No. 23A814

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, APPLICANT

v.

STATE OF TEXAS, ET AL.

REPLY IN SUPPORT OF APPLICATION TO VACATE STAY OF PRELIMINARY INJUNCTION

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In enacting Senate Bill 4 (SB4), Texas is attempting to "achieve its own immigration policy" by directly regulating the entry and removal of noncitizens. Arizona v. United States, 567 U.S. 387, 408 (2012). Under this Court's precedent and longstanding principles of field and conflict preemption, SB4 cannot stand. SB4 intrudes on a field of dominant federal interests that Congress has fully occupied. And it does so in a way that conflicts in multiple respects with the provisions of the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq. -- as Texas itself now tacitly recognizes by attempting to rewrite SB4 to mitigate the statute's obvious conflicts with federal law. For similar reasons, SB4 violates the Foreign Commerce Clause. And Texas cannot justify its unprecedented immigration law by purporting to be "engag[ing] in War" in response to an "actual[] inva[sion]." U.S. Const. Art.

I, § 10, Cl. 3. Unlawful immigration is not an invasion, and the State War Clause does not authorize a State to override Congress's considered response to that longstanding problem.

I. THE GOVERNMENT IS LIKELY TO SUCCEED ON THE MERITS

A. Federal Law Preempts SB4

The comprehensive federal framework regulating immigration occupies the field with respect to entry and removal. SB4 both impermissibly intrudes on that field and conflicts in numerous respects with federal law. SB4 is therefore preempted.

1. SB4 impermissibly intrudes into a field reserved to, and occupied by, the federal government

Texas cannot dispute that the entry and removal of noncitizens implicates dominant federal interests relating to immigration, foreign relations, and control of the Nation's border. Indeed, Texas quotes (Opp. 17) this Court's holding that "authority to control immigration -- to admit or exclude aliens -- is vested solely in the Federal Government." Truax v. Raich, 239 U.S. 33, 42 (1915) (emphasis added). And Texas likewise does not dispute that Congress invoked that authority in the INA, which comprehensively regulates the entry and removal of noncitizens.

Texas nonetheless asserts (Opp. 17) that States may "help enforce federal immigration laws" by enacting state laws that criminally punish unlawful entry and impose a state-administered process for removing noncitizens. That assertion directly contradicts this Court's decision in Arizona. There, the Court held

that when Congress enacts a comprehensive framework that provides a "full set of standards," "including the punishment for noncompliance," and designs that system to function "'as a harmonious whole,'" Congress "occupies [the] entire field," such that "even complementary state regulation is impermissible." Arizona, 567 U.S. at 401 (citation omitted). Such comprehensive federal regulation "reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards." Ibid. That is because in areas of dominant federal interests and extensive congressional regulation, the federal government must possess the exclusive authority to interpret and enforce the law, apply statutory exceptions, choose among enforcement options and sanctions, and take account of foreign relations. See id. at 402. "Permitting the State to impose its own penalties for the federal offenses here would conflict with the careful framework Congress adopted." Ibid.

In this respect, the Court in Arizona followed a long line of decisions barring parallel state-law enforcement, especially in fields fully occupied by federal law. 567 U.S. at 402 (citing Buckman Co. v. Plaintiffs' Legal Comm., 531 U.S. 341, 347-348 (2001); Wisconsin Department of Indus. v. Gould Inc., 475 U.S. 282, 288-289 (1986); In re Loney, 134 U.S. 372, 375-376 (1890)); see also California v. Zook, 336 U.S. 725, 730-731 (1949). For instance, the Court held in In re Loney, supra, that States have no power to punish perjury before a federal tribunal. The state

prosecution was impermissible not because federal and state perjury laws were substantively different, but because a federal witness's breach of his duty of truthfulness does not impair "any authority derived from the State." In re Loney, 134 U.S. at 374. And Loney distinguished that circumstance from cases where the Court had recognized that "the same act" may validly constitute "a violation of the laws of the State, as well as of the laws of the United States." Id. at 375. In those cases, unlike in Loney, the state statutes addressed issues of legitimate local regulation distinct from the federal offense. Ibid. (citing Fox v. Ohio, 46 U.S. (5 How.) 410 (1847); Gilbert v. Minnesota, 254 U.S. 325 (1920)).

The same principles apply here. Texas may prosecute a noncitizen who trespasses on private property, possesses illegal drugs, or otherwise violates generally applicable criminal laws that do not turn on noncitizens' immigration status. Whether or not the noncitizen violated federal law by entering illegally, all of those offenses are within the State's power to prevent and punish. Here, by contrast, compliance with federal entry and reentry provisions does not lie within any traditional police power of the State, but is instead a field of national concern occupied by Congress. Even parallel state regulation is therefore preempted.

Texas seeks to justify its unprecedented intrusion into federal immigration enforcement by noting that the INA allows some immigration-related roles for States. But the very fact that

Congress affirmatively authorized state participation in specified circumstances only further confirms that the States do not otherwise have such authority -- much less free rein to regulate entry and removal under state law. The provisions Texas cites (Opp. 17 n.4) underscore the particularized and limited circumstances in which Congress contemplated a role for States. Texas cannot identify any INA provision that invites States to adopt state immigration laws imposing criminal penalties for unlawful entry, to issue removal orders, or even to unilaterally engage in the enforcement of federal law. Rather, the INA provides a procedure by which, pursuant to a federal agreement, state law enforcement personnel may exercise the authority of a federal immigration officer after suitable training and with federal supervision. 8 U.S.C. 1357(g)(1)-(9). Absent such an agreement, state officers may "cooperate" with the Secretary of Homeland Security, 8 U.S.C. 1357(g)(10), by assisting in the arrest of noncitizens or similar measures under the INA. But such "cooperation" necessarily involves some "request, approval or other instruction from the Federal Government." Arizona, 567 U.S. at 410. As the district court recognized (Appl. App. 64a), Texas's assertion of "unlimited concurrent immigration authority" cannot be reconciled with those carefully cabined provisions. See Appl. 24.

Recognizing the force of this Court's holding in Arizona that the INA preempts even "parallel" state criminal penalties for failure to comply with the INA's registration requirements, see

567 U.S. at 401, Texas attempts (Opp. 18-19) to limit Arizona to its facts. According to Texas, the INA preempts state laws related to noncitizen registration, but would permit all 50 States to enact criminal penalties for unlawful entry and order the removal of noncitizens even to non-consenting countries. But Texas does not and could not argue that Congress's regulation of entry and removal is any less pervasive, comprehensive, or unified than its regulation of noncitizen registration. Just the opposite: To a far greater degree than noncitizen registration, the regulation of entry and removal is at the very core of the INA's comprehensive framework and is "vitally and intricately interwoven" with foreign affairs. Harisiades v. Shaughnessy, 342 U.S. 580, 588 (1952). Congress has thus occupied the field of entry and removal even more clearly than the field of noncitizen registration.

2. SB4 conflicts with federal immigration law

SB4 is also preempted because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Arizona, 567 U.S. at 399 (citation omitted). On its face, SB4 allows a single State to make unilateral determinations regarding unlawful entry and removal, resulting in imprisonment of noncitizens and orders requiring noncitizens to return to a non-consenting foreign country. In so doing, SB4 disrupts the "delicate balance" embodied in the INA by placing noncitizens in state rather than federal custody, displacing federal authority to determine whether to bring criminal prosecutions

prior to pursuing removal proceedings or expedited removal, and imposing a truncated removal process that materially differs from the processes Congress established under the INA. See Buckman, 531 U.S. at 348; see also Arizona, 567 U.S. at 406. Those disruptions are particularly problematic because of the implications for foreign affairs and the need for the Nation to speak "with one voice" on such matters. Arizona, 567 U.S. at 409.

Perhaps recognizing that SB4 is indefensible by its terms, Texas attempts to rewrite the law its legislators enacted. Texas now claims (Opp. 21) that rather than providing for removal, SB4 "merely requires that an alien be transported to a port of entry, at which point the alien's potential removal is a question for federal immigration officers." And for the first time in this litigation, Texas now asserts (Opp. 23) that noncitizens subject to removal orders will be "placed in custody of federal officials" when transported to the port of entry. But SB4 says no such thing. Rather, SB4 provides for the issuance of a written order that "require[s] the person to return to the foreign nation from which the person entered or attempted to enter." Tex. Code Crim. P. art. 5B.002(c); see id. art. 5B.002(d). And as Texas must acknowledge (Opp. 21), the law requires a state officer to "monitor[] compliance with the order." Art. 5B.002(e)(2). Texas's declarant avers that a state officer will "observe the alien go to the Mexican side" and only "[u]pon witnessing the aliens cross to the Mexican side of the international bridge" will Texas "consider

the aliens to have complied with the return order and will cease monitoring the alien." Opp. App. 36a. And refusal to comply with the order is a second-degree felony, Tex. Penal Code § 51.04, punishable by fines up to $10,000 and two to 20 years of imprisonment, Tex. Penal Code § 12.33(a). There is thus no hyperbole in the district court's recognition that noncitizens subject to removal orders under SB4 must "either depart into Mexico or * * * face 20 years in prison." Appl. App. 45a.

That state procedure plainly conflicts with, and indeed supplants, the federal removal regime. It would prevent the federal government from deciding which grounds for removal to charge and whether various forms of relief or protection should be granted, even when the Nation's treaty commitments are at stake. By the same token, it would displace the INA's procedures with respect to expedited removal, see 8 U.S.C. 1225(b)(1), as well as formal removal proceedings, which include a right to hearings before an immigration judge and the opportunity to seek any relief or protection from removal for which a noncitizen is eligible, see 8 U.S.C. 1229a(a)(3). And it would ignore the INA's procedures for determining how and to which country noncitizens may be removed. See 8 U.S.C. 1231(b).

Texas asserts (Opp. 21) that SB4 would not prevent a noncitizen from seeking asylum or other relief from removal. But again, SB4 says otherwise. In a provision Texas barely mentions, SB4 expressly prohibits a state court from "abat[ing] [a] prosecution"

on "the basis that a federal determination regarding the immigration status of the defendant is pending or will be initiated." Tex. Code Crim. P. art. 5B.003. A noncitizen could thus be removed under SB4 without the opportunity to seek asylum or other protections from removal, which would be unavailable after the noncitizen is removed. See, e.g., 8 U.S.C. 1158(a)(1) (providing that a noncitizen be physically present in the United States or arrive at a port of entry to apply for asylum).

Despite those conflicts between SB4 and federal law, Texas compares (Opp. 23) SB4 to the prosecution of noncitizens under state trespass law and asserts (Opp. 20) that SB4 is not preempted under this Court's reasoning in Kansas v. Garcia, 140 S. Ct. 791, 806 (2020). Those arguments fail. Kansas involved a generally applicable law -- like Texas's criminal trespass law -- that applied to "citizens and aliens alike." 140 S. Ct. at 798. Applying such a general law to noncitizens is far afield from enacting and enforcing a law that specifically targets noncitizens and regulates their entry and removal in a way that conflicts with and frustrates the INA's comprehensive regime.

Texas next asks (Opp. 21-22) the Court to assume that it will implement the law in a way that maximizes cooperation with the federal government and suggests that any conflicts can be the subject of a federal preemption defense in particular criminal prosecutions. But SB4 does not set out a cooperative scheme at all. It allows the State to arrest, prosecute, and remove a

noncitizen under state law and without any federal involvement or oversight. As this Court has recognized, such a law goes far beyond any "coherent understanding" of cooperation. Arizona, 567 U.S. at 410. And as in Arizona, the fact that noncitizens could raise a preemption defense in criminal proceedings cannot save SB4 from facial invalidation. The state proceedings themselves are an impermissible intrusion on the federal scheme because no state prosecution under SB4 is consistent with federal law.

Nor can Texas prevail by invoking (Opp. 24) the canon of constitutional avoidance. As the district court explained (Appl. App. 58a), that canon "comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction." Jennings v. Rodriguez, 583 U.S. 281, 296 (2018) (citation omitted). There is no ambiguity in SB4. It is flatly inconsistent with federal law in all its applications, and it is therefore preempted on its face.[1]

B. SB4 Violates The Foreign Commerce Clause

SB4 also violates the Foreign Commerce Clause. "Foreign commerce is pre-eminently a matter of national concern." Japan Line,

[1] For similar reasons, the district court did not err in holding that the provisions of SB4 are not severable. See Appl. App. 110a-112a. The three provisions the government challenged are preempted in all their applications. The remaining provisions are ancillary to those provisions and involve "supervision or parole of defendants under SB4," "require[] criminal databases to include offenses under SB4," or address severability and the law's effective date. Id. at 111a n.55. The district court properly held that those provisions are "nullified by the underlying injunction on the criminal prohibitions themselves." Ibid.

Ltd. v. Los Angeles Cnty., 441 U.S. 434, 448 (1979). Enactment and enforcement of state laws concerning entry and removal from the United States would prevent the Nation from "speaking with one voice" on those core subjects of national authority. Id. at 451.

Texas denies (Opp. 25) that the movement of persons qualifies as commerce. But this Court has repeatedly held that it does. See Covington & Cincinnati Bridge Co. v. Kentucky, 154 U.S. 204, 218-219 (1894); Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 255-256 (1964); United States v. Guest, 383 U.S. 745, 758-759 (1966). And because SB4 unambiguously regulates persons moving across the Nation's border with Mexico, it regulates foreign commerce and must comply with the relevant limits on States' authority.

Texas also claims (Opp. 24) that States may exercise their police powers even when those powers have consequences for foreign affairs, citing Medellin v. Texas, 552 U.S. 491 (2008). But Medellin concerned whether a treaty provision was self-executing and therefore had domestic legal effect on the State's prosecution of a Mexican national for murder. Id. at 501-505. That question, and the foreign policy effects of a state law regulating purely domestic conduct more generally, have no bearing on the validity of a state law that directly regulates foreign commerce in an area "of national concern." Japan Line, 441 U.S. at 448. SB4 thus undermines the federal government's ability to achieve "federal uniformity" in its relations with foreign governments. Ibid.

C. Texas's Reliance On The State War Clause Is Without Merit

Contrary to Texas's argument (Opp. 25-31), the State War Clause provides no basis for SB4. As our application explains (Appl. 32-35), Texas has not been "actually invaded" within the meaning of that Clause; the Clause's "actually invaded" exception does not, in any event, allow Texas to disregard other constitutional limits, including the Supremacy Clause; and the exception does not give States authority to overrule federal decisions about how (and whether) to "engage in War." Texas's attempts to address those flaws all fail.

1. Texas makes no serious effort to defend its position below that an influx of unlawful immigration, by itself, constitutes an "inva[sion]" within the meaning of the State War Clause. Opp. 29; see Appl. 32-33 & n.4 (addressing that position). Instead, Texas now focuses almost exclusively (Opp. 28) on criminal cartels, arguing that the cartels have "actually invaded" the State and that the Clause therefore authorizes enforcement of SB4 as to armed cartel members. But Texas cannot seriously maintain that SB4 is an attempt to address cartel activity, or that misdemeanor prosecution and removal under SB4 would be an appropriate response to violent crime by cartel members. The State can already invoke other, constitutional criminal laws to reach those serious criminal activities.

In any event, Texas's argument is incorrect. As the district court explained, Founding-era dictionaries and usage make clear

that the phrase "actually invaded" referred to military occupation or open, armed hostilities carried out in opposition to a civil government. Appl. App. 70a-88a; see Padavan v. United States, 82 F.3d 23, 28 (2d Cir. 1996) (holding that "invasion" entails "expos[ure] to armed hostility * * * that is intending to overthrow the state's government"); California v. United States, 104 F.3d 1086, 1090-1091 (9th Cir.) (similar), cert. denied, 522 U.S. 806 (1997); New Jersey v. United States, 91 F.3d 463, 468 (3d Cir. 1996) (similar). Texas faces no such military occupation or opposition to civil government today, nor any concerted intrusion of a comparable nature. To be sure, criminal cartels operating in Texas pose a serious threat to public safety, and therefore warrant a strong law-enforcement response. But their activities smuggling migrants, drugs, and contraband into the State do not qualify as an "actual[] inva[sion]" of the sort that authorizes Texas to "engage in War" in response. U.S. Const. Art. I, § 10, Cl. 3.

James Madison's speech during the Virginia ratifying convention, on which Texas relies heavily (Opp. 26-27, 29-30), confirms that conclusion. Contrary to Texas's implication (ibid.), Madison did not suggest that smuggling activities qualified as an "invasion." Instead, Madison's remarks were offered in defense of the federal government's authority to call out the militia, rather than a standing army, to "execute the Laws." U.S. Const. Art. I, § 8, Cl. 15. Madison explained that "[t]he Constitution does not say that a standing army shall be called out to execute the laws,"

and argued that the "more proper" way of ensuring the laws are executed is for "[t]he militia * * * to be called forth to suppress smugglers." 3 The Debates in the Several State Conventions on the Adoption of the Federal Constitution 414 (Jonathan Elliot ed., Washington, D.C., 2d ed. 1836), https://perma.cc/R7ZP-NRSD. Far from supporting Texas's view that smuggling qualifies as an "inva[sion]" to which States may respond by "engag[ing] in War," U.S. Const. Art. I, § 10, Cl. 3, those remarks demonstrate that the Founders viewed smuggling as an issue to be addressed through the robust "execut[ion] of the laws" -- i.e., a matter for law enforcement. U.S. Const. Art. I, § 8, Cl. 15.

The handful of other historical examples Texas identifies (Opp. 27-28) are likewise inapposite. Texas notes, for instance, that the U.S. Army pursued Pancho Villa into Mexico in 1916. Opp. 27. But the Army did so only after Villa led a force of nearly 500 men on a raid of an American border town and barracks in a deliberate attempt to provoke a military confrontation between the United States and Mexico. See Jeff Guinn, War on the Border: Villa, Pershing, The Texas Rangers, and An American Invasion 1-7, 153-159 (2021). Similarly, when Texas itself sent men into Mexico in the mid-19th century, it did so primarily in pursuit of forces led by Juan Cortina that had previously captured the American city of Brownsville, and which later sent large raiding parties across the Rio Grande to plunder towns and ranches near the border before fleeing back to Mexico. See H.R. Rep. No. 343, 44th Cong., 1st

Sess. at III-IV, 13-15 (1876). Even assuming that those historical examples involved invasions of the sort that would justify "engag[ing] in War," Texas cannot -- and does not -- contend that cartels are carrying out comparable attacks on its cities today.

2. In any event, Texas fails to show that the "actually invaded" exception would authorize enforcement of SB4 even if it applied. As the district court recognized, an invasion temporarily exempts a State from the prohibition on engaging in War, but it "is not an unlimited grant of power" and does not authorize States to violate other constitutional restrictions. Appl. App. 88a. It therefore cannot save SB4 from invalidity under the Supremacy Clause and Foreign Commerce Clause.

Pointing to this Court's decision in Moyer v. Peabody, 212 U.S. 78 (1909), Texas renews its argument that "the greater power to wage war against invaders and insurrectionists includes the lesser power to 'arrest' them." Opp. 29 (quoting Moyer, 212 U.S. at 84). But Moyer simply recognized that temporary executive detention of persons involved in an insurrection did not violate the Due Process Clause because "what is due process of law depends on circumstances." 212 U.S. at 84; see id. at 84-85. Moyer did not suggest that the Due Process Clause ceases to apply when an invasion or insurrection is declared, let alone that other constitutional provisions lose effect.[2]

[2] Moyer also does not support Texas's claim that it has "exclusive authority to decide" whether an invasion has occurred.

3. Texas also argues that under the State War Clause, a State "is not required to obtain Congress's 'consent'" and thus can act without regard to "federal statutory law." Opp. 30 (quoting U.S. Const. Art. I, § 10, Cl. 3). But while the State War Clause authorizes a State that has been "actually invaded" to "engage in War" without waiting for the affirmative "consent of Congress," U.S. Const. Art. I, § 10, Cl. 3, it does not authorize States to contradict the federal government's considered decision about whether and how to respond to an alleged invasion. Here, the INA comprehensively addresses the subject of the unlawful entry of noncitizens and specifically provides a mechanism for the Secretary to authorize state and local law-enforcement officers to exercise the powers conferred by the INA in the event of a "mass influx of aliens." 8 U.S.C. 1103(a)(10). It does not allow for unilateral immigration enforcement by a State under state law.

As we explained (Appl. 31-32), the State War Clause reflected the Founders' concern that "'bordering States . . . under the impulse of sudden irritation, and a quick sense of apparent interest or injury[,]' might take action that would undermine foreign relations." Arizona, 567 U.S. at 395 (quoting The Federalist No. 3, at 39 (John Jay) (Clinton Rossiter ed., 2003)). Given that purpose, it simply is not plausible to suppose, as Texas argues

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Opp. 30 (citing Moyer, 212 U.S. at 83-85, and Rucho v. Common Cause, 139 S. Ct. 2484, 2495-2496 (2019)). The Court in Moyer simply held that a governor could not "be subjected to an action [for damages] after he is out of office" based on a good-faith declaration of an insurrection. 212 U.S. at 85.

(Opp. 30-31), that the Clause gives Texas an unreviewable right to declare that it has been invaded and to then engage in war over the direct objection of the national government. See Appl. 18-19 (discussing extraordinary implications of that argument).

D. The United States May Seek Equitable Relief To Protect Federal Interests From Unconstitutional State Laws

Texas is likewise wrong in arguing (Opp. 11-15) that the United States cannot seek judicial relief to prevent Texas from enforcing an unconstitutional law that would directly intrude into or impair federal operations and interests.

Contrary to Texas's assertion (Opp. 12), the United States is not seeking to assert "a cause of action under the Supremacy Clause." Instead, the United States has brought the very sort of action that this Court recognized as appropriate in Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320 (2015): A suit in equity to obtain "injunctive relief" against "state regulatory actions [that are] preempted." Id. at 326 (citing Ex parte Young, 209 U.S. 123, 155-156 (1908)); see id. at 326-327.

Texas argues (Opp. 13) that this suit has no precise parallel in equitable practice, and therefore cannot proceed, because there is no tradition of "federal officers * * * bring[ing] a claim in equity to enforce the Supremacy Clause." But Arizona involved an identical resort to equity, as did numerous other cases discussed by the district court. Appl. App. 29a. More broadly, this Court has not approached the United States' right to resort to equity in

the crabbed way Texas proposes. The Court has described a "general rule that the United States may sue to protect its interests," Wyandotte Transp. Co. v. United States, 389 U.S. 191, 201 (1967), based on the fundamental principle that "[e]very government * * * has a right to apply to its own courts for any proper assistance in the exercise of [its powers] and the discharge of [its duties]," In re Debs, 158 U.S. 564, 584 (1895). Texas seeks to limit that rule to cases seeking to "abate a public nuisance connected with federal proprietary interests," prevent "trespass[es]," or "quiet title." Opp. 13-14. But this Court has never recognized such limits, and the fundamental principles on which it has relied are not so confined. See, e.g., Debs, 158 U.S. at 584-586.

To the extent further historical precedent were necessary, this Court's Ex parte Young doctrine would supply it. Under that doctrine, parties that are directly affected by enforcement of an unconstitutional state law may sue in equity to obtain an injunction barring that enforcement. See, e.g., Virginia Office for Prot. & Advocacy v. Stewart, 563 U.S. 247, 255 (2011). That describes this case perfectly. Texas argues that such suits were historically brought by "'private parties,'" not "the federal government." Opp. 14-15 (citation and emphasis omitted). But less than three years ago, Texas acknowledged that Debs and related decisions establish at least that "the United States can * * * assert the same causes of action available to private individuals." Br. of State Respondents at 51, United States v. Texas, 595 U.S.

74 (2021) (per curiam) (No. 21-588). And in Stewart, the Court expressly rejected any limitation of the Ex parte Young doctrine to suits by private parties. 563 U.S. at 256.

II. THE EQUITIES OVERWHELMINGLY FAVOR VACATUR OF THE STAY

Finally, Texas fails to show that the district court erred in balancing the equities here. See Opp. 32-34.

SB4 would cause significant harm to the United States. As explained above, Texas cannot credibly dispute that SB4 will result in orders removing tens of thousands of noncitizens to Mexico, including many who are not Mexican nationals. See pp. 7-9, supra; see also 23-cv-1537 D. Ct. Doc. 30-3, at ¶ 10 (Jan. 12, 2024) (describing estimates by Texas official that SB4 will result in between 75,000-80,000 arrests a year). Based on information provided by the State Department, the district court found that such removals could "irreparably derail[]" ongoing diplomatic discussions about how to reduce irregular migration and interfere with the United States' "paramount interest in maintaining a strong diplomatic relationship with Mexico." Appl. App. 102a, 104a. Texas dismisses that finding as "[s]peculation," Opp. 33, but this Court has recognized that requiring such removals would "impose[] a significant burden upon the Executive's ability to conduct diplomatic relations with Mexico." Biden v. Texas, 597 U.S. 785, 806 (2022). Texas ignores this Court's treatment of the issue.[3]

[3] Texas also vaguely asserts (Opp. 33 n.8) that at a hearing last week in a different case, one of the other declarants

Texas also fails to grapple with the many other harms that enforcement of SB4 would inflict. Texas does not dispute, for example, that enforcement of SB4 could likely cause the United States to violate its treaty obligations regarding nonrefoulement. See Appl. 39; see also Sanitary Dist. v. United States, 266 U.S. 405, 425 (1925) (affirming injunction based in part on United States' need "to carry out treaty obligations to a foreign power"). Nor does Texas address SB4's interference with federal immigration proceedings. See Appl. 39-40. And it ignores the chaos that could result if this Court (or the Fifth Circuit) declared SB4 preempted after Texas had already arrested, detained, prosecuted, or removed thousands of noncitizens while this case was proceeding.

Texas appears to suggest (Opp. 1, 7) that those harms could be short-lived because the Fifth Circuit has expedited the appeal. But Texas cannot dispute that the Fifth Circuit has -- without any analysis -- dramatically altered the status quo by issuing a stay that will permit SB4 to take effect absent relief from this Court. Far from constituting a "routine practice" (Opp. 7 n.3), that stay would allow SB4 to cause significant harm by fundamentally altering the roles of the United States and the States in the context of

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cited by the district court "testified that his declaration filed in this litigation relied on speculation." A transcript of that hearing is not yet available, but this Office understands the testimony in question to have concerned a Department of Homeland Security official's predictions about the potential effect of SB4 on noncitizens' choices regarding where to cross into the United States -- an issue that the district court addressed in just four sentences of its 114-page opinion. See Appl. App. 105a-106a.

immigration enforcement.

Texas itself, meanwhile, will not suffer any significant cognizable harm if the preliminary injunction remains in place during the pendency of the litigation. It claims that SB4 is necessary "to prevent the illegal entry of aliens at the Mexican border," Opp. 33 (citation omitted), but the district court recognized that the law may actually have the opposite effect by interfering with bilateral and regional efforts, Appl. App. 103a-105a. And in any event, the preliminary injunction merely maintains the status quo that has been in place since Texas became a State more than 150 years ago.

CONCLUSION

This Court should vacate the stay entered by the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted.

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