

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

L.M.L., K.G.S., on behalf of themselves and all
those similarly situated,

Plaintiffs,

v.

FREEMAN F. MARTIN, in his official capacity
as Director of the State of Texas Department of
Public Safety,

Defendant.

Case No. 1:26-cv-01170

**MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION**

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INTRODUCTION

In separate litigation pending in this District, Texas’s S.B. 4—an unprecedented state-law immigration regime—has been enjoined since before its effective date. *See United States v. Texas*, 719 F. Supp. 3d 640 (W.D. Tex. 2024) (Ezra, J.). While a panel of the Fifth Circuit affirmed that injunction, 144 F.4th 632 (5th Cir. 2025), the en banc Court of Appeals subsequently vacated it, holding that the organizational and governmental plaintiffs in that suit lacked standing without reaching the merits, 2026 WL 1122127 (5th Cir. Apr. 24, 2026) (en banc). **That means that S.B. 4 will take effect when the mandate issues on May 15, 2026.**

But that standing decision does not remotely impact the correct conclusion reached by the district court and the *Texas* panel that S.B. 4 is both field and conflict preempted. Indeed, courts throughout the country have held that similar state laws establishing state deportation systems are unconstitutional. *See Iowa Migrant Movement for Just. v. Bird*, 157 F.4th 904 (8th Cir. 2025), *reh’g en banc denied*, 166 F.4th 688 (8th Cir. 2026); *Fla. Immigrant Coal. v. Uthmeier*, No. 25-11469, 2025 WL 1625385 (11th Cir. June 6, 2025) (denying application for stay); *Padres Unidos de Tulsa v. Drummond*, 785 F. Supp. 3d 993 (W.D. Okla. 2025); *Idaho Org. of Res. Councils v. Labrador*, 780 F. Supp. 3d 1013 (D. Idaho 2025) (“IORC”); *Fla. Immigrant Coal. v. Uthmeier*, 780 F. Supp. 3d 1235 (S.D. Fla. 2025); *United States v. Iowa*, 737 F. Supp. 3d 725, 751 (S.D. Iowa 2024). And the Supreme Court declined to stay the injunction of Florida’s version of S.B. 4’s entry-and-reentry crimes—with no noted dissents. *Uthmeier v. Fla. Immigrant Coal.*, 145 S. Ct. 2872 (2025) (mem.).

Plaintiffs bring this new action to challenge S.B. 4’s reentry and removal provisions on behalf of a putative class of individuals subject to arrest, detention, prosecution, and removal under its preempted terms. Plaintiffs and putative class members will face these unconstitutional harms

regardless of whether they have federal permission to live in the United States, and without access to the federally mandated removal process and protections. And communities will face the arrest and summary removal of loved ones, with widespread separation of families.

Because S.B. 4's reentry and removal provisions will take effect when the Court of Appeals' mandate issues, Plaintiffs seek this Court's prompt intervention. They respectfully request that the Court grant the accompanying motion for provisional class certification and enjoin the enforcement of Texas Penal Code §§ 51.03 and 51.04 and Texas Code of Criminal Procedure articles 5B.002 and 5B.003 on behalf of themselves and the putative class by May 15, 2026. Pursuant to Local Rule CV-7(i), counsel informed the Texas Attorney General's office of this motion, and it has not yet indicated a position.

BACKGROUND

A. The Federal Government Has Exclusive Authority to Regulate Immigration.

"The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens." *Arizona v. United States*, 567 U.S. 387, 394 (2012). In the Immigration and Nationality Act ("INA"), Congress created a complex system to regulate entry into and removal from the United States. *See generally* 8 U.S.C. §§ 1151–1382.

That scheme balances policy goals, including discouraging irregular entry between ports and providing for humanitarian and other protections. To do so, it offers federal officers a range of tools to regulate immigration, including civil immigration procedures and criminal charges.

On the civil side, Congress has specified categories of noncitizens who may be denied admission to the United States, *see* 8 U.S.C. § 1182, including those who enter between ports of entry, *see id.* § 1182(a)(6). To decide whether a person who entered without inspection at a port will be removed, Congress has established several alternative removal procedures, including full removal proceedings with trial-like processes subject to administrative and judicial appeals,

8 U.S.C. § 1229a, and expedited removal proceedings, a shortened form of proceedings applicable to recent border crossers, 8 U.S.C. § 1225(b)(1). On the criminal side, unlawful entry and reentry into the country are federal offenses, along with various other criminal regulations related to irregular entries. 8 U.S.C. §§ 1325, 1326; *see also, e.g.*, §§ 1321, 1323, 1324 (criminalizing the “unauthorized landing of aliens,” and “unlawful bringing of aliens” into the country).

Even as it rendered noncitizens entering between ports “inadmissible” and subject to criminal penalties, Congress enacted a range of protections that are available despite unlawful entry. Asylum, a form of humanitarian protection that can lead to permanent residence and eventually citizenship, is specifically available “whether or not” a noncitizen enters “at a designated port of arrival,” and “irrespective of such [noncitizen’s] status.” 8 U.S.C. § 1158(a)(1). Congress also barred federal officials from removing people to likely persecution or torture, in compliance with the United States’ obligations under international treaties. *See id.* § 1231(b)(3); Pub. L. No. 105-277, Div. G, Title XXII, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231). In addition, individuals who are placed in full removal proceedings may apply for other forms of relief Congress has extended, including cancellation of removal. 8 U.S.C. § 1229b(b). Noncitizens who have entered without inspection may also apply affirmatively for numerous other forms of relief outside of removal proceedings, including visas for victims of crimes and trafficking, 8 U.S.C. §§ 1101(a)(15)(U), 1101(a)(15)(T); temporary protected status, § 1254(a), and Special Immigrant Juvenile Status for noncitizens under 21 years of age, § 1101(a)(27)(J).

Given the complexities of the immigration system, federal discretion and control is vital. A “principal feature of the removal system is the broad discretion exercised by immigration officials.” *Arizona*, 567 U.S. at 396. Federal officials “decide whether it makes sense to pursue

removal at all.” *Id.* Federal officials choose among the several removal processes Congress established. *See Biden v. Texas*, 597 U.S. 785, 792 (2022). Federal officials decide whether to deploy the associated criminal immigration charges. *See Iowa*, 157 F.4th at 924. And once removal procedures have been initiated, federal officials decide whether to extend relief to otherwise removable noncitizens. *See, e.g., INS v. Yueh-Shaio Yang*, 519 U.S. 26, 30 (1996).

B. Texas Enacts S.B. 4 to Regulate Entry into and Removal from the Country.

S.B. 4 is a blatant attempt to supersede this complex federal system. It establishes new state crimes that criminalize irregular entry into the United States and direct state officers to effectuate deportations without any federal discretion or protection from removal.

As relevant here, S.B. 4 creates a new state “reentry” charge, applicable if a noncitizen enters, attempts to enter, or is at any time found in Texas after the person has been denied admission to, excluded, deported, or removed from the United States, or departed from the United States while an order of exclusion, deportation, or removal was outstanding. Tex. Penal Code § 51.03(a). There are no affirmative defenses for this crime. *Id.* A person can be prosecuted by Texas under this provision even if the United States authorized their reentry, even if they are in federal removal proceedings or seeking federal humanitarian relief, and even if they have lawful immigration status under federal law.

S.B. 4 also creates a mechanism for the State of Texas to unilaterally deport individuals from the United States. If a person is convicted under S.B. 4’s entry or reentry provisions, the state judge *must* enter an Order to Return, which requires the defendant to return to the foreign nation from which they entered. Tex. Code Crim. Proc. art. 5B.002(d). To push people to quickly accept state removal orders, a state magistrate or judge may alternatively enter an Order to Return at the beginning of prosecution if certain conditions are met. *Id.* Art. 5B.002(a)-(c). Refusal to

comply with an Order to Return is a state crime punishable by up to 20 years in prison; there are no affirmative defenses. Tex. Penal Code § 51.04. S.B. 4 provides that an “Order to Return” is, like federal deportations, a predicate for the State’s reentry crime. *Id.*

As to all of these offenses, S.B. 4 specifically prohibits “abat[ing] the prosecution . . . on the basis that a federal determination regarding the immigration status of the defendant is pending or will be initiated.” Tex. Code of Crim. Proc. Art. 5B.003.

STANDARD OF REVIEW

The substantive standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction. “A preliminary injunction should issue if the movant establishes: (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury . . . , (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.” *Speaks v. Kruse*, 445 F.3d 396, 399-400 (5th Cir. 2006).

ARGUMENT

I. S. B. 4 IS PREEMPTED.

S.B. 4 is preempted for the same reasons explained in the holdings of this Court and a panel of the Fifth Circuit, prior to the en banc standing ruling. It regulates entry and removal—an exclusively federal field. S.B. 4 also conflicts with federal law in numerous ways, eliminating immigration relief and federal discretion and interfering with foreign policy and Congress’s calibrated regulation of irregular entry.

A. S.B. 4 Intrudes on the Exclusively Federal Field of Entry and Removal.

In S.B. 4, Texas established an unprecedented state immigration system that entirely bypasses Congress’s comprehensive scheme. Texas has regulated and criminalized entry into the

United States; chosen for itself who will be permitted to remain in the country, what statuses will qualify as defenses to removal, and what procedures will apply; and claimed the power to deport noncitizens by ordering them to depart the United States on pain of severe additional punishment. But immigration is an exclusively federal power, and Congress has long occupied the field of entry and removal. S.B. 4 is field preempted.

Courts may infer field preemption from either a “federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject,” or “a framework of regulation ‘so pervasive . . . that Congress left no room for the States to supplement it.’” *Arizona v. United States*, 567 U.S. 387, 399 (2012) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). Here, both tests are satisfied. *See Fla. Immigrant Coal.*, 2025 WL 1625385, at *3 (citing “the federal government’s longstanding and distinct interest in the exclusion and admission of aliens, and the Immigration and Nationality Act’s extensive regulation of alien admission”); *Texas*, 719 F. Supp. 3d at 663-66; *Texas*, 144 F.4th at 667-77.

The federal interest in entry and removal is unquestionably dominant. “Policies pertaining to the entry of aliens and their right to remain here are entrusted exclusively to Congress.” *Arizona*, 567 U.S. at 409 (quoting *Galvan v. Press*, 347 U.S. 522, 531 (1954)) (cleaned up). Indeed, for 150 years—ever since Congress began systematically regulating immigration—the Supreme Court has been crystal clear: Regulation of entry into and expulsion from the United States are exclusively federal matters from which the States are excluded. *See, e.g., Chy Lung v. Freeman*, 92 U.S. 275, 280 (1875) (“The passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to Congress, and not to the States.”); *Truax v. Raich*, 239 U.S. 33, 42 (1915) (“The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal government.”); *Hines v. Davidowitz*, 312 U.S. 52, 62 & n.10

(1941) (noting the “continuous recognition by this Court” of “the supremacy of the national power . . . over immigration . . . and deportation”); *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948) (“The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States [and] the period they may remain,” and “the states are granted no such powers”); *De Canas v. Bica*, 424 U.S. 351, 354 (1976) (“Power to regulate immigration is unquestionably exclusively a federal power.”); *Arizona*, 567 U.S. at 409 (“the removal process is entrusted to the discretion of the Federal Government”).

That unbroken line of precedent is grounded in the principle that immigration powers are “inherent in [the] sovereignty” of the United States as a nation. *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892). The federal government’s sovereign authority includes the power “to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.” *Id.*; see also *Fong Yue Ting v. United States*, 149 U.S. 698, 705 (1893); *Arizona*, 567 U.S. at 394-95. States, by contrast, are not endowed with such “powers of external sovereignty.” *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 316-18 (1936); *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 16 (2025) (“the Federal Government’s broader sovereign authority” is “categorically different” than states’).

In light of this unbroken line of precedent, the Fifth Circuit has likewise recognized that entry, exclusion, and deportation are exclusively federal matters. See, e.g., *Texas v. United States*, 50 F.4th 498, 516 (5th Cir. 2022) (because “[p]olicies pertaining to the entry of aliens and their right to remain here are entrusted exclusively to Congress[,] [a]n attempt by Texas to establish an alternative classification system . . . would be preempted”) (cleaned up); *Villas at Parkside Partners v. City of Farmers Branch, Tex.*, 726 F.3d 524, 537 (5th Cir. 2013) (en banc). Other lower federal courts are in accord. See, e.g., *United States v. Alabama*, 691 F.3d 1269, 1293 (11th

Cir. 2012) (“The power to expel aliens has long been recognized as an exclusively federal power.”); *Lozano v. City of Hazleton*, 724 F.3d 297, 315 (3d Cir. 2013) (similar). Texas’s state courts recognize that “the matter of entry into the United States” is “wholly preempted by federal law,” *Hernandez v. State*, 613 S.W.2d 287, 290 (Tex. Crim. App. 1980), as are “matters involving deportation,” *Gutierrez v. State*, 380 S.W.3d 167, 176 (Tex. Crim. App. 2012).

Consistent with this dominant federal interest, Congress’s entry-and-removal regime is highly “pervasive.” *Arizona*, 567 U.S. at 399 (internal quotation marks omitted). Through the INA, Congress has established an exceptionally detailed, complex, and finely reticulated regulatory framework governing the inspection, admission, and removal of noncitizens seeking to enter the United States. *See, e.g.*, 8 U.S.C. §§ 1182, 1225, 1227, 1229c, 1229b, 1231; *see also Alabama*, 691 F.3d at 1294 (discussing “Congress’s comprehensive statutory framework governing alien removal”). Congress has specifically provided that the INA’s provisions shall be “the sole and exclusive procedure” for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States. 8 U.S.C. § 1229a(a)(3); *see Farmers Branch*, 726 F.3d at 537. To call the immigration statutes—and their implementing regulations and precedential administrative adjudications—comprehensive is an understatement; the immigration laws have “been described as second only to the Internal Revenue Code in complexity.” *Singh v. Gonzales*, 499 F.3d 969, 980 (9th Cir. 2007) (cleaned up). And Congress has frequently amended this statutory scheme, including multiple significant amendments to the provisions most relevant here. *See Ga. Latino All. for Hum. Rts. v. Governor*

of Ga., 691 F.3d 1250, 1263 n.10 (11th Cir. 2012) (discussing similar history of legislation to support field preemption).¹

In particular, Congress has extensively regulated individuals who enter between ports of entry—those whom Texas is attempting regulate through S.B. 4. On one hand, as explained, the federal scheme contains a variety of enforcement mechanisms. Congress has created multiple removal pathways, with detailed procedures and multiple layers of review by federal officials, including a special “expedited removal” system specifically for those who arrive at our borders without visas or other valid immigration documents. *See, e.g.*, 8 U.S.C. §§ 1225(b)(1) (expedited removal procedures), 1229, 1229a (regular removal procedures), 1231(a)(5) (reinstatement of removal). Congress has also criminalized entry and reentry between ports of entry, along with efforts to assist or facilitate entry between ports. *See id.* §§ 1325, 1326, 1323, 1324, 1327, 1328, 1329; *Ga. Latino All.*, 691 F.3d at 1264 (discussing the “larger context of federal statutes” addressing entry). And Congress has provided a detailed set of standards and procedures for when people who enter between ports may be arrested and detained by federal officials. *See, e.g.*, 8 U.S.C. §§ 1225(b), 1226(a)-(c), 1182(d)(5)(A). On the other hand, Congress has established numerous forms of relief from removal for people who enter between ports: Asylum is available “whether or not” a noncitizen arrives “at a designated port of arrival,” *id.* § 1158(a)(1), and can be accessed through multiple procedural channels, *see id.* § 1225(b)(1)(B), 1158(d); 8 C.F.R. § 208.4. Withholding of removal bars a person’s removal to any country where they face persecution or torture. *See* 8 U.S.C. § 1231(b)(3) and Note. And Congress has given federal officials “broad

¹ *See, e.g.*, Immigration and Nationality Act, Pub. L. No. 414, 66 Stat. 163 (1952); Refugee Act of 1980, Pub. L. 96–212, 94 Stat. 102; Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, Div. C, 110 Stat. 3009-546. Further changes are proposed in every Congress—and are often a focus of intense national political debate.

discretion” to decide whether it makes sense to detain, remove, or prosecute in the first place. *Arizona*, 567 U.S. at 396; 8 U.S.C. § 1103(a)(1), (a)(5).

Through these many intricate and interrelated provisions, Congress has established “a full set of standards governing” those who enter between ports, “including the punishment for noncompliance”—a system that is “designed as a ‘harmonious whole.’” *Arizona*, 567 U.S. at 401 (quoting *Hines*, 312 U.S. at 72). As such, “States may not enter” this field “in any respect,” and “even complementary state regulation is impermissible.” *Id.* at 401-02.

In sum, when it comes to regulating noncitizens’ entry into the United States, their permission to remain, and their removal, the case for field preemption is straightforward. S.B. 4 represents an extraordinary intrusion on the field of entry and removal of noncitizens, *see Texas*, 719 F. Supp. 3d at 666-68, and is therefore field preempted.

B. S.B. 4 Conflicts with the Federal Immigration System.

In addition, S.B. 4 is conflict preempted because it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress” in multiple respects. *Arizona*, 567 U.S. at 399 (quoting *Hines*, 312 U.S. at 67); *see Texas*, 719 F. Supp. 3d at 673-78; *Texas*, 144 F.4th at 677-86.

First, S.B. 4 obstructs federal law by eliminating federal immigration discretion and instead allowing state officers to unilaterally make immigration enforcement decisions. *See Iowa Migrant Movement for Just.*, 157 F.4th at 921-24 (state reentry law was preempted as “an obstacle to the exercise of the discretion that Congress gives federal officials charged with enforcing federal immigration law”).

S.B. 4 wrests from the federal government *all* discretion over the immigration processing, prosecution, and removal of noncitizens who reenter the United States between ports. “A principal

feature of the removal system is the broad discretion exercised by immigration officials.” *Arizona*, 567 U.S. at 396. Specifically, Congress has provided federal Executive Branch officials with a range of tools to address noncitizens re-entering the United States between ports. Federal prosecutors may choose to bring criminal charges under 8 U.S.C. § 1326; immigration officials may initiate ordinary removal proceedings, *id.* § 1229a, or expedited proceedings if applicable, *id.* § 1225(b)(1); and immigration agents or administrative hearing officers may exercise discretion to forego removal proceedings, defer removal, or take other discretionary action to ameliorate the potential harshness of the immigration laws. *See Arizona*, 567 U.S. at 396, 409. Such discretion “implicates not only ‘normal domestic law enforcement priorities’ but also ‘foreign-policy objectives.’” *United States v. Texas*, 599 U.S. 670, 679 (2023) (quoting *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 490-91 (1999)).

But under S.B. 4, *State* officers decide whether a noncitizen is prosecuted, detained, or removed. The statute thus blatantly “violates the principle that the removal process is entrusted to the discretion of the Federal Government.” *Arizona*, 567 U.S. at 409; *Farmers Branch*, 726 F.3d at 534 (same); *id.* at 546 (Dennis, J., specially concurring) (same). Indeed, the violation is even starker here than in *Arizona*, which involved state police conducting arrests but otherwise left the removal process in federal hands. *See Farmers Branch*, 726 F.3d at 534 (discussing *Arizona*). S.B. 4 “empowers [Texas] to contradict the policy decisions of Congress, and the policy decisions made with the discretion that Congress grants to federal immigration officials, frustrating U.S. law enforcement and foreign policy interests.” *Iowa Migrant Movement for Just.*, 157 F.4th at 923.

That “is not a decision for [Texas] to make.” *Alabama*, 691 F.3d at 1295. The Supreme Court and courts of appeals have rejected state efforts like this to make “unilateral” state decisions about immigration enforcement. *Arizona*, 567 U.S. at 410 (conflict preemption on these grounds);

see Farmers Branch, 726 F.3d at 530, 535 (cleaned up) (rejecting “unilateral state authority to prosecute as well as to detain” because “the federal government retains sole authority under the statute to prosecute, convict, and sentence offenders” for unlawful entry and reentry); *Alabama*, 691 F.3d at 1295 (statute conflict preempted where state had “taken it upon itself to unilaterally determine that any alien unlawfully present in the United States cannot live within the state’s territory, regardless of whether the Executive Branch would exercise its discretion to permit the alien’s presence”); *United States v. South Carolina*, 720 F.3d 518, 531-32 (4th Cir. 2013) (provisions preempted where they “improperly place in the hands of state officials the nation’s immigration policy, and strip federal officials of the authority and discretion necessary in managing foreign affairs”); *Ga. Latino All.*, 691 F.3d at 1265 (similar, emphasizing discretion of federal prosecutors over immigration crimes).

Second, S.B. 4 blatantly overrides federal decisions about who can reenter and remain in the United States. It criminalizes anyone who is “found” in Texas after a prior removal, Tex. Penal Code § 51.03(a), even if they had federal permission to reenter the country and reside in the United States. It’s hard to imagine a starker conflict with federal law. Under federal law, a noncitizen cannot be convicted of illegal reentry if she has obtained federal “consent” to again seek admission to the United States. 8 U.S.C. § 1326(a)(2)(A). But the new Texas law contains no such limitation. *See* S.B. 4 §51.03 (criminalizing noncitizen “found in this state after” she “has been . . . removed”); *cf.* S.B. 4 §51.02(c)(2) (providing affirmative defense, inapplicable to reentry crime, where “the defendant’s conduct does not constitute a violation of 8 U.S.C. Section 1325(a)”). The result is that people who the federal government has expressly permitted to return to the United States, and who have been granted long-term legal status, are nevertheless criminalized by Texas. *See Iowa Migrant Movement for Justice*, 157 F.4th at 921 (citing this conflict); *Farmers Branch*, 726 F.3d

at 531 n.9 (quoting *Alabama*, 691 F.3d at 1288) (rejecting “untenable expansion of the federal [reentry] provision”).

S.B. 4 similarly bypasses *all* of the defenses to removal that Congress has established. Perhaps most notably, as explained above, Congress carefully enshrined protection from persecution and torture as defenses to removal, specifically providing that such protections would be available to individuals who enter the country between ports of entry. *See* 8 U.S.C. §§ 1158(a)(1) (providing for asylum “whether or not at a designated port of arrival”), 1231(b)(3), 1231 Note; *see also INS v. Cardoza-Fonseca*, 480 U.S. 421, 436 (1987). And when Congress established the expedited removal system to address noncitizens arriving at our borders without valid visas, it took care to provide access to such humanitarian protections through the “credible fear” screening process. *See* 8 U.S.C. § 1225(b)(1)(A)(ii), (B); *Grace v. Barr*, 965 F.3d 883, 887, 902 (D.C. Cir. 2020) (discussing credible fear process). Other relief is also available in the federal system, including special protections for unaccompanied minors and victims of crime and trafficking. 8 U.S.C. § 1232; 8 U.S.C. § 1101(a)(15)(T)-(U).

Under Texas’s new immigration system, all this is wiped away. Noncitizens are arrested by state officers, held in state custody, and then ordered deported by state agents. Because this new process entirely sidesteps Congress’s removal system, noncitizens will be subjected to state removal without the opportunity to seek asylum or other forms of humanitarian protection available under federal law. Indeed, S.B. 4 makes this explicit, providing that a “court may not abate the prosecution of an offense under” its new criminal provisions “on the basis that a federal determination regarding the immigration status of the defendant is pending or will be initiated.” Tex. Code Crim. Proc. art. 5B.003; *see Iowa Migrant Movement for Just.*, 157 F.4th at 927 (rejecting same provision). And the reentry crime does not contain any exceptions—even for

people who are *granted* asylum by the federal government. *Cf.* Tex. Penal Code § 51.02(c) (providing affirmative defenses only for entry, not reentry, crime).

A state cannot simply take away people’s federal right to enter the country, remain in the country, or seek asylum and numerous other defenses to removal. Texas has impermissibly declared that noncitizens with prior removals “cannot be tolerated within its territory, without regard for any of the [federal] statutory processes or avenues for granting an alien permission to remain lawfully within the country.” *Alabama*, 691 F.3d at 1295.

Third, S.B. 4 also injects Texas directly into sensitive foreign policy matters reserved exclusively for the federal government. *See Iowa Migrant Movement for Justice*, 157 F.4th at 922-23 (explaining that a state reentry law “complicate[s] U.S. foreign relations”). Determinations regarding the entry into the United States by foreign nationals, and their removal from it, “touch on foreign relations,” and therefore “must be made with one voice.” *Arizona*, 567 U.S. at 409; *see also Jama v. ICE*, 543 U.S. 335, 348 (2005) (similar). Indeed, the obvious danger that unilateral state immigration regulation could “embroil us in disastrous quarrels with other nations” has for 150 years been a cornerstone of the doctrine (explained above) that “[t]he passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to Congress, and not to the States.” *Chy Lung*, 92 U.S. at 280; *see Hines*, 312 U.S. at 63-64 (similar). That risk is only heightened in this case, as the United States has negotiated and committed to humanitarian international commitments, and Texas now proposes to toss those agreements aside.

Here, that general interference with federal foreign affairs authority is heightened because S.B. 4 has already created a direct conflict with national policy towards Mexico. Under its terms, state judges order noncitizens—regardless of their nationality—“to return to the foreign nation from which the person entered,” on penalty of even more severe punishment. Tex. Code Crim.

Proc. Art. 5B.002(d). For all (or nearly all) defendants, that will be Mexico. *See* Tex. Penal Code § 51.02 (criminalizing entry into Texas “directly from a foreign nation” and not at a port). That “undermines the discretion of federal officials to decide who will be removed” and “conflicts with federal regulations over *where* to remove an alien to.” *Iowa Migrant Movement for Just.*, 157 F.4th at 925.

As the Supreme Court recently observed in rejecting another Texas effort to dictate immigration policy, given Mexico’s sovereignty even the federal government “cannot unilaterally return . . . migrants to Mexico.” *Biden v. Texas*, 597 U.S. 785, 806 (2022). The same is obviously true of Texas. As the Court explained, the federal government’s efforts to negotiate such returns with Mexico had “played a particularly outsized role in diplomatic engagements with Mexico, diverting attention from more productive efforts to fight transnational criminal and smuggling networks and address the root causes of migration.” *Id.* (internal quotation marks omitted). The Court rejected Texas’s proffered statutory interpretation, which would have “tie[d] the hands of the Executive” by allowing a court to supervise such foreign policy negotiations to obtain Mexican agreement. *Id.* Here, the interference with foreign policy is worse. Rather than supervising federal negotiations, S.B. 4 purports to cut the federal government out entirely, as it would be Texas—not the United States—either negotiating with Mexico or ignoring Mexico’s wishes and violating its sovereignty.²

² Notably, in response to S.B. 4’s passage, Mexico stated that it “categorically rejects any measure that allows state or local authorities to detain and return Mexican or foreign nationals to Mexican territory.” Government of Mexico, Press Release 476 (Nov. 15, 2023), <https://www.gob.mx/sre/prensa/mexican-government-opposes-the-anti-immigrant-legislation-passed-in-texas?idiom=en>; *see Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 382-85 (2000) (citing protests lodged by foreign nations as evidence that state statute interfered with federal foreign policy).

II. THE EQUITIES STRONGLY FAVOR AN INJUNCTION.

A. S.B. 4 Will Irreparably Harm Plaintiffs Absent Injunctive Relief.

Absent an injunction, Plaintiffs and members of the putative class will suffer irreparable harm by being placed at immediate risk of arrest, prosecution, detention, and removal under a state statute that is preempted by federal law.

L.M.L. is a lawful permanent resident who lives in Austin with his wife, daughter, and son. L.M.L. Decl. ¶¶ 2-3. His wife and daughter are both lawful permanent residents, and his son is a U.S. citizen. *Id.* ¶ 3. L.M.L. is the primary breadwinner and caretaker for his family due to his wife’s diabetes and high blood pressure, which make it difficult for her to work. *Id.* ¶ 8. K.G.S. is also a resident of Austin, where she lives with her two children, one of whom is a U.S. citizen. K.G.S. Decl. ¶ 3. K.G.S. has been approved for a U visa. *Id.* ¶ 7. She is the primary breadwinner and caretaker for her two children. *Id.* ¶ 8. Both L.M.L. and K.G.S. face arrest, prosecution, and removal if S.B. 4’s reentry and removal provisions go into effect. L.M.L. Decl. ¶¶ 5-6; K.G.S. Decl. ¶¶ 5-6.

“[T]he threatened enforcement of [this] preempted law” against the plaintiffs constitutes irreparable injury. *Villas at Parkside Partners v. City of Farmers Branch*, 577 F. Supp. 2d 858, 878 (N.D. Tex. 2008), *aff’d* 726 F.3d 524 (5th Cir. 2013) (en banc); *see also Iowa Migrant Movement for Just.*, 157 F.4th at 927 (similar); *Ga. Latino All.*, 691 F.3d at 1269 (similar); *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (similar). Preemption represents a “federal right to be free from” impermissible state regulation, *Murphy v. NCAA*, 584 U.S. 453, 479 (2018), and “the loss of constitutional freedoms for even minimal periods of time ... unquestionably constitutes irreparable injury,” *BST Holdings, L.L.C. v. Occupational Safety & Health Admin.*, 17 F.4th 604, 618 (5th Cir. 2021) (internal quotation marks omitted). Furthermore,

under S.B. 4, individuals will be arrested, prosecuted, and removed without any opportunity to raise federal defenses to removal. That harm is acute because S.B. 4 directs that noncitizens be removed to Mexico, where it is well documented that migrants face truly extraordinary dangers of abduction, rape, torture, and death. *See Roma Decl.*, Exh. 1-18 (documenting harms to asylum seekers in Mexico); *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 733 (D.C. Cir. 2022) (pointing to “stomach-churning evidence of death, torture, and rape” caused by policy of expelling migrants, primarily to Mexico). They will also be separated from their families, including their young children who need their caregiving support. *See Farmworker Ass’n of Fla., Inc. v. Moody*, 734 F. Supp. 3d 1311, 1339 (S.D. Fla. 2024).

B. The Balance of Equities and Public Interest Support an Injunction.

Any interest the State has in enforcement of S.B. 4 is far outweighed by the harms to plaintiffs, the putative class, and the public. *See Trans World Airlines, Inc. v. Mattox*, 897 F.2d 773, 784 (5th Cir. 1990) (finding states faced no injury from injunction of preempted regulation); *Alabama*, 691 F.3d at 1301 (“[W]e discern no harm from the state’s nonenforcement of invalid legislation”). States’ “[f]rustration of federal statutes and prerogatives [is] not in the public interest.” *Alabama*, 691 F.3d at 1301. That is particularly so where state action invades federal domains, and threatens “friction with foreign countries and weakening the effective diplomacy of the Executive Branch.” *Iowa Migrant Movement for Just.*, 157 F.4th at 929; *see Texas*, 144 F.4th at 687-88. And “there is a public interest in preventing [noncitizens] from being wrongfully removed, particularly to countries where they are likely to face substantial harm.” *Nken v. Holder*, 556 U.S. 418, 436 (2009); *see Texas*, 719 F. Supp. 3d at 699.

Even those who are not subject to S.B. 4 will reasonably fear being targeted and racially profiled. *See Ortega-Melendres v. Arpaio*, 836 F. Supp. 2d 959, 979-980 (D. Ariz. 2011).

Noncitizens and their families will fear that interaction with officials, to report crimes, or obtain assistance, will result in their removal. S.B. 4 will erode the public trust that governments have worked to create with migrant communities that is integral to public safety. *See Make the Road New York v. Pompeo*, 475 F. Supp. 3d 232, 270 (S.D.N.Y. 2020) (enjoining public charge rule because of chilling effect the rule had on immigrants seeking services).

In sum, the equities weigh the heavily in favor of a preliminary injunction.

CONCLUSION

The Court should grant a preliminary injunction enjoining enforcement of Tex. Penal Code 51.03 and 51.04 and Tex. Code Crim. Pro. arts. 5B.002 and 5B.003. It should enjoin Defendant Martin and his officer, agents, servants, employees, and attorneys, and all other persons who are in active concert or participation with them. Fed. R. Civ. P. 65(d)(2).³

³ The Court should require only a nominal bond of \$1. “The amount of security required pursuant to Rule 65(c) is a matter for the discretion of the trial court.” *Fellowship of Christian Univ. Students at Univ. of Texas at Dallas v. Eltife*, 806 F. Supp. 3d 662, 689 (W.D. Tex. 2025) (quoting *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996) (cleaned up). For all the reasons already explained, nominal bond is appropriate here. *See id.* at 689-90.

Dated: May 4, 2026

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*Pro Hac Vice Application Forthcoming
** Admission to Western District of Texas Pending
*** Application for Admission to Western District of Texas Forthcoming; barred in Texas and Arizona, not barred in the District of Columbia, practice supervised by a member of the D.C. Bar

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2026, I electronically filed the foregoing with the Clerk of Court by using the District Court CM/ECF system. I have also caused a copy to be emailed to the following attorneys with the Texas Office of the Attorney General: Ryan Kercher (Ryan.Kercher@oag.texas.gov); Kyle Tebo (Kyle.Tebo@oag.texas.gov); Munera Al-Fuhaid (Munera.Al-Fuhaid@oag.texas.gov); David Bryant (David.Bryant@oag.texas.gov).

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