



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 13, 2022

U.S. Customs and Border Protection  
U.S. Border Patrol Headquarters  
1300 Pennsylvania Ave. 6.5E Mail Stop 1039  
Washington, D.C. 20229-1100

RE: Comment in response to Border Barrier Environmental Planning – Webb County and Zapata County

To Secretary Mayorkas:

The Attorney General of Texas submits the following comments in response to the U.S. Customs and Border Protection’s (CBP) request for comments concerning the Laredo Environmental Project.<sup>1</sup>

A border barrier is critical to protecting Texans. The crisis on Texas’s southern border remains ongoing—illegal alien encounters at the southwest border are currently up to 1,295,900 for this fiscal year alone.<sup>2</sup> The massive influx of illegal aliens has inflicted and continues to inflict serious costs on the State of Texas as well as Texans. These costs are addressed more specifically within this comment. Generally, the costs include negative impacts to the culture, quality of life, and commerce, which includes socioeconomic impacts, to not only Texans but also Americans.<sup>3</sup>

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<sup>1</sup> U.S. CUSTOMS AND BORDER PROTECTION, *Border Barrier Environmental Planning - Webb County and Zapata County - April 2022*, (May 19, 2022, 12:00 PM), <https://www.cbp.gov/document/environmental-assessments/border-barrier-environmental-planning-webb-county-and-zapata>.

<sup>2</sup> U.S. CUSTOMS AND BORDER PROTECTION, *Southwest Land Border Encounters*, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last visited June 6, 2022).

<sup>3</sup> OAG provides information concerning these costs because CBP has identified this information as an important part of the environmental planning process. U.S. CUSTOMS AND BORDER PROTECTION, *Environmental Management*, (June 7, 2022), <https://www.cbp.gov/about/environmental-management>.

The increase in southwest border crossings has resulted in a significant increase in organized crime and drug cartels. These thugs continue to prey on migrants and unaccompanied children through human and drug trafficking, violence, extortion, sexual assault, and exploitation. Texas and its border communities are directly and disproportionately affected by these resulting crimes. The construction of a border barrier is thus crucial to preventing these harms. And time is of the essence.

The Department of Homeland Security (“DHS”) has already recognized the value of a southwest border barrier.<sup>4</sup> DHS’s prior assessment concluded generally that “Walls Work.”<sup>5</sup> More specifically, DHS concluded that border barriers are highly effective in deterring and preventing illegal immigration and illegal drug trafficking across the southwest border, and that the construction of border barriers on the southwest border led to a 90 percent reduction in border apprehensions.<sup>6</sup> Considering DHS’s recognition of the significant benefit of border barriers to prevent the ever-increasing harms that have resulted from an open border, the Laredo Sector border barrier project should begin immediately, and the environmental assessment should be waived.

In light of the increase in available illegal drugs, human trafficking, harm to local communities, and costs to the American people as well as the border states, and the fact that border barriers are greatly effective in preventing these tragic costs, there is not a better time for you, Mr. Secretary, to exercise your authority under Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act.<sup>7</sup>

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<sup>4</sup> U.S. DEP’T OF HOMELAND SEC., *Walls Work*, (Dec. 12, 2018), <https://www.dhs.gov/news/2018/12/12/walls-work>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Section 102(c) delegates to the DHS Secretary “the authority to waive all legal requirements such Secretary, in such Secretary’s sole discretion, determines necessary to ensure expeditious construction of the barriers and roads.” CBP’s website expressly acknowledges such action is an option: “For some projects, the Secretary of the Department of Homeland Security (DHS) may determine it is necessary to exercise his or her authority in Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) to waive certain environmental laws, including NEPA, to expedite construction of border infrastructure.” U.S. CUSTOMS AND BORDER PROTECTION, *Environmental Management*, <https://www.cbp.gov/about/environmental-management> (last visited June 6, 2022). (emphasis added).

**I. A BORDER BARRIER WOULD SIGNIFICANTLY IMPROVE QUALITY OF LIFE NOT ONLY IN TEXAS BUT IN AMERICA.**

**(A) The Border Crisis**

According to you, Mr. Secretary, the federal government was “on pace to encounter more individuals on the southwest border than we have in the last 20 years.”<sup>8</sup> That was in March 2021. By the end of 2021, the number of illegal alien crossings totaled almost 1.7 million.<sup>9</sup> That was a 78 percent increase from the number of crossings in 2019 and a 279 percent increase from the number of crossings in 2020.<sup>10</sup> Despite these huge increases of illegal alien crossings, a border barrier has not been built even though it was fully funded more than a year ago.<sup>11</sup>

Further, per CBP’s data,<sup>12</sup> the trend is not decreasing, but increasing, with no signs of slowing:

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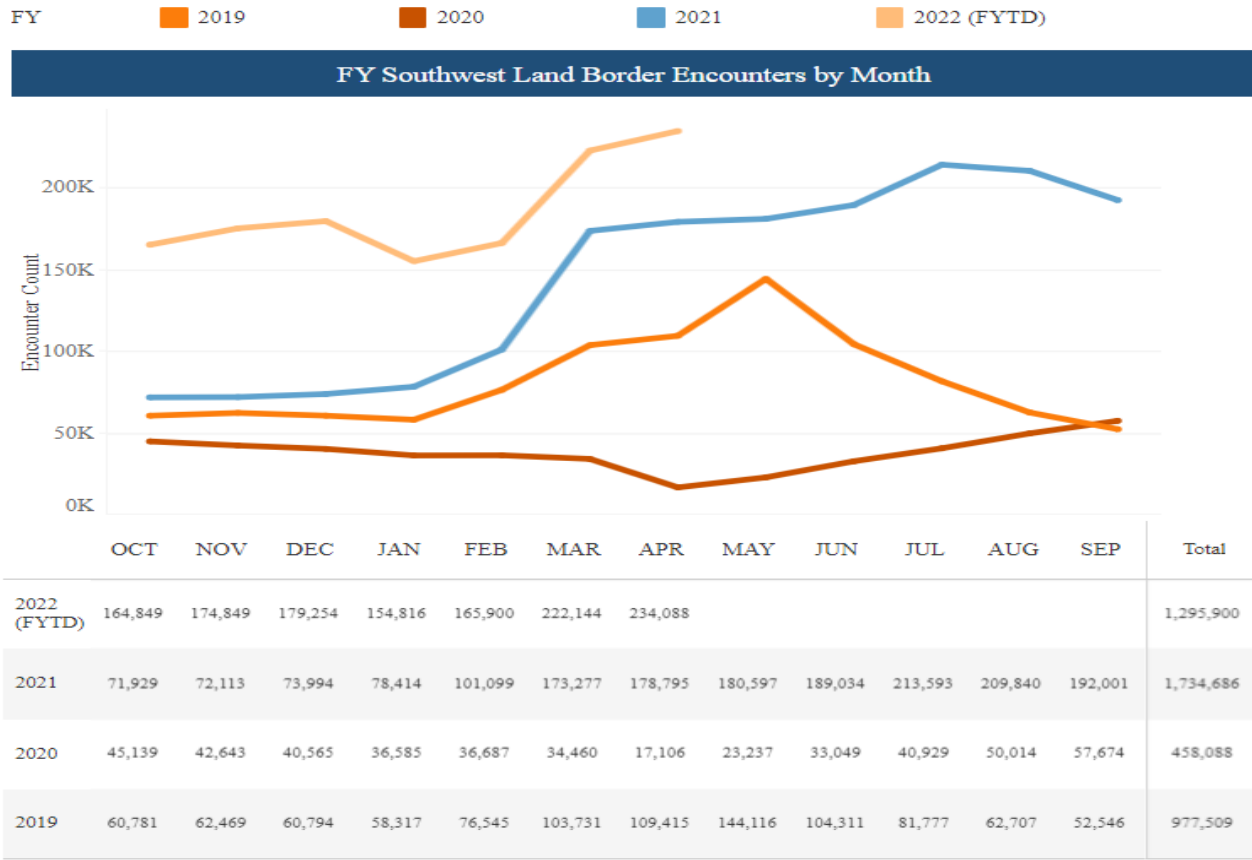
<sup>8</sup> U.S. DEPT OF HOMELAND SEC., *Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border* (March 16, 2021), <https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation>.

<sup>9</sup> *Southwest Land Border Encounters*, *supra* note 2.

<sup>10</sup> *Id.*

<sup>11</sup> Niv Elis, *Congress to approve \$1.375 billion for border wall in 2021*, THE HILL (Dec. 20, 2020), <https://thehill.com/policy/finance/531088-congress-to-approve-1375-billion-for-border-wall-in-2021/>.

<sup>12</sup> *Southwest Land Border Encounters*, *supra* note 2.



In fiscal year 2022, there has already been a 78 percent increase in the number of crossings compared to the same period in fiscal year 2021.<sup>13</sup> And fiscal year 2021 was supposed to be the record-breaking year. Following this trend, southern states, such as Texas, could reasonably anticipate 3,087,742 illegal alien crossings by the end of fiscal year 2022.<sup>14</sup> This number will likely be higher with the anticipated expiration of Title 42.

**(B) Humanitarian Costs from an Open Border**

**(1) Unfathomable amounts of illegal drugs are being smuggled across America’s open border.**

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

Americans are dying from drug overdoses resulting from the massive influx of illegal drugs. For example, a tragic case occurred in January 2022, where a 13-year-old boy died of a fentanyl overdose, and two other students were rushed to the hospital for having similar symptoms.<sup>15</sup> The school found 40 pounds of powdered fentanyl hidden throughout a *middle school*.<sup>16</sup> This should not be happening.

In only the first month of Texas's 2022 fiscal year (September 1, 2021 to August 31, 2022), the Texas Department of Public Safety (DPS) seized 11,764.47 pounds of illegal drugs at the border.<sup>17</sup> Following this trend, DPS could reasonably anticipate seizing at least 141,174 pounds of illegal drugs by the end of this fiscal year—which would be a 411 percent increase from the prior fiscal year. Currently, Texas law enforcement authorities have seized enough fentanyl to make up more than 36.2 million lethal doses.<sup>18</sup>

Likewise, during fiscal year 2021, CBP officers at eight South Texas ports of entry noted a 1,066 percent increase in fentanyl seizures, totaling 588 pounds.<sup>19</sup> This spike occurred even though international travel significantly decreased due to COVID-19 travel restrictions.<sup>20</sup>

The resulting increase in illegal drugs flowing across the border has spurred an opioid epidemic in the United States, with ghastly, if predictable consequences.<sup>21</sup> The CDC estimates that almost 108,000 Americans died in 2021 from a drug overdose

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<sup>15</sup> Jeff Truesdell, *13-Year-Old Boy Dies After Overdose From Fentanyl at His Connecticut School*, PEOPLE (Jan. 17, 2022), <https://people.com/crime/13-year-old-conn-boy-dies-after-fentanyl-overdose-school/>.

<sup>16</sup> *Id.* See also Selene Rodriguez, *Biden's Border Policies are Fueling the Fentanyl Crisis in America*, TEXAS PUBLIC POLICY FOUNDATION (Feb. 23, 2022), <https://www.texaspolicy.com/bidens-border-policies-are-fueling-the-fentanyl-crisis-in-america/>.

<sup>17</sup> TEXAS DEPT' OF PUBLIC SAFETY, TEXAS BORDER SECURITY (September 2021), <https://www.dps.texas.gov/sites/default/files/documents/publicinformation/documents/bordersecbrief20210901.pdf>.

<sup>18</sup> *Biden's Border Policies are Fueling the Fentanyl Crisis in America*, *supra* note 16.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, *Understanding the Opioid Overdoes Epidemic*, <https://www.cdc.gov/opioids/basics/epidemic.html> (last visited June 7, 2022).

— a 14.9 percent increase from 2020 and a 34.9 percent increase from 2019.<sup>22</sup> This is the *number one cause of death* for Americans ages 18 through 45.<sup>23</sup> Not deaths from COVID-19. Not deaths from gun violence. Illegal drug overdoses. And the construction of a border barrier can save American lives by substantially reducing the availability of illegal drugs in the United States. Yet, the border remains open, and the construction of border barriers is handcuffed with bureaucratic red tape, showing once again the Biden Administration refuses to take commonsense border security measures that would save American lives. The Biden Administration’s open border is killing Americans.

**(2) Americans and illegal aliens are being enslaved by human traffickers.**

In addition to the harm to Americans from increased illegal drugs in the United States—a direct result of the current border crisis—it is well established that open borders create and promote a humanitarian crisis in the form of human trafficking, a type of modern slavery, that extends beyond Texas’s borders.<sup>24</sup> “Every form of human trafficking is an atrocity, and every victim deserves to be rescued, rehabilitated, and cared for. One way in which the United States can help curb human trafficking is improving border security.”<sup>25</sup>

The border crisis has led to an explosion in human trafficking activity across the border. Immigrants, especially immigrant women, make up the largest portion of

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<sup>22</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, *Provisional Drug Overdose Death Counts*, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> (last visited June 7, 2022); Berkeley Lovelace Jr., *U.S. drug overdose deaths reached all-time high in 2021, CDC says Fentanyl continues to drive the majority of overdose deaths in the country*, NBC NEWS (May 11, 2022), <https://www.nbcnews.com/health/health-news/cdc-says-drug-overdose-deaths-reached-highest-record-last-year-rcna28129>.

<sup>23</sup> Audrey Conklin, *Fentanyl overdoses become No. 1 cause of death among US adults, ages 18-45: ‘A national emergency’*, FOX NEWS (Dec. 16, 2021), <https://www.foxnews.com/us/fentanyl-overdoses-leading-cause-death-adults>.

<sup>24</sup> Selene Rodriguez, *How Porous Borders Fuel Human Trafficking in the United States*, TEXAS PUBLIC POLICY FOUNDATION (Jan. 11, 2022), <https://www.texaspolicy.com/how-porous-borders-fuel-human-trafficking-in-the-united-states/>.

<sup>25</sup> *Biden’s Border Policies are Fueling the Fentanyl Crisis in America*, *supra* note 16.

trafficking victims.<sup>26</sup> There is also a well-documented and tragic connection between unlawful immigration from the southern border and human trafficking in the Midwest.<sup>27</sup>

Indeed, the data makes it readily apparent that trafficking on the southern border is a contributing factor to overall rates of human trafficking in the United States.<sup>28</sup> For example, the Latin American branch of the Coalition Against Trafficking In Women estimates that 60 percent of Latin American children who set out to cross the border alone or with smugglers have been caught by the cartels and are being abused in child pornography or drug trafficking.<sup>29</sup>

While the costs of combating human trafficking vary from state to state, Texas inevitably carries much of these costs due to its extensive shared border with Mexico. For example, a report from 2016 concluded that Texas spends approximately \$6.6 billion in lifetime expenditures on minor and youth sex trafficking victims, and that traffickers exploit approximately \$600 million annually from victims of labor trafficking in Texas (i.e., lost wages). Yes, this undoubtedly results in lost tax revenue to Texas; but, far more tragically, it means people are being enslaved.<sup>30</sup>

Preventing this horrible humanitarian tragedy—the trafficking of children and

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<sup>26</sup> *Id.*

<sup>27</sup> See generally U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REPORT (20th ed., June 2020), <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-06242-0-FINAL.pdf>; U.S. DEPT OF JUSTICE, *U.S. Mexico Bilateral Human Trafficking Enforcement Initiative*, <https://www.justice.gov/humantrafficking/special-initiatives#bilateral> (last visited June 6, 2022) (“Mexico is the country of origin of the largest number of foreign-born human trafficking victims identified in the United States.”); POLARIS PROJECT, FIGHTING HUMAN TRAFFICKING ACROSS THE U.S. – MEXICO BORDER (2018), <https://polarisproject.org/wp-content/uploads/2016/10/Consejo-NHTH-Statistics-2018.pdf> (“Every day, powerful criminal networks and individual traffickers on both sides of the border recruit people for labor or sexual exploitation.”); UNITED NATIONS OFFICE ON DRUG AND CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS (2018), [https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP\\_2018\\_BOOK\\_web\\_small.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf); *Southwest Land Border Encounters*, *supra* note 2.

<sup>28</sup> *Id.*

<sup>29</sup> Heather Robinson, *How Biden’s border policies will increase sex trafficking of children to US*, NEW YORK POST (April 17, 2022), <https://nypost.com/2021/04/17/how-bidens-border-policy-will-increase-child-sex-trafficking-to-us/>.

<sup>30</sup> Noël Busch-Armendariz, et al., *Human Trafficking by the Numbers: The Initial Benchmark of Prevalence and Economic Impact for Texas*, UNIVERSITY OF TEXAS AUSTIN (Dec. 2016), <https://repositories.lib.utexas.edu/bitstream/handle/2152/44597/idvsa-2016-human-trafficking-by-the-numbers.pdf?sequence=2%26isAllowed=y>.



others—should be reason enough to implement this border barrier immediately.

**(3) Webb and Zapata counties are disproportionately impacted by the negative consequences of an open border.**

The impacts of an open border also disproportionately harm Texas border communities.

The Laredo Sector, which includes both Webb and Zapata counties, has seen encounters increase by up to 165 percent from October 2020 through March 2021 as compared to the same period a year earlier.<sup>31</sup> And fiscal year 2022 encounters will be greater as this year is already breaking prior years' statistics by a record pace.

Webb County has seen a significant increase in the number of illegal aliens trespassing on private property and inflicting harm. Just a few weeks ago, DPS stopped two big rig trucks in Webb County with over 200 illegal immigrants being smuggled inside.<sup>32</sup> As a result of these increased encounters and crime, Webb County, has partnered with Governor Greg Abbott's border security operation to arrest migrants suspected of crossing the border illegally on state charges.<sup>33</sup> This reflects the substantial decrease in the quality of life as a result of the open border. For example, Webb County Judge Tano Tijerina explained that growing up on ranches, he always encountered people crossing the border illegally onto their property and "for the most part, almost all of them d[id] not mean us any harm."<sup>34</sup> But "[n]owadays, there's a lot of changes that have happened." Specifically, he said "[y]ou have a lot of

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<sup>31</sup> U.S. CUSTOMS AND BORDER PROTECTION, *U.S. Border Patrol Southwest Border Apprehensions by Sector* <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters/usb-sw-border-apprehensions> (last visited June 6, 2022). This website also shows that, in the Laredo Sector, unaccompanied children encounters increased by 27% and single adult encounters increased by 157%.

<sup>32</sup> TEX. DEPT OF PUBLIC SAFETY, *Over 200 Illegal Migrants Discovered During Traffic Stops (DPS-South Texas Region)* (May 11, 2022), <https://www.dps.texas.gov/news/over-200-illegal-migrants-discovered-during-traffic-stops-dps-south-texas-region>.

<sup>33</sup> Jolie McCullough, *Webb County, a Democratic stronghold, is set to welcome Texas Gov. Greg Abbott's controversial migrant arrests*, THE TEXAS TRIBUNE (March 10, 2022), <https://www.texastribune.org/2022/03/10/texas-border-migrant-arrests-webb-county/>.

<sup>34</sup> *Id.*



people who do have malintent.”<sup>35</sup> Similarly, the Zapata County Sheriff noted his community previously experienced about one highway chase or vehicle bailout per week, but “[n]ow it’s once a day.”<sup>36</sup>

In addition, the economic cost to ranchers from illegal alien traffic through their properties has also been substantial. Ranch owners in the nearby area cite costs in the tens of thousands of dollars to repair cut fences and gates destroyed by human smugglers transporting undocumented persons through their ranches.<sup>37</sup> These numbers are not unique.

More than 100,000 illegal aliens are caught trespassing in the U.S. each month.<sup>38</sup> Just six months into fiscal year 2022, border agents have logged over 1 million encounters with illegal aliens at the U.S.-Mexico border.<sup>39</sup> As a result, border agents are expected to “exceed 2 million apprehensions total in the 2022 fiscal year,” easily beating the record 1.7 million apprehensions in fiscal year 2021.<sup>40</sup>

In 2021, Governor Greg Abbott issued border-related disaster declarations for both Webb and Zapata counties, due to the “surge of individuals unlawfully crossing the Texas-Mexico border” which posed an “ongoing and imminent threat of disaster” for those counties.<sup>41</sup> That disaster declaration was recently renewed on May 22, 2022 because of the “ongoing and imminent threat of disaster for a number of Texas counties,” which include Webb and Zapata counties, “and for all state agencies

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<sup>35</sup> *Id.*

<sup>36</sup> John Burnett, *Human Smugglers Bypass Border Patrol, Bedeviling Sheriffs And Ranchers in South Texas*, NPR (April 24, 2021), <https://www.npr.org/2021/04/24/990150761/human-smugglers-bypass-border-patrol-bedeviling-sheriffs-and-ranchers-in-south-t>.

<sup>37</sup> *Id.* (noting that rancher Whit Jones III spent \$30,000 in a three-month period in 2021 to repair dozens of breaks in his fences).

<sup>38</sup> *Southwest Land Border Encounters*, *supra* note 2.

<sup>39</sup> Jordan Boyd, *Fiscal Year 2022 Border Encounters Will Hit 1 Million Right Before Peak Migration Season*, THE FEDERALIST (March 29, 2022), <https://thefederalist.com/2022/03/29/fiscal-year-2022-border-encounters-will-hit-1-million-right-before-peak-migration-season/>; *Southwest Land Border Encounters*, *supra* note 2.

<sup>40</sup> *Fiscal Year 2022 Border Encounters Will Hit 1 Million Right Before Peak Migration Season*, *supra* note 39.

<sup>41</sup> Gov. Greg Abbott, PROCLAMATION BY THE GOVERNOR OF THE STATE OF TEXAS (May 31, 2021), [https://gov.texas.gov/uploads/files/press/DISASTER\\_border\\_security\\_IMAGE\\_05-31-2021.pdf](https://gov.texas.gov/uploads/files/press/DISASTER_border_security_IMAGE_05-31-2021.pdf).

affected” by the border crisis.<sup>42</sup> A disaster declaration only applies where there is an “occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, . . . requiring emergency action[.]”<sup>43</sup> Yet, despite these troubling realities for Texas communities, they are still waiting for the already funded border barrier to be built. These counties have been in this state of disaster for at least more than a year now as a result of DHS’s and the Biden Administration’s inactions.

A border barrier will improve the quality of life of Texans and Americans by leaps and bounds and should be constructed immediately.

## **II. A BORDER BARRIER WILL RESULT IN HUGE ECONOMIC BENEFITS IN THE FORM OF REDUCED COSTS TO TAXPAYERS AND THE STATE OF TEXAS.**

The increase in the number of illegal aliens crossing the border has inflicted serious and substantial costs on Texas. The additional costs of housing, educating, and providing healthcare and other social services for trafficking victims, asylum seekers, or illegal aliens continue to financially burden Texas and its taxpayers.

The costs of an open border are extensive. Texas spends significant amounts of money providing services to illegal aliens. Those services include education services, healthcare, subsidized driver’s licenses, and many other social services broadly available in Texas. Federal law even requires Texas to include illegal aliens in some of these programs. The State also funds multiple healthcare programs that cover illegal aliens. These services include the Emergency Medicaid program, the Texas Family Violence Program, and the Texas Children’s Health Insurance Program. The provision of these services to illegal aliens is estimated to cost Texas over \$850 million

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<sup>42</sup> Gov. Greg Abbott, PROCLAMATION BY THE GOVERNOR OF THE STATE OF TEXAS (May 22, 2022), [https://gov.texas.gov/uploads/files/press/DISASTER\\_border\\_security\\_renewal\\_IMAGE\\_05-22-2022.pdf](https://gov.texas.gov/uploads/files/press/DISASTER_border_security_renewal_IMAGE_05-22-2022.pdf).

<sup>43</sup> Tex. Gov’t Code § 418.004(1) (defining “disaster”).

each year.<sup>44</sup>

- Texans annually pay between \$579 million and \$717 million for public hospital districts to provide uncompensated care for illegal aliens.<sup>45</sup>
- Texans paid \$152 million to house illegal criminal aliens for just one year.<sup>46</sup>
- Texans pay between \$62 million and \$90 million to include illegal aliens in the state Emergency Medicaid program.<sup>47</sup>
- Texans paid more than \$1 million for The Family Violence Program to provide services to illegal aliens for one year.<sup>48</sup>
- Texans pay between \$30 million and \$38 million per year on perinatal coverage for illegal aliens through the Children's Health Insurance Program.<sup>49</sup>
- Texans annually pay between \$31 million and \$63 million to educate unaccompanied alien children.<sup>50</sup>

As noted above, moreover, border crossings are anticipated to increase dramatically in 2022 with the expiration of Title 42, resulting in even higher costs to Texas, Texas communities, and taxpayers. Thus, a border barrier that results in decreased border crossings will create massive economic savings.

### **III. A BORDER BARRIER WILL ONLY BENEFIT BOTH TEXANS AND AMERICANS.**

Adequate border security in the form of a border barrier will deter human smuggling, human trafficking, and other criminal activities associated with a porous

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<sup>44</sup> Attorney General Ken Paxton, *AG Paxton: Illegal Immigration Costs Texas Taxpayers Over \$850 Million Each Year*, PRESS RELEASE (March 31, 2021), <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-illegal-immigration-costs-texas-taxpayers-over-850-million-each-year>.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

border. Any obstacle to building a border barrier injures not only Texas but also Americans generally.

Failure to expedite implementation of a border barrier means the ongoing horrific and tragic activities—such as human trafficking and overdose deaths from illegal drugs—will continue as these are intertwined with the current border crisis. These horrific impacts are material and long-lasting. And they show that the status quo has not worked and is not working. By failing to expedite projects such as these, DHS and the Biden Administration are preventing proven deterrence measures to protect America's borders.

Mr. Secretary, as Texas's Attorney General, I urge you to fulfill your statutory duty to secure America's borders, by exercising your authority under Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act to waive environmental requirements to expedite construction of this much needed border barrier.

Respectfully submitted,

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

KEN PAXTON  
Attorney General of Texas