

No. 17-50762

**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 Cross-Appellants

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
Cross-Appellants

v.

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

Defendants-Appellants Cross-Appellants

EL PASO COUNTY; RICHARD WILES, SHERIFF OF EL PASO COUNTY, IN HIS OFFICIAL CAPACITY; TEXAS ORGANIZING PROJECT EDUCATION FUND; MOVE SAN ANTONIO,

Plaintiffs-Appellees Cross-Appellees,

v.

STATE OF TEXAS; GREG ABBOTT, GOVERNOR; KEN PAXTON, ATTORNEY GENERAL; STEVE McCRAW, DIRECTOR OF THE TEXAS DEPARTMENT OF PUBLIC SAFETY,

Defendants-Appellants Cross-Appellees

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

Plaintiffs-Appellees Cross-Appellants,

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 Cross-Appellees

On Appeal from the United States District Court for the Western District of Texas,
San Antonio Division, Nos. 5:17-cv-404; 5:17-cv-459, 5:17-cv-489

**BRIEF OF AMICI CURIAE NATIONAL QUEER ASIAN PACIFIC ISLANDER ALLIANCE,
KHUSHATX, OCA GREATER HOUSTON CHAPTER, THE COLLECTIVE OF
HOUSTON ASIAN AMERICANS, DRAGONFLIES OF DALLAS IN SUPPORT OF
PLAINTIFFS-APPELLEES/CROSS-APPELLANTS, AND IN SUPPORT OF AFFIRMANCE
OF THE DISTRICT COURT'S INJUNCTION ORDER**

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STATEMENT OF INTERESTED PARTIES

The undersigned counsel of record for Amici Curiae certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made as a supplement to the disclosures of interested parties contained in Appellants' and Appellees' Briefs, and are made in order that the judges of this Court may evaluate possible disqualification or recusal:

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KhushATX

OCA Greater Houston Chapter

The Collective of Houston Asian Americans

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STATEMENT OF AMICI CURIAE

The National Queer Asian Pacific Islander Alliance (NQAPIA) is a federation of lesbian, gay, bisexual, and transgender (LGBT) Asian, South Asian, Southeast Asian, and Pacific Islander (Asian American) organizations. NQAPIA seeks to build the organizational capacity of local LGBT Asian American groups, develop leadership, promote visibility, educate our community, enhance grassroots organizing, expand collaborations, and challenge homophobia and racism. NQAPIA's interest in this case arises from the significant and growing number of Asian American and LGBT immigrants who will be impacted by the potential implementation of Senate Bill 4 (SB4). NQAPIA has filed, contemporaneously with this brief, a motion for leave to file amici curiae brief.

KhushATX's mission is to create a space for South Asian LGBTQ persons to meet and support each other. KhushATX wishes to increase acceptance and reduce stigma of LGBTQ people within the local South Asian communities by increasing visibility and awareness. KhushATX also wishes to add to the diversity of the broader queer community. KhushATX supports immigrants' rights and opposes racial profiling of South Asians.

Established in 1979, the OCA Greater Houston Chapter (OCA-GH) is one of the OCA's (formerly the "Organization of Chinese Americans") 100+ chapters and

college affiliates, with a long track record of programs/initiatives that work to advance 4 main goals:

- * to advocate for social justice, equal opportunity and fair treatment;
- * to promote civic participation, education, and leadership;
- * to advance coalitions and community building; and
- * to foster cultural heritage.

The Collective of Houston Asian Americans (“CHAA”) is an all-volunteer driven group for lesbian, gay, bisexual, and transgender, queer, questioning and intersex Asian Americans in the Greater Houston Area. CHAA supports progressive intersectional racial justice, immigrants’ rights, gender justice, and LGBTQI equality, and seeks to build a safe and supportive community.

Dragonflies of Dallas is a social-support group for gay Asians, Pacific Islanders, and friends in the Dallas and Fort Worth metroplex. Dragonflies of Dallas’s goal is to bring together gay, Asian and Pacific Islanders in a friendly, supportive, and non-judgmental setting, while also striving to promote awareness, visibility, and acceptance of gay Asian Pacific Islanders. Although not politically affiliated to a specific party, Dragonflies of Dallas opposes racism, homophobia, sexism, and other forms of prejudice and discrimination.

Pursuant to Federal Rule of Appellate Procedure 29, NQAPIA represents that no counsel for a party to this appeal has authored this brief, in whole or in part,

that no party to this appeal, nor their counsel, has contributed money that was intended to fund preparing or submitting this brief, and that no person, other than NQAPIA, its members, or its counsel, has contributed money intended to fund preparing or submitting the brief.

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SUMMARY OF THE ARGUMENT

SB4, passed earlier this year by the Texas Legislature and signed into law by Governor Greg Abbott, is a controversial measure designed to limit “sanctuary cities” in Texas. It is intended to give local law enforcement the authority to inquire about immigration status during routine investigations, to require compliance by local law enforcement with requests from federal immigration authorities, and to punish local law enforcement officials if they fail to comply with federal directives. Although SB4 does not expressly state, in its language or its legislative history, that its intent is to harm immigrants, SB4 will nonetheless have precisely that effect.

The harms SB4 will bring to Texas immigrants will not be restricted to the Hispanic community. While Hispanic immigrants make up the largest portion of Texas immigrants, they are not the fastest growing immigrant group. Asian Americans are the fastest growing immigrant group in Texas—and it is not a close contest. Indeed, over recent time periods, the Texas Asian American population is growing at twice the rate of the Texas Hispanic population. Large metro areas like Dallas and Houston are experiencing particularly rapid growth of Asian Americans, and each has a significant number of undocumented Asian American immigrants. As a direct result of SB4’s controversial mandates, undocumented Asian Americans immigrants will likely be subject to increased harassment and

detainment that harkens back to some of the darkest eras of immigrant mistreatment in the United States.

LGBT immigrants will likewise be subject to increased harassment and detainment as a result of SB4. Studies show that federal immigration authorities already use their discretion to target and detain the LGBT population more routinely than other populations. As enacted, SB4 will divest local law enforcement officials of discretion to inquire about immigration status, instead requiring adherence to the potentially discriminatory discretion of federal immigration officers. Additionally, LGBT immigrants' countries of origin can be extremely dangerous for them, and SB4 increases the likelihood that they will be faced with the trauma of detainment or worse, forced to return to those unsafe environments.

Finally, a disproportionate number of the LGBT undocumented immigrant community is Asian American. For those immigrants who are both Asian American and LGBT, the adverse impacts and risks associated with SB4 are only compounded. Texas should not sanction official conduct against anyone without just cause—but especially not against those groups that have historically suffered targeting, harassment, and discrimination based on their race or sexual or gender identification—yet this is the probable, intolerable impact of SB4 should it be implemented as drafted.

ARGUMENT AND AUTHORITIES

NQAPIA joins in the substantive arguments presented by Appellees. SB4 is bad for immigrants, and bad for the State of Texas. And despite the apparent political policy objectives underlying SB4, it is not mutually exclusive to enact immigration policy that is both good for immigrants, and good for Texas. But doing so requires a willingness to acknowledge the value immigrants bring to the communities in which they live, and a willingness to require reasoned law enforcement rather than discretionless mandates to comply with federal directives. It says much about SB4 that so many of those charged with implementing it, oppose it. The local municipalities and law enforcement officers who have mounted this challenge to provisions of SB4 know their communities, and should have the ability to exercise their discretion in determining whether detention is appropriate. This issue is important to all immigrant communities, both those who have legally immigrated and those who are undocumented.

Not surprisingly, most of the attention surrounding SB4 has centered on immigrant members of the Hispanic community. But the adverse impacts of SB4, both actual and prospective, will not be limited to the Hispanic community, and this Court should view the constitutionality of SB4 through a broad lens to observe the impact on all communities that will be affected. Failing to do so will subject

communities that are already targeted and at-risk to even more discriminatory and disproportionate treatment.

I. SB4 Will Negatively Impact Texas’ Fastest Growing Immigrant Population—Asians, South Asians, Southeast Asians, and Pacific Islanders (Asian Americans).

As noted, and as argued by Appellees, through overbroad drafting and vague requirements, SB4 will harm non-compliant law enforcement officials and the immigrant community generally.¹ But SB4’s reach and potential harm extends beyond these identified groups. SB4 will also distinctively harm Texas’ fastest growing immigrant population—members of the Asian American community. SB4’s damage will be dealt, and felt, daily in metro areas such as Houston and Dallas, both of which are home to hundreds of thousands of members of the Asian American community. This damage, as with the damage to the Hispanic community, will be evident in profiling, targeting, and unwarranted detention of immigrants, but will also be evident in a variety of other tangible and intangible harms. That is why, in addition to the strong legal arguments espoused by Appellees regarding federal preemption and the unconstitutionality of portions of SB4, this Court must also pay close attention to even more fundamental rights—

¹ See, e.g., Brief for Harris County Sherriff Ed Gonzalez and Dallas County Sherriff Lupe Valdez as Amici Curiae; Brief of American Immigration Lawyers Association as Amici Curiae.

those of life, liberty, and the pursuit of happiness²—each of which are subject to severe infringement should this Court allow SB4 to take effect as written.

A. SB4 IMPACTS THE ASIAN AMERICAN COMMUNITY BECAUSE THE ASIAN AMERICAN POPULATION PERCENTAGE GROWTH IS DOUBLE THAT OF HISPANICS IN TEXAS.

The Asian American population is growing rapidly in Texas. While most reports on Texas immigration focus on the growing Hispanic population, Asian American population growth is easily outpacing Hispanic population growth over the same time periods. For example, from 2000 to 2010, the Texas Asian American population grew 72.4 percent compared to the Texas Hispanic population, which grew 41.8 percent.³ More recently, reports estimate that from 2010 to 2016, the Texas Asian American population grew over twice as much as the Texas Hispanic population (35.5 percent versus 15 percent, respectively).⁴

Without doubt, the Texas Hispanic population is greater in raw numbers than the Texas Asian American population.⁵ And, quite naturally, in the majority of briefing involving Texas immigration issues, Appellees have effectively laid out

² The Declaration of Independence para. 2 (U.S. 1776).

³ Compare U.S. Department of Commerce, C2010BR-11, *The Asian Population: 2010* Table 2 (Mar. 2012), <https://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf>, with U.S. Department of Commerce, C2010BR-04, *The Hispanic Population: 2010* Table 2 (May 2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-04.pdf>.

⁴ Alex Ura, *Texas Hispanics behind half of state's growth since 2010*, The Texas Tribune (June 22, 2017 12:00 AM), <https://www.texastribune.org/2017/06/22/texas-hispanics-behind-half-states-growth-2010/> (compiling U.S. Census Bureau data).

⁵ See *id.* (citing U.S. Census Bureau data that estimates 10.9 million Hispanics and 1.3 million Asians in Texas as of 2016).

for this Court the numerous and substantial concerns relating to the negative impacts SB4 will have on the Texas Hispanic population.⁶ But because the Hispanic population is not the only immigrant group in Texas that will experience negative ramifications from SB4, this Court should be ever mindful of the daily burden of fear, uncertainty, and discrimination that SB4 will bring to the growing Asian American population.

B. TEXAS' LARGEST METRO AREAS ARE HOME TO A SIGNIFICANT NUMBER OF UNDOCUMENTED ASIAN AMERICAN IMMIGRANTS.

Given the high growth rate in Texas of the Asian American population, it is not surprising that much of that growth is centered in Texas' largest metro areas. In fact, almost 390,000 Asians and over 13,000 Pacific Islanders lived in the Dallas Metro Area as of 2010, representing the fastest growing minority communities in the metro area.⁷ Importantly, almost two-thirds (or 230,000) of the Asian American population was foreign-born, which was proportionally much higher than any other racial group in the area.⁸ The Houston Metro Area also has a significant and quickly growing Asian American population. As of 2010, nearly 430,000 Asians and over 10,000 Pacific Islanders lived in the Houston Metro Area,

⁶ *See, e.g.*, Brief of the Government of the United Mexican States as Amici Curiae.

⁷ Asian Americans Advancing Justice, *A Community of Contrasts* 23 (2014), https://advancingjustice-aajc.org/sites/default/files/2016-09/2014_Community%20of%20Contrasts.pdf (compiling U.S. Census Bureau data).

⁸ *See id.* at 27 (detailing that the Asian American foreign-born population is 65% and the Dallas MSA average is 17% as of 2010).

with growth rates that mirror the State's rate.⁹ Over two-thirds (or 260,000) of the Asian American population is foreign-born, which, like Dallas, is proportionally higher than any other racial group in the area.¹⁰

Furthermore, while no official estimate of the number of undocumented Asian American immigrants exists for these specific metro areas, studies from recent years estimate that between 1.3 million and 1.7 million Asian American undocumented immigrants live in the United States.¹¹ Previous studies have looked to this overall number and assumed consistent geographical distribution across the Asian American foreign-born population to estimate the number of Asian American undocumented immigrants in a given metro area.¹² Conducting the same analysis for Dallas and Houston, Dallas may have between 30,000 and 39,000 Asian American undocumented immigrants, and Houston may have between 39,000 and 50,000 Asian American undocumented immigrants.¹³ Of important note, the Houston metro area is home to a large, and growing, number of

⁹ *See id.* at 35; *supra* note 3.

¹⁰ *See id.* at 39 (detailing that the Asian American foreign-born population is 68% and the Houston MSA average is 22% as of 2010).

¹¹ U.S. Department of Homeland Security, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012*, (Mar. 2013) https://www.dhs.gov/sites/default/files/publications/ois_ill_pe_2012_2.pdf (estimating 1.3 million unauthorized immigrants living in the United States in 2012 originated in Asia); Center for Migration Studies, *State-Level Unauthorized Population and Eligible-to-Naturalize Estimates*, <http://data.cmsny.org/> (last visited Oct. 6, 2017) (estimating over 1.7 million unauthorized immigrants living in the United States in 2015 originated in Asia).

¹² *See supra* note 7 at 27, 39.

¹³ *See id.*

Muslim South Asians.¹⁴ For instance, Houston has the second-largest Pakistani population among metro areas nationwide.¹⁵

Summary Metro Area Population Chart¹⁶

| | Asian Population | Pacific Islander Population | Foreign-born Asian American Population | Undocumented Asian American Population |
|----------------|---------------------|--------------------------------|--|--|
| Dallas | 390,000 | 13,000 | 230,000 | 30,000-39,000 |
| Houston | 430,000 | 10,000 | 260,000 | 39,000-50,000 |

C. AS ENACTED, SB4 WILL DAMAGE ASIAN AMERICAN IMMIGRANTS.

Post-September 11, 2001, heightened profiling and harassment of Muslims and South Asians began across the United States. This profiling and harassment has only expanded in recent years, with hate crimes against, and detention of, minorities on the rise.¹⁷ Of course, profiling and harassment of the Asian American population is not a new phenomenon in the United States. The Chinese Exclusion Act of 1882, made permanent in 1902, was the first law ever enacted to permanently exclude a specific ethnic group from immigrating to the United States

¹⁴ In addition to the issues faced by both the Asian American and LGBT communities as noted in this amici brief, the high proportion of Muslim Asian immigrants adds yet another complicating factor to this analysis as Muslim individuals have been consistently targeted and held out as “the enemy” at the very highest levels of government. See E.A. Crunden, *Anti-Muslim hate crimes rock South Asian communities while Trump and Modi look away*, Think Progress (Apr. 3, 2017 12:02 PM), <https://thinkprogress.org/islamophobia-south-asia-trump-modi-b43a7eb0a6df/>.

¹⁵ See *supra* note 7 at 36.

¹⁶ Compiled information from *supra* notes 7-13.

¹⁷ Crunden, *supra* note 14.

based on race.¹⁸ During World War II, Japanese-Americans were forced into relocation and incarceration camps based on nothing more than being Japanese.¹⁹ Texas' SB4 echoes this shameful era of U.S. bans on Chinese immigrants and internment of Japanese-American citizens because, with overbroad drafting and vague requirements, law enforcement officers will have no choice but to comply with United States Immigration and Customs Enforcement (ICE) requests to target and detain immigrants.

This is not to say that every member of the Asian American community will suffer discrimination or detention. But the Asian American community is one that has experienced great discrimination in the past. And the size of this community is growing at an exponential rate. With that growth, it is only reasonable to believe that ICE officers will step up enforcement activities, which will lead to increased detentions, especially for those who are both Asian American and Muslim. For the same reasons expressed by Appellees, NQAPIA urges this Court to see the challenged provisions of SB4 for what they are – an attempt to grant broad powers to target minority populations that have a history of mistreatment in our country.

¹⁸ This law also excluded Chinese immigrants from applying for US citizenship and essentially legalized racial discrimination.

¹⁹ See Harry S. Truman Presidential Library & Museum, *The War Relocation Authority & the Incarceration of Japanese-Americans During World War II: Background*, https://www.trumanlibrary.org/whistlestop/study_collections/japanese_internment/index.php?action=bg (last visited October 14, 2017).

II. SB4 Will Exacerbate the Already Routine Targeting and Detention of Lesbian, Gay, Bisexual, and Transgender Immigrants.

Research suggests that an estimated 267,000 undocumented LGBT immigrants live in the United States.²⁰ Given the large number of undocumented immigrants living in Texas, it is not unreasonable to estimate that tens of thousands of those undocumented immigrants are members of the LGBT community.²¹ Historically, without regard to immigrant status, tensions among the LGBT population and law enforcement officials have run high.²² For the LGBT immigrant population—specifically those who are undocumented—such tensions have always run even higher, and SB4 will only intensify disputes.

Studies show that ICE officers “overwhelmingly use their discretion to detain LGBT immigrants.”²³ In 2014, only 25 percent of LGBT immigrants were released on community supervision despite the fact that ICE *could* have released

²⁰ Gary J. Gates, *LGBT Adult Immigrants in the United States* 1 (Mar. 2013), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTImmigrants-Gates-Mar-2013.pdf>.

²¹ Migration Policy Institute, *Profile of the Unauthorized Population: Texas*, <http://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/TX> (last visited Oct. 6, 2017) (estimating 1.47 million unauthorized immigrants live in Texas as of 2014).

²² See Christy Mallory, Amira Hasenbush, and Brad Sears, *Discrimination and Harassment by Law Enforcement Officers in the LGBT Community* 5 (Mar. 2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-and-Harassment-in-Law-Enforcement-March-2015.pdf>.

²³ Sharita Gruberg, *ICE Officers Overwhelmingly Use Their Discretion to Detain LGBT Immigrants*, Center for American Progress (Oct. 26, 2016 11:20 AM), <https://www.americanprogress.org/issues/lgbt/reports/2016/10/26/291115/ice-officers-overwhelmingly-use-their-discretion-to-detain-lgbt-immigrants/>.

70 percent of them.²⁴ This statistic only got worse in 2015, when ICE released only 10 percent of LGBT immigrants on community supervision, despite the fact that 82 percent were eligible for release.²⁵ If SB4 is enforced as enacted, Texas officials will lose much of their discretion and, instead, will be required to comply with ICE requests, which requests have a historically and disproportionately harsh impact on the LGBT community.

Indeed, while precise estimates are hard to come by, research indicates that of the over 400,000 people ICE detains each year, thousands are members of the LGBT community.²⁶ Of these thousands, many are asylum seekers and are placed in mandatory detention while awaiting their asylum hearings.²⁷ Consequently, “a significant number of LGBT asylum seekers languish in detention facilities each year.”²⁸

This is problematic for several reasons, foremost of which is the fact that undocumented LGBT immigrants face an increased risk of violence and

²⁴ *Id.* (obtaining information from a Freedom of Information Act request to U.S. Immigration and Customs Enforcement and reporting statistics based on individuals in ICE custody who expressed fear in detention based on LGBT status).

²⁵ *Id.*

²⁶ Crosby Burns et al., *Living in Dual Shadows: LGBT Undocumented Immigrants* 19 (Mar. 2013), <https://www.americanprogress.org/wp-content/uploads/2013/03/LGBTUndocumentedReport-5.pdf>.

²⁷ *Id.*

²⁸ *Id.*

harassment in immigration detention centers.²⁹ Additionally, while housed in detention centers, LGBT immigrants are not always provided with appropriate medical care such as hormone treatments or HIV medications, especially when they are transgender.³⁰

Furthermore, LGBT immigrants' countries of origin can be extremely dangerous for them,³¹ and SB4 increases the likelihood that they will be forced to return to those unsafe environments. And even if they are not forced to return, the fact of detention itself can be a traumatizing experience for refugee and asylum seekers fleeing violence in their home countries. Thus, as to a community that is already disproportionately targeted by federal immigration policy and enforcement, SB4 will only exacerbate targeting, detention, and deportation, while also exacerbating the harassment and trauma faced by LGBT immigrants on an unacceptably frequent basis.

²⁹ Liam Stack, *The Challenges That Remain for L.G.B.T. People After Marriage Ruling*, The New York Times (June 30, 2016), <https://www.nytimes.com/2016/07/01/us/the-challenges-that-remain-for-lgbt-people-after-marriage-ruling.html>.

³⁰ *Id.*

³¹ Aengus Carroll & Lucas Paoli Ramon Mendos, *State-Sponsored Homophobia* 8 (12th ed. May 2017), http://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf (classifying 72 countries around the world as “criminalizing States” and noting that the death penalty is allowed or evidenced as punishment for homosexual activity in eight countries).

III. SB4 Will Have a Disproportionate Impact on the Asian American LGBT Community.

Of the 267,000 undocumented LGBT immigrants in the United States, nearly 40,000 are also members of the Asian American community.³² In fact, studies comparing the LGBT undocumented immigrant population to the overall undocumented immigrant population show that the LGBT undocumented immigrant population is disproportionately Asian.³³ In other words, members of the Asian American community make up a larger percentage of the LGBT undocumented immigrant population than they do of the overall undocumented immigrant population.

Understandably, the same adverse impacts of discrimination, harassment, and violence discussed *supra* will also likely face those undocumented immigrants who identify as both Asian American and LGBT.³⁴ However, those impacts will likely be felt at an even higher frequency. After all, given their rising population numbers, Texas law enforcement officers will have no option but to comply with requests to target undocumented Asian American immigrants. Likewise, history shows that undocumented LGBT immigrants will be targeted for disproportionate treatment by ICE, and Texas law enforcement officers will have no choice but to

³² Gates, *supra* note 20, at 6.

³³ *See id.* at 3 (“Asians and Pacific Islanders comprise 15% of LGBT undocumented immigrants, somewhat higher than the 11% of that group among all undocumented immigrants.”).

³⁴ *See supra* Section I.C. and II.

comply with those targeting requests. If both the Asian American and LGBT communities, standing alone, will be targeted under SB4, one can only imagine the disproportionate treatment that will be visited upon individuals who are members of both communities. As researchers have recognized:

Undocumented LGBT immigrants face numerous challenges endemic both to their lack of immigration status and to their sexual orientation and gender identity. For those who are both LGBT and undocumented, this double minority status has compounding harmful effects on their social, economic, and psychological well-being that make them among our society's most vulnerable people.³⁵

Sanctioned official action based on nothing more than compounded suspicions is unacceptable. Yet, SB4 appears to authorize precisely that.

CONCLUSION

Treatment of the Asian American and LGBT communities has been historically grim. Implementation of SB4 as currently written risks promoting, rather than defeating, discrimination and harassment of these populations. This Court must take a critical look at the language of SB4 and consider the cascading ramifications of implementation of this flawed law as enacted. By doing so, this Court can ensure that SB4 does not assist in placing the State of Texas on the wrong and discriminatory side of history; and instead, ensure that all immigrants—

³⁵ Crosby Burns et al., *Living in Dual Shadows: LGBT Undocumented Immigrants* 8 (Mar. 2013), <https://www.americanprogress.org/wp-content/uploads/2013/03/LGBTUndocumentedReport-5.pdf>.

including Asian American and LGBT immigrants—are afforded basic human rights, and are protected from arbitrary law enforcement action.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(A)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(b) because:
 - * this brief contains 3,166 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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/s/ R. Alan York

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Dated: October 26, 2017

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service is being served with a copy of this document via the Court's CM/ECF system per Local Rule CV 5(a)(3) on October 26, 2017.

/s/ R. Alan York

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