



January 29, 2024

Submitted via email

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

The Honorable Alejandro Mayorkas
Secretary, U.S. Department of Homeland Security
2707 Martin Luther King Jr Avenue, SE
Washington, D.C. 20528

Re: Supporting Texas's Efforts to Secure the Border

Dear President Biden and Secretary Mayorkas:

America is facing an unprecedented border crisis. Since Inauguration Day, more than six million illegal immigrants have crossed the southern border. That is effectively adding the population of Iowa and Utah to our country in less than three years. The federal government has failed to stanch this flow.

We undersigned attorneys general, from Iowa, Utah, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, Ohio, South Carolina, South Dakota, Tennessee, Virginia, West Virginia, and Wyoming and the leadership of the Arizona State Legislature, now write given our unique perspective and expertise in law enforcement and border related issues. [Governor Abbot's efforts](#) to secure our border, and Attorney General Paxton's work defending those efforts, must be supported rather than opposed. We are a nation of laws. And without a border, we would quickly cease to be a nation at all.

Texas's efforts to support the border do not violate the recent Supreme Court order in *Department of Homeland Security v. Texas*. Further, States

have an independent duty to defend against invasion. Finally, the crisis at the border requires the Executive Branch to enforce the law.

The current lawsuit

Through its Operation Lone Star, intended to “aid Border Patrol in its core functions,” Texas sent manpower to the southern border and built physical barriers to prevent some of the millions of illegal crossings. Some of these barriers are made with concertina wire, placed on Texas landowners’ land with their permission. In some places with the wire, illegal border crossings dropped by more than two-thirds. Texas often placed this wire in collaboration with Border Patrol itself.

That leads to the current legal dispute between the federal government and Texas—with the former trying to destroy border barriers and Texas trying to build them. Under the most recent Supreme Court order, both can continue.

The federal agencies that act at your direction have since flipflopped on wanting a secure border, particularly in Eagle Pass, Texas, a city with a population of fewer than 30,000. Border Patrol repeatedly cut holes in the wire to let illegal immigrants into the country. In one month, it did so more than twenty times. In one instance, Border Patrol used a forklift to lift the wire to let more than 300 people crossing the Rio Grande into Texas. That is when Texas sued.

The district court found that the federal government was ignoring its duty to protect the border and that many of its arguments were cynical and disingenuous. It found not only that the facts stated above were true, but that Border Patrol could access both sides of the wire without compromising the barrier it created. It therefore ordered the federal government not to cut, crush, or forklift Texas’s wire.

The Supreme Court has not overturned any of the district court’s factual findings. Instead, it issued, without explanation, a 5-4 order pausing the injunction against the federal government. Federal agents are no longer prohibited by a court order from destroying Texas’s wire—but neither has Texas been ordered to stop repairing or replacing the wire. As lawyers yourselves, you must know that [reports](#) that Texas is ignoring or “[defying](#)” the Supreme Court are wrong, either misunderstanding or deliberately misstating the law. Even [far-left law professors](#) admit, “There’s no way Abbott could defy that ruling.” The Supreme Court’s order did not tell Texas that it could or could

not do anything. Texas should be applauded for continuing to try to protect the border despite the federal government now, again, being able to try to destroy the barriers Texas builds.

Texas’s building barriers to secure its 1,200-mile border reflects its duty to defend against invasion.

States must be able to defend themselves from invasion. No one seriously contests that point. Article I, section 10, clause 3 lays out the circumstances that States may act to defend themselves in a crisis—including when they are “actually invaded.” Justice Scalia said it best in his dissent in *Arizona v. United States*: States have a “sovereign interest in protecting their borders.” Right now cartels, terror groups, and other bad actors are taking advantage of the chaos by the border to orchestrate a mass influx of people. [Gangs](#) are using the flood of people to hide their “[predator](#)” members as they enter the United States.

Millions of people illegally coming into Texas as part of a coordinated assault on our border is an invasion. No State, not even Texas, can handle such an influx of people. And no one—not Texas, not the United States—knows whether any person illegally crossing the border is engaging in additional criminal activity. For example, the [New York Times reports](#) that an “increasing number of [illegal] migrants arrested at the southern border over the past year are on the United States’ terrorist watch list.”

The federal government should be working to stop this crisis, but it is not. And the Constitution’s Guarantee Clause requires that the federal government do so. It must “protect each [State] against invasion.” But it has abandoned its duty. Nothing in the Constitution stops Texas from stepping up and doing its part to protect itself, and in so doing also protecting States across the country. To those that contend this power belongs only in Congress, they should take that up with [Speaker of the House Mike Johnson](#), who stands with Texas. By following the Constitution, Texas is doing what the federal government has failed to do.

Texas’s efforts are necessary attempts to stop the ongoing border crisis.

Your Administration is doing more than impeding Texas’s attempts to enforce the law. Indeed, your Administration is helping individuals complete their illegal entry into the United States. It is this Administration’s policies

that have magnetized the southern border to attract ever greater numbers into attempting illegal immigration. It is this Administration's deliberate refusal to enforce immigration law—indeed, its deliberate subversion of that law to grant to illegal immigrants benefits to which they are legally barred—that has encouraged millions of people to place themselves in hock to murderous criminal cartels; at the mercy of rapists; and into the hands of modern-day slavers, as these sex- and child-traffickers are more properly called. DHS has still failed to account for over [85,000 missing children](#), many “placed in the hands of probable traffickers by HHS.”

As only two examples, your administration's [Circumvention of Lawful Pathways](#) rule turns the presumptions in our asylum system on their head and uses the federal government's own resources to facilitate illegal immigration into the U.S., and your expansion of work authorization for those paroled into the U.S. (paroles that are themselves violations of federal law) even further increases the incentives for illegal immigrants to risk themselves on a task that federal law explicitly bans. Until you reverse the policies that tell people they will be rewarded for their attempts to violate American immigration law, your Administration engenders the very human misery it purports to oppose.

What happens at the border does not stay at the border. That is why [25 governors](#) signed a statement supporting Texas. Reports [from around](#) the country show migrants sleeping in public facilities and airports. A New York school's housing migrants led to a [justified backlash from parents](#) whose children were forced back into the remote-school model that so comprehensively failed during the COVID shutdowns. Encouraging further illegal immigration from Central America means encouraging a system in which people are [drugged, sexually assaulted, and raped](#)—a humanitarian disaster. Once in the country, many illegal immigrants become part of a system that [undermines worker protections](#).

What you should do is simple: enforce the law and protect the border. And despite some recent suggestions that you should nationalize control of the Texas National Guard as a ruse, we would like to remind you that you cannot do so without legal authority that you currently lack. If you cannot bring yourselves to enforce the law, get out of the way so Texas can.

Respectfully Submitted,



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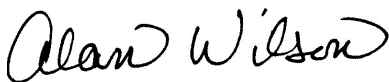
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