

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

CITY OF EL CENIZO, et al.,	§	Civil Action No.: 5:17-CV-00404-OLG
	§	(Lead Case)
	§	
EL PASO COUNTY; RICHARD WILES, SHERIFF OF EL PASO COUNTY; JO ANNE BERNAL, COUNTY ATTORNEY OF EL PASO COUNTY, in their official capacity; the TEXAS ORGANIZING PROJECT EDUCATION FUND; and MOVE TEXAS	§	Civil Action No: 5:17-CV-00459-OLG
	§	(Consolidated case)
	§	
CITY OF SAN ANTONIO, et al.,	§	Civil Action No: 5:17-CV-00489-OLG
	§	(Consolidated case)
<i>Plaintiffs,</i>	§	
	§	
v.	§	
	§	
THE STATE OF TEXAS; et al.,	§	
	§	
<i>Defendants.</i>	§	

CONSOLIDATED PLAINTIFFS EL PASO COUNTY, ET AL.’S THIRD AMENDED
COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF¹

I. PRELIMINARY STATEMENT

1. Senate Bill 4 (“SB 4” or the “Law”) was enacted with the intent to discriminate against Latinos and Latin American immigrants.² It creates draconian penalties, which have now been enforced against Plaintiffs, to silence those with contrary points of view. The Law establishes a legal framework that facilitates and encourages illicit discrimination and, indeed, has now been

¹ Consolidated Plaintiffs El Paso County, et al. file this Third Amended Complaint pursuant to the Court’s Order, Dkt. No. 289.

² As used here, “Latino” means a person of Latin American descent, born in any country. “Latin American immigrants” refer to immigrants from Spanish-speaking countries in the Americas and the Caribbean.

applied to do exactly that. SB 4 violates the U.S. Constitution and should be permanently enjoined.

2. As described below, the Legislature's racial stereotypes and animus fueled SB 4's enactment, tainting the entire law with a discriminatory legislative purpose that is forbidden by the Fourteenth Amendment. The Law chills the speech of local decision-makers in violation of the First Amendment, using stiff penalties to silence public servants on a broad range of topics related to immigration law and immigrant families. SB 4's framework facilitates and causes racial profiling and disparate policing of Latinos and Latin American immigrant communities which, alongside the State of Texas' aggressive tactics to enforce the Law and retaliate against perceived opponents of the Law, has already resulted in the violation of equal protection rights. Latinos and Latin American immigrants and their families, particularly men, have been targeted.

3. This historic and unconstitutional attack on certain Texas communities is especially harmful to the County of El Paso — comprised of residents, employees, and visitors — and to the Texas Organizing Project Education Fund (TOPEF) and MOVE Texas (MOVE) and the populations they serve. For this reason, the County of El Paso, its Sheriff, Richard Wiles, its County Attorney, Jo Anne Bernal, TOPEF and MOVE on behalf of their employees and the people they serve (collectively, the "Plaintiffs"), seek declaratory and injunctive relief against the State of Texas, Texas Governor Greg Abbott, and Texas Attorney General Ken Paxton under the First and Fourteenth Amendments of the U.S. Constitution. In addition, El Paso County and Sheriff Wiles seek a declaratory judgment that El Paso's current policies regarding federal immigration enforcement do not violate SB 4.

II. JURISDICTION AND VENUE

4. This action raises federal questions under the United States Constitution, particularly Article III, and the First and Fourteenth Amendments. In addition, this court has jurisdiction over these constitutional claims pursuant to 42 U.S.C. § 1983.

5. The Court has jurisdiction under 28 U.S.C. §§ 1331, 1346. This court has further remedial authority under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

6. Venue lies in this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this district.

III. PARTIES

7. Plaintiff, El Paso County, Texas is, at all times relevant to this Complaint, a county located in Texas and is recognized as a legal subdivision of the State. Tex. Const. Art. 11 § 1. El Paso County has the constitutional and statutory authority to set policies and regulations, as well as administer programs for its residents in certain areas, including administering its county judicial system, and providing health and social services to many county residents regardless of their national origin. El Paso County also adopts its own budget, has its own funds, can levy taxes, and elects its own representatives. The County Attorney is an elected county official created by the Texas Constitution. Tex. Const. Art. V § 21. The funding and the budget for the El Paso County Attorney is established by the County Commissioners' Court, but the County Attorney is autonomous in its hiring of assistant county attorneys and investigators and other staff. The El Paso County Sheriff is an elected official created by the Texas Constitution. Tex. Const. Art. V § 23. While the funding and budget for the El Paso County Sheriff is derived from the El Paso County Commissioners, the El Paso County Sheriff is autonomous in its hiring and supervision of Deputies and other staff and in supervising and managing the County Jail. El Paso

County, unlike most Texas counties, is bilingual, bi-national, multicultural, and geographically distinct. For instance, El Paso has over 800,000 residents, is over 82% Latino and over 25% of its residents are foreign born. Over 72% of El Paso County households speak a language other than English at home. It is part of the largest border community in the United States, and one of the safest communities in the nation, leading the country in public safety. El Paso takes great pride in protecting all its residents and its values, and has been a leader in the fight against discrimination of all types for decades, with a special focus on protecting the civil rights of its immigrant communities. In its attack upon Latinos and Latin American immigrants, SB 4 stands in stark contrast to El Paso's history and identity. The County is the seat of government for its public officials, who face the injury of removal from office for adopting a policy in violation of SB 4.

8. El Paso County faces injury in fact from SB 4 in the form of substantial civil penalties for non-compliance with the law, as well as tremendous budget uncertainty due to SB 4's unclear standards and imminent full enforcement, including fines of \$25,000 per day of violation excluding the first day of that violation. The County faces the threat of mandamus and injunction actions for violating SB 4. In addition, it has created unbudgeted costs associated with training its deputy sheriffs and administrative staff about complex federal immigration rules and laws.

9. The threat of the State's aggressive and imminent full enforcement of SB 4 against El Paso County officials is real, as underscored by the State of Texas' retaliatory suit against opponents of SB 4, including the El Paso Plaintiffs and by the State's recent lawsuit against the City of San Antonio.

10. For all of these reasons — the budgetary uncertainty created by SB 4, its imminent full enforcement, and the Attorney General and Governor’s threats against the opponents of SB 4 — El Paso County is already injured by SB 4’s unconstitutional mandates.

11. Plaintiff Richard Wiles is the Sheriff of El Paso County. He is a judicial officer imbued with judicial discretion derived from the Texas Constitution. Sheriff Wiles is responsible for the enactment and enforcement of El Paso County’s law enforcement policies and practices, including those governing compliance with Texas law and federal immigration detainers. He faces removal from office for violating SB 4, including by “endorses[ing]” any policy that “materially limit[s]” the enforcement of immigration laws. Sheriff Wiles, as a law enforcement officer, also faces criminal sanction under SB 4 for failing to honor a civil detainer request. Finally, Sheriff Wiles’ authority and discretion to administer the law and to ensure the public safety of the residents of El Paso is greatly diminished by SB 4. Sheriff Wiles is injured by SB 4’s unconstitutional mandates.

12. Plaintiff Jo Anne Bernal is the County Attorney for El Paso County. In November of 2009, Jo Anne Bernal became the first female County Attorney in El Paso County’s history. Before Commissioners Court appointed her, Ms. Bernal had been working with the County Attorney’s Office for 16 years, 14 years as First Assistant County Attorney. As County Attorney, Ms. Bernal manages an office with an annual budget of \$7.5 million and supervises more than 100 employees. In addition to handling complex litigation, she oversees 39 attorneys who practice both civil and criminal law in areas that range from civil rights litigation to juvenile prosecution.

13. It is the duty of the County Attorney to enforce the laws of the State of Texas regardless of the immigration status of the victim. The County Attorney’s office is statutorily responsible

for obtaining legal protections on behalf of all victims of family violence, and elder and child abuse. As an elected official, she faces removal from office for violating SB 4. This violation may include the endorsement of a policy that limits the enforcement of immigration laws. Endorsement is undefined by the statute and may include expression for a policy in violation of SB 4. County Attorney Bernal testified against SB 4 during the committee hearings in both the Texas House and Senate. The threat of civil penalties and the need to train the County's staff, attorneys, and investigators regarding SB 4's requirements and federal immigration enforcement have created budgetary uncertainty for the County Attorney's office.

14. Plaintiff, TOPEF, is an education organization that promotes social, racial and economic justice for all Texans by conducting strategic, year-round community organizing, focusing efforts within working class neighborhoods in San Antonio, Houston, and Dallas. TOPEF is incorporated in San Antonio and keeps its principal place of business there. TOPEF organizes Black and Latino communities across several cities in the state with the goal of transforming Texas into a state where working people of color have the power and representation they deserve.

15. For example, TOPEF has organized the community members it serves to rally in support of passage of the Development, Relief, and Education for Alien Minors (DREAM) Act. One such example occurred in 2017, when TOPEF, working with partner organizations, organized a rally of hundreds of people from all across Texas in front of the San Antonio federal courthouse to demand passage of the DREAM Act. Similarly, TOPEF has been heavily involved in educating people about, and organizing people to rally against, the Trump administration's attempt to end the Deferred Action for Childhood Arrivals (DACA) policy.

16. TOPEF and the community members it serves have already been injured by SB 4's unconstitutional mandates. TOPEF has been forced to divert funding and other resources to directly counteract the effects of SB 4. For example, in response to SB 4, TOPEF has had to conduct "know your rights" presentations, and given out "know your rights" cards; applied for and obtained grants for projects related to SB 4 and immigration issues; organized rallies against SB 4; and even expanded its immigration program — including creating at least one position — to more effectively tackle immigration issues locally and statewide such as SB 4. The attention and resources that TOPEF has been and continues to be forced to give to SB 4 — efforts for which are mostly locally-focused — has taken away from the efforts that it would otherwise be able to devote to broader federal immigration issues affecting the communities it serves. For example, TOPEF is currently focused on advocating against (1) family separations; (2) the recent implementation of the "public charge" criterion for United States admissibility determinations; and (3) the expansion of private immigration detention centers both in San Antonio and across the State. Its efforts on these fronts include educating the public, organizing its community members to rally in support of or against these issues, and working directly with relevant lawmakers. TOPEF's diversion of resources to counteract SB 4 takes away from its ability to accomplish these, and other, goals.

17. SB 4 also directly impairs TOPEF's mission by making Latinos more hesitant to interact with the police and, therefore, negatively affecting their power and willingness to organize in the sorts of public demonstrations and rallies described above. This fear has manifested in a decrease in the number of community members willing to participate in TOPEF's organizing activities because the families it serves, which are mostly Latino, are afraid to do so for fear of being targeted by local law enforcement. The fear of racial targeting, leading to a chilling of

participation, will only amplify if SB 4 goes into effect in full, further stifling TOPEF's ability to accomplish its organizational goals.

18. Given TOPEF's mission, the forced diversion of resources, and the harms to the racially and ethnically diverse community it serves, TOPEF has organizational standing.

19. Plaintiff, MOVE, is a grassroots, nonpartisan, nonprofit organization that builds political power in underrepresented youth communities through civic engagement, leadership development, and progressive issue advocacy. MOVE operates primarily within the San Antonio area, organizing students on the 13 largest college campuses in San Antonio and promoting participation in political and social causes. MOVE focuses these efforts primarily in the area of voting rights, with a particular emphasis on the voting rights of minority communities. For example, each year MOVE registers thousands of students to vote. It also tracks voting rights bills proposed by the Texas House or Senate that affect high school and college students, and organizes those students to rally in support of or opposition to those bills. MOVE also helped co-sponsor 11 bills during the last legislative session. MOVE is incorporated in San Antonio and keeps its principal place of business there.

20. MOVE and the community members it serves have already been injured by SB 4's unconstitutional mandates. MOVE has been forced to divert funds and change its programming priorities in order to address the needs of Latino students at the colleges it serves directly as a result of SB 4. For example, in response to SB 4, MOVE has had to: conduct "know your rights" trainings and activities to raise awareness about SB 4 on college campuses after it was passed; co-found and participate in a coalition designed to combat the effects of SB 4, including by organizing students and others to rally in protest of SB 4 and by researching SB 4 repeal bills to produce briefings for its partner organizations; and dedicate multiple staff members and dozens,

if not hundreds, of hours toward these and similar efforts. Essentially, MOVE has been forced to pivot as an organization in order to direct both financial and staff resources towards counteracting the effects of SB 4, when it would otherwise be able to focus its attention entirely on advocacy related to voting rights and preparing for the next legislative session.

21. SB 4 also directly impairs MOVE's mission by making Latino youth hesitant to interact with the police, thereby negatively affecting their willingness to mobilize, organize, and build power through the organization, which harms MOVE's ability to carry out its activities. Specifically, the students who participate and organize with MOVE fear racial profiling on their college campuses and many are now afraid that local law enforcement and/or campus police will inquire about their personal immigration status or that of their family members. Heightened fear chills participation in campus activities and deeply impacts MOVE's ability to mobilize college students and fulfill its organizational mission.

22. Given MOVE's mission, the forced diversion of resources, and the harms to the racially and ethnically diverse community it serves, MOVE has organizational standing.

23. Defendant, the State of Texas, is a free and independent sovereign state of the United States.

24. Defendant, Greg Abbott, is the Governor of the State of Texas and signed SB 4 into law on May 7, 2017. He is the Chief Executive officer of the State of Texas and is responsible for the appointment of officials who administer state law enforcement. Governor Abbott is sued in his official capacity.

25. Defendant Ken Paxton is the Attorney General of the State of Texas, which is an executive office that represents the State of Texas in all actions in which the State may be a party. He is the officer who shall seek mandamus or injunction if and when local entities violate

SB 4. He is also the officer given the sole authority to seek a *quo warranto* or a removal action against a public official who has violated SB 4. Attorney General Paxton is sued in his official capacity.

IV. FACTUAL BACKGROUND

A. SB 4 Imposes Unconstitutional Mandates on Local Governments and Facilitates Discriminatory Policing Tactics

26. Over the past several decades, the federal government has had a history of creating and enforcing immigration law at the expense of civil rights laws and the Constitution.

27. In the past two decades, federal immigration enforcement has increasingly co-opted local resources in border jurisdictions like El Paso County, placing a strain on local police resources and relationships with communities of color.

28. Texas cities and counties, such as El Paso, have used their traditional police powers to adopt a variety of policies and measures to guide their cooperation with federal immigration enforcement initiatives in a way that best advances the needs of their communities. Jurisdictions like El Paso also rely on their traditional police power to allocate scarce resources to balance their commitment to federal immigration priorities with public safety, due process, and accountability.

29. In recent years, certain politicians, including Defendant Greg Abbott, have labeled at least some of these cities and states as “sanctuary jurisdictions” — a pejorative, imprecise term.

30. Indeed, since 2010, spurred by anti-immigrant sentiments, at least five other state legislatures have attempted to enact laws with requirements to regulate local police stops, questioning, and detention policies. Each of these laws has either failed or judges have voiced concerns about the civil rights implications on the basis of race.

31. Nonetheless, Texas followed suit. The Texas legislature considered so-called “Sanctuary Cities” and “Show Me Your Papers” bills over several legislative cycles, continuing even as similar laws were enjoined.

32. Then, after a contentious legislative process, described below, SB 4 was signed into law on May 7, 2017. As Governor Greg Abbott said, immediately after signing the bill, the Law was meant to “ban[] sanctuary cities.” It is codified at Tex. Gov’t Code Ann. §§ 402.0241, 752.051–752.057, 772.0073 (West), Tex. Code Crim. Proc. Ann. Art. 2.13, 2.251, 17.16 (West), Local Gov’t Code Ann. § 87.031 (West), Tex. Penal Code Ann. § 39.07 (West).

33. As is relevant here, SB 4 prohibits local entities from adopting, enforcing, or endorsing a policy that prohibits or materially limits the enforcement of “immigration laws,” a term without meaningful definition, or, as demonstrated by pattern or practice, materially limiting or prohibiting enforcement of such laws.

34. SB 4 prohibits law enforcement agencies, as demonstrated by pattern or practice, from refusing to comply with an immigration detainer request issued by the federal government. An immigration detainer, also known as an “ICE hold,” is a document by which United States Immigration and Customs Enforcement (ICE) requests a local law enforcement agency to hold a person ICE suspects has violated civil immigration laws, so that ICE may gain custody, even if there are no underlying criminal charges to justify continued detention.

35. In addition, SB 4 provides that local entities may not prohibit or “materially limit” a police officer — including safety officers on college campuses — from inquiring into the immigration status of a person under lawful detention or under arrest; inquiring into the detainee’s place of birth; sending that information to United States Citizenship and Immigration Services (USCIS), ICE, or any other federal agency; assisting or cooperating with a federal

immigration officer; or allowing the federal government access to a jail to enforce federal immigration law.

36. Any “citizen” residing in the jurisdiction of a local entity may file a complaint with the attorney general alleging that a jurisdiction has violated SB 4. The Attorney General may then seek a writ of mandamus or injunction to compel the jurisdiction to comply with SB 4.

37. Jurisdictions that intentionally violate SB 4 face severe, escalating civil penalties, including fines of \$25,000 per day of violation, excluding the first day of a violation.

38. Public officials who violate SB 4 face removal from office via *quo warranto*. A public statement made by a public official is evidence for removal.

39. Sheriffs, chiefs of police, constables, or anyone with primary authority for administering a jail is criminally liable for knowingly failing to comply with a detainer request.

40. In total, SB 4 forces local government to divert resources to federal immigration priorities as envisioned by the State of Texas. Law enforcement officials who do not comply will have committed crimes. Public officials who do not abide by federal immigration priorities face removal. All law enforcement agencies and jurisdictions that opt to focus on community policing and stay out of immigration enforcement face stringent civil liability.

41. Latinos and Latin American immigrants and their families, particularly men, bear the brunt of this unjust law.

B. Procedural History

42. Before SB 4 could go into effect, several Texas cities, counties, local law enforcement and city officials, and advocacy groups challenged the law in three consolidated actions. Plaintiffs sought a preliminary injunction, and the district court found Plaintiffs likely to prevail on certain of their claims.

43. Following the district court’s order, Texas moved this court to stay the injunction pending appeal. The stay panel granted the motion in part, finding Texas likely to prevail on the Fourth Amendment and preemption claims, and stayed the injunction as to Article 2.251’s ICE-detainer mandate and Section 752.053(b)(3)’s assistance-cooperation provision. *City of El Cenizo v. Texas*, No. 17-50762, 2017 WL 4250186, at *2 (5th Cir. Sept. 25, 2017).

44. The stay panel left the injunction in place as to the “endorse” and the “materially limits” prohibitions, concluding that possible limiting constructions of these terms “are best left for the time when this court’s ruling would have more finality.” Texas appealed the preliminary injunction, and Plaintiffs cross-appealed the district court’s refusal to enjoin SB 4 completely.

45. Plaintiffs ultimately succeeded on the merits of their constitutional claims as to the enforcement of Section 752.053(a)(1)’s “endorse” provision against elected officials.

46. Plaintiffs now seek final determination on their remaining claims.

C. SB 4 was Enacted with the Intent to Encourage and Facilitate Discrimination Against Latinos and Latin American Immigrants, Particularly Men

47. Circumstantial evidence surrounding SB 4’s enactment raises a strong inference of an illicit purpose, in light of the teachings of *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265-68 (1977).

Background and Events Leading to Enactment, and the Mindset of the Legislative Leaders

48. For more than one-hundred years, facially neutral laws and ordinances have unconstitutionally discriminated on the basis of race and national origin against Latinos and Latin American immigrants.

49. In Texas, Latinos and Latin American immigrants have suffered routine racial profiling, discrimination, and violation of their civil rights at every stage of interaction with law enforcement, spanning from being disproportionately subject to traffic stops to being disparately

impacted by the use of ICE detainers while held in local jails. As discussed below, the disparate impacts on these communities continue to-date, despite some localities' attempts to ameliorate these effects by banning racial discrimination.

50. For the past decade, Texas lawmakers have relied on racially charged statements against Latin American immigrants in their campaigns. Since his 2006 campaign, Lieutenant Governor Dan Patrick, one of the main architects of SB 4, has called immigration into Texas an “invasion” and said that immigrants coming to Texas bring “third world diseases,” such as leprosy. Without factual data, Patrick blamed Latin American immigrants for “a rising crime rate, overcrowded schools, an overburdened health-care system, and runaway growth in the state budget,” and characterized undocumented Latin American immigrants as “terrorists and drug runners.” In 2014, he affirmed these anti-immigrant statements.

51. Since the passage of SB 4, Lt. Gov. Patrick’s dangerous and irresponsible rhetoric toward Latin American immigrants has continued unmoored from reality or reason. In 2018, Lt. Gov. Patrick erroneously suggested that undocumented people had committed 566,000 crimes in the last six years. The claim was called a “pants on fire” lie by a fact-checking entity. This statement and others like it are provably false. More relevant here, these statements elucidate a legislative intent that is based on lies, misstatements, racial panic, and impermissible invidious discrimination.

52. Just like Lt. Gov. Patrick, Governor Greg Abbott has made it clear that he considers undocumented people to be a danger to the citizens of Texas. In June of 2013, Gov. Abbott stated that “[f]or the first time in more than a decade the front line of illegal immigration has shifted from Arizona to Texas... A surge of illegal crossings is a threat to the safety of Texas families.” Even before SB 4 was enacted, Gov. Abbott began to take action against the

jurisdictions he wrongly believed were not cooperating with the federal government's enforcement of immigration laws. On February 6, 2017, Gov. Abbott tweeted that Sheriff Sally Hernandez of Travis County had refused to enforce certain provisions of federal immigration law and was "not giving ICE info about drugs cartels [sic] & armed robbers." The non-compliance of Travis County with federal immigration law became a driving force behind the State's obsession with passing SB 4. Similar to nearly every justification for this law, it was false that Travis County was refusing to honor federal immigration laws. However, the rhetoric used by the Governor before the enactment of SB 4 illustrates a mindset that all undocumented immigrants are dangerous criminals who must be stopped using legislative means. This rationale is irrational, unfounded, and is clear evidence of an impermissible legislative purpose.

53. Governor Abbot repeated similar rhetoric on the Sunday night when he signed SB 4 into law. He discussed at length a case from San Francisco, California, in 2015 which involved a Mexican man accused of a crime. Despite the utter lack of a connection between that incident and Texas, in describing the necessity of SB 4, the Governor explained that "Texas will not be complicit in endangering our citizens. . . ." This fearmongering rhetoric further evinces the Governor's intent to portray Latin American immigrants, especially men, as dangerous criminals.

54. Nor can SB 4 be separated from the racially charged context of recent federal immigration enforcement. Defendants have used the heightened enforcement and its accompanying rhetoric to lead a movement to discriminate against Latinos and Latin American immigrants. The 2016 election both in Texas and in the United States was riddled with nativist and anti-immigrant appeals. For instance, then-candidate Trump repeatedly claimed that "illegal immigrants" were "rapists" and "criminals" roaming the streets, killing people and stealing jobs from American workers. In response to a question about immigration, he even used the term

“bad hombres” to describe the specific target of his proposed immigration plan, in the process conflating crime and undocumented immigration with Latinos, and Latino men in particular, and furthering the stereotype that the two are synonymous. He also publicly attacked Latinos, including by questioning the impartiality of a Latino United States federal judge presiding over a lawsuit related to Trump University. In 2017, the Trump administration issued several Executive Orders to ban immigrants of color, initiatives that were twice enjoined for discriminatory intent.

Procedural and Substantive Departures from Normal Processes

55. SB 4 flew through the legislative process with speed unusual for even high-profile bills, despite a chorus of public cries against it, including by law enforcement officials. Elected officials who participated in the legislative process for years, including for many high-profile bills, had not seen any other constitutionally adequate bill passed with such alacrity and procedural deviations.

56. Senator Charles Perry filed SB 4 on November 16, 2016, as a pre-filed bill.

57. On February 2, 2017, the Senate State Affairs Committee held a daylong committee hearing in which hundreds of people testified in person. Despite the volume of testimony, less than 3% testified in person in support of the bill, only one of whom was a law enforcement member.

58. During the testimony, the State Affairs Committee Chair refused to allow extra chairs for Democratic State Senators who were not part of the Committee, causing State Senators to shuttle between the two seats for Democrats.

59. On February 8, 2017, SB 4 was passed to engrossment and sent to the House. SB 4 was referred to the House Committee on State Affairs and was heard on March 15, 2017. Again, hundreds of people testified in person against the bill. Again, only about 3% testified in favor.

60. On April 12, 2017, the bill was voted out of the House State Affairs Committee as substituted and sent to the Calendars Committee on April 20, 2017 at 2:22 PM. Just 48 minutes later, the bill was placed on the Emergency Calendar, moving with extraordinary speed.

61. The House considered SB 4 on April 26, 2017. Chairman Charlie Geren was the House sponsor for SB 4. In all, the House considered 145 amendments, of which fewer than 10% were adopted, accompanied by emotional debate, in a session that extended until 4:30 AM on April 27, 2017.

62. The House debate contained many peculiar deviations from normal procedure. For instance, several points of order were overruled that under normal operating procedures would have been sustained. This included a point of order concerning the validity of a witness affirmation, which is the same category of point of order that was sustained against a previous “sanctuary cities” bill. Moreover, rather than cut off debate utilizing the House rules to move to the previous question, the House moved to have the vote for “Record Vote 456” used for all amendments that remained on the Speaker’s desk. This rule suspension has not been used or adopted by the Texas House for any legislation other than bills on the local and consent calendars. This effectively cut-off debate without meaningful consideration of any amendment numbered 76 to 145.

63. The tenor of the debate was also a major departure from the normal practices of the Texas House. The Texas House Rules in effect during the 85th Legislature state “the speaker shall preserve order and decorum” in the House and “shall see that the members of the house conduct themselves in a civil manner in accordance with accepted standards of parliamentary conduct.”³

³ Tex. Legis. Council, Tex H. Rules, 85th Leg. 3-4 (2017), available at https://lrl.texas.gov/scanned/rules/85-0/85_house_rules.pdf.

64. Despite this, the proponents of the bills defined the problem that the legislation was meant to address not as local cooperation, but as “illegals,” using a term widely considered specifically pejorative to the Latino community, not only undocumented immigrants. Chairman Geren said that the bill was aimed at “bad people,” suggesting animus toward the targets of the law. Legislators were often heard laughing at the demise of ameliorative amendments, and heckling at their legislative colleagues who voiced opposition to the bill. The disrespectful behavior and racially charged undertones of the debate led one lawmaker to conclude: “I can’t speak to what was in their hearts and why — what motivated them to file this legislation, but I can speak to the fact that we raised concerns about its impact on the Latino community and they were disregarded.”

65. Consideration of the so-called “Schaeffer Amendment,” an amendment proposed by Representative Matt Schaeffer, was also a substantive departure from the normal procedures. The Schaeffer Amendment sought to re-draft the House version of the bill and revert to certain language of the Senate version, including language permitting law enforcement to make immigration inquiries during any “lawful detention,” rather than only after an arrest. This amendment was hotly contested and controversial. A legislative trade proposal was raised that, essentially, would have removed the Schaeffer Amendment from consideration in exchange for allowing multiple other amendments to be considered, in response to concerns that the public and other lawmakers had raised about the bill. After some time, however, it became clear that a true deal was never on the table, as Representative Schaeffer showed no serious inclination to remove his amendment from consideration.

66. Accordingly, in one night, SB 4 made Texas legislative history in the worst possible way. Meaningful points of order were denied outright and not considered despite the traditional

practice of the House. The bill spent less than an hour in the Calendars Committee. It was subject to a tremendous volume of negative witness testimony in both the Texas Senate and Texas House committees, all of which failed to impede its swift progress through the legislature. The House cut off debate by using a practice reserved only for bills on the local and consent calendar. A “deal” was offered that would have allowed the Speaker to choose which amendments would be considered but without any serious intention of compromise.

67. SB 4 passed the Texas House on April 27, 2017 and was sent to the Senate.

68. The Senate concurred in House Amendments, and the Governor signed SB 4 into law on the evening of Sunday, May 7, 2017 in a private event not open to the media or the public. It became effective on September 1, 2017.

Evidence of Pretext in Stated Rationale

69. As noted above, the bill’s sponsor, Chairman Geren, announced from the House floor that SB 4 was meant to uphold the rule of law and get at “bad people.” He argued that SB 4 required local governments to enforce federal immigration law only to the extent it was requested by the federal government. He also misleadingly claimed that the “Show Me Your Papers” component of the bill applied only to people who were actually arrested and nearby bystanders. Finally, Chairman Geren claimed the bill simply requires jurisdictions to honor valid ICE immigration detainer requests.

70. But Chairman Geren admitted on the House Floor that he did not consult any studies to justify or inform his decision to champion SB 4. He further stated there was no inciting event that led to his sponsorship or drafting of SB 4. In fact, his use of the term “bad guys,” which is shockingly similar to Trump’s infamous reference to “bad hombres” — a term that perpetuates the stereotype conflating criminals and undocumented immigrants with Latino men —

exemplifies an underlying intent to discriminate against Latinos and specifically target Latino men. Ultimately, too, each of the offered rationales is belied through a close examination of legislative history, particularly the repeated rejection of ameliorative amendments.

71. First, SB 4 cannot be justified by any true concern about public safety. For example, amendments were rejected that targeted violent or dangerous offenders to be held pursuant to ICE detainer requests. Other amendments that would have provided training to local law enforcement concerning the complexities of federal immigration law were likewise rejected. Similarly, amendments seeking to improve communication between immigrant communities and law enforcement were also rejected.

72. There was voluminous testimony by law enforcement officials in both the Texas House and Senate committees that SB 4 will make Texas less safe, but it was not given serious credit.

73. Chairman Geren, the House sponsor of SB 4, engaged in a colloquy with Chairman Rene Oliveira during the floor debate for SB 4. Chairman Geren admitted that out of the hundreds of testifying witnesses, only one law enforcement officer testified in favor of the bill. (“Oliveira: ...I think throughout the state based on the testimony we heard — there was only one law enforcement officer, and he testified in the Senate as a sheriff in favor of this bill. Isn’t it true there was not one police chief, one police officer, one constable, one sheriff, or anybody else who testified in favor of this bill? Geren: That’s Correct.”)

74. Finally, the bill author and all proponents of the bill were made aware that the incidence of crime among the undocumented community was lower than that among U.S. citizens and Legal Permanent Residents.

75. Similarly, SB 4 was not structured to target only individuals who have been convicted of a crime, but a broader class of “bad people” and “illegals,” again suggesting impermissible

discriminatory intent. Once the Schaeffer Amendment was adopted, the will of the House was to allow this bill to apply to *anyone* detained by law enforcement and not just to those who were arrested. Accordingly, SB 4 allows police officers and campus safety officers to make national origin inquiries at traffic stops and other commonplace interactions with Texas residents.

76. SB 4 bans racial profiling on its face, but the bill hamstringing one of the most effective tools that local jurisdictions use to combat racial profiling. For example, El Paso County, to address a history of racial profiling issues with officers, adopted a ban on inquiries into immigration status at stops. Hearings did not address how localities could find similarly effective alternatives.

77. This bill also cannot be justified by the State's strong interest in cooperation with federal immigration efforts, as SB 4 goes much further. First, SB 4 transforms compliance with voluntary ICE detainer requests into mandatory obligations. Second, SB 4 goes much further even when it could have been narrowed: a floor amendment was offered that would have limited SB 4 to the detainer issue only, but it was rejected. Finally, the State's interest is already being met by Texas localities. There was credible testimony in committee that local jurisdictions in Texas comply with almost all ICE detainers already. Chairman Geren in fact stated that he could not name a so-called "sanctuary city," county, or university that did not intend to honor ICE detainers. This bill was thus not passed to simply force compliance with ICE detainers, as such compliance is already the standard across Texas and has been for years.

78. A fervent belief in the "rule of law" also cannot justify SB 4, which allows the Attorney General (AG) to seek mandamus or injunction for entities that allegedly violate SB 4 and allows the AG to defend local entities from suits against those jurisdictions for complying with SB 4. In stark contrast, SB 4's perfunctory language regarding non-discrimination provides no

authorization for the AG to *enforce* that non-discrimination policy. Instead of evidencing a serious concern with how to deal with the very likely discriminatory impact of SB 4, the presence of the non-discrimination policy without an enforcement mechanism reveals the policy as nothing more than a fig leaf provision intended to obscure impermissible discriminatory intent.

79. Accordingly, the policy rationales for this bill are pre-textual and belie a sub-rational, impermissible purpose based in racial or national origin animus or discriminatory intent.

Evidence of Disparate Impact

80. SB 4 removes critical checks on discrimination such as local supervisory control to prevent and punish racial profiling. For example, local supervisors can no longer have policies to prevent discriminatory traffic stops and questioning. Local supervisory control allows cities and municipalities to address racial profiling across the entire spectrum of law enforcement interactions with individuals. Stripping local supervisory discretion to implement strict anti-discrimination methods permits individual officers to discriminate and leads to a cascading series of disparate impacts beginning at traffic stops and potentially ending in ICE detainers. For example, racial profiling has had a disparate impact on Latino drivers. Despite laws attempting to ameliorate the effects of racial profiling, from 2009 to 2015, in a review of 15 million records in Texas, Latino drivers in Texas were found to be “33% more likely to be stopped than Caucasians and much less likely to have any drugs, weapons, or illegal currency on them.”⁴

81. Data specialists have found that even this data may underestimate the extent of racially-motivated stops. For example, in reviewing Texas racial profiling data, Stanford specialists

⁴ Elizabeth Wheat, *Law Enforcement Profiling in Public Policy*, in *Global Encyclopedia of Public Administration, Public Policy, and Governance* 1, 6 (A. Farazmand ed., 2016), *available* at https://www.researchgate.net/profile/Elizabeth_Wheat/publication/305420304_Law_Enforcement_Profiling_in_Public_Policy/links/5b4a1989a6fdccadaecb5c6c/Law-Enforcement-Profiles-in-Public-Policy.pdf.

confirmed that Texas DPS records a large percentage of the Latino population as white, causing data flaws in capturing racial profiling.⁵

82. The disparate impact goes beyond racial profiling. On information and belief, Latino communities in Texas are already less willing to report being victims of crimes due to fears of being asked about immigration status or detained.

83. The disparate impact of ICE detainers also falls heavily on undocumented Latino individuals. For example, in Texas, ICE detainers are used to hold predominately Latin American immigrants. Based on Syracuse University's Transactional Records Access Clearinghouse (TRAC) data, in FY 2019, 21,180 ICE detainers were sent to Texas facilities; 95.6% (n=20,256)⁶ of those were for people from Latin American countries. In FY 2018, 35,429 detainers were sent to Texas facilities; at least 95.8% (n=33,958) were from Latin American countries. In contrast, DHS estimates that, in FY 2015, just 71.4% of undocumented immigrants residing in the U.S. were from Latin American countries.⁷

84. Additionally, the disparate impact of ICE detainers most impacts undocumented Latin American immigrant men. For example, in FY 2018, in Texas, 93% of ICE detainers were issued for men (n=33,020), and in FY 2019, 92.4% were issued for men (n=19,582). Yet men make up just roughly half of all undocumented immigrants.⁸

⁵ See Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, Stanford Computational Policy Lab (2019), (discussing the raw data issues in Texas racial profiling reporting) <https://5harad.com/papers/100M-stops.pdf>; Cindy Casares, *Texas Misreports Latino Traffic Offenses as White, Impacting Racial Profiling Record*, Latina (Nov. 25, 2015), <http://www.latina.com/lifestyle/our-issues/texas-misreports-latino-traffic-offenders>.

⁶ "N" denotes "sample size."

⁷ Bryan Baker, *Estimates of the Illegal Alien Population Residing in the United States: January 2015*, Dep't of Homeland Sec'y (2018), https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf

⁸ Tanya Golash-Boza, *The Deportation Crisis for Latino Immigrant Men and Their Families*, SCHOLARS STRATEGY NETWORK (Apr. 9, 2014), <https://scholars.org/brief/deportation-crisis-latino-immigrant-men-and-their-families>.

85. History and logic supports that not all people will be equally subject to this harassment: Latinos and Latin American immigrants and their families, particularly men, will be targeted for both immigration questioning and for ICE detainers. Ultimately, the overwhelming majority of people deported are Latino men.⁹ Immigration enforcement efforts simply do not fall equally on all immigrants.

86. This information was easily accessible to proponents of the Law, and known to at least some of them. Indeed, even on the House floor, Chairman Geren admitted that most immigrants in Texas are of Latin American origin, essentially acknowledging that Latinos were more likely to be racially profiled under the law.

87. Chairman Geren also admitted that ICE detainers are not always valid. It is widely known that, in Texas, invalid ICE detainers and unlawful detentions unequally affect Latinos and Latin American immigrants.

88. Chairman Geren also stated on the House floor that the immigrant community was not in favor of the bill, stating that members of this community had communicated with him about their concerns about being treated unfairly. He said, “most of their concerns were for their parents. Most of the immigrant community that approached me were citizens of the United States, but their parents’ status was questionable.”

89. Chairman Geren also acknowledged Texas’ long history of racial profiling, stating, “I agree with you that racial profiling does occur — not just in law enforcement, and it’s not just against Hispanics.”

90. Upon information and belief, SB 4 was passed because of its foreseeable discriminatory impact upon Latinos and Latin American immigrants.

⁹ *Id.*

D. Chilling Speech, Association and other First Amendment Rights

91. On its face, SB 4 prohibits officials from “endors[ing]” any policy that would prohibit or materially limit the enforcement of immigration laws. Although the term “endorse” is not defined in statute, its common definition includes “a recommendation, suggestion, comment, or other expression in support of or in favor of an idea or viewpoint that is generally conveyed openly or publicly.” *City of El Cenizo, Texas v. Texas*, 890 F.3d 164, 183 (5th Cir. 2018). The definition of the term “endorse” also commonly includes the word “sanction,” as in “us[ing] ... official authority to ratify or authorize.” *Id.* The term includes “endorsement” of policies already in place, as well as those not yet adopted.

92. SB 4 creates significant penalties for local officials who run afoul of certain provisions, including the endorsement rule. Among other penalties, it allows for the removal of public officials via *quo warranto* for the endorsement of a policy in violation of SB 4. SB 4 also subjects local entities and campus police who intentionally violate the endorsement rule to civil penalties of a minimum of \$25,000 per day of violation, excluding the first day of a violation.

93. Moreover, SB 4 creates a chilling effect upon peaceable assembly — for example, organizing, protesting, and other protected forms of speech and petition that occur in the public square. These activities often take place on college campuses and other public venues subject to presence by either campus police or local law enforcement. Community members from both TOPEF and MOVE are afraid to participate in the activities of those organizations, for fear of being targeted for looking “foreign” and being asked to produce proof of citizenship by campus or local police.

94. At the same time, TOPEF and MOVE have been stymied in their efforts to work with officials in establishing local reforms designed to serve the community, as officials have expressed severe reluctance to engage in speech that might run afoul of certain SB 4 provisions.

95. Further, in a remarkably retaliatory move, Texas sued Plaintiffs El Paso County, Sheriff Wiles and TOPEF in an advisory opinion action it filed in the Austin Division. *Texas, et al. v. Travis County, et al.*, 5:17-CV-00425-SS (W.D. Tex.—Austin Division), which included a claim about the “endorse” provision of SB 4.

96. Texas did not allege any actions or omissions by TOPEF that may have justified its lawsuit; Texas stated plainly that it sued TOPEF because the organization challenged the constitutionality of SB 4.

97. While the suit was ultimately dismissed, Texas’ addition of Plaintiffs was a retaliatory, malicious action that served to chill and violate Plaintiffs’ First Amendment rights, including their right to petition the government and have access to the courts. To date, Texas has not affirmatively announced that it will not bring a similar action in the future.

E. SB 4 Facilitates and Encourages Discriminatory Policing Practices

98. SB 4 causes unlawful detentions and the use of national origin, race, and gender for unlawful disparate impact in policing, in violation of constitutional guarantees.

99. SB 4 allows law enforcement personnel, including college campus law enforcement officials, greater discretion to make inquiries into the national origin of any individual detained for any period of time. Jurisdictions are specifically *disallowed* from prohibiting law enforcement personnel from inquiring into national origin at the point of detention, arrest, or custody.

100. SB 4 has led and leads to pre-textual vehicle stops or other investigation, which forms the basis for racial profiling by law enforcement personnel in Texas at every stage of interaction with law enforcement, spanning from stops and questioning, to searches, seizures, arrests, and detentions, and ultimately to being subject to ICE detainers while in local jails. Each of these potential points of contact provides the opportunity for and leads to disparate impact along the lines of race, national origin, and gender, in violation of equal protection.

101. On information and belief, SB 4 has caused discriminatory policing acts in multiple jurisdictions since its implementation in its current form on May 8, 2018.

V. CAUSES OF ACTION / VIOLATIONS OF LAW

A. SB 4 was Passed with a Discriminatory Intent in Violation of the Fourteenth Amendment's Equal Protection Clause

102. Plaintiffs incorporate by reference all factual allegations in paragraphs 1-101 as if set forth herein.

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

104. Discrimination based on race, national origin, and/or gender was a substantial or motivating factor behind SB 4.

105. The historical background, sequence of events, procedural deviations, substantive departures, and legislative history, as well as the foreseeable certainty of the disparate impact of SB 4 on a protected class — and the failure to adopt amendments that would have ameliorated that disparate impact, all indicate an intent to discriminate on the basis of race and/or national origin.

106. The stated justifications and policy rationales for SB 4 are pre-textual and meant to obfuscate an impermissible discriminatory purpose.

B. SB 4 violates the First Amendment by Limiting Protected Speech, Chilling Public Assembly, and Retaliating Against Public Officials and Private Citizens

SB 4 Unconstitutionally Burdens Protected Speech by Public Officials

107. Plaintiffs incorporate by reference all factual allegations in paragraphs 1-101 as if set forth herein.

108. “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.” U.S. Const. Art. V, cl. 1.

109. The First Amendment, incorporated and made applicable to Texas by the Fourteenth Amendment to the United States Constitution, prohibits viewpoint discrimination by the government under certain circumstances.

110. SB 4 impermissibly limits speech by public officials based on the content of their speech about a range of issues — namely, immigration policy and law enforcement practices — that are of immense public concern.

111. SB 4’s regulation of speech to an elected public official’s constituency is not narrowly tailored to address a compelling government interest.

SB 4 Unconstitutionally Chills Public Assembly

112. The First Amendment, incorporated and made applicable to Texas by the Fourteenth Amendment to the United States Constitution, prohibits the abridging of the right to peaceably assemble.

113. SB 4 impermissibly chills the right of TOPEF, MOVE, and the communities they serve to peaceably assemble.

Defendants Filed a Retaliatory Lawsuit against Plaintiffs

114. Defendants have violated Plaintiffs El Paso County, Sheriff Wiles, and TOPEF's First Amendment rights by retaliating against them through a malicious action in the Austin Division.

115. Plaintiffs' filing of this lawsuit challenging SB 4 constitutes protected speech under the First Amendment.

116. Texas's retaliatory suit against Plaintiffs in the Austin Division violated Plaintiffs' protected speech. Texas had no legitimate, non-retaliatory reason for suing Plaintiffs in the Austin Division action. Indeed, the lawsuit was ultimately dismissed.

117. The purpose of Texas' action against Plaintiffs was to unlawfully deter TOPEF and others from exercising their own constitutionally protected speech, in the form of their lawsuit challenging SB 4.

118. Plaintiffs, including TOPEF, were forced to divert additional resources to defend against Texas' malicious, retaliatory — and at heart, baseless — action in the Austin Division.

119. Texas's retaliatory suit against Plaintiffs in the Austin Division violated and continues to chill their right to petition the government and access to the courts.

C. In Application, SB 4 is Used to Discriminate on the Basis of Race, National Origin, and Gender in Violation of the Fourteenth Amendment's Equal Protection Clause

120. Plaintiffs incorporate by reference all factual allegations in paragraphs 1-101 as if set forth herein.

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

122. As applied, SB 4 impermissibly discriminates against Plaintiffs on the basis of race, national origin, and gender in violation of the Fourteenth Amendment's guarantee of equal protection.

123. Defendants intentionally and discriminatorily apply SB 4 on the basis of race, national origin, and gender as evidenced by disparate impact on Latinos and Latin American immigrants, particularly men.

124. Upon information and belief, there is disparate impact based on race, national origin, and gender in who is stopped by law enforcement officers in traffic stops, who is questioned about immigration status as permitted by SB 4, and who is subject to ICE detainers in local jails. When taking into consideration the totality of the circumstances, the disparate impact on Latinos and Latin American immigrants, particularly men, in the past two years shows that SB 4 is applied with an impermissibly discriminatory purpose.

VI. DECLARATORY JUDGMENT

125. In the alternative, Plaintiffs request this Court to declare Plaintiffs El Paso County and Sheriff Wiles' adherence to the County's adopted policies, arising from a court-approved settlement in relation to federal immigration enforcement, complies with SB 4. Plaintiffs are party to a civil rights settlement in federal court that guides their policing policies, including as those policies relate to immigration enforcement. A contrary ruling could force Plaintiffs to choose between whether to follow SB 4 or federal civil rights law.

126. Plaintiffs have no adequate or available administrative remedy, or, in the alternative, any effort to obtain an administrative remedy would be futile. SB 4 creates a system where local jurisdictions must wait for the State to investigate and sue for violations of SB 4, meaning

Plaintiffs are able to be only Defendants in the regulatory system designed by SB 4. Plaintiffs have no right to initiate a suit or administrative action in the SB 4 framework.

127. Plaintiffs have no adequate remedy at law.

128. As no state court action is pending, declaratory relief would terminate the controversy. Without such a declaration, as Plaintiffs policies are guided by a federal settlement, dismissal would result in a potential conflict between current federal court and future state court rulings. Absent declaratory relief, Plaintiffs will continue to be harmed.

VII. PRAYER FOR RELIEF

129. WHEREFORE, Plaintiffs pray that the Court grant the following relief:

- 1) Declare SB 4 unconstitutional and invalid on its face, or, in the alternative, as applied;
- 2) Enjoin Defendants from enforcing SB 4;
- 3) In the alternative, declare that El Paso and its County officials and their policies related to immigration enforcement arising from a court-approved settlement comply with state law, including SB 4; and
- 4) Award Plaintiffs court costs and reasonable attorneys' fees and grant any other relief to Plaintiffs as allowed by law and that the Court should deem fit.

DATED: February 24, 2020

Respectfully,

By: /s/ Emma Hilbert

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TEXAS

CERTIFICATE OF SERVICE

I certify that, on February 24, 2020, I filed the foregoing Plaintiffs' Third Amended Complaint for Declaratory Judgment and Injunctive Relief via the Court's ECF/CM system, which will serve a copy on all counsel of record.

/s/ Emma Hilbert
Emma Hilbert