automatically extends the EAD for certain categories for an additional six months. Notice of such extension only appears on the DHS website. USCIS, *Automatic Employment Authorization Document (EAD) Extension*, https://www.uscis.gov/working-united-states/automatic-employment-authorization-document-ead-extension (last updated Feb. 1, 2017). Thus, a non-citizen, who has filed to extend her EAD card, has no proof of lawful status, other than what is published on the DHS website.

75. **SB 4 places persons in removal proceedings and those granted status by an immigration judge at risk of unlawful detention.**

76. Many persons are present in the U.S. without documentation but are awaiting a court hearing before an immigration judge or an appeal at the Board of Immigration Appeals or in the federal courts. They may be challenging their removal (deportation) or seeking available relief from removal under the immigration statute such as asylum, cancellation of removal, or other benefits. They may even be filing statutory or Constitutional challenges to provisions of the law, immigration-centric Executive Orders, or the implementation of the law or its regulations. Some may be individually named and some may be included in class actions. In fact, there are over 585,000 cases pending in the immigration courts alone, and a current backlog in Texas of 99,690 cases, second only to pending cases in California. TRAC Immigration, *Immigration Court Backlog Tool*,

http://trac.syr.edu/phptools/immigration/court_backlog (last visited June 1, 2017). The current estimate for when an immigrant's deportation case will actually be heard is approximately four years, and the delays are growing.

77. These individuals would not normally be rearrested by ICE because they have already been placed in removal proceedings and are allowed to remain in the community during those pending proceedings. However, the only documentation that a person in this category would have is the Notice to Appear (Form I-862), alleging the grounds for the removal proceedings. Non-citizens do not normally carry the Notice to Appear with them.

78. When a person is granted relief from removal, the immigration judge issues a short memorandum or a longer formal decision, pending the processing of immigration documentation (the I-551 card). The immigration judge cannot issue immigration documents related to such relief from removal. Instead, the non-citizen must apply to USCIS for evidence of status awarded by the judge. The process and wait for issuance of a permanent resident card or an employment authorization card can take many months, depending on the specific relief granted

79. If the person loses her case before the immigration courts, she may file a timely appeal to the Board of Immigration Appeals. Upon such filing, she receives an automatic stay of removal. She is not provided with any additional immigration documentation. If she loses before the Board of Immigration Appeals, she may file a petition for review to the Federal Circuit Court of Appeals and seek a stay of removal. Again, these procedures are outside DHS purview, residing solely within the federal court system. No DHS database automatically tracks them. *Habeas* petitions, and

challenges to certain aspects of immigration law and its implementation are filed in Federal District Courts and may include stays of removal. Again, there is no ICE database of such judicial proceedings.

80. A non-citizen would not normally carry proof of the status of her case on appeal. Even if she did, a law enforcement officer would not be able to interpret or ascertain her immigration status from the appeal notice, and any effort to do so would almost certainly prolong detention without any legal basis.

81. **SB 4 may also cause the unlawful detention of individuals who have been granted withholding of removal.**

82. A person who is granted withholding of removal under 8 U.S.C. § 1231(b)(3), commonly known as "protection from harm" in the home country, is provided with a written decision from an immigration judge. The decision contains no expiration date and simply states that the person cannot be removed to the country from which she fears harm. Such a person is lawfully in the U.S., and detention or arrest violates her rights.

83. Such a person may, but need not, apply for an employment authorization document (EAD); even if she chooses to add this step, she must wait months for approval and issuance of the document. The employment authorization document is valid for a period of one to two years, despite the fact that the person continues to have indefinite withholding of removal status until it is formally terminated by the immigration judge, and only then upon a finding that she may be safely removed from the U.S. In the case of stateless persons, a situation more common than generally thought, withholding may be for a lifetime. A person may have an expired EAD then, but still

be lawfully in the U.S. Further, while she is applying for withholding of removal before the immigration judge, she cannot be removed from the U.S., even though she has no proof of lawful status during proceedings.

84. **SB 4 may also lead to the unlawful detention of individuals who have been granted asylum.**

85. A person who is granted asylum under 8 U.S.C. § 1158 by the immigration judge is similarly issued a written decision. The administrative decision contains no expiration date. Such person may, but need not, apply for an employment authorization document, but doing so is the usual prolonged process. The employment authorization document is generally valid for a period of one to two years, despite the fact that the person continues in indefinite asylee status unless it has been formally terminated by the immigration judge.

86. While she is applying for asylum status before either an immigration judge or the Asylum Office of USCIS, she cannot be removed from the U.S., although she has no proof of lawful status.

87. The "A" file (alien registration file) is a near mythical creature. Supposedly a single archive of all data relating to a lawful permanent resident, in the real world the "A" file may be spread out among other DHS and other federal law enforcement agencies, may include both electronic and paper components, may be updated or not by the immediate user, and may not be returned intact. There are millions of "A" files going back decades, so what is described as "the complete file" seldom is. In my experience as USCIS Chief Counsel, a case that was actively involved in any one of the hundreds of immigration-related processing steps was seldom intact. Cases that

had been sent for particular review by fraud detection experts or were involved in removal proceedings of litigation or involved an especially troubling adjudication were often spread out among different offices and officers. For Texas law enforcement or ICE, the incomplete nature of the records is a serious impediment to understanding a person's immigration status; certainly, it is a shaky foundation on which to determine detention and possibly arrest.

88. Further, as mentioned above, some of USCIS' files are subject to stricter privacy controls, especially those pertaining to refugees, VAWA (Violence Against Women Act), T and U visas and applicants for asylum, since open access to those person's immigration information can place them in physical harm. Files kept by the Immigration Court are subject to yet a different database; housed not by DHS but by the DOJ, Executive Office of Immigration Review. If appeals are filed beyond the EOIR level, any files are the property of the particular Federal Court involved, and are not accessible by or coordinated with ICE or USCIS databases.

89. It is worth noting that decisions by immigration judges are often omitted from ICE files because the underlying cases are still in process. Such routine judicial orders as continuances, administrative closings, voluntary departure with extensions of same, and even grants of permanent resident status that may take a year to activate due to backlogs in the availability of visa numbers would likely not be part of any ICE officer's routine inquiry. As discussed herein, the judicial database gap alone would affect thousands of persons who happen to be in Texas on any given day.

90. Due to the bifurcation of missions, where ICE is the enforcement arm of immigration and USCIS the benefit side, ICE officers are not trained in and do not work with the visa categories or statuses. They do not know the implementing regulations, policy memos, legal memoranda or operating guidelines necessary to determine whether a person is lawfully in the U.S. State law enforcement has no knowledge whatsoever of these complicated issues. Indeed, it is the overwhelming complexity of these edicts that have even the most erudite courts concluding that: "Immigration laws bear a "striking resemblance . . . [to] King Minos's labyrinth in ancient Crete. The Tax Laws and the Immigration and Nationality Acts are examples we have cited of Congress's ingenuity in passing statutes certain to accelerate the aging process of judges." *Lok v. INS,* 548 F.2d 37, 38 (2nd Cir. 1977).

Date: June 3, 2017
Executed in Rockport, New York

Respectfully submitted,

Roxana C. Bacon
Roxana C. Bacon

EXHIBIT A

CURRICULUM VITAE
ROXANA BACON

6114 N. 2nd. Avenue
Phoenix, Arizona 85013
602 478 6380
roxie.bacon@gmail.com

Education:

University of California at Santa Barbara, 1961-1963, Honors at Entrance and California State Scholarship

Peace Corps Volunteer 1963-1965; trained at Notre Dame University, Puerto Rico and stationed for 2 years in Copiapo, Chile in the Atacama Desert. Established "head start" programs and mining cooperatives.

University of California at Berkeley, 1965-1967. B.A. in interdisciplinary honors major, Communication and Public Policy. Recipient, California State Scholarship.

University of California at Berkeley, Boalt Hall School of Law, 1971-1974. JD

Employment:

International Institute of the East Bay, 1965-1968. Designed, obtained funding and directed program matching new arrival immigrants from rural areas of Central and South America with politically active U.S. teenagers for 5 hours a week. Goal was to provide real life orientation to urban living for people who had extremely limited resources and no experience with bureaucracies. Program received Congressional recognition and had over 500 "matches". In addition, more than 15 of the U.S. teenage volunteers received scholarships to continue their University education as a direct result of their work in the program.

San Francisco International Institute, 1968-1971. Social worker/community development manager with new arrival immigrant groups. Established out-reach programs in high schools and hospitals offering cultural and language translators to expedite services to this hidden population. Developed innovative group approaches [yoga and meditation, cooking events, dance classes] to counter isolation of mono-lingual, uneducated women recently arrived from Central America and rural Mexico. Continued teen-age matching program.

Jackson & Hertogs, San Francisco, CA 1971-1974. Clerked throughout law school [20-30 hours per week] with premier immigration law firm mentored by Joseph Hertogs and Z.B. Jackson, both national experts in the field.

Jennings, Strouss & Salmon, Phoenix AZ summer 1973 and 1974-1984. Law clerk 1973, associate 1974 -1977, partner 1977 -1984. Specialized in all aspects of employment and labor law while developing immigration practice. First immigration practice in the state to provide services in business immigration law. Donated over 500 hours annually to low/no income family and refugee immigration cases.

Sacks, Tierney, Phoenix AZ partner 1984-1986. Managed and grew immigration law practice. Left with another partner to form own firm.

Daughton, Hawkins & Bacon 1986-1988 Owned, managed and grew law firm that offered immigration, employment and litigation services. Firm's success led to its acquisition by national law firm seeking Phoenix presence.

Bryan Cave, 1988-1997. 1,000+lawyer firm based in St. Louis, Missouri. Partner, first woman Member of 15 person Executive Committee [served 3 appointments, for 6 years], Resident Manager of Phoenix office, member of Compensation, Diversity and Marketing Committees. During tenure, Bryan Cave established first international offices and expanded national footprint coast to coast. Directed Immigration practice, which quadrupled in revenues and tripled in staff.

Bacon & Dear. 1997-2006. Founding partner of woman-owned firm. Firm's innovations include first interactive database for case management and preparation, no billable hours, and team format for client service. Practice limited to immigration law, emphasizing business and management of volume processing. In 2003 affiliated with national employment law firm, Littler Mendelson, to assist with international expansion. At time of retirement, July 2006, firm had grown from 10 to 150 employees with offices in Shanghai and Bangalore and extensive international migration practice. Clients included 10 Fortune 100 businesses and annual income in excess of $20 million.

Western Progress, January 2007 – June 2008. Accepted 6-month assignment from Center for American Progress as CEO. Set up a non-profit policy and communication firm devoted to issues of concern in the 8 Rocky Mountain States. Establish Board, secured funding for first 3 year cycle, obtained 501c3 tax status, hired staff, opened offices in Colorado, Montana and Phoenix, produced first 8-state workshop on solar energy, developed website, e-newsletter, partnerships with each Governor's office and working relationships with Universities and experts in the areas of interest.

Western Progress, June 2007 to December 2008: Distinguished Fellow-Immigration.
Work with immigration policy, process and legislation in the Rocky Mountain States.

Department of Homeland Security, Chief Counsel United States Citizenship & Immigration Service October 2009 – December 2010 Managed 180 USCIS lawyers throughout the U.S., counseled Director of USCIS, participated in policy discussions among DHS immigration agencies, drafted memoranda regarding administrative/executive options to statutory reform, including DACA-type discretion.

Teaching:

Visiting Professor of Law, Arizona State University College of Law, 1979-1980. Taught torts, professionalism and immigration/labor seminar. On leave from Jennings Strouss & Salmon.

Adjunct Professor of Law, Arizona State University College of Law, 1981-2005; 2008. Taught professionalism and immigration seminar at least once each academic year as well as participate in orientation programs, student mentoring and career counseling as requested by ASU.

Lecturer, University of Arizona College of Law, periodically since 1995.

Keynote Lecture IL: Syracuse University Law School, 2015

Distinguiished Practitioner, University of Miami Law School, Spring semester, 2012, 2013, 2014, 2016. Taught seminar to 3L and LLM students on Global Migration Policy and Law; guest lectured at UM Law School immigration law course and clinic. Presented at panels related to immigration.

Professional Affiliations and Appointments:

First women to serve as the **President of the 10,000-member Arizona Bar** Association, 1991-92. Established Law Office Management Assistance Program [LOMAP], state Constitutional amendment to include diversity as criteria for merit selection, revamping of discipline system to establish priorities based on public harm, divert health-based problems to treatment, and professionalize staff, included public members on Board of Governors, established Appointments Committee to ensure equal opportunity to serve on Bar Committees.

First woman to serve as **General Counsel** to 14,000 member American Immigration Lawyers Association, 1993–1996 and **General Counsel** to American Immigration Law Foundation, 2000 to 2006. Chaired numerous AILA INS liaison committees, including DOL, INS Enforcement and Professional Responsibility.

First woman lawyer representative to the **Ninth Circuit Court of Appeals,** 1983-86.

First Arizona women lawyer selected by Ninth Circuit Federal Court of Appeals to its **Advisory Board**, 2006-2009

University of Arizona James E. Rogers College of Law Board of Visitors. Member, 1995 – present, Chair, 2000-2003.

University of Miami School of Law Visiting Committee, Member, 2010-present.

Arizona Court of Appeals Judge pro-tempore, 1985, 1994, 1998.

Served on **Selection Committees for Federal District Court** Magistrate and Commissioner positions.

Served on Appellate Court **Merit Selection Nominating Committee** for Arizona Supreme Court.

Served on Governor-appointed **Selection Committees** for State Land Commission, Director of State Department of Revenue, Director of Corrections.

Member, Editorial Board, **Bender's Immigration Law Publications** 2002 –2008.

Community Activities:

Co-Chair, Mayoral campaign, Terry Goddard 1982. Coordinated volunteers, fund-raising, issues briefing papers for successful campaign of progressive candidate.

Phoenix Citizen's Bond Commission 1988. With 2 co-chairs, appointed by Mayor Terry Goddard to lead campaign that approved over 1 billion dollars in city improvements, at that time the largest in U.S. history. Bond issue included innovative public initiatives, including streetscapes, freeway art, "green" library and museum designs, and was the first to be tied to a comprehensive 5 year City Plan based on citizen input.

Co-Chair, **Phoenix Indian School Design Commission**, 1988-90. With 3 others, chaired controversial land-use decision making process and plan for use of centrally located, and commercially valuable, Phoenix open space previously used as Native American boarding school. Result preserved open space and engaged developers in design and uses acceptable to Native American advisory groups.

Big Sisters of Arizona 1975-1982. Board member, held all offices and served as President 1978-80. During this period organization grew 5 fold and began merger with Big Brothers of Arizona. Program is considered national model for Big Brother/Big Sister operations across the United States. Remained active contributor.

Valley Leadership 1976-1977. Selected for leadership program established by Phoenix area business leaders to identify leadership talent and provide orientation to pressing area issues, including growth, education, employment and diversity. Remained active in mentoring program.

Established Bacon & Dear ASU College of Law scholarships to serve detainees through the Florence Project. Program involved semester of law school credit and $10,000 grant per recipient. Program folded into immigration law clinic.

Initiated and funded **Immigration Law Clinics** at Arizona State University Sandra Day O'Conner College of Law, and University of Arizona James Rogers College of Law. The latter is now named Bacon Immigration Law Program and Policy. I serve as Advisor on policy issues.

Mentor young lawyers seeking to specialize in immigration law 1980 to present; currently working with 4 lawyers who are developing immigration law practices.

Executive Board, **Arizona Supreme Court's Centennial Commission**, Developing interactive program to celebrate outstanding historic actions and members of Arizona legal community. 2008-present

<u>Awards:</u>

- **Margaret Brent Award**, (highest award given to women lawyer nationally, by the American Bar Association, for lifetime achievement and support for women in the law), 2007.
- Arizona's **100 Outstanding Minority and Women Lawyers** 2000-present.
- **Sarah Herring Sorin Award** (highest award give to an Arizona woman attorney) 2001
- State Bar **Distinguished Service Award** (highest award given to an Arizona State Bar member) 2003
- Arizona State University **Distinguished Achievement Awards** 1985; 2001
- University of Arizona **Distinguished Service Award** 1998
- University of Arizona James E. Rogers College of Law **Honorary Alumni Award**. 2003
- American Immigration Lawyers Association **President's Commendation** 1994, 2004, 2005

- American Immigration Lawyers Association **Appreciation Awards**, 1997, 1998, 2000, 2002
- **Quality of Life award**, Maricopa County Bar Association, given to "best small firm" in Arizona, 1999.

<u>Publications and Speaking Engagements:</u>

Spoken at every AILA annual convention since 1985; spoken at most State Bar of Arizona annual conventions and at more than 50 Continuing Legal Education courses in professionalism, employment law and immigration law; chaired panels and moderated conferences and seminars in Arizona and nationally covering the entire range of immigration issues, from detention to naturalization; given key note addresses at law school orientation, women's law conferences, women law students conferences, community organizations involved in immigration or border issues and inductions of federal and state judges, most recently at Syracuse University, Arizona State University and University of Miami.

Written articles or book chapters relating to immigration law for many specialty publications, including ILW and Arizona Employment Law Handbook, as well as authored columns for The Arizona Attorney, monthly during tenure as Bar President and regularly since 2003. Publications include:

PERM: An Introduction, Lexis/Nexis Immigration Law Recent Developments, http://www.lexisnexis.com/practiceareas/immigration/pdfs/web713.pdf (Feb. 18, 2005) (co-authored with Lori S. Melton).

INS Enforcement at the Workplace: The I-9 Audit and Beyond, in 2 1995-96 Immigration & Nationality Law Handbook 499 (American Immigration Lawyers Ass'n Ed., 1995).

A Practitioner's Guide to Successful Alien Labor Certifications, 88-5 Immigration Briefings 5 (May 1988) (co-authored with Lenni B. Benson).

Estopping INS-'Affirmative Misconduct' Makes Positively Bad Law, 5 Immig. J. 8 (1982).

Regular columnist in *Arizona Attorney* monthly magazine on law-related, and frequently immigration law related, issues.

Writer, *MS Magazine* periodically since 2014, including article on migrant women asylum applicants in ICE detention.

Served as expert witness in *State of Arizona v. MCCCD* (concerning in-state tuition for DACA recipients), 2014 and 2015.

Signatory to various Amici briefs in the USSC regarding immigration issues, including *U.S. v. State of Texas* (Constitutionality of discretionary authority exercised by the Executive branch). 2015

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

City of El Cenizo, Texas, Mayor Raul L. Reyes of City of El Cenizo, Maverick County, Maverick County Sheriff Tom Schmerber, Maverick County Constable Pct.3-1 Mario A. Hernandez, and League of United Latin American Citizens,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 5:17-cv-404-OLG
State of Texas, Governor Greg Abbott (In His Official Capacity), and Texas Attorney General Ken Paxton (In His Official Capacity)	:	
Defendants.	:	

DECLARATION OF ALEXIS WARREN

I, Alexis Warren, declare as follows:

I make the statements in this Declaration based on my own personal knowledge, and if called to testify I could and would do so competently as follows:

1. I am a paralegal with the American Civil Liberties Union Foundation Immigrants' Rights Project. I work with the attorneys representing Plaintiffs-Petitioners in the instant case.

2. On June 4, 2017 I visited the website of The New Yorker and downloaded a copy of the article "Why Police Chiefs Oppose Texas's New Anti-Immigrant Law" by Jonathan Blitzer, June 2, 2017, *available at* http://www.newyorker.com/news/news-desk/why-police-chiefs-oppose-texass-new-anti-immigrant-law. A true and correct copy of this article is attached to this Declaration as Exhibit A.

3. On June 4, 2017 I visited the website of the NBC News and downloaded a copy of the article "ACLU: Tucson Traffic Stops for Immigration Checks Violating Rights" by Suzanne Gamboa, May 2, 2017, *available at* http://www.nbcnews.com/news/latino/aclu-tucson-traffic-stops-immigration-checks-violating-rights-n566326. A true and correct copy of this article is attached to this Declaration as Exhibit B.

4. On June 2, 2017 I visited the website of The Houston Chronicle and downloaded a copy of the article "Police chiefs: SB4 is a 'lose-lose' for Texas" by Art Acevedo and James McLaughlin, April 30, 2017, *available at* http://www.houstonchronicle.com/opinion/outlook/article/Police-chiefs-SB-4-is-a-lose-lose-for-Texas-11110336.php. A true and correct copy of this article is attached to this Declaration as Exhibit C.

5. On June 2, 2017 I visited the website of the San Antonio Current and downloaded a copy of the article "Texas' Big-City Police Chiefs Hate The 'Sanctuary Cities' Bill" by Michael Barajas, May, 1, 2017, *available at* http://www.sacurrent.com/the-daily/archives/2017/05/01/texas-big-city-police-chiefs-hate-the-sanctuary-cities-law. A true and correct copy of this article is attached to this Declaration as Exhibit D.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 4th day of June, 2017 in New York, New York.

Alexis Warren

Exhibit A

NEWS DESK

WHY POLICE CHIEFS OPPOSE TEXAS'S NEW ANTI-IMMIGRANT LAW

By Jonathan Blitzer June 2, 2017

Some of the most vocal critics of Senate Bill 4 are leaders of Texas's law-enforcement community, like Art Acevedo, the Houston police chief.

Last month, Greg Abbott, the Republican Governor of Texas, signed into law an anti-immigrant measure allowing local police officers to ask for the citizenship status of anyone they detain. This sort of provision—often called a "show me your papers" law—has been attempted at the state level before, most notoriously in Arizona, which passed a measure in 2010 that was subsequently blocked in federal court. In response to the new law, civil-rights groups and several Texas city governments have filed lawsuits against the measure. Earlier this week, thousands of demonstrators descended on the state capitol, in Austin, to protest on the last day of the legislative session, prompting one overwhelmed Republican representative to call Immigration and Customs Enforcement (ICE), presumably so that agents could arrest and deport members of the opposition while they stood in a gallery of the statehouse.

Texas's law, known as Senate Bill 4 (S.B. 4), is in some ways even harsher than the one Arizona passed seven years ago: the new measure allows state authorities to punish any police chief or sheriff who tells his or her subordinates not to act as de-facto immigration agents. Violators face steep fines (a thousand dollars for the first offense and up to twenty-five thousand dollars thereafter) as well as potential removal from office. For this, and other reasons, some of the most vocal critics of S.B. 4 are leaders of the state's law-enforcement community.

On April 28th, just after the bill passed the Texas House of Representatives, a group of police chiefs led by David Pughes and Art Acevedo—the heads of the Dallas and Houston Police Departments, respectively—wrote a public statement urging lawmakers to reconsider. "No one believes in the rule of law more than police officers," they began, but this bill was "political pandering that will make our communities more dangerous." In their eyes, the bill would undermine the work they've done to build trust in the communities they police.

Police chiefs have been speaking out against the bill since it was introduced in the State Senate, last fall. "It's kind of amazing that, during the initial hearing, the senators had all these chiefs and sheriffs from across Texas speaking against the bill—and they totally ignored the people in law enforcement," the El Paso County sheriff, Richard Wiles, told me this week. He said that his staff is overworked as it is. "My officers are too busy to waste their time doing another agency's work," he said. "If there is an officer who wants to do this, we can't stop him under the new law. The only area where one of my officers could now be allowed to go out there and ignore his own bosses is on immigration. It's crazy."

Wiles believes that the law will make daily policing more difficult. "We want people to report crime, whether they're a victim or a witness, regardless of their immigration status," he said. If individuals are scared they'll be deported when they come forward, key leads will dry up and crimes will become harder to solve. Acevedo, the Houston police chief, pointed out that such an outcome would affect citizens and noncitizens alike. "What if the only witness to a crime is an undocumented nanny, or the gardener, or a construction worker?" he said. "And now they don't call in what they see!" Acevedo told me that this year, amid rising fears of a federal immigration raids, there's been a forty-two-per-cent reduction in reports of rapes in Latino communities in the Houston area, even though the crime rate itself hasn't declined. "That does not bode well," he said. "Community policing is something that's been at the core of American law enforcement for the last twenty or thirty years. It's resulted in historically low crime rates despite population growth and despite the fact that most departments are understaffed and under-resourced. I'm not going to sit idly by while calls for service are piling up and an officer decides to go, instead, to a Home Depot to harass day laborers."

Bills like S.B. 4 had circulated in the Texas legislature in years past, pushed by conservative state lawmakers looking to make a statement. Gregorio Casar, a member of the Austin City Council, told me, "There have been forces here in Texas that have wanted this bill and bills like it for a long time. But they weren't serious threats. Texas on immigration policy was like the dog that barked but didn't always bite." That changed in January, after Donald Trump issued an executive order on so-called sanctuary cities, threatening to withhold federal money from local jurisdictions that didn't do ICE's bidding. There is no set definition of what makes a sanctuary city—different cities have instituted their own immigrant-friendly laws and guidelines—but the Administration was trying to compel local officials to do more to help federal immigration agents.

After Trump issued the order, Sally Hernandez, the sheriff of Travis County, Texas, publicly criticized it. "We cannot afford to make our community less safe by driving people into the shadows," she said at the time. Abbott, the Governor, responded by promising a total "crackdown" on sanctuary cities in the state. On January 31st, in his State of the State address, he identified the war on sanctuary cities as a top policy priority. He also punished Travis County, specifically, by withholding $1.5 million in state funding. S.B. 4 had been introduced a few months earlier, and Republicans quickly rallied to the Governor's call, passing the measure in the State Senate on February 8th.

As the House debated the bill, Steve Adler, the mayor of Austin—which is the Travis County seat—travelled to Washington with a delegation of mayors from across the country to meet with Jeff Sessions, the Attorney General. Adler and the other mayors wanted to know if the federal government considered their cities "sanctuaries." More specifically, they wanted clarification on whether cities were legally required to comply with so-called detainer requests—when ICE asks local law-enforcement officials to hold, for an extended period of time, an undocumented person who was arrested, even if he or she hadn't been charged with a crime. Several of the mayors present interpreted the Attorney General's answer as a no, and they gave press conferences after the meeting to announce that they'd left feeling reassured. "I walked out of that meeting saying, 'O.K., this is what the Attorney General is telling me,' " Adler recalled. He thought that having clarification from the Justice Department would slow down the legislative push in his home state. But it didn't; neither did the ruling of a federal judge, who blocked the President's executive order for unfairly punishing sanctuary cities.

I asked Cecillia Wang, the deputy legal director of the A.C.L.U., which has also filed suit against the law, how S.B. 4 ranks among other infamously harsh anti-immigrant laws that have been passed in recent years, like Arizona's. She told me that she sees Texas's law as especially harmful because it puts local officials in a significant legal bind. Over the years, people have sued local police departments for holding them without a valid warrant at the behest of ICE, and the courts have ruled that municipalities bear legal liability in such cases. "The various detainer lawsuits over the past several years make it clear that this law is a bad idea, and yet the Texas legislature and the Governor shoved it down their own police chiefs' and sheriffs' throats," Wang said. "It's stripping away their ability to do their job as they see fit, which is to protect public safety."

Acevedo, the Houston police chief, saw an irony in this. "Texas politicians always complain that Washington is trying to dictate to them how to do things," he told me. "Now they're turning around and doing the same thing to the cities in their own state."

Jonathan Blitzer is a contributing writer to newyorker.com. He has written for the magazine since 2014, and was a finalist for a 2016 Livingston Award.

MORE: IMMIGRATION

WATCH: In Georgia, where undocumented immigrants are banned from the top public universities, they have a school of their own.

Exhibit B

NEWS MAY 2 2016, 6:14 PM ET

ACLU: Tucson Traffic Stops for Immigration Checks Violating Rights

by SUZANNE GAMBOA

American Civil Liberties Union of Arizona said Monday its review of Tucson police records found the department is, with help from the Border Patrol, prolonging traffic stops beyond necessary to check the immigration status of people it stops.

The ACLU alleges the extended stops are constitutional violations and go beyond a requirement in Arizona's SB 1070 law that officers make a "reasonable attempt" to determine immigration status.

The group said those stops happened in about 85 of the 110 cases it reviewed in records dating from June 2014 to December 2015. The records were obtained through an open government request.

The group said the stops "reflect a fundamental misunderstanding of the Fourth Amendment's prohibition on prolonging stops and limits on the authority of local police to enforce immigration laws."

The ACLU sent a letter to Tucson Chief of Police Chris Magnus with its complaints about the practices and failures by the department to properly train and provide accurate guidance to its officers.

RELATED: Phoenix Murals Turn Immigration Controversy into Latino Pride

The ACLU also sent a second letter to Homeland Security Secretary Jeh Johnson, complaining of Border Patrol participation in the prolonged traffic stops.

The involvement of Border Patrol officers shows "disregard for DHS enforcement priorities and contradicts the Obama administration's commitment … to limit the involvement of federal immigration officials in traffic stops by Arizona law enforcement …," the letter to Johnson said.

Lyall said the ACLU had received complaints about the delayed stops from members of the community and filed complaints with police prior to Monday's letters. But he said the Tucson police records confirmed the largely anecdotal evidence from community members.

The Tucson police has made reforms to its immigration enforcement policies over time, but the ACLU said they are inadequate.

According to ACLU's records review, the stops often were stretched beyond needed because Border Patrol did not have a record of the person stopped by police in its database.

In more than a dozen of the prolonged stops false hits or false positives were returned on U.S. citizens or legal residents - almost exclusively Latinos. Some had been transferred to Border Patrol custody on the misinformation.

The ACLU demanded an investigation of Border Patrol's involvement in its enforcement of SB 1070, Arizona's immigration enforcement law once considered the strictest in the country. It also asked DHS for national standards limiting Border Patrol involvement in local law enforcement activities and to collect basic data on the stops.

Lyall said the involvement of Border Patrol in local police stops "flies in the face" of the administration's statements that it would limit the role of the federal government enforcing "this bad law."

The Tucson police department did not have an immediate response to the complaints.

"We have been made aware of the ACLU's letter and we're reviewing it at this time," said officer Dan Lucas who responded to a call from NBC News Latino to the Tucson police department's public information office.

The Border Patrol also was reviewing its letter from the ACLU of Arizona and so did not have immediate comment, said Dan Hetlage, deputy director for media at Customs and Border Protection in Washington, D. C. Hetlage said the agency focuses its enforcement resources according to the secretary's priorities for immigration enforcement, with priority given to public and national threats.

Follow NBC News Latino on Facebook, Twitter and Instagram.

Exhibit C

OUTLOOK

Police chiefs: SB 4 is a 'lose-lose' for Texas

By Art Acevedo and James McLaughlin | April 30, 2017

7

No one believes in the "rule of law" more than the Texas Police Chiefs Association and the Texas Major Cities Chiefs, which besides Houston include Austin, Arlington, Dallas, Fort Worth and San Antonio. We work tirelessly to make our communities safer, within the confines of the U.S. Constitution, by arresting those who commit criminal actions that threaten our communities. We specifically target those individuals committing violent crimes and arrest anyone who threatens the safety of our communities, regardless of their immigration status.

Police chiefs across the state work extremely hard to develop law enforcement agencies that build and maintain trust, communication and stronger relationships with minority communities through community-based policing and outreach programs. So we know well that no good can come of Senate Bill 4, which the state House of Representatives, joining the state Senate, passed last week.

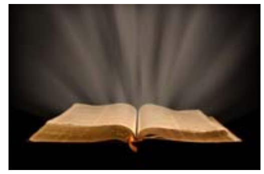
SB 4 requires local law enforcement to take a more active role in immigration enforcement; this will tear down what we've worked so hard to build up. Officers will start inquiring about the immigration status of every person they come in contact with, or worse, only inquire about the immigration status of individuals based on their appearance. This will lead to distrust of police, less cooperation from members of the community and will foster the belief that they cannot seek assistance from police for fear of being subjected to an immigration-status investigation. This is a lose-lose situation for everyone.

Distrust and fear of contacting or assisting the police has already become evident among legal immigrants. Legal immigrants are beginning to avoid contact with the police for fear that they themselves or undocumented family members or friends may become subject to immigration enforcement. Such a divide between the local police and immigrant groups will result in increased crime against immigrants and in the broader community, create a class of silent victims, and eliminate the potential for assistance from immigrants in solving crimes or preventing crime. It should not be forgotten that by not arresting criminals who victimize our immigrant communities, we are also allowing them to remain free to victimize the rest of us.

Law enforcement in Texas works cooperatively with federal law enforcement agencies, including ICE, to disrupt violent street gangs and others who threaten our communities. If federal agencies file criminal charges or obtain judicially reviewed warrants on any person, local law enforcement officers arrest the person regardless of immigration status.

Senate Bill 4 reinforces the call by some for local police to become more involved in enforcing federal immigration laws; however, to comply with these constitutionally questionable requirements means stretching already limited resources. At a time of strained law enforcement budgets and critically low jail space, narrowing the focus to violent criminals, human traffickers, gun traffickers and members of organized crime syndicates is critical. Requiring local law enforcement to prioritize immigration efforts, without adequate funding or increased support from involved governmental agencies, will hinder an agency's ability to focus its limited resources on the unique needs of the community it serves.

Friday letters: Trump's trip, Kathy Griffin, bootstrap philosophy



Levinson: What are "sincerely held religious beliefs?" Nobody

Immigration enforcement is first and foremost a federal obligation. Any immigration reform must begin with the federal government. While the federal government has not been able or willing to address this issue, any effort by the state of Texas to address immigration reform will be ineffective. SB 4 is not the answer to comprehensive immigration reform; rather it is political pandering that will make our communities more dangerous.

If the Legislature is serious about removing undocumented persons, there are better ways. One would be to address businesses that hire undocumented workers, the primary reason undocumented persons enter this state. The Texas Major Cities Chiefs and the Texas Police Chiefs Association respectfully request that the Legislature reconsider SB 4. This legislation will make our communities more dangerous for all.

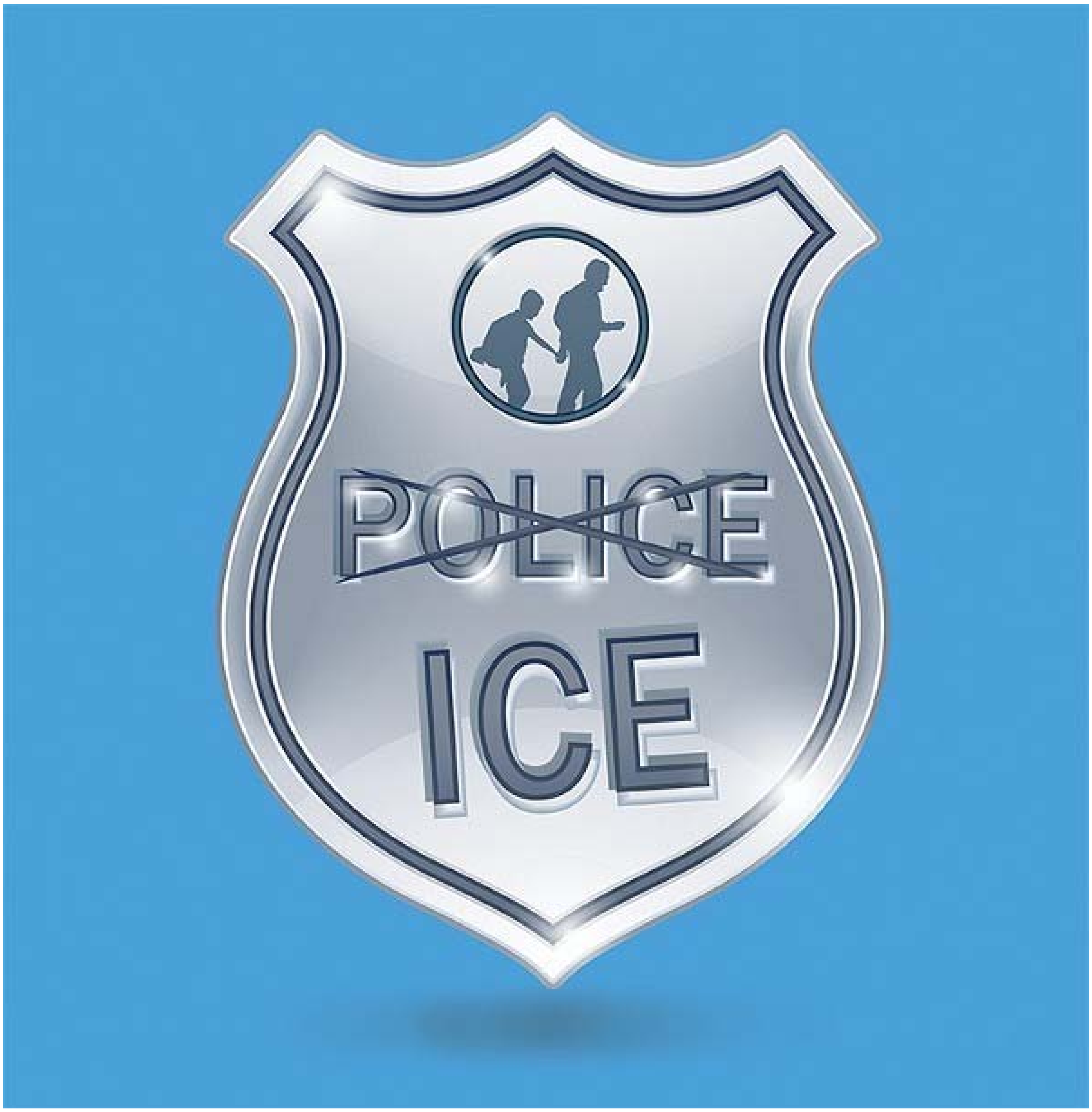
Acevedo is chief of the Houston Police Department. McLaughlin is executive director of the Texas Police Chiefs Association. Other chiefs supporting this commentary are listed at houstonchronicle.com/opinion.

Exhibit D

Texas' Big-City Police Chiefs Hate The "Sanctuary Cities" Bill

Monday, May 1, 2017

Posted By Michael Barajas on Mon, May 1, 2017 at 11:15 am



Last week, after a bitter and hours-long debate, the Texas House passed the latest version of Arizona's infamous "papers please" law, **a crackdown on so-called "sanctuary cities"** and one of Gov. Greg Abbott's top priorities this session.

While the measure, **Senate Bill 4,** seems destined for Abbott's desk, some of the loudest voices opposing it are police chiefs in the state's biggest cities who argue that forcing local departments to enforce federal immigration law would increase crime and alienate entire communities where cops have been working to forge stronger relationships and cooperation.

In an open letter this weekend, six of Texas' top police chiefs, including SAPD Chief William McManus, call SB 4 a dangerous mistake. "This is not a political issue for police chiefs," they write. "It's a practical issue that will affect public safety." Chiefs in Austin, Arlington, Dallas, Fort Worth and Houston also signed the letter.

Indeed, chiefs like McManus have raised their hands in opposition **every time** the legislature drags up the "sanctuary cities" boogeyman. That's because most of the state's large police departments realized a long time ago that pushing immigrant communities into the shadows makes people less likely to report crime and therefore makes cities less safe. As the chiefs put it in their letter this weekend, a law "requiring local law enforcement to take a more active role in immigration enforcement will further strain the relationship between local law enforcement and the diverse communities we serve."

Per their letter:

> "Distrust and fear of contacting or assisting the police has already become evident among legal immigrants as well. Legal immigrants are beginning to avoid contact with the police for fear that they themselves or undocumented family members or friends may become subject to immigration enforcement. Such a divide between the local police and immigrant groups will result in increased crime against immigrants and in the broader community, create a class of silent victims, and eliminate the potential for assistance from immigrants in solving crimes or preventing crime. It should not be forgotten that by not arresting criminals that victimize our immigrant communities, we are also allowing them to remain free to victimize every one of us. When it comes to criminals, we are in this together, regardless of race, sex, religion or nation of origin. SB 4 will make our communities more dangerous, not safer, as we presume the legislature intended."

Police say this is not an abstract concern. Houston's chief has said that already the number of Hispanics reporting rape in that city is **down 43 percent** from last year, and that the number of Hispanics reporting other violent crimes saw a 13 percent dip during that same timeframe. Hours after the Texas House advanced the bill last week, **McManus held a press conference to tell reporters**, "We are very, very fearful that the community will no longer cooperate with us because of this bill." He said there's "not one thing in this bill that I consider to be positive, nor do my colleagues consider to be positive."

That's also because under the bill, chiefs like McManus could no longer enforce their own internal policies barring cops from asking about immigration status in routine law enforcement encounters. Like, say, a traffic stop. "That takes away our authority to direct our officers not to do something," he said — like racial profiling.

As for racial profiling, McManus was blunt on who that would largely affect in Texas:

“We’re talking about folks south of the border. We’re not talking about people we think might be here from Russia or from somewhere else. We're talking about out people south of the border," he said. "In order for me to identify someone who I don’t think is from here, it’s either skin color, language or accent. And in order to do, that I’m profiling. So that’s another part of the bill that’s distasteful, to say the least."

McManus also said that should SB 4 be signed into law, San Antonio would likely have to train its police officers on immigration law. He said he had no idea how much that might cost, but added, "It ain't gonna be cheap."

Jump to comments

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

City of El Cenizo, Texas, Mayor Raul L. Reyes of City of El Cenizo, Maverick County, Maverick County Sheriff Tom Schmerber, Maverick County Constable Pct.3-1 Mario A. Hernandez, and League of United Latin American Citizens, *Plaintiffs*,	:	
v.	:	Civil Action No. 5:17-cv-404-OLG
State of Texas, Governor Greg Abbott (In His Official Capacity), and Texas Attorney General Ken Paxton (In His Official Capacity) *Defendants*.	:	:

<u>DECLARATION OF VANITA GUPTA</u>

I, Vanita Gupta, hereby declare:

I make this declaration based on my own personal knowledge, and if called to testify, I could and would do so competently as follows:

1. I am currently the President and CEO of the Leadership Conference on Civil and Human Rights.
2. Between October 2014 and January 2017, I served as the Principal Deputy Assistant Attorney General and head of the Civil Rights Division at the United States Department of Justice.
3. During my tenure at the Department of Justice, I worked extensively and collaboratively with city officials and law enforcement across all ranks – from mayors to police chiefs to command staff to line officers to police unions – to build community-police trust across

the country. Through enforcement, public education, and joint initiatives, I oversaw efforts aimed at advancing best and constitutional police practices, protecting officer safety, ensuring public safety, and promoting community engagement with law enforcement. This work was a top priority not only for me but for the Attorney General, who also devoted extensive time to these issues.

4. Under my supervision, the Civil Rights Division investigated and/or negotiated agreements with police departments in cities like Ferguson, Cleveland, Baltimore, and Chicago, to address problems of use of excessive force, unlawful arrests, and discriminatory policing. I have extensive experience working with law enforcement agencies to develop and maintain constitutional policing practices and improve community relations.

5. I have read and reviewed Texas Senate Bill 4 ("SB 4").

6. Based on my expertise and experience, SB 4 will negatively impact the ability of police to engage in effective community policing and traditional law enforcement functions. It will harm public safety. It will result in increased racial profiling by police, and it will result in other constitutional violations, such as unlawful stops and prolonged detentions.

7. Immigration enforcement is a function of federal law. Immigration law is a complex field and requires special training to administer. Absent specialized training, law enforcement may not be capable of accurately determining immigration status. Even then, it will require dedication of considerable resources – both money and time – to make the inquiries and determinations required by SB 4. This will necessarily impact the ability of police to engage in other activities.

8. Law enforcement involvement in immigration enforcement decreases community trust, particularly in localities with sizeable populations of immigrant or minority populations. SB 4 makes it difficult, if not impossible, for local police to develop and maintain this trust, because it removes their ability to choose when and how to engage in immigration enforcement actions. For communities to cooperate with police, they need to have faith that their local departments have their best interests in mind. Many law enforcement agencies foster that faith by regulating participation in immigration enforcement, by, for instance, limiting inquiries about immigration status, coordination with federal officials, and compliance with detainers. Under SB 4, law enforcement will no longer be able to instill this trust in communities where a significant number of non-citizens reside.

9. For example, if the community believes that police will inquire into their immigration status or honor even erroneous detainer requests, they will come to see their police as immigration agents and not as a police force that is entrusted to ensure the community's public safety needs. This will foster distrust that is antithetical to effective policing. As a result, some communities will be effectively deprived of full police services and protection. This is dangerous as community-police trust is a cornerstone of public safety. This is precisely why almost all major city chiefs in Texas publicly opposed passage of SB 4.

10. Moreover, removing the ability and discretion of local law enforcement leaders to limit when and under which circumstances their officers may inquire into immigration status will create the risk of racial profiling. Without proper training, supervision, or resources, police will rely on racial proxies for immigration status and screen minorities and those

who "look" foreign. This will create disparities in police treatment of the community. The appearance of racial bias will further erode community relations.

11. Finally, police involvement in immigration enforcement will result in increased constitutional violations. Fourth Amendment violations will result from SB 4's detention provision, which generally does not allow police to deny any detainer request, even if the request lacks probable cause. Fourth Amendment violations will similarly result from investigations of immigration status in the course of a detention or arrest, which SB 4 precludes police chiefs and sheriffs from reasonably limiting. While SB 4 provides that the State of Texas will bear costs of a legal defense related to the detainer provision, it will not bear the costs or otherwise indemnify localities for other Fourth Amendment or equal protection violations.

12. For a law enforcement agency to function effectively and respect constitutional limits, those in charge of the agency must exercise responsible oversight over the actions of line officers. In my experience, patterns of Fourth Amendment and equal protection violations are most common where supervisors fail to provide leadership and oversight for the officers who interact with the community on a daily basis. I am very concerned that SB 4 will disable that oversight and prevent agency chiefs and supervisors from acting when they encounter patterns and practices in their agencies that give rise to constitutional concerns.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed June 4th 2017 in Washington, D.C..

Vanita Gupta

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

City of El Cenizo, Texas, Mayor Raul L. Reyes of City of El Cenizo, Maverick County, Maverick County Sheriff Tom Schmerber, Maverick County Constable Pct.3-1 Mario A. Hernandez, and League of United Latin American Citizens, *Plaintiffs*, v. State of Texas, Governor Greg Abbott (In His Official Capacity), and Texas Attorney General Ken Paxton (In His Official Capacity) *Defendants*.	Civil Action No. 5:17-cv-404-OLG

DECLARATION OF TOM SCHMERBER

1. My name is Tom Schmerber, and I am currently the Sheriff of Maverick County, Texas. I was first elected to this position in November 2012 and was reelected in November 2016.

2. I have over 30 years of law enforcement experience. Prior to my election as Sheriff, I was employed by the United States Border Patrol ("USBP") for 26 years. During my time with the USBP, I was a field agent, a training instructor at the academy, and a field operations supervisor.

3. I am a native of Eagle Pass, Texas—the county seat of Maverick County.

4. I received a Bachelor's in Political Science from Southwest Texas State University in 1974 and a Master's in Education from Sul Ross State University in 1978.
5. Maverick County covers an area of 1,292 square miles.
6. As of the 2010 census, Maverick County had a population of approximately 54,000. Approximately 95% of the population identifies as Hispanic or Latino.
7. I have read Texas Senate Bill 4 ("SB4"), and based on my extensive experience in law enforcement at the federal and local level, I have several concerns with the law.
8. I am concerned that SB4 will subject me to removal from office and will subject me and my employees to civil penalties for endorsing policies that prohibit or limit immigration enforcement.
9. I have made numerous public statements during my campaign for and tenure as Sheriff regarding the participation of local law enforcement in immigration. I have publicly announced that the Maverick County Sheriff's Office will not participate or cooperate in the arrests of individuals for civil immigration violations. I have also publicly opposed having my deputies engage in additional immigration enforcement actions pursuant to SB4 based on our limited resources and lack of training. Given SB4's broad language, I do not know whether I will be subject to liability for making such endorsements.
10. There are several provisions of SB4 that are confusing and do not provide clear guidance on how to ensure that my deputies and I comply with its requirements. For example, I do not understand what actions or decisions would "materially

limit" immigration enforcement or what is considered to be an informal policy or "pattern and practice" that limits immigration enforcement. I also do not understand what SB4 prohibits regarding limitations on "assisting or cooperating with a federal immigration officer as reasonable or necessary."

11. The Maverick County Sheriff's Office currently has only 34 deputy sheriffs. The County does not have the budget to hire more deputies. Given the lack of staff and large population and coverage area in the County, our resources are already overly stretched.

12. Given the lack of clarity in SB4, I fear that I will be required to divert critical and scarce law enforcement resources away from what I believe is necessary to ensure public safety for my constituents. SB4 will take away my ability to limit my deputies' participation in immigration enforcement when I believe that resources should be focused on local priorities, such as answering calls for service and investigating and preventing violent and property crimes.

13. For example, I do not know if the following decisions will subject me to liability or removal from office: limiting which staff members can engage in immigration enforcement or determining the percentage of time they may spend on such matters; deciding to not participate in a certain immigration taskforce with federal officials or to not provide police backup to immigration agents for a particular immigration enforcement action; and preventing my deputies for investigating a person's immigration status when such actions would divert them from other more critical tasks. I can imagine several other instances in which I will need to make

decisions based on resources and best policing practices that could be seen as a limitation on my Office's participation in immigration enforcement.

14. There have been several situations when I have declined requests from federal immigration authorities to assist them in the apprehension of individuals. I have done so because of my office's limited resources. Under SB4, I will no longer be able to properly allocate my resources by deciding when to and when not to cooperate with such immigration efforts.

15. SB4 also takes away the discretion necessary for me to determine when our resources permit for compliance with detainer requests from the federal government.

16. Under SB4, I will no longer have the ability to decline detainer requests from the federal government even when I believe I do not have the lawful authority to continue holding an individual—for example, when I understand that there is no justification for detaining the individual pursuant to the federal government's direction. Under SB4, I believe I can no longer take into account whether my office has the resources or even the space to continue detaining an individual pursuant to a request from the federal government.

17. Given the lack of clarity of what constitutes a detainer request, I am also not sure whether I will need to comply with any and all requests from the federal government to detain individuals, including informal or verbal requests by immigration authorities to simply hold a person until they are able to determine whether to take custody.

18. My deputies also lack the training to enforce SB4. My deputies are not trained in immigration law or immigration enforcement, and SB4 does not provide for any training, additional guidance, or resources to ensure compliance with the requirements of SB4.

19. I currently instruct my deputies not to inquire as to an individual's immigration status during a law enforcement contact. Under SB4, I can no longer prohibit my deputies from investigating immigration status.

20. Since my deputies are not trained in determining a person's immigration status, which in my experience is a very complicated determination, I believe that deputies will inevitably rely on race and ethnicity and unlawfully prolong detentions as a result of this practice. This will expose my office to potential legal liabilities.

21. SB4 will also harm the community policing efforts by my office. SB4 sends a message to immigrant communities that my deputies will be engaging in immigration enforcement and inquiring about immigration status.

22. I am highly concerned that people will no longer call to report crimes or to seek help for fear of being questioned or of their family members being questioned about their immigration status. By causing communities to distrust police, SB4 will harm our ability to ensure public safety.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed June 2, 2017 in Houston, Texas.

Tom Schmerber

Tom Schmerber
Sheriff of Maverick County

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

City of El Cenizo, Texas, Mayor Raul L. Reyes of City of El Cenizo, Maverick County, Maverick County Sheriff Tom Schmerber, Maverick County Constable Pct.3-1 Mario A. Hernandez, and League of United Latin American Citizens, *Plaintiffs*, v. State of Texas, Governor Greg Abbott (In His Official Capacity), and Texas Attorney General Ken Paxton (In His Official Capacity) *Defendants*.	Civil Action No. 5:17-cv-404-OLG

DECLARATION OF MARIO ALBERTO HERNANDEZ

1. My name is Mario Alberto Hernandez, and I am currently a Constable of Maverick County, Texas, Precinct 3AB. I was first appointed in November of 2015 by the Maverick County Commissioners Court and then elected on November 1, 2016.

2. In May of 2003, I graduated from the Southwest Texas Jr. College Police Academy, where I served as Vice-President of my graduating class.

3. Prior to my appointment as Constable, I was the Eagle Pass Independent School District Police Officer, having served in that role since June of 2003. As a Police Officer for the District, I patrolled the schools in our district and engaged in routine law enforcement activities to ensure the safety of the District's staff and

student body. I was also a member of the Juvenile Task Force with the Texas Department of Public Safety, where I worked to curtail drug activity. I was also a Reserve Deputy with the Maverick County Sheriff's Office, a position I first held in 2007.

4. I am a native of Eagle Pass, Texas—the county seat of Maverick County.

5. Maverick County covers an area of 1,292 square miles. As of the 2010 census, Maverick County had a population of approximately 54,000. 100% of the population identifies as Hispanic or Latino.

6. Constables are constitutionally authorized peace officers. Constables have the same arrest powers as police officers in Texas. In fact, we share the same radio frequency with the Maverick County Sheriff's Office to monitor criminal activity, and we run the same databases as other agencies to review criminal background records and identify criminal justice information, including the National Crime Information Center (NCIC) and the Texas Crime Information Center (TCIC).

7. I am one of three full time deputies who have supervisory authority over 36 reserve deputy constable in Maverick County.

8. As a Maverick County Constable, my main duties involve delivering and executing criminal and civil warrants, subpoenas, and temporary restraining orders, serving as a bailiff, patrolling the various neighborhoods in my precinct, and conducting various law enforcement activities, like traffic stops and arrests.

9. I have read pertinent portions of Texas Senate Bill 4 ("SB4"), and based on my experience in law enforcement, I have several concerns with the law.

10. I am concerned that SB4 will subject me to removal from office and will subject me and my employees to civil penalties for endorsing policies that prohibit or limit immigration enforcement. As an elected official, I must be able to speak openly about my opinions regarding SB4 and immigration enforcement and how it impacts my community. For example, I do not know whether my participation in this lawsuit—critical of SB4 and seeking to block its enforcement—would be considered an endorsement of limitations on immigration enforcement that could subject me to fines or removal from office. And I do not know whether any further criticisms I have of SB 4 and of its attitude towards local law enforcement and immigration enforcement will subject me to removal or other sanctions.

11. SB4 includes provisions that are unclear and do not provide clear guidance on how to ensure that my deputies and I comply with all of its requirements. I do not understand what is prohibited by SB4. For example, I do not understand what actions or decisions would "materially limit" immigration enforcement or what is considered to be an informal policy or "pattern and practice" that limits immigration enforcement. I also do not understand what SB4 prohibits regarding limitations on "assisting or cooperating with a federal immigration officer as reasonable or necessary."

12. Given the vagueness of SB4's provisions, I do not know whether the following actions will subject me to civil penalties or even removal from office. Under SB4, I am not certain whether in the course of my duties as Constable, I will be required to investigate the immigration status of all individuals I encounter or of individuals

who I suspect may be presented without lawful status. It is also not clear whether I am required to arrest individuals who I suspect are present without lawful status or if I must report them immigration authorities.

13. I am also not certain whether I will need to assist with all requests from immigration authorities to help execute immigration enforcement actions, such as in arrests or immigration raids. I do not know when I will be required to forgo my own job responsibilities to engage in immigration enforcement. SB4 also does not specify whether I will need to comply with all requests, including informal verbal requests, by immigration authorities to detain or continue detaining an individual.

14. I do not have the training or experience to enforce immigration law or to determine an individual's status. As a result, I do not believe I can engage in the actions required by SB4 without risking making wrongful determinations. SB4 provides neither the guidance nor training to ensure compliance with its provisions.

15. In the course of my job, I regularly deliver and execute warrants and summons. This is a basic function of county government and the orderly administration of justice. But SB 4 will interfere and create uncertainties in even this part of my job. If I were to even briefly detain someone in the course of these duties, SB 4 may require me, or others in my position, to inquire into or investigate immigration status, and then report this information. This will obviously interfere with the main purpose of my job. Based on my training and my experience, I believe this will also lead people to not comply with or otherwise avoid

interaction with me for fear that they will be subject to immigration enforcement. This will create problems for the way that our justice system works and for the ability of my constituents and my community to access justice, and to my ability to enforce the laws as necessary.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed June 2, 2017 in Eagle Pass, Texas.

M A R H

Mario Alberto Hernandez
Maverick County Constable Precinct
3AB

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

City of El Cenizo, Texas, Mayor Raul L. Reyes of City of El Cenizo, Maverick County, Maverick County Sheriff Tom Schmerber, Maverick County Constable Pct.3-1 Mario A. Hernandez, and League of United Latin American Citizens,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 5:17-cv-404-OLG
State of Texas, Governor Greg Abbott (In His Official Capacity), and Texas Attorney General Ken Paxton (In His Official Capacity)	:	
Defendants.	:	:

DECLARATION OF LUPE TORRES

1. My name is Lupe Torres, and I serve as the State Director for Texas State LULAC, Inc. ("Texas LULAC").

2. Texas LULAC is a Plaintiff in the case styled, *City of El Cenizo, Texas, et al. v. State of Texas, et al.*, in the United States District Court for the Western District of Texas, San Antonio Division, Civil Case No. 5:17-cv-404-OLG.

3. The mission of Texas LULAC is to advance the economic condition, educational attainment, political influence, housing, health and civil rights of the Latino population of Texas. Our mission is the same as the National LULAC's mission, except

that it applies to Texas instead of the whole United States. LULAC was founded in part to provide opportunities for Latino veterans who faced discrimination after they returned home from war.

4. Texas LULAC's offices are located at 7500 Callaghan #103, San Antonio, Texas 78229, where I maintain my office.

5. Texas LULAC is a membership organization with over 1,000 members who reside in the San Antonio, Texas area. Our membership is comprised of volunteers from every profession, including teachers, doctors, social workers, business persons, government employees, retirees, veterans, and young adults, many of whom are members of the many councils located within the San Antonio area.

6. Our members actively participate in a variety of educational and community events to raise awareness about issues affecting the Latino community. For example, we host conferences throughout the state, which are organized by our deputy state directors focused on particular issues affecting women, the elderly, and young adults. The deputy state directors appoint chairpersons to coordinate workshops and panel discussions covering topics like veterans affairs, civil rights, and legislative advocacy, among other topics that affect Latinos in Texas.

7. The workshops on women's issues cover topics like domestic violence, sex trafficking, parenting, and equality. Our young adult conferences are focused on providing and advancing educational opportunities for Latino students to empower them to take control of their future, become productive members of society, and know how to defend their rights. Many of our young adult members are active in college campus

chapters where they engage in and educate themselves on legal and legislative matters. Our young members hold their own conventions in which they discuss issues affecting Dreamers and present "know your rights" information on interactions with police or immigration authorities. In fact, many of our young members are undocumented students who will be affected directly by laws like Senate Bill 4 (SB4).

8. Many of our members who attend our conferences, conventions and workshops, are residents of San Antonio. They attend both San Antonio-based and statewide events to which they travel as representatives of their respective San Antonio-area LULAC councils.

9. The National LULAC Convention will be held in San Antonio in July of 2017. Next year, in June of 2018, San Antonio will also be the host city for the Texas LULAC State Convention. Most of our members in San Antonio are expected to attend both of these conventions to learn more about SB4 and the rights of our communities in interactions with law enforcement officers because SB4 has already impacted our membership significantly.

10. Particularly in light of recent efforts by Texas to harm Latino voters through discriminatory redistricting plans and voter ID laws, I believe SB4 was passed with the intent to discriminate against Latinos and immigrants in Texas. This belief was reinforced by State Representative Matt Rinaldi's racial profiling of Latino protesters at the State Capitol on May 29, 2017, when he threatened to call Immigration and Customs Enforcement (ICE) on them. At the national and state level, politicians have been targeting Latinos and immigrants with a false narrative, describing members of our

community as criminals, despite the many contributions that these groups have made to our nation. For example, Latinos and immigrants have proudly served in our armed forces.

11. SB4 has negatively impacted our organizational mission and the lives of our members. While not yet in effect, the introduction and passage of SB4 and the state's public messaging on immigration enforcement have given local officers the green light the engage in immigration enforcement. Many of our members and the community we serve have expressed anxiety, fear, and anger because of the dangerous environment SB4 will likely create. Our members, including many veterans, have a genuine concern that they will once again face discrimination in being racially profiled by local law enforcement officers under SB4. Due to our members' fear of being stopped and potentially arrested by local police based on SB4, attendance at our events will decrease, making it more difficult for us to serve the community and achieve our goals.

12. We have also recently received several reports from Latinos in San Antonio and throughout Texas who believe they have been victims of racial profiling as a result of local officer's attempts to enforcement immigration laws. We have also received reports indicating that stops and arrests of Latinos by local law enforcement have disproportionately increased. We believe this is the result of SB4.

13. For example, a law enforcement officer in Kermit, Texas recently stopped a woman for an alleged traffic violation and asked for her social security number, instead of her driver's license and insurance card. We believe the basis for that stop was only to

investigate her immigration status. We expect that if SB4 goes into effect, more of these incidents will occur throughout the State.

14. Many of the members of Texas LULAC do not have lawful immigration status or have family members or friends who lack such status. These individuals are hardworking and productive members of our community. SB4, however, has caused many of these members to go into hiding. Some have expressed that they no longer feel comfortable going to the police for assistance for fear that they or their family members could be turned over to immigration authorities.

15. As a result of SB4, Texas LULAC has had to shift organizational and financial resources to address the law and its effects. In addition to using our time and resources to distribute more "know your rights" information and other educational materials, we have hosted town halls and are planning to host more town halls regarding SB4. This year's State Convention in Corpus Christi, for example, will have workshops on SB4.

16. We have also expended significant resources advising and working with U.S. war veterans who have been deported because of their undocumented status. We anticipate these kinds of incidents will increase as local law enforcement officers become more involved in federal immigration enforcement efforts. As a result, we anticipate needing to expend more resources to protect veterans.

17. To address the serious concerns of our youth membership raised by the college campus police provisions of SB4, we are also preparing to have an increased number of meetings on university or college campuses, as well as additional resources for our college campus chapters.

18. The diversion of Texas LULAC resources to SB4 has required us to reduce the amount of resources and time we can spend on other organizational priorities, such as on economic justice and combating discrimination relating to voting, healthcare, and housing.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed June 3, 2017 in San Antonio, Texas.

Lupe Torres
Texas LULAC State Director

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

City of El Cenizo, Texas, Mayor Raul L. Reyes of City of El Cenizo, Maverick County, Maverick County Sheriff Tom Schmerber, Maverick County Constable Pct.3-1 Mario A. Hernandez, and League of United Latin American Citizens, *Plaintiffs*, v. State of Texas, Governor Greg Abbott (In His Official Capacity), and Texas Attorney General Ken Paxton (In His Official Capacity) *Defendants*.	Civil Action No. 5:17-cv-404-OLG

DECLARATION OF RAUL REYES

1. I am currently the Mayor of El Cenizo, Texas. I was first elected to this position in November 2004 and was reelected for my sixth term in November 2014.
2. I have 13 years of governing experience, serving the people of El Cenizo by advocating for better city services and better city infrastructure. At the time of my election in 2004, I was 21 years old—the youngest mayor in Texas's history. Prior to 2004, I was a full time student at Texas A&M International University (TAMIU) in Laredo, Texas, and I also worked as an administrative assistant for a construction company called BMW Creative Homes, Inc.
3. During my six terms as Mayor of El Cenizo, I have secured more than four million dollars in local, state, and federal funding for infrastructure and

community development projects including: the creation of an active Volunteer Fire Department, the creation of the Police Department, the creation of the Municipal Court, the paving of all of the city's dirt roads, the installation of more than 100 public lights, the construction of the city's first Fire Station, Municipal Park and Public Library, the installation of more than 1,500 linear feet of sidewalks, the installation of more than 5,000 linear feet of storm drainage pipe, and the construction of 9 new homes for the elderly and disabled through the HOME Grant.

4. I currently serve on the following boards and committees in Webb County: the local management advisory board of the Gateway Academy Charter Schools, board of directors of the Friends of the El Cenizo Public Library, and the board of directors of Sisters Ministry of Mercy. I also serve as President of the Public Administration Student Association of TAMIU. Additionally, I serve as the president of the LULAC Council #12 chapter of the League of United Latin American Citizens (LULAC) in Laredo, Texas. At the district level, I serve as Deputy Director for Young Adults for LULAC District #14.

5. I was born in Corpus Christi, Texas and moved to the City of El Cenizo at the age of nine. At the age of fifteen I started volunteering at the Boys and Girls Club of El Cenizo and since that time have dedicated my time to serving the people of El Cenizo.

6. I received a Bachelor's in Business Administration with a Concentration in Management from TAMIU. I am currently pursuing my Master's in public administration at TAMIU.

7. The City of El Cenizo is led by a Mayor and two City Commissioners elected at large under the Texas Local Government Code.

8. As of the 2010 census, El Cenizo had a population of 3,273. Approximately 99% of the population identifies as Hispanic or Latino. Approximately 68% of the population is below the poverty line with a median household income of $25,302.

9. The City of El Cenizo was founded in 1980. Prior to incorporation in 1989, El Cenizo was one of approximately 2,000 *colonias* in South Texas.

10. The El Cenizo Police Department was created on July 14, 2005. The department is comprised of four reserve police officers, who are all volunteers and certified Texas peace officers licensed and commissioned by the Texas Commission on Law Enforcement (TCOLE). We currently have no full-time police officers.

11. For the past 11 years, the El Cenizo Police Department has worked diligently to create a safe community for all of its residents. Its mission statement is: "To protect lives and property, safeguard individual rights and liberties, reduce crime and increase safety by providing quality customer service and professional and responsibly aggressive law enforcement services in partnership with our community."

12. I have read Texas Senate Bill 4 ("SB4"), and based on my extensive experience in city governance, I have several concerns with the law.

13. I am concerned that SB4 will subject me to removal from office and will subject me and my employees to civil penalties for endorsing policies that prohibit or limit immigration enforcement.

14. I have made numerous public statements during my campaign for and during my tenure as Mayor regarding the participation of local law enforcement in immigration. I have made public comments critical of policies that would require local agencies, such as the El Cenizo Police Department, to participate or cooperate in the arrests of individuals for civil immigration violations. I have also publicly expressed my opposition to having the El Cenizo Police Department engage in immigration enforcement actions pursuant to SB4 based on our limited resources and lack of training. I have made several statements about the harm that SB4 will have on our state and communities.

15. I fear that SB4 will expose me, my employees, and the city to hefty fines because I do not know how I can comply with SB 4.

16. El Cenizo's annual budget is $250,000. Resources are very limited and the city cannot afford to hire additional police officers. As the mayor, I need to ensure that these limited resources are focused on local priorities such as crime reduction and infrastructure investments.

17. Federal immigration enforcement is a not the responsibility of the El Cenizo Police Department. My officers are not trained to enforce immigration law.

Communities like El Cenizo depend on the brave men and women in uniform, but they are here to protect our community and to help the people within the jurisdiction that they serve. To impose additional responsibilities onto law enforcement, in particular immigration enforcement responsibilities, without providing them the necessary skills and training would not be in the best interest of our community.

18. Although we have cooperated with U.S. Customs and Border patrol for select immigration enforcement operations in the past, we were able to make the individual determination that these operations were an efficient use of city resources and were aligned with the city's focus on public safety. SB4 would not permit the police department to make these individual determinations.

19. El Cenizo first passed a "safe haven ordinance" in 1999 and is currently Texas' smallest and oldest "sanctuary city." This policy is meant to increase the level of trust between administrators and the city's residents as it limits the situations in which my employees and other El Cenizo officials can engage in immigration enforcement or collect and disseminate such information. SB4 would prohibit the enforcement of our ordinance—one that was passed with community support by our elected officials.

20. Supporters of SB4 falsely claimed that sanctuary cities, such as El Cenizo, are communities that welcome criminal aliens or that harbor dangerous illegal. Any person who commits a crime or who poses a threat to the well-being of our

community, our state or our country, will be prosecuted to the full extent of the law.

21. As the leader of the City of El Cenizo for the past 13 years, I have developed a deep understanding of the needs of the community and of the best ways to ensure public safety. If the members of the community fear that my officers are acting as immigration agents, they will be more hesitant to report crimes and to serve as witnesses, and public safety will suffer as a result. I have observed a decrease in the reporting of domestic violence crimes.

22. Our vibrant and engaged community includes undocumented individuals and mixed status families. If the El Cenizo Police Department is forced to comply with SB4, the new law's requirements will create an environment of fear and members of our community will no longer feel comfortable seeking city services or participating in civic life. Due to the size of our community, the withdrawal of even some members from community events will have a detrimental impact on all residents of El Cenizo.

23. The language of SB4 is vague and the text does not provide clear guidance as to which actions by me or my employees are permitted and which are prohibited. For example, I am unsure what is meant by to "materially limit" or would comprises an informal policy or "pattern and practice" that would "materially limit" immigration enforcement. Additionally, I do not understand the limitations that SB4 imposes on "assisting or cooperating with a federal immigration officer as reasonable or necessary."

24. Given the vague requirements or prohibitions of SB4, I am concerned that I will be required to prioritize funding from our budget to assist in federal immigration enforcement requests at the expense of much-needed public safety and infrastructure investments. It is also not clear whether I can determine that it is not practicable for law enforcement to inquire into immigration status. Moreover, it is not clear whether I can limit the discretion of individual police officers to inquire into immigration status.

25. I also do not know whether I can limit non-law enforcement employees, such as employees responsible for city public services, from inquiring into a person's immigration status.

26. It is also not clear whether I now have to honor all requests from immigration officials to assist in enforcement actions, such as large-scale raids, which I believe are harmful and lead to widespread constitutional violations.

27. I must be able to determine whether and when to use our scarce resources on immigration enforcement. Yet, SB4 appears to take away that discretion.

28. Our city officials are also not trained in immigration law and are not capable of making determinations as to a person's immigration status or citizenship. I believe that SB4 will lead untrained officers to improperly extended detentions or even rely on an individual's appearance in determining whether to engage in such investigations.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed June 2, 2017 in El Cenizo, Texas.

Raul Reyes
Mayor, City of El Cenizo, Texas

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

City of El Cenizo, Texas, Mayor Raul L. Reyes of City of El Cenizo, Maverick County, Maverick County Sheriff Tom Schmerber, Maverick County Constable Pct.3-1 Mario A. Hernandez, and League of United Latin American Citizens,	
Plaintiffs,	
v.	Civil Action No. 5:17-cv-404-OLG
State of Texas, Governor Greg Abbott (In His Official Capacity), and Texas Attorney General Ken Paxton (In His Official Capacity)	[PROPOSED] ORDER GRANTING PLAINTIFFS' APPLICATION FOR PRELIMINARY INJUNCTION
Defendants.	

This matter comes before the Court on the Plaintiffs' Application for a Preliminary Injunction to enjoin Defendants from enforcing Texas Senate Bill 4 ("SB 4"), enacted on May 7, 2017. Having considered the parties' papers and evidence filed in support and in opposition to the application, as well as oral arguments, the Court rules as follows:

Plaintiffs are likely to succeed on the merits of their claims that SB 4 violates the U.S. Constitution. Plaintiffs have also demonstrated that they will suffer irreparable injury. Plaintiffs have demonstrated that the balance of hardships tips in their favor, and that a preliminary injunction advances the public interest. Preliminary relief would maintain the status quo until the Court can render final judgment.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiffs' Application for a Preliminary Injunction is GRANTED.

2. Until such time as the Court makes a final ruling on the merits, or until further ordered from the Court, Defendants and their officers, agents, servants, employees, and attorneys and those persons in active concert or participation with them are HEREBY ENJOINED AND RESTRAINED from giving any effect to or otherwise taking action to enforce SB 4.

This order shall become effective immediately, and shall continue in effect until this Court enters a final judgment in this action or otherwise lifts the preliminary injunction.

Entered this _____ day of _____, 2017

____
Hon. Orlando L. Garcia
United States District Judge