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

CITY OF EL CENIZO, TEXAS; MAYOR RAUL L. REYES, City of El Cenizo; MAVERICK COUNTY; MAVERICK COUNTY SHERIFF TOM SCHMERBER; MAVERICK COUNTY CONSTABLE PRECINCT 3-1 MARIO A. HERNANDEZ; and LEAGUE OF UNITED LATIN AMERICAN CITIZENS,

Plaintiffs

v.

STATE OF TEXAS; GOVERNOR GREG ABBOTT, in his official capacity; and TEXAS ATTORNEY GENERAL KEN PAXTON, in his official capacity

Defendants

Civil Action No. 5:17-CV-404-OG
[Lead Case]

EL PASO COUNTY; RICHARD WILES, SHERIFF OF EL PASO COUNTY, in his official capacity; and the TEXAS ORGANIZING PROJECT EDUCATION FUND

Plaintiffs

v.

STATE OF TEXAS; GOVERNOR GREG ABBOTT; ATTORNEY GENERAL KEN PAXTON; and DIRECTOR STEVE MCCRAW, TEXAS DEPARTMENT OF PUBLIC SAFETY – in their official capacities

Defendants

Civil Action No. 5:17-CV-459-OG
[Consolidated Case]

CITY OF SAN ANTONIO, TEXAS; REY A. SALDANA, in his official capacity as San Antonio City Councilmember; TEXAS ASSOCIATION OF CHICANOS IN HIGHER EDUCATION; LA UNION DEL PUEBLO ENTERO; and WORKERS DEFENSE PROJECT *Plaintiffs* v. STATE OF TEXAS; GREG ABBOTT, in his official capacity as Governor of the State of Texas; KEN PAXTON, in his official capacity as Attorney General of Texas *Defendants*	)	Civil Action No. 5:17-CV-489-OG [Consolidated Case]

MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR PRELIMINARY INJUNCTION BY CITY OF SAN ANTONIO, TEXAS, REY A. SALDANA, TEXAS ASSOCIATION OF CHICANOS IN HIGHER EDUCATION, LA UNION DEL PUEBLO ENTERO, AND WORKERS DEFENSE PROJECT

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INTRODUCTION

Plaintiffs City of San Antonio, Texas, Rey A. Saldaña, Texas Association of Chicanos in Higher Education, La Union del Pueblo Entero, and Workers Defense Project ("San Antonio Plaintiffs" or "Plaintiffs") respectfully move for a preliminary injunction enjoining Defendants ("the State") from enforcing Texas Senate Bill 4 ("SB 4"). SB 4 violates the First, Fourth, and Fourteenth Amendments of the U.S. Constitution, the Supremacy Clause and the Contracts Clause of the U.S. Constitution, and Section 2 of the Voting Rights Act of 1965.

Plaintiffs are likely to prevail on the merits as to all of their constitutional and statutory claims:

- First Amendment Claim: SB 4 outlaws speech in favor of policies that might prohibit or materially limit the enforcement of immigration laws. This kind of viewpoint-based prohibition renders SB 4 facially unconstitutional. Moreover, even if the Court assumes *arguendo* that SB 4 has some constitutional applications, it is so vastly overbroad that it must be struck down. The law would govern the speech of community college professors and many other government employees far removed from the enforcement of law. SB 4's vast reach strikes at the core First Amendment protections that are cherished in a free society.

- Fourth Amendment Claim: SB 4 compels compliance with all immigration detainer requests and prohibits local jurisdictions from exercising discretion as to when to comply with such requests. Because deportation and removal proceedings are civil in nature, SB 4 thus requires local officials to detain those suspected of civil immigration violations without probable cause. This constitutional problem is compounded by SB 4's broad definition of

"immigration detainer request" and its imposition of criminal penalties against local officials who refuse to comply with the law's requirements. SB 4 impermissibly requires local officials to decide between detaining persons in violation of the Fourth Amendment—perhaps based on nothing more than a telephone call from immigration authorities—and being charged with criminal conduct.

- Supremacy Clause Claim (Preemption): Congress has indicated its intent to "occupy the field" of the enforcement of federal immigration laws, and has specifically crafted a carefully delineated scheme for the working relationship between federal and local law enforcement. SB 4 purports to override this scheme by prohibiting local law enforcement agencies from exercising the discretion vested in them by federal law and by making individual local law enforcement agents responsible for enforcing federal law beyond the contours, and without the training or supervision, envisioned by the federal scheme. As a result, SB 4 is barred under the doctrines of field and/or conflict preemption.

- Equal Protection Claim under the Fourteenth Amendment: SB 4 was enacted with discriminatory intent in an effort to target Latinos and non-citizens. This alone is reason to strike down the law. Moreover, if implemented, SB 4 will disparately impact non-citizens by effectively stripping them of constitutional protections under the Fourth Amendment and requiring local officials to hold them without probable cause. SB 4 also encourages law enforcement officials to target citizens and non-citizens on the basis of their race and prohibits local entities from taking measures to avoid unconstitutional racial targeting.

- Voting Rights Act of 1965, Section 2 Claim: SB 4 prohibits Texas officials representing Latino-majority districts from advocating for common-sense immigration enforcement policies. If these officials do advocate such policies, SB 4 punishes them with

removal from office. Thus, SB 4 effectively dilutes the voting strength of Latino voters by removing their chosen representatives from office for speaking on issues they were elected to address.

- Due Process Claim under the Fourteenth Amendment: SB 4 violates Plaintiffs' right to due process in three ways. First, it requires local officials to detain non-citizens, including some of Plaintiffs' members, without first requiring those officials to make a probable cause determination. Second, by depriving local officials of any discretion in deciding whether to detain non-citizens suspected of immigration violations, it prohibits local officials from convening a hearing to determine if detainer is appropriate and ensures that there will not be a hearing "at a meaningful time and in a meaningful manner." Third, SB 4 violates Plaintiffs' right to due process because it is so vague that Plaintiffs and Plaintiffs' members cannot reasonably determine what it prohibits. More specifically, the law purports to prohibit local entities from adopting, enforcing, or endorsing policies that would affect the immigration laws of "this state or federal law." But SB 4 fails to define what it means by "endorse, enforce, or adopt" such policies, or what state immigration law it refers to.

- Contracts Clause Claim: Finally, SB 4 impairs the contracts between institutions of higher learning and their students and professors. By requiring these institutions' police departments to detain non-citizen students without probable cause, and imposing draconian fines on those who utter forbidden views, SB 4 ensures that students will not feel safe to attend, and professors will not feel safe to teach. Unless the State is enjoined from enforcing SB 4, it is a certainty that non-citizen students—and even citizen students who fear unconstitutional targeting—will not attend, and that professors will not speak freely.

Not only are Plaintiffs likely to prevail on the merits of all of these claims, but they will suffer irreparable injury if the State is not enjoined from enforcing SB 4. It is well-established that both a constitutional violation, and the enforcement of a preempted law, are irreparable injuries sufficient to support a preliminary injunction. Both SB 4 on its face, and the declarations attached to this memorandum, evidence the likelihood of irreparable injury.

Plaintiffs' injuries outweigh any purported injury the State might put forward. Plaintiffs' simply ask the Court to maintain the status quo pending resolution of Plaintiffs' claims. And the State cannot claim any injury because it has no right to enforce an unconstitutional law.

Finally, granting Plaintiffs' request for a preliminary injunction would serve the public interest. Enjoining the violation of constitutional rights is always in the public interest, as is enjoining the enforcement of a state law that is preempted under the Supremacy Clause.

FACTUAL BACKGROUND

I. Framework for the Interaction of Federal and Local Law Enforcement Under Federal Immigration Law

The U.S. Constitution gives the federal government supreme power to "establish a uniform rule of naturalization."[1] "Federal law makes a single sovereign responsible for maintaining a comprehensive and unified system to keep track of aliens within the Nation's borders,"[2] and Congress has intended to occupy some,[3] if not all of the field of immigration law and enforcement.[4]

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[1] U.S. Const. art. I, § 8, cl. 4.

[2] *Arizona v. United States*, 567 U.S. 387, 401-02 (2012).

[3] *See id.* at 401-03 (holding that the federal government occupies the entire field of non-citizen registration).

[4] *See* Gabriel J. Chin & Marc L. Miller, *The Unconstitutionality of State Regulation of Immigration Through Criminal Law*, 61 Duke L.J. 251, 265 (2011) ("The long history of federal authority over naturalization and immigration, along with the history of federal authority over

The Immigration and Naturalization Act ("INA") includes a comprehensive scheme for immigration enforcement that reflects Congress's considered judgement about the role of local authorities in achieving its aims. For example, Section 1357 of the INA addresses the interrogation, search and arrest of non-citizens or those believed to be non-citizens. 8 U.S.C. § 1357. Although it focuses on the power of federal officials, it also addresses interaction between federal immigration officers and officers of states or their political subdivisions. In particular, Section 1357(g) outlines a program whereby qualified officers of states or their political subdivisions may carry out the functions of "investigation, apprehension or detention" of non-citizens after receiving specialized training. 8 USC § 1357(g)(1)-(10). That may occur, however, only under certain conditions, including a written agreement between a State or its political subdivisions, training and certification for the state or local officers and employees, and direction and supervision by the Attorney General. *Id.* Even under Section 1357(g), state officers may only carry out enforcement functions to the extent consistent with "local law." *Id.*

Numerous other provisions show Congress's careful attention to regulating local participation in immigration enforcement.[5] In general, Congress has chosen not to compel local law enforcement to assist or participate with federal immigration authorities in the enforcement of federal immigration law.

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foreign affairs provides a strong basis for a finding of field or conflict preemption with regard to the regulation of immigration." (footnote omitted)).

[5] *See, e.g.*, 8 U.S.C. § 1357(d) (providing for direct interaction with a "local law enforcement official"); *id.* (enforcement of detainers by local officials is voluntary); *id.* § 1101(1)(15)(T)(U) (visas for otherwise-deportable victims and witnesses after local certification); *id.* § 1103(a)(10) § 1226(d)(1)(B) (requiring a federal "liaison" to "local law enforcement"); *id.* § 1522(c)(1)(C) (providing for "consultation with local governments").

One exception is Section 1373, which provides that local government entities "may not prohibit" officials from sending, receiving, maintaining or exchanging information about any person's immigration status. 8 U.S.C. § 1373. But that simply involves the exchange of information, as opposed to having state or local officials affirmatively and independently investigate immigration status or having them detain people on behalf of federal immigration authorities. In particular, while ICE may issue "Detainer Requests," the decision to comply is left to the local jurisdiction; nothing in the statutory scheme or implementing regulations compels States or law authorities to follow those requests.[6]

That Congress would be so careful in enlisting local law enforcement and leave local entities such discretion is unsurprising. Immigration law is complex, and scholars have observed that coopting local officials into immigration enforcement activities gives rise to significant risks of racial profiling, discrimination, and constitutional rights violations, and it has raised significant objections from law enforcement officials themselves.[7]

II. Plaintiffs Have Operated Under the Federal Framework to Balance the Interests of Immigration Enforcement with the Interests of Preserving Safety and Trust Within Their Communities, and SB 4 Destroys that Balance

A. The City of San Antonio

Plaintiff San Antonio is the seat of government for the public officials who are

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[6] Immigration Detainer – Notice of Action Form, ICE.gov, https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf.

[7] *See, e.g.*, Michael J. Wishnie, *State and Local Police Enforcement of Immigration Laws*, 6 U. Pa. J. Const. L. 1084, 1104-05 (2004) (examining data regarding enlistment of state and local officials in enforcement of immigration law after 9/11 and concluding that "[t]he evidence that even federal immigration officials, trained in the arcania of immigration law and (presumably) the risks of improper reliance on profiling, frequently resorted to stereotypes and discrimination, confirms that the move to enlist or conscript state and local police in ordinary immigration enforcement is fraught with risk").

responsible for representing all people within their district, citizens and noncitizens alike.[8] San Antonio sets policies and regulations for the city, and administers health and social service programs for its residents, including those residents that are immigrants. San Antonio is also responsible for law enforcement within its jurisdiction.

1. San Antonio Police Department's Community Trust Policy

The mission of the San Antonio Police Department ("SAPD") is to create a safe environment and reduce crime. *See* generally Ex. 3 (McManus Decl.). San Antonio does not consider itself a "sanctuary city." The SAPD and Police Chief William McManus have a longstanding practice of cooperating with federal law enforcement, including in the execution of federal warrants, honoring appropriate immigration detainers requests, and allowing ICE officials into the city jail where detained individuals are processed. *Id.*; *see also* Ex. 4 (Detention Center Decl.).

Consistent with federal law, the scope of cooperation with ICE is something that occurs at the Chief's discretion, in light of local law enforcement policy, objectives, and resource constraints. Id. SAPD does not have the funding or resources to undertake enforcement of immigration laws. Id. SAPD officers are neither trained nor adequately qualified to enforce the very complex federal immigration laws. *Id.*

Moreover, building trust with the whole San Antonio community is integral to SAPD's capacity to investigate and prevent crime. When local residents are afraid of being reported, detained, or deported by local law enforcement, they are less likely to report crimes against them and are afraid to cooperate with police in criminal investigations. *Id.* Criminal activity resulting

[8] *Cf. Evenwel v. Abbott*, 136 S. Ct. 1120, 1127-29, 1132-33 (2016) (confirming constitutional and democratic principle of "representational equality" – that "representatives serve all residents, not just those eligible or registered to vote").

from fear of police in immigrant communities affects the entire community, rendering police in San Antonio less effective and causing harm to the safety of its residents. *Id.*

In light of these various concerns, San Antonio has, for example, a policy (Procedure 618 – Racial/Bias Profiling/Immigration Policy) that instructs SAPD officers neither to question the immigration status of those arrested nor detain individuals solely on the basis of their immigration status. *Id.* & Ex 3-A. It also prohibits officers from making decisions regarding immigration status and deportability. *Id.* These restrictions are consistent with Procedure 618's other provisions prohibiting racial/bias profiling in any aspect of law enforcement-initiated action. *Id.* [9] SAPD views Procedure 618 as critical to preventing discrimination and avoiding legal liability while best protecting public safety and building public trust.

Under SB 4, the SAPD cannot "adopt, enforce, or endorse a policy under which the entity or department prohibits or materially limits the enforcement of immigration laws." §752.053 (a). SB 4 also provides that SAPD cannot maintain a policy that would "prohibit or materially limit" individual officers from "inquiring into [] immigration status," "assisting or cooperating with a federal immigration officer," or "providing enforcement assistance" to a federal officer. §752.053 (b). SB 4 threatens to undermine public safety and take away the ability of San Antonio to implement policies that best protect public safety and protect the City and SAPD officers from legal liability. *See* generally Ex. 3 (McManus Decl.).

2. San Antonio's Magistrate and Detention Center

The City of San Antonio, in conjunction with Bexar County, Texas, operates the Magistrate and Detention Center ("Detention Center"), which is where persons arrested by

[9] Under Procedure 618, SAPD Police Officers are directed not to use race, national origin, citizenship, religion, ethnicity, age, gender, sexual orientation, or physical or mental disability for a law enforcement-initiated action, except to determine whether a person matches a specific description of a particular suspect. Id. at Ex. 3-A.

SAPD are taken in order to appear before a Magistrate. *Id.* Once persons are taken before the magistrate, they are given the opportunity to bond out from the Detention Center within a reasonable amount of time without being transferred to the Bexar County Adult Detention Center. *Id.*

Federal immigration officers are permitted to enter the Detention Center and to review the roster of persons being detained there. *Id.* Immigration officials may also issue detainer requests to the Detention Center. *Id.* However, the Detention Center currently retains the discretion about whether to comply with an ICE detainer due to potential Fourth Amendment liability, such as after bond posted, charges are dropped or when a *habeas* petition has been filed.

SB 4 makes the failure of a jail official to honor any detainer request a Class A misdemeanor, even when doing so would, in the view of the Detention Center officials, violate the Fourth Amendment. Tex. Penal Code §39.07. A misdemeanor exposes employees of the Detention Center to arrest, a jail term of up to one year and a fine of up to $4,000. Texas Penal Code § 12.21. Furthermore, SB 4 exposes the City, its Detention Center and employees to penalties under Section 752.056, and officials could face removal from elected or appointed office. Tex. Gov't Code §§752.0565.

SB 4 except compliance with ICE detainer requests only upon receiving "proof that the person is a citizen of the United States or that the person has lawful immigration status in the United States." *See* SB 4 at Article 2, Section 2.01. This is inconsistent with the duties of employees of the Detention Center and it forces these employees to make immigration status determinations that they are neither qualified nor authorized by federal law to make.

B. **City Councilmember Rey Saldaña**

Rey Saldaña is a San Antonio City Councilmember for District 4. Councilmember

Saldaña was elected by the citizens of District 4 to advocate on their behalf. He also views his role as representing noncitizens, many of whom are family members of citizens. As discussed, Section 752.053(a)(1) makes it unlawful to "endorse a policy" that "prohibits or materially limits the enforcement of immigration laws," and Section 752.0565 allows for the removal of elected officials for violating Section 752.053. Councilmember Saldaña fears that this undefined and vague provision could encompass his political speech, including speaking publicly against SB 4 itself and current federal immigration enforcement policies, and endorsing city ordinances and internal policies that would limit SB 4.

C. **TACHE**

TACHE is a professional organization committed to the improvement of educational and employment opportunities for Chicanos in higher education. TACHE promotes educational advocacy and networking for the purpose of securing changes in laws and policies detrimental to its constituencies. *Id.* TACHE's members include administrators, counselors, professors, staff, and students at four-year and community college campuses, as well as over thirty institutional members, including community colleges and universities throughout Texas. *Id.* at ¶ 5. When an enforcement policy is detrimental to college faculty, staff, or students or threatens to increase inequities in higher education, TACHE's members speak out. *Id.* at ¶ 8.

TACHE and its members support policies that create safe spaces on Texas college campuses from racial profiling, immigration questioning, and detention by campus police. Ex. 6 (Harmon Decl.) ¶ 14. For example, Alamo Colleges District ("ACD"), a founding member of TACHE, adopted a Resolution of Support for the Educational Success of Alamo Colleges District Undocumented Student DREAMers. *Id.* at ¶ 18 & Ex. 6-B. The Resolution recognizes the value of DREAMers to their educational institutions and to the State of Texas and states that

the "Alamo Colleges District shall oppose any state or federal legislation that would be detrimental to the educational success of undocumented student DREAMers." *Id.* at ¶ 18.

TACHE and its members appreciate the importance of these policies, which promote campus safety and build trust with the students. Tens of thousands of undocumented students attend community colleges in Texas under a provision of state law that allows them to pay in-state tuition. Ex. 6 (Harmon Decl.) ¶ 21. Creating a safe space free from racial profiling and fear of immigration questioning is necessary to recruit qualified students. *Id.* ¶ 22. Absent such trust, the problem of unreported sexual assaults would likely increase because victims will fear being questioned about their immigration status if they report crimes to campus police, and perpetrators may threaten to report undocumented victims to campus police to prevent them from seeking help in situations of crime, bullying, and abuse. *Id.* at ¶ 26-¶ 27. Students may also fear that campus police may become involved. *Id.* at ¶ 28.

SB 4 applies to the state's 50 community college districts as well as the campus police departments of Texas's "private or independent institution[s] of higher education," and "any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education." *Id.* at ¶ 6, attach. A. *See* SB 4 at 1 and Texas Edu. Code §§ 61.003 and 130.001 *et seq.*[10] SB 4's "local entity" definition is broad enough to sweep the governing body, officers and employees of community college districts into its restrictions on speech and policy-making, including policies guiding and supervising campus police officers. Ex. 11 (Alderete Decl.) ¶¶ 7-8. Officials elected to represent TACHE member institutions could be forcibly removed from office for endorsing guidance. *Id.*

[10] (Ex. 6 (Harmon Decl.); *see also* Ex. 6-A, Map of Texas Community College Taxing Districts).

SB 4 would prohibit colleges from adopting policies they believe are necessary to keep their campuses safe and maintain a proper educational environment for their students. Ex. 11 (Alderete Decl.) ¶ 8. TACHE members believe that the prohibition on "endorsing" any policy that limits the enforcement of immigration law will chill, or be used to suppress, the academic freedom and political speech of its members. *Id.* ¶ 10-11. TACHE members also fears that SB 4 will deter Texas institutions of higher education from hiring qualified teachers who would be critical of federal or state immigration enforcement, or will deter qualified teachers from joining State institutions. *Id.* ¶ 12-14.

D. **LUPE and WDP**

LUPE is a community union that provides social services and English classes and helps communities organize to advocate for better living conditions. WDP is a membership-based organization that works to enable low-income workers to achieve fair employment through education, direct services, and strategic partnerships. Most of LUPE's and WDP's members are Latino and many are immigrants who are not authorized to be present in the United States. Ex. 8 (Garza Decl.) ¶ 3; Ex. 7 (Valdez-Cox Decl.) ¶ 5.

LUPE has worked to build trust between its members and law enforcement officials and to strategize on ways to lower crime. For the past ten years, LUPE has devoted resources to establishing a community of trust between LUPE members and the police. Ex. 7 (Valdez-Cox Decl.) ¶ 6. The passage of SB 4 has eroded that trust and LUPE members now fear that local police are working as immigration officers. *Id.* at ¶ 7. Many LUPE members have indicated that if they are victims of crime, they will no longer report those crimes to the police because of fear of immigration consequences. *Id.* WDP members are likewise less willing to report crimes or ask law enforcement for assistance, because they fear police officers will inquire about their

immigration status. Ex. 8 (Garza Decl.) ¶ 13. They also fear that local law enforcement will question and detain them because they look Latino. *Id.* at ¶ 12.

SB 4 has also caused LUPE and WDP members to fear going out in public to conduct their daily activities, such as taking their children to school, grocery shopping, and visiting their friends, because of fear of being detained and questioned about their immigration status. Ex. 7 (Valdez-Cox Decl.) ¶ 9; Ex. 8 (Garza Decl.) at ¶ 6. Many LUPE and WDP members have also stopped seeking health care and other social services due to fear of interactions with law enforcement. Ex. 7 (Valdez-Cox Decl.) ¶ 9; Ex. 8 (Garza Decl.) at ¶ 6. Instead, they limit their activities to what they feel are safe spaces, such as work and church. *Id.* at ¶ 7. SB 4 has also negatively affected the children of WDP and LUPE members causing them fear, anxiety and loss of sleep because they are afraid that their families will be torn apart as a result of the law. Ex. 7 (Valdez-Cox Decl.) at 10; Ex. 8 (Garza Decl.) ¶ 8.

As a result of the fear caused by SB 4, LUPE has seen a decrease in participation by its members. Ex. 7 (Valdez-Cox Decl.) ¶ 11. Many members have said that they will not participate in marches or protests due to fear of repercussions for their advocacy. *Id.* The loss of membership participation additionally affects LUPE in its ability to receive grants that are based on membership participation and to provide crucial services to its vulnerable members. *Id.* at ¶ 12.

III. SB 4's Legislative History Reveals How the State Disregarded the Federal/State Balance out of Fear and Animus[11]

The proponents of SB 4 would have people believe that they acted in response to "sanctuary jurisdications" openly flouting federal law and allowing dangerous criminals on the street. That is a fiction. An estimated 1.65 million undocumented immigrants live in Texas,

[11] *See generally* Ex. 13 (Romero Decl.) & Ex. 13 (Moody Decl.).

comprising about six percent of the state's total population.[12] These immigrants are no more, and often less, likely to commit crimes than the U.S.-born population. Study after study has also shown that immigrants, including undocumented immigrants, provide a net benefit to the Texas economy.[13] *See generally*, Ex. 17 (Nixon Decl.), Ex. 14 (Johnson Decl.) and Ex. 15 (Barrios Decl.). In any event, as explained above, local entities have been doing exactly what they are supposed to be doing under the federal scheme, which recognizes and respects their goals of maintaining safety and the interests of their communities. Not only is the purported purpose of SB 4 a fiction, it is one built on scapegoating and animus.

Texas lawmakers have consistently characterized undocumented immigrants as "dangerous criminals," both before and during the debate on SB 4. In 2006, future Lieutenant Governor Dan Patrick, demonized undocumented immigrants, telling his supporters: "The number one problem we are facing is the silent invasion of the border. We are being overrun. It is imperiling our safety."[14] In 2015, in response to a decision by Dallas County Sheriff Lupe Valdez to honor ICE detainers on a case-by-case basis, as authorized by federal law, Governor Abbott wrote: "Your refusal to fully participate in a federal law enforcement program intended to keep dangerous criminals off the streets leaves the State no choice but to take whatever actions

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[12] (Compl. ¶ 83); *see also* Pew Research Center, U.S. Unauthorized Immigration Population Estimates, Nov. 3, 2016, https://goo.gl/HaNFh0.

[13] (Compl. ¶ 84); *see also* CAROLE KEETON STRAYHORN, OFFICE OF THE COMPTROLLER, UNDOCUMENTED IMMIGRANTS IN TEXAS: A FINANCIAL ANALYSIS OF THE IMPACT TO THE STATE BUDGET AND ECONOMY (2006), http://www.lrl.state.tx.us/scanned/SIRSI/C2600.8_UN2U_2006.pdf (last visited May 31, 2017); (Compl. ¶ 85); The Perryman Group, The Economic Benefits of the Texas Undocumented Workforce, https://www.perrymangroup.com/wp-content/uploads/Perryman-Undocumented-Workforce-

[14] Ex. 1-B (Salmon Decl.); Paul Sweeney, *Can Houston's King of Right-wing Talk Radio Bust into the Texas Senate?*, Tex. Observer, Feb. 24, 2006.

are necessary to protect our fellow Texans."[15] In January 2017, Travis County Sheriff Sally Hernandez announced that she would honor ICE detainers only when a suspect was booked on charges for the most serious crimes, including capital murder, aggravated sexual assault, and "continuous smuggling of persons." The following month, Governor Abbott cut approximately $1.5 million in state grant funds to Travis County. At that time, Governor Abbott stated: "We are working on laws that will, one, ban sanctuary cities, remove from office any office holder who promotes sanctuary cities and impose criminal penalties[,] as well as financial penalties."[16] SB 4 followed shortly thereafter.

Senator Charles Perry introduced SB 4 to the Senate on January 24, 2017.[17] On January 31, during his State of the State address, Governor Abbott declared "anti-sanctuary city" legislation to be one of four emergency items.[18] The Governor's action not only elevated this already high profile issue, but also altered the applicable legislative rules to allow voting on SB 4 within the first 60 days of session, which otherwise would be prohibited.

On February 2, the Senate Affairs Committee heard testimony on SB 4.[19] Over 1000 people registered against, and 332 people testified against, the bill during the 16-hour hearing that started at 8:33 a.m. and lasted until 12.51 a.m. the next day. Only 21 people registered in

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[15] (Compl. ¶ 56). *See* https://gov.texas.gov/uploads/files/press/DallasCounty_FederalImmigrationDetainer_10262015.pdf

[16] (Comp. ¶ 58); *see also* Abbott to Seek Laws to Remove Sheriff After ICE Detainer Policy Announcement, KVUE.COM, Jan. 25, 2017, https://goo.gl/IRW0It.

[17] *See* S.J. of Tex., 85th Leg., R.S. 90 (2017).

[18] (Compl. ¶ 59) Governor Abbott Delivers State of the Address (Jan. 31, 2017), https://gov.texas.gov/news/post/governor_abbott_delivers_state_of_the_state_address.

[19] (Comp. ¶ 68).

support.[20] At the beginning of the hearing, Senator Joan Huffman, the Committee chair, assured the public that written testimony would be considered by the Committee.[21] However, at the end of the hearing, the Committee swiftly voted—without reviewing the 97 written testimonies submitted that day—that SB 4 be reported back to the Senate with the recommendation that it pass.[22]

The full Senate debated SB 4 on February 7, 2017, only two business days after the committee hearing.[23] During the Senate floor debate, the bill's author Sen. Perry falsely claimed: "[M]y bill does not impact those that are here illegal [*sic*], undocumented that are providing work and food for their family as long as they don't commit a crime that they're hauled in where a detainer request occurs. That's all it applies to is the guys that break the law."[24] The Senate voted 20-11 to pass the bill.[25] No legislator of color voted for the bill, and only 3 of 33 amendments to SB 4 offered in the Senate by Latino senators were adopted.[26]

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[20] *See* Ex. 1-C. (Salmon Decl.), Tex. S. Comm. on State Affairs Minutes, 85th Leg., R.S. (Feb. 2, 2017); Ex. 1-D (Salmon Decl.), Tex. S. Comm. on Senate Affairs Witness List, 85th Leg., R.S. (Feb. 2,2017).

[21] *See* Senate Comm. on State Affairs Pub. Hearing, 85th Leg., R.S. (Feb 2, 2017, http://tlcsenate.granicus.com/MediaPlayer.php?clip_id=11651.

[22] *See* Ex. 1-C (Salmon Decl.), Tex. S. Comm. on State Affairs Minutes 3, 85th Leg., R.S. (Feb. 2, 2017).

[23] *See* S.J. of Tex., 85th Leg., R.S. 208 (2017). Relevant excerpts from the Senate and House Journals are accessible as links at http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=85R&Bill=SB 4.

[24] *See* Debate on SB 4 on the Tex. S. Floor, 85th Leg., R.S. (Feb. 7, 2017), http://www.senate.texas.gov/av-archive.php.

[25] *Id.* at 232.

[26] *Id.* at 208–231.

SB 4 was then sent to the House, where it was referred to the House State Affairs Committee.[27] On March 15, 2017, the House State Affairs Committee heard over 10 hours of public testimony on the bill.[28] Over 465 people gathered to testify against it and only 11 registered in support.[29] House State Affairs Committee Chairman Byron Cook said the next day that he thought the bill could be consolidated to include only the provision requiring compliance with ICE detainer requests.[30]

On April 20, 2017, the House State Affairs Committee sent SB 4 to the House Calendars Committee, which passed the bill out in less than one hour, and set SB 4 on the Emergency Calendar to be heard on the House floor on April 26.[31]

The House considered SB 4 on April 26, 2017.[32] When laying out the bill to the full House, SB 4's House sponsor Rep. Charlie Geren referred to undocumented immigrants as

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[27] *See* H.J. of Tex., 85th Leg., R.S. 582 (2017).

[28] *See* Ex. 1-E (Salmon Decl.), Tex. H. Comm. on State Affairs Corrected Minutes, 85th Leg., R.S. (Mar. 15, 2017). Several children gave powerful testimony that, if SB 4 passed, their parents could be detained and ultimately deported whenever they left the house. *See* Testimony on SB 4, Tex. H. Comm. on State Affairs, 85th Leg., R.S. (Mar. 15, 2017),http://tlchouse.granicus.com/MediaPlayer.php?view_id=40&clip_id=13021, *excerpts available at* https://www.youtube.com/watch?v=BI07VEjdgIY.

[29] *See* Ex. 1-F (Salmon Decl.), Tex. H. Comm. on State Affairs Witness List, 85th Leg., R.S. (Mar. 15, 2017).

[30] *See* Ex. 1-G (Salmon Decl.), Julian Aguilar, *Key Chairman Says House Will Take Its Time on "Sanctuary" Legislation, Tex. Tribune*, Mar. 16, 2017. Rep. Cook stated, according to the Texas Tribune: "If you look at this on the big picture [level], all we're really needing to do, all that's really been said is that local jurisdictions need to honor federal detainer requests," he said, noting Hernandez was the only outlier. "And what the testimony indicated once again last night is that though one sheriff deviated for a short period of time, all our law enforcement agencies across the state are in fact honoring detainer requests, as they're supposed to."

[31] *See* H.J of Tex., 85th Leg., R.S. 1803 (2017); Ex. 1-H (Salmon Decl.), Tex. Leg. Online, SB 4 History, 85th Leg., R.S. (2017) (showing Committee report distributed on April 20, 2017 at 2:22 p.m., and subsequently considered by considered by the House Calendars Committee that day); Ex,. 1-I (Salmon Decl.), Tex. H. Comm. on Calendars Minutes, 85th Leg., R.S. (Apr. 20, 2017) (showing Committee met at 3:00 p.m. and adjourned at 3:09 p.m.).

"illegals," despite having been told by Latino legislators and advocates how offensive that term was to the immigrant community.[33] Rep. Geren described the Bill as having no effect on undocumented immigrants who had not committed crimes or associated with those who had. [34] Later, he admitted that he was unaware of any statistics regarding the propensity for criminal activity by immigrants as opposed to non-immigrants.[35]

During the House floor debate Rep. Matt Schaefer brought back a key provision of the Senate's version of SB 4 through an amendment.[36] The provision expands the authority of police to ask a person's immigration status not only when that person is arrested but also when he or she lawfully detained.[37] The "Schaefer amendment"—or what many call the "show me your papers" provision—applies even to those detained as a result of an alleged traffic violation or jaywalking.[38] The House passed the "Schaefer amendment" 84-64, with only one Latino legislator voting in favor.[39] In arguing against the Amendment, Rep. Cook, the Republican Chairman of the House of State Affairs Committee stated the obvious—SB 4 was no longer

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[32] *See* H.J of Tex., 85th Leg., R.S. 1849 (2017).

[33] *See* Debate on SB 4 on the Tex. H. Floor, 85th Leg., R.S. (Apr. 26, 2017), http://tlchouse.granicus.com/MediaPlayer.php?view_id=39&clip_id=13771.

[34] *Id.*

[35] *Id.*

[36] *See* H.J. of Tex., 85th Leg., R.S. 1862–1863 (2017).

[37] *See id.*

[38] *See id.*

[39] *See id.* at 1875–76.

about keeping "dangerous criminals off the streets."[40] Rep. Cook warned his colleagues of the true target and costs of SB 4 with the included Schaefer Amendment and concluded. "It will not benefit this state. You can pass sanctuary cities and still not do harm to a lot of really good people, so I beg you to vote against this amendment."[41]

Multiple attempts to amend the "Schaefer amendment" to exempt vulnerable populations such as children, veterans, pregnant women, homeless individuals, and those in domestic violence shelters failed.[42] As Rep. Diego Bernal pleaded in offering his limiting amendment with respect to children: "I'm asking for us to ensure that the most vulnerable among us, the ones who can't defend themselves, and, honestly, for the most part, aren't responsible for their presence in this country anyway . . . that this law does not touch them . . . that law enforcement does not have the right to ask them for their status."[43]

During the debate, several lawmakers warned of the inevitable profiling and harassment SB 4 would cause immigrants and persons of color, regardless of immigration status. Rep. Hubert Vo warned: "We used to have the freedom to do and go wherever we wanted without fear of unjustified harassment from local enforcement. Now those freedoms will be taken away from individuals if SB 4 passes simply because of the way they speak and appear."[44] Rep. Rafael Anchia warned his colleagues that SB 4 could only be considered another instance of

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[40] *See* Debate on SB 4 on the Tex. H. Floor, 85th Leg., R.S. (Apr. 26, 2017), http://www.house.state.tx.us/video-audio/chamber/85/, *excerpt available at* https://www.youtube.com/watch?v=-udQB0vTtrY.

[41] *See id.*

[42] *See id.* at 1872 (Amendment 17, offered by Rep. Diego Bernal, to exempt children failed).

[43] *See* Debate on SB 4 on the Tex. H. Floor, 85th Leg., R.S. (Apr. 26, 2017), http://www.house.state.tx.us/video-audio/chamber/85/.

[44] *See* Debate on SB 4 on the Tex. H. Floor, 85th Leg., R.S. (Apr. 26, 2017), http://www.house.state.tx.us/video-audio/chamber/85/, *excerpt available at* https://www.youtube.com/watch?v=HktXHXLvp6c.

legislation that is intentionally, racially discriminatory, in light of six federal court findings of intentional racial discrimination in other laws since 2011.[45] Rep. Anchia stated the obvious—if SB 4 is not about ICE detainers (which over 99% or jurisdictions already complied with),[46] not about dangerous criminals, not about what law enforcement says makes us safe, then the only plausible explanation to connect the dots is that SB 4 is about racism.[47] Rep. Gene Wu testified that, as he walked around the chamber, he overheard "gleeful" comments, "joyous about what we're going to do to an entire population of people."[48]

The House departed from procedural norms by suspending the rules to skip debate on 70—almost half—of the 145 pre-filed amendments.[49] Ultimately, in the early morning of April 27, 2017, SB 4 passed to third reading on a 93-54 vote.[50] The House passed SB 4 on third reading with a 94-53 vote later that day.[51] Only three of the 36 Latino legislators voted for the bill.[52]

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[45] *See* Debate on SB 4 on the Tex. H. Floor, 85th Leg., R.S. (Apr. 26, 2017), http://www.house.state.tx.us/video-audio/chamber/85/.

[46] In fact, the Bill's author in the Texas House, Rep. Geren, could not name a current Texas "sanctuary" county, city, or university. *See* Debate on SB 4 on the Tex. H. Floor, 85th Leg., R.S. (Apr. 26, 2017), http://www.house.state.tx.us/video-audio/chamber/85/.

[47] *Id.*

[48] *See* Debate on SB 4 on the Tex. H. Floor, 85th Leg., R.S. (April 26, 2017), http://www.house.state.tx.us/video-audio/chamber/85/, *excerpt available at* https://www.youtube.com/watch?v=h95yjY-EAt8.

[49] *See* H.J. of Tex., 85th Leg., R.S. 1849–1951 (2017); *id.* At 1929–30; *see also* Ex. 1-H (Salmon Decl.), Tex. Leg. Online, SB 4 History, 85th Leg., R.S. (2017).

[50] *See id.* at 1951.

[51] *See id.* at 2021.

[52] *See id.*

On May 3, 2017, the Senate moved to concur with the House amendments to SB 4.[53] During floor debate on the issue, Sen. Jose Rodriguez remarked that local compliance with ICE detainers could not be the motivation for this law because all 254 counties complied with detainer requests.[54] When Sen. Rodriguez voiced his concerns that SB 4 would lead to racial profiling, Sen. Perry, the Bill's sponsor, stated that racial profiling happens with or without SB 4.[55] When Sen. John Whitmire asked Sen. Perry whether he worried about the unintended consequences of the law, Sen. Perry responded: "So, number one, you don't see me in my private time. I do have that angst, and I do hear and see that. I do feel Sen. Menendez's pain in that sense. Can I relate? No, I haven't walked a mile in his shoes."[56]

The next day, May 4, 2017, both chambers signed the bill and sent it to Governor Abbott.[57] Governor Abbott signed SB 4 on May 7, 2017.[58] SB 4 takes effect on September 1, 2017.[59]

The division fostered by the debate and passage of SB 4 stained the remainder of the Texas Legislative Session. On May 29, 2017, the last day of the Legislative Session, in response to chanting in the House Gallery by peaceful, mostly Latino anti-SB 4 protesters, Texas Rep. Matt Rinaldi approached and taunted several Latino lawmakers on the House floor, saying "I called ICE on all of them. [Expletive] them. They need to deport all these illegals." Ex. 12

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[53] *See* S.J. of Tex., 85th Leg., R.S. 1616 (2017).

[54] *See* Debate on SB 4 on the Tex. S. House Floor, 85th Leg., R.S., http://tlcsenate.granicus.com/MediaPlayer.php?view_id=42&clip_id=12389.

[55] *Id.*

[56] *Id.*

[57] *See id.* at 1650; H.J. of Tex., 85th Leg., R.S. 2645 (2017).

[58] *See* S.J. of Tex., 85th Leg., R.S. 1732 (2017).

[59] *See* Ex. 1-A (Salmon Decl.), SB 4 § 7.02.

(Romero Decl.) ¶ 9. Rep. Rinaldi's statement implies an assumption that all of the members in the gallery were undocumented because of their physical appearance. When reminded by Rep. Cesar Blanco that Rep. Rinaldi himself comes from an immigrant background, Rep. Rinaldi responded, "Yeah but my people loved this country and your people don't." *Id.* at ¶ 9. The difference between those people and my family is that my family loves America." On May 31, 2017, U.S. Immigration and Customs Enforcement confirmed that Rep. Rinaldi indeed made a report to ICE on the last day of the legislative session.[60] In the ensuing argument, Rep. Rinaldi threatened to "put a bullet in [the] head" of Rep. Nevarez Ex. 13 (Moody Decl.). Rep. Rinaldi's actions sparked additional harassment of Latino legislators by members of the public. *See generally* Ex. 2 (Celina Moreno Decl.).

The passage of SB 4 has left local entities, officials, community groups, and their members in legal jeopardy based on both the breadth of its provisions and its draconian penalties. Plaintiffs therefore bring this motion to enjoin the law.

LEGAL STANDARD

Preliminary injunctions favor the status quo and preserve the relative positions of the parties until a trial on the merits can be held. *Wenner v. Tex. Lottery Comm'n*, 123 F.3d 321, 326 (5th Cir. 1997); *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). The decision to grant or deny a preliminary injunction is within the discretion of the trial court. *See Texas v. United States*, 809 F.3d 134, 184 (5th Cir. 2015), *aff'd by an equally divided court*, 136 S. Ct. 2271 (2016) (per curiam).

A plaintiff seeking a preliminary injunction must establish: (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued,

[60] *See* Ex. 1-J (Salmon Decl.), James Drew, *ICE Now Confirms that Texas Lawmaker Did Call about Protesters Monday*, Houston Chronicle, May 31, 2017.

(3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest. *Id.*

A finding of likelihood of success on a preemption claim implies findings for the other preliminary injunction requirements. *See Tex. Midstream Gas Servs., LLC v. City of Grand Prairie*, 608 F.3d 200, 206 (5th Cir. 2010) (asserting that a finding of likelihood of express preemption fulfills the remaining preliminary injunction requirements); *Trans World Airlines, Inc. v. Mattox*, 897 F.2d 773, 783 (5th Cir.1990) (asserting the same and determining that all preliminary injunction requirements were satisfied upon a finding of likely express preemption), *abrogated on other grounds by Heimann v. Nat'l Elevator Indus. Pension Fund*, 187 F.3d 493 (5th Cir. 1999).

ARGUMENT

The San Antonio Plaintiffs establish below that: (1) they are likely to prevail on the merits of their claim that SB 4 violates the Constitution and federal law; (2) they will suffer irreparable harm if an injunction is not granted; (3) their threatened injuries outweigh any alleged injuries to the State; and (4) a preliminary injunction would serve the public interest. For these reasons, Plaintiffs respectfully request that the Court enjoin Defendants from enforcing SB 4.

I. Plaintiffs are Likely to Prevail on the Merits

Plaintiffs are likely to prevail on their claims that SB 4 is unconstitutional because SB 4 violates the Supremacy Clause, the First, Fourth, and Fourteenth Amendments of the U.S. Constitution, the Contracts Clause, and Section 2 of the Voting Rights Act of 1965. These violations are described below.

A. SB 4 Violates the First Amendment

SB 4 is a ban on speech: Its "endorse" provision prohibits a wide variety of persons from endorsing any policy under which a local entity that "prohibits or materially limits the enforcement of immigration laws." Tex. Gov't Code § 752.053(a)(1). This ban blatantly violates the First Amendment in two ways. It constitutes viewpoint discrimination and it is unconstitutionally overbroad.

1. The Prohibition is Unconstitutional Viewpoint Discrimination

SB 4 mandates that the members of the governing bodies of "local entities" and campus police departments, including their officers and employees, may not "endorse" any policy that "prohibits or materially limits the enforcement of immigration law." *Id.* This is classic viewpoint discrimination. The expression of one viewpoint is forbidden: endorsement of a particular policy. Expression of other and opposite viewpoints on the issue is allowed.

This is impermissible. Under the First and Fourteenth Amendments, a state "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2226 (2015) (quoting *Police Dept. of Chi. v. Mosley*, 408 U.S. 92, 95 (1972)). "Government regulation of speech is content-based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed*, 135 S. Ct. at 2227. "Content-based laws—those that target speech based on its communicative content—are *presumptively unconstitutional* and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Id.* at 2226 (emphasis added).

Like the law at issue in the Supreme Court's *Reed* decision, the "endorse" provision of SB 4 is "content-based on its face": the statute plainly prohibits the expression of ideas. Just as plainly, the statute prohibits the expression of only certain ideas, on one side of an issue. As a

result, the law "can stand only if [it] survive[s] strict scrutiny, 'which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.'" *Reed*, 135 S. Ct. at 2231 (quoting *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 131 S.Ct. 2806, 2817 (2011)). It is no easy task to show a compelling interest in this context:

> The State must specifically identify an 'actual problem' in need of solving, and the curtailment of free speech must be actually necessary to the solution. That is a demanding standard. "It is rare that a regulation restricting speech because of its content will ever be permissible."

Brown v. Entm't Merchs. Ass'n, 564 U.S. 786, 799 (2011) (quoting *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 818 (2000)). By the same token, where the government can identify only "vaguely described, speculative benefits that it believes may result" from the restriction of speech, the restrictive law does not pass muster and injunctive relief is warranted. *Nat'l Fed'n of Indep. Bus. v. Perez*, No. 5:16-CV-00066-C, 2016 WL 3766121, at *32 (N.D. Tex. June 27, 2016) (granting preliminary injunction after government failed to identify compelling interest).

SB 4 does not advance a compelling government interest. Even assuming that those who "endorse" a policy that would "prohibit or materially limit the enforcement of immigration laws" are advocating illegality—and it is far from clear that this is so—this would not in itself give the state a compelling interest. More is needed: "the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of . . . law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969); *cf. United States v. Williams*, 553 U.S. 285, 298-99 (2008) (upholding law because it did not prohibit "abstract advocacy of illegality," but instead, targeted illegal actions like offering to assist in violating

child pornography laws). SB 4 is not limited to the prohibition of such incitement. Instead, it broadly prohibits expression of support for a particular policy.

This in turn reveals a second defect in SB 4. It is not narrowly tailored to achieve the State's purported interest. If the State were indeed concerned that local entities, campus police departments, or their employees would limit the enforcement of state and federal immigration law, the obvious solution would be to prohibit *acts* that impede the enforcement of those laws. Instead, SB 4 universally prohibits *speech* in support of particular policies. It prohibits such speech without regard to whether it takes place in public or private, whether uttered on-the-job or at a weekend barbeque. SB 4 is vastly overinclusive for any purported government purpose and injunctive relief is warranted on this ground. *Nat'l Fed'n*, 2016 WL 3766121, at *35.

2. SB 4 is Unconstitutionally Overbroad

Because it is anything *but* narrowly tailored, SB 4 suffers from the related constitutional defect of overbreadth. Among other things, the group of persons the statute targets is impermissibly broad. The statute reaches all college campus police departments and "local entities" (which are defined to include the governing bodies of cities, counties, and special districts, including community college districts) *and* the officers and employees of campus police departments and local entities. Tex. Gov't Code § 752.051(5)(B); *see also Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 826 S.W.2d 489, 555 (Tex. 1992) (recognizing that "special district" in Texas statutes captures "junior college districts, fire prevention districts, [and] water control districts."). SB 4 thus reaches—and limits—the speech of individuals as far removed from the enforcement of the law as a community college professor, an engineer at a local water district office, or a janitor at a county fire house.

The application of a law limiting speech to a group as large and diverse as this raises

serious constitutional concerns in itself. The Fifth Circuit has held that a law prohibiting protected First Amendment activities of people as various as "leaders for AA, Weight-Watchers, or other self-help groups, [or] someone who has taken graduate classes in psychology, fitness, or counseling and has written a marriage-advice column or parenting blog" may for that reason be struck down as overbroad. *Serafine v. Branaman*, 810 F.3d 354, 367 (5th Cir. 2016); *see also Nat'l Fed'n*, 2016 WL 3766121, at *35. More generally, a law limiting speech is overbroad if "a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 473 (2010) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 n.6 (2008)).

Those authorities plainly apply here, both because of the breadth of persons and activities SB 4 reaches and because the statute provides no way to derive a straightforward, textually-based limit to the "endorse" clause. *Serafine*, 810 F.3d at 369 (declining to give an unconstitutional state regulation "an additional extra-textual limiting construction in a frantic attempt to rescue it"). As shown in the declarations of San Antonio Police Chief William McManus, San Antonio Councilmember Rey A. Saldana, Alamo Colleges District Board Member Joe Alderete Jr., and TACHE President Belinda Harmon, there is a more than substantial risk here that if SB 4 goes into effect, it will chill the protected First Amendment speech of a broad swath of local entities, their officials, and their employees—including, to take just one example, college professors. *See generally* Ex. 3 (McManus Decl.), Ex. 5 (Saldana Decl.), Ex. 11 (Alderete Decl.), Ex. 6 (Harmon Decl.) ¶¶ 10-11. Injunctive relief is warranted on this basis alone. *Nat'l Fed'n*, 2016 WL 3766121, at *35 (issuing injunction on the basis of overbreadth challenge, among others).[61]

[61] The constitutional infirmity of the "endorse" clause is not cured by virtue of the fact that its

Finally, insofar as SB 4 may be applied to both campaign speech and academic speech, it infringes upon some of our Nation's most cherished First Amendment protections. On the subject of campaign speech, the statute specifically targets the political speech of local elected officials who are often on the campaign trial including city councilmembers, county commissioners, community college trustees, sheriffs, and district attorneys. Tex. Gov't Code §752.051(1)(5)(B)-(C). This is impermissible. The Fifth Circuit recently explained in *Serafine* that political speech during a campaign—such as a statement made on a campaign website—is "political speech of the highest form." 810 F.3d at 361. "Indeed, 'it can hardly be doubted that the constitutional guarantee [of free speech] has its fullest and most urgent application precisely to the conduct of campaigns for political office.'" *Id.* (quoting *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347 (1995)) (alteration in original). SB 4 runs directly counter to this guarantee.

As to academic speech, SB 4 also sweeps in the abstract political advocacy of community college employees, including professors; they are also classified as "local entities." This too is impermissible. As the Supreme Court explained in *Keyishian v. Board of Regents of the*

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targets are government employees speaking within the scope of their employment. Although some authorities have recognized special First Amendment limitations in this context, those cases arise in a context wholly different from that at issue here, in which the government is advancing its interest in regulating office conduct, as opposed to making policy. *E.g.*, *Kinney v. Weaver*, 367 F.3d 337, 358 (5th Cir. 2004) (en banc) ("In 'governmental employee' cases, . . . courts must be attentive to the '[t]he government's interest in achieving its goals as effectively and efficiently as possible,' which interest 'is elevated from a relatively subordinate interest when it acts as sovereign to a significant one when it acts as employer'" (quoting *Waters v. Churchill*, 511 U.S. 661, 675 (1994) (plurality opinion)) (alteration in original). The State is not providing for the functioning of state government offices with SB 4. It is legislating as a sovereign.

University of the State of New York, "[o]ur Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom." 385 U.S. 589, 603 (1967). SB 4's violation of these cherished First Amendment freedoms exposes its impermissible overbreadth.

SB 4 sweeps substantial amounts of protected speech into its ambit—including even the most cherished forms of free speech—and furnishes no textual tools by which its overbreadth could be remedied. Injunctive relief is warranted on this basis alone. *Nat'l Fed'n*, 2016 WL 3766121, at *35.

B. **SB 4 Violates the Fourth Amendment**

The Fourth Amendment provides "[t]he right of people to be secure in their persons" and protects against "unreasonable searches and seizures" without a warrant and without probable cause. U.S. Const. amend. IV. SB 4 violates the Fourth Amendment by compelling compliance with all immigration detainer requests and prohibiting local jurisdictions from exercising discretion to decide when to comply with detainers in order to ensure compliance with the Fourth Amendment.

In order to lawfully stop an individual, an officer must have reasonable articulable suspicion "that *criminal activity* may be afoot." *Terry v. Ohio*, 392 U.S. 1, 30 (1968) (emphasis added); *see also Devenpeck v. Alford*, 543 U.S. 146, 152 (2004) ("[A] warrantless arrest by a law officer is reasonable under the Fourth Amendment where there is probable cause to believe that a *criminal offense* has been or is being committed." (emphasis added)). Moreover, once the reasonable suspicion or probable cause supporting the stop or arrest has expired, any additional seizure must be supported by a new reasonable suspicion or probable cause justification.

See, *e.g.*, *Arizona v. Johnson,* 555 U.S. 323, 333 (2009); *Illinois v. Caballes,* 543 U.S. 405, 407 (2005) ("A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission"); *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015). Accordingly, detention pursuant to an ICE detainer requires either probable cause to believe that a criminal offense has been or is being committed or a warrant. *Arizona*, 567 U.S. at 413; *Cervantez v. Whitfield*, 776 F.2d 556, 560 (5th Cir. 1985).

Deportation and removal proceedings are *civil* in nature. *Arizona*, 567 U.S. at 396; *Mercado v. Dallas County,* No. 3:15-CV-3481-D, 2017 WL 169102, at *7 (N.D. Tex. Jan. 17, 2017). Thus, "[b]ecause civil immigration violations do not constitute crimes, suspicion or knowledge that an individual has committed a civil immigration violation, by itself, does not give a law enforcement officer probable cause to believe that the individual is engaged in criminal activity." *Santos v. Frederick Cty. Bd. of Comm'rs*, 725 F.3d 451, 465 (4th Cir. 2013); *see also Mercado,* 2017 WL 169102, at *7 (knowledge of a civil ICE detainer alone does not give state officers probable cause "to detain the plaintiffs after they were otherwise eligible for release."); *Santoyo v. United States*, No. 5:16-CV-855-OLG, slip op. at 15 (W.D. Tex. June 5, 2017) (stating that a "County's assumption that probable cause must exist to detain any individual for whom it receives an ICE detainer request was unreasonable"). For these and other reasons, there can be no question but that "[d]etaining individuals solely to verify their immigration status would raise constitutional concerns." *Arizona,* 567 U.S. at 413.

The ability of local officials to hold detainees solely because of their immigration status is also constrained. State officers do not have the authority to enforce federal civil immigration law absent an authorizing agreement pursuant to Section 287(g) of the INA. *See Melendres v.*

Arpaio, 695 F.3d 990, 1001 (9th Cir. 2012). And even immigration officers expressly authorized to enforce federal immigration laws may make a warrantless arrest only if the officer has "reason to believe" that the detainee is "likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2).

SB 4 violates the Fourth Amendment in multiple ways. First, Art. 2.251(a) requires that local law enforcement agencies comply with *all* ICE detainer requests, whether or not the agency has probable cause to continue to hold a detainee and whether or not it would otherwise be proper to release the detainee (as in cases where a detainee has posted bond and would otherwise be released from custody). ICE detainers are not warrants; they are administrative requests and typically do not provide "probable cause to believe that a criminal offense has been or is being committed." *See Devenpeck*, 543 U.S. at 152; *Santos*, 725 F.3d at 465; *see also Arizona*, 567 U.S. at 396 ("As a general rule, it is not a crime for a removable alien to remain present in the United States.").

SB 4's broad definition of "immigration detainer request" further compounds the problem. That definition sweeps more broadly than formal requests under DHS Form I-247; it also reaches informal written or even oral requests, in which the Fourth Amendment risk is greatly heightened. Tex. Gov't Code § 772.0073. Given SB 4's universal detainer compliance requirement, application of the statute will necessarily result in "individuals who are the subjects of ICE detainers [being] detained by [local] officials who make no assessment, and have no knowledge, regarding whether probable cause exists that those individuals have committed any crime." *Santoyo,* slip op. at 13.

The detainees' rights are not the only ones in jeopardy. Local officials, are too. Section 39.07 makes it a crime for a jail official to refuse to enforce an ICE detainer even if the official

believes in good faith that the ICE detainer lacks the probable cause required by the Fourth Amendment. Because SB 4 forces law enforcement officials to choose between criminal sanctions and conduct that could constitute a Fourth Amendment violation, it virtually ensures ongoing unconstitutional conduct by a host of local actors. It is difficult to conceive of a more pernicious scheme.

C. SB 4 Violates The Supremacy Clause Under The Doctrine Of Implied Preemption

SB 4 cannot stand because it is preempted by federal immigration law. The Supremacy Clause of the United States Constitution provides that federal law "shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. As a consequence, state laws must "give way to federal law" when they are either expressly or impliedly preempted by Acts of Congress. *Arizona v. United States*, 567 U.S. 387, 399 (2012). Implied preemption encompasses field and conflict preemption. Plaintiffs are likely to succeed in showing that SB 4 must be enjoined under both doctrines.

1. SB 4 Field Preempted Because A Comprehensive Federal Scheme Regulates The Intersection of Federal And Local Participation in Immigration Enforcement.

Plaintiffs will succeed in showing that SB 4 is field preempted. Field preemption prevents states from "regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance." *Id.* In such circumstances, Congressional intent to "displace state law altogether can be inferred from a framework of regulation 'so pervasive . . . that Congress left no room for the States to

supplement it' or where there is a 'federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'" *Id.* (alterations in original). Because the field of immigration enforcement is fully occupied by the federal government through a complex statutory framework that regulates the intersection of federal and local participation in enforcement efforts, state law on the same subject cannot stand.

The Immigration and Naturalization Act includes a comprehensive scheme for immigration enforcement that reflects considered judgement about the role of local authorities in achieving its aims. For example, Section 1357 addresses the interrogation, search and arrest of non-citizens or those believed to be non-citizens. 8 U.S.C. § 1357. Although it focuses on the power of federal officials, it also addresses interaction between federal immigration officers and officers of states or their political subdivisions. In particular, Section 1357(g) outlines a program whereby qualified officers of states and their political subdivisions may carry out the functions of "investigation, apprehension or detention" of non-citizens after receiving specialized training. 8 USC § 1357(g)(1)-(10). It constitutes a carefully constructed structure for cooperation with federal authorities. The elements of the structure include a written agreement between a State or its political subdivisions, training and certification for its officers and employees, and direction and supervision by the Attorney General. *Id.* But even under Section 1357(g), local officers may only carry out enforcement functions to the extent consistent with "local law." *Id.*

The INA generally, and section 1357 specifically illustrates that Congress has not only occupied the field of immigration enforcement but its comprehensive framework takes into account participation at different levels of government and the need for deference to local law. SB 4 bypasses these provisions and forces local authorities to comply with all detainers and permit "assisting or cooperating" with federal authorities absent any of the structural elements of

Section 1357(g). The result is an intrusion into the field of immigration enforcement, which the federal government has already occupied.

Numerous other provisions confirm that Congress occupies the field of immigration enforcement.[62] In general, Congress has not required local cooperation with federal immigration authorities. One exception is Section 1373, which provides that local government entities "may not prohibit" officials from sending, receiving, maintaining or exchanging information about any person's immigration status. 8 U.S.C. § 1373. SB 4 replicates that provision and then includes a list of other enforcement activities that local authorities "may not prohibit," along with a set of harsh penalties to compel compliance. SB 4 also mandates compliance with detainers where the U.S. Department of Homeland Security provides that compliance is discretionary. See 8 C.F.R. ¶ 287.7(d)(3) ("The detainer is a request[.]).[63]That is impermissible because the federal government already has a "complete scheme" for immigration enforcement, which means that the no state can impose an "auxiliary or additional" regulation. *Hines v. Davidowitz,* 312 U.S. 52, 66-67 (1941).

The Supreme Court has reiterated that even state laws that are "parallel to federal standards" cannot survive if the federal government already occupies the field. *Arizona*, 567 U.S. at 401. In *Arizona v. United States*, the Court considered four provisions of an Arizona law designed to "discourage and deter the unlawful entry and presence of aliens" in the state. *Arizona*, 567 U.S.

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[62] *See, e.g.*, 8 U.S.C. § 1357(d) (providing for direct interaction with a "local law enforcement official"); *id.* (enforcement of detainers by local officials is voluntary); *id.* § 1101(1)(15)(T)(U) (visas for otherwise-deportable victims and witnesses after local certification); *id.* § 1103(a)(10) § 1226(d)(1)(B) (requiring a federal "liaison" to "local law enforcement"); *id.* § 1522(c)(1)(C) (providing for "consultation with local governments").

[63] *See also* DHS form 247-A, available at: https://www.ice.gov/sites/default/files/documents/document/2017/I-247A.pdf

at 393.[64] The first provision the Court considered created a new state misdemeanor for non-citizens who fail to carry an identification card. *Id.* at 400. Arizona defended the provision by arguing that it merely adopted federal standards. *Id.* at 402. The court rejected Arizona's argument as "ignor[ing] the basic premise of field pre-emption – that States may not enter, in any respect, an area the Federal Government has reserved for itself." *Id.* Here, the federal government occupies the field of immigration enforcement generally and particularly the regulation of local participation in federal immigration efforts. Because SB 4 permits the state to encroach into a field the federal government occupies, Plaintiffs are likely to succeed in showing that SB 4 is preempted.

2. SB 4 Is Conflict Preempted Because It Presents An Obstacle To Congressional Objectives

SB 4 is also conflict preempted. Conflict preemption applies if "where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.* at 399. (quotations and citations omitted). "What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects." *Id.* In particular, a state law that "upsets the balance struck" by federal law or attempts to achieve the same goals as federal law by a different "method of enforcement" creates an obstacle to Congressional objectives. *See id.* at 403, 407. Here, SB 4 upsets the balance struck by federal law by layering a new set of state sanctions over federal immigration law, inviting local determinations of immigration status, limiting local

[64] The court struck down three of four provisions on preemption grounds. The fourth provision, which required state officers to make a "reasonable attempt" to determine the immigration status of a person detained on another legitimate basis survived in part because the court concluded that the "nature and timing of the case counsel[ed] caution in evaluating" that provision because of "basic uncertainty about what the law means." *Id.*

authorities' discretion in immigration matters, authorizing unsupervised local officers to use their own discretion to "assist[]" and "cooperat[e]" with federal agents, and making mandatory conduct that Congress chose to leave voluntary, such as local enforcement of detainers. *See id.* at 406 ("[C]onflict in technique can be as fully disruptive to the system Congress erected as conflict in overt policy."). For these reasons, Plaintiffs will succeed on the merits in showing that SB 4 is conflict preempted.

First, SB 4 creates a new set of sanctions for local authorities who in any way limit their officers in cooperating with federal immigration authorities. Those who violate the law could be subject to fines of up to $25,000 per offense and could be removed from their jobs. SB 4's sanctions are not consistent with anything in federal law and therefore "undermine[] the congressional calibration of force" applied to local authorities in the immigration context. *Crosby v. Nat'l Foreign Trade Council,* 530 U.S. 363, 380 (2000); *see also Villas at Parkside Partners v. City of Farmer's Branch*, 726 F.3d 524, 529 (5th Cir. 2013) (en banc plurality).

The Supreme Court has been clear that inconsistent sanctions create a conflict between state and federal law. In *Arizona v. United States*, the provision that created a state misdemeanor for failure to carry an identification card was not only field preempted, it was conflict preempted because it created its own system of penalties for a violation of federal law. As the Court explained, the "state framework of sanctions creates a conflict with the plan Congress put in place." *Id.* at 403. For similar reasons, the Court also struck down a provision of the Arizona law making it a crime for an "unauthorized alien" to solicit work. *Id.* The Court explained that even a state law that "attempts to achieve the same goals as federal law" will be subject to conflict preemption if it adopts its own "method of enforcement." *Id.* at 406. Because SB 4 adopts its own "method of enforcement" for federal immigration law, Plaintiffs are likely to succeed in

showing that it is subject to conflict preemption.

Second, SB 4's detainer provisions conflict with the U.S. Department of Homeland Security's approach to local enforcement of detainer requests. SB 4 requires local law enforcement officials to comply with federal detainer requests and requires local officers to make immigration determinations in order to decide if the subject should be released from the detainer. Federal law does not require that "method of enforcement" for detainer request. *Arizona*, 567 U.S. at 403, 407. Also, Congress has made federal immigration officials responsible for status determinations except in "limited circumstance." *Farmers Branch*, 726 F.3d at 531. SB 4's detainer provisions bypass those limitations and place status determinations in the hands of untrained local officials, upsetting the "careful balance" Congress struck in the INA. *Id.*

Finally, SB 4 prohibits local officials from engaging in conduct that federal law allows. Congress only requires local officials to permit cooperation with federal immigration authorities in a narrow circumstance: local government entities "may not prohibit" officials from sending, receiving, maintaining or exchanging information about any person's immigration status. 8 U.S.C. § 1373. But under SB 4, local government entities "may not prohibit" inquiries into immigration status, "cooperating" with federal authorities, or "assisting" federal authorities. Because those provisions impose greater prohibitions on local jurisdiction than federal law on the same subject, they are preempted as conflicting with the Congress' considered decision to "steer a middle path" on the same issue. *Crosby*, 530 U.S. at 378-379.

For these reasons Plaintiffs are likely to succeed on the merits in showing that SB 4 is conflict-preempted.

D. SB 4 Violates the Equal Protection Clause of the Fourteenth Amendment

The Equal Protection Clause of the Fourteenth Amendment protects citizens and non-

citizens alike.[65] SB 4 violates the Equal Protection Clause for two reasons: (1) SB 4 purposefully discriminates against Latinos on the basis of race; and (2) purposefully discriminates against immigrants on the basis of citizenship.

SB 4 targets particular classes—Latinos and non-citizens—and affects fundamental rights, including freedom from unlawful detention. For both reasons, SB 4 is subject to strict scrutiny. *Graham v. Richardson*, 403 U.S. 365, 372 (1971) ("Aliens are a prime example of a 'discrete and insular' minority for whom such heightened judicial solicitude is appropriate."). SB 4 does not survive such scrutiny.

SB 4 Was Enacted With Discriminatory Intent. To determine whether a law was enacted with discriminatory intent, courts consider direct evidence as well as circumstantial evidence according to the following factors: (1) the impact of the official action, *i.e.*, whether it "bears more heavily on one race than another," and whether "a clear pattern, unexplainable on grounds other than race emerges from the effect of the state action even when the governing legislation appears neutral on its face"; (2) the historical background of the decision; (3) the specific sequence of events leading up to the challenged decision; (4) departures from the normal procedural sequence; (5) substantive departures, "particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached"; and (6) the legislative or administrative history, especially where there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports. *Vill. of Arlington*

[65] "No state shall make or enforce any law which shall … deny to *any person* within its jurisdiction *the equal protection* of the laws." U.S. Const. amend. XIV, § 1 (emphases added); *Plyler v. Doe*, 457 U.S. 202, 210 (1982) (observing that "an alien is surely a 'person' in any ordinary sense of that term," and that the Equal Protection Clause applies to "any person" without limitation to citizens or any other sub-group); *Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886) (finding that if a law intends to or is administered "so as practically to make unjust and illegal discriminations between persons of similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution").

Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 264-68 (1977).

SB 4 falls short on each applicable prong. First, the law would disproportionately impact Latinos and non-citizens, regardless of their immigration status. By prohibiting the implementation of safeguards to prevent unlawful profiling, SB 4 effectively ensures that Latinos and non-citizens will be subject to disparate treatment and overt discrimination. *See, e.g., Melendres v. Arpaio*, 989 F. Supp. 2d 822, 903-04 (D. Ariz. 2013) (attributing racial profiling in part to agency's "failure to monitor its deputies' actions for patterns of racial profiling"). Second, the historical background of SB 4 includes a long history of Texas enactments that purposefully discriminate against Latinos. *See, e.g.*, *Perez v. Abbott*, ---F. Supp. 3d---, No. SA-11-CV-360, 2017 WL 1450121 (W.D. Tex. Apr. 20, 2017); *Id.*, ---F. Supp. 3d---, 2017 WL 1787454 (W.D. Tex. May 2, 2017) (concluding Texas 2011 congressional and state house redistricting plans discriminated against Latinos on the basis of race); *Veasey v. Abbott*, ---F. Supp. 3d---, No. 13-CV-193 (S.D. Tex. Apr. 10, 2017) (concluding Texas 2011 voter identification law purposefully discriminated against Latinos and African Americans); *LULAC v. Perry*, 548 U.S. 399, 439 (2006) (recounting Texas's "long history of discrimination against Latinos"); *Hernandez v. Texas*, 347 U.S. 475 (1954) (striking down Texas's systematic exclusion of persons of "Mexican descent" from jury service). Third, the sequence of events surrounding SB 4's enactment reflects an increasingly heated debate around immigration in general and calls to reduce crime by targeting immigrants. Fourth and fifth, the enactment of SB 4 was rife with departures from normal legislative procedure as well as substantive departures. Finally, the legislative history of SB 4 reveals the State's intent to discriminate against Latinos and non-citizens, including the use of racial insults aimed by Anglo legislators at their Latino colleagues. *See* Ex. 12 (Romero Decl.) ¶¶ 3-20. The failure to connect any public safety concern to the specific provisions of SB 4 further exposes SB 4's discriminatory intent. For example, one

Texas lawmaker stated about SB 4: "This is about getting dangerous criminals off the street. That's the mission. It shouldn't be any less than that or any more than that."[66] This equation of non-citizens who encounter the police with "dangerous criminals" shows precisely the impermissible focus on race and national origin that betrays discriminatory intent. Each of the applicable *Arlington Heights* factors points in the same direction here, and each shows prohibited intent.

SB 4 Mandates Disparate Treatment of Non-Citizens. The effect of applying SB 4 would be no more constitutionally acceptable than the intent behind the statute. SB 4 strips Fourth Amendment protections from individuals subject to ICE detainers, prohibiting local entities from releasing those individuals even after they would no longer be detained and when the local entity lacks probable cause to believe the individual has committed a crime. Tex. Crim. Code § 39.07. Whereas U.S. citizens can be released from jail upon posting bond, SB 4 forces the jail to violate the Fourth Amendment rights of non-citizens in the same situation by requiring the jail to hold them in response to a detainer. SB 4 eradicates basic constitutional protections for non-citizens (and those suspected of being non-citizens), targeting a group that Texas has no compelling reason to treat differently. SB 4 also prevents local officials from protecting the constitutional rights of non-citizens by depriving local entities of the ability to enact or enforce laws that prohibit questioning arrestees and detainees about immigration status. Tex. Gov't Code § 752.053(b).

Immigration law is complex, and its enforcement is reserved to federal authorities; local officers untrained in its nuances may use race, national origin, and citizenship as impermissible proxies in seeking to enforce it. It is well established that unregulated local immigration

[66] Cervantes, B., *Sanctuary Cities Bill Gets Lengthy Debate*, *Houston Chronicle* (Apr. 27, 2017) at 1, *available at* https://www.pressreader.com/usa/houston-chronicle/20170427/281625305195450 (accessed June 16, 2017) (Texas House Representative Byron Cook, a senior Republican from Corsicana, explained this intent in arguing against amendment).

enforcement leads to stops and arrests targeted at those *perceived* to be foreign, particularly Latinos. *Melendres*, 989 F. Supp. 2d at 903-04. It is for this reason that local entities—including the City of San Antonio—have adopted a variety of measures to ensure that their officers and other employees are not placed in positions where they will be encouraged or likely to commit Fourteenth Amendment violations. These local entities are best positioned to prevent official discrimination in their local communities. Yet in clear disregard of the Fourteenth Amendment, SB 4 prevents local entities, including community colleges, from taking preventive steps to avoid the serious risk of violating the Constitution. *E.g.*, Ex. 6 (Harmon Decl.) ¶¶ 6-8.

None of this is permissible. The Supreme Court has repeatedly struck down and found unconstitutional similar state efforts to override local policies intended to address or prevent injury caused from discrimination.[67] The Supreme Court's decision in *Romer* is particularly instructive. The law at issue there was an amendment to the Colorado state constitution that blocked *local* residents and officials from adopting *local* anti-discrimination policies that protected gays and lesbians. Notwithstanding the fact that gays and lesbians were not a traditionally protected class, the Court struck down the amendment, emphasizing that the law "impose[d] a special disability upon those persons alone" in preventing them from obtaining local laws to prevent discrimination." *Romer*, 517 U.S. at 631; *cf. Hunter v. Erickson*, 393 U.S. 385, 391 (1969). SB 4 similarly violates the Equal Protection Clause by singling out a discrete, vulnerable group and eliminating their ability to obtain local protections against constitutional

[67] *Romer v. Evans,* 517 U.S. 620 (1996) (striking down Colorado amendment that prohibited all legislative, executive, or judicial action designed to protect homosexual persons from discrimination); *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457 (1982) (striking down Washington statewide initiative that allowed school boards to maintain authority except for enacting anti-discrimination policies); *Reitman v. Mulkey*, 387 U.S. 369 (1967) (striking down California amendment as unconstitutionally encouraging racial discrimination despite fact that race was not mentioned, but impact would outlaw existing anti-discriminatory laws and policies).

harms. Such laws do more than permit discrimination at the local level, although this would be bad enough. They also "operate to insinuate the State into the decision to discriminate." *Schuette v. Coal. to Defend Affirmative Action*, 134 S. Ct. 1623, 1631 (2014) (plurality opinion).

SB 4 is also plainly improper when seen against the background of state-local relations generally. The law allows for local authority to continue over all policies *but* anti-discrimination policies, and thereby "differentiates between the treatment of problems involving racial matters and that afforded other problems in the same area." *Seattle*, 458 U.S. at 480. This too is improper. *Id.* (finding state law prohibiting school boards from enacting anti-discrimination policies violates the Equal Protection Clause where, after its passage, authority over all areas *except* discrimination "remained in the local board's hands.").

SB 4's purported anti-discrimination provision does not cure any of the statute's Equal Protection infirmities. A boilerplate reference to constitutional prohibitions on the consideration of race does nothing to address the problem that the statute disarms local entities from enacting or applying policies aimed at *preventing* racial discrimination.

E. SB 4 Violates Section 2 of the Voting Rights Act of 1965

By mandating the removal from office of elected officials who "adopt, enforce, or endorse a policy under which the entity or department prohibits or materially limits the enforcement of immigration laws," SB 4 dilutes the voting strength of Latinos in violation of section 2 of the federal Voting Rights Act of 1965, 52 U.S.C. § 10301. *See* SB 4 at Article 1, amending Texas Gov't Code to add §§752.053 (policies and actions regarding immigration enforcement) and 752.0565 (removal from office).

Members of city councils, county commissions and community college boards of trustees across Texas are elected in Latino-majority districts that offer Latinos the opportunity "to

participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301 (b); *see also* Ex. 5 (Saldana Decl.) ¶ 2. If they believe they were elected in part to advocate for common-sense immigration enforcement policies, and make statements that are either critical of SB 4 or that "endorse a policy" under which their jurisdiction "prohibits or materially limits the enforcement of immigration laws," they are subject to removal and the votes of their constituents are nullified. Furthermore, in many cases, the appointment to fill their unexpired terms will be made by the governing body as a whole, which will not reflect the demographics of the Latino-majority district from which that official was elected. *See, e.g.* San Antonio City Charter, Article II ¶8 (providing that council vacancies are filled by a majority vote of the remaining members for an unexpired term of less than 6 months)[68] and Tex. Election Code § 202.002 (providing for appointment to fill certain vacancies in county government).

Because SB 4 removes elected officials from office for endorsing alternatives to current immigration enforcement policies, and many of these officials will inevitably be elected from districts created to comply with section 2, SB 4 dilutes the voting strength of Latino voters in violation of section 2.

F. **SB 4 Violates the Due Process Clause of the Fourteenth Amendment**

SB 4 violates Plaintiffs' rights under the Due Process Clauses of the Fourteenth Amendment in at least three ways. First, SB 4 deprives the members of Plaintiffs LUPE, WDP, and TACHE of their substantive due process rights by subjecting them to the arbitrary deprivation of physical liberty without adequate cause. Second, SB 4 deprives the members of Plaintiffs LUPE, WDP, and TACHE of their procedural due process rights to be heard "at a meaningful time and in a meaningful manner." *Boddie v. Connecticut*, 401 U.S. 371, 378

[68] Available at http://www.sanantonio.gov/Clerk/Legislative/City-Charter-City-Code (last viewed June 18, 2017)

(1971). Third, SB 4 deprives Plaintiffs City of San Antonio, Councilman Saldaña, and the members of TACHE of their due process rights by exposing them to civil and criminal sanctions without providing adequate notice of the law's content, and by failing to "establish minimal guidelines to govern law enforcement." *Kolender v. Lawson*, 461 U.S. 352, 358 (1983). As a consequence of this third defect, the law fails on vagueness grounds.

1. SB 4 deprives Plaintiffs of physical liberty without adequate cause.

"Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). SB 4 impermissibly infringes on this freedom. Section 2.01 of the statute requires "law enforcement agencies . . . to comply with, honor, and fulfill any request made in the detainer request provided by the federal government." This Court recently held that an individual's Fourth and Fourteenth Amendment rights were violated when a county complied with a federal immigration detainer request that led to detaining the individual without probable cause. *Santoyo v. United States*, No. 5:16-CV-855-OLG (W.D. Tex. June 5, 2017). Although not every enforcement of an immigration detainer request will necessarily create the same constitutional dilemma, SB 4 mandates that local law enforcement agencies comply with any detainer requests regardless of whether doing so would violate the Constitution. *Santoyo* highlights that SB 4 represents a concrete and imminent threat to Plaintiffs' due process rights.

2. SB 4 contains no procedural safeguards to that individuals are heard "at a meaningful time and in a meaningful manner."

Related to the substantive due process violation, the same provisions in SB 4 deprive Plaintiffs' members' of their "procedural due process" right to be heard "'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting

Armstrong v. Manzo, 380 U.S. 545, 552 (1965)). In determining what procedural protections the Constitution requires, the Supreme Court often considers three factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Zinermon v. Burch, 494 U.S. 113, 127 (1990) (quoting *Mathews*, 424 U.S. at 335). As applied to this case, each factor confirms the deficiency of SB 4.

As noted, physical liberty is the most fundamental private interest protected by the Due Process Clause. *See Foucha*, 504 U.S. at 80. SB 4 poses a significant risk of erroneously depriving Plaintiffs' members of this fundamental liberty interest. In addition to the direct threat described immediately above, SB 4 renders local or state hearings potentially meaningless. For instance, as was the case in *Santoyo*, an individual who is ordered released by a judge at a hearing might nevertheless be detained pursuant to SB 4 without probable cause simply because federal immigration authorities issue a detainer request. This would strip the state hearing of its essential purpose and erode Plaintiffs' members' right to procedural due process. Meanwhile, the only procedural safeguard in SB 4 to ensure a detained individual will have access to an alternative outcome requires local police officers to review documentation and make immigration determinations in a manner wholly preempted by the INA. *See* SB 4 Art. 2.

The state interests in SB 4 are negligible or non-existent. The Supreme Court's federal preemption jurisprudence affirms that states have no interest in regulating immigration. *See Graham*, 403 U.S. at 379 ("The authority to control immigration—to admit or exclude non-citizens—is vested solely in the Federal Government."). Furthermore, the legislative history of SB 4 demonstrates that Texas had no evidence that current law enforcement practices were

creating a public safety problem with respect to immigrants. The ample evidence demonstrating SB 4's burden on the economy and local government finances undermines the argument that the law fulfills a legitimate—much less a compelling—state interest. *See generally* Ex. 17 (Nixon Decl.) (discussing SB 4's negative effects on the Texas labor market and economy as a whole); Ex. 14 (Johnson Decl.); Ex. 15 (Barrios Decl.) (discussing SB 4's negative impact on tourism).

3. SB 4's unconstitutional vagueness imposes severe sanctions without providing adequate and encourages arbitrary law enforcement practices.

Separate from constitutional overbreadth issues related to the First Amendment—which are implicated in this case as discussed above—the Supreme Court recognizes that a law may be impermissibly vague if "it fails to establish standards for the police and public that are sufficient to guard against the arbitrary deprivation of liberty interests." *City of Chicago v. Morales*, 527 U.S. 41, 52 (1999) (citing *Kolender*, 461 U.S. at 358); *see also United States v. Escalante*, 239 F.3d 678, 680 (5th Cir. 2001). There are two ways in which a law's vagueness can violate the Due Process Clause. First, "it is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits." *Morales*, 527 U.S. at 56 (quoting *Giaccio v. Pennsylvania*, 382 U.S. 399, 402–03 (1966)). Second, due process requires "'that a legislature establish minimal guidelines to govern law enforcement.'" *Kolender*, 461 U.S. at 358. SB 4 is unconstitutionally vague under both tests.

SB 4 fails to provide local entities and their employees with constitutionally acceptable notice as to what constitutes prohibited activity. "Because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws

may trap the innocent by not providing fair warning. *Vill. of Hoffman Estates v. Flipside, Hoffman Estates*, Inc., 455 U.S. 489, 498 (1982) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108–109 (1972)). Section 1.01 of SB 4 establishes that "[a] local entity or campus police department may not adopt, enforce, or endorse a policy under which the entity or department prohibits or materially limits the enforcement of immigration laws." This provision creates several irreconcilable ambiguities. A local entity or campus police department is broadly defined as the entity itself or "an officer or employee of . . . a municipality, county, or special district or authority." Taking the statute at its plain meaning, this provision would prohibit a municipally-employed janitor from individually expressing support for a reform to immigration laws affecting his city.

Adding to the ambiguity, SB 4 defines immigration laws as "the laws of this state or federal law relating to aliens, immigrants, or immigration." But because states have no authority to regulate immigration, it is entirely unclear what is meant by "'immigration laws' . . . of this state."[69] Presuming that SB 4 itself is a state immigration law, the law's plain meaning turns advocating for SB 4's repeal into endorsing a policy to materially limit state immigration laws.

SB 4's vagueness also encourages inconsistent enforcement by individual peace officers and makes uniform oversight by responsible governmental subdivisions precarious if not impossible. The law implicitly imbues individual officers with authority to make ad hoc interpretations of "state and federal immigration laws" with no oversight or repercussions. Meanwhile, superior officers, administrators and elected officials risk severe fines and removal

[69] In a recent case challenging the Texas immigrant harboring statute, codified at Tex. Penal Code § 20.05, Texas argued that its harboring statute was "not about immigration[.]" *See, Cruz v. Abbott*, 177 F. Supp. 3d 992, 1009 (W.D. Tex. 2016), *rev'd in part*, 849 F.3d 594 (5th Cir. 2017).

from office if they make statements or take actions that might plausibly fall within in the broadly worded "endorse" prohibition. The statute's weak attempt at providing a safeguard from discrimination only exacerbates the problem. Saying officers "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" while removing any authority of their employers to supervise or guide their behavior encourages officers to determine individually the boundaries of constitutional anti-discrimination jurisprudence.

The citizen complaint provision of the statute is equally infirm. Under Section 752.055, citizens may petition the attorney general when they believe SB 4 is being violated. But the statute provides no specific requirements for such complaints beyond that they include "facts supporting an allegation" of a purported SB 4 violation. Not does the statute provide any criteria for the attorney general to consider in evaluating complaints.

"[I]f arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory applications." *Vill. of Hoffman Estates*, 455 U.S. at 498. Because SB 4 prohibits law enforcement agencies and local government officials from adopting policies aimed at preventing either indiscriminate or intentionally discriminatory constitutional violations, it subjects Plaintiffs to precisely the type of "arbitrary governmental action" the Due Process Clause prohibits. *Foucha*, 504 U.S. at 80.

G. SB 4 Violates the Contracts Clause

The Constitution prohibits states from "impairing the Obligation of contracts." U.S. Const. art. I, § 10, cl. 1. To show a violation, the threshold question is whether "the state law has,

in fact, operated as a substantial impairment of a contractual relationship." *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978). "This inquiry has three components: whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial." *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 186 (1992). If a substantial impairment is shown, the state may justify the change in law by showing "a significant and legitimate public purpose behind the regulation." *Energy Reserves Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 411 (1983). But even if such a purpose exists, the law will survive scrutiny only if the impairment is "both reasonable and necessary to serve" the purposes claimed by the State. *U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 29 (1977). While courts defer to legislative judgment on a statute's necessity and reasonableness, that deference is lessened where a state is a party and the state's "self-interest is at stake." *Id.* at 26.

1. SB 4 impairs the obligations between public institutions of higher education and students.

SB 4 impairs the contractual obligations between institutions of higher education and students. Because the statute strips colleges and universities of the ability to supervise and guide campus police departments in the area of immigration, students will be deterred from attending school and completing their degrees.[70] Ex. 11 (Alderete Decl.) ¶ 7, 8.

There is an implied contract between these institutions of higher education and their students. The institution offers admission, charges tuition, and sets standards and guidelines for academic achievement, community citizenship, and general behavior through student handbooks and pertinent curriculum. It is implied that if students follow these standards and guidelines,

[70] SB 4 applies both to the State's community college districts and to all college and university campus police departments. Tex. Gov't Code § 752.051(5) and Tex. Educ. Code §§ 61.003 and 130.001 *et seq.*; Ex. 6 (Harmon Decl.) ¶ 6.

they will earn degrees.

SB 4 substantially impairs this contract. The statute restrains the ability of colleges and universities to guide and supervise their police officers in the area of immigration, and it will inevitably lead to racial profiling and local enforcement of federal immigration laws as campus police officers question and detain students in an effort to "inquir[e] into [] immigration status," "assist[] or cooperat[e] with a federal immigration officer," or "provid[e] enforcement assistance" to a federal officer. Tex. Gov't Code §752.053(b); Ex. 6 (Harmon Decl.) ¶¶ 20, 25, 31. Indeed, officials fear that students will no longer consider their college campus safe, that recruitment of Latino students will drop, and that parents will not feel safe sending their children to community colleges. *See* Ex. 6 (Harmon Decl.) ¶¶ 22-24; Ex. 11 (Alderete Decl.) ¶¶ 4-5. Because of its effects on Latino students in higher education, SB 4 substantially impairs contractual obligations between students and their institutions.

There is no significant and legitimate public purpose behind SB 4, nor is it reasonable and necessary. The safety and security arguments offered by legislators during the enactment of SB 4 were contradicted by local law enforcement officials, who testified that SB 4 will make communities less safe. *See* generally Ex. 3 (McManus Decl.); Ex. 11 (Alderete Decl.) ¶ 9. Furthermore, SB 4 creates a detainer policy that conflicts with federal law, and establishes a system of local immigration enforcement that encroaches on the federal field of immigration and conflicts with current federal policy and practices. There can be no legitimate public purpose in passing preempted legislation. And even if there were, the law is neither reasonable nor appropriate in its effects on the contracting parties. *See U.S. Trust*, 431 U.S. at 30 (finding statute unconstitutional where State could have met its goals by other means). Indeed, SB 4 makes communities less safe, as it threatens to undermine proven methods of community policing. *See*

Ex. 6 (Harmon Decl.) ¶¶ 17, 23-24.

2. SB 4's endorsement ban impairs the obligations between public institutions of higher education and their employees

SB 4 also substantially impairs the obligations between public institutions and their employees, who may be subject to unduly prohibitive civil penalties while teaching pursuant to their employment contracts. Community college employees, including professors and administrators, are subject to the "endorse, adopt" provision, and are thereby prohibited from expressing support for any policy that "materially limits the enforcement of immigration laws," which would include expressing support for alternatives to SB 4 itself. Tex. Gov't Code § 752.053(a)(1). Contracts between public institutions and their employees, specifically professors and other teachers, mandate teaching courses with sufficient rigor and critical analysis. SB 4 will inevitably "lead to a suppression of employee speech." Ex. 6 (Harmon Decl.) ¶ 10. Under SB 4, community college professors and other teachers will not be able to fulfill their contractual obligation to teach effectively due to SB 4's unconstitutional limitation on speech. *Id.*

For example, a public policy or political science professor teaching a class on immigration at a community college may be sued and fined for endorsing a policy that materially limits the enforcement of immigration laws by holding class discussion and endorsing, even for the purpose of promoting debate, a policy under which campus police decline to assist ICE agents in collecting information about, or apprehending, undocumented students on campus. The substantial civil penalties of up to $25,500 per offense limit the ability of professors to perform their duties with adequacy and sufficiency, and thereby constitutes a substantial impairment of their contractual obligation to teach.

II. Plaintiffs Will Suffer Irreparable Harm if an Injunction Is Not Granted

It is well settled that the violation of constitutional rights for even a minimal period of time constitutes irreparable injury justifying the grant of a preliminary injunction. *See Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. Unit B. Nov. 1981) (citing, *e.g.*, *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *DeLeon v. Perry*, 975 F. Supp. 2d 632, 663 (W.D. Tex. 2014), *aff'd sub nom. DeLeon v. Abbott*, 791 F.3d 619 (5th Cir. 2015) ("Federal courts at all levels have recognized that violation of constitutional rights constitutes irreparable harm as a matter of law."); *see also Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.").

Where state law is likely preempted, as it is here, the likelihood of irreparable injury is implied. *See Tex. Midstream Gas Servs., LLC*, 608 F.3d at 206 ("If a statute is expressly preempted, a finding with regard to likelihood of success fulfills the remaining [preliminary injunction] requirements."); *see also VRC LLC v. City of Dallas,* 460 F.3d 607, 611 (5th Cir. 2006); *Trans World Airlines,* 897 F.2d at 784; *Greyhound Lines, Inc. v. City of New Orleans*, 29 F. Supp. 2d 339, 341 (E.D. La. 1998) ("Because this case involves preemption, a finding of success on the merits implicitly carries with it a determination that the other three requirements have been satisfied."). Irreparable injury results because Plaintiffs are subject to inconsistent prohibitions after Congress determined that one federal set of standards should apply. *See Trans World Airlines*, 897 F.2d at 784 (explaining that irreparable injury results when state law deprives plaintiffs of the right to have only one regulator); *see also United States v. South Carolina*, 720 F.3d 518, 533 (4th Cir. 2013) (determining that plaintiffs established a likelihood of irreparable injury because "the likelihood of chaos resulting from South Carolina enforcing its separate immigration regime is apparent"); *Ga. Latino All. for Human Rights v. Governor of Ga.*,

691 F.3d 1250, 1269 (11th Cir. 2012) ("Plaintiffs are under the threat of state prosecution for crimes that conflict with federal law, and we think enforcement of a state law at odds with the federal immigration scheme is neither benign nor equitable.").

A. **Plaintiff San Antonio**

As discussed above, San Antonio is confronted with the choice between attempting to comply with SB 4—which is preempted and threatens the constitutional rights of the city's residents—and defying SB 4 and thereby risking the imposition of tens of thousands of dollars in civil penalties, criminal liability, and removal of its officials from elected or appointive office. Because SB 4 forces San Antonio and other municipalities to make this unreasonable choice, the statute threatens constitutional injury sufficient to establish irreparable harm. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 380-381 (1992) (injunctive relief available where "respondents were faced with a Hobson's choice: continually violate the Texas law and expose themselves to potentially huge liability; or violate the law once as a test case and suffer the injury of obeying the law during the pendency of the proceedings and any further review."). San Antonio faces draconian penalties for ensuring that its city jail, police force, and administrative staff comply with constitutional standards.

The substantial uncertainty caused by SB 4's unclear terms and its broad and undefined scope are currently causing harm and will continue to do so absent an injunction. This uncertainty is multi-faceted: SB 4's directive and unduly vague terms have caused substantial confusion and fear that San Antonio may be subject to hefty fines, criminal liability, and removal of its elected and appointed officials from their public offices. This uncertainty interferes with San Antonio's ability to budget, plan for the future, and properly serve its residents.

SB 4 also hijacks San Antonio's authority to enact policies that best fit its community's

needs, including community policing policies. San Antonio faces imminent irreparable injury if SB 4 takes effect because the provisions of SB 4 will diminish the trust that San Antonio's Police Department has established with the Latino and immigrant community. San Antonio has spent years gaining this trust and has cultivated a relationship where the immigrant community feels safe reporting crimes and assisting the police with investigating crimes. SB 4 will undo that trust, and consequently make San Antonio and other Texas communities less safe. No judicial remedy can repair this.

B. **Plaintiff San Antonio City Councilmember Rey Saldaña**

SB 4 threatens Councilmember Saldaña with irreparable harm because it infringes his First Amendment freedom of speech and restricts the content of his political speech. *Elrod*, 427 U.S. at 373 ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). SB 4 impermissibly limits the kinds of policies, laws, and regulations that Councilmember Saldaña can advocate for or against. Councilmember Saldaña is subject to credible threats of prosecution as Defendants proceed to enforce SB 4. A plaintiff "does not have to await the consummation of threatened injury to obtain preventative relief." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979) (internal quotation marks omitted). The looming threat of prosecution is a substantial threat of irreparable injury if the injunction is not issued. *See Valle del Sol, Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (likelihood of irreparable injury where plaintiffs demonstrated "a credible threat of prosecution" under the likely-preempted state harboring statute).

C. **Plaintiff TACHE**

Plaintiff TACHE's members face irreparable harm to their First Amendment freedom of speech and academic freedom. *Elrod*, 427 U.S. at 373. SB 4 abridges the academic freedom of

TACHE's members in that it restricts members' ability to control who teaches, who is taught, what subjects are taught, and how subjects are taught at Texas institutions of higher education. By deterring TACHE members from organizing on campus, their freedom of association is also abridged. Ex. 6 (Harmon Decl.) ¶¶ 11, 14-15. TACHE members may face racial profiling in hiring decisions, which will irreparably harm their careers. *Id.* at ¶ 14. The removal of TACHE institution's leadership would deprive those districts of their elected representation. *Id.* at ¶ 19.

Additionally, TACHE's Latino student members face irreparable injury in the form of unlawful stops, arrests, and extended detentions. *Id.* SB 4 will adversely affect TACHE's members, who may be deterred from going to classes and campus events because they fear being unlawfully detained, racially profiled, and questioned about their immigration status.

D. **Plaintiffs WDP and LUPE**

Plaintiffs WDP and LUPE fear that vulnerable members, employees, and volunteers for their organizations will be deterred from seeking assistance from and performing work with them. WDP and LUPE also fear that they will have to redirect or lose resources because members are not seeking out organizational services for fear of intimidation with law enforcement. Ex. 7 (Valdez-Cox Decl.) at ¶ 12.

Consequently, SB 4 will hinder WDP's and LUPE's ability to fulfill their organizational missions. *Valle del Sol Inc.*, 732 F.3d at 1029 (finding irreparable harm where "organizational plaintiffs have shown ongoing harms to their organizational missions as a result of the [anti-harboring] statute"). Additionally, WDP's and LUPE's members face irreparable injury in the form of unlawful stops, arrests, extended detentions, racial profiling, and questions about their immigration status.

III. **Plaintiffs' Threatened Injuries Outweigh Any Alleged Injuries to the State**

The equities tip heavily in favor of granting a preliminary injunction that halts the enforcement of SB 4. Plaintiffs simply seek to maintain the status quo by enjoining Defendants from enforcing an unconstitutional and preempted law in order to prevent irreparable harm to Plaintiffs and to the public. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (party seeking a preliminary injunction must "establish… that the balance of equities tips in his favor, and that an injunction is in the public interest"). Indeed, the primary purpose of a preliminary injunction is to preserve the status quo pending a determination of the action on its merits. *Chalk v. United States Dist. Ct. Cent. Dist. of Cal..*, 840 F.2d 701, 704 (9th Cir. 1988); *Six Clinics Holding Corp., II v. Cafcomp Sys., Inc.*, 119 F.3d 393, 400 (6th Cir. 1997).

There is no harm to defendants because there is no injury to Defendants who have no authority to enforce the law. *See Trans World Airlines*, 897 F.2d at 784 (determining plaintiffs were likely to succeed on their preemption claim and, consequently, that there was no injury to weigh against defendants from an injunction of the preempted state law); *United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012) ("[W]e discern no harm from the state's nonenforcement of invalid legislation.").

IV. A Preliminary Injunction Would Serve the Public Interest

It is "always" in the public's interest to prevent the violation of the constitution and of an individual's constitutional rights. *Deerfield Med. Ctr.*, 661 F.2d at 338-39; *Melendres v. Arpaio*, 695 F3d 990, 1002 (9th Cir. 2012) (Fourth Amendment); *Wis. Right to Life, Inc. v. Barland*, 751 F.3d 804, 830 (7th Cir. 2014) (First Amendment). It is in the public interest not to allow a state to violate the requirements of federal law. *Valle del Sol*, 732 F.3d at 1029. And the government has no interest in enforcing an unconstitutional law. *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013).

Finally, Congress has established a comprehensive scheme regulating immigration enforcement that best serves the public interest without interference by an incompatible state law. *See Trans World Airlines*, 897 F.2d at 784 (reasoning that the public interest was best served by enjoining a preempted state law and giving effect to Congress's determination that the public was best served by exclusive federal regulation); *Alabama*, 691 F.3d at 1301 ("Frustration of federal statutes and prerogatives are not in the public interest.").

CONCLUSION

For the above reasons, the Plaintiffs respectfully request that the Court enjoin the State from enforcing SB 4.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June, 2017, I served a copy of the foregoing document on all counsel registered to receive NEFs through this Court's CM/ECF system. All attorneys who are not registered to receive NEFs have been served via email.

/s/ Nina Perales
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