



Homeland
Security

January 14, 2024

Ken Paxton, Esq.
Attorney General
State of Texas
300 West 15th Street
Austin, Texas 78711

Dear Attorney General Paxton:

On January 10, 2024, the State of Texas took action to block U.S. Border Patrol's access to the border over an approximately 2.5-mile stretch of the Rio Grande, inclusive of the area of Shelby Park and areas south of Shelby Park in Eagle Pass, Texas (hereinafter "Shelby Park area"). Although Texas recently indicated it allowed Border Patrol access to the boat ramp in this area it has done so only with restrictions such as requiring information about each Border Patrol individual agent entering the area and reiterated that this access is limited to use of the boat ramp. Even in light of this minor concession, Texas has continued to this day to deny full access to the area. The Department of Homeland Security (DHS) is committed to securing the border and ensuring the apprehension, inspection, and proper processing of noncitizens in accordance with the law, as well as to rendering emergency assistance to individuals in need. The recent actions by the State of Texas have impeded operations of the Border Patrol. Those actions conflict with the authority and duties of Border Patrol under federal law and are preempted under the Supremacy Clause of the Constitution. Texas's actions also improperly seek to regulate the federal government. I am writing to demand that Texas immediately cease and desist any actions taken by the State that block Border Patrol's full access to the U.S.-Mexico border in and around the Shelby Park area.

Beginning around 8:00 p.m., Central Time, on January 10, 2024, Texas National Guard (TNG) established fencing and concertina wire and began preventing access to Shelby Park and blocking entrances to the river and other areas proximate to the border using border barriers and armed soldiers. The combination of armed TNG soldiers and equipment, fencing, and concertina wire is blocking Border Patrol from a total of approximately 2.5 miles of the U.S.-Mexico border in the Shelby Park area. Some of the area to which Border Patrol has been denied access (e.g., the Park itself) is municipal land owned by the City of Eagle Pass. Pursuant to a Memorandum of Agreement with Eagle Pass signed by CBP on December 13, 2015, Border Patrol is entitled to have "continuous and uninterrupted access to all gate locations." In addition, the entire area to which Border Patrol has been denied access is well within 25 miles of the international border and thus within the zone to which Border Patrol has an express statutory right of access without a warrant. Finally, some of the barriers placed by Texas and the armed soldiers deployed by Texas are on federal land. Specifically, Texas National Guard is blocking entrances through federally owned and maintained border barriers

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with armed soldiers. While Texas has claimed that it has re-opened the use of Shelby Park to the public, it continues to prevent Border Patrol from entering, and from using the area under the adjacent port of entry where Border Patrol has certain property stored for use when migrants are apprehended. Border Patrol is being prevented from entering any portion of the 2.5 mile Shelby Park area, with the minor exception of regulated access to the boat ramp in Shelby Park, including being unable to place scope trucks as Border Patrol determines is operationally necessary.

The U.S. Constitution tasks the federal government with regulating immigration, *see Arizona v. United States*, 567 U.S. 387, 394 (2012) (“the Government of the United States has broad, undoubted power over the subject of immigration and the status of” noncitizens), and securing the Nation’s borders. Among other things, federal law unambiguously grants Border Patrol agents the authority, without a warrant, to access private land within 25 miles of the international border, 8 U.S.C. § 1357(a)(3), as well as to “interrogate” and “arrest” anyone “who in [their] presence or view is entering or attempting to enter the United States in violation of any law” and is likely to abscond, 8 U.S.C. § 1357(a)(1)-(2). Federal law “deem[s]” those who are present in the United States without having been admitted or paroled “applicant[s] for admission” with certain statutory rights, 8 U.S.C. § 1225(a)(1). It provides for federal officials to “inspect[]” such applicants, 8 U.S.C. § 1225(a)(3); and authorizes federal agents to “arrest[] and detain[]” noncitizens “pending a [removal] decision,” 8 U.S.C. § 1226(a). Texas’s actions conflict with these statutory authorities and are an improper attempt to regulate the federal government. State law cannot be applied to restrain federal agents from carrying out these federally authorized activities.

Texas’s failure to provide access to the border persists even in instances of imminent danger to life and safety. On January 12, 2024, upon learning from Grupo Beta, a group affiliated with the National Institute of Migration of Mexico, that a group of migrants was attempting to cross the river, Border Patrol contacted Texas officials and requested access to the border. Texas refused. Later, a rescue team from Mexico was able to rescue two individuals from the group, both with signs of hypothermia. Three individuals drowned. Texas has demonstrated that even in the most exigent circumstances, it will not allow Border Patrol access to the border to conduct law enforcement and emergency response activities.

Texas’s actions are clearly unconstitutional and are actively disrupting the federal government’s operations. We demand that Texas cease and desist its efforts to block Border Patrol’s access in and around the Shelby Park area and remove all barriers to access in the Shelby Park area. If you have not confirmed by the end of day on January 17, 2024, that Texas will cease and desist its efforts to block Border Patrol’s access in and around the Shelby Park area and remove all barriers to access to the U.S.-Mexico border, we will refer the matter to the Department of Justice for appropriate action and consider all other options available to restore Border Patrol’s access to the border.

Sincerely,

Jonathan E. Meyer
General Counsel

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January 14, 2024

COPIES TO:

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