

**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,	§	
	§	
CITY OF AUSTIN, <i>et al.</i> ,	§	
Plaintiff-Intervenors,	§	CIVIL ACTION NO. 5:17-cv-404-OLG
v.	§	
	§	
STATE OF TEXAS, <i>et al.</i> ,	§	
Defendants.	§	

DECLARATION OF BRIAN MANLEY

Pursuant to 28 U.S.C. § 1746, I Brian Manley, declare the following:

1. My name is Brian Manley, I am over the age of eighteen years, and I am authorized to make this declaration in support of the City of Austin's Motion for Preliminary Injunction. I have never been convicted of a crime and am competent to make this declaration. I am personally acquainted with the facts herein stated which are true.

2. I am currently employed as the Chief of Police for the City of Austin Police Department (APD). I am currently serving in this position on an interim basis. I have been the Interim Chief of Police for APD since December, 2016. Although I hold the job on an interim basis, I have all of the authority that comes with being the Chief of Police for APD.

3. The City of Austin police chief is not an elected position. The police chief is appointed by the City Manager, subject to the approval of the elected Austin City Council.

4. Immediately prior to being elevated to the Chief, I held the position of Assistant Chief and Chief of Staff. Overall, I have been a state-certified peace officer with APD for over 25 years in many different capacities, including serving as an officer, detective, or supervisor in patrol, narcotics, child abuse, homicide, and internal affairs.

5. I hold a bachelor's degree from the University of Texas at Austin. I also have master's degree from St. Edwards University.

I. APD & the City of Austin

6. As the Chief of Police, I manage the personnel, budget, and police operations for APD. APD is one of the largest law enforcement agencies in Texas, with approximately 2,600 employees (including approximately 1,900 peace officers), and a budget of approximately \$400 million. Although APD has a large budget, it has many unmet needs every year. Most pressing, it is my opinion that APD needs more police officers. If, as I discuss below, APD will need to expend resources to comply with Senate Bill No. 4 (SB 4), that will obviously hamper its ability to fulfill its existing unmet needs.

7. APD serves the City of Austin, Texas. The City of Austin is the 11th largest city in the nation, with a population of approximately 850,000 people. The City of Austin is primarily located in Travis County, Texas, but also stretches into Hays County to the south and Williamson County to the north. I know that approximately 36% of the population of the City of Austin is Hispanic/Latino. I know from professional experience that there are many thousands of undocumented immigrants who call the City of Austin home. It is APD's mission to keep everyone in the City of Austin safe, regardless of whether they are citizens, legal residents, or undocumented immigrants. For APD to fulfill its mission, it is imperative that everyone, regardless of immigration status, feel safe and comfortable interacting with and reporting crime to the police.

8. As the Chief of Police, and in my previous roles at APD, I have worked hard to build trust between APD and the people of Austin. In the last several years, I have given particular attention to ensuring that undocumented immigrants trust APD by communicating to

them that APD's mission does not include the enforcement of federal civil immigration law, and that APD does not detain or arrest people merely for undocumented presence in the United States. This trust is imperative to support APD's ongoing efforts to be involved in the community. A positive relationship between the community and the police that serve that community leads to enhanced crime prevention, quicker resolutions to serious crimes, and overall a safer community.

9. I have heard from people at community forums that people are fearful that interacting with law enforcement (and specifically APD) will result in deportation, either for themselves or a loved one. Through conversations with professional colleagues, I know that many law enforcement professionals in Texas share my concern that undocumented immigrants may be unwilling to report an abusive spouse, out of fear that the spouse could be deported; or that witnesses to crime may refuse to come forward, believing that they and their families will be deported. I know from first-hand experience as a career law enforcement officer that the Austin community is safer when undocumented immigrants and their families are willing and able to cooperate with the police.

10. I have final responsibility for setting the operational policies ("APD Policies"), hiring standards, and training standards for APD. I have personal knowledge of APD's policies and practices with regard to how officers should interact with foreign nationals who may be suspected of a crime. I am also aware of APD's policies and procedures with respect to handling warrants from other law enforcement agencies, sharing or exchanging information with other law enforcement agencies, and maintaining information in its files.

11. As the Chief of Police, I am also personally responsible for, or have personal knowledge of, APD's high-level interactions with federal law enforcement agencies, including agencies that operate under the auspices of the U.S. Department of Homeland Security.

II. Overview of SB 4

12. I followed SB 4 and similar bills through the legislative process. I was one of many witnesses, including other major city Texas police chiefs, to testify against the adoption of SB 4.

13. I have reviewed SB 4 carefully, as I know it imposes new duties, restrictions, and potential enforcement mechanisms on cities, city employees, law enforcement officers, law enforcement agencies, chiefs of police, and elected and appointed city officials. As I describe below, I find SB 4 to be vague and I believe that it will impede my ability to do my job by undermining my ability to control my workforce and set enforcement priorities for APD officers.

14. But perhaps more important, I believe SB 4 will undermine the bonds of trust I have worked hard to establish between immigrant communities in Austin and the police.

III. ICE Detainers

15. As the Chief of Police, and a police officer with more than 25 years of experience at APD, I know that APD does not receive written detainer requests (Form I-247, Immigration Detainer-Notice of Action) from ICE. This is likely because, in the vast majority of situations, APD brings its arrestees to the local sheriff in Travis, Hays, or Williamson for booking into jail. It is typically at this point that arrestees are fingerprinted, information concerning the arrest is transmitted to DPS, and federal authorities might be notified that the arrestee is in custody. In other words, except in unusual circumstances (for instance when APD officers are working as

part of a federal task force), arrestees are out of APD's custody before federal authorities are notified that the arrestee has been arrested and is being detained in jail.

16. APD (and the City of Austin) does not operate any jails or detention facilities for its arrestees. Therefore, (except in unusual circumstances where an arrestee might remain in APD's custody at the hospital) APD could not hold an arrestee in its custody for longer than a short time before delivering that arrestee to jail to be booked and presented to a magistrate.

17. APD does not have a policy, written or unwritten, or any practice that prohibits or limits officers from honoring any detainer request. Any such policy or practice would be superfluous because APD does not receive written detainer requests from ICE.

18. I have reviewed SB 4's provisions concerning detainer requests. SB 4 obligates law enforcement agencies to honor detainer requests when a person in the agency's custody is the subject of a detainer request. An agency is permitted to disregard a detainer request only if the person can provide proof, for example a Texas driver's license, that he or she is a citizen or has lawful immigration status. In addition, SB 4 makes it a crime for a police chief to knowingly fail to honor a detainer request.

19. Although APD does not currently receive written detainer requests from ICE, I am concerned about SB 4's detainer provisions. I am concerned that the obligations are so broad that an APD officers could detain a person (e.g., for a traffic infraction), release that person with a citation, and never know that the person was the subject of an ICE detainer request. If such an incident were to occur several times, it could be considered a "pattern or practice" of "materially limiting" the enforcement of immigration laws. If that were true, the City of Austin could face serious fines, and I, as the police chief, could be removed from office.

20. Moreover, APD officers do not presently have any method to determine whether a person is subject to an ICE detainer request. ICE detainer requests are not warrants that are put into the National Crime Information Center or Texas Crime Information Center databases that officers routinely check for warrants. If APD officers have no way to determine whether a person is the subject of an ICE detainer request, then there is no way to ensure compliance with SB 4. My concern on this issue is exacerbated by the fact that SB 4 does not define what a “detainer request” is. Although traditionally these are written requests on form I-247, SB 4 is vague enough to leave open the possibility that APD and other agencies would have to comply with verbal or more informal requests made by ICE.

21. The provisions of SB 4 concerning ICE detainer requests also permit law enforcement agencies to choose not to honor a request if the person subject to the detainer can prove, through a government ID, that they are lawfully present in the country. APD does not provide training to its officers on the nuances of federal immigration law. Specifically, officers are not trained in recognizing what sort of ID’s (perhaps other than a Texas driver’s license or U.S. Passport) might prove lawful status or citizenship. As a result, if an APD officer detains a person who is the subject of a detainer request (and the officer knows of the request) the officer might be unable to properly determine that person’s status, and may end up improperly detaining a person with lawful status.

IV. SB 4 Undermines Supervision and Control of Police Officers

22. Several aspects of SB 4 undermine my ability to control APD officers and resources. In particular, SB 4 prohibits me, as an employee and the police chief, from adopting, enforcing, or endorsing any formal or informal policy or practice that would prevent or “materially limit” officers from inquiring into a detainee’s or arrestee’s immigration status. SB

4 also places identical prohibitions on any policy or practice that would prevent officers from cooperating with or assisting ICE “as reasonable or necessary.”

23. Moreover, because SB 4 also prohibits “informal” policies that would limit immigration status inquiries or providing assistance to ICE, as well as having a “pattern or practice” of so limiting officers, I am concerned that I will have to implement formal policies that specifically permit officers to engage in those actions. I may have to implement those policies even if I believe that may result in a loss of appropriate control over my officers, as well as a misallocation of police resources.

24. With respect to the restrictions imposed by SB 4, I am concerned that SB 4 will prohibit me from deploying my officers in the manner I think most appropriate and effective to achieve the goal of keeping Austin safe. SB 4 will remove my control over officer time and resources in many ways. For example, I am concerned that SB 4 will require APD to start training officers on immigration laws and enforcement; SB 4 will permit officers to leave their regularly assigned duties and tasks to assist ICE (even if I have assigned the officer to work as, for example, a district representative, a homicide detective, or a commander over communications); and SB 4 will require me to enter into agreements with ICE to provide specific resources dedicated to immigration enforcement (so-called “287(g)” agreements). I am also concerned that SB 4 will lead to officers unnecessarily prolonging detentions—for instance, during a traffic stop—for the purpose of inquiring into a person’s immigration status.

25. APD officers make many thousands of arrests and detentions every year, including thousands of routine traffic stops. There are very few criminal laws enforced by APD that might include immigration status as an element or relevant factor. Therefore, any time that officers spend assisting ICE to enforce civil violations of immigration law, or time spent

inquiring about the immigration status of people stopped for traffic violations, is time lost to enforcing the criminal laws that APD has a duty to enforce. If SB 4 goes into effect, police officers and resources will necessarily be diverted away from enforcing criminal laws and responding to serious crimes.

26. I am concerned that, although SB 4 forbids racial and ethnic profiling in the enforcement of immigration law (a task that APD officers are generally not authorized or trained to do), the law will lead to allegations of such behavior. How are officers to decide which detainees or arrestees to question about immigration status? Must they ask everyone? I am concerned that even providing training to officers on these issues could be perceived as “materially limiting” their ability to make the immigration status inquiry; thereby subjecting the City to fines and me to potential removal from office.

27. I fear that if I have to specifically permit officers to make immigration status inquiries of any detainee they chose, it will not only lead to racial profiling claims, but also to claims of Fourth Amendment violations by those detained and questioned.

28. I know from speaking with community leaders that if APD officers begin questioning people about immigration status, and assisting with ICE enforcement activities, it will lead to a breakdown of the trust that I and my predecessors have worked hard to build with the immigrant community in Austin. I fear that if SB 4 goes into effect, many people will be too fearful to report crimes or provide assistance to APD.

V. SB 4 Restricts Speech

29. As discussed above, I have repeatedly advocated and endorsed, in both public and private settings, policies or practices that would keep APD and its officers out of enforcing civil federal immigration laws. I expect to continue to express my belief that APD officers and

resources are best focused on preventing and solving crimes, not on assisting ICE with deportation of individuals who have overstayed a visa or who have undocumented status because their parents brought them to this country as young children.

30. Even if I comply with SB 4's requirements not to adopt or enforce policies or practices that would, for example, prevent officers from assisting ICE, I would still wish to advocate for or endorse policies that might be in conflict with SB 4. If I were to do so, SB 4 would subject the City to potentially heavy fines, and I could face removal from office.

31. The concerns of state enforcement of SB 4 against the City Austin, APD, and me, stem in no small part from the fact that I, along with the Austin City Council (acting as a body), have been vocal opponents of SB 4. I have observed that there is also a common, though mistaken, belief that the City of Austin and APD do not comply with federal law with respect to immigration. Accordingly, I am concerned that SB 4 will be invoked against me, as the Police Chief, and the City of Austin.

I declare under penalty of perjury that the above statements are within my personal knowledge and are true and correct."

Signed this 19th day of June, 2017


BRIAN MANLEY