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

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)

[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

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("[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]

[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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