



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 17, 2024

Jonathan E. Meyer
General Counsel
U.S. Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, D.C. 20528-0525

Dear Mr. Meyer:

On behalf of the State of Texas, I write in response to your demand letter of January 14, 2024, in which you complain about how the Texas Military Department (TMD) recently seized and secured Shelby Park in the City of Eagle Pass, Texas. Your letter misstates both the facts and the law in demanding that Texas surrender to President Biden's open-border policies. Because the facts and law side with Texas, the State will continue utilizing its constitutional authority to defend her territory, and I will continue defending those lawful efforts in court. The U.S. Department of Homeland Security (DHS) should stop wasting scarce time and resources suing Texas, and start enforcing the immigration laws Congress already has on the books.

Your letter betrays a lack of on-the-ground understanding of what is happening in Shelby Park. While I need not correct every mistaken assertion, a few of your false claims must be debunked:

- Texas allows prompt entry into Shelby Park by any U.S. Border Patrol personnel responding to a medical emergency, and this access is not "limited to use of the boat ramp," as you say. TMD has ordered its Guardsmen not to impede lifesaving care for aliens who illegally cross the Rio Grande. To that end, TMD has erected gates that allow for rapid admission when federal personnel communicate the existence of some medical exigency.
- Your supposed commitment "to rendering emergency assistance to individuals in need" is belied by the fact that U.S. Border Patrol withdrew from Shelby Park last year and advised the Texas Department of Public Safety that *federal personnel would not be present to administer aid unless Texas called for help*. Moreover, the Del Rio Sector appears to be the only place along the Rio Grande where DHS does not keep boats on the water around the clock to provide water-rescue capabilities.
- Your attempt to blame Texas for three migrant deaths on January 12, 2024 is vile and, as you now should be aware, completely inaccurate. "Three individuals drowned" that

night on the Mexican side of the Rio Grande, but that tragedy is *your* fault. Contrary to your letter, TMD did not prevent U.S. Border Patrol from entering Shelby Park to attempt a water rescue of migrants in distress. The federal agents at the gate did not even have a boat, and they did not request entry based on any medical exigency. Instead, ***the federal agents told TMD's staff sergeant that Mexican officials had already recovered dead bodies and that the situation was under control.*** Texas's Guardsmen nevertheless made a diligent search, only to confirm that Mexican officials had recovered the migrants' bodies, downriver from the Shelby Park boat ramp and on their side of the river.

- Texas has seen no evidence, and you cite none, showing that the migrants who drowned actually reached the Texas shore. And this despite TMD Guardsmen surveilling the waters of the Rio Grande near Shelby Park with spotlights, night-vision goggles, and thermal-imaging devices.
- As a federal court has already ruled, it is DHS and Biden Administration policies that are leading migrants to risk their lives, and sometimes lose them, trying to cross the Rio Grande. If you really care about migrants being put in “imminent danger to life and safety,” your agency should stop driving them into the waters of the river. Nobody drowns on a bridge. A federal court recently rebuked the Biden Administration for creating this dangerous situation: “If [DHS] agents are going to allow migrants to enter the country, and indeed facilitate their doing so, why make them undertake the dangerous task of crossing the river? Would it not be easier, and safer, to receive them at a port of entry?” *Texas v. DHS*, 2023 WL 8285223, at *4 (W.D. Tex. Nov. 29, 2023). By “creat[ing] a perverse incentive for aliens to attempt to cross” the Rio Grande, the court found, you are “begetting life-threatening crises for aliens and agents both.” *Id.* at *14.
- Although Shelby Park does sit on “municipal land owned by the City of Eagle Pass,” as you say, TMD has now taken that land from the City for law-enforcement and disaster-relief purposes in accordance with Texas Government Code § 418.017(c). It is immaterial that U.S. Customs and Border Protection entered into a “Memorandum of Agreement with Eagle Pass . . . on December 13, 2015,” because the State of Texas never approved that transaction as required by Article IV, § 10 of the Texas Constitution. Your federal agency cannot have something that was not the City's to give.

Quite apart from the Shelby Park specifics, your demand letter rests on a more fundamental misunderstanding of federal law and the role of sovereign States within our constitutional order. This much is clear from your invocation of a federal statute that gives U.S. Border Patrol warrantless access to land within 25 miles of the border, but only “for the purpose of patrolling the border to *prevent* the illegal entry of aliens into the United States.” 8 U.S.C. § 1357(a)(3) (emphasis added). President Biden has ordered your agency to do the exact opposite, in keeping with his open-borders campaign promise. There is not even a pretense that you are trying to *prevent* the illegal entry of aliens.

As a federal court recently found, DHS's “utter failure . . . to deter, prevent and halt unlawful entry into the United States” has left your agency powerless to “claim the statutory duties [it is]

so obviously derelict in enforcing as excuses to puncture [Texas's] attempts to shore up the [Biden Administration's] failing system." *Texas v. DHS*, 2023 WL 8285223, at *14 (W.D. Tex. Nov. 29, 2023). Indeed, Secretary Mayorkas's refusal to enforce federal immigration laws enacted by Congress has now put him in danger of impeachment by the U.S. House of Representatives. *See also* U.S. CONST. art. I, § 8, cl. 4 (empowering Congress, not the President, "[t]o establish an uniform Rule of Naturalization").

According to your letter, "[t]he U.S. Constitution tasks the federal government with . . . securing the Nation's borders." When were you planning to start?

President Biden has been warned in a series of letters, one of them hand-delivered to him in El Paso, that his sustained dereliction of duty in securing the border is illegal. By instructing your agency and others to ignore federal immigration laws, he has breached the guarantee, found in Article IV, § 4 of the U.S. Constitution, that the federal government "shall protect each of [the States] against Invasion." Texas, in turn, has been forced to invoke the powers reserved in Article I, § 10, Clause 3, which represents "an acknowledgement of the States' sovereign interest in protecting their borders." *Arizona v. United States*, 567 U.S. 387, 419 (2012) (Scalia, J., concurring in part and dissenting in part). Although you invoke the majority opinion in that case, it never addressed these crucial constitutional guarantees because Arizona did not raise them. Having abandoned the field of immigration enforcement, in defiance of Congress's commands, your agency is in no position to claim preemption under *Arizona v. United States* and the Supremacy Clause.

Rather than addressing Texas's urgent requests for protection, President Biden has authorized DHS to send a threatening letter through its lawyers. But Texas has lawyers, too, and I will continue to stand up for this State's constitutional powers of self-defense. Instead of running to the U.S. Department of Justice in hopes of winning an injunction, you should advise your clients at DHS to do their job and follow the law.

Sincerely,



Ken Paxton
Attorney General of Texas

cc: The Honorable Greg Abbott, Governor of Texas
Major General Thomas M. Suelzer, Adjutant General, Texas Military Department
The Honorable Merrick B. Garland, U.S. Attorney General