

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

UNITED STATES OF AMERICA, §

*Plaintiff,*

V.

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Case No. 1:24-CV-00008-DAE (Lead Case)

Consolidated with 1:23-CV-1537-DAE

STATE OF TEXAS, et al.,

*Defendants.*

**HARRIS COUNTY’S AMICUS CURIAE BRIEF  
IN SUPPORT OF PLAINTIFF UNITED STATES OF AMERICA**

## **STATEMENT OF INTEREST<sup>1</sup>**

Amicus Curiae Harris County supports Plaintiff United States' request that enforcement of Senate Bill 4 ("SB 4") be enjoined because it will cause substantial harm to Harris County and its residents for two reasons.

First, SB 4 will increase jail-related costs in Texas. This will disproportionately harm Harris County, which is the largest county in Texas and operates the largest jail in Texas and third largest jail in the United States. Because of its size, reduced capacity at its jail is already a pervasive issue in Harris County, and it spends millions of dollars each year outsourcing jail operations to other jails in Texas and nearby states. If SB 4 is not enjoined, the Texas Department of Public Safety ("DPS") estimates that agency alone will arrest up to 88,000 noncitizens along the border each year, resulting in overcrowding in border county jails. This enormous influx of SB 4 inmates in Texas will cause the price of outsourcing jail operations and other jail-related costs to rise substantially. This will cause harm to Harris County by forcing it to increase its budget for jail-related costs by hundreds of thousands, if not millions of dollars each year, reducing the services it can provide its residents.

Second, SB 4 will have a chilling effect on noncitizens' willingness to aid law enforcement because it makes no exceptions for U or T visas, harming Harris County's ability to successfully prosecute criminal defendants and combat crime. Noncitizen victims of certain violent crimes, as well as qualifying family members, are eligible to apply for U

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no entity, other than Amicus, its officers, employees, or counsel, has made a monetary contribution to the preparation or submission of this brief.

or T visas to stay in this country in exchange for assisting with law enforcement investigations. SB 4 will cause a chilling effect on noncitizen victims' cooperation with law enforcement. Without victim participation, crimes will go unreported and unsolved, resulting in increased victimization and revictimization of Harris County residents.

To avoid these harms, Amicus Curiae Harris County supports Plaintiff's request that enforcement of SB 4 be enjoined.

### **INTRODUCTION AND SUMMARY OF THE ARGUMENT**

SB 4's author, Texas State Senator Charles Perry, testified in a legislative committee hearing that he could "never envision a situation where someone" in an interior Texas county will be arrested solely for an offense under SB 4. Hearing on SB 4 before the Senate Committee on State Affairs, 88th Leg., 4th C.S. (2023) (Nov. 9, 2023) (available at [https://tlcsenate.granicus.com/MediaPlayer.php?view\\_id=53&clip\\_id=18444](https://tlcsenate.granicus.com/MediaPlayer.php?view_id=53&clip_id=18444)) (testimony at 2:30 – 4:07). "[T]he reality and the probable likelihood of an arrest being made for this is zero" in interior counties "because you'd have to see those people, you'd have to actually physically see them" crossing the Texas-Mexico border illegally for an officer to have probable cause to make an arrest under SB 4. *Id.*

State law enforcement agrees with this legislative intent. Steve McCraw, the Director of DPS and a defendant in this lawsuit, testified during a separated legislative committee hearing that it will be "almost impossible to ... arrest and charge somebody" under SB 4 in an interior county. Hearing on the identical, companion house bill before the House Committee on State Affairs, 88th Leg., 4th C.S. (2023) (Nov. 9, 2023) (available at [https://tlchouse.granicus.com/MediaPlayer.php?view\\_id=78&clip\\_id=25165](https://tlchouse.granicus.com/MediaPlayer.php?view_id=78&clip_id=25165)) (testimony

at 1:42:30 – 1:43:43).

While noting his agency alone estimates it could arrest up to 88,000 noncitizens per year based on previous data, DPS Director McCraw agreed an officer would have no probable cause to make an arrest under SB 4 unless there was direct, corroborating evidence—such as video evidence—that a noncitizen crossed the border illegally. *Id.* (testimony at 1:30:15 – 1:35:08, 1:42:30 – 1:43:43); *see also* House Committee on State Affairs testimony of Smith County Sheriff Larry Smith, who is also the President of the Sheriffs’ Association of Texas (represents all 254 county sheriffs in Texas) (acknowledging that an SB 4 offense could likely only be prosecuted in border counties, but who, nevertheless, expressed concerns it will cause jail overcrowding and increase jail-related costs statewide) (testimony at 2:28:25 – 2:33:10).

Accordingly, the legislature made it clear that SB 4 will not be applied to interior counties, and state law enforcement agrees.<sup>2</sup> Despite this, the effects of SB 4 will extend throughout Texas and cause harm to interior counties like Harris County. Specifically, if SB 4 is not enjoined: (1) it will increase jail-related costs in Texas, directly harming Harris County by forcing it to pay more to outsource jail operations, negatively affecting its budget and reducing the services it can provide its residents; and (2) it will have a chilling effect on noncitizens’ willingness to aid law enforcement because it makes no exceptions

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<sup>2</sup> Otherwise, there could be no probable cause to make an arrest, and SB 4 would open a pandora’s box of federal civil rights litigation, resulting in financial ruin for local governments forced to indemnify well-intentioned, but clearly misguided officers in interior counties. *See* SB 4; Tex. Civ. Prac. & Rem. Code § CPRC 117.002 (requiring local governments to indemnify and pay attorney’s fees relating to an officer’s actions under SB 4).

for U or T visas, harming Harris County's ability to successfully prosecute criminal defendants and combat crime.

## ARGUMENT

### 1. SB 4 will increase jail-related costs in Texas.

SB 4's strict, mandatory sentences range between at least six months in jail up to 20 years in prison. *See* SB 4. Community supervision is specifically prohibited. *Id.*; Tex. Code Crim. Pro. art. 42A.059.

Accordingly, based on DPS's estimate of up to 88,000 arrests per year along the border by that agency alone, SB 4's mandatory sentencing requirements will cause Texas jails in border counties to quickly become overcrowded. *See* DPS Director McCraw's testimony during a hearing on the identical, companion house bill before the House Committee on State Affairs.<sup>3</sup>

It will obviously be impossible to construct new or larger jails in time to house this influx of inmates arrested under SB 4.<sup>4</sup> And it will also be impossible to hire the requisite number of licensed and trained deputies to guard these inmates, nor the doctors and nurses needed to provide them adequate medical care. As such, based on SB 4's mandatory sentences and DPS's estimates alone, county jails, especially border county jails, will become increasingly overcrowded, and jails will be forced to outsource operations to other jail facilities. *See e.g.*, Sheriff Larry Smith's testimony before the House Committee on

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<sup>3</sup> Available at [https://tlchouse.granicus.com/MediaPlayer.php?view\\_id=78&clip\\_id=25165](https://tlchouse.granicus.com/MediaPlayer.php?view_id=78&clip_id=25165) (testimony at 1:30:15 – 1:35:08).

<sup>4</sup> Also, courts, prosecutors, and defense attorneys will struggle to handle the influx of SB 4 cases, exacerbating the jail overcrowding problem as court backlogs increase.

State Affairs (testifying about concerns of jail overcrowding and increased jail-related costs statewide).<sup>5</sup>

Harris County operates the largest jail in Texas and the third largest jail in the United States.<sup>6</sup> Due to reduced capacity at its jail, Harris County already spends millions of dollars each year housing inmates in other jail facilities in Texas and nearby states.<sup>7</sup> If SB 4 is not enjoined and border counties start outsourcing jail operations too, basic supply and demand principles dictate these costs will rise dramatically, and Harris County will be forced to pay even more to outsource jail operations.<sup>8</sup>

SB 4 will also cause other jail-related costs to increase. A massive influx of inmates along the border will create a statewide increase in demand for jail personnel, such as

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<sup>5</sup> Available at [https://tlchouse.granicus.com/MediaPlayer.php?view\\_id=78&clip\\_id=25165](https://tlchouse.granicus.com/MediaPlayer.php?view_id=78&clip_id=25165) (testimony at 2:28:25 – 2:33:10).

<sup>6</sup> See Harris County Sheriff's Office, Criminal Justice Command, <https://www.harriscountysoc.org/AboutUs/CriminalJusticeCommand#:~:text=Harris%20County%20operates%20the%20largest,the%20Detention%20Support%20Services%20Bureau> (last visited Feb. 13, 2024).

<sup>7</sup> See e.g., St. John Barned-Smith, *Inmates transferred, jails overcrowded*, HOUSTON CHRONICLE (April 17, 2016) <https://www.houstonchronicle.com/news/houston-texas/houston/article/Inmates-transferred-jails-overcrowded-7251977.php>. (In 2016, Harris County housed some inmates in Bowie County and Jefferson County jails); Jen Rice, *Harris County may pay \$25M to house jail inmates at West Texas lockup*, HOUSTON CHRONICLE (July 18, 2022), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Harris-County-approves-25M-plan-to-house-jail-17316135.php> (In 2022, Harris County Commissioners Court approved \$25 million agreement to house inmates in a facility near Lubbock); Lucio Vasquez, *Officials approve \$11 million contract to outsource more inmates from the Harris County Jail to ease continuous overcrowding*, Houston Public Media (Nov. 15, 2023), <https://www.houstonpublicmedia.org/articles/news/criminal-justice/2023/11/15/469673/officials-approve-11-million-contract-to-outsource-more-inmates-from-the-harris-county-jail-to-ease-continuous-overcrowding/>; see also Harris County Sheriff's Office, Inmate Mail Page, <https://www.harriscountysoc.org/JailInfo/inmateinfoinmatemail> (last visited Feb. 13, 2024) (evidencing Harris County currently housing inmates in facilities in Texas, Louisiana, and Mississippi).

<sup>8</sup> See e.g., *The A to Z of Economics*, THE ECONOMIST <https://www.economist.com/economics-a-to-z#S> (last visited Feb. 13, 2024).

detention officers, custodial workers, medical professionals, etc. The cost of their services will rise, disproportionately affecting Harris County because it will be forced to pay more as operator of the largest jail in Texas.

As outsourcing operations and other jail-related costs rise, Harris County will have to shift its limited resources. It will have less in its budget to spend on services that benefit Harris County residents, such as social services, infrastructure maintenance, educational programs, and public safety. This reduction in services will cause great harm to Harris County's residents.

Therefore, although it is not an interior county and the legislature does not intend for law enforcement to utilize SB 4 within its jurisdiction, Amicus Curiae Harris County supports Plaintiff's request to enjoin enforcement of SB 4 because it will exacerbate jail overcrowding in Texas and force Harris County to incur increased jail-related costs.

**2. SB 4 will have a chilling effect on noncitizens' willingness to aid law enforcement because it makes no exceptions for U or T visas, harming Harris County's ability to successfully prosecute criminal defendants and combat crime.**

As noted in Plaintiff's Motion for Preliminary and Permanent Injunction, SB 4 upends longstanding procedures by prohibiting the abatement of a noncitizen's prosecution when the federal government is still determining immigration status, including for asylum seekers. ECF No. 14 at 33-34; *see also* Tex. Code Crim. Pro. art. 5(B)003. Similarly, SB 4's abatement prohibition makes no exception for U or T visas.

Currently, if a noncitizen becomes the victim of a qualifying crime in this country, that victim and certain family members may apply for a U or T visa to stay here in exchange

for cooperating with law enforcement.<sup>9</sup> The list of U visa crimes includes: “rape;<sup>10</sup> trafficking; incest; domestic violence; sexual assault ... prostitution; sexual exploitation; kidnapping; abduction ... murder ... [and] witness tampering ...” 8 U.S.C.A. § 1101(U); 8 C.F.R. § 214.14 (a) and (b). T visas may be granted to victims of a severe form of trafficking. 8 U.S.C.A. § 1101(T); 8 C.F.R. § 214.11.

The criminal justice system relies upon these noncitizens—as it does all witnesses and victims—to aid law enforcement investigations and testify at trial.<sup>11</sup> And importantly, noncitizen crime victims must fully cooperate with law enforcement *while their U or T visa applications are pending*, which can take one to five years.<sup>12</sup> However, because SB 4 provides no exception for abating a prosecution while this status is being determined,

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<sup>9</sup> See U.S. Dep’t of Homeland Security, U Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges and other Governmental Agencies (May 3, 2022), [https://www.dhs.gov/sites/default/files/2022-05/U-Visa-Law-Enforcement-Resource-Guide-2022\\_1.pdf](https://www.dhs.gov/sites/default/files/2022-05/U-Visa-Law-Enforcement-Resource-Guide-2022_1.pdf); U.S. Dep’t of Homeland Security, T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges and other Governmental Agencies (May 3, 2022), [https://www.dhs.gov/sites/default/files/2022-05/T-Visa-Law-Enforcement-Resource-Guide-2022\\_1.pdf](https://www.dhs.gov/sites/default/files/2022-05/T-Visa-Law-Enforcement-Resource-Guide-2022_1.pdf).

<sup>10</sup> Despite Defendant Governor Greg Abbott’s infamous vow to eliminate rape in Texas after this state enacted an abortion ban, rape still happens here. See e.g., Paul J. Weber & Jamie Stengle, *Texas vow to ‘eliminate all rapists’ rings hollow at clinics*, AP NEWS (Sep. 25, 2022), <https://apnews.com/article/abortion-austin-texas-houston-sexual-assault-00bb74e67ce427a3adbb8f7fe811ff13>; Bianca Moreno-Paz & Bayliss Wagner, *Texans have had 26,000 rape-related pregnancies since Roe v. Wade was overturned, study finds*, AUSTIN AMERICAN STATESMAN (Jan. 1, 2024), <https://www.statesman.com/story/news/state/2024/01/25/texas-rape-statistics-pregnancies-roe-v-wade-overturned-abortion-ban/72339212007/>.

<sup>11</sup> See e.g., Birdsall, N., Kirby, S., & Phythian, R., *Cooperative actors in domestic abuse and their association with prosecution: implications for the criminal justice system*. The Police Journal, 95(2), 391-406 (2022), <https://doi.org/10.1177/0032258X20931922>.

<sup>12</sup> See U.S. Citizenship and Immigration Services, Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms by Fiscal Year <https://egov.uscis.gov/processing-times/historic-pt> (last visited Feb. 13, 2024).



noncitizen victims who are eligible or have a U or T visa pending are likely to stop cooperating with law enforcement. News will spread quickly throughout noncitizen communities that interacting with law enforcement could result in arrest, mandatory jail sentences, and deportation despite one's eligibility or pending U or T visa status. Harris County has already received reports from those communities that their members are afraid of SB 4's enforcement in the County, regardless of the intent of that law.

This will have a chilling effect on the cooperation between law enforcement and noncitizen victims, their families, and their communities. Noncitizens will be more fearful of law enforcement and unlikely to come forward to report crimes, negatively impacting the ability to fight crime statewide. And unfortunately, this will disproportionately impact Harris County, which is home to an estimated 481,000 noncitizens,<sup>13</sup> has the highest number of reported human trafficking incidents in Texas,<sup>14</sup> and has more than double the number of violent homicides committed by an intimate partner than any other Texas county.<sup>15</sup>

If SB 4 is not enjoined and U and T visas are no longer utilized to detect and prevent crime, what will happen to noncitizens who are trafficked across the border and forced into

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<sup>13</sup> See Migration Policy Institute, *Profiles of the Unauthorized Population: Harris County, TX* <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/county/48201> (last visited Feb. 13, 2024).

<sup>14</sup> See University of Texas at Austin, School of Social Work Institute on Domestic Violence and Sexual Assault, *Human Trafficking by the Numbers: Initial Benchmarks of Prevalence & Economic Impact in Texas* (Dec. 2016) <https://repositories.lib.utexas.edu/server/api/core/bitstreams/57d75eaa-848d-4002-b3bd-44333081e1de/content> (the greater Houston area was responsible for the most tips made to the National Human Trafficking Hotline in 2016).

<sup>15</sup> Texas Council on Family Violence, *Texas Intimate Partner Fatality Report* (2022) [https://tcfv.org/wp-content/uploads/TCFV-2022-HTV-Report\\_Final-Web2.pdf](https://tcfv.org/wp-content/uploads/TCFV-2022-HTV-Report_Final-Web2.pdf).

prostitution? Without victim participation, human trafficking will continue its insidious spread across Texas, irreparably harming vulnerable communities.<sup>16</sup> What about a noncitizen victim of domestic abuse who is frightened into silence by their abusive partner? Who will report the abuse and cooperate with law enforcement before it escalates to another violent homicide? What about the noncitizen child threatened with deportation, or the deportation of their family, so that they will not report a molestation, allowing a pedophile to remain free and assault another child? If SB 4 is not enjoined, even when victimized, noncitizens and their families fearing deportation will remain in the shadows, harming them, and harming Harris County's ability to investigate crimes and achieve successful prosecutions. The residents of Harris County—citizen and noncitizen alike—will suffer the consequences.

Therefore, Amicus Curiae Harris County supports Plaintiff's request to enjoin enforcement of SB 4 because it will harm Harris County's ability to successfully prosecute criminal defendants and combat crime.

### CONCLUSION

For the reasons explained above, the Court should enjoin enforcement of SB 4.

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<sup>16</sup> Cf. Ken Paxton, Attorney General of Texas, *Prosecute*, Texas Attorney General website, <https://www.texasattorneygeneral.gov/human-trafficking-section/texas-human-trafficking-prevention-coordinating-council/prosecute> (last visited Feb. 13, 2024) (stating, "One primary pillar to combatting human trafficking is the successful prosecution of those who commit this crime. There are many challenges to prosecuting human trafficking cases, and many of those challenges arise from the nature of the victimization. Victims may not self-identify, may not cooperate with law enforcement, and may fear law enforcement. When victims feel secure, they are more likely to cooperate with law enforcement and prosecutors, leading to successful prosecutions").

Dated: February 14, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing document was filed electronically on February 14, 2024, with the Clerk of the Court for the U.S. Western District of Texas by using the CM/ECF system, causing electronic service upon all counsel of record.

/s/Christopher Garza  
Christopher Garza