



GOVERNOR GREG ABBOTT

November 16, 2022

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear President Biden:

The U.S. Constitution won ratification by promising the States, in Article IV, § 4, that the federal government “shall protect each of them against Invasion.” By refusing to enforce the immigration laws enacted by Congress, including 8 U.S.C. § 1325(a)(1)’s criminal prohibition against aliens entering the United States between authorized ports of entry, your Administration has made clear that it will not honor that guarantee. The federal government’s failure has forced me to invoke Article I, § 10, Clause 3 of the U.S. Constitution, thereby enabling the State of Texas to protect its own territory against invasion by the Mexican drug cartels.

Your inaction has led to catastrophic consequences. Under your watch, America is suffering the highest volume of illegal immigration in the history of our country. This past year, more than 2 million immigrants tried to enter the country illegally, coming from more than 100 countries across the globe. Worse yet, your failed border policies recently prompted a United Nations agency to declare that the border between the United States and Mexico is the deadliest land crossing in the world.

Texans are paying the price for your failure. Ranches are being ripped apart, and homes are vulnerable to intrusion. Our border communities are regularly disrupted by human traffickers and bailouts. Deadly fentanyl is crossing the porous border to such a degree that it is now the leading cause of death for citizens between the ages of 18 and 45.

By opening our border to this record-breaking level of illegal immigration, you and your Administration are in violation of Article IV, § 4 of the U.S. Constitution. Your sustained dereliction of duty compels Texas 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., dissenting). Using that authority, Texas will escalate our efforts to repel and turn back any immigrant who seeks to enter our State at a border crossing that Congress has designated as illegal; to return to the border those who do cross illegally; and to arrest criminals who violate Texas law.

Know this: Article I, § 10, Clause 3 is not just excess verbiage. It reflects an understanding by our Founders, the authors of the Constitution, that some future President might abandon his obligation to safeguard the States from an extraordinary inflow of people who have no legal right of entry. They foresaw your failures. In the more than 240 years of our great nation, no Administration has done more than yours to place the States in “imminent Danger”—a direct result of your policy decisions and refusal to deliver on the Article IV, § 4 guarantee. In the absence of action by your Administration to secure the border, every act by Texas officials is taken pursuant to the authority that the Founders recognized in Article I, § 10, Clause 3.

All of this can be avoided, of course, if you will simply enforce the laws that are already on the books. Your Administration must end its catch-and-release policies, repel this unprecedented mass migration, and satisfy its constitutional obligation through faithful execution of the immigration laws enacted by Congress:

- You should aggressively prosecute the federal crimes of illegal entry and illegal reentry. *See* 8 U.S.C. § 1325, § 1326.
- You should comply with statutes mandating that various categories of aliens “shall” be detained. *See, e.g.*, 8 U.S.C. § 1225(b)(1)(B)(ii) & (iii)(IV) (aliens claiming asylum); *id.* § 1225(b)(2)(A) (aliens applying for admission); *id.* § 1226(c)(1) (criminal aliens); *id.* § 1231(a)(2) (aliens ordered removed); *id.* § 1222(a) (aliens who may carry disease).
- You should stop paroling aliens *en masse* in violation of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which decrees that aliens applying for admission can be paroled into the United States “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A).
- You should fully reinstate the Migrant Protection Protocols, such that aliens seeking admission remain in Mexico while proceedings unfold in the United States. *See* 8 U.S.C. § 1225(b)(2)(C).
- You should immediately resume construction of the border wall in Texas, using the billions of dollars Congress has appropriated for that purpose. *See* FY2021 DHS Appropriations Act § 210, Pub. L. 116-260, 134 Stat. 1182, 1456–57 (Dec. 27, 2020); FY2020 DHS Appropriations Act § 209, Pub. L. 116-93, 133 Stat. 2317, 2511–12 (Dec. 20, 2019).

Americans want an orderly immigration process that adheres to the laws enacted by the legislators they sent to Washington. In the words of Judge Oldham, however, you have “supplant[ed] the rule of law with the rule of say-so” while “tell[ing] Congress to pound sand.” *Texas v. Biden*, 20 F.4th 928, 982, 1004 (5th Cir. 2021); *cf.* U.S. CONST. art. I, § 8, cl. 4 (empowering Congress “[t]o establish an uniform Rule of Naturalization”).

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Before you took office, the United States enjoyed some of the lowest illegal-immigration figures it had seen in decades. Your Administration gutted the policies that yielded those low numbers. You must reinstate the policies that you eliminated, or craft and implement new policies, in order to fulfill your constitutional duty to enforce federal immigration laws and protect the States against invasion.

Your silence in the face of our repeated pleas is deafening. Your refusal to even visit the border for a firsthand look at the chaos you have caused is damning. Two years of inaction on your part now leave Texas with no choice but to escalate our efforts to secure our State. Your open-border policies, which have catalyzed an unprecedented crisis of illegal immigration, are the sole cause of Texas having to invoke our constitutional authority to defend ourselves.

Sincerely,

A handwritten signature in black ink that reads "Greg Abbott". The signature is written in a cursive, flowing style.

Greg Abbott
Governor of Texas

GA:jsd

cc: The Honorable Merrick B. Garland, U.S. Attorney General
The Honorable Alejandro Mayorkas, U.S. Secretary of Homeland Security