

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

CITY OF EL CENIZO, TEXAS; RAUL L. REYES, MAYOR, CITY OF EL CENIZO;
TOM SCHMERBER, COUNTY SHERIFF; MARIO A. HERNANDEZ, MAVERICK
COUNTY CONSTABLE PCT. 3-1; LEAGUE OF UNITED LATIN AMERICAN
CITIZENS; MAVERICK COUNTY; CITY OF EL PASO, Plaintiffs-Appellees,

CITY OF AUSTIN, JUDGE SARAH ECKHARDT, IN HER OFFICIAL CAPACITY
AS TRAVIS COUNTY JUDGE; SHERIFF SALLY HERNANDEZ, IN HER OFFICIAL
CAPACITY AS TRAVIS COUNTY SHERIFF; TRAVIS COUNTY; CITY OF
DALLAS, TEXAS; TEXAS ASSOCIATION OF HISPANIC COUNTY JUDGES AND
COUNTY COMMISSIONERS; THE CITY OF HOUSTON, Intervenors-Plaintiffs-
Appellees,

v.

STATE OF TEXAS; GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS, IN
HIS OFFICIAL CAPACITY, KEN PAXTON, TEXAS ATTORNEY GENERAL,
Defendants-Appellants.

CITY OF SAN ANTONIO; BEXAR COUNTY, TEXAS; REY A. SALDANA, IN HIS
OFFICIAL CAPACITY AS SAN ANTONIO CITY COUNCILMEMBER; TEXAS
ASSOCIATION OF CHICANOS IN HIGHER EDUCATION; LA UNION DEL
PUEBLO ENTERO, INCORPORATED; WORKERS DEFENSE PROJECT, Plaintiffs-
Appellees,

CITY OF AUSTIN, Intervenor Plaintiff-Appellee,

v.

STATE OF TEXAS; KEN PAXTON, SUED IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF TEXAS; GREG ABBOTT, SUED IN HIS OFFICIAL
CAPACITY AS GOVERNOR OF THE STATE OF TEXAS, Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS, NOS. 5:17-cv-404, 5:17-cv-459, 5:17-
cv-489

**MOTION FOR LEAVE TO FILE AND BRIEF *AMICUS CURIAE* OF THE
REMEMBRANCE PROJECT IN SUPPORT OF DEFENDANTS-APPELLANT**

Noah B. Peters
1015 18th Street, N.W.
Suite 204
Washington, D.C. 20036
(202) 331-1331

*Counsel of Record for Amicus Curiae, The
Remembrance Project*

October 5, 2017

**MOTION OF *AMICUS CURIAE* FOR LEAVE TO FILE BRIEF IN SUPPORT OF
DEFENDANTS-APPELLANTS**

Amicus curiae The Remembrance Project respectfully moves for leave of Court to file the accompanying brief under Federal Rule of Appellate Procedure 29.

Counsel for appellant (the State of Texas) consents to the filing of this *amicus curiae* brief. Counsel for the El Cenizo Plaintiffs, the San Antonio Plaintiffs, and the Travis County Intervenor-Plaintiffs stated that they do not oppose timely filing of this *amicus curiae* brief. The Intervenor-Plaintiff, the City of Houston, did not consent, necessitating the filing of this motion. The remaining plaintiff and intervenor-plaintiff groups (El Paso, Austin, Dallas, and the Texas Association of Hispanic County Judges and County Commissioners) did not respond.

STATEMENT OF INTEREST OF *AMICUS CURIAE*

This case has enormous importance for all Americans who are concerned about the enforcement of our nation's immigration law and the rule of law in general. But its outcome is especially important to *amicus* The Remembrance Project, which has a personal interest in the enforcement of the nation's immigration laws.

The Remembrance Project was formed in Houston, TX to honor the memory of Americans killed by illegal aliens, by ensuring that policies are enacted to prevent similar tragedies from occurring. Since its founding, educating the public about sanctuary cities such as those targeted by SB4 has been one of its core goals.

The Remembrance Project works with dozens of family members of victims of illegal alien, who President Trump dubbed "Angel Moms." Several of these victims, including Felecia Ruiz and Spencer Golvach, Agent Javier Vega, Tina Davila, Dr. Mario

Gonzalez, and Officer Rodney Johnson were killed in the sanctuary cities at issue in this case. The court would benefit from having their voices represented.

The Remembrance Project's brief focuses on public safety implications of this case. The district court's opinion below discussed perceived negative public safety effects of SB4, as it related to its holding on irreparable injuries, the balance of equities, and the public interest. However, it did not address the possible public safety benefits of SB4. Moreover, the Appellants' Brief does not address the public safety benefits of SB4 in great depth either.

Thus, the Remembrance Project's brief will give important information and another perspective to a key finding in the district court's decision.

For these reasons, amicus curiae respectfully requests that the Court grant leave to file this brief.

Dated: October 5, 2017

Respectfully submitted,

Noah B. Peters, Esq.
1015 18th Street, N.W.
Suite 204
Washington, D.C. 20036
(202) 331-1331

*Counsel of Record for Amicus Curiae, The
Remembrance Project*

TABLE OF CONTENTS

SUMMARY OF ARGUMENT	1
ARGUMENT	2
I. PROTECTING PUBLIC SAFETY IS A CORE OBJECTIVE OF FEDERAL IMMIGRATION POLICY.	3
A. The Purpose of Removal and Exclusion of Criminal Aliens is Distinct from Criminal Punishment.....	3
B. Since the Nation’s founding, Congress Has Urged Exclusion and Removal of Criminal Aliens.	4
II. SB4 DOES NOT DISCOURAGE COOPERATION BETWEEN LAW ENFORCEMENT AND THE COMMUNITY.	6
A. SB4 Does Not Apply to Victims or Witnesses to Crimes, and Encourages Community Outreach.....	6
B. Immigration Enforcement Is Just One Factor Which Makes Some Illegal Aliens Hesitant to Cooperate with Police.....	8
C. The Concern That Enforcement Discourages Illegal Alien Victims and Witnesses from Cooperating with Law Enforcement and Public Services Could Justify Non-Enforcement of Almost Any Law.	9
III. SB4 PROMOTES PUBLIC SAFETY BY REMOVING CRIMINAL ALIENS FROM THE COMMUNITY.	11
A. Due to High Recidivism Rates, Criminal Aliens are Likely to Reoffend After Serving Their Sentences.....	11
B. Criminal Acts Committed by Illegal Aliens Have Devastating Personal Consequences for the Victims of Such Crimes.....	13
CONCLUSION.....	15

TABLE OF AUTHORITIES

Cases

City of New York v. Miln, 36 U.S. 102, 112 (1837)..... 4

Demore v. Kim, 538 U.S. 510 (2003) 5

Ferrell v. State, No. 14-02-00893-CR, 2003 WL 22076847, at *1 (Tex. App. Sept. 9, 2003)..... 14

Hinds v. Lynch, 790 F.3d 259, 261 (1st Cir. 2015)..... 3

Mahler v. Eby, 264 U.S. 32, 39 (1924)..... 3

Padilla v. Kentucky, 559 U.S. 356 (2010) 3, 4

Patel v. Zemski, 275 F.3d 299, 311 (3d Cir. 2001) 5

Texas v. U.S., 809 F.3d 134, 150 (5th Cir. 2015)). 2, 3, 11

Zadvydas v. Davis, 533 U.S. 678, 713 (2001) 4, 12

Statutes

H.R. 10384; Pub.L. 301; 39 Stat. 874 § 3..... 4

H.R. 2580; Pub.L. 89–236, 79 Stat. 911 (1965). 5

Immigration Act of 1882, 47 Cong. Ch. 376, August 3, 1882, 22 Stat. 214 § 4 4

Immigration and Nationality Act of 1952, Pub.L. 82–414, 66 Stat. 163, (1952) § 212(a)(9) 5

Tex. Code Crim. Pro. Art. 2.13..... 7

Tex. Gov’t Code §752.051(4)..... 7

Tex. Gov’t Code §752.057(a)..... 8

Vernon’s Ann. Texas Code Crim. Pro. Art. 2.13..... 7

Other Authorities

‘Sanctuary City’ Debate to Heat Up at State Capital, Fox 4 Dallas, Feb. 1, 2017, <http://archive.is/4TaX6>. 15

142 Cong. Rec. 7972 (1996)..... 12

Allison Bass, <i>Getting Screwed: Sex Workers and the Law</i> 114 (2015).....	10
Caleb Downs, <i>Suspected Serial Rapist in Austin Who Allegedly Tried to Light Prostitute on Fire Has Been Deported 5 Times</i> , Dallas Morning News, Sep. 12, 2016, http://archive.is/ta7ip	15
Gabriel J. Chin, <i>The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965</i> , 75 N.C. L. Rev. 273, 276 (1996)	5
<i>Goodfellas</i> (Warner Bros., 1990).....	10
Houston Police Department, HPD Immigration Policy Questions & Answers, https://perma.cc/GQW9-2DVU	13
Jay Root, <i>Houston Slayings Fueled Border Security Debate</i> , Texas Tribune, Jan. 31, 2016, https://archive.is/PZbJ2	14
Jennifer S. Wong, et. al, <i>Examining Recidivism Among Foreign-Born Jail Inmates: Does Immigration Status Make a Difference Over the Long Term?</i> , 16 Global Crime 265, 274 (2015).....	12
Jessica Vaughan & Steven A. Camarota, <i>Immigration and Crime: Assessing a Conflicted Issue</i> (Nov. 2009), https://perma.cc/WR6V-U373	11
John P May et. al., <i>Do Criminals Go to the Hospital When They Are Shot?</i> , 8 INJURY PREVENTION 236, 237 (2002).....	10
Lynn Langton, <i>Victimizations Not Reported to the Police, 2006-2010</i> , Bureau of Justice Statistics, at 1, 16 (2012), https://perma.cc/LK3M-5SE8	9
Office of the Texas Governor, <i>Texas Bans Sanctuary Cities</i> , May 7, 2017, http://archive.is/Kk1mr	2
Omnibus Consolidated Appropriations Act, 1997 § 642(a), 8 U.S.C.A. § 1373(a)	6
Robert C. Davis, et. al., <i>Access to Justice for Immigrants Who are Victimized: The Perspectives of Police and Prosecutors</i> , 12 Crim. Justice Policy Rev. 183, 190 (2001)9	
S. Rep. No. 104–48	5
Texas Department of Public Safety, <i>Texas Criminal Alien Arrest Data</i> , Sep. 30, 2017, http://archive.is/IEmqL	12
U.S. Department of Justice, Bureau of Justice Statistics, <i>Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010</i> (Dec. 2016), http://archive.is/7Sfre	11

U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations,
Weekly Declined Detainer Outcome Report for Recorded Declined Detainers Jan. 28
to Feb. 3, 2017, <https://perma.cc/XE6J-CFPG> 13

**BRIEF OF AMICUS CURIAE IN SUPPORT OF
DEFENDANTS-APPELLANTS¹**

SUMMARY OF ARGUMENT

The federal immigration laws were enacted by Congress in large part to protect American citizens and other lawful residents from the risk of violent crimes committed by criminal aliens. If the district court's injunction against SB4 remains, local jurisdictions within Texas will continue to undermine these congressional objectives and jeopardize public safety.

Section One demonstrates that public safety is a core objective of federal immigration policy through removal and exclusion of criminal aliens. In contrast to criminal remedies, deportation is meant primarily to protect citizens, not as a punishment. Congress has promoted this objective since the founding.

Section Two refutes the district court's finding that SB4 harms public safety by discouraging immigrant victims and witnesses from cooperating with local law enforcement. SB4 only applies to aliens who are lawfully detained. It even explicitly prohibits law enforcement from inquiring into victim and witnesses immigration status in most circumstances, and encourages community outreach to immigrants.

The district court did not consider the many other factors other than immigration enforcement that can discourage immigrants from cooperating with police. Furthermore, even if immigration enforcement makes some illegal aliens hesitant to report crimes, there

¹ Undersigned counsel, Noah B. Peters, was retained by the Remembrance Project to represent it for this filing in June 2017. National Director Maria Espinoza authorized undersigned counsel to file this Amicus Brief in support of the Appellants on behalf of the Remembrance Project. No party to the case has funded or participated in the preparation and submission of this Amicus Brief. U.S. Inc. of Petoskey, Michigan, a tax-exempt educational foundation, has provided funding for preparation and submission of this brief.

is no evidence that sanctuary cities ameliorate this problem.² Even if reducing enforcement to promote victim and witness cooperation, doing so would undermine the rule of law because its premise could justify non-enforcement of any law.

Section Three shows how SB4 promotes public safety by removing criminal aliens. Because the law only applies to aliens who have been arrested, it is not necessary to look at the overall immigrant crime rate, but only the extremely high recidivism rate of criminal aliens. The vast majority of criminal aliens who sanctuary jurisdictions release will commit further crimes if not removed from the community. This has already led to the deaths of many Texans, some whom are described below.

By preventing local jurisdictions from impeding federal immigration officials from removing these criminal aliens, SB4 will protect Texans and help prevent further tragedies from occurring.

ARGUMENT

Upon signing SB4, Governor Abbott said, “[a]s Governor, my top priority is public safety, and this bill furthers that objective by keeping dangerous criminals off our streets.”³ The district court, however, found “overwhelming evidence” that “SB4 will make many communities and neighborhoods less safe.” ROA.4211.

The district court applied this interpretation as a factor in three of the four elements for a preliminary injunction, specifically finding that SB4 created “a substantial threat of irreparable injury if the injunction is not issued” and concluding “the threatened injury if

² This brief uses the term “illegal alien” to refer to a removable alien who is present in the United States. See *Texas v. United States* 809 F. 3d 134, 148 n. 14 (5th Cir. 2015) (“The usual and preferable term in [American English] is *illegal alien*.”) (emphasis in original).

³ Office of the Texas Governor, Texas Bans Sanctuary Cities, May 7, 2017, <http://archive.is/Kk1mr>.

the injunction is denied outweighs any harm that will result if the injunction is granted” and “granting an injunction will not disserve the public interest.” ROA.4122 (citing *Texas*, 809 F.3d at 150).

This brief will demonstrate that the district court’s interpretation was wrong. Promoting public safety by removing and excluding criminal aliens has been central to immigration policy since the founding of the Republic. The district court ignored any public safety benefit by removing dangerous aliens, while overstating the potential harms SB4 could pose to community policing.

I. PROTECTING PUBLIC SAFETY IS A CORE OBJECTIVE OF FEDERAL IMMIGRATION POLICY.

A. The Purpose of Removal and Exclusion of Criminal Aliens is Distinct from Criminal Punishment.

Intervenor-plaintiff Travis County claims that it does not let criminal aliens off because its policies do not “prevent people from being prosecuted for criminal acts.” ROA.566 ¶30. However, removal of criminal aliens has long been an additional measure to promote public safety. For over a century, the courts have held that “deportation, while it may be burdensome and severe for the alien, is not a punishment.” *Mahler v. Eby*, 264 U.S. 32, 39 (1924).⁴

Public safety is just one of many factors, such as rehabilitation, deterrence, restitution, and constitutional protections against excessive punishment which are weighed in criminal punishment. In contrast, “[t]he motivation to protect the citizenry from aliens

⁴ The Court has subsequently held that deportation is a “penalty,” which aliens should be informed of for Sixth Amendment purposes. *Padilla v. Kentucky*, 559 U.S. 356 (2010) However, it clarified that deportation “it is not, in a strict sense, a criminal sanction.” *Id.* See also *Hinds v. Lynch*, 790 F.3d 259, 261 (1st Cir. 2015) (noting that *Padilla* did not alter the “longstanding notion that removal is non-punitive”).

determined to be dangerous is central to the immigration power itself.” *Zadvydas v. Davis*, 533 U.S. 678, 713 (2001) (Kennedy J., dissenting).

B. Since the Nation’s founding, Congress Has Urged Exclusion and Removal of Criminal Aliens.

The public safety objective has been core to federal immigration policy since the nation’s founding. In 1788, the Congress of the Confederation “unanimously adopted a resolution, recommending to the several states to pass proper laws for preventing the transportation of convicted malefactors from foreign countries into the United States.” *City of New York v. Miln*, 36 U.S. 102, 112 (1837). Several states enacted and enforced such provisions after the Constitution took effect. *Id.* at 112-13. The first general national immigration law provided “[t]hat all foreign convicts except those convicted of political offenses, upon arrival, shall be sent back to the nations to which they belong and from whence they came.”⁵

In addition to excluding aliens, “[o]ur law has enmeshed criminal convictions and the penalty of deportation for nearly a century.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In 1910, the Senate Immigration Commission found that “present immigration law is not adequate to prevent the immigration of criminals, nor is it sufficiently effective as regards to the deportation of alien criminals.”⁶ The 1917 Immigration Act, the first broad federal restriction on immigration, barred “persons who have been convicted . . . of a felony or other crime or misdemeanor involving moral turpitude.” H.R. 10384; Pub.L. 301; 39 Stat. 874 § 3. Even as Congress enacted the Immigration and Nationality Act in 1952 and

⁵ Immigration Act of 1882, 47 Cong. Ch. 376, August 3, 1882, 22 Stat. 214 § 4.

⁶ Reports of the Immigration Commission: Abstracts of Reports of the Immigration Commission, S. Doc. No. 61-747 at 27 (3d Sess. 1910).

liberalized immigration policies in 1965, it continued strong protections against criminal aliens.⁷

However, by the mid-1990s, Congress had found that “(1) the number of aliens who commit crimes in this country has grown, (2) unacceptable delays hindered the INS’ ability to detain and deport aliens, and (3) criminal aliens posed a growing threat to public safety.” *Patel v. Zemski*, 275 F.3d 299, 311 (3d Cir. 2001) (citing S. Rep. No. 104–48, at 1–2 (1995)) (abrogated on unrelated grounds by *Demore v. Kim*, 538 U.S. 510 (2003)). In response to the “INS’ near-total inability to remove deportable criminal aliens,” Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) to address this public safety threat. *Demore*, 538 U.S. at 519.

Among the many factors which led to under-enforcement, Congress found that “by adopting non-cooperation laws, local jurisdictions are making effective governmental response to the problem of criminal aliens substantially more difficult.” *Criminal Aliens in the United States*, S. Rep. 104-48, 30 (1995). In direct response to the public safety threat caused by local sanctuary cities, IIRIRA prohibited government entities and officials from restricting any other “government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” Omnibus Consolidated

⁷ Immigration and Nationality Act of 1952, Pub.L. 82–414, 66 Stat. 163, (1952) § 212(a)(9) (listing crimes of moral turpitude making alien “excluded from admission”); *id.* at §241(a) (expanding definition of criminal “moral turpitude” as “classes of deportable aliens”). The 1965 Immigration Act, “a high-water mark for opponents of immigration restriction,” Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 N.C. L. Rev. 273, 276 (1996), did not weaken any restrictions on exclusion or removal of criminal aliens. *See* H.R. 2580; Pub.L. 89–236, 79 Stat. 911 (1965).

Appropriations Act, 1997 § 642(a), 8 U.S.C.A. § 1373(a).

SB4 ensures that no government entities within the state of Texas will frustrate this statute, or the core federal policy of removing dangerous criminal aliens.

II. SB4 DOES NOT DISCOURAGE COOPERATION BETWEEN LAW ENFORCEMENT AND THE COMMUNITY.

Among the “probable harms” SB4 will inflict on the plaintiffs, the district court listed:

- “Local officials will be prohibited from effectively guiding, supervising, and directing their employees, and allocating resources to address the most pressing public safety needs of the community.” ROA.4208.
- “Undocumented immigrants, and U.S. citizens related to them, who are victims of family violence, sexual assault, abuse, and stalking will be reluctant to come forward to report crimes because they will face removal from the country and separation from their families.” ROA.4208-09.
- “Undocumented immigrants, and U.S. citizens related to them, will be reluctant to . . . seek healthcare. . . because it will put members of their family at risk of removal” ROA.4209.
- “Trust between local law enforcement and the people they serve, which police departments have worked so hard to promote, will be substantially eroded and result in increased crime rates.” *Id.*

All of these assertions are dependent on the assumption that fear of immigration consequences will make illegal aliens and their family members less likely to engage with local authorities.

As shown below, SB4 makes specific allowances for these concerns; the evidence that immigration enforcement causes these perceived problems is lacking; and even if true, accepting this premise would undermine the rule of law.

A. SB4 Does Not Apply to Victims or Witnesses to Crimes, and Encourages Community Outreach.

SB4 only applies to aliens under “lawful detention” of an individual “for the investigation of a criminal offense.” ROA.4215, Tex. Gov’t Code §752.051(4). It explicitly “excludes a detention if the sole reason for the sole reason for the detention is that the individual” is “a victim or witness to a criminal offense” or “is reporting a criminal offense” from the definition of lawful detention. ROA.4215, Tex. Gov’t Code §752.051(4)(A)-(B).

Section 6.01 of SB4 goes further by explicitly prohibiting police officers from inquiring “as to the nationality or immigration status of a victim of or witness to the offense” unless it is necessary to “provide the victim or witness with information about federal visas designed to protect individuals providing assistance to law enforcement.” ROA.4227-28, Tex. Code Crim. Pro. Art. 2.13(d). The law does not prevent an officer from investigating witness or victim “if the officer has probable cause to believe that the victim or witness has engaged in specific conduct constituting a separate criminal offense.” ROA.4227-28, Tex. Code Crim. Pro. Art. 2.13(e). This will not discourage cooperation, because an alien who is suspected of a non-immigration criminal offense would be hesitant to communicate with police regardless. Prior to this law, the state had no legislative restrictions on inquiring into the immigration status of victims of witnesses. Vernon’s Ann. Texas Code Crim. Pro. Art. 2.13 (Effective: Sep 1, 2003 to Aug 31, 2017).

Neither the district court opinion, plaintiffs, intervenors, nor any amici address Section 6.01 with respect to the supposed discouragement. However, they could conceivably argue that because the law broadly mandates more local cooperation with federal immigration authorities, illegal alien victims and witnesses will react to the law’s *gestalt* rather than its technical protections.

Even if true, local police can educate their residents about the SB4’s protections.

To this end, the law includes special provisions for “Community Outreach Policy,” which authorizes law enforcement agencies “to perform community outreach activities to educate the public that a peace officer is prohibited from inquiring into the immigration status of a victim of or witness to an alleged criminal offense” except in the limited situations described above. ROA.4221, Tex. Gov’t Code §752.057(a).

Intervenor-plaintiff the City of Houston argues that this is insufficient because “[i]f undocumented immigrants are too afraid to report violent crime or access food for their children, they are highly unlikely to attend a seminar on SB4 sponsored by the very law enforcement agencies that must detain and deliver them to ICE.” ROA.2495 ¶54. Yet if immigrants are so untrusting that they will not even listen to police explain their policies, then there is no reason to assume they will educate themselves about a more permissive sanctuary city policy.

B. Immigration Enforcement Is Just One Factor Which Makes Some Illegal Aliens Hesitant to Cooperate with Police.

According to the Major Cities Chiefs’ Association *amicus curiae* brief in the district court,

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. ROA.3353.

However, past behavior of Hispanic crime victims does not reflect this hypothetical concern. Data from the Department of Justice’s Bureau of Justice Statistics show that

Hispanics are slightly *more* likely than the general population to report violent crimes.⁸ Moreover, according to surveys of immigrants who do not report crimes, language barriers (47%), cultural differences (22%), and failure to understand the U.S. justice system (15%) motivate their decisions to a far greater extent than any concerns about deportation.⁹ The Major Cities district court brief indirectly acknowledges there are other factors in a footnote noting increased enforcement is supposedly “*exacerbating* their mistrust of law enforcement authorities.” ROA.3353 n.9 (quoting Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* at 5-6 (May 2013)¹⁰ (emphasis added)).

To the extent that Latinos or illegal aliens are reluctant to contact law enforcement, non-cooperation policies do little to alleviate these concerns. The Major Cities brief stated that 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.” ROA.3358. Accepting this *arguendo*, then federal immigration enforcement drives the reluctance that illegal aliens have to cooperate with police much more than SB4.

C. The Concern That Enforcement Discourages Illegal Alien Victims and Witnesses from Cooperating with Law Enforcement and Public Services Could Justify Non-Enforcement of Almost Any Law.

⁸ See Lynn Langton, *Victimizations Not Reported to the Police, 2006-2010*, Bureau of Justice Statistics, at 1, 16 (2012), <https://perma.cc/LK3M-5SE8> (finding that 51% of Hispanic violent crime victims did not report their crime, as compared to 52% of the general population).

⁹ Robert C. Davis, et. al., *Access to Justice for Immigrants Who are Victimized: The Perspectives of Police and Prosecutors*, 12 *Crim. Justice Policy Rev.* 183, 190 (2001).

¹⁰ Available at <https://perma.cc/H5YN-CLE7>

In the movie *Goodfellas*, the narrator (Henry Hill)s explains that the mafia served as “the police department for wiseguys” by offering “protection for people who can't go to the cops.”¹¹ Drug dealers, pimps, bookies, racketeers, and other criminals could face criminal charges if they went to the police to report another criminal. By the district court’s logic, the police should not enforce laws against these criminals lest they need healthcare or become the victim of more serious criminal.

Indeed, many have raised this concern in other contexts. Prostitutes are reluctant to report abusive johns or pimps. See, e.g., Allison Bass, *Getting Screwed: Sex Workers and the Law* at 114 (2015) (“Yet because prostitution is illegal in the United States, sex workers can't go to the police, even when they've been robbed, raped, or otherwise physically threatened.”).

Similarly, social scientists have found that drug addicts are so “extremely afraid of the police” that “they would rather let their friends, relatives and even themselves die, than call upon the emergency services for assistance.” Joanne Neale, *Drug Users in Society* at 167 (2002). In fact, approximately 10% of inmates who had been shot reported that they did not go the hospital.¹² This figure is likely much higher among those who were shot in commission of a crime.

Granted, unlawful presence is a less serious offense than “family violence, sexual assault, abuse, and stalking.” However, virtually all lawbreakers could be victimized by a more dangerous criminal.

¹¹ *Goodfellas* (Warner Bros., 1990).

¹² John P May et. al., *Do Criminals Go to the Hospital When They Are Shot?*, 8 *Injury Prevention* 236, 237 (2002).

III. SB4 PROMOTES PUBLIC SAFETY BY REMOVING CRIMINAL ALIENS FROM THE COMMUNITY.

There is a great debate over the effect of illegal immigration on crime. Determining the exact level of illegal alien crime is difficult because these aliens are “undocumented” (to use the popular euphemism);¹³ the federal government does not keep strong data; and many sanctuary jurisdictions do not inquire into criminals immigration status (among other reasons).¹⁴ SB4 does not target illegal aliens *en masse*. Instead, it focuses on criminal aliens who have been “lawfully detained” (that is, arrested for convicted for another criminal offense). Unlike the larger debate over illegal immigrant crime in general, removing criminal aliens from the community undoubtedly significantly promotes public safety.

A. Due to High Recidivism Rates, Criminal Aliens are Likely to Reoffend After Serving Their Sentences.

The recidivism rate for all criminals is extremely high. Of all released prisoners, 76.6% are arrested again within five years, including 28.6% for violent crimes, 1.7% for rape or sexual assault, and 0.9% for homicide.¹⁵ This only accounts for the recidivists who are caught. Only 48.1% of reported violent crime and 19.7% of property crimes result in

¹³ See *Texas*, 809 F. 3d at 148 n. 14 (describing terms like “undocumented alien” as “needless euphemisms” that “should be avoided as near-gobbledygook.”).

¹⁴ Jessica Vaughan & Steven A. Camarota, *Immigration and Crime: Assessing a Conflicted Issue* (Nov. 2009), <https://perma.cc/WR6V-U373>.

¹⁵ U.S. Department of Justice, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010* (Dec. 2016), <http://archive.is/7Sfre>. The BJS statistics have limitations in predicting the future crimes committed by released criminals. It only looks at those who had previous convictions, while SB4 also applies to those who had been arrested, but not convicted. This group, is probably less likely to reoffend. However, the reoffend numbers only applies to crimes the released criminals did were caught committing. *Id.*

an arrest.¹⁶

The recidivism rates for criminal aliens does not differ from the general criminal population. A Government Accounting Office study cited during the debates over the Antiterrorism and Effective Death Penalty Act of 1996 found a “high recidivism rates for released aliens” at 77%. *Zadvydas*, 533 U.S. at 713 (Kennedy J., dissenting) (citing 142 Cong. Rec. 7972 (1996)). A more recent study of deportable aliens released from Los Angeles County Jail (located within a sanctuary jurisdiction) found that 71% were rearrested within nine years, slightly higher than the other criminals released from the jail.¹⁷

Between June 2011 and September 2013, 232,000 criminal aliens were arrested in Texas.¹⁸ These included 6,651 arrests and 3,059 convictions for sexual assault, 1,256 arrests and 527 convictions or homicide, and 73,691 arrests and 27,739 convictions for assault.¹⁹ These figures understate alien crime, because it does not count “Texas arrestees who have not had interaction with the DHS,” which would exclude aliens arrested and jailed in non-cooperating jurisdictions.²⁰

Texas’s most extreme sanctuary jurisdiction, Travis County, will only comply with ICE detainers with a warrant or for convictions of capital murder, first degree murder, aggravated sexual assault, or continuous smuggling of persons. ROA.2437. On the first

¹⁶ Federal Bureau of Investigation, *Crime in the United States 2013*, Table 25: Percent of Offenses Cleared by Arrest or Exceptional Means by Population Group (Nov. 10, 2014), <https://archive.is/sRXsJ>.

¹⁷ Jennifer S. Wong, et. al, *Examining Recidivism Among Foreign-Born Jail Inmates: Does Immigration Status Make a Difference Over the Long Term?*, 16 *Global Crime* 265, 274 (2015).

¹⁸ Texas Department of Public Safety, *Texas Criminal Alien Arrest Data*, Sep. 30, 2017, <http://archive.is/IEmqL>.

¹⁹ *Id.*

²⁰ *Id.*

day of the policy, Travis County State Jail and Travis City Jail denied 142 detainer requests.²¹ The aliens which the County shielded included those with convictions for aggravated assault with a weapon, domestic violence, and robbery, as well as charges for sexual assault, and child fondling.²²

Based on the high recidivism rates for all criminals and criminal aliens, the vast majority of these released will likely reoffend when returned to the community after their sentence is served. If these criminal aliens are turned over to ICE and removed, then they will not have the opportunity to reoffend.

B. Criminal Acts Committed by Illegal Aliens Have Devastating Personal Consequences for the Victims of Such Crimes.

Releasing criminal aliens into the community leads to devastating personal consequences, which can be forgotten in technical discussions. Below are just a few examples of the Texan victims of illegal alien crime who were killed or assaulted in jurisdictions which limit officer's ability to check the immigration status of lawfully detained arrestees.²³ The Remembrance Projects highlights these cases to show how lax enforcement policies on both the federal and local level can lead to tragedy and ask the Court to consider these victims when considering the effect SB4 has on public safety.

Family members of Felecia Ruiz and Spencer Golvach, described below, as well as the survivors of other victims killed in sanctuary jurisdictions including Agent Javier Vega,

²¹ U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, Weekly Declined Detainer Outcome Report for Recorded Declined Detainers Jan. 28 to Feb. 3, 2017, <https://perma.cc/XE6J-CFPG>.

²² *Id.*

²³ Travis County's sanctuary policies are described *supra*. Houston participates in the Secure Communities program, but does not allow officers to otherwise inquire about the immigration status of individuals, even after they are arrested. Houston Police Department, HPD Immigration Policy Questions & Answers, <https://perma.cc/GQW9-2DVU>.

Tina Davila, Dr. Mario Gonzalez, and Officer Rodney Johnson, have worked with the Remembrance Project.

1. Felecia Ruiz.

In 1999, seventeen-year-old honor student and aspiring teacher Felicia Ruiz was murdered in Houston by illegal alien and known Latin Kings gang member Jesus Gerrado Salazar and two others. Salazar had told Felicia he would pick her up to go a Halloween party. Instead he led her to a field where his accomplices held her down, as he stabbed her 26 times and left her to bleed to death. *Ferrell v. State*, No. 14-02-00893-CR, 2003 WL 22076847, at *1 (Tex. App. Sept. 9, 2003). Salazar fled the country to Venezuela and remains at large.

2. Spencer Golvach and Juan Garcia.

On January 30, 2015 in Houston, Victor Reyes pulled up beside 25-year-old aspiring musician Spencer Golvach and shot him, killing him instantly. Minutes earlier, he had shot 67-year-old John Weston in the face, who miraculously survived. He then shot and killed Juan Garcia, fled from police and fired at them before deputy sheriff Javier Rojas finally shot and killed him.

Reyes had been arrested five times and deported four times between 2001 and 2010. Golvach's family is still trying to find out when Reyes reentered the country and what he had been doing in Houston prior to his final killing spree, but has not found answers.²⁴ Spencer's father Dan, who has worked with the Remembrance Project, advocated for SB4 and blamed the federal immigration officials and sanctuary cities for failing to enforce the

²⁴ Jay Root, *Houston Slayings Fueled Border Security Debate*, Texas Tribune, Jan. 31, 2016, <https://archive.is/PZbJ2>.

immigration law, “I’ve said before that the real killers of my son are the government.”²⁵

3. The Many Survivors of Nicodemo Coria-Gonzalez

Last August, Austin Police arrested Nicodemo Coria-Gonzalez, after he kidnapped, sexually assaulted, and beat a sixty-eight-year-old woman. Police later linked him to at least ten sexual assaults, including one woman he stabbed and another he doused in gasoline. Coria-Gonzalez is an illegal alien who had been deported five times, thrice for DUIs.²⁶ Under Travis County’s current sanctuary policies, the police would not have cooperated with ICE to deport him after for the DUIs.

CONCLUSION

SB4 will prevent future Texans from having to repeat the tragedies faced by Spencer Golvach, Felecial Ruiz, and countless others. The district court’s decision threatens to significantly endanger public safety by making it more difficult for ICE to remove violent criminal aliens from the community. The district court’s decision was partially based on a faulty understanding of how immigration enforcement affects crime.

The district court arrived at its findings by taking the fallacious claims about community policing from the plaintiffs and intervenors at face value and failing to consider the violent crimes committed by criminal aliens. Its error not only to an incorrect legal decision, but could have deadly real world consequences.

²⁵ *‘Sanctuary City’ Debate to Heat Up at State Capital*, Fox 4 Dallas, Feb. 1, 2017, <http://archive.is/4TaX6>.

²⁶ Caleb Downs, *Suspected Serial Rapist in Austin Who Allegedly Tried to Light Prostitute on Fire Has Been Deported 5 Times*, Dallas Morning News, Sep. 12, 2016, <http://archive.is/ta7ip>.

This court has temporarily fixed the error by staying the district court's injunction, and should now make it permanent. For all of these reasons, and those set forth by defendants-appellants, the district court's decision should be reversed.

Dated: October 5, 2017

Respectfully submitted,

Noah B. Peters, Esq.
1015 18th Street, N.W.
Suite 204
Washington, D.C. 20036
(202) 331-1331

*Counsel of Record for Amicus Curiae, The
Remembrance Project*

CERTIFICATE OF SERVICE

On October 5, 2017, this brief was transmitted to the Clerk of the Court and served via CM/ECF on all registered counsel and email on:

Ken Paxton
Scott A. Keller
Jeffrey C. Mateer
J. Campbell Barker
Ari Cuenin
Eric A. White
Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697
scott.keller@oag.texas.gov

Counsel for Appellants

Andre I. Segura
Omar C. Jadwat
Spencer E. Amdur
Lee Gelernt
American Civil Liberties Union
125 Broad Street
New York, NY 10004
asegura@aclu.org
ojadwat@aclu.org
samdur@aclu.org
lgelernt@aclu.org

Cecillia D. Wang
Cody H. Wofsy
Stephen Kang
American Civil Liberties Union Foundation
39 Drumm Street
San Francisco, CA 94111
cwang@aclu.org
cwofsy@aclu.org

Edgar Saldivar
Andre Segura
American Civil Liberties Union Foundation of Texas
P.O. Box 8306

Houston, Texas 77288
esaldivar@aclutx.org
asegura@aclutx.org

Max Renea Hicks
Law Office of Max Renea Hicks
P.O. Box 303187
Austin, Texas 78703
(512) 480-8231
rhicks@renea-hicks.com
Luis Roberto Vera, Jr.
Law Offices of Luis Roberto Vera & Associates, P.C.
111 Soledad, Ste. 1325
San Antonio, Texas 78205-2260
(210) 225-3300
lrvlaw@sbcglobal.net

Counsel for the El Cenizo Plaintiffs

Andrea E. Senteno
Celina Ysela Moreno
Marisa Bono
Nina Perales
John Paul Salmon
MALDEF
110 Broadway Street #300
San Antonio, Texas 78205
(210) 224-5476
asenteno@maldef.org
cmoreno@maldef.org
mbono@maldef.org
nperales@maldef.org
tpellegrini@maldef.org
jsalmon@maldef.org

Tanya G. Pellegrini
MALDEF
1512 14th Street
Sacramento, CA 95814
tpellegrini@maldef.org

Thomas A. Saenz
MALDEF
634 S. Spring Street, 11th Floor
Los Angeles, CA 90014
tsaenz@maldef.org

Deborah Lynne Klein
Office of the City Attorney, Litigation Division
Frost Bank Tower
100 West Houston Street, 18th Floor
San Antonio, TX 78205
(210) 207-8940
Deborah.klein@sanantonio.gov

Cory D. Szczepanik
Yolanda Cornejo Garcia
Sidley Austin, L.L.P.
2021 McKinney Avenue, Suite 2000
Dallas, TX 75201
cszczepanik@sidley.com
ygarcia@sidley.com

Jose F. Sanchez
Sidley Austin, L.L.P.
555 West Fifth Street
Los Angeles, CA 90013
jose.sanchez@sidley.com

Robin E. Wechkin
Sidley Austin, L.L.P.
701 5th Avenue, Ste. 4200
Seattle, WA 98104
rwechkin@sidley.com

Counsel for the San Antonio Plaintiffs

Jo Anne Bernal
El Paso County Attorney
500 E. San Antonio
5th Floor, Ste. 503
El Paso, TX 79901
(915) 546-2050
joanne.bernal@ca.epcounty.com

Jose Garza
Law Office of Jose Garza
7414 Robin Rest Dr.
San Antonio, TX 78209
(210) 892-8543
jgarza@trla.org

Michael Moran
Garza Golando Moran, PLLC
115 E. Travis St., Ste. 1235
San Antonio, TX 78205
michael@ggmtx.com
Mimi M.D. Marziani
Texas Civil Rights Project
1405 Montopolis Dr.
Austin, TX 78741
mimi@texascivilrightsproject.org

Efren Carlos Olivares
Texas Civil Rights Project
1017 W. Hackberry
Alamo, TX 78516
(956) 787-8171
efren@texascivilrightsproject.org

Mary B. McCord
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, DC 20001-2075
mbm7@georgetown.edu

Counsel for the El Paso Plaintiffs

Christopher J. Coppola
City of Austin
P.O. Box 1546
Austin, Texas 78767
Christopher.coppola@austintexas.gov

Michael John Weills Siegel
City of Austin Law Department
P.O. Box 1088
Austin, TX 78767
(512) 974-2888
michael.siegel@austintexas.gov

Counsel for the Austin Intervenor Plaintiffs

Anthony J. Nelson
Laurie R. Eiserloh
Sharon Talley
Sherine E. Thomas
Tim Labadie

Travis County Attorney
P.O. Box 1748
Austin, TX 78767
(512) 854-9415
tony.nelson@traviscountytx.gov
laurie.eiserloh@traviscountytx.gov
sharon.talley@traviscountytx.gov
sherine.thomas@traviscountytx.gov
tim.labadie@traviscountytx.gov

Counsel for the Travis County Intervenor Plaintiffs

Charles S. Estee
Stacy Jordan Rodriguez
Barbara Elaine Rosenberg
City Attorney's Office
1500 Marilla Street, Room 7B North
Dallas, Texas 75201
(214) 670-3519
Charles.estee@dallascityhall.com
Stacy.rodriguez@dallascityhall.com
Barbara.rosenberg@dallascityhall.com

Counsel for Intervenor Plaintiff the City of Dallas

Ronald C. Lewis
Judith L. Ramsey
Patricia L. Casey
Connica Lemond
Collyn A. Peddie
Fernando De Leon
City of Houston Legal Department
900 Bagby, 4th Floor
Houston, Texas 77002
(832) 393-6491
ronald.lewis@houstontx.gov
Judith.ramsey@houstontx.gov
pat.casey@houstontx.gov
connica.lemond@houstontx.gov
collyn.peddie@houstontx.gov
Fernando.deleon2@houstontx.gov

Paul Yetter
Lonny Hoffman
Grant Martinez
Yetter Coleman, L.L.P.

Suite 3600
909 Fannin Street
2 Houston Center
Houston, TX 77010
pyetter@yettercoleman.com
lhoffman@yettercoleman.com
gmartinez@yettercoleman.com

Counsel for Intervenor Plaintiff the City of Houston

Rolando L. Rios
Law Offices of Rolando L. Rios
115 E. Travis, Ste. 1645
San Antonio, Texas 78205
(210) 222-2102
rios@sbcglobal.net

**Counsel for Intervenor Plaintiff the Texas Association of Hispanic County
Judges and County Commissioners**

/s/ Noah B. Peters

Noah B. Peters

CERTIFICATE OF COMPLIANCE

Counsel certifies that, on October 5, 2017, this document was transmitted to the Clerk of the United States Court of Appeals for the Fifth Circuit via the Court's CM/ECF document filing system.

Counsel further certifies that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; (2) the electronic submission is an exact copy of the paper document in compliance with Fifth Circuit Rule 25.2.1; and (3) the document has been scanned with the most recent version of Symantec Endpoint Protection and is free of viruses.

Counsel further certifies that this brief complies with: (1) the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 4,234 words, excluding the parts of the brief exempted by Rule 32(f); and (2) the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (12-point Times New Roman) using Microsoft Word (the same program used to calculate the word count).

/s/ Noah B. Peters

Noah B. Peters