

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

City of El Cenizo, Texas, <i>et al.</i>	§	
	§	
Plaintiffs,	§	
	§	
Travis County, <i>et al.</i>	§	Civil Case No. 5:17-cv-404-OG
	§	
Plaintiff-Intervenors,	§	
v.	§	
	§	
State of Texas, <i>et al.</i>	§	
	§	
Defendants.	§	

DECLARATION OF SALLY HERNANDEZ

Background on Travis County and its Sheriff

1. My name is Sally Hernandez, and I am currently the Sheriff of Travis County, Texas. I was first elected to this position in November 2016, and I assumed office on January 1, 2017. I have lived in Travis County since 1988.
2. I have over 31 years of law enforcement experience. Prior to my election as Sheriff, I served as Constable, Precinct 3, in Travis County, Texas. Prior to being elected Constable, I spent nearly 21 years as an Investigator at the Travis County District Attorney’s Office and I was Chief Investigator from 2005 to 2012. Before I went to work for the Travis County District Attorney, I worked for the Travis County Constable, Precinct 3, the Llano County Sheriff’s Office, and the City of Llano Police Department.

3. I have a Bachelor's Degree in Criminal Justice from St. Edwards University.
4. Travis County covers approximately 1,023 square miles in Central Texas. As of the 2010 census, Travis County had a population of approximately 1,024,266, and approximately 33.5% of that population identified as Hispanic or Latino.
5. The Travis County Sheriff's Office, ("TCSO"), currently employs 338 law enforcement officers and 945 correctional officers. TCSO resources are already spread thin due to the geographic size of Travis County, the size of the Travis County Jail, and our rapidly growing population. Additionally, to punish Travis County elected officials for their opposition to laws like SB 4, Governor Abbott abruptly cancelled \$1.5 million in grant funding already awarded to Travis County for the current budget year, and the Governor has made it clear that he plans to deny Travis County's applications for grant funds for the next budget year as well.

Overview of SB 4

6. I have read Texas Senate Bill 4 ("SB 4"), and based on my extensive experience in law enforcement, as well as my recent experience with respect to my adoption of a policy for TCSO that placed certain limits on TCSO's participation in immigration enforcement, I have many concerns regarding this law.
7. I believe that all of Travis County is safer when everyone, regardless of immigration status, feels safe interacting with law enforcement, and that was a key component of, and widely discussed in, my campaign for Sheriff. I was elected to the office of Travis County Sheriff by nearly a 30-point margin.

Adoption of TCSO Policy and Governor's Response of the State

8. Based on my law enforcement experience, training, and my research into legal authority, I issued a written policy setting forth the procedures by which TCSO would cooperate with ICE concerning ICE detainer requests and enforcement of federal immigration laws. Essentially, I will honor an ICE detainer request if the request is accompanied by a judicial warrant or court order for continued detention; if the individual is convicted of certain felonies and if under my assessment or belief it is appropriate to hold the individual to ensure that justice is served.
9. My policy was adopted before the legislature even began to consider SB 4, and was consistent with my promises to my constituents during my campaign and with existing law. When I released it on January 20, 2017, I announced that it would become effective on February 1, 2017.
10. Immediately after I introduced my policy concerning ICE detainees, Texas Governor Greg Abbott announced that he would withhold grant funding for Travis County unrelated to immigration in retaliation for my policy. Because I refused to concede to what I perceived as an unconstitutional demand that I revoke my policy, the State denied Travis County \$1.5 million in previously awarded and allocated funds that would have supported programs that were not TCSO programs. The grant funds were designated for programs that were designed for victims of family violence, veterans, and other at-risk communities. Thus, the governor's intent was clear: he wanted to punish all of Travis County for a decision that I made in the best interest of Travis County.

11. Defunding ongoing programs for Travis County’s veterans and domestic violence victims was not enough. Governor Abbott then directed his office to refuse all future Travis County grant applications— even though they are unrelated to immigration. Travis County’s new grant applications for the 2017-2018 grant cycle have also been denied.
12. On February 2, 2017, Governor Abbott announced, via social media, that “Texas will hammer Travis County” because of its perceived “sanctuary” policies.
13. On or about February 6, 2017, Governor Abbott again announced that he would “hammer” Travis County. During an appearance on a radio talk show, Governor Abbott stated:

I’m putting the hammer down. This is offensive what is going on in Austin, Texas. It’s actually the county, which is Travis County, which is the county seat of Austin, Texas. Travis County has declared what I call “sanctuary city policies.” They are no longer going to hold for ICE detainers, certain criminals—who are, in fact, criminals—they’ve been arrested before for very serious crimes. *See, Andrew Eicher, Texas Gov. Abbott on Levin: ‘I’m Putting the Hammer Down’ on Sanctuary Cities, CNSNEWS.COM BLOG (Feb.6, 2017, 2:32 pm), <http://www.cnsnews.com/blog/andrew-eicher/texas-gov-abbot-levin-im-putting-hammer-down-sanctuary-cities>.*

14. As part of his comments, Governor Abbott, without authority, threatened to send public officials to jail if they failed to comply with ICE detainer requests.
15. The State of Texas, by its enactment of SB 4, seeks to coerce me to engage in federal immigration enforcement with the threat of criminal prosecution, removal from office, and hefty civil penalties. Additionally, the State would coerce me into abandoning my oath of office and the United States Constitution by requiring me to honor all ICE detainer requests. Given the need to ensure that my limited resources

are dedicated to protecting my community against criminal activity, my policy allows me to use my experience and training to determine under what circumstances to comply with a detainer request and to consider whether I have authority to comply with the request. SB 4 would require me, as a County official, to honor all ICE detainer requests regardless of their legality or strain my resources. Additionally, SB 4 mandates that I enforce both formal and informal ICE detainer requests without permitting me to determine whether there is probable cause. Removing this discretion will put me in the position of possibly violating individuals' 4th Amendment rights by detaining them without lawful justification or authority.

SB 4 Undermines Public Safety by Making Victims Afraid to Report Crimes and Witnesses Afraid to Cooperate in Prosecution of Those Crimes

16. The purpose of my policy is to keep my community safe, to protect and serve all residents of Travis County, and to ensure that victims of crime continue to report those crimes, and witnesses to those crimes continue to cooperate with TCSO officers, regardless of their immigration status.
17. SB4 will harm the community policing efforts of my office. SB4 sends a message to immigrant communities that my deputies will be engaging in immigration enforcement and inquiring about immigration status. This inquiry, will in turn, frighten crime victims and witnesses.
18. I am highly concerned that crime victims and witnesses will no longer call TCSO to report crimes because they will be afraid that they or their family members will be questioned about their immigration status. By causing communities to distrust law enforcement officers, SB 4 will harm our ability to ensure public safety and will

significantly impact TCSO's ability to prosecute criminals and protect our community and specifically victims of crime. I believe that witnesses will be unwilling to participate in prosecution even with exceptions outlined in SB4. Incidents such as the arrest by ICE of an individual appearing in his case at the Travis County Courthouse on February 3, 2017, foster that fear and cause victims and witnesses to be afraid to participate in prosecution, and defendants to be afraid to appear in court to face the criminal charges against them.

ICE Detainer Requests

19. TCSO cooperation with other law enforcement entities begins when TCSO provides information regarding every inmate booked into the Travis County Jail, including the FBI and ICE. When arrestees are booked into the Travis County Jail, as part of the booking process, they are asked about their citizenship in order to determine if a consulate should be notified. Arrestees are also fingerprinted, and an electronic fingerprint is automatically uploaded and shared with other local, state, and federal agencies, including ICE.
20. If ICE sends TCSO a detainer request accompanied by a criminal warrant or an order for detention signed by a judge, I detain those individuals for ICE.
21. However, ICE routinely sends detainer requests without a judicially reviewed warrant to TCSO. A detainer request notifies me that the Department of Homeland Security ("DHS") has identified a person who is being held in the Travis County Jail and requests that TCSO maintain custody of the individual for a period of up to 48 hours

(excluding Saturdays, Sundays, and holidays, 8 C.F.R. §287.7 (d)) beyond the time when the individual would otherwise be released from custody.

22. Courts, not sheriffs, determine how long an individual may be held in jail. Judges frequently authorize pre-trial release of defendants on bond, and I do not have discretion to continue to hold these defendants once the bond set by the judge is posted. When a defendant is convicted of a crime, the sentence imposed by the judge determines how long the defendant may be held in the jail. I do not participate in sentencing, nor do I have discretion to disobey an order of the court.
23. Unlike detentions that are reviewed and authorized by a court, an ICE detainer is merely a request by ICE that TCSO hold an individual beyond the release date authorized by the criminal courts at sentencing to afford ICE extra time to arrest the individual. Such detainers, issued by ICE on Form I-247A, are civil in nature. These detainers are easily distinguishable from criminal warrants issued by a judge, which I honor. ICE civil detainer requests are neither reviewed, nor issued, by a judge. SB 4 also requires me to honor informal ICE detainer requests, such as a verbal request where ICE does not use an I-247 form.
24. Numerous federal courts have held that the federal government cannot mandate local law enforcement officials to comply with such detainers without running afoul of the anti-commandeering provision of the Tenth Amendment. The courts have designated ICE detainers as merely requests that law enforcement agencies are not required to follow.
25. Because ICE detainers are requests, not mandatory orders, federal law imposes no consequences upon law enforcement agencies that disregard the detainer request.

26. Under my policy, TCSO will comply with civil detainer requests from ICE if those requests are supported by judicial warrant or court order, or if those requests concern individuals alleged to have committed certain serious crimes or based on my own discretion and judgment that it is appropriate to hold an individual.
27. Based upon my experience and training, and the authority granted to me as the duly elected Sheriff of Travis County, I exercise discretion and judgment with respect to a detainer request in any individual case to ensure that justice is served and public safety can be maintained. This is how my policy strikes a balance between ICE detainer requests, TCSO resources, the constitutional rights of detainees, and the law enforcement needs of the Travis County community.
28. My policy ensures cooperation and does not restrict participation where it is mandated by 28 U.S.C. § 1373 and other federal laws while still being true to the mandates of the United States Constitution and preserving TCSO's ability to maintain safe communities.
29. My policy allows me to manage TCSO resources in a manner that I believe makes the entire Travis County community safer.
30. Additional and unnecessary compliance with ICE detainer requests consumes limited resources. TCSO personnel must track and respond to requests. Further, inmates whom the courts have ruled to be eligible for release must be held in TCSO jails, cells that are often in short supply, and these inmates must be supervised and fed for additional time beyond court authorized periods of detention or custody.
31. My policy does not protect criminals or prevent people from being prosecuted for criminal acts.

32. Although the rhetoric surrounding the consideration and passage of SB 4 asserted that I am currently violating the law by not honoring all ICE detainer requests, and that I will continue to violate the law, my current policy is compliant with all current state and federal laws, and I have stated repeatedly and publicly that I would always follow the law, whatever it is.
33. My policy is fully compliant with current state law as well as federal law and DHS guidance.
34. I intend to fully comply with SB 4 unless ordered otherwise by the courts. If SB 4 is allowed to take effect on September 1, 2017, I will comply with its provisions.

SB4 is Vague and Impedes My Duties as the Travis County Sheriff

35. There are several provisions of SB 4 that are confusing and do not provide clear guidance on how to ensure that my deputies and I comply with its requirements. For example, the bill offers no guidance whatsoever regarding what actions or decisions would "materially limit" immigration enforcement or what is considered to be an informal policy or "pattern and practice" that limits immigration enforcement. I also do not understand what SB 4 prohibits regarding limitations on "assisting or cooperating with a federal immigration officer as reasonable or necessary."
36. I am concerned that because of the vague nature of the requirements of SB 4, in spite of my attempts to comply with the law, I will face civil penalties and/or removal from office for various acts that may be deemed to violate SB 4, including adopting, enforcing, or "endorsing" a written or verbal policy that is determined to "materially limit" the enforcement of immigration laws, especially in light of the fact that the Governor has voiced his intent to "hammer" Travis County at every opportunity

possible. SB 4 does not provide me with adequate notice of those things I can and cannot do in order to fulfill my duties as Travis County Sheriff.

37. I am further concerned that SB 4 subjects me, as a law enforcement officer, to criminal sanctions for declining to honor any detainer request from ICE, as well as automatic removal from office if I am convicted of this new criminal offense. For example, given the lack of clarity regarding what constitutes a detainer request, I am also not sure whether I will need to comply with any and all requests from the federal government to detain individuals, including informal or verbal requests by immigration authorities to simply hold a person until they are able to determine whether to take custody.
38. My authority and discretion to administer the law and to ensure the public safety of the residents of Travis County is greatly diminished by SB 4.
39. SB 4 requires me to honor all detainer requests from ICE or face criminal charges and removal from office, eliminating my discretion to address Fourth Amendment concerns raised by detention of inmates without criminal warrants.
40. By forcing me to detain individuals without discretion, SB 4 places me in the position of having to choose whether to violate the Fourth Amendment rights of individuals in my custody or to personally face criminal penalties and removal from office.
41. Under federal law, ICE detainers are requests, not mandatory orders. SB 4, by adding article 2.251 to the Texas Code of Criminal Procedure, transforms these requests into mandatory orders, demanding that TCSO imprison, at our own expense, suspected “aliens subject to removal.”
42. SB 4 also takes away the discretion necessary for me to determine when my

resources permit compliance with detainer requests from the federal government.

43. Under SB 4, I will no longer have the ability to decline detainer requests from the federal government even when I believe I do not have the lawful authority to continue holding an individual—for example, when I understand that there is no justification for detaining the individual pursuant to the federal government's direction. Under SB 4, I also believe I can no longer take into account whether my office has the resources or the space to continue detaining an individual pursuant to a request from the federal government.

Required Immigration Enforcement Activities and Impact on TCSO

44. I fear that I will be required to divert critical and scarce law enforcement resources from what I believe is necessary to ensure public safety for my constituents. SB 4 will require me to direct my deputies to engage in immigration enforcement, when, based upon my discretion and judgment and years in law enforcement, I believe that my limited resources should be focused on local priorities, such as responding to calls for service and investigating and preventing violent and property crimes.
45. For example, I do not know if the following decisions will subject me to liability or removal from office: limiting which staff members can engage in immigration enforcement or determining the percentage of time they may spend on such matters; deciding not to participate in a certain immigration task force with federal officials; or not to provide police backup to immigration agents for a particular immigration enforcement action; and preventing my deputies from investigating a person's immigration status when such actions would divert them from other more critical tasks. I can imagine several other instances in which I will need to make decisions

based on resources and best policing practices that could be seen as a limitation on my office's participation in immigration enforcement.

46. Pursuant to my policy, my office on occasion has declined requests from federal immigration authorities to assist them in the apprehension of individuals. I have done so partly because of my office's limited resources. Under SB 4, I will no longer be able to properly allocate my resources by deciding when to, and when not to, cooperate with such immigration efforts.

Deputies Are Not Trained in Immigration Law or Immigration Enforcement

47. My deputies at TCSO also lack the training to enforce SB 4. My deputies are not trained in immigration law or immigration enforcement, and SB 4 does not provide for any training, additional guidance, or resources to ensure compliance with the requirements of SB 4.
48. My written policy currently instructs TCSO deputies not to inquire about a person's immigration status in the jail, on patrol, or elsewhere. My policy further prohibits TCSO employees from using a suspicion about any person's immigration status as a basis to initiate contact, question, detain, or arrest that person. Under SB 4, I can no longer prohibit my deputies from investigating anyone's immigration status.
49. SB 4 states that a person employed by my office may not consider race, color, religion, language, or national origin while enforcing immigration laws except to the extent permitted by the U.S. Constitution or the Texas Constitution. I am concerned that any attempt that I might make to train or educate my employees regarding immigration status and the Federal and State Constitutions may be construed as

endorsing or adopting a policy that “materially limits’ the enforcement of immigration laws.

50. Since my deputies are not trained in determining a person's immigration status, which in my experience is a very complicated determination, I believe that deputies will inevitably rely on race and ethnicity, and will unlawfully prolong detentions as a result of this practice. Even if trained, there will be an increased in the risk of these kinds of violations, and members of the community will still fear interaction with law enforcement. These are additional reasons that I adopted my policy.
51. Under SB4, I may not “adopt, enforce or endorse” a policy that prohibits or “materially limits” the enforcement of immigration laws. This vague language does not provide me with notice of which actions might violate SB4. For instance, it is unclear whether I can provide training on the unconstitutional use of race or ethnicity in law enforcement, i.e. profiling, because such training may be construed to “materially limit” the enforcement of immigration. It is unclear whether, once effective, SB 4 would allow me to testify in front of the legislature or even this Court without consequence.
52. Similarly, SB 4’s provision of SB 4 that a local entity “may not consider race, color, religion language or national origin while enforcing immigration law” has no true application and cannot be read in conjunction with the rest of the statute because TCSO does not have authority to enforce immigration law. This provision only adds to the vagueness of the statute.
53. In part because of its vagueness, SB4 requires me and other local entities to violate

the United States Constitution and laws under threat of criminal prosecution, civil penalties, and/or removal from office. It will expose my office and Travis County to potential legal liabilities.

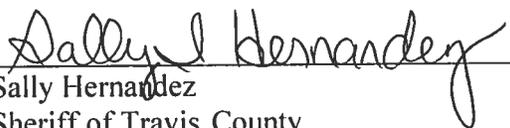
Restriction of Free Speech

54. SB 4 further requires me to unquestioningly agree with, and comply with, any requests by immigration authorities or face fines up to \$25,500 per day and removal from office. Indeed, SB 4 goes so far as to punish me if I attempt to comply with its edicts, but refuse to remain silent while doing so.
55. I have made numerous public statements during my campaign for, and tenure as, Sheriff regarding the participation of local law enforcement in immigration. I have publicly adopted a policy stating that the Travis County Sheriff's Office will not participate or cooperate in the arrests of individuals for civil immigration violations as permissible under current law. I have also publicly opposed having my deputies engage in additional immigration enforcement actions by SB 4 based on our limited resources and lack of training, and my concern that public safety is compromised when victims and witnesses are afraid to interact with local law enforcement for fear of their own deportation or the deportation of their friends or family members. Given SB 4's broad language, I do not know whether I will be subject to liability for making such policies and endorsements. It is even unclear whether testifying at trial or filing suit for clarification by the Courts would violate this statute.
56. The threats of prosecution, civil penalties and removal by Governor Abbott against me and Travis County are not hypothetical or imagined. Governor Abbott has made

it clear through the media that he intends to punish Travis County officials. It is imperative that the language of the statute is not vague. Otherwise, Governor Abbott will use every opportunity at his disposal harass me and retaliate against Travis County.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed June 12, 2017, in Austin, Texas.


Sally Hernandez
Sheriff of Travis County