

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

City of El Cenizo, Texas *et al.*,

*Plaintiffs,*

v.

State of Texas, *et al.*,

*Defendants.*

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Case No. 5:17-cv-404-OG

**BRIEF OF AMICUS CURIAE ANTI-DEFAMATION LEAGUE IN SUPPORT OF  
PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTION**

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## INTRODUCTION

The Anti-Defamation League (“ADL”) files this brief as *Amicus Curiae* in support of the Plaintiffs’ Motions for Preliminary Injunction because allowing SB4 to come into effect would cause irreparable injury to cooperation and trust between law enforcement officials and immigrant and minority communities. SB4 would immediately and irreparably undermine that trust, which is crucial to overall public safety and central to the success of community policing efforts. If SB4 commandeers Plaintiffs’ local law enforcement agencies to act as immigration agents for even one day, it would destroy relationships of trust that the agencies, working with ADL and other civil rights and community groups, have spent years building. No injunction or any other remedy at law or equity can rebuild that trust once it is broken.

Congress has given local law enforcement a strictly voluntary role in immigration enforcement. This decision by Congress was informed by the law enforcement imperative to maintain trust and cooperation between communities and local law enforcement agencies. SB4 is incompatible with this Congressional balance. For this and other reasons set forth in the briefs of Plaintiffs and *amici*, SB4 is unconstitutional and Plaintiffs are likely to prevail in this lawsuit. Because Plaintiffs are likely to prevail on the merits and the harm to Plaintiffs of denying the injunction would be grave and irreparable, the Court should preliminarily enjoin SB4 so that it can deliberately assess the law’s legality without disrupting the *status quo ante*.

### **I. Interest of *Amicus Curiae*: ADL’s Partnership With Law Enforcement to Foster the Community Cooperation, Tolerance, and Trust That SB4 Would Destroy**

Founded in 1913 “to stop the defamation of the Jewish people, and to secure justice and fair treatment to all,” ADL’s mission is to create an ever-more just and tolerant society recognizing the equal rights of all groups. This mission has long included training law enforcement professionals on hate crimes, countering violent extremism, and building trust with the people they

serve. ADL's "Law Enforcement and Society" training program, developed with the United States Holocaust Memorial Museum, uses the history of the Holocaust as a springboard for examining law enforcement professionals' role in our democracy and their relationship to diverse communities they serve. ADL trains more than 14,000 law enforcement professionals every year, with more than 130,000 law enforcement professionals having received Law Enforcement and Society training from ADL since 1999. As a result of these efforts, ADL is now the leading non-governmental law enforcement training organization in the United States.

ADL's regional offices in Austin, Dallas, and Houston are deeply engaged with local law enforcement agencies in those Plaintiff cities and throughout the State of Texas. ADL is in regular contact with local police departments throughout Texas regarding prevention of hate crimes, countering violent extremism, and developing community policing strategies built on tolerance, non-discrimination, and trust. For example, ADL offers the above-referenced Law Enforcement and Society training to the Houston, Dallas, and Austin police departments. ADL's website explains that the "program traces the changing role of police under the Nazis, from neutral professionals to instruments of the 'Final Solution.' The example of the German police hits home. "Without clear values and commitment to what is just," said one participant, "you could lose your path and become a person you never intended to be."<sup>1</sup>

Fostering cooperation and trust between law enforcement and all segments of the population is at the core of ADL's law enforcement training. As explained on ADL's website:

The unique role of law enforcement officials in any community makes cross-cultural understanding imperative. . . . If members of the community feel that their own concerns are not understood, their confidence in law enforcement personnel to meet these needs may be severely diminished. Unfortunately, this can adversely impact cooperation for reporting crimes and providing information vital to solving crimes.

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<sup>1</sup> See ADL, "Protecting All People," <https://www.adl.org/news/article/protecting-all-people> (July 14, 2016).

## ARGUMENT

Plaintiff Texas cities and law enforcement leaders have exercised the discretion afforded to local law enforcement by Congress to adopt policies that balance enforcement of immigration law with other law enforcement interests including maintaining cooperation and trust with the communities they serve. In addition to conserving limited resources, these policies are designed to assist local law enforcement by encouraging community members to report crimes to local police and cooperate with investigations without fear that their immigration or citizenship status will subject them to legal action themselves. The policies thus directly serve the fundamental mission of local law enforcement—the prevention of crime and promotion of safety in their communities.

There is a demonstrable risk that, if SB4 becomes effective while this case is still pending, the relationship of trust and cooperation between Texans and their local law enforcement agencies will be irreparably destroyed. Because of SB4, both undocumented immigrants and immigrants with lawful status justifiably fear that the police will report their immigration information—or that of a family member or friend—to Immigration and Customs Enforcement (“ICE”), resulting in potential detention and/or deportation.<sup>2</sup> This fear is already preventing the reporting of crimes.<sup>3</sup>

In the experience of ADL and numerous Texas law enforcement agencies that have either spoken out or joined this case, commandeering local law enforcement agents and making them *de facto* immigration enforcement agents would make it impossible for Texans from mixed-status families or communities with significant numbers of immigrants to interact with police in an atmosphere of trust without fear that their families, their neighbors, or they themselves will be deported. The cooperative relationships that Plaintiffs have built over years with the people they

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<sup>2</sup> See, e.g. Dkt No. 57-1 and exhibits thereto.

<sup>3</sup> See, e.g. Brooke Lewis, *HPD Chief Announces Decrease in Hispanics Reporting Rape and Violent Crimes Compared to Last Year*, HOUS. CHRON. (Apr. 6, 2017), <http://www.chron.com/news/houston-texas/houston/article/HPD-chief-announces-decrease-in-Hispanics-11053829.php> (reporting decline in rape and violent crime reported by Hispanics).

serve, often with training and assistance from ADL, would be destroyed overnight. Accordingly, ADL supports Plaintiffs' Motions for Preliminary Injunction. (Dkt. Nos. 24, 55, 56, 57). Only an injunction can prevent immediate and irreparable harm, including the undermining of trust and cooperation between immigrant communities and law enforcement that will otherwise ensue if SB4 becomes effective. *See Winter v. Nat. Res. Def. Council, Inc.*, 129 S. Ct. 365, 376 (2008).

**I. Congress Gives Local Law Enforcement Discretion to Balance Immigration Enforcement With Other Law Enforcement Imperatives.**

The Constitution grants primary power over immigration and the status of aliens to the Federal Government. *Arizona v. United States*, 567 U.S. 387, 394 (2012). "State laws are preempted when they conflict" with Federal immigration law, including where they "conflict with the method of enforcement" or "where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.* at 399, 406.

Congress has carefully balanced immigration enforcement with local law enforcement's overarching mission to enhance public safety. Recognizing that local governments and police departments are best equipped to understand the needs of their communities, Congress repeatedly made local law enforcement involvement in immigration enforcement activities voluntary rather than mandatory, so as to prevent forcing local entities to sacrifice their core public safety mission in the name of immigration enforcement. *See e.g.* 8 U.S.C. § 1357 (g)(9) & (10) (making the 287(g) program purely voluntary for local entities and specifying "[n]othing in this subsection shall be construed to require" state or local participation); *id.* § 1357(d) (making detainers voluntary); *id.* 1101(1)(15)(T), (U) (empowering local officers to protect victims and witnesses from deportation). SB4 does not account for any of the local law enforcement interests that Congress included in its scheme. "This is not the system Congress created." *Arizona*, 567 U.S. at 408.

## **II. Plaintiffs' Policies Balance Immigration Enforcement With the Need to Build Trust, Foster Community Policing, and Enhance Public Safety**

Plaintiff cities and local law enforcement agencies adopted policies “to foster community trust in policing.” Dkt. No. 24-1 at 3. In the words of Plaintiff Mayor Reyes of El Cenizo, “[i]f the members of the community fear that my officers are acting as immigration agents, they will be more hesitant to report crimes and to serve as witnesses, and public safety will suffer as a result.” Dkt. No. 24-8 at ¶ 21. Cooperation and open communication are cornerstones of community policing, which is based on forging partnerships between law enforcement and community members and groups. The U.S. Department of Justice affirms the foundational importance of this trust: “Community policing begins with a commitment to building trust and mutual respect between police and communities. It is critical to public safety, ensuring that all stakeholders work together to address our nation's crime challenges.”<sup>4</sup>

Developing this trust requires an environment in which both victims and witnesses are willing to come forward and actively participate in criminal investigations. Plaintiffs' policies are designed to do just that, *i.e.*, to encourage community members—regardless of their or their families' immigration or citizenship status—to contact and cooperate with local police without fear of deportation or other immigration consequences. *See, e.g.* Dkt. No. 24-8 at ¶ 19-22. Public safety in Plaintiffs' cities (and elsewhere) depends on *all* community members having this trust.

## **III. SB4 Overrides Plaintiffs' Congressionally-Granted Discretion, Irreparably Destroys Trust, Undermines Community Policing, and Threatens Public Safety.**

### *A. SB4 Turns Local Law Enforcement Officers into De Facto Immigration Agents*

Under SB4, local entities may not “adopt, enforce, or endorse a policy,” including an “informal policy,” or engage in any “practice” that “materially limits the enforcement of

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<sup>4</sup> U.S. Dept. of Justice, Community Oriented Policing Services, <https://cops.usdoj.gov/about> (visited June 24, 2017).

immigration law” without facing draconian consequences including jail and removal from office. TEXAS GOV’T CODE §§ 752.053(a)(1), 752.051(6). SB4 specifically prohibits Plaintiffs from taking any action to prevent local police officers from conducting immigration inquiries every time they detain a member of the public, or (perhaps worse) during selective detentions in which the member of the public “seems” like a possible immigrant to the officer. *Id.* at § 752.053(b)(1).

SB4 thus deprives local law enforcement agencies of the discretion afforded by Congress. If, under SB4, they apply immigration law in any way that may be interpreted by the Attorney General of Texas as “limit[ing] the enforcement of immigration law,” they risk fines, jail, and removal from office. To comply with SB4, local law enforcement agencies would have to become *de facto* immigration enforcement agencies, enforcing immigration law with no “material[] limit.” At minimum, they would be unable to set policies restricting officers from conducting immigration inquiries with every detention or arrest. Plaintiff entities would be powerless to prevent an officer who sought to conduct an inquiry even “without any input from the Federal Government about whether” the inquiry “is warranted in a particular case.” *Arizona*, 567 U.S. at 408.

By coercing local law enforcement agencies to enforce federal immigration law, SB4 drives a wedge between police officers and the residents they protect. Even a policy designed merely to ensure Equal Protection of the law on the basis of race, religion, or national origin during such detentions and inquiries would risk being deemed a “material limit” on immigration enforcement subjecting Plaintiffs to massive fines, jail, or removal from office.

SB4 commandeers and conscripts local law enforcement agents to become *de facto* immigration enforcement agents, but without the training and legal limits placed on Federal immigration agents. Local police are not trained or equipped to enforce Federal Immigration Law.<sup>5</sup>

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<sup>5</sup> See, e.g. Dkt. No. 24-5 at ¶ 20; Dkt. No. 24-6 at ¶ 14.

Unlike federal immigration enforcement agents who are trained in the “significant complexities involved in enforcing federal immigration law,” and its careful balance of enforcement with other priorities and Constitutional rights, SB4 instructs local law enforcement officers and agencies to apply a one-way ratchet toward “materially [un]limit[ed]” immigration enforcement. *Arizona*, 567 U.S. at 409; TEXAS GOV’T CODE §§ 752.053(a)(1). Plaintiffs will be deprived of discretion to take any action or pursue any interest that may in any way inhibit to-the-hilt immigration enforcement.

Thus, if SB4 takes effect, local law enforcement officials will often act as, and will be reasonably perceived in the community as, *de facto* immigration enforcement officials. Indeed, they will be especially menacing immigration enforcement officials, unconstrained by training in the nuanced body of law that authorized Federal immigration enforcement officials apply. For immigrants, members of ethnic groups identified with immigration, and members of communities with large numbers of immigrants, every interaction with local law enforcement will be fraught with the risk of unwanted, and likely unwarranted, immigration enforcement actions. Little could be more destructive to the trust and cooperation necessary to effective community policing.

B. *Turning Law Enforcement Officers Into De Facto Immigration Agents Destroys Law Enforcement-Community Trust and Cooperation, Harming Public Safety*

Under SB4, immigrants and members of communities with large immigrant populations will reasonably fear that interaction with local police will lead to unwanted interaction with ICE. As a result, absent an injunction, individuals who are undocumented, along with their families and neighbors, will be unwilling to report crimes and to assist in police investigations out of fear that contact with local police will lead to deportation. *See* Dkt. No. 24-8 at ¶ 19-22 (explaining that SB4 “will create an environment of fear and members of our community will no longer feel comfortable seeking city services or participating in civic life.”). Nor will these effects be limited to those that are undocumented: U.S. citizens and lawful permanent residents who live among

immigrant communities and/or belong to ethnic groups that include many immigrants similarly will hesitate to report crimes or assist in the investigation of crimes absent an injunction. Instead, they will fear being mistakenly treated as undocumented and/or the consequences of drawing additional law enforcement attention to their friends and neighbors.<sup>6</sup>

This effect is not hypothetical. Research has confirmed that fear of retribution following interaction with law enforcement has serious practical implications for community safety. Empirical data and analysis show that undocumented immigrants are significantly less likely to report a crime committed against them.<sup>7</sup> One study completed earlier this year compared counties with a “sanctuary” policy—counties that do not assist federal immigration enforcement officials by holding people in custody beyond their release date—with demographically similar non-sanctuary counties. The study concluded that “[t]here are, on average, 35.5 fewer crimes committed per 10,000 people in sanctuary counties compared to non-sanctuary counties.”<sup>8</sup>

Diminished cooperation and reporting of crime are already evident in Texas in light of the debate over SB4, increased ICE activity, and the now-enjoined federal Executive Order that similarly aimed to require local police to enforce immigration law. For example, Houston Police Chief Art Acevedo announced in April that the number of Hispanics reporting rape had decreased 42.8 percent in the first quarter of 2017 compared to the same time frame in 2016, with the

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<sup>6</sup> Fears of being treated as undocumented are well-founded. *See, e.g., Mendia v. Garcia*, 768 F.3d 1009, 1010 (9th Cir. 2014) (U.S. citizen spent two years in pre-trial detention as a result of the detainer); *Galarza v. Szalczyk*, 745 F.3d 634, 636-38 (3d Cir. 2014) (U.S. citizen held in jail for three days pursuant to erroneous detainer); Eyder Peralta, *You Say You're An American, But What If You Had To Prove It Or Be Deported?*, NPR (Dec. 22, 2016, 12:29 PM), <http://www.npr.org/sections/thetwo-way/2016/12/22/504031635/you-say-you-re-an-american-butwhat-if-you-had-to-prove-it-or-be-deported#foot1> (Data obtained through a Freedom of Information Act Request showed 693 detainees that were lifted or resolved with the outcome “United States Citizen Interviewed.”).

<sup>7</sup> *See, e.g.* Stefano Comino et al., *Silence of the Innocents: Illegal Immigrants' Underreporting of Crime and their Victimization*, IZA (Oct. 2016), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2861091](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2861091).

<sup>8</sup> Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, CTR. FOR AM. PROGRESS (Jan. 26, 2017), <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy>.

percentage reporting other violent crimes down 13 percent.<sup>9</sup> Affidavit evidence in this case likewise demonstrates that members of many Texas communities will be less likely to interact with their local police if those interactions become more likely to result in unwanted interactions with ICE.<sup>10</sup> SB4's requirement that local law enforcement effectively act as immigration agents will compound this reluctance and distrust. Crime will increase—not decrease—because the necessary trust and cooperation between the police and local communities will be reduced.

C. *Texas Local Law Enforcement's Reputation for Trust and Cooperation With Immigrant Communities Will Be Irreparably Injured Absent an Injunction.*

Warren Buffett famously observed that “[i]t takes 20 years to build a reputation and five minutes to ruin it.”<sup>11</sup> A community policing strategy built on local law enforcement's reputation for tolerance and trustworthiness is similarly fragile. It is imperative that Plaintiff cities and law enforcement agencies not be compelled to sacrifice that reputation.

Texas law enforcement leaders agree with Plaintiffs and ADL that local law enforcement's reputation for cooperation and trustworthiness with immigrant communities risks being permanently tarnished by SB4. This is why the Police Chiefs of six of Texas's largest police departments and the Executive Director of the Texas Police Chiefs Association co-signed an opinion piece in the State's largest daily newspaper prior to passage of SB4, urging the Legislature to reject the measure.<sup>12</sup> The police chiefs warned that SB4 would open a “divide between the local police and immigrant groups [which] will result in increased crime against immigrants and in the broader community, create a class of silent victims, and eliminate the potential for assistance from

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<sup>9</sup> See Lewis, *supra* footnote 2.

<sup>10</sup> See, e.g. Dkt No. 57-1 and exhibits thereto.

<sup>11</sup> Brad Tuttle, *Warren Buffett's Boring, Brilliant Wisdom*, TIME (Mar. 1, 2010), <http://business.time.com/2010/03/01/warren-buffetts-boring-brilliant-wisdom>.

<sup>12</sup> David Pughes, Art Acevedo, et al., *Texas police chiefs: Do not burden local officers with federal immigration enforcement*, DALLAS MORNING NEWS (Apr. 28, 2017).

immigrants in solving crimes or preventing crime.”<sup>13</sup> Plaintiff Maverick County Sherriff Schmerber confirms that “SB4 will [] harm community policing efforts by my office” because “people will no longer call to report crimes or to seek help for fear of being questioned or their family members being questioned about their immigration status.” Dkt. 24-5 at ¶¶ 21-22.

These conclusions are echoed by the broader law enforcement community. Many national law enforcement and immigration policy organizations have expressed grave concern that deputizing local law enforcement officers to implement immigration law undermines immigrant communities’ trust in and cooperation with local law enforcement.<sup>14</sup> The Major Cities Chiefs Association ably articulated the consensus among law enforcement professionals:

Cities that aim to build trusting and supportive relations with immigrant communities should not be punished because this is essential to reducing crime and helping victims . . . Local police departments work hard to build and preserve trust with all of the communities they serve, including immigrant communities. Immigrants residing in our cities must be able to trust the police and all of city government.<sup>15</sup>

As the nation’s largest non-governmental trainer of law enforcement officers with an emphasis on preventing discrimination and hate crimes, ADL shares these concerns. Absent a preliminary injunction, ADL’s and Plaintiffs’ hard work to establish trust and cooperation with diverse communities and improve community policing will be irreparably injured.

### **CONCLUSION**

For these reasons, and for the reasons stated in the Plaintiffs’ briefs, SB4 will inflict irreparable harm if not enjoined, and the public interest dictates entry of a preliminary injunction.

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<sup>13</sup> *Id.*

<sup>14</sup> See, e.g., Tom Jackson, *Police chiefs’ immigration task force outlines opposition to Trump policy*, WASHINGTON POST (Mar. 1, 2017), [https://www.washingtonpost.com/news/true-crime/wp/2017/03/01/police-chiefs-immigration-task-force-outlines-opposition-to-trump-policy/?utm\\_term=.4a1b2456fec8](https://www.washingtonpost.com/news/true-crime/wp/2017/03/01/police-chiefs-immigration-task-force-outlines-opposition-to-trump-policy/?utm_term=.4a1b2456fec8).

<sup>15</sup> U.S. Conf. of Mayors & Major Cities Chiefs Ass’n., “U.S. Mayors, Police Chiefs Concerned with Sanctuary Cities Executive Order”, [https://www.majorcitieschiefs.com/pdf/news/mcca\\_mayors\\_pr\\_on\\_eo\\_12517.pdf](https://www.majorcitieschiefs.com/pdf/news/mcca_mayors_pr_on_eo_12517.pdf) (Jan. 25, 2017)

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Respectfully submitted,

/s/ Jay D. Ellwanger\_\_\_\_\_

Jay D. Ellwanger

Texas State Bar No. 24036522

jellwanger@dpelaw.com

Holt Major Lackey (**Pro Hac Vice Pending**)

Texas State Bar No. 24047763

hlackey@dpelaw.com

**DiNovo Price Ellwanger LLP**

7000 North MoPac Expressway, Suite 350

Austin, Texas 78731

Telephone: (512) 539-2626

Facsimile: (512) 539-2627

Steven M. Freeman

Lauren A. Jones

Rachel G. Bresner

**Anti-Defamation League**

605 Third Avenue, 10th Floor

New York, NY 10158

(212) 885-7700

**CERTIFICATE OF SERVICE**

I hereby certify that on the 26th day of June 2017, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system.

*/s/ Jay D. Ellwanger* \_\_\_\_\_  
Jay D. Ellwanger