



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 26, 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:

I have received your second demand letter dated January 23, 2024, in which DHS continues to complain about how TMD secured Shelby Park in the City of Eagle Pass, Texas. In a previous response, I explained that your original letter “misstates both the facts and the law in demanding that Texas surrender to President Biden’s open-border policies.” Presumably because you have no meaningful response to our letter, your latest letter abandons earlier factual assertions, asserts new ones, and supplies even less of a legal basis for your demand. Once again, I respectfully suggest that any time you might spend suing Texas should be redirected toward enforcing the immigration laws Congress already has on the books.

Again, let’s start with the facts. As I have already explained, U.S. Border Patrol withdrew from Shelby Park last year and deliberately reduced its ability to respond to medical emergencies in the vicinity. The tragic incident on January 12, 2024 that you once tried to pin on Texas had already occurred well before your agency’s officers arrived at the Shelby Park gate—conspicuously lacking any equipment to perform an emergency rescue. And the supposed “Memorandum of Agreement” between U.S. Customs and Border Protection and the City of Eagle Pass from 2015 (2015 MOA) was never approved by Texas as required under the State’s constitution.

Your latest letter disputes *none* of this. Instead, you now claim Texas has somehow restricted access to land owned by the federal government. Yet your first demand letter acknowledged that Shelby Park “is municipal land owned by the City of Eagle Pass,” not the United States. Which is it?

If this newfound allegation of federal “property rights” were true, Texas would of course remove any obstructions to federal land pursuant to a lawful court order. This State will continue to respect another sovereign’s property rights, even though the federal government refuses to do so. *See, e.g., Texas v. DHS*, 2023 WL 7135677, at *3 (W.D. Tex. Oct. 30, 2023) (Moses, C.J.) (finding federal agents repeatedly trespassed to state chattels, and even “damaged more property a mere day after”

the State sought a temporary restraining order); *Texas v. DHS*, 88 F.4th 1127, 1136 (5th Cir. 2023) (observing that federal agents “have repeatedly ‘damage[d], destroy[ed], and exercis[ed] dominion over state property’”), *vacated*, 2024 WL 222180 (U.S. Jan. 22, 2024) (mem.).

After conducting a diligent search in the arbitrarily short period you allotted for this rebuttal, it appears there are serious reasons to question both of your new claims of federal property rights.

First, you say the United States acquired fee-simple title to certain parcels in the Shelby Park area. But your own map shows that most of the tracts you reference fall outside the perimeter area secured by Texas at Shelby Park. With respect to parcels identified in your maps that are actually in the vicinity of the park, publicly available records suggest the United States does not even purport to own what your latest letter claims. For example, the home-cooked map attached to your letter insinuates that the United States has title to every parcel on the west side of Ryan Street bordering Shelby Park. Based on our necessarily cursory review, current records from Maverick County do not support that claim. **By February 15, 2024, Texas hereby demands that your agency supply the following documents and information to this office:**

- official plat maps and deeds demonstrating the precise parcels that you believe the United States owns; and
- your explanation of how exactly Texas officials are preventing access to those parcels by federal agents.

Second, you say the United States acquired a perpetual easement from the City of Eagle Pass in 2018. What I said last week about the 2015 MOA, I will say again about your latest claim: “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.” You are invited to read that document at <https://tlc.texas.gov/docs/legref/TxConst.pdf>. But even if the 2015 MOA were somehow valid, you are not seeking “access consistent with” its terms. The “nonexclusive” easement from 2018 is attached for your convenience. Its express “purpose” was to allow “maintenance . . . of a road” along the river, including “the right to trim . . . trees” or other obstacles within the roadway. Elsewhere, the 2018 easement prohibits the United States from making any permanent improvements “other than a Roadway” without written City approval. If your federal agency wishes to help municipal officials with tree-trimming and road-maintenance chores, I suspect they would appreciate the help. The 2018 easement, however, nowhere contemplates allowing the federal government to deploy infrastructure that President Biden will use to wave thousands of illegal aliens into a park that will “continue to [be] use[d] and enjoy[ed]” for “recreation events.” **By February 15, 2024, Texas hereby demands that your agency supply the following documents and information to this office:**

- any written approval from the City of Eagle Pass or the State of Texas consenting to allow your federal agents to erect the open-border infrastructure hinted at in your letter; and
- your explanation of where the Congress has empowered your federal agency to pursue this scheme, notwithstanding statutory provisions to the contrary.

Without clarifying both the metes and bounds of the federal government’s alleged “property rights,” and how its lawful access to such property has been in any way impeded, the State cannot meaningfully assess your demand. But to the extent your agency demands access in order to once again transform Shelby Park into “an unofficial and unlawful port of entry,” *Texas v. DHS*, 2023 WL 8285223, at *14 (W.D. Tex. Nov. 29, 2023) (Moses, C.J.), **your request is hereby denied.**

To be clear, your latest letter points to no law supporting the agency’s right to do that. In an unexplained reference to “Border Patrol’s responsibility and statutory authorities,” you parrot statutory language about the need “to patrol the border.” But you (unsurprisingly) omit the statutory language that your agency continues publicly to disregard: Border Patrol is tasked with “patrolling the border *to prevent the illegal entry* of aliens.” 8 U.S.C. § 1357(a)(3) (emphasis added). Instead, you fixate on a recent order from the Supreme Court of the United States. As you know, that unsigned order supplied no rationale for vacating a Fifth Circuit injunction. It may be that the Supreme Court was misled by allegations levelled by your federal agency, and which you repeated in your January 14th letter to our office. In any event, the Court’s order certainly said nothing about access to Shelby Park, which even the federal government’s lawyers acknowledged is “not presented” in that ongoing litigation. *See* Second Supplemental Memorandum at 5, *DHS v. Texas*, No. 23A607 (Jan. 15, 2024).

As I said before, this office will continue to defend Texas’s efforts to protect its southern border against every effort by the Biden Administration to undermine the State’s constitutional right of self-defense. You should advise your clients to join us in those efforts by doing their job and following 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

Enclosure