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WESTERN DISTRICT OF TEXAS

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

TEXAS; and KEN PAXTON, in  
his official capacity as Texas  
Attorney General,

*Plaintiffs,*

v.

TRAVIS COUNTY, TEXAS; SALLY  
HERNANDEZ, in her official capacity as  
Sheriff of Travis County; CITY OF  
AUSTIN, TEXAS; ORA HOUSTON,  
DELIA GARZA, SABINO RENTERIA,  
GREGORIO CASAR, ANN KITCHEN,  
JIMMY FLANNIGAN, LESLIE POOL,  
ELLEN TROXCLAIR, KATHIE TOVO,  
and ALISON ALTER, all in their official  
capacities as City Council Members of  
the City of Austin; STEVE ADLER, in  
his official capacity as Mayor of the City  
of Austin; ELAINE HART, in her official  
capacity as Interim City Manager of the  
City of Austin; EL PASO COUNTY,  
TEXAS; RICHARD WILES, in his  
official capacity as Sheriff of El Paso  
County; CITY OF EL CENIZO, TEXAS;  
RAUL L. REYES, in his official capacity  
as Mayor of the City El Cenizo; TOM  
SCHMERBER, in his official capacity as  
Sheriff of Maverick County; MARIO A.  
HERNANDEZ, in his official capacity as  
Constable Pct. 3-1 of Maverick County;  
the TEXAS ORGANIZING PROJECT  
EDUCATION FUND; the MEXICAN  
AMERICAN LEGAL DEFENSE AND  
EDUCATION FUND; and the LEAGUE  
OF UNITED LATIN AMERICAN  
CITIZENS,

*Defendants.*

Civ. Action No. 1:17-cv-425-SS

**FIRST AMENDED COMPLAINT  
FOR  
DECLARATORY JUDGMENT**

Texas and Ken Paxton, Attorney General of the State of Texas (collectively referred to hereinafter as “Texas”), by and through the Attorney General, and for its First Amended Complaint against the Defendants, states as follows:

## INTRODUCTION

1. This case is about the rule of law. The Texas Legislature and Governor, elected by the People of Texas, exercised their constitutional authority to enact a state-wide law—Senate Bill 4 (“SB 4”)—to codify a longstanding practice of Texas law enforcement to cooperate with federal immigration officials in the application of immigration law.

2. According to Texas Department of Public Safety Statistics, between June 1, 2011, and April 30, 2017, over 220,000 criminal aliens have been booked into Texas jails. The 586,000 criminal offenses charged against these aliens in Texas during their lifetimes include 1,196 homicides, 6,274 sexual assaults, and 16,996 burglaries. The ongoing threat to public safety, deriving from the failure of localities to cooperate with federal immigration policies, was significant to the passage of SB 4.

3. Prior to and since the enactment of SB 4, a few vocal municipalities and local officials decided that they have, or should have, authority superior to the Texas’s Legislature and executive, and should be granted unfettered discretion as to whether they will cooperate with federal immigration officials. Accordingly, they publicly declared their intentions to contest and/or violate SB 4, regardless of the threat to public safety.

4. The federal government recognizes that cooperation by Texas “is necessary to preserve the Federal Government’s ability to enforce the immigration laws.”<sup>1</sup> Texas possesses an independent, sovereign responsibility to protect the

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<sup>1</sup> See, e.g., Br. of United States as Amicus Curiae in Support of Neither Party at 1–2, *Massachusetts v. Lunn*, No. SJC-12276, 2017 WL 1240651, at \*1–2 (Mass. 2017).

health, welfare, and safety of its residents. Texas, cognizant of this duty, enacted SB 4 to affirm its policy of cooperation with federal immigration authorities.

5. Prior to SB 4, many, but not all, Texas law enforcement agencies worked cooperatively with federal immigration authorities on a regular basis. Often, this meant officers detaining an individual pursuant to a request from Immigration and Customs Enforcement (“ICE”) so that those who flout immigration law cannot slip through the cracks of the justice system.

6. Among other things, SB 4 requires local law enforcement agencies to cooperate with federal immigration authorities; prohibits them from preventing officers from inquiring into someone’s immigration status; requires them to comply with ICE detainers; and requires early release to federal authorities for incarcerated persons subject to ICE detainers.

7. With the passage of SB 4, Texas, pursuant to the Texas Constitution, and the powers reserved to it under the Tenth Amendment of the United States Constitution, took measures to ensure cooperation with federal immigration officials as they enforce immigration law.

8. Despite the cooperation between many Texas law enforcement agencies and ICE, Defendants desire to maintain their policies and practices of noncooperation under SB 4.

9. Travis County, Texas and its Sheriff, Sally Hernandez, have been publicly hostile to cooperation with federal immigration enforcement. Both in policy and practice, and through various public statements, Travis County, Texas has openly rejected even routine cooperation with federal immigration officials.

10. The City of Austin, Texas, its City Council, and executives with discretionary authority provided by the Texas Local Government Code oppose cooperation with federal immigration enforcement. Both in policy and practice, and through various public statements, the City of Austin, Texas, the city council, the

mayor, and the city manager are openly hostile and have failed to render even routine cooperation to federal immigration officials. In fact, the Austin City Council recently approved a resolution to sue Texas over SB 4 so that it may continue operating under policies and practices that violate SB 4.<sup>2</sup> In open session, debating the City of Austin's resolution to contest SB 4, the Defendant Adler made clear his intention to flout SB 4, stating in part "I and many of us up here, I would anticipate, will endorse policies contrary to this law [SB 4], it would be good to have a court say we can't be removed from office."

11. The City of El Cenizo, Texas and its Mayor, Raul L. Reyes, have openly and deliberately refused to cooperate with federal immigration officials since at least 1999. They continue to do so today and refuse to change their policies and practices that violate SB 4. Tellingly, El Cenizo and Mayor Reyes sued Texas, claiming that SB 4 is unconstitutional.

12. The Sheriff of Maverick County, Texas, Tom Schmerber, and one of its constables, Mario A. Hernandez, also maintain policies and practices that refuse to comply with federal immigration officials and publicly declared that they will continue those practices under SB 4. As a result, they sued Texas, claiming that SB 4 is unconstitutional and unenforceable.

13. El Paso County and its Sheriff, Richard Wiles, maintain policies and practices that refuse to comply with federal immigration officials and will continue those policies and practices under SB 4. Accordingly, they sued Texas and the Attorney General, among others, over the constitutionality of SB 4.

14. The Mexican American Legal Defense and Education Fund ("MALDEF") is publicly hostile to cooperation with federal immigration enforcement, and, through

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<sup>2</sup> Plaintiffs note that despite the City of Austin's recent resolution to sue Texas over SB 4, it hypocritically filed a motion to dismiss this lawsuit claiming there is no actual case or controversy.

various public statements, indicated it will sue Texas over the constitutionality of SB 4.

15. League of United Latin American Citizens (“LULAC”) is publicly hostile to cooperation with federal immigration enforcement and sued Texas over the constitutionality of SB 4.

16. The Texas Organizing Project Education Fund sued Texas and the Attorney General, among others, over the constitutionality of SB 4.

17. Defendants maintain policies and practices that violate SB 4 and they have no intention to change those policies to comply with SB 4.

18. This action is premised on the United States Constitution concerning rights reserved to Texas under the Tenth Amendment, the power of the United States to “establish an uniform Rule of Naturalization,” Art. I, § 8, cl. 4, the related laws enacted by the United States pursuant to that authority, Texas’s sovereign rights pursuant to its own constitution, the right to be secure from unlawful searches and seizures under the Fourth Amendment, and equal protection of law and due process of law under the Fourteenth Amendment. Further, this declaratory judgment action is premised upon First Amendment challenges to SB 4 alleged by some Defendants.

19. Defendants flout the newly enacted mandate of SB 4 and have sued or threatened to sue Texas and its officials over the constitutionality of SB 4.

20. Each and every act of Defendants, past and ongoing, alleged herein was and is committed by Defendants, each and every one of them, under the color of Texas law and authority.

#### **JURISDICTION AND VENUE**

21. This action raises federal questions under the United States Constitution, particularly Article I and the First, Fourth, Ninth, Tenth, and Fourteenth Amendments, as well as 42 U.S.C. § 1983. The Court has the authority to provide Texas with declaratory relief. *See Sherwin-Williams Co. v. Holmes Cty.*,

343 F.3d 383, 388 (5th Cir. 2003); *St. Paul Ins. Co. v. Trejo*, 39 F.3d 585, 591 (5th Cir. 1994); *Travelers Ins. Co. v. La. Farm Bureau Fed'n, Inc.*, 996 F.2d 774, 776–77 (5th Cir. 1993). Consistent with the purposes of the Declaratory Judgment Act, Texas brings this action “to avoid a multiplicity of suits in various forums . . . so that the one pertinent issue . . . [can] be resolved consistently in one, rather than multiple, forums.” *Travelers*, 996 F.2d at 777.

22. The Court has jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1343.

23. The Court has authority to award the requested declaratory relief pursuant to 28 U.S.C. § 2201–02.

24. Venue lies in this district pursuant to 28 U.S.C. § 1391 because certain Defendants reside in this district and/or all of the acts described in this Complaint occurred in this district.

#### PLAINTIFFS

25. Plaintiff Texas is a free and independent sovereign, subject only to the Constitution of the United States. Tex. Const. art. I, § 1.

26. The Legislature, under its general police power, may enact such legislation not forbidden by the United States or Texas constitutions to reasonably regulate the rights and duties of all persons and corporations within its jurisdiction which are necessary for the common good and welfare of its citizenship. *Texas v. Smith*, 47 S.W.2d 642, 644 (Tex. Civ. App.—Waco 1932, no writ).

27. Cities and counties are subordinate to the Texas Constitution and general laws enacted by the Legislature.

28. The Texas Constitution vests the Legislature with the power to create counties for the convenience of the people. Tex. Const. art. 9, § 1.

29. Qualified voters of a city of more than five thousand inhabitants may engage in home-rule, “subject to such limitations as may be prescribed by the

Legislature, and no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” Tex. Const. art. 11, § 5.

30. Texas has the sovereign authority and responsibility to protect the health, safety, and welfare of its residents. *See, e.g., Texas v. Richards*, 301 S.W.2d 597, 602 (Tex. 1957) (“As a general rule the [police] power is commensurate with, but does not exceed, the duty to provide for the real needs of the people in their health, safety, comfort and convenience . . . .”); *Lombardo v. City of Dall.*, 73 S.W.2d 475, 479 (Tex. 1934) (“[T]he police power of a state embraces regulations designed to . . . promote the public health, the public morals, or the public safety.”).

31. To that end, Texas exercises its police power through state and local law enforcement agencies and cooperates with federal authorities in the enforcement of immigration law.

32. Texas possesses the sovereign authority to pass civil and criminal laws that bind the actions and responsibilities of law enforcement agencies throughout Texas, as it has done through SB 4, among other laws.

33. Plaintiff Attorney General Ken Paxton, in his official capacity, is the duly elected Attorney General of Texas and is responsible for enforcement of SB 4.

#### **DEFENDANTS**

34. Defendant Travis County, Texas is, at all times relevant to this Complaint, a county located in Texas.

35. Defendant Travis County has a policy and practice of noncooperation with federal immigration policies and ICE detainers. On information and belief, Defendant Travis County intends to maintain those policies and practices under SB 4.

36. Defendant Sally Hernandez is, at all times relevant to this Complaint, the Sheriff of Travis County.

37. Defendant Sally Hernandez is the final policymaker for actions of the Travis County's Sheriff's Office.

38. Defendant Sally Hernandez is responsible for the enactment and enforcement of the Travis County's Sheriff's Office's policies and practices, including those governing compliance with Texas law and federal immigration detainers.

39. All changes in Travis County's Sheriff's Office's policy or practice are made only with the prior approval of Defendant Sally Hernandez.

40. Defendant Sally Hernandez has a policy and practice of noncooperation with federal immigration policies and ICE detainers. On information and belief, Defendant Sally Hernandez intends to maintain those policies and practices under SB 4.

41. Defendant Sally Hernandez is sued in her official capacity.

42. Defendant City of Austin, Texas is a home rule municipality, headquartered in Travis County, Texas, that openly refuses to comply with Texas law.

43. Defendant City of Austin has a policy and practice of noncooperation with federal immigration law and ICE detainers. On information and belief, Defendant City of Austin intends to maintain those policies and practices under SB 4.

44. Defendants Ora Houston, Delia Garza, Sabino Renteria, Gregorio Casar, Ann Kitchen, Jimmy Flannigan, Leslie Pool, Ellen Troxclair, Kathie Tovo, and Alison Alter ("City Council Defendants") are, at all times relevant to this Complaint, city council members of the City of Austin, Texas.

45. The City Council Defendants are the final policymakers for actions of the City of Austin, Texas.



46. The City Council Defendants are responsible for the enactment and enforcement of the City of Austin's policies and practices, including those governing compliance with Texas law and federal immigration detainers.

47. All changes in the City of Austin's policies or practices are made only with the prior approval of the City Council Defendants.

48. The City Council Defendants have a policy and practice of noncooperation with federal immigration law and ICE detainers. On information and belief, the City Council Defendants intend to maintain those policies and practices under SB 4.

49. On May 18, 2017, the City Council Defendants voted to sue Texas over the constitutionality of SB 4 so that they can maintain their unlawful police and practice of noncooperation with federal immigration officials.

50. The City Council Defendants are sued in their official capacities.

51. Defendant Steve Adler is, at all times relevant to this Complaint, the Mayor of the City of Austin, Texas.

52. Defendant Adler is the chief executive officer of the City of Austin, Texas.

53. Defendant Adler ensures that the laws and ordinances of the municipality are properly carried out. He also performs duties and exercises the powers prescribed by the City Council Defendants.

54. Defendant Adler inspects the conduct of each subordinate municipal officer and causes any negligence, carelessness, or other violation of duty to be prosecuted and punished.

55. Defendant Adler gives to the governing body any information, and recommends to the governing body any measure, that relates to improving the finances, police, health, security, cleanliness, comfort, ornament, or good government of the municipality.

56. To preserve the peace and good order in the municipality, Defendant Adler may order the arrest of a person who violates Texas law or a municipal ordinance.

57. Defendant Adler is responsible for enactment and enforcement of City of Austin's policies and practices, including those governing compliance with Texas law and federal immigration detainers.

58. All changes in City of Austin's policy or practice are made only with the prior approval of Defendant Adler.

59. Defendant Adler declared publicly on multiple occasions that he will not abide by SB 4 and will do everything in his power to ensure the City of Austin does not follow the law.

60. Defendant Adler has a policy and practice of noncooperation with federal immigration law and ICE detainers. Defendant Adler intends to maintain those policies and practices under SB 4

61. Defendant Adler is sued in his official capacity.

62. Defendant Elaine Hart is, at all times relevant to this Complaint, the interim City Manager of the City of Austin, Texas.

63. Defendant Hart administers the municipal business and the governing body of the municipality ensures that the administration is efficient.

64. The City Council Defendants may delegate to Defendant Hart any additional powers or duties the City Council Defendants consider proper for the efficient administration of municipal affairs.

65. Defendant Hart is responsible for enforcement of City of Austin's policies and practices, including those governing compliance with Texas law and federal immigration detainers.

66. Defendant Hart maintains a policy and practice of noncooperation with federal immigration law and ICE detainers. On information and belief, Defendant Hart intends to maintain those policies and practices under SB 4.

67. The City Council Defendants voted to direct Defendant Hart to “pursue litigation against” Texas “to provide relief to the City of Austin and the people of Texas from Senate Bill 4.”

68. The City Council Defendants directed Defendant Hart to “explore, identify, and allocate the necessary resources, financial or otherwise, to prepare and pursue effective litigation and defense.”

69. The City Council Defendants directed Defendant Hart “to explore coordination with other municipalities and entities engaging in similar litigation.”

70. Defendant Hart is sued in her official capacity.

71. Defendant El Paso County, Texas is, at all times relevant to this Complaint, a county located in Texas.

72. Defendant El Paso County has a policy and practice of noncooperation with federal immigration law and ICE detainers. On information and belief, Defendant El Paso County intends to maintain those policies and practices under SB 4.

73. After Plaintiffs filed this lawsuit, Defendant El Paso County sued Texas over the constitutionality of SB 4 and raised the same causes of action pleaded herein. *See El Paso Cty., et al. v. Texas, et al.*, No. 5:17-cv-459-OLG (W.D. Tex., San Antonio Division).

74. Defendant Richard Wiles is, at all times relevant to this Complaint, the Sheriff of El Paso County.

75. Defendant Wiles is the final policymaker for actions of the El Paso County Sheriff’s Office.

76. Defendant Wiles is responsible for the enactment and enforcement of the El Paso County's Sheriff's Office's policies and practices, including those governing compliance with Texas law and federal immigration detainers.

77. All changes in El Paso County's Sheriff's Office's policy or practice are made only with the prior approval of Defendant Wiles.

78. Defendant Wiles has a policy and practice of noncooperation with federal immigration law and ICE detainers. On information and belief, Defendant Wiles intends to maintain those policies and practices under SB 4.

79. After Plaintiffs filed this lawsuit, Defendant Wiles sued Texas over the constitutionality of SB 4 and raised the same causes of action pleaded herein. *See El Paso Cty.*, No. 5:17-cv-459-OLG (W.D. Tex., San Antonio Division).

80. Defendant Wiles is sued in his official capacity.

81. Defendant City of El Cenizo, Texas is a municipal corporation organized and headquartered in Webb County. Defendant City of El Cenizo openly refuses to cooperate with SB 4.

82. Defendant City of El Cenizo has a policy and practice of noncooperation with federal immigration law and ICE detainers. Defendant City of El Cenizo intends to maintain those policies and practices under SB 4.

83. After Plaintiffs filed this lawsuit, Defendant City of El Cenizo sued Texas over the constitutionality of SB 4 and raised the same causes of action pleaded herein. *See City of El Cenizo, et al. v. Texas, et al.*, No. 5:17-cv-404-OLG (W.D. Tex., San Antonio Division).

84. Defendant Raul L. Reyes is, at all times relevant to this Complaint, the Mayor of the City of El Cenizo, Texas.

85. Defendant Reyes is the chief executive officer of the City of El Cenizo, Texas.

86. Defendant Reyes ensures that the laws and ordinances of the municipality are properly carried out. He also performs duties and exercises the powers prescribed by the Defendant City of El Cenizo.

87. Defendant Reyes inspects the conduct of each subordinate municipal officer and causes any negligence, carelessness, or other violation of duty to be prosecuted and punished.

88. Defendant Reyes gives to the governing body any information, and recommends to the governing body any measure, that relates to improving the finances, police, health, security, cleanliness, comfort, ornament, or good government of the municipality.

89. To preserve the peace and good order in the municipality, Defendant Reyes may order the arrest of a person who violates Texas law or a municipal ordinance.

90. Defendant Reyes is responsible for enactment and enforcement of Defendant City of El Cenizo's policies and practices, including those governing compliance with Texas law and federal immigration detainers.

91. All changes in Defendant City of El Cenizo's policy or practice are made only with the prior approval of Defendant Reyes.

92. Defendant Reyes declared publicly on multiple occasions that he will not abide by SB 4 and will do everything in his power to ensure the City of El Cenizo does not follow the law.

93. Defendant Reyes has a policy and practice of noncooperation with federal immigration law and ICE detainers. Defendant Reyes intends to maintain those policies and practices under SB 4.

94. After Plaintiffs filed this lawsuit, Defendant Reyes sued Texas over the constitutionality of SB 4 and raised the same causes of action pleaded herein. *See City of El Cenizo*, No. 5:17-cv-404-OLG (W.D. Tex., San Antonio Division).

95. Defendant Reyes is sued in his official capacity.

96. Defendant Maverick County, Texas is, at all times relevant to this Complaint, a county located in Texas that openly refuses to enforce or otherwise comply with Texas law.

97. Defendant Maverick County has a policy and practice of noncooperation with federal immigration law and ICE detainers. Defendant Maverick County intends to maintain those policies and practices under SB 4.

98. Defendant Maverick County voted to sue Texas over the constitutionality of SB 4 and is listed in the caption of the lawsuit filed by City of El Cenizo. *See City of El Cenizo*, No. 5:17-cv-404-OLG (W.D. Tex., San Antonio Division).

99. Defendant Tom Schmerber is, at all times relevant to this Complaint, the Sheriff of Maverick County.

100. Defendant Schmerber is the final policymaker for actions of the Maverick County's Sheriff's Office.

101. Defendant Schmerber is responsible for the enactment and enforcement of the Maverick County's Sheriff's Office's policies and practices, including those governing compliance with Texas law and federal immigration detainers.

102. All changes in Maverick County's Sheriff's Office's policy or practice are made only with the prior approval of Defendant Schmerber.

103. Defendant Schmerber has a policy and practice of noncooperation with federal immigration law and ICE detainers. Defendant Schmerber intends to maintain those policies and practices under SB 4.

104. After Plaintiffs filed this lawsuit, Defendant Schmerber sued Texas over the constitutionality of SB 4 and raised the same causes of action pleaded herein. *See City of El Cenizo*, No. 5:17-cv-404-OLG (W.D. Tex., San Antonio Division).

105. Defendant Schmerber is sued in his official capacity.

106. Defendant Constable Mario A. Hernandez is, at all times relevant to this Complaint, a Constable of Maverick County, Texas.

107. Defendant Mario Hernandez is charged with statutory authority to engage in certain law enforcement duties including service of process and warrants.

108. Defendant Mario Hernandez has a policy and practice of noncooperation with federal immigration law and ICE detainers. On information and belief, Defendant Mario Hernandez intends to maintain those policies and practices under SB 4.

109. After Plaintiffs filed this lawsuit, Defendant Mario Hernandez sued Texas over the constitutionality of SB 4 and raised the same causes of action pleaded herein. *See City of El Cenizo*, No. 5:17-cv-404-OLG (W.D. Tex., San Antonio Division).

110. Defendant Mario Hernandez is sued in his official capacity.

111. Defendant the Texas Organizing Project Education Fund (TOPEF) is self-described as an education organization with a focus on working class neighborhoods in Dallas, Houston, and San Antonio. TOPEF claims to improve the lives of low-income and working class Texas families through education, civil engagement, and community organizing. TOPEF is incorporated in Texas.

112. After Plaintiffs filed this lawsuit, Defendant TOPEF sued Texas over the constitutionality of SB 4 and raised the same causes of action pleaded herein. *See El Paso Cty.*, No. 5:17-cv-459-OLG (W.D. Tex., San Antonio Division).

113. Defendant Mexican American Legal Defense and Education Fund (“MALDEF”) is a nonprofit that has a regional office in Texas. MALDEF describes itself as the nation’s leading Latino legal civil rights organization. MALDEF asserts that it promotes social change through advocacy, communications, community education, and litigation in the areas of education, employment, immigrant rights, and political access.

114. Defendant League of Latin American Citizens (LULAC) is a nonprofit that has chapters throughout Texas and members in at least Austin, San Antonio, Waco, Midland, Pecos, Alpine, Del Rio, and El Paso. LULAC describes itself as representing Latino and other minority interests in all regions of the State. LULAC asserts that its members could and will be impacted severely both as individual residents in Counties deemed not in compliance with SB 4 and as members of law enforcement.

115. After Plaintiffs filed this lawsuit, Defendant LULAC sued Texas over the constitutionality of SB 4 and raised the same causes of action pleaded herein. *See City of El Cenizo*, No. 5:17-cv-404-OLG (W.D. Tex., San Antonio Division).

## **FACTUAL BACKGROUND**

### **The Cooperative Nature of Immigration Law**

116. The United States Constitution grants the federal government authority over immigration law and policy.

117. Congress specifies categories of aliens who may not be admitted to the United States. *See* 8 U.S.C. § 1182.

118. Federal law prohibits unlawful entry and unlawful reentry into the country. *Id.* §§ 1325, 1326.

119. Once here, aliens must register with the federal government and carry proof of status on their person. *Id.* §§ 1301–1306. Failure to do so is a federal misdemeanor. *Id.* §§ 1304(e), 1306(a).

120. Federal immigration law also authorizes Texas to deny noncitizens a range of public benefits, *id.* § 1622, and it imposes sanctions on employers who hire unauthorized workers, *id.* § 1324a.

121. Congress specifies which aliens may be removed from the United States and the procedures for doing so. Aliens may be removed if they were inadmissible at



the time of entry, have been convicted of certain crimes, or meet other criteria set by federal law. *Id.* § 1227.

122. Components of the U.S. Department of Homeland Security play a major role in enforcing immigration laws.

123. ICE conducts criminal investigations involving the enforcement of immigration-related statutes.

124. ICE also operates the Law Enforcement Support Center, which provides immigration status information to federal, state, and local officials.

125. ICE officers identify, apprehend, and remove illegal aliens from the United States.

126. ICE officers have the authority to arrest any alien pursuant to a warrant or if they have “reason to believe” the alien is in the United States without permission and is “likely to escape before a warrant can be obtained.” 8 U.S.C. § 1357(a)(2).

127. Any authorized ICE officer may issue a Form I-247, Immigration Detainer–Notice of Action, to any other federal, state, or local law enforcement agency (herein, “ICE detainer”). 8 C.F.R. § 287.7(a).

128. ICE detainers are supported by probable cause.

129. An ICE detainer advises other law enforcement agencies that ICE seeks the custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. *Id.*

130. An ICE detainer is a request that such agency advise ICE prior to releasing the alien, so that ICE may arrange to assume custody. *Id.*

131. An ICE detainer also commonly asks the local law enforcement agency to hold the person for up to 48 hours in order to assume custody. *Id.* § 287.7(d).

132. As of April 2, 2017, the ICE detainer policy requires “[a]ll immigration officers must establish probable cause to believe that the subject is an alien who is

removable from the United States before issuing a detainer with a federal, state, local, or tribal [law enforcement agency].”<sup>3</sup>

133. The new ICE policy requires that all ICE detainees be accompanied by one of two types of Federal immigration warrants, which is signed by an authorized ICE immigration officer. *Id.*

134. Congress authorized Federal immigration officials to “arrest[] and detain[]” an alien while awaiting a removal decision pursuant to “a warrant issued by the Attorney General.” 8 U.S.C. § 1226(a).

135. Immigration law welcomes the cooperation of Texas law enforcement with requests like ICE detainees.

136. The United States Attorney General can enter into a “written agreement” with Texas or any political subdivision of Texas, which deputizes state or local law enforcement officers as immigration officers. *Id.* § 1357(g)(1).

137. In these instances, Texas state and local officers are “considered to be acting under color of Federal authority.” *Id.* § 1357(g)(8).

138. Even absent a written agreement, Texas and local law enforcement officers may become deputized to “cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.” *Id.* § 1357(g)(10).

139. “State and local law enforcement officials are authorized to arrest and detain” an individual who is “an alien illegally present in the United States” and “has been previously convicted of a felony in the United States and deported or left the United States after such conviction.” 8 U.S.C. § 1252c(a).

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<sup>3</sup> ICE Policy 10074.2, *Issuance of Immigration Detainers by ICE Immigration Officers* ¶ 2.4 (last visited May 7, 2017), <https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf>.

### **Texas's Practice of Cooperating with Federal Immigration Authorities**

140. For some time now, law enforcement agencies across Texas have held persons in custody for up to 48 hours based on ICE detainers, and they do so to cooperate with federal agencies as well as fulfill the requirements of Texas law.

141. Between 2011 and 2017, over 212,000 criminal aliens were booked into Texas jails.

142. Texas places statutory duties on agencies, such as the Texas Department of Public Safety ("DPS"), the Texas Department of Criminal Justice ("TDCJ"), and the Texas Commission on Jail Standards ("TCJS"), as well as subdivisions such as Travis County and the City of Austin, to cooperate with federal immigration officials with respect to persons in their custody.

143. Texas law charges DPS with authority to enforce "laws protecting public safety and provide for the prevention and detection of crime." Tex. Gov't Code § 411.002(a).

144. DPS "is composed of the Texas Rangers, the Texas Highway Patrol," and other administrative divisions. *Id.*

145. The Texas Rangers have the same powers and duties of sheriffs, except their authority extends throughout Texas. *Id.* § 411.022(a).

146. The Texas Highway Patrol has the same powers and authority as the Texas Rangers, in addition to other powers and duties provided by law. *Id.* § 411.032.

147. Texas law requires DPS to cooperate with local law enforcement.

148. "The sheriff and constables of each county and chief of police of each municipality are associate members of the department and are entitled to the rights and privileges granted to them by the department." *Id.* § 411.009(a).

149. The director of DPS implements coordination among peace officers throughout Texas and may require the assistance of those officers "to aid or assist in the performance of a duty imposed" by Texas law. *Id.* § 411.009(b).

150. Law enforcement agencies throughout Texas cooperate together and share responsibility to enforce the law.

151. This nexus of cooperation extends to the federal level as well, especially with respect to the identification of aliens.

152. DPS coordinates with federal and local authorities at international border checkpoints and shares the costs of those efforts with the federal government. Tex. Gov't Code § 411.0209.

153. In furtherance of this cooperation, DPS has a program for preventing and detecting the unlawful movement or transfer between Texas and an adjacent state, or between Texas and the United Mexican States, of firearms, controlled substances, currency, or smuggling or trafficking of persons. *Id.* § 411.0208(a).

154. DPS implements this program “in conjunction with federal and local law enforcement agencies.” *Id.* § 411.0208(d).

155. The DPS Border Security Operations Center coordinates Operation BorderStar to collect intelligence and statistical information, which is shared with federal, state, and local law enforcement each week.

156. Because of the responsibilities and duties placed on DPS by Texas law, uniform cooperation with federal immigration officers is of vital importance to Texas.

157. Once individuals are in custody, counties, Rangers, Highway Patrol, and local police can run their fingerprints through DPS systems, which notify federal immigration officers of any potential aliens in custody.

158. DPS's Bureau of Identification and Records collects information of all persons arrested, *id.* § 411.042(b)(1), maintains a database of criminal history that allows for entry of records into an FBI database, *id.* § 411.042(b)(9), and serves as a clearinghouse for local law enforcement to check fingerprints against federal databases at FBI and the Department of Homeland Security.

159. When the accused stand trial and are found guilty, Texas judges must notify federal immigration officers of those who are criminal aliens, as defined by Texas law. Tex. Code Crim. Proc. art. 2.25 (“A judge shall report to the United States Immigration and Naturalization Service a person who has been convicted in the judge’s court of a crime or has been placed on deferred adjudication for a felony and is an illegal criminal alien as defined by Section 493.015(a), Government Code.”).

160. TCJS monitors the use of county jails for ICE detentions. Tex. Gov’t Code § 511.0101(a)(1)(J).

161. Texas law also requires the prison system to cooperate with immigration officers.

162. TDCJ must “cooperate with the [U.S.] Immigration and Naturalization Service in implementing an efficient system for the deportation of illegal criminal aliens on completion of the inmates’ sentences or release of the inmates on parole or mandatory supervision.” Tex. Gov’t Code § 493.015(g).

163. As of December 2015, over 9,000 Texas prisoners were under an ICE detainer of some kind, and ICE determined more than 6,000 of them to be unlawfully present.

164. Texas law obligates TDCJ to “identify those inmates who” may be “an illegal criminal alien” in their custody. *Id.* § 493.015(b).

165. If a person in custody is determined to be an illegal criminal alien, TDCJ “shall promptly notify” INS. *Id.* § 493.015(d).

166. TDCJ also “shall promptly notify the criminal justice division of the governor’s office of any inmate determined by [TDCJ] or by [INS] to be an illegal criminal alien,” and the “governor’s office shall apply to the federal government for any funds due the state for criminal justice costs incurred with respect” to that person. *Id.* § 493.015(e).

167. TDCJ also provides facilities as central locations to “hold inmates who are illegal criminal aliens for the period immediately preceding release on parole or mandatory supervision,” and provides “two-way closed circuit communications systems and other technology that will assist the state and the federal government in ensuring the timely and efficient deportation of illegal criminal aliens.” *Id.* § 493.015(g)(1–2).

168. Texas possesses an interest in consistency in law enforcement, as evidenced by the standards and supervision exercised by TCJS.

169. Among other things, TCJS establishes reasonable rules and minimum standards for the construction, maintenance, and operation of county jails, as well as for the custody, care, and treatment of prisoners. Tex. Gov’t Code § 511.009(a).

170. TCJS also monitors the use of state and county jails for ICE detentions and calculates the costs of those detentions. *Id.* § 511.0101(a)(1)(J).

**SB 4 Prohibits Local Policies that Refuse to Cooperate  
with Enforcement of Immigration Law**

171. Notwithstanding Texas’s longstanding practice to cooperate with federal immigration authorities, some local law enforcement entities and leaders opposed this practice. This included opposing cooperation with ICE detainees.

172. In order to unify Texas policy, and solidify cooperation with federal immigration law, Senate Bill 4 is Texas law as of May 7, 2017. A true and correct copy of SB 4 is attached to this Complaint as Exhibit 1.

173. SB 4 states that a:

local entity or campus police department may not: (1) adopt, enforce, or endorse a policy under which the entity or department prohibits or materially limits the enforcement of immigration laws; (2) as demonstrated by pattern or practice, prohibit or materially limit the enforcement of immigration laws; or (3) for an entity that is a law enforcement agency or for a department, as demonstrated by pattern or practice, intentionally violate Article 2.251, Code of Criminal Procedure.

Ex. 1 § 752.053.

174. SB 4 prohibits local law enforcement agencies from adopting, enforcing, or endorsing a policy that limits the enforcement of federal immigration laws.

175. Texas does not interpret SB 4 to prohibit or restrict affected governments and officials from freely speaking against or in any way commenting upon, or communicating about, immigration laws, policies, actions, SB 4, or any related issues or matters.

176. SB 4 also states:

a local entity or campus police department may not prohibit or materially limit a person who is a commissioned peace officer described by Article 2.12, Code of Criminal Procedure, a corrections officer, a booking clerk, a magistrate, or a district attorney, criminal district attorney, or other prosecuting attorney and who is employed by or otherwise under the direction or control of the entity or department from doing any of the following:

(1) inquiring into the immigration status of a person under a lawful detention or under arrest;

(2) with respect to information relating to the immigration status, lawful or unlawful, of any person under a lawful detention or under arrest, including information regarding the person's place of birth:

(A) sending the information to or requesting or receiving the information from United States Citizenship and Immigration Services, United States Immigration and Customs Enforcement, or another relevant federal agency;

(B) maintaining the information; or

(C) exchanging the information with another local entity or campus police department or a federal or state governmental entity;

(3) assisting or cooperating with a federal immigration officer as reasonable or necessary, including providing enforcement assistance; or

(4) permitting a federal immigration officer to enter and conduct enforcement activities at a jail to enforce federal immigration laws.

*Id.* § 752.053.

177. SB 4 bans local law enforcement agencies from prohibiting or limiting their officers or employees from inquiring into a person's immigration status when that person is under lawful detention or arrest.

178. SB 4 bans local law enforcement agencies from prohibiting or limiting their officers or employees from sharing immigration status of a person with federal

authorities, collecting a person's immigration status, or exchanging that information with another local law enforcement agency.<sup>4</sup>

179. SB 4 bans local law enforcement agencies from prohibiting or limiting their officers or employees from cooperating with federal immigration officers.

180. SB 4 bans local law enforcement agencies from prohibiting or limiting their officers or employees from permitting federal immigration officers to enter and conduct enforcement activities within their jails.

181. SB 4 permits a peace officer, while investigating an alleged criminal offense, to inquire as to the nationality or immigration status of a victim or witness to the offense only if it is necessary to investigate the offense or to provide the victim or witness with information about federal visas designed to protect individuals providing assistance to law enforcement. *Id.* art. 6, § 6.01.

182. SB 4 also states that a "local entity, campus police department, or a person employed by or otherwise under the direction or control of the entity or department may not consider race, color, religion, language, or national origin while enforcing immigration laws except to the extent permitted by the United States Constitution or Texas Constitution." *Id.* § 752.054.

183. SB 4 prohibits unlawful discrimination based on race, color, religion, language, or national origin.

184. Any person residing within the jurisdiction of the local law enforcement agency may file a complaint about that agency with the Attorney General of Texas, who may seek equitable relief in court against that agency to compel compliance with the law. *Id.* § 752.055.

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<sup>4</sup> SB 4 is in harmony with 8 U.S.C. § 1373 (2017), which purports to prohibit any restrictions on government entities or officials that would prevent them from communicating with INS regarding citizenship or immigration status, maintaining such information, or sharing such information with other governmental entities.



185. A local law enforcement agency found in violation of SB 4 is subject to civil penalties in an amount “(1) not less than \$1,000 and not more than \$1,500 for the first violation; and (2) not less than \$25,000 and not more than \$25,500 for each subsequent violation.” *Id.* § 752.056(a)(1–2). Each day a local law enforcement agency violates SB 4 “constitutes a separate violation for the civil penalty under this section.” *Id.* § 752.056(b).

186. Civil penalties collected under SB 4 are deposited into the victims of crime fund established under Subchapter B, Chapter 56, Code of Criminal Procedure.

187. SB 4 states that “a person holding an elective or appointive office of a political subdivision of this state does an act that causes the forfeiture of the person’s office if the person violates Section 752.053.” *Id.* § 752.0565(a).

188. Under SB 4, elective or appointed officials of a political subdivision may be removed from office if he or she prohibits officers or employees from:

- a) inquiring into a person’s immigration status if that when that person is under lawful detention or arrest;
- b) sharing immigration status of a person with federal authorities, maintain a person’s immigration status, or exchanging that information with another local law enforcement agency;
- c) cooperating with federal immigration officers; and
- d) permitting federal immigration officers to enter and conduct enforcement activities within their jails.

*Id.*

189. The Attorney General of Texas is charged with authority to enforce section 752.0565(a). *Id.* § 752.0565(b).

190. SB 4 states that each local law enforcement agency:

may adopt a written policy requiring the agency to perform community outreach activities to educate the public that a peace officer may not inquire into the immigration status of a victim of or witness to an alleged criminal offense unless . . . the officer determines that the inquiry is necessary to: (1) investigate the offense; or (2) provide the victim or witness with information about federal visas designed to protect individuals providing assistance to law enforcement.

*Id.* § 752.057(a).

191. Any outreach policy adopted under section 752.057 must include outreach to victims of family violence and sexual assault. *Id.* § 752.057(b).

192. SB 4 also provides grants to local law enforcement entities to offset costs related to enforcing immigration laws, or complying with, honoring, or fulfilling immigration detainer requests. *Id.* § 772.0073(b).

#### **SB 4 Requires Cooperation with ICE Detainers**

193. SB 4 states that a

law enforcement agency that has custody of a person subject to an immigration detainer request issued by United States Immigration and Customs Enforcement shall: (1) comply with, honor, and fulfill any request made in the detainer request provided by the federal government; and (2) inform the person that the person is being held pursuant to an immigration detainer request issued by United States Immigration and Customs Enforcement.

*Id.* art. 2.251(a).

194. SB 4 requires law enforcement agencies holding a person subject to an ICE detainer to comply with, honor, and fulfill that request and inform the person in custody that he or she is being held pursuant to an ICE detainer.

195. A law enforcement agency is not required to comply with an ICE detainer if the person in custody proves his or her United States citizenship, or lawful immigration status, through government-issued identification. *Id.* art. 2.251(b).

196. SB 4 provides grants to local law enforcement entities to offset costs related to enforcing immigration laws, or complying with, honoring, or fulfilling immigration detainer requests. *Id.* § 772.0073(b).

197. SB 4 authorizes the Attorney General of Texas to defend a local entity in any action in any court if the local entity requests help and if the Attorney General determines that the local entity was attempting to comply in good-faith with an ICE detainer. *Id.* § 402.0241.

198. SB 4 provides that it is a Class A misdemeanor for a sheriff, chief of police, constable, or person who has primary authority for administering a jail to knowingly fail to comply with an ICE detainer request issued concerning a person in his or her custody, unless the person in custody proves his or her lawful citizenship or immigration status. *Id.* § 39.07.

**SB 4 Requires Early Release of Incarcerated Persons  
Subject to ICE Detainers to Federal Authorities**

199. SB 4 also provides that an incarcerated individual who is subject to an ICE detainer may be transferred from a Texas correctional facility to federal authorities during the last seven (7) days of the individual's sentence.

200. SB 4 states:

In a criminal case described by Subsection (a) [where the judgment requires the defendant to be confined in a correctional facility and the defendant is subject to an immigration detainer request], the judge shall, at the time of pronouncement of a sentence of confinement, issue an order requiring the secure correctional facility in which the defendant is to be confined and all appropriate government officers, including a sheriff, a warden, or members of the Board of Pardons and Paroles, as appropriate, to require the defendant to serve in federal custody the final portion of the defendant's sentence, not to exceed a period of seven days, following the facility's or officer's determination that the change in the place of confinement will facilitate the seamless transfer of the defendant into federal custody. In the absence of an order issued under this subsection, a facility or officer acting under exigent circumstances may perform the transfer after making the determination described by this subsection. This subsection applies only if appropriate officers of the federal government consent to the transfer of the defendant into federal custody under the circumstances described by this subsection.

*Id.* art. 42.039.

**Defendants' Policies and Practices Violate SB 4 and Cause a Concrete,  
Immediate Injury to Plaintiffs Enactment and Enforcement of SB 4**

201. Defendant Travis County has a policy and practice of ignoring ICE detainer requests and refusing to cooperate with federal immigration officials.

202. Defendant Travis County, Defendant Sally Hernandez, and other county officials, engage in patterns and practices of ignoring ICE detainer requests and not cooperating with federal officials.

203. On February 1, 2017, well after SB 4 was introduced in the Texas Legislature, Defendant Sally Hernandez issued a revised, written policy concerning Travis County's non-cooperation with federal immigration authorities. Under the policy, Travis County shall not cooperate with federal immigration officials and their lawful activities, except in limited circumstances determined solely by the Travis County and its sheriff.

204. Defendant Sally Hernandez described the County's policy in place when SB 4 was passed in a publicly available video statement: The Travis County Sheriff's Office will not "conduct or initiate any immigration status investigation" into those in custody. The Travis County Sheriff's Office prohibits the use of county resources to communicate with ICE about an "inmate's release date, incarceration status, or court dates, unless ICE presents a judicial warrant or court order." Absent such a warrant or order, ICE will not be allowed to conduct "civil immigration status investigations at the jail or [Travis County Sheriff's Office]." Further "no [Travis County Sheriff's Office] personnel in the jail, on patrol, or elsewhere may inquire about a person's immigration status."<sup>5</sup>

205. Travis County Judge Sarah Eckhardt publicly endorsed Travis County's policy and practice:

Place of birth alone is no indication that a person is a threat to public safety under the criminal laws of Texas or is in violation of immigration laws of the U.S. Under both Texas and U.S. Constitutions, jailers and immigration agents do not determine probable cause to detain a person. Only a judge can make that determination. It's called a warrant. I fully

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<sup>5</sup> Travis County Sheriff's Office, ICE Policy Video, at <http://www.tcsheriff.org/inmate-jail-info/ice-video> (last visited May 6, 2017).

support Sheriff Hernandez requiring a warrant to deprive anyone of his or her liberty under the 4th Amendment of the U.S. Constitution.<sup>6</sup>

206. As of the original filing of this lawsuit, Defendant Sally Hernandez's and Travis County's policy remained in place, unaffected by SB 4.

207. Defendant Hernandez, acting as the Travis County Sheriff, continues not to cooperate with federal immigration officials and, on information and belief, has no plans to change this policy and practice.

208. Defendant Travis County's failure to cooperate with federal immigration officials is pervasive. According to a report by the U.S. Department of Homeland Security, of 206 detainer requests denied between January 28 and February 3, 2017, Travis County declined 142 requests to hold unauthorized immigrants, or about 69%, which is more than any other local jurisdiction.

209. Defendant City of Austin has a policy and practice of ignoring ICE detainer requests and refusing to comply with federal immigration officials.

210. Defendants City of Austin, Adler, and Hart, the City Council Defendants, and other city officials publicly endorse and engage in patterns and practices of ignoring ICE detainer requests and not cooperating with federal officials.

211. On May 18, 2017, Defendants City of Austin, Adler, Hart, and the City Council Defendants voted to sue Texas over the constitutionality of SB 4.

212. During the City Council Defendants' discussion on whether to file a lawsuit against Texas over SB 4, Defendant Casar stated that the City of Austin, the City Council Defendants, and Defendants Adler and Hart are part of a broad coalition that want to stop SB 4 before it gets implemented.

213. During the City Council Defendants' discussion on whether to file a lawsuit against Texas over SB 4, Defendant Casar also stated that SB 4 will require

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<sup>6</sup> Casey Claiborne, *Travis Co. Commissioners discuss Hernandez ICE policy*, FOX 7 (Jan. 24 2017, 06:20 PM), <http://www.fox7austin.com/news/local-news/231502450-story> (last visited May 6, 2017).

the City of Austin to make a policy change to cooperate with federal immigration law and ICE detainers.

214. During the City Council Defendants' discussion whether to file a lawsuit against Texas over SB 4, Defendant Adler stated that a city should be able to have their culture reflected in the ordinances, rules, and policies they adopt. In other words, Defendant Adler does not believe the City of Austin, a subordinate unit of government to Texas, must comply with Texas law.

215.

216. Defendant City of Austin, the City Council Defendants, and Defendants Adler and Hart intend to file a pre-enforcement challenge to SB 4 that is nearly identical to this first-filed matter.

217. Defendant Hart participated in Defendant City of Austin's violation of SB 4 by directing the City Law Department to file a baseless motion to dismiss this action just days after the City Council Defendants voted to sue Texas over SB 4.

218. Defendant El Paso County and Defendant Wiles have policies and practices of ignoring ICE detainer requests and refusing to cooperate with federal immigration officials.

219. Defendant El Paso County, Defendant Wiles, and other county officials, engage in patterns and practices of ignoring ICE detainer requests and not cooperating with federal officials.

220. Defendant Wiles said SB 4 was pointless.

221. On May 15, 2017, the commissioners' court of Defendant El Paso County voted to sue Texas over the constitutionality of SB 4.

222. On May 22, 2017, Defendants El Paso County and Wiles sued Plaintiffs over the constitutionality of SB 4. *See El Paso Cty.*, No. 5:17-cv-459-OLG (W.D. Tex., San Antonio Division).

223. The lawsuit filed by Defendants El Paso County, Wiles, and TOPEF characterizes SB 4 as a cruel and racially animated law.

224. Defendants Maverick County, Schmerber, and Mario Hernandez have policies and practices of ignoring ICE detainer requests and refusing to cooperate with federal immigration officials.

225. Defendants Maverick County, Schmerber, and Mario Hernandez, and other county officials, engage in patterns and practices of ignoring ICE detainer requests and not cooperating with federal officials.

226. On May 8, 2017, Defendants Schmerber and Mario Hernandez sued Plaintiffs over the constitutionality of SB 4. *See City of El Cenizo*, No. 5:17-cv-404-OLG (W.D. Tex., San Antonio Division).

227. On information and belief, the commissioners' court of Defendant Maverick County voted to sue Texas over the constitutionality of SB 4.

228. On May 18, 2017, Defendant Maverick County sued Plaintiffs over the constitutionality of SB 4. *See City of El Cenizo*, No. 5:17-cv-404-OLG (W.D. Tex., San Antonio Division).

229. Defendants City of El Cenizo and Reyes have policies and practices of ignoring ICE detainer requests and refusing to cooperate with federal immigration officials.

230. Defendants City of El Cenizo and Reyes, and other city officials, engage in patterns and practices of ignoring ICE detainer requests and not cooperating with federal officials.

231. Defendant Reyes alleged that SB 4 is "dangerous and discriminatory" and that it "opens up the door to racial profiling against Hispanics."

232. On May 8, 2017, Defendants City of El Cenizo and Reyes sued Plaintiffs over the constitutionality of SB 4. *See City of El Cenizo*, No. 5:17-cv-404-OLG (W.D. Tex., San Antonio Division).

233. In Defendants LULAC's, City of El Cenizo's, Reyes's, Schmerber's, and Mario Hernandez's allegations against Texas and two of its officials, they have alleged that Texas has no constitutional or sovereign authority to enforce SB 4. Further, they allege that "SB 4 is a severe invasion of Plaintiffs' sovereign rights as local governments to form their own laws and policies"—even, apparently, as it relates to immigration law and policy.

234. Defendants LULAC, City of El Cenizo, Reyes, Schmerber, and Mario Hernandez have admitted in legal pleadings that they "have in some case directed their employees and officers not to assist the Federal government in enforcing federal immigration law, with limited exceptions.

235. Defendant MALDEF publicly declared imminent legal action against Texas regarding the constitutionality of the Texas law described herein.<sup>7</sup>

236. Defendant LULAC filed suit against Texas regarding the constitutionality of the Texas law described herein. *See City of El Cenizo*, No. 5:17-cv-404-OLG (W.D. Tex., San Antonio Division).

237. Defendants' deliberate failure to cooperate with federal immigration officials hampers the federal government's ability to exercise its constitutional authority to make removal decisions. *Arizona v. United States*, 132 S. Ct. 2492, 2499 (2012).

238. Defendants' policies and practices undermine the fundamental principle that foreign countries "must be able to confer with one national sovereign, not the 50 separate States"—much less countless local governments. *Id.* at 2498.

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<sup>7</sup> *See, e.g.*, Press Release, MALDEF Statement on Texas SB 4 "Sanctuary Cities" Bill (May 4, 2017), [http://www.maldef.org/news/releases/2017\\_5\\_4\\_MALDEF\\_Statement\\_on\\_TX\\_SB\\_4\\_Sanctuary\\_Cities\\_Bill/](http://www.maldef.org/news/releases/2017_5_4_MALDEF_Statement_on_TX_SB_4_Sanctuary_Cities_Bill/); Mercedes Olivera, *Legal fight on SB 4 gears up*, Dallas Morning News, May 6, 2017.



239. All Defendants follow a pattern and practice of failing to cooperate with federal immigration officials, which on information and belief, they intend to continue prior to and after September 1, 2017.

240. All Defendants have either sued Texas and/or its officials over the constitutionality of SB 4 or resolved to take legal action against Texas alleging that SB 4 is unconstitutional.

#### **ALLEGATIONS OF LAW**

241. At all times relevant to this Complaint, each and all of the acts alleged herein are attributed to the Defendants who acted under color of a statute, regulation, custom, or usage of Texas.

242. Defendants are aware that refusing to comply with SB 4 is in violation of Texas law.

243. Defendants are aware that SB 4 is valid under the United States Constitution.

244. Texas has no adequate or speedy remedy at law to correct or redress these violations of Texas law.

245. Until SB 4 is declared constitutional, Defendants will continue to pursue legal action adverse to SB 4 and/or with their unlawful policy or practice.

#### **FIRST CAUSE OF ACTION Fourth Amendment Right to Protection Against Unreasonable Searches and Seizures**

246. Texas incorporates by reference as if set forth fully herein paragraphs 1 to 245.

247. The Fourth Amendment, incorporated and made applicable to Texas by the Fourteenth Amendment to the United States Constitution, prohibits unreasonable searches and seizures.

248. To establish a claim for unreasonable seizure, one must show that an arrest is unreasonable.

249. A warrantless arrest is considered unreasonable if, at the moment of the arrest, there is no probable cause for the peace officer to reasonably believe that an unlawful act has been or is being committed.

250. Probable cause does not require proof beyond a reasonable doubt, but only a showing of a fair probability of unlawful activity.

251. The reasonableness of an arrest must also be judged based on what a reasonable peace officer would do under the circumstances, and does not consider the officer's state of mind.

252. The question is whether a reasonable officer believes that the law was violated based on the facts available to that officer.

253. Defendants assert that SB 4 violates the Fourth Amendment because it requires them to participate in an ICE detainer, which they attest is an unreasonable seizure.

254. ICE detainers may be issued for civil or criminal immigration law violations.

255. Whether an ICE detainer is civil or criminal in nature, it must be supported by probable cause.

256. ICE makes the determination of whether it has probable cause to issue a detainer and will not issue a detainer without probable cause. Current ICE policy further reflects this probable-cause requirement, as ICE will not issue a detainer without an accompanying Federal immigration warrant signed by an authorized ICE immigration officer.

257. ICE detainers, therefore, are supported by probable cause established by ICE officers under federal law.

258. SB 4's requirement that local law enforcement cooperate with ICE detainers does not violate the Fourth Amendment's prohibition on unreasonable seizures.

259. SB 4 does not violate the Fourth Amendment.

260. Texas has no adequate or available administrative remedy, or, in the alternative, any effort to obtain an administrative remedy would be futile.

261. Texas has no adequate remedy at law.

262. Absent declaratory relief, Texas will continue to be harmed.

**SECOND CAUSE OF ACTION**  
**Fourteenth Amendment Right to Equal Protection of Law**

263. Texas incorporates by reference as if set forth fully herein paragraphs 1 to 262.

264. The Fourteenth Amendment to the United States Constitution guarantees persons the equal protection of the laws, and prohibits the government from treating persons differently than a similarly situated individual.

265. Laws are not unconstitutional under the Fourteenth Amendment if they result in a racially disproportionate impact.

266. Representatives of Defendants publicly assert that Texas enacted SB 4 with a discriminatory purpose that violates the Fourteenth Amendment.

267. SB 4's requirement that local law enforcement cooperate with federal authorities in the enforcement of immigration laws does not have a discriminatory purpose.

268. SB 4's requirement that local law enforcement not prevent peace officers from verifying immigration status of a person does not have a discriminatory purpose.

269. Racial discrimination is not a substantial or motivating factor behind SB 4 and Texas law.

270. The historical background of SB 4 does not indicate discriminatory intent.

271. Texas enacted SB 4 to set a policy of cooperation with federal immigration authorities, not to discriminate against one particular race or group of people.

272. The enactment of SB 4 did not deviate from the normal procedural sequence of passing laws in Texas.

273. SB 4 does not bear more heavily on persons from one race than another.

274. SB 4 does not promote discrimination in the cooperation with ICE detainees and prohibits, rather than promotes, discrimination by Texas law enforcement.

275. SB 4 does not violate the Fourteenth Amendment.

276. Texas has no adequate or available administrative remedy, or, in the alternative, any effort to obtain an administrative remedy would be futile.

277. Texas has no adequate remedy at law.

278. Absent declaratory relief, Texas will continue to be harmed.

**THIRD CAUSE OF ACTION**  
**Fourteenth Amendment Right to Due Process of Law**

279. Texas incorporates by reference as if set forth fully herein paragraphs 1 to 278.

280. The Fourteenth Amendment to the United States Constitution guarantee persons the right to due process of law.

281. Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Fourteenth Amendment.

282. Substantive due process protects individuals from government deprivations of liberty or property.

283. SB 4 does not deny the substantive or procedural due process rights of any person.

284. The requirements of SB 4 are not vague. SB 4 is plain and understandable, providing adequate notice of what conduct is required and prohibited by it.

285. SB 4 does not deprive the right of any person to access to the courts, the safeguards thereof, and any available redress thereby.

286. SB 4 does not deprive any person of life, liberty, or property without due process.

287. SB 4 does not deprive any person of any fundamental liberty.

288. All matters of immigration enforcement are left to federal immigration officials, not Texas law enforcement.

289. SB 4 does not violate the Fourteenth Amendment.

290. Texas has no adequate or available administrative remedy, or, in the alternative, any effort to obtain an administrative remedy would be futile.

291. Texas has no adequate remedy at law.

292. Absent declaratory relief, Texas will continue to be harmed.

**FOURTH CAUSE OF ACTION  
Federal Preemption**

293. Texas incorporates by reference as if set forth fully herein paragraphs 1 to 292\_.

294. The Supremacy Clause of the United States Constitution provides that “[t]his Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.” U.S. Const. art. VI, cl. 2.

295. The Supremacy Clause provides that federal law may expressly or impliedly preempt Texas or local laws.

296. Generally, Texas can assert a preemption argument in a claim for injunctive relief under *Ex Parte Young*, 209 U.S. 123 (1908). See *Armstrong v. Exceptional Child Ctr., Inc.*, 135 S. Ct. 1378, 1383 (2015) (“[I]f an individual claims federal law immunizes him from state regulation, the court may issue an injunction upon finding the state regulatory actions preempted.”).

297. Section 1373 of Title 8 of the United States Code provides that local government entities and officials “may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”

298. In the spirit of cooperative federalism, Texas enacted SB 4 in part to effectuate federal immigration law, as expressed in, but not limited to, 8 U.S.C. § 1373.

299. SB 4 promotes the objectives of 8 U.S.C. § 1373, and the objectives of federal immigration law more generally, by prohibiting government entities or officials from enacting policies that restrict sharing information regarding immigration status and otherwise cooperating with federal immigration authorities, including the Immigration and Naturalization Service, and imposes enforcement mechanisms to achieve those objectives.

300. SB4 is in harmony with the U.S. Constitution, federal immigration law, and all other federal laws, including but not limited to 8 U.S.C. § 1373.

301. SB4 does not expressly conflict with the U.S. Constitution, federal immigration law, or any other federal law, including but not limited to 8 U.S.C. § 1373.

302. SB4 does not impliedly conflict with, or impose an obstacle to, the U.S. Constitution, federal immigration law, or any other federal law, including but not limited to 8 U.S.C. § 1373.

303. Federal regulation of immigration is not so pervasive as to occupy the field and disallow Texas from passing SB 4.

304. SB 4 does not violate the Supremacy Clause.

305. Texas has no adequate or available administrative remedy, or, in the alternative, any effort to obtain an administrative remedy would be futile.

306. Texas has no adequate remedy at law.

307. Absent declaratory relief, Texas will continue to be harmed.

**FIFTH CAUSE OF ACTION**  
**First Amendment**

308. Texas incorporates by reference as if set forth fully herein paragraphs 1 to 307.

309. The First Amendment, among other things, prohibits laws “abridging the freedom of speech.”

310. The First Amendment’s Free Speech Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits content and viewpoint discrimination of persons in public forums.

311. The Free Speech Clause also prohibits compelled speech of private citizens.

312. The First Amendment does not protect speech by the government or government officials acting in their official capacities.

313. Defendants allege that SB 4 violates the Free Speech Clause by inhibiting the free speech of those regulated by SB 4.

314. SB 4 does not chill or infringe on speech protected by the First Amendment.

315. Texas does not interpret SB 4 as regulating any speech that would otherwise be protected against government interference by the First Amendment.

316. SB 4 does not violate the First Amendment.

317. Defendants are actively engaged in contests to the constitutional validity of SB 4 based, in part, upon the allegation that it violates the First Amendment.

318. Texas has no adequate or available administrative remedy, or, in the alternative, any effort to obtain an administrative remedy would be futile.

319. Texas has no adequate remedy at law.

320. Absent declaratory relief, Texas will continue to be harmed.

**SIXTH CAUSE OF ACTION**  
**Separation of Powers Under the Texas Constitution**

321. Texas incorporates by reference as if set forth fully herein paragraphs 1 to 320.

322. Defendants allege that SB 4 violates powers constitutionally reserved to local governments and officials by the Texas Constitution.

323. SB 4 does not conflict with any provision of the Texas Constitution.

324. No provision of the Texas Constitution grants local governments or local officials the discretion to violate or ignore general laws enacted by the legislature.

325. Binding precedent from the Texas Supreme Court establishes that general laws enacted by the Texas legislature supersede any inconsistent conflicting local ordinances.

326. In the case of larger cities, traditionally granted more power than other localities, the Texas Constitution expressly establishes the supremacy of legislatively enacted general laws over local ordinances.

327. Texas has no adequate or available administrative remedy, or, in the alternative, any effort to obtain an administrative remedy would be futile.

328. Texas has no adequate remedy at law.

329. Absent declaratory relief, Texas will continue to be harmed.



**PRAYER FOR RELIEF**

WHEREFORE, Texas respectfully requests that this Court enter judgment against Defendants and provide Texas and Attorney General Paxton with the following relief:

- a. Declare that SB 4 is valid under the First, Fourth, and Fourteenth Amendments to the United States Constitution; SB 4 is not preempted by federal law; and SB 4 does not violate provisions of the Texas Constitution; and
- b. All other further relief to which Texas and Attorney General Paxton may be entitled.

Respectfully submitted this the 31th day of May, 2017.

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*ATTORNEYS FOR TEXAS*

**CERTIFICATE OF SERVICE**

I, Brantley D. Starr, hereby certify that on this the 31th day of May, 2017, a true and correct copy of the foregoing document was transmitted using the CM/ECF system. A copy of this document will be served on each defendant. *glm*

  
\_\_\_\_\_  
Brantley D. Starr

*Via e-mail glm*

# EXHIBIT 1



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1 higher education as defined by Section 61.003, Education Code.

2 (4) "Lawful detention" means the detention of an  
3 individual by a local entity, state criminal justice agency, or  
4 campus police department for the investigation of a criminal  
5 offense. The term excludes a detention if the sole reason for the  
6 detention is that the individual:

7 (A) is a victim of or witness to a criminal  
8 offense; or

9 (B) is reporting a criminal offense.

10 (5) "Local entity" means:

11 (A) the governing body of a municipality, county,  
12 or special district or authority, subject to Section 752.052;

13 (B) an officer or employee of or a division,  
14 department, or other body that is part of a municipality, county, or  
15 special district or authority, including a sheriff, municipal  
16 police department, municipal attorney, or county attorney; and

17 (C) a district attorney or criminal district  
18 attorney.

19 (6) "Policy" includes a formal, written rule, order,  
20 ordinance, or policy and an informal, unwritten policy.

21 Sec. 752.052. APPLICABILITY OF SUBCHAPTER. (a) This  
22 subchapter does not apply to a hospital or hospital district  
23 created under Subtitle C or D, Title 4, Health and Safety Code, a  
24 federally qualified health center as defined in Section 31.017,  
25 Health and Safety Code, a hospital owned or operated by an  
26 institution of higher education, or a hospital district created  
27 under a general or special law authorized by Article IX, Texas

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1 Constitution, to the extent that the hospital or hospital district  
2 is providing access to or delivering medical or health care  
3 services as required under the following applicable federal or  
4 state laws:

5       (1) 42 U.S.C. Section 1395dd;  
6       (2) 42 U.S.C. Section 1396b(v);  
7       (3) Subchapter C, Chapter 61, Health and Safety Code;  
8       (4) Chapter 81, Health and Safety Code; and  
9       (5) Section 311.022, Health and Safety Code.

10       (b) Subsection (a) excludes the application of this  
11 subchapter to a commissioned peace officer:

12               (1) employed by a hospital or hospital district during  
13 the officer's employment; or

14               (2) commissioned by a hospital or hospital district.

15       (c) This subchapter does not apply to a commissioned peace  
16 officer employed or contracted by a religious organization during  
17 the officer's employment with the organization or while the officer  
18 is performing the contract.

19       (d) This subchapter does not apply to a school district or  
20 open-enrollment charter school, including a peace officer employed  
21 or contracted by a district or charter school during the officer's  
22 employment with the district or charter school or while the officer  
23 is performing the contract. This subchapter does not apply to the  
24 release of information contained in educational records of an  
25 educational agency or institution, except in conformity with the  
26 Family Educational Rights and Privacy Act of 1974 (20 U.S.C.  
27 Section 1232g).

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1           (e) This subchapter does not apply to the public health  
2 department of a local entity.

3           (f) This subchapter does not apply to:

4                   (1) a community center as defined by Section 571.003,  
5 Health and Safety Code; or

6                   (2) a local mental health authority as defined by  
7 Section 531.002, Health and Safety Code.

8           Sec. 752.053. POLICIES AND ACTIONS REGARDING IMMIGRATION  
9 ENFORCEMENT. (a) A local entity or campus police department may  
10 not:

11                   (1) adopt, enforce, or endorse a policy under which  
12 the entity or department prohibits or materially limits the  
13 enforcement of immigration laws;

14                   (2) as demonstrated by pattern or practice, prohibit  
15 or materially limit the enforcement of immigration laws; or

16                   (3) for an entity that is a law enforcement agency or  
17 for a department, as demonstrated by pattern or practice,  
18 intentionally violate Article 2.251, Code of Criminal Procedure.

19           (b) In compliance with Subsection (a), a local entity or  
20 campus police department may not prohibit or materially limit a  
21 person who is a commissioned peace officer described by Article  
22 2.12, Code of Criminal Procedure, a corrections officer, a booking  
23 clerk, a magistrate, or a district attorney, criminal district  
24 attorney, or other prosecuting attorney and who is employed by or  
25 otherwise under the direction or control of the entity or  
26 department from doing any of the following:

27                   (1) inquiring into the immigration status of a person



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1 under a lawful detention or under arrest;

2 (2) with respect to information relating to the  
3 immigration status, lawful or unlawful, of any person under a  
4 lawful detention or under arrest, including information regarding  
5 the person's place of birth:

6 (A) sending the information to or requesting or  
7 receiving the information from United States Citizenship and  
8 Immigration Services, United States Immigration and Customs  
9 Enforcement, or another relevant federal agency;

10 (B) maintaining the information; or

11 (C) exchanging the information with another  
12 local entity or campus police department or a federal or state  
13 governmental entity;

14 (3) assisting or cooperating with a federal  
15 immigration officer as reasonable or necessary, including  
16 providing enforcement assistance; or

17 (4) permitting a federal immigration officer to enter  
18 and conduct enforcement activities at a jail to enforce federal  
19 immigration laws.

20 (c) Notwithstanding Subsection (b)(3), a local entity or  
21 campus police department may prohibit persons who are employed by  
22 or otherwise under the direction or control of the entity or  
23 department from assisting or cooperating with a federal immigration  
24 officer if the assistance or cooperation occurs at a place of  
25 worship.

26 Sec. 752.054. DISCRIMINATION PROHIBITED. A local entity,  
27 campus police department, or a person employed by or otherwise

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1 under the direction or control of the entity or department may not  
2 consider race, color, religion, language, or national origin while  
3 enforcing immigration laws except to the extent permitted by the  
4 United States Constitution or Texas Constitution.

5 Sec. 752.055. COMPLAINT; EQUITABLE RELIEF. (a) Any  
6 citizen residing in the jurisdiction of a local entity or any  
7 citizen enrolled at or employed by an institution of higher  
8 education may file a complaint with the attorney general if the  
9 person asserts facts supporting an allegation that the entity or  
10 the institution's campus police department has violated Section  
11 752.053. The citizen must include a sworn statement with the  
12 complaint stating that to the best of the citizen's knowledge, all  
13 of the facts asserted in the complaint are true and correct.

14 (b) If the attorney general determines that a complaint  
15 filed under Subsection (a) against a local entity or campus police  
16 department is valid, the attorney general may file a petition for a  
17 writ of mandamus or apply for other appropriate equitable relief in  
18 a district court in Travis County or in a county in which the  
19 principal office of the entity or department is located to compel  
20 the entity or department that is suspected of violating Section  
21 752.053 to comply with that section.

22 (c) An appeal of a suit brought under Subsection (b) is  
23 governed by the procedures for accelerated appeals in civil cases  
24 under the Texas Rules of Appellate Procedure. The appellate court  
25 shall render its final order or judgment with the least possible  
26 delay.

27 Sec. 752.056. CIVIL PENALTY. (a) A local entity or campus

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1 police department that is found by a court of law as having  
2 intentionally violated Section 752.053 is subject to a civil  
3 penalty in an amount:

4 (1) not less than \$1,000 and not more than \$1,500 for  
5 the first violation; and

6 (2) not less than \$25,000 and not more than \$25,500 for  
7 each subsequent violation.

8 (b) Each day of a continuing violation of Section 752.053  
9 constitutes a separate violation for the civil penalty under this  
10 section.

11 (c) The court that hears an action brought under Section  
12 752.055 against the local entity or campus police department shall  
13 determine the amount of the civil penalty under this section.

14 (d) A civil penalty collected under this section shall be  
15 deposited to the credit of the compensation to victims of crime fund  
16 established under Subchapter B, Chapter 56, Code of Criminal  
17 Procedure.

18 (e) Sovereign immunity of this state and governmental  
19 immunity of a county and municipality to suit is waived and  
20 abolished to the extent of liability created by this section.

21 Sec. 752.0565. REMOVAL FROM OFFICE. (a) For purposes of  
22 Section 66.001, Civil Practice and Remedies Code, a person holding  
23 an elective or appointive office of a political subdivision of this  
24 state does an act that causes the forfeiture of the person's office  
25 if the person violates Section 752.053.

26 (b) The attorney general shall file a petition under Section  
27 66.002, Civil Practice and Remedies Code, against a public officer

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1 to which Subsection (a) applies if presented with evidence,  
2 including evidence of a statement by the public officer,  
3 establishing probable grounds that the public officer engaged in  
4 conduct described by Subsection (a). The court in which the  
5 petition is filed shall give precedence to proceedings relating to  
6 the petition in the same manner as provided for an election contest  
7 under Section 23.101.

8 (c) If the person against whom an information is filed based  
9 on conduct described by Subsection (a) is found guilty as charged,  
10 the court shall enter judgment removing the person from office.

11 Sec. 752.057. COMMUNITY OUTREACH POLICY. (a) Each law  
12 enforcement agency that is subject to the requirements of this  
13 subchapter may adopt a written policy requiring the agency to  
14 perform community outreach activities to educate the public that a  
15 peace officer may not inquire into the immigration status of a  
16 victim of or witness to an alleged criminal offense unless, as  
17 provided by Article 2.13, Code of Criminal Procedure, the officer  
18 determines that the inquiry is necessary to:

19 (1) investigate the offense; or  
20 (2) provide the victim or witness with information  
21 about federal visas designed to protect individuals providing  
22 assistance to law enforcement.

23 (b) A policy adopted under this section must include  
24 outreach to victims of:

25 (1) family violence, as that term is defined by  
26 Section 71.004, Family Code, including those receiving services at  
27 family violence centers under Chapter 51, Human Resources Code; and

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1           (2) sexual assault, including those receiving  
2 services under a sexual assault program, as those terms are defined  
3 by Section 420.003.

4           SECTION 1.02. Subchapter A, Chapter 772, Government Code,  
5 is amended by adding Section 772.0073 to read as follows:

6           Sec. 772.0073. ENFORCEMENT OF IMMIGRATION LAW GRANT  
7 PROGRAM. (a) In this section:

8           (1) "Criminal justice division" means the criminal  
9 justice division established under Section 772.006.

10           (2) "Immigration detainer request" means a federal  
11 government request to a local entity to maintain temporary custody  
12 of an alien, including a United States Department of Homeland  
13 Security Form I-247 document or a similar or successor form.

14           (3) "Immigration laws" means the laws of this state or  
15 federal law relating to aliens, immigrants, or immigration,  
16 including the federal Immigration and Nationality Act (8 U.S.C.  
17 Section 1101 et seq.).

18           (4) "Local entity" means a municipality or county.

19           (b) The criminal justice division shall establish and  
20 administer a competitive grant program to provide financial  
21 assistance to local entities to offset costs related to:

22           (1) enforcing immigration laws; or

23           (2) complying with, honoring, or fulfilling  
24 immigration detainer requests.

25           (c) The criminal justice division shall establish:

26           (1) eligibility criteria for grant applicants;

27           (2) grant application procedures;

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1           (3) criteria for evaluating grant applications and  
2 awarding grants;

3           (4) guidelines related to grant amounts; and

4           (5) procedures for monitoring the use of a grant  
5 awarded under this section and ensuring compliance with any  
6 conditions of the grant.

7           (d) The criminal justice division may use any revenue  
8 available for purposes of this section.

9           ARTICLE 2. DUTIES OF LAW ENFORCEMENT AGENCIES AND JUDGES

10           SECTION 2.01. Chapter 2, Code of Criminal Procedure, is  
11 amended by adding Article 2.251 to read as follows:

12           Art. 2.251. DUTIES RELATED TO IMMIGRATION DETAINER  
13 REQUESTS. (a) A law enforcement agency that has custody of a  
14 person subject to an immigration detainer request issued by United  
15 States Immigration and Customs Enforcement shall:

16           (1) comply with, honor, and fulfill any request made  
17 in the detainer request provided by the federal government; and

18           (2) inform the person that the person is being held  
19 pursuant to an immigration detainer request issued by United States  
20 Immigration and Customs Enforcement.

21           (b) A law enforcement agency is not required to perform a  
22 duty imposed by Subsection (a) with respect to a person who has  
23 provided proof that the person is a citizen of the United States or  
24 that the person has lawful immigration status in the United States,  
25 such as a Texas driver's license or similar government-issued  
26 identification.

27           SECTION 2.02. Chapter 42, Code of Criminal Procedure, is

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1 amended by adding Article 42.039 to read as follows:

2 Art. 42.039. COMPLETION OF SENTENCE IN FEDERAL CUSTODY.

3 (a) This article applies only to a criminal case in which:

4 (1) the judgment requires the defendant to be confined  
5 in a secure correctional facility; and

6 (2) the defendant is subject to an immigration  
7 detainer request.

8 (b) In a criminal case described by Subsection (a), the  
9 judge shall, at the time of pronouncement of a sentence of  
10 confinement, issue an order requiring the secure correctional  
11 facility in which the defendant is to be confined and all  
12 appropriate government officers, including a sheriff, a warden, or  
13 members of the Board of Pardons and Paroles, as appropriate, to  
14 require the defendant to serve in federal custody the final portion  
15 of the defendant's sentence, not to exceed a period of seven days,  
16 following the facility's or officer's determination that the change  
17 in the place of confinement will facilitate the seamless transfer  
18 of the defendant into federal custody. In the absence of an order  
19 issued under this subsection, a facility or officer acting under  
20 exigent circumstances may perform the transfer after making the  
21 determination described by this subsection. This subsection  
22 applies only if appropriate officers of the federal government  
23 consent to the transfer of the defendant into federal custody under  
24 the circumstances described by this subsection.

25 (c) If the applicable information described by Subsection  
26 (a)(2) is not available at the time sentence is pronounced in the  
27 case, the judge shall issue the order described by Subsection (b) as

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1 soon as the information becomes available. The judge retains  
2 jurisdiction for the purpose of issuing an order under this  
3 article.

4 (d) For purposes of this article, "secure correctional  
5 facility" has the meaning assigned by Section 1.07, Penal Code.

6 ARTICLE 3. DEFENSE OF LOCAL ENTITIES BY ATTORNEY GENERAL

7 SECTION 3.01. Subchapter B, Chapter 402, Government Code,  
8 is amended by adding Section 402.0241 to read as follows:

9 Sec. 402.0241. DEFENSE OF LOCAL ENTITIES IN SUITS RELATED  
10 TO IMMIGRATION DETAINER REQUESTS. (a) In this section, "local  
11 entity" has the meaning assigned by Section 752.051.

12 (b) The attorney general shall defend a local entity in any  
13 action in any court if:

14 (1) the executive head or governing body, as  
15 applicable, of the local entity requests the attorney general's  
16 assistance in the defense; and

17 (2) the attorney general determines that the cause of  
18 action arises out of a claim involving the local entity's  
19 good-faith compliance with an immigration detainer request  
20 required by Article 2.251, Code of Criminal Procedure.

21 (c) If the attorney general defends a local entity under  
22 Subsection (b), the state is liable for the expenses, costs,  
23 judgment, or settlement of the claims arising out of the  
24 representation. The attorney general may settle or compromise any  
25 and all claims described by Subsection (b)(2). The state may not be  
26 liable for any expenses, costs, judgments, or settlements of any  
27 claims against a local entity not being represented by the attorney



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1 general under Subsection (b).

2 ARTICLE 4. SURETY BOND

3 SECTION 4.01. Article 17.16, Code of Criminal Procedure, is  
4 amended by amending Subsection (a) and adding Subsection (a-1) to  
5 read as follows:

6 (a) A surety may before forfeiture relieve the surety of the  
7 surety's undertaking by:

8 (1) surrendering the accused into the custody of the  
9 sheriff of the county where the prosecution is pending; or

10 (2) delivering to the sheriff of the county in which  
11 the prosecution is pending and to the office of the prosecuting  
12 attorney an affidavit stating that the accused is incarcerated in:

13 (A) federal custody, subject to Subsection  
14 (a-1);

15 (B) ~~(in)~~ the custody of any state; ~~(r)~~ or

16 (C) ~~(in)~~ any county of this state.

17 (a-1) For purposes of Subsection (a)(2), the surety may not  
18 be relieved of the surety's undertaking if the accused is in federal  
19 custody to determine whether the accused is lawfully present in the  
20 United States.

21 ARTICLE 5. PROHIBITED CONDUCT BY SHERIFF OR CONSTABLE

22 SECTION 5.01. Section 87.031, Local Government Code, is  
23 amended by adding Subsection (c) to read as follows:

24 (c) For purposes of Subsection (a), "a misdemeanor  
25 involving official misconduct" includes a misdemeanor under  
26 Section 39.07, Penal Code.

27 SECTION 5.02. Chapter 39, Penal Code, is amended by adding

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1 Section 39.07 to read as follows:

2 Sec. 39.07. FAILURE TO COMPLY WITH IMMIGRATION DETAINER  
3 REQUEST. (a) A person who is a sheriff, chief of police, or  
4 constable or a person who otherwise has primary authority for  
5 administering a jail commits an offense if the person:

6 (1) has custody of a person subject to an immigration  
7 detainer request issued by United States Immigration and Customs  
8 Enforcement; and

9 (2) knowingly fails to comply with the detainer  
10 request.

11 (b) An offense under this section is a Class A misdemeanor.

12 (c) It is an exception to the application of this section  
13 that the person who was subject to an immigration detainer request  
14 described by Subsection (a)(1) had provided proof that the person  
15 is a citizen of the United States or that the person has lawful  
16 immigration status in the United States, such as a Texas driver's  
17 license or similar government-issued identification.

18 ARTICLE 6. INQUIRY BY PEACE OFFICER REGARDING IMMIGRATION OR  
19 NATIONALITY OF CRIME VICTIM OR WITNESS

20 SECTION 6.01. Article 2.13, Code of Criminal Procedure, is  
21 amended by adding Subsections (d) and (e) to read as follows:

22 (d) Subject to Subsection (e), in the course of  
23 investigating an alleged criminal offense, a peace officer may  
24 inquire as to the nationality or immigration status of a victim of  
25 or witness to the offense only if the officer determines that the  
26 inquiry is necessary to:

27 (1) investigate the offense; or

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1           (2) provide the victim or witness with information  
2 about federal visas designed to protect individuals providing  
3 assistance to law enforcement.

4           (e) Subsection (d) does not prevent a peace officer from:

5                 (1) conducting a separate investigation of any other  
6 alleged criminal offense; or

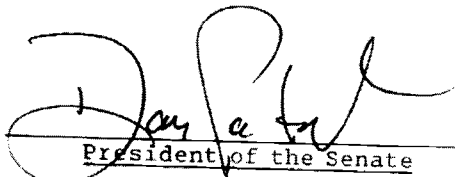
7                 (2) inquiring as to the nationality or immigration  
8 status of a victim of or witness to a criminal offense if the  
9 officer has probable cause to believe that the victim or witness has  
10 engaged in specific conduct constituting a separate criminal  
11 offense.

12                   ARTICLE 7. SEVERABILITY AND EFFECTIVE DATE

13           SECTION 7.01. It is the intent of the legislature that every  
14 provision, section, subsection, sentence, clause, phrase, or word  
15 in this Act, and every application of the provisions in this Act to  
16 each person or entity, are severable from each other. If any  
17 application of any provision in this Act to any person, group of  
18 persons, or circumstances is found by a court to be invalid for any  
19 reason, the remaining applications of that provision to all other  
20 persons and circumstances shall be severed and may not be affected.

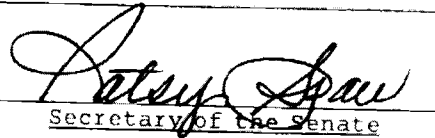
21           SECTION 7.02. This Act takes effect immediately if it  
22 receives a vote of two-thirds of all the members elected to each  
23 house, as provided by Section 39, Article III, Texas Constitution.  
24 If this Act does not receive the vote necessary for immediate  
25 effect, this Act takes effect September 1, 2017.

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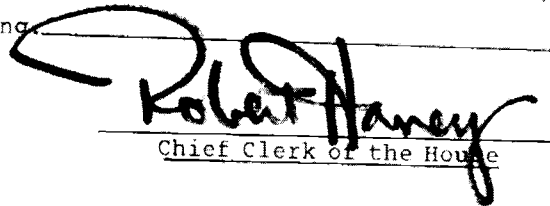
  
President of the Senate

  
Speaker of the House

I hereby certify that S.B. No. 4 passed the Senate on February 8, 2017, by the following vote: Yeas 20, Nays 10; and that the Senate concurred in House amendments on May 3, 2017, by the following vote: Yeas 20, Nays 11.

  
Secretary of the Senate

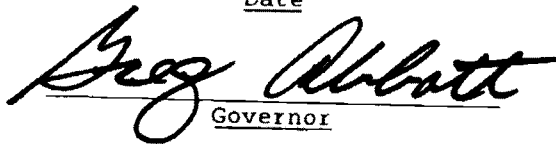
I hereby certify that S.B. No. 4 passed the House, with amendments, on April 27, 2017, by the following vote: Yeas 94, Nays 53, one present not voting.

  
Chief Clerk of the House

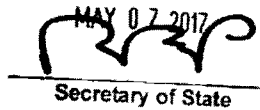
Approved:

5-7-2017

Date

  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
6:40pm O'CLOCK

MAY 07 2017  
  
Secretary of State