

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	§	Civil Action No: 5:17-CV-00459-OLG
BERNAL, COUNTY ATTORNEY OF EL	§	(Consolidated case)
PASO COUNTY, in their official capacity, the	§	
TEXAS ORGANIZING PROJECT	§	
EDUCATION FUND; and MOVE SAN	§	
ANTONIO,	§	
	§	
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 FIRST AMENDED
COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

I. PRELIMINARY STATEMENT

1. Senate Bill 4 (“SB 4”), also known as the “Show Me Your Papers Bill,” is an unprecedented, cruel, and vague law that is aimed at the heart of Texas. It violates the Constitution of the United States, the Texas Constitution, and federal law and should be immediately and permanently enjoined.

2. There are many legal flaws with SB 4. Racial animus fueled SB 4’s enactment, tainting the entire law with an impermissible legislative purpose. The law’s language is unconstitutionally vague, chills policy dissent in violation of the First Amendment and leaves those potentially subject to its mandates without meaningful notice of what acts are forbidden. SB 4 will make all

Texans less safe by eroding the discretion of our local law enforcement and law enforcement on college campuses, interfering with the chain of command and the existing decision-making processes of local officials, and preventing the reporting of crimes. Finally, SB 4 invites racial profiling, permitting local officers to demand “papers” from virtually any person in Texas at any time. History and logic supports that all Texans will not be equally subject to this harassment: Texans of Hispanic heritage and immigrants and their families, particularly those from Mexico, Central American and other Spanish-speaking countries, will be targeted.

3. This historic and unconstitutional attack on the core values and identity of Texas 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 San Antonio (MOVE) and the populations they serve.

4. El Paso is unique among Texas counties: it is bilingual, bi-national, multicultural, and geographically distinct. For instance, El Paso has over 800,000 residents, is over 82% Hispanic and over 25% of its residents are foreign born. 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 immigrants of all nationalities, against Mexican Americans, and against Hispanic communities, SB 4 stands in stark contrast to El Paso’s history and identity.

5. It is insulting to the people and leaders of El Paso that the Texas Legislature continues to erode the policy decision-making and sovereignty of local communities based on irrational, unfounded “fears” of immigrants. As it has done for hundreds of years, El Paso will protect its

heritage, identity and adherence to constitutional values such as equality and justice — and will do so with everything that it has. It is for these reasons and more, that El Paso files this suit seeking declaratory and injunctive relief.

6. TOPEF is an education organization that promotes social, racial, and economic justice for all Texans by conducting strategic, year-round community organizing in San Antonio, Houston and Dallas. Incorporated in San Antonio, TOPEF serves thousands of Latino and immigrant families the city. Indeed, more than half of TOPEF’s employees and the people they serve identify as Latino; many are from immigrant, mixed-status families. TOPEF and its members are already injured by SB 4’s unconstitutional mandates, including widespread racial profiling, which has chilled their First Amendment rights and forced a diversion of organizational resources.

7. Operating exclusively within San Antonio, MOVE is a grassroots, non-partisan nonprofit organization that promotes political power in underrepresented youth communities through civic engagement, leadership development and progressive issue advocacy. Its mission is to give youth a voice. MOVE and its members are already injured by SB 4’s unconstitutional mandates, including racial profiling on college campuses, which has chilled their First Amendment rights and forced a diversion of organizational resources.

8. 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, Texas Attorney General Ken Paxton, and Director Steve McCraw of the Texas Department of Public Safety for the following legal violations in connection with the enactment, administration, and prospective enforcement of SB 4: 1) SB 4 was adopted with an impermissible purpose which violates the Fourteenth Amendment’s guarantee of the equal protection of laws; 2)

SB 4 is unconstitutionally vague and violates the Fourteenth Amendment's Due Process Clause; 3) SB 4 violates the Fourth Amendment protection against unreasonable searches and seizures; 4) SB 4 violates the Supremacy Clause, Art. V § 2, of the United States Constitution, as federal immigration enforcement is wholly dedicated to the federal government and may not be usurped by the states; 5) SB 4 violates the First Amendment prohibition against governmentally-controlled speech or expression by disallowing the endorsement of a policy by public officials that prohibits or materially limits the enforcement of immigration laws; and finally, and 6) SB 4 violates the Texas Constitution.

9. In addition, El Paso County and Sheriff Wiles also seek a declaratory judgment that El Paso's current policies regarding federal immigration enforcement comply with state and federal law and do not violate SB 4.

II. JURISDICTION AND VENUE

10. This action raises federal questions under the United States Constitution, particularly Article 1, and the First, Fourth, and Fourteenth Amendments. In addition, this court has jurisdiction over these constitutional claims pursuant to 42 U.S.C. § 1983.

11. 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.

12. This Court has supplemental jurisdiction over any state law claims pursuant to 28 U.S.C. § 1367, "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."

13. 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

14. 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. The County is composed of more than 800,000 residents, over 80% of whom are Hispanic. More than one in four residents of El Paso County are foreign born. Over 72% of El Paso County households speak a language other than English at home. The County is the seat of government for its public officials, who face the injury of removal from office for endorsing or adopting a policy in violation of SB 4.

15. 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 and vague standards and imminent 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 creates unbudgeted costs associated with training its deputy sheriffs and administrative staff about complex federal immigration rules and laws.

16. Uniquely, El Paso is under a federal court settlement agreement agreeing to prohibit the discriminatory enforcement of civil immigration laws. El Paso also has adopted policies that may violate SB 4's unconstitutional mandates. Specifically, the El Paso County Attorney's office has adopted a policy that prohibits its investigators from making inquiries into the citizenship or

residency status for the purpose of determining whether an individual has violated civil immigration law or for the purpose of enforcing those laws.

17. The threat of the State’s aggressive and imminent 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 Plaintiffs in this action.

18. For all of these reasons — the budgetary uncertainty created by SB 4, its imminent 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.

19. 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 by “endors[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 already injured by SB 4’s unconstitutional mandates.

20. 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.

21. 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, 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.

22. 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.

23. TOPEF and its members are already injured by SB 4's unconstitutional mandates. TOPEF has been forced to divert funding and other resources to counteract the effects of SB 4. TOPEF is also losing membership because the families it serves, which are mostly Latino, are scared to participate in TOPEF organizing activities for fear of being targeted by local law enforcement. The fear of racial targeting, leading to a chilling of participation, will only amplify when SB 4 goes into effect, stifling TOPEF's ability to accomplish its organizational goals.

24. As they are personally threatened, TOPEF has associational standing to sue on its members behalf. Moreover, given TOPEF's mission, the forced diversion of resources and the harms to its racially and ethnically diverse membership, TOPEF has organizational standing as well.

25. Plaintiff, MOVE, is a grassroots, nonpartisan organization that builds political power in underrepresented youth communities through civic engagement, leadership development, and progressive issue advocacy. MOVE operates exclusively 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 is incorporated in San Antonio and keeps its principal place of business there.

26. MOVE and its members are already injured by SB 4's unconstitutional mandates. MOVE has been forced to divert funds and change its programming priorities to order to address the needs of Latino students at the colleges it serves. Specifically, MOVE is already planning "know your rights" trainings and activities to raise awareness about SB 4 on college campuses this summer and as the new school year approaches. The San Antonio students who participate and organize with MOVE fear racial profiling on their college campuses; some are afraid that local law enforcement and/or campus police will inquire about their personal immigration status or that of family members. Heightened fear will chill participation in campus activities and deeply impact MOVE's ability to mobilize college students and fulfill its organizational mission.

27. As they are personally threatened, MOVE has associational standing to sue on its members behalf. Moreover, given MOVE's mission, the forced diversion of resources and the harms to its racially and ethnically diverse membership, MOVE has organizational standing as well.

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

29. 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.

30. 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.

31. Defendant Steve McCraw is the Director of the Texas Department of Public Safety (DPS). He is responsible for the policies and practices of the DPS officers and their enforcement of federal immigration laws. These officers, under SB 4, are given the authority during any lawful detention to inquire into the nationality of the detained party. Director McCraw is sued in his official capacity.

IV. FACTUAL BACKGROUND

A. SB 4's Unconstitutional Mandates

32. SB 4 was signed into law on May 7, 2017. It is the most restrictive and prohibitive anti-immigrant state law of the fifty states.

33. 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 the 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 the 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 attempts to force the hands of local government to enforce federal immigration laws as envisioned by the State of Texas. Law enforcement officials who do not

comply will have committed crimes. Public officials who do not comply 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. Texans, particularly Mexican-Americans, those of Hispanic descent, and immigrants and their families, are caught in the crossfire.

B. SB 4 and Victims of Domestic Violence and Sexual Assault

42. Recently, anti-immigration policies have already affected the enforcement of domestic abuse claims in El Paso County. In February 2017, federal immigration agents detained a family violence victim who was seeking a protective order in the El Paso County Courthouse. Within days of the incident becoming public, an undocumented mother of three U.S. citizen children who had sought a protective order to protect her from stalking asked to withdraw her protective order because of threats by her former partner to report her to U.S. Immigration and Customs Enforcement. An undocumented mother who requested protection for her 17-year-old daughter who was the victim of dating violence and stalking sought to withdraw the request for the protective order because of the viral effect of the publicity surrounding the courthouse incident. The undocumented parents of a 16-year-old male sexual assault victim sought to have their request for a protective order withdrawn because they feared interacting with law enforcement and the court system.

43. During floor consideration of SB 4, the Texas House rejected an amendment by State Representative Lina Ortega (D-El Paso) that would have precluded the enforcement of federal immigration laws by state officers in courthouses. In addition, the House rejected an amendment by State Representative Mary Gonzalez (D-El Paso) that would have precluded the enforcement of an immigration detainer request for a victim of family violence or sexual assault.

44. SB 4 already has, and will continue to, drive a wedge of distrust and fear between immigrant victims and law enforcement and the court system. This result will benefit offenders, who will escape accountability for their actions, and will create a class of permanent victims, who will be forced to keep quiet and remain in the shadows. Ultimately, SB 4 will result in the re-victimization of crime victims by pushing them away from the justice system.

C. Discriminatory Purpose

45. The procedural process leading to the enactment of SB 4 shows that it was passed with a discriminatory purpose, in violation of the Equal Protection Clause of the Fourteenth Amendment. *See in Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265-68 (1977).

Background and Events Leading to Enactment

46. SB 4 cannot be separated from the cultural context in which it was passed. 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,” “criminals” roaming the streets, killing people and stealing jobs from American workers. He also publicly attacked persons of Hispanic descent, including by questioning the impartiality of a United States federal judge presiding over a lawsuit related to Trump University.

47. Likewise, Texas lawmakers and members of the State’s leadership have made racial and xenophobic appeals in supporting laws like SB 4. In campaigns, Lieutenant Governor Dan Patrick 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 immigrants for “a rising crime rate, overcrowded schools, an overburdened health-care system, and runaway growth in the state budget,” and characterized illegal immigrants as “terrorists and drug runners.”

48. Texas Legislatures have considered so-called “Sanctuary Cities” and “Show Me Your Papers” bills in several forms in past legislative cycles, but SB 4 is the most extreme anti-immigrant measure to be enacted into law in Texas.

Procedural and Substantive Departures from Normal Processes

49. SB 4 flew through the legislative process at an unusually fast pace, despite a chorus of public cries against it.

50. Senator Charles Perry filed SB 4 on November 15, 2016, as a pre-filed bill.

51. 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, only a few people testified in person in support of the bill.

52. On February 7, 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 a few testified in favor.

53. 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.

54. 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, accompanied by emotional debate, in a session that extended until 4:30 AM on April 27, 2017.

55. The House debate contained many peculiar deviations from normal procedure. First, 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.

Second, 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.

56. The tenor of the debate was also a major departure from the normal practices of the Texas House. The proponents of the bills used words like “illegals” to describe the problem the legislation was meant to address. Legislators were often heard laughing at the demise of ameliorative amendments, which led to one lawmaker commenting about the disrespectful behavior during the debate. Chairman Geren said that the bill was aimed at “bad people.” Throughout debate, opposition legislators were heckled by their colleagues.

57. Consideration of the so-called “Schaeffer Amendment,” an amendment proposed by Representative Matt Schaffer, was substantive departure from the normal procedures, becoming the turning point of the debate. 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. A 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.

58. 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 but without any serious intention of compromise. Only one amendment offered by a lawmaker of color was adopted.

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

60. 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 is scheduled to become effective on September 1, 2017.

Legislative History

61. 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 said 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.

62. 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. And, each of the offered rationales is belied through a close examination of legislative history, particularly the repeated rejection of ameliorative amendments.

63. First, SB 4 cannot be justified by any true concern about public safety. 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. Amendments seeking to improve communication between immigrant communities and law enforcement were also rejected.

64. 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. 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.

65. Similarly, SB 4 was not structured to target only “bad” people, presumably meaning individuals who have been convicted of a crime. 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 — and seemingly prohibits jurisdictions from adopting policies preventing racial profiling.

66. This bill also cannot be justified by the need to mandate compliance with voluntary ICE detainer requests. A floor amendment was offered that would have limited SB 4 to the detainer issue only, but it was rejected. Moreover, 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 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.

67. 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 contrast, SB 4’s perfunctory language regarding non-discrimination provides no authorization for the AG to *enforce* that non-discrimination policy.

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

Certainty of Disparate Impact

69. SB 4 invites racial profiling, permitting local officers to demand “papers” from virtually any person in Texas at any time. History and logic supports that all Texans will not be equally subject to this harassment: Texans of Hispanic heritage and immigrants and their families, particularly those from Mexico, Central American and other Spanish-speaking countries, will be targeted.

70. Indeed, on the House floor, Chairman Geren admitted that most immigrants in Texas are of Hispanic origin, essentially acknowledging that Latinos were more likely to be racially profiled under the law.

71. Chairman Green also admitted that ICE detainers are not always valid. It is widely known that, in Texas, invalid ICE detainers and unlawful detentions unequally affect Mexicans, Mexican Americans, and those of Hispanic descent more broadly. Accordingly, SB 4, as signed into law, allows unconstitutional intrusions into the rights of these individuals based on racial and national origin animus.

72. Immigration enforcement has a sordid and discriminatory history in Texas, including in El Paso County. That is one of the reasons that El Paso has adopted policies to prevent racial profiling and other discriminatory measures — and remains so strongly committed to a multi-culturalism and inclusion.

73. The anti-immigrant fervor in recent years in Texas is, in many ways, unique. The Plaintiffs have each been particularly affected.

74. In El Paso, residents have suffered from illegal intrusions into their lives. One example is referred to locally as “the Bowie High School incident.” During the morning of November 9, 1991, Benjamin Murillo, Coach of the Bowie High School football team, and Isaac Villalva and Cesar Soto, members of the Bowie High School varsity football team, drove to neighboring high school to watch the junior varsity football game between Bowie High School and Jefferson High School. Two El Paso Border Patrol Agents stopped their vehicle. One of the El Paso Border Patrol Agents approached the car and pointed a pistol at the head of Coach Murillo. The agents searched the car without probable cause or consent. The students were questioned about their national origin and immigration status. These children and their coach were stopped solely because of their Hispanic descent. The subsequent lawsuit found that the agents violated the civil rights of the students and their coach.

75. This case and many others have typified the relationship between immigration enforcement and Mexican Americans in Texas, and in El Paso County specifically. This unequal enforcement is based on racial classification or national origin animus.

76. TOPEF’s mission is to improve the lives of low and moderate-income Texas families by building power through community organizing and civic engagement. TOPEF was founded in December 2009 by a group of seasoned community organizers, grassroots community leaders and

an Advisory Committee that includes renowned policy experts, union presidents, and progressive civic leaders from around the state. TOPEF has over 140,000 supporters across the state, most of whom are African American and Latino and organize around issue areas such as: jobs and job training, criminal justice reform, neighborhoods of opportunity, access to health care, improving public schools, and immigrant rights.

77. TOPEF has successfully organized to effect local policy change and grow the electorate in three counties. Among other things, the work of TOPEF's trained community leaders has won the allocation of \$1 million toward street lights for San Antonio's low-income, predominantly Latino west-side neighborhoods, won an alternative disciplinary program to tackle the "School to Prison Pipeline" problems in Dallas Independent School District, and secured a policy within DISD that bans discretionary suspensions for Pre-K through second grade students. TOPEF's work has consistently targeted 200,000 low propensity voters and has empowered them to see the impact of voter participation and community organizing.

78. MOVE's mission is to give underrepresented youth communities a voice in politics. As mentioned above, MOVE's work focuses on civic engagement, leadership development, and progressive issue advocacy. It was founded in 2013 by a group of students at the University of Texas at San Antonio, and currently has members in the thirteen largest colleges in San Antonio. MOVE serves underrepresented Latino and immigrant communities in San Antonio and its surrounding areas. MOVE's issue advocacy work involves and benefits citizens as well as non-citizens of the United States.

79. TOPEF and MOVE have also suffered racial classification or national origin animus while engaged in their organizing and education activities. If SB 4 goes into force, TOPEF and MOVE have a reasonable expectation that this animus against their employees, fellows, volunteers and the

people they serve will increase significantly, as law enforcement leaders will be prevented from ordering their subordinates not to engage in unjustified immigration-status and place of birth-related questioning.

D. Chilling Speech, Association and other First Amendment Rights

80. 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 convening public approval or support.

81. 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. This is a clear viewpoint-based attempt to censor local officials from discussing certain topics — it cannot stand under the First Amendment.

82. Moreover, SB 4 creates a chilling effect upon organizing, protesting and other protected forms of speech and petition that occur in the public square. 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.

83. Moreover, in a remarkably retaliatory move, Texas sued Plaintiffs El Paso County, Sheriff Wiles and TOPEF in the 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).

84. Texas does not allege any actions or omissions by TOPEF that may justify its lawsuit; Texas states plainly that it sued TOPEF because the organization challenged the constitutionality of SB 4.

85. Texas' addition of Plaintiffs is a retaliatory, malicious action that chills and violates Plaintiffs' First Amendment rights, including their right to petition the government and access to the courts.

E. Impermissibly Vague

86. SB 4 never defines core aspects of its legislative scheme, leaving those subject to its mandates unsure about their meaning. The law does not, for instance, define "materially limiting" in relation to "immigration laws," which is itself a term without meaningful definition. It does not define "pattern or practice" in relation to a material limitation or prohibition of federal immigration laws. It does not define "endorse," "citizen," "enforcement activities," or "lawful immigration status."

87. Each of these phrases and terms are material to the enforcement of SB 4. Jurisdictions misinterpreting these terms face dire civil penalties, including potential removal from office. There are other inconsistencies within the law as well.

88. The failure to define these important phrases is an unconstitutional delegation of authority to police officers and the courts and gives little notice or certainty to those affected concerning which behaviors are proscribed.

89. The terms used in the statute are so without definition that an average person could not understand what behaviors are prohibited or give rise to penalties under SB 4.

90. In its vagueness, SB 4 is so indefinite that it will allow for rampant arbitrary and discriminatory enforcement. SB 4 is also overly broad and proscribes behaviors that cannot be criminal or civilly penalized.

F. Enabling Illegal Searches and Seizures

91. SB 4 will allow unlawful detentions and the use of national origin and race for unlawful searches and seizures, in violation of constitutional guarantees.

92. SB 4 allows law enforcement personnel, including college campus law enforcement officials, 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.

93. SB 4 allows and creates the opportunity for pre-textual vehicle stops or other investigation, which will form the basis for racial profiling by law enforcement personnel in Texas.

G. Federal Preemption

94. Federal regulation of immigration is pervasive, occupying the entire field and preempting SB 4 in several ways.

95. SB 4 mandates that local entities must comply with all ICE detainer requests and disallows local entities from adopting policies or procedures that prohibit or materially limit the enforcement of “immigration laws.” Taken together, because of SB 4, no Texas local entity will be able to adopt, enact, execute, administer or endorse policy that is not exactly congruous with Texas’ perverse vision of compliance with federal immigration law.

96. Under SB 4, local law enforcement will become an instrument of the federal government and will have no discretion or ability to fail to comply with the dictates of the federal government as to federal immigration law. This is true no matter how full a jail will become. This is true no matter how much money is spent on litigation or detention involving ICE detainees. This will be true no matter any other exigent circumstance that might justify non-compliance with federal immigration laws in a specific instance. SB 4 turns local entities into arms of the federal government and usurps the prerogative of the federal government as to its immigration laws.

97. Federal law controls what constitutes compliance with federal immigration law by local entities. SB 4 improperly seeks to re-define this compliance and usurps the role of the federal government.

98. Federal law defines ICE detainer requests as voluntary for local jurisdictions. SB 4 re-defines these voluntary requests and intrudes into the sovereignty of the United States.

99. By conflicting, both expressly and impliedly, with federal immigration law, SB 4 violates the Supremacy Clause.

V. Causes of Action/Violations of Law

A. SB 4 Violates the Fourteenth Amendment's Equal Protection Clause and was passed with an Invidious and Impermissible Purpose

100. Plaintiffs incorporate by reference all factual allegations in paragraphs 1-99 as if set forth herein.

101. 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.

102. SB 4's requirement that local law enforcement comply with federal authorities in the enforcement of immigration laws does have a discriminatory purpose.

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

104. Racial discrimination and national origin animus is a substantial or motivating factor behind SB 4.

105. The historical background, procedural deviations, and legislative history departing from normal procedures, as well as the certainty of the disparate impact of SB 4 on a protected class, all indicate discriminatory intent.

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

107. Texas enacted SB 4 to set a policy of complying with federal immigration authorities, in order to discriminate against one particular race or group of people based predominantly on account of their race or national origin.

108. The enactment of SB 4 deviates from the normal procedural sequence of passing laws in Texas.

109. SB 4 does bear more heavily on persons from one race than another.

110. SB 4 does bear more heavily on persons of one national origin than another.

111. SB 4 violates the Fourteenth Amendment to the United States Constitution.

112. SB 4 was adopted with a discriminatory and impermissible purpose in violation of the Fourteenth Amendment of the United States Constitution.

B. SB 4 violates the First Amendment by Limiting Protected Speech and Retaliating Against Elected Officials and Private Citizens

(i) SB 4 unconstitutionally limits protected speech

113. Plaintiffs incorporate by reference all factual allegations in paragraphs 1-99 as if set forth herein.

114. “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.

115. The First Amendment, incorporated and made applicable to Texas by the Fourteenth Amendment to the United States Constitution, prohibits government-control of speech and expression.

116. The speech of elected officials cannot be limited to the same degree as that of public employees.

117. SB 4 impermissibly limits speech by elected officials based on the content of the speech.

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

119. SB 4 functions as a prior restraint on speech by placing a predetermined prohibition restraining specific expression containing views against SB4 or expressions containing support or endorsement of policies which the State deems to contradict SB 4.

120. SB 4 allows the removal of a duly elected or appointed governmental official from public office for a violation of SB 4. Proof of that violation includes a public statement of the public official's conduct in violation of SB 4.

121. To the degree that SB 4 seeks to constrain public expression or policy advocacy for policies that materially limit or prohibit state enforcement of federal immigration laws, then it violates the First Amendment's guarantee of freedom of expression.

(ii) Defendants have filed a retaliatory lawsuit against Plaintiffs

122. Additionally, 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.

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

124. Texas's retaliatory suit against Plaintiffs in the Austin Division violates Plaintiffs' protected speech. Texas has no legitimate, non-retaliatory reason for suing Plaintiffs in the Austin Division action.

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

126. Plaintiffs, including TOPEF, will be forced to divert additional resources to defend against Texas' malicious, retaliatory action in the Austin Division.

127. Texas's retaliatory suit against Plaintiffs in the Austin Division violates their right to petition the government.

128. Texas's retaliatory suit against Plaintiffs in the Austin Division violates their right to access to the courts.

129. Plaintiff MOVE San Antonio reserves the right to allege this Cause of Action if it is also sued in the Austin litigation.

**C. SB 4 Violates the Due Process Clause of the Fourteenth Amendment
Because it is Too Vague to Give Notice That Penalties May be Imposed**

130. Plaintiffs incorporate by reference all factual allegations in paragraphs 1-99 as if set forth herein.

131. The Fourteenth Amendment to the United States Constitution also guarantees no state shall "deprive any person of life, liberty, or property, without due process of law."

132. The Due Process Clause of the Fourteenth Amendment requires that laws give reasonable notice of what conduct is subject to criminal penalties and to stringent, quasi-criminal civil penalties, like removal from office.

133. The Due Process Clause also requires that a law not be so indefinite so as to allow for arbitrary and discriminatory enforcement.

134. A statute is void for vagueness if a legislature's delegation of authority to judges and/or administrators is so extensive that it would lead to arbitrary prosecutions or penalties.

135. SB 4 is impermissibly vague because it fails to define key terms and to give notice to the average person what behaviors give rise to penalties under the law.

136. Every law must state explicitly what it mandates, what is enforceable, and what conduct is proscribed.

137. SB 4 is also impermissibly vague because by failing to define key, material terms, it will lead to arbitrary and discriminatory applications and prosecutions.

138. Definitions must be given for potentially vague terms, especially critical terms. SB 4 violates the Due Process Clause of the Fourteenth Amendment.

D. SB 4 Violates the Fourth Amendment by Removing the Probable Cause Requirement and Mandating Unreasonable Seizures

139. Plaintiffs incorporate by reference all factual allegations in paragraphs 1-99 as if set forth herein.

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

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

142. An arrest is any significant pretrial restraint of liberty.

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

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

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

146. Immigration detainers issued by ICE seek to detain subjects, and may be issued without a warrant.

147. Some ICE detainers are civil in nature.

148. SB 4 requires law enforcement officers to honor all ICE detainer requests, some of which may result in an unreasonable seizure, if officers do not have the discretion to reject invalid detainers.

149. ICE detainers can be new and subsequent seizures, independent of the initial finding of probable cause for violating state law.

150. Neither foreign national origin nor unlawful presence is an element for any state crime in Texas.

151. SB 4 violates the Fourth Amendment by forcing peace officers to enforce warrantless detainer requests and by removing officer discretion to find probable cause, therefore requiring unreasonable seizures.

**E. SB 4 Violates the Supremacy Clause by Expressly and Impliedly
Conflicting With Federal Laws and Should be Preempted**

152. Plaintiffs incorporate by reference all factual allegations in paragraphs 1-99 as if set forth herein.

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

154. The Supremacy Clause provides that federal law may expressly or impliedly preempt Texas or local laws, and cause the state law to be without effect. State laws may be implicitly preempted when the federal scheme occupies the field or when federal and state laws conflict.

155. SB 4 is in disharmony with the United States Constitution and federal immigration laws and regulations.

156. SB 4 expressly conflicts with the United States Constitution, federal immigration law, or other federal law.

157. SB 4 impliedly conflicts with, or imposes an obstacle to, the United States Constitution, federal immigration law, or other federal laws.

158. Federal regulation of immigration, especially as to the definition of Sanctuary Cities, is so pervasive as to occupy the field of immigration enforcement and disallows Texas from passing SB 4.

159. SB 4 violates the Supremacy Clause and should therefore be preempted by federal law.

F. State Law Claim – SB 4 Violates the Separation of Powers by Encroaching on the Functions of Three Separate Governmental Bodies

160. Plaintiffs incorporate by reference all factual allegations in paragraphs 1-99 as if set forth herein.

161. Pursuant to Art. II, § 1 of the Texas Constitution, the sovereign power of our state government is divided into three distinct, but equal branches: the legislative; the executive; and the judicial.

162. Texas's separation-of-powers provision may be violated in one of two ways: (1) when one branch of government assumes or is delegated a power more properly attached to another branch, or (2) when one branch unduly interferes with another branch so that the other branch cannot effectively exercise its constitutionally assigned powers.

163. Any attempt by one department of government to interfere with the powers of another is null and void.

164. Each elected county official has a delegated sphere of authority that cannot be invaded. However, this sphere of authority covers only those duties that the Texas Constitution and statutes specifically delegate to the officer.

165. The Texas Legislature holds the exclusive power to make law, including the sole authority to establish criminal offenses and designate applicable penalties, consistent with other federal and state law, as well as principles of federalism.

(i) SB 4 Encroaches on the Powers of the El Paso County Commission

166. The Texas Constitution provides that the Commissioners Court “shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed,” TEX. CONST. Art. V, § 18, thereby establishing the Commissioners Court as the county’s principal governing body.

167. The powers and duties of the Commissioners Courts include aspects of legislative, executive, administrative, and judicial functions. In the exercise of its powers and jurisdiction over county business, the Commissioners Court has implied authority to exercise broad discretion to accomplish the purposes intended.

168. In violation of the Texas Constitution, SB 4 unduly interferes with the El Paso County Commission’s ability to exercise its broad discretion in accomplishing its constitutionally assigned duties to provide county government services to all its residents.

(ii) SB 4 Encroaches on the Powers of the El Paso Sheriff

169. The Texas Constitution provides that the duties, qualifications, perquisites, and fees of the Sheriff shall be prescribed by the Legislature. TEX. CONST. Art. V, § 23.

170. The El Paso County Sheriff is a member of the executive branch with the power to make and enforce rules, regulations, and policy, as well as the authority to define county law enforcement objectives and choose the means of achieving them.

171. The El Paso County Sheriff is the county's final policymaker in the area of law enforcement, not by virtue of the delegation by the county's governing body but, rather, by virtue of the office to which the Sheriff has been elected.

172. In violation of the Texas Constitution, SB 4 unduly interferes with the El Paso County Sheriff's constitutional duty as the county's final policymaker in the area of law enforcement. SB 4 unconstitutionally removes from the Sheriff any and all discretion to make and enforce rules, regulations, and policy regarding his officers' interactions with federal immigration officials, as well as his authority to define county law enforcement objectives and choose the means of achieving them consistent with federal immigration law.

(iii)SB 4 Encroaches on the Powers of the El Paso County Attorney

173. Along with various civil duties, the primary function of a County or District Attorney is to prosecute the pleas of the state in criminal cases, though these duties are not enumerated in Article V, § 21.

174. The offices of County and District Attorney are in the judicial branch of government. TEX. CONST. Art. V, § 21.

175. An obvious corollary to a District or County Attorney's duty to prosecute criminal cases is the utilization of his own discretion in the preparation of those cases for trial. Therefore, under the separation of powers doctrine, the Legislature may not remove or abridge a District or County Attorney's exclusive prosecutorial function, unless authorized by an express constitutional provision. I

176. In violation of the Texas Constitution, SB 4 unduly interferes with the El Paso County Attorney's exclusive prosecutorial function. Moreover, SB 4 unduly interferes and conflicts with the El Paso County Attorney's discretion regarding her duty to protect victims—including victims of domestic violence and child abuse

VI. DECLARATORY JUDGMENT

177. In the alternative, Plaintiffs El Paso County and Sheriff Wiles' adherence to the County's adopted policies in relation to federal immigration enforcement comply with SB 4.

178. Plaintiffs have no adequate or available administrative remedy, or, in the alternative, any effort to obtain an administrative remedy would be futile.

179. Plaintiffs have no adequate remedy at law.

180. Absent declaratory relief, Plaintiffs will continue to be harmed.

VII. PRAYER FOR RELIEF

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

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

DATED: June 19, 2017

Respectfully,

By: /s/ Jose Garza

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CERTIFICATE OF SERVICE

I certify that, on June 19, 2017, I filed the foregoing Plaintiffs' First 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.

Efrén C. Olivares

Efrén C. Olivares