

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

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CITY OF EL CENIZO, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Case No. 5:17-cv-404-OLG
)	
STATE OF TEXAS, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
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**BRIEF *AMICI CURIAE* OF MAJOR CITIES CHIEFS ASSOCIATION,
POLICE EXECUTIVE RESEARCH FORUM, AND
UNITED STATES CONFERENCE OF MAYORS IN SUPPORT OF
PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTION**

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INTEREST OF *AMICI CURIAE*

Amici Major Cities Chiefs Association, Police Executive Research Forum, and the United States Conference of Mayors file this brief as *Amici Curiae* in support of the Plaintiffs’ Motions for Preliminary Injunction. *Amici* are two leading national associations of local law enforcement officials and a nonpartisan organization of the 1,408 cities in the United States with populations of 30,000 or more. *Amici* have extensive expertise in local governance, law enforcement and in cooperative federal-state law enforcement activities. They are intimately familiar with the challenges of performing critical law enforcement functions in communities where immigrants fear the police and are vulnerable to exploitation and crime. *Amici* represent some of the cities and jurisdictions from across the country that understand the challenges of balancing local community needs and public safety.

Amici’s experience in keeping their communities safe has taught the critical importance of bringing immigrants and their families out of the shadows. Community trust and cooperation are essential to public safety, and sound police work is undermined by undocumented immigrants’ fears of interacting with law enforcement. This dynamic, moreover, leaves undocumented immigrants more vulnerable to crime and exploitation, leading to more violence in the communities *amici* are charged with protecting.

Amici have concluded that Texas Senate Bill 4 (“SB 4”) will dangerously impact local communities by eliminating law enforcement discretion of how to effectively serve public safety needs and mandating that they take part in federal immigration enforcement, including honoring civil detainers—requests from Immigration and Customs Enforcement (“ICE”) to hold an individual in local governmental custody to allow ICE to take the individual into federal custody—or risk severe penalties including staggering fines and even jail time or removal from office. Forced local involvement in immigration enforcement would cause community members to mistrust the

police and result in a decrease in cooperation, hindering the ability of local law enforcement agencies to keep their communities safe. It would also drain scarce resources that would otherwise be used to enhance public safety, depriving local law enforcement of the discretion necessary to determine how best to protect their communities. Further, continued detention under ICE detainers of individuals who would otherwise be released from local custody has been found by federal courts across the country to violate the Fourth Amendment of the United States Constitution, and SB 4 mandates that law enforcement officers comply with *all* ICE detainer requests, formal or informal, without an exception for requests that are unsupported by probable cause. Thus, *amici* have concluded that a preliminary injunction is necessary to halt this attempt to force local law enforcement officers and agencies into a practice that would likely result in widespread constitutional violations and substantial civil liability.

INTRODUCTION

The lessons *amici* have learned in protecting their communities shed important light on the issues raised in these cases. When community residents live in constant fear that interactions with local police could result in deportation, there is a fundamental breakdown in trust that impedes the police from doing their jobs and threatens public safety. Extensive evidence shows that undocumented immigrants—and their lawfully present family and neighbors—fear that turning to the police will bring adverse immigration consequences. As a result, immigrant communities are less willing to report crime or cooperate with police investigations. This fundamental breakdown in trust poses a major challenge both to investigation of individual crimes and to proper allocation of public safety resources.

Law enforcement officials need the flexibility and discretion to determine how to best address these issues in their own communities. Many localities have policies limiting local law enforcement agency involvement in federal immigration enforcement. Though they take several

different forms, these policies generally aim to preserve local resources and improve public safety by promoting cooperation between law enforcement and the communities they serve.¹ Some jurisdictions include a policy or law limiting continued detention pursuant to an ICE detainer.² SB4 upends these policies in the state of Texas, even prohibiting “endorsement” of such policies, to the detriment of community safety.

Further, SB 4 mandates that local officials honor ICE detainer requests—formal or informal—without an exception for requests that are unsupported by probable cause, and despite the fact that immigration detainers are purely voluntary under federal law.³ This deprives law enforcement from exercising any discretion on whether their communities can or should allocate the substantial funds and resources that ICE detainer compliance requires to federal immigration enforcement. Moreover, detentions pursuant to traditional ICE detainers have been held by numerous courts to violate the probable cause requirement of the Fourth Amendment. Thus, SB 4 seeks to compel local jurisdictions to take part in conduct that could result in unconstitutional detentions and civil liability, or face harsh penalties. The state should not force local communities into such a Hobson’s choice.

¹ See *Oversight of the Administration’s Misdirected Immigration Enforcement Policies: Examining the Impact of Public Safety and Honoring the Victims: Hearing Before the S. Comm. on the Judiciary*, 2 (July 21, 2015) (statement of Tom Manger, Chief, Montgomery Cty., Md., Police Dep’t & President, Major Cities Chiefs Ass’n), available at <http://www.judiciary.senate.gov/imo/media/doc/07-21-15%20Manger%20Testimony.pdf>.

² 8 C.F.R. § 287.7; see also Jasmine C. Lee, Rudy Omri, and Julia Preston, *What Are Sanctuary Cities?*, N.Y. TIMES Feb. 6, 2017, <http://www.nytimes.com/interactive/2016/09/02/us/sanctuary-cities.html>; *Detainer Policies*, IMMIGRANT LEGAL RESOURCE CENTER (Mar. 21, 2017), available at <https://www.ilrc.org/detainer-policies> [hereinafter *ILRC Detainer Policies*]

³ See TEX. CODE CRIM. PROC. ANN. art. 2.251(a) (effective Sept. 1, 2017), amended pursuant to Article 2 of SB 4; *Galarza v. Szalczyk*, 745 F.3d 634, 639-42, 639 n.3 (3d Cir. 2014).

ARGUMENT

I. SB 4 Impedes Effective Law Enforcement.

A. Trust and Respect Between Communities and Police Is Essential to Effective Law Enforcement, and is Thwarted When Local Officers are Forced to Partake in Federal Immigration Enforcement.

The experience of policing cities across the country has taught law enforcement officers that “[t]o do our job, we must have the trust and respect of the communities we serve.”⁴ In order to stop crime, police officers “need the full cooperation of victims and witnesses.”⁵

This common-sense philosophy is sometimes called “community policing.” Community policing is an approach to policing where police officers engage communities in a working partnership to reduce crime and promote public safety.⁶ It thus requires police to interact with neighborhood residents in a manner that will build trust and improve the level of cooperation with the police department.⁷ When that relationship of trust is missing—as it is when people believe that contacting police could lead to deportation for themselves or others—community policing breaks down and the entire community is harmed.

According to a Pew survey, 57% percent of Latinos in the United States indicate that they worry about deportation—of themselves, family members, or close friends—and 40% worry about it “a lot.”⁸ This fear necessarily affects cooperation and communication with the police.

⁴ Statement of Tom Manger, *supra* note 1.

⁵ *Id.*

⁶ See Anita Khashu, *The Role Of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, POLICE FOUND., (Apr. 2009) (citing Mark H. Moore, “Problem-Solving and Community Policing,” MODERN POLICING (Michael Tonry & Norval Morris eds., 1992)), available at <https://www.policefoundation.org/wp-content/uploads/2015/06/The-Role-of-Local-Police-Narrative.pdf>.

⁷ *Id.*

⁸ Mark Hugo Lopez & Susan Minushkin, *2008 National Survey of Latinos: Hispanics See Their Situation in U.S. Deteriorating; Oppose Key Immigration Enforcement Measures*, PEW HISPANIC CENTER, (Sept. 18, 2008), at ii, available at <http://pewhispanic.org/reports/report.php?ReportID=93>.

Immigrants—and their family members and neighbors who may be U.S. citizens or lawfully present—often assume that interaction with police could have adverse consequences for themselves or a loved one.

As a result, immigrant communities in general, and undocumented immigrants in particular, are less likely to trust and cooperate with local police. One study of Latinos in four major cities found that 70% of undocumented immigrants and 44% of all Latinos are less likely to contact law enforcement authorities if they were victims of a crime for fear that the police will ask them or people they know about their immigration status; and 67% of undocumented immigrants and 45% of all Latinos are less likely to voluntarily offer information about, or report, crimes because of the same fear.⁹

This study (among others) highlights that fears of immigration enforcement and the resulting damage to law enforcement cooperation affects not just the undocumented community but also individuals with citizenship or lawful status, in particular in “mixed-status” households.¹⁰

This problematic atmosphere of mistrust is felt by police as well. In one study, two-thirds of the law enforcement officers polled held the view that recent immigrants reported crimes less

⁹ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* 5-6 (May 2013), available at www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF; see also *id.* at 1 (“Survey results indicate that the greater involvement of police in immigration enforcement has significantly heightened the fears many Latinos have of the police, . . . exacerbating their mistrust of law enforcement authorities.”).

¹⁰ An estimated 85% of immigrants live in mixed-status families. See Anita Khashu, *The Role Of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, POLICE FOUND., (Apr. 2009), at 24, available at <http://www.policefoundation.org/wp-content/uploads/2015/06/The-Role-of-Local-Police-Narrative.pdf>. See also Jill Theresa Messing, et al., *Latinas’ Perceptions of Law Enforcement: Fear of Deportation, Crime Reporting, and Trust in the System*, 30 J. Women & Soc. Work 328, 334 (2015) (“The results indicate that for each 1-point increase in fear of deportation [e.g., from ‘not much’ to ‘some’ worry, or from ‘some’ to ‘a lot’], Latina participants were 15% less willing to report being victim of a violent crime to police.”).

frequently than others.¹¹ Those surveyed also indicated that the crimes that are underreported by immigrants most often are serious ones, with domestic violence and gang violence at the top.¹²

The widely-recognized fear among immigrants of interacting with law enforcement poses a fundamental challenge for community policing. Police cannot prevent or solve crimes if victims or witnesses are unwilling to talk to them because of concerns that they or their loved ones or neighbors will face adverse immigration consequences. As the president of the Major Cities Chiefs Association has explained to Congress, “[c]ooperation is not forthcoming from persons who see their police as immigration agents.”¹³

The experience of one woman who came to the United States from Guatemala is illustrative. When asked in an interview whether she could count on the police to protect her, “simply smiled.”¹⁴ She recounted an episode working the night-shift at a fast-food restaurant that was robbed at gunpoint.¹⁵ The immigrant managed to knock out an assailant with a broomstick and take his gun, but “[a]t that moment, while I was holding the men, I kept on thinking, what do I do? If I call the police, I’d get deported. Yes, I was nervous (with the gun), but I was even more nervous to have to talk to the police.”¹⁶

In contrast, incidents in jurisdictions that implemented policies limiting local law enforcement of federal immigration law—policies that would be prohibited by SB 4—demonstrate

¹¹ Robert C. Davis, Edna Erez & Nancy Avitabile, *Access to Justice for Immigrants Who Are Victimized: The Perspectives of Police and Prosecutors*, 12 *Crim. Just. Pol’y Rev.* 183, 187 (Sept. 2001).

¹² *Id.* at 188-9.

¹³ Statement of Tom Manger, *supra* note 1, at 2.

¹⁴ Cecilia Menjivar & Cynthia Bejarano, *Latino Immigrants’ Perceptions of Crime and Police Authorities in the United States: A Case Study from the Phoenix Metropolitan Area*, 27 *Ethnic & Racial Stud.* 120, 134 (Jan. 2004).

¹⁵ *Id.* at 134-35.

¹⁶ *Id.* at 135.

their public safety benefits. For example, last year Los Angeles Police Department officers had an encounter with a suspected gang member that resulted in a vehicle chase, a foot pursuit, and shots fired. An undocumented immigrant helped police locate the suspect by providing a description and vehicle information.¹⁷ In Tucson, Arizona, an undocumented man confronted and struggled with a man who tried to steal a car with children inside. The immigrant held the individual until police arrived, then cooperated with detectives in the follow-up investigation, resulting in charges of kidnapping, auto theft, and burglary.¹⁸ These examples demonstrate why crime has been statistically significantly lower in counties that do not hold people in custody beyond their release date pursuant to an ICE detainer compared to those that do.¹⁹ SB 4, however, will penalize local agencies for developing these common-sense policing policies. But as cautioned by one official, “immigrants will never help their local police to fight crime once they fear we have become immigration officers.”²⁰

The underreporting of crimes by recent immigrants is a problem for the criminal justice system.²¹ The most immediate consequence, of course, is that serious crimes go unreported and unpunished. At a broader level, undercounting the incidence of crime in areas where immigrant

¹⁷ Chuck Wexler, *Commentary: Why police support sanctuaries*, PHILA. INQUIRER, March 10, 2017, available at http://www.philly.com/philly/opinion/20170310_Commentary__Why_police_support_sanctuaries.html.

¹⁸ *Id.*

¹⁹ Tom K. Wong, “The Effects of Sanctuary Policies on Crime and the Economy,” CENTER FOR AMERICAN PROGRESS, (Jan. 26, 2017), available at <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/> (“The results of the CEM analysis show that there are, on average, 35.5 fewer crimes per 10,000 people in sanctuary counties—a result that is highly statistically significant.”).

²⁰ *Local Law Enforcement Leaders Oppose Mandates to Engage in Immigration Enforcement*, NATIONAL IMMIGRATION LAW CENTER, (Aug. 2013), at 2 (statement of Chief Acevedo), available at <https://www.nilc.org/wp-content/uploads/2017/02/Law-Enforcement-Opposition-to-Mandates-2013-08-30.pdf>.

²¹ Davis et al., *supra* note 11, at 188.

communities live leads to the under-allocation of law enforcement resources to those communities.²² As one official explained, when criminal behavior goes unreported “[c]rime multiplies” and “[u]nresolved resentments grow in the community.”²³ Another added that the under-reporting of crime “keeps fear at very high levels and diminishes quality of life.”²⁴

Distrust between immigrants and the police also results in greater victimization of immigrants. “When immigrants come to view their local police and sheriffs with distrust because they fear deportation, it creates conditions that encourage criminals to prey upon victims and witnesses alike.”²⁵ This phenomenon has been termed the “deportation threat dynamic,” where an individual does not report a crime of which they are the victim, fearing immigration consequences.²⁶ Nearly two-thirds of undocumented migrant workers participating in a study in Memphis, Tennessee reported being the victim of at least one crime, with the most common being theft and robbery.²⁷ Respondents indicated that fewer than a quarter of these crimes were reported to the police, and *only one* was reported by the victim himself.²⁸ The targeting of undocumented immigrants for robbery has become so widespread that these individuals have been labeled “walking ATMs” – or the subjects of “amigo shopping.”²⁹

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Statement of Tom Manger, *supra* note 1, at 2.

²⁶ Elizabeth Fussell, *The Deportation Threat Dynamic & Victimization of Latino Migrants: Wage Theft & Robbery*, 52 Soc. Q. 593, 610 (2011).

²⁷ Jacob Bucher, Michelle Manasse & Beth Tarasawa, *Undocumented Victims: An Examination of Crimes Against Undocumented Male Migrant Workers*, 7 Sw. J. Crim. Just. 159, 164, 166 (2010).

²⁸ *Id.* at 165.

²⁹ See Fussell, *supra* note 26, at 604-05; see also *Under Siege: Life for Low-Income Latinos in the South*, SOUTHERN POVERTY LAW CTR., (Apr. 2009), at 25, available at <http://www.splcenter.org/sites/default/files/downloads/UnderSiege.pdf>; Khashu, *supra* note 6, at 25.

Undocumented immigrants are especially vulnerable to domestic violence. A number of studies have shown that abusive partners may utilize the threat of deportation in order to maintain power and control.³⁰ The experience of one domestic violence survivor demonstrates this dynamic: she explained that a partner “beat me up and I could have called the police because that was what I thought to do... but he threatened me...he told me that if I called the police I was going to lose out...because they [police officers] ...would ... take me, because I didn’t have legal documents.”³¹ When the abusing partner has lawful status, financial dependence on a partner with stable immigration status may similarly facilitate violence.³² Seventy percent of participants in one study of domestic abuse victims said that immigration status was a major reason keeping them from seeking help or reporting their abuse to the authorities—and thereby permitting the violence to continue.³³ In another study, the single largest factor independently affecting the rate at which battered immigrant Latina women called the police was identified as immigration status.³⁴

SB 4’s sweeping mandate that municipalities engage in federal immigration enforcement will compound fear of the police, in many cases undoing years of carefully developed community policing efforts. While the law contains a provision that prohibits law enforcement from inquiring into immigration status individuals detained *solely* because the person is a victim or witness to a criminal offense or is reporting a criminal offense, this is unlikely to have any material effect on

³⁰ See, e.g., Messing, *supra* note 10, at 330 (citing several studies); Angelica S. Reina, Brenda J. Lohman & Marta María Maldonado, “*He Said They’d Deport Me*”: *Factors Influencing Domestic Violence Help-Seeking Practices Among Latina Immigrants*, 29 J. Interpersonal Violence 593, 601 (2013).

³¹ Reina, Lohman & Maldonado, *supra* note 30, at 601.

³² See, e.g., Messing, *supra* note 10, at 330.

³³ Reina, Lohman & Maldonado, *supra* note 30, at 600.

³⁴ Nawal H. Ammar et al., *Calls to Police and Police Response: A Case Study of Latina Immigrant Women in the USA*, 7 Int’l J. Police Sci. & Mgmt. 230, 237 (2005).

curbing fear of law enforcement.³⁵ First and foremost, it contains broad exceptions that allow officers to make immigration inquiries “to investigate” crimes or to provide information about visas.³⁶ Moreover, the line between witnesses and suspects is not always immediately clear, particularly in cases involving domestic violence or human trafficking. And critically, very few individuals affected by crime and violence will be familiar with the intricacies of the law, aware of this provision, or confident that it will be stringently enforced. Other jurisdictions’ experiences with state immigration enforcement bills are illustrative. Salt Lake City’s former police chief has reported that when the state legislature *debated* a bill that would require local law enforcement to detain undocumented immigrants, crime reporting dropped, even though he directed the city’s officers not to inquire about immigration status and announced that policy on the news.³⁷ Here, the mere existence of SB 4 and knowledge that local law enforcement will engage in immigration activities will be enough to erode trust of the police.

Indeed, the recent surge in federal immigration enforcement activities, stemming from Executive Order 13,768³⁸ and other Trump Administration policies already has had a chilling effect on crime reporting in Latino communities in jurisdictions across the country, including even in those with so-called “sanctuary” policies. In Los Angeles, reports of sexual assault from the city’s Latino population have dropped 25% since the beginning of 2017, compared with the same

³⁵ See Tex. Code Crim. Proc. Ann. art. 2.13(d)-(e) (effective Sept. 1, 2017) (amendment pursuant to Article 6 of SB 4).

³⁶ *Id.* art. 2.13(d).

³⁷ Rob Arthur, *Latinos In Three Cities Are Reporting Fewer Crimes Since Trump Took Office*, May 18, 2017, available at <https://fivethirtyeight.com/features/latinos-report-fewer-crimes-in-three-cities-amid-fears-of-deportation/>.

³⁸ See Exec. Order 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017) (significantly expanding interior immigration enforcement by, among other things, broadening categories of noncitizens who are deportation priorities, directing tripling the number of federal officers available for immigration enforcement, and calling for the withholding of federal funding from “sanctuary jurisdictions”).

period last year; reports of domestic violence have dropped 10%.³⁹ In Denver, crime reports among Latinos fell 12% compared with the same period last year, while reports from non-Latinos rose 3.6% in the same period.⁴⁰ In Camden, there has been a 6% drop in calls for service from immigrant neighborhood communities.⁴¹ And Houston already has experienced an overall 13% decline in reported Part 1 violent crimes from Hispanic complainants, compared to an 11.7% increase in reports of these crimes from non-Hispanic complainants and a dramatic 42.8% decrease in reports of rape from Hispanic complainants, compared to an 8.2% increase of reports from non-Hispanic victims.⁴² SB 4 would exacerbate immigrant communities' existing fear of reporting crime, endangering the safety of the entire community. As cautioned by Houston's Police Chief: "When you see this type of data, and what looks like the beginnings of people not reporting crime, we should all be concerned. . . A person that rapes or violently attacks or robs an undocumented immigrant is somebody that is going to harm a natural born citizen or lawful resident."⁴³

³⁹ James Queally, *Latinos are reporting fewer sexual assaults amid a climate of fear in immigrant communities, LAPD says*, Mar. 21, 2017, available at <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>

⁴⁰ Rob Arthur, *Latinos In Three Cities Are Reporting Fewer Crimes Since Trump Took Office*, May 18, 2017, available at <https://fivethirtyeight.com/features/latinos-report-fewer-crimes-in-three-cities-amid-fears-of-deportation/>.

⁴¹ Lindsey Bever, *Hispanics 'are going further into the shadows' amid chilling immigration debate, police say*, May 12, 2017, available at https://www.washingtonpost.com/news/post-nation/wp/2017/05/12/immigration-debate-might-be-having-a-chilling-effect-on-crime-reporting-in-hispanic-communities-police-say/?utm_term=.04ebe5a4080c.

⁴² Brooke A. Lewis, *HPD chief announces decrease in Hispanics reporting rape and violent crimes compared to last year*, Apr. 6, 2017, available at <http://www.chron.com/news/houston-texas/houston/article/HPD-chief-announces-decrease-in-Hispanics-11053829.php>

⁴³ *Id.*

B. SB 4 Precludes Local Governments, Agencies, and Officials from Effectively Allocating Resources to Serve Local Law Enforcement Needs.

By mandating that local entities enforce federal immigration law and imposing stiff penalties for non-compliance,⁴⁴ SB 4 fully deprives local law enforcement officials from exercising discretion on the best way to allocate limited resources and protect their communities.

For example, complying with ICE detainer requests alone can add staggering costs—in some cases, tens of millions of dollars annually.⁴⁵ The *Houston Chronicle* reported that Harris County, Texas spent more than \$45 million to detain immigrants for ICE in 2012 and 2013.⁴⁶ One study assessing the cost of federal immigration enforcement activities undertaken by Colorado law enforcement in 2012 (during a time that a now-repealed state law required police to report suspected undocumented arrestees to Immigration and Customs Enforcement) estimated that the \$13 million spent statewide per year exceeded the cost of putting an additional 200 full-time police officers on the street.⁴⁷ Officer training on SB 4 and federal immigration laws could exceed

⁴⁴ SB 4 penalties include fines imposed on local employees that range from \$1,000 to \$1,500 for an initial violation, up to \$25,500 for subsequent violations. For continuing violations, each day triggers a new penalty of up to \$25,500. TEX. GOV'T CODE ANN. § 752.056(a). Elected and appointed officials who violate certain provisions are subject to immediate removal from office. § 752.0565(b).

⁴⁵ *Legislative Threats to Undermine Community Safety Policies: The Costs of Entangling Local Policing and Immigration Law*, NATIONAL IMMIGRANT JUSTICE CENTER AND NATIONAL IMMIGRATION LAW CENTER, (Oct. 2015), available at http://www.immigrantjustice.org/sites/immigrantjustice.org/files/NILC_NIJC_CommunitySafetyFactSheet_201510.pdf.

⁴⁶ Kiah Collier, “Harris County Jail brings in highest number of undocumented immigrants,” *Houston Chronicle*, Oct. 17, 2013, available at <http://www.houstonchronicle.com/news/houston-texas/texas/article/Harris-County-Jail-brings-in-highest-number-of-4905303.php>.

⁴⁷ *Legislative Threats to Undermine Community Safety Policies: The Costs of Entangling Local Policing and Immigration Law*, NATIONAL IMMIGRANT JUSTICE CENTER AND NATIONAL IMMIGRATION LAW CENTER, (Oct. 2015), available at http://www.immigrantjustice.org/sites/immigrantjustice.org/files/NILC_NIJC_CommunitySafetyFactSheet_201510.pdf.

hundreds of thousands of dollars and displace training or other law enforcement efforts on issues specifically needed by local communities.⁴⁸

The cost to localities is not purely financial. At a 2014 roundtable convened by the Police Executive Research Forum (“PERF”) on state immigration policies, local law enforcement officials from across the country expressed their concerns that mandating local immigration enforcement will divert resources and attention away from individual community needs and threaten police-community relationships.⁴⁹ One police chief noted the critical role local police already play without taking on federal enforcement duties, “We are the first responders, and sometimes the only responders,” and accordingly, as PERF cautioned, “spending time and money on immigration enforcement can hinder the ability of officers to respond to calls for service, conduct criminal investigations, and perform the other duties required by their jobs.”⁵⁰ Communities carefully allocate resources such as funds, training, and officer duties to best serve local law enforcement needs; forced redistribution to immigration enforcement would siphon limited resources away from where they are most needed while simultaneously damaging community engagement and protection.⁵¹

⁴⁸ According to a report by the Police Executive Research Foundation, state laws mandating immigration enforcement activities impose an “essential” need for officer training and investigation and the cost of such training in jurisdictions across Arizona following the passage of SB 1070 ranged from \$123,000 to \$640,000. *Local Police Perspectives on State Immigration Policies*, POLICE EXEC. RESEARCH FORUM, (July 2014), at 21, available at http://www.policeforum.org/assets/docs/Free_Online_Documents/Immigration/local%20police%20perspectives%20on%20state%20immigration%20policies.pdf.

⁴⁹ *Id.* at 15-25

⁵⁰ *Id.* at 17.

⁵¹ See Letter from Law Enforcement Task Force to Hon. Trey Gowdy and Hon. Zoe Lofgren (July 20, 2015) available at <https://immigrationforum.org/wp-content/uploads/2015/07/072015-LEITF-Letter-House.pdf> (opposing Congressional proposals to mandate local law enforcement engaged in immigration enforcement).

II. SB 4 Seeks to Force Local Law Enforcement Agencies to Engage in Conduct that Violates the Constitution and Subjects Local Law Enforcement Officers and Agencies to Potential Liability.

SB 4 requires local law enforcement agencies to honor *all* ICE detainer requests or incur potentially staggering fines and even makes an individual official's decision to decline to comply with a detainer a criminal offense.⁵² The law imposes this detainer mandate even for circumstances where the federal government's detainer request is not supported by probable cause, and despite that federal law makes clear that detainees are voluntary.⁵³ This places localities in an untenable situation as numerous courts have found that continuing to detain an individual under an ICE detainer absent probable cause for longer than they otherwise would be held violates the Fourth Amendment. Local law enforcement should not be faced with the stark choice of incurring crushing fines and jail time or committing constitutional violations for which they will be subject to civil liability.

The Fourth Amendment's most basic requirement is that all arrests must be supported by probable cause.⁵⁴ Probable cause requires that "the facts and circumstances within . . . the officers' knowledge and of which they ha[ve] reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being

⁵² See TEX. CODE CRIM. PROC. ANN. art. 2.251(a) (effective Sept. 1, 2017) *amended* pursuant to Article 2 of SB 4 (detainer mandate); TEX. PENAL CODE ANN. § 12.21; TEX. PENAL CODE ANN. § 39.07 (effective Sept. 1, 2017) *amended* pursuant to Art. 5 of SB 4 (single knowing violation by a sheriff, police chief, or constable is a Class A misdemeanor punishable by up to one year in jail and a \$4000 fine); TEX. LOC. GOV'T CODE ANN. § 87.031(c) (elected official subject to immediate removal from office); and TEX. GOV'T CODE ANN. § 752.056 (imposing fines up to \$25,500 per violation for violations of SB 4's sanctuary provisions, which would include local policies that place limitations on detainer compliance).

⁵³ See TEX. CODE CRIM. PROC. ANN. art. 2.251(a) (effective Sept. 1, 2017), *amended* pursuant to Article 2 of SB 4; *Galarza*, 745 F.3d at 639-42, 639 n.3.

⁵⁴ See *Dunaway v. New York*, 442 U.S. 200, 213 (1979).

committed.”⁵⁵ Under long-standing Fourth Amendment precedent, numerous federal courts—including this Court—have found that continued detention under an ICE detainer, absent probable cause, gives rise to a claim for a violation of the Fourth Amendment and subjects the detaining officer or jurisdiction to civil liability.⁵⁶ These courts have found that local jails must have a warrant or probable cause of a new offense to detain a person after they would otherwise be released from custody.⁵⁷ SB 4’s detainer mandate will almost certainly subject localities to

⁵⁵ *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949) (internal quotation marks, brackets, and citation omitted).

⁵⁶ See Order, *Trujillo Santoyo v. United States*, No. 5:16-cv-855-OLG (W.D. Tex. June 5, 2017), ECF No. 36 (granting summary judgment to plaintiff held on ICE detainer by Bexar County, Texas and finding it unreasonable for the county to assume that all detainer forms are supported by probable cause); *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D. R.I. 2014), *aff’d on appeal*, 793 F.3d 208 (1st Cir. 2015) (plaintiff stated Fourth Amendment claim where she was held for 24 hours on ICE detainer issued without probable cause); *Galarza v. Szalczyk*, No. 10-cv-06815, 2012 WL 1080020, at *10, *13 (E.D. Pa. Mar. 30, 2012) (where plaintiff was held for 3 days after posting bail based on an ICE detainer, he stated a Fourth Amendment claim against both federal and local defendants), *rev’d on other grounds*, 745 F.3d 634 (3d Cir. 2014); *Miranda-Olivares v. Clackamas Cnty.*, No. 12-cv-02317-ST, 2014 WL 1414305, at *10 (D. Or. Apr. 11, 2014) (plaintiff’s detention on an ICE detainer after she would otherwise have been released “constituted a new arrest, and must be analyzed under the Fourth Amendment”); *Mendoza v. Osterberg*, No. 13CV65, 2014 WL 3784141, at *6 (D. Neb. July 31, 2014) (recognizing that “[t]he Fourth Amendment applies to all seizures of the person,” and thus, “[i]n order to issue a detainer[,] there must be probable cause”) (internal quotation marks, ellipses, and citations omitted); *Villars v. Kubiowski*, 45 F.Supp.3d 791 (N.D. Ill. 2014) (holding that plaintiff stated a Fourth Amendment claim where he was held on an ICE detainer that “lacked probable cause); *Uroza v. Salt Lake Cnty.*, No. 11CV713DAK, 2013 WL 653968, at *5-6 (D. Ut. Feb. 21, 2013) (holding that plaintiff stated a Fourth Amendment claim where ICE issued his detainer without probable cause); *Vohra v. United States*, No. 04-cv-00972-DSF-RZ, 2010 U.S. Dist. LEXIS 34363, *25 (C.D. Cal. Feb. 4, 2010) (magistrate’s report and recommendation) (“Plaintiff was kept in formal detention for at least several hours longer due to the ICE detainer. In plain terms, he was subjected to the functional equivalent of a warrantless arrest” to which the “‘probable cause’ standard . . . applies”), adopted, 2010 U.S. Dist. LEXIS 34088 (C.D. Cal. Mar. 29, 2010). *But see* Order, *Roy, et al. v. County of Los Angeles, et al.*, No. 2:12-cv-9012-BRO-FFM (C.D. Cal. June 12, 2017), ECF No. 264 (fourth amendment does not require judicial review of ICE officers’ probable cause determinations).

⁵⁷ See, e.g., *Morales*, 793 F.3d at 217 (1st Cir. 2015) (“Because Morales was kept in custody for a new purpose after she was entitled to release, she was subjected to a new seizure for Fourth Amendment purposes—one that must be supported by a new probable cause justification.”); *Vohra*, 2010 U.S. Dist. LEXIS 34363 (C.D. Cal. 2010).

expensive litigation and judgments as it not only requires officers to comply with the type of formal immigration detainer requests that courts already have held often violate the Fourth Amendment (such as the ICE detainer form which lacks individual and particularized facts regarding probable cause), but even detention requests placed through *informal* means such as telephone calls.⁵⁸ Particularly problematic is SB 4's failure to allow officers the latitude to decline detainers that they believe are not supported by probable cause, the foundational requirement for Fourth Amendment compliance.

Moreover, there are a myriad of other reasons why local law enforcement need the flexibility to decide when they should prioritize their community's needs over ICE detainer requests. As described above, universal compliance with all ICE detainer requests, both formal and informal, during a time of aggressive ICE enforcement, could impose staggering costs on localities, even absent subsequent legal challenges.⁵⁹ And compliance requires allocating physical space, officer time, and other resources to detained individuals. Local law enforcement needs the flexibility and discretion to focus those resources on dealing with violent crime or other community-specific needs at any given time.

In sum, SB 4's broad requirement that local law enforcement honor all ICE detainers, without an exception for requests that are unsupported by probable cause, forces localities to choose between harsh penalties and committing and subjecting themselves to liability for constitutional violations or significant diversions of resources. As such, SB 4 should be preliminarily enjoined.

⁵⁸ TEX. GOV'T CODE ANN. § 772.0073(a)(2).

⁵⁹ See *supra* Sec. I(B) (complying with detainers has previously cost some jurisdictions tens of millions of dollars).

CONCLUSION

For the foregoing reasons, as well as the reasons set forth in Plaintiffs' Motion, this Court should grant the preliminary injunction against Texas Senate Bill 4.

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Respectfully Submitted,

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