



STATE OF TEXAS
HOUSE OF REPRESENTATIVES

January 26, 2022

The Honorable Merrick B. Garland
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable Alejandro Mayorkas
Secretary
Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, D.C. 20016

Sent via email

Re: Request for Immediate Investigation into, and Clarity Surrounding, Texas Governor Greg Abbott's State Immigration Policy c/k/a "Operation Lone Star."

Attorney General Garland and Secretary Mayorkas:

The undersigned Members of the Texas House of Representatives write to request an *immediate investigation* of Texas Governor Greg Abbott's state immigration policy commonly referred to as "Operation Lone Star." In addition, we seek clarity on the immigration process for individuals subjected to this cross-agency, multi billion-dollar¹ law enforcement program. The likely violations of the protections afforded under the United States Constitution and state and federal law that have resulted from the implementation of Operation Lone Star, and its overburdening of local justice systems, warrant immediate review and use of all tools at your disposal to ensure the end of this policy.

I. Operation Lone Star Was Launched on the Heels of a Rise in Anti-Immigrant Rhetoric.

Operation Lone Star uses state criminal law to target Black and Latino migrants for punishment.² Beginning in July 2021, at the direction of Governor Abbott, Texas state and local agencies began implementing a policy of arresting migrants for state criminal trespass. Texas has arrested more than 2,681 people on these misdemeanor trespass charges, and has created a separate criminal prosecution and detention system that makes a mockery of the due process rights foundational to our nation's judicial process.

This militarization of Texas' border communities follows a rise in anti-immigrant hate that incited a shooter to target Latino residents of El Paso in 2019, murdering 23 people. Operation Lone Star has led local law enforcement in Kinney County, Texas, to seek out partnerships with armed vigilante groups and an armed private security contractor, contributing to a volatile atmosphere with the potential for anti-immigrant violence. The stakes are too high to forego an expeditious assessment of Operation Lone Star's compliance with the law.

II. Operation Lone Star Likely Violates the Supremacy Clause and Due Process Protections of the U.S. Constitution.

¹ Office of the Tex. Governor, *Governor Abbott Announces An Additional \$38.4 Million In Funding For Operation Lone Star*, Dec. 20, 2021, <https://gov.texas.gov/news/post/governor-abbott-announces-an-additional-38.4-million-in-funding-for-operation-lone-star>.

² Jolie McCullough, *Migrants arrested by Texas in border crackdown are being imprisoned for weeks without legal help or formal charges*, Tex. Tribune, Sept. 27, 2021, <https://www.texastribune.org/2021/09/27/texas-border-migrants-jail/>.

From its inception, Operation Lone Star has suffered from Constitutional deficiencies that upend our federal system of government. Governor Abbott has unilaterally set this state immigration policy and created a system of state immigration enforcement to be carried out by various state agencies.³ The Supremacy Clause of the United States Constitution asserts that federal law “shall be the supreme Law of the Land” and will supersede state laws.⁴ Thus, when states or localities promulgate laws that conflict with federal law, the federal law generally will take precedence, preempting the state law.

In 2012, the U.S. Supreme Court recognized that states may not unilaterally set and enforce immigration policy when it struck down provisions of Arizona's anti-immigrant SB 1070.⁵ And just last week, a Travis County District Judge held that an individual's arrest under Operation Lone Star indeed violated the Supremacy Clause and represented an impermissible attempt to intrude on federal immigration policy.⁶ Because this ruling dismissed the case of one person, we urge an investigation into whether similar arrests executed under Operation Lone Star identically violate the U.S. Constitution.

Under the vast umbrella of civil rights violations resulting from the execution of Operation Lone Star are a series of due process transgressions which warrant immediate review. These include, but are not limited to, the failure to timely file charges⁷, the filing of deficient charging documents lacking essential information regarding charges⁸, and irregular judicial assignments — including the Kinney County Judge's apparently improper removal of judges.⁹ Additionally, hundreds of those arrested have languished in jail for weeks or months without a lawyer and without a court date.

These due process violations — in light of public comments made by Governor Abbott — indicate the goal is, as stated by Governor Abbott, to punish migrants for their travel to the United States.

III. Operation Lone Star has Overwhelmed Local Justice Systems, Exacerbating Legal Concerns.

The effects of this unlawful operation are not only being felt by individuals, but by local justice systems too. In Kinney County, population of about 3,700, the court system has experienced a deluge of arrests which has only been exacerbated by the aforementioned due process concerns.¹⁰ The Texas Rio Grande Legal Aid is currently representing approximately 800 people charged with trespassing and they are expecting to represent more than 2,500 people over the next few months.¹¹ Some clients have been in jail for over 120 days and have never been given a court date.

IV. Texas Guardsmen Involved in Operation Lone Star Have Raised Systemic Concerns

Furthermore, on December 24, 2021, Members of the Texas Legislature and of Congress received an anonymous email from a Soldier in the Texas Army expressing grave concerns with Operation Lone Star, including four reported deaths by suicide of Texas Guardsmen over the course of the operation. We should ignore the Governor's attempts to deflect responsibility for the deaths of Guardsmen whom he is using as political pawns and get to the bottom of the causes for these tragedies.

³ Florian Martin & Paul DeBenedetto, *Gov. Abbott Orders South Texas Prison To Make Room For Undocumented Immigrants, TDCJ Says*, Houston Pub. Media, June 17, 2021, <https://www.houstonpublicmedia.org/articles/news/politics/immigration/2021/06/17/400934/gov-abbot-orders-south-texas-prison-to-house-undocumented-immigrants-tdcj-says/>.

⁴ U.S. Const. art. VI, ¶ 2.

⁵ See *Arizona v. United States*, 641 F.3d 339 (2012), (striking down three of the four provisions in the challenged legislation because it unconstitutionally attempted to supersede the government's enforcement of immigration laws).

⁶ <https://www.statesman.com/story/news/2022/01/13/greg-abbott-texas-mexico-border-unconstitutional-judge-district/6510864001/>

⁷ Jolie McCullough, *Migrants arrested by Texas in border crackdown are being imprisoned for weeks without legal help or formal charges*, Tex. Tribune, Sept. 27, 2021, <https://www.texastribune.org/2021/09/27/texas-border-migrants-jail/>.

⁸ Jolie McCullough, *In Latest Blunder, Charges Dropped Against Migrants Arrested in Texas Governor's Border Crackdown Because of Faulty Paperwork*, Tex. Tribune (Nov. 4, 2021), <https://www.texastribune.org/2021/11/04/texas-border-migrants-charges-dropped/>.

⁹ Jolie McCullough, *Hundreds of migrants accused of trespassing languish in Texas prisons. A county judge's new approach might prolong their detention*, Tex. Tribune (Dec. 10, 2021), <https://www.texastribune.org/2021/12/10/texas-border-security-migrant-prisons/>.

¹⁰ Jasper Scherer, *Chaotic rollout of Gov. Abbott's migrant arrest plan fuels confusion, claims of violated rights*, Houston Chronicle, Oct. 7, 2021, <https://www.houstonchronicle.com/politics/texas/article/Chaotic-rollout-of-Gov-Abbott-s-migrant-arrest-16517065.php>.

¹¹ Jolie McCullough, *Hundreds of migrants accused of trespassing languish in Texas prisons. A county judge's new approach might prolong their detention*, Tex. Tribune (Dec. 10, 2021), <https://www.texastribune.org/2021/12/10/texas-border-security-migrant-prisons/>.

In effect, the surge to the Texas border as a result of Operation Lone Star also overwhelmed the mobilization and pay processing system.¹² The Texas Military Department itself has “acknowledged it was a ‘hurdle’ to add so many soldiers to the state payroll system in a surge last fall that bumped troops on the mission from about 1,200 in June to 10,000 in November.”¹³ Questions remain as to whether state leadership was aware that such surges would result in the systemic concerns resulting from Operation Lone Star.

V. There is a Need for Clarity as it Relates to the Path Forward for Migrants Subjected to Operation Lone Star.

We also follow those who have asked the Department of Homeland Security (DHS) for clarity on the immigration process for individuals subjected to the Operation Lone Star program, and similarly urge that DHS provide migrants who enter into its custody after their release from state custody with timely and regular telephone access so that they can inform their loved ones and attorneys of their location. Ensuring access to these resources after weeks or months of uncertainty while detained in an unpredictable state criminal process is essential for migrants and their families.

VI. Conclusion

The fundamental constitutional protections of due process and equal protection embodied in our Constitution and Bill of Rights apply to every person, regardless of immigration status. To allow the transgressions mentioned herein to go unaccounted for would constitute a gross abdication of the responsibility to uphold the rule of law and our federal system of government. We ask that you expeditiously review Operation Lone Star and use all tools at your disposal to end the policy in light of the very serious constitutional concerns outlined above.

Sincerely,

Cc: Greg Abbott, Governor of the State of Texas
 Dan Patrick, Lt. Governor of the State of Texas
 Dade Phelan, Speaker of the Texas House of Representatives
 Trent Ashby, Chair of the Texas House Select Committee on Constitutional Rights and Remedies
 Senfronia Thompson, Vice-Chair of the Texas House Select Committee on Constitutional Rights and Remedies

State Representative Alma Allen

State Representative Rafael Anchía

State Representative Diego Bernal

State Representative Rhett Bowers

State Representative John Bucy III

State Representative Liz Campos

State Representative Terry Canales

State Representative Sheryl Cole

State Representative Garnet Coleman

State Representative Joe Deshotel

State Representative Alex Dominguez

State Representative Art Fierro

¹² Patrick Svitek, *Gov. Greg Abbott says critics are “playing politics” over Texas National Guard suicides*, Tex. Tribune, (Jan. 11, 2022), <https://www.texastribune.org/2022/01/11/texas-greg-abbott-national-guard/>.

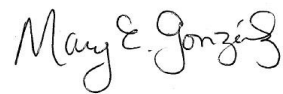
¹³ *Id.*



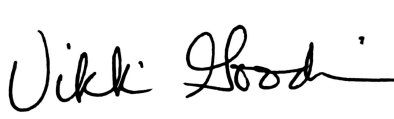

State Representative Barbara Gervin-Hawkins



State Representative Jessica Gonzalez



State Representative Mary Gonzalez

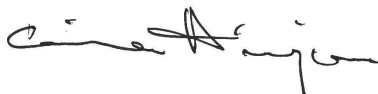



State Representative Vikki Goodwin

State Representative Ana Hernandez



State Representative Abel Herrero



State Representative Gina Hinojosa



State Representative Donna Howard



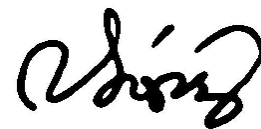
State Representative Celia Israel



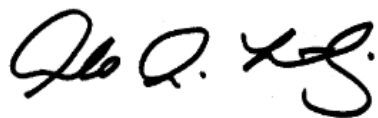
State Representative Ann Johnson



State Representative Julie Johnson



State Representative Ray Lopez



State Representative Armando Martinez



State Representative Trey Martinez Fischer



State Representative Terry Meza



State Representative Ina Minjarez



State Representative Joe Moody




State Representative Christina Morales



State Representative Penny Morales Shaw



State Representative Victoria Neave



State Representative Claudia Ordaz Perez



State Representative Lina Ortega



State Representative Mary Ann Perez



State Representative Ana-Maria Ramos



State Representative Ron Reynolds



State Representative Eddie Rodriguez



State Representative Ramon Romero




State Representative Toni Rose



State Representative Jon Rosenthal



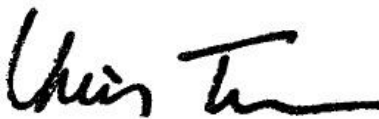
State Representative Carl Sherman



State Representative Senfronia Thompson



State Representative James Talarico



State Representative Chris Turner



State Representative John Turner



State Representative Hubert Vo



State Representative Armando Walle



State Representative Gene Wu



State Representative Erin Zwiener