



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Sam Graves
Chairman

Rick Larsen
Ranking Member

Jack Ruddy, Staff Director

Katherine W. Dedrick, Democratic Staff Director

October 19, 2023

The Honorable Michael L. Connor
Assistant Secretary of the Army for Civil Works
United States Department of the Army
108 Army Pentagon
Washington, DC 20310

Lieutenant General Scott A. Spellmon
Chief of Engineers and Commanding General
United States Army Corps of Engineers
441 G Street NW
Washington, DC 20314

Dear Assistant Secretary Connor and Lieutenant General Spellmon:

We write to express our dismay with a lawsuit brought by the Department of Justice (DOJ) against Greg Abbott, in his capacity as Governor of the State of Texas, and the State of Texas, filed on July 24, 2023.¹ As Members of the Committee on Transportation and Infrastructure, we are concerned that the DOJ is using Section 10 of the *Rivers and Harbors Act of 1899 (RHA)* as an excuse to thwart the State of Texas' efforts to protect the Southern border.² The Biden Administration's current policies create the impression that illegally entering the United States is a risk worth taking, therefore creating a crisis with drastic humanitarian costs.³ Further compounding this situation, lax border policies allow cartels and drug smugglers to funnel dangerous amounts of illegal substances into our Nation, harming American families.⁴ Texas is on the front lines of the crisis, and we want to ensure the Biden Administration is not using this lawsuit to further its failed border policies.

The Biden Administration's refusal to secure our Southern border has led to over 2.2 million encounters as of August 2023, following nearly 2.4 million in Fiscal Year (FY) 2022, a staggering number.⁵ Last year, the United Nations labeled the United States-Mexico border as

¹ *U.S. v. Abbott et. al.*, 1:23-cv-00853, (W.D.Tex., July 24, 2023) [hereinafter *U.S. v. Abbott*].

² *Rivers and Harbors Appropriation Act of 1899*, 33 U.S.C. § 403 [hereinafter *RHA*].

³ See e.g. Kelsey Koberg, *Report Calls Out Biden Policies Encouraging Illegal Immigration: 'Humanitarian Catastrophe'*, FOX NEWS, (June 21, 2022), available at <https://www.foxnews.com/media/report-calls-biden-policies-encouraging-illegal-immigration-humanitarian-catastrophe>; Press Release, HOUSE COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY, *Border Patrol Chiefs: Biden's Border Crisis is "Overwhelming"*, (Feb. 7, 2023), available at <https://oversight.house.gov/release/border-patrol-chiefs-bidens-border-crisi-is-overwhelming/>.

⁴ See e.g., Kevin D. Roberts, Ph.D., *How Biden Paved the Way for Cartels, Drugs & Lawlessness*, THE HERITAGE FOUNDATION, (Mar. 16, 2022) available at <https://www.heritage.org/immigration/commentary/how-biden-paved-the-way-cartels-drugs-lawlessness>.

⁵ UNITED STATES CUSTOMS AND BORDER PROTECTION, *SOUTHWEST LAND BORDER ENCOUNTERS*, available at <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

the deadliest land crossing in the world.⁶ Sadly, at least 853 migrants died crossing the Southern border in FY 2022, the highest level ever recorded.⁷ In addition, in FY 2023, at least 22,000 pounds of fentanyl, a drug for which a deadly dose is two milligrams, has been interdicted at the border.⁸ However, interdiction only stops 5 to 10 percent of the total quantity of drugs trafficked across the Southern border.⁹

Due to these failures, Texas Governor Greg Abbott has taken a number of steps to protect the State's border with Mexico.¹⁰ One initiative in Texas' efforts has been the installation of a chain of marine buoys in the Rio Grande near Eagle Pass, TX, which began on July 7, 2023.¹¹ The Rio Grande is practically navigable only at the mouth of the river, while at Eagle Pass the river is as low as eighteen inches deep, far too shallow for commercial use.¹² The buoys are designed to be as humane as possible, while deterring people from attempting to cross through or under them into the United States.¹³ For example, Texas officials decided to use flat spin discs to connect the chain, rather than discs or buoys with spikes or barbs, in order to minimize potential for bodily harm.¹⁴ Further, Texas has ensured the buoys remained on the United States side of the border.¹⁵ Additionally, a recent poll from the University of Texas found that a majority of voters in Texas supported "placing buoys and barbed wire at the Rio Grande River to deter

⁶ See Press Release, UNITED NATIONS INTERNATIONAL ORGANIZATION FOR MIGRATION, *Latest Migrant Tragedy in Texas Highlights Crisis Along Deadliest Migration Land Route*, (July 1, 2022), available at <https://www.iom.int/news/latest-migrant-tragedy-texas-highlights-crisis-along-deadliest-migration-land-route>.

⁷ See Camilo Montoya-Galvez, *At least 853 migrants died crossing the U.S.-Mexico border in past 12 months – a record high*, CBS NEWS, (Oct. 28, 2022), available at <https://www.cbsnews.com/news/migrant-deaths-crossing-us-mexico-border-2022-record-high/>.

⁸ UNITED STATES CUSTOMS AND BORDER PROTECTION, *DRUG SEIZURE STATISTICS FY2023*, available at <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>.

⁹ Travis Hartman, et. al., *Fentanyl is fast, cheap and deadly*, REUTERS, (Aug. 9, 2023), available at <https://www.reuters.com/graphics/MEXICO-DRUGS/FENTANYL/dwvkadblovml/>.

¹⁰ See e.g. Press Release, OFFICE OF THE TEXAS GOVERNOR GREG ABBOTT, *Operation Lone Star Combats President Biden's Humanitarian Crisis*, (July 21, 2023), available at <https://gov.texas.gov/news/post/operation-lone-star-combats-president-bidens-humanitarian-crisis>; see also Erin Dwinell, *Toll of Border Crisis on States: Texas*, THE HERITAGE FOUNDATION, (Mar. 3, 2023), available at <https://www.heritage.org/immigration/commentary/toll-border-crisis-states-texas>.

¹¹ See Victor Nava, *Texas begins installing buoy barrier along Rio Grande to deter migrant border crossings*, N.Y. POST, (July 7, 2023), available at <https://nypost.com/2023/07/07/texas-begins-installing-buoy-barrier-along-rio-grande-to-deter-migrant-border-crossings/> [hereinafter Post Article].

¹² See Daniel Wiessner, *Texas urges US appeals court to allow Rio Grande barrier*, REUTERS, (Oct. 5, 2023), available at <https://www.reuters.com/legal/texas-urges-us-appeals-court-allow-rio-grande-barrier-2023-10-05/>.

¹³ See Post Article, *supra* note 11; see also Julia Ainsley, *Trump officials hatched the idea for the Rio Grande buoys that Texas now uses to block migrants*, NBC NEWS, (Aug. 17, 2023), available at <https://www.nbcnews.com/politics/immigration/trump-officials-idea-rio-grande-buoys-texas-blocks-migrant-border-rcna100245>.

¹⁴ *Id.*

¹⁵ Adolfo Flores, *Challenge to Texas Border Buoy Barrier Argued in Court*, THE WALL ST. J., (Aug. 22, 2023), available at <https://www.wsj.com/us-news/challenge-to-texas-border-buoy-barrier-to-be-argued-tuesday-db0ad6a6>.

migration,”¹⁶ underscoring the popularity amongst Texans of the buoys and securing the Southern border.¹⁷

Following installation of the buoys, the DOJ filed a civil complaint against Governor Abbott and the State of Texas on July 24, 2023.¹⁸ In the complaint, the DOJ seeks to have the buoys removed at Texas’ expense, citing a lack of authorization under Section 10 of the *RHA*.¹⁹ However, the suit provides no mention of the National security benefit the buoys provide or the negative consequences of the Biden Administration’s subpar border policies that led to the buoys’ installation.²⁰

On September 6, 2022, a Federal district court judge sided with the DOJ and granted a preliminary injunction in the case, ordering the buoys to be moved by September 15, 2023.²¹ However, noting the irreparable damage the injunction would have placed on Texas’ sovereignty and self-defense, the United States Circuit Court of Appeals for the 5th Circuit granted Texas’ appeal granting a stay from the injunction, allowing the buoys to remain in place.²²

We have significant questions about the factors behind the filing of the lawsuit. It remains unclear if the DOJ is truly basing its argument on the navigability of the Rio Grande. Or, if instead, the true motivation behind the lawsuit at hand is to defend the Biden Administration’s catastrophically damaging open-border policies.

As such, we are concerned that the Biden Administration is weaponizing Section 10 of the *RHA* in their lawsuit, thus dragging the United States Army Corps of Engineers (Corps) into the White House’s political fight.²³ Section 10 of the *RHA* primarily focuses on ensuring navigation for the purposes of interstate commerce.²⁴ Therefore, it is inappropriate to hijack this authority to bar a state from executing stronger and more robust border security policies which

¹⁶ See Jim Henson & Joshua Banks, *Support or oppose: Placing buoys and barbed wire at the Rio Grande River to deter migration (August 2023)*, THE TEXAS POLITICS PROJECT AT THE UNIVERSITY OF TEXAS AT AUSTIN, (Sept. 8, 2023), available at <https://texaspolitics.utexas.edu/set/support-or-oppose-placing-buoys-and-barbed-wire-rio-grande-river-deter-migration-august-2023>.

¹⁷ *Id.*

¹⁸ U.S. v. Abbott, *supra* note 1.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See e.g. Brian Bushard, *Texas ordered to remove Rio Grande buoy border barrier by Federal judge*, FORBES, (Sept. 6, 2023), available at <https://www.forbes.com/sites/brianbushard/2023/09/06/texas-ordered-to-remove-rio-grande-buoy-border-barrier-by-federal-judge/?sh=4f56a3224e1f>.

²² See Todd J. Gilman & Aarón Torres, *Federal appeals court lets Texas keep anti-migrant buoys in place for now*, THE DALLAS MORNING NEWS, available at <https://www.dallasnews.com/news/politics/2023/09/07/federal-appeals-court-lets-texas-keep-anti-migrant-buoys-in-place-for-now/>; see also William Melhado & Uriel J. García, *Texas can keep buoys in the Rio Grande while legal challenge continues, federal appeals court rules*, THE TEXAS TRIBUNE, (updated Sept. 7, 2023), available at <https://www.texastribune.org/2023/09/06/texas-border-floating-barrier-buoys-federal-judge-ruling/>.

²³ See e.g. Letter, The Hon. Greg Abbott, Governor, Texas to The Hon. Joseph R. Biden, Jr., President, United States of America (July 24, 2023), available at https://gov.texas.gov/uploads/files/press/O-BidenJoseph_07.24.23.pdf [hereinafter July 24 Letter to President Biden].

²⁴ See *id.*; see also *RHA*, *supra* note 2.

the Administration opposes. It is imperative that we ensure this Administration is not leveraging the navigation regulatory process to distract from its failure to secure our Sothern border.²⁵

To ensure that the Corps' Section 10 responsibilities are not being politically manipulated as a shield for the Biden Administration's irresponsible border policies, please provide responses to the following questions, as soon as possible, but no later than 5:00 p.m. ET on November 2, 2023:

1. All documents and communications related to the decision to bring legal action against the State of Texas.
2. All correspondence between or amongst the Corps, the offices of the Secretary of Defense, the Secretary of Defense, the Secretary of the Army, the Assistant Secretary of the Army (Civil Works), International Boundary and Water Commission, the Department of Homeland Security, and the White House referring or relating to the installation of buoys in the Rio Grande.
3. All documents referring or relating to possible Section 10 regulatory review of buoys in the Rio Grande, including, but not limited to, documents related to which executive agencies are involved in the review, the lead agency in regulatory review, and the decision-making process of the regulatory review.

Pursuant to House Rule X, clause 1(r), the Committee has jurisdiction over these issues and shall conduct appropriate oversight of these actions. This request and any documents created as a result of this request will be deemed Congressional documents of the Committee. An attachment contains additional instructions for responding to this request. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2165 of the Rayburn House Office Building and the Minority Staff in Room 2164 of the Rayburn House Office Building.

If you have any questions, please contact the Majority Staff, Subcommittee on Water Resources and Environment, at (202) 225-9446. Thank you for your prompt attention to this matter.

Sincerely,



Sam Graves
Chairman
Committee on Transportation
and Infrastructure



David Rouzer
Chairman
Subcommittee on Water Resources
and Environment

²⁵ See July 24 Letter to President Biden, *supra* note 23.



Garret Graves
Chairman
Subcommittee on Aviation



Daniel Webster
Chairman
Subcommittee on Coast Guard and
Maritime Transportation



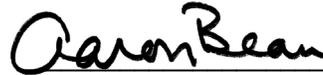
Eric A. "Rick" Crawford
Chairman
Subcommittee on Highways and Transit



Troy E. Nehls
Chairman
Subcommittee on Railroads,
Pipelines, and Hazardous
Materials



Brian Babin, D.D.S.
Member of Congress



Aaron Bean
Member of Congress



Mike Bost
Member of Congress



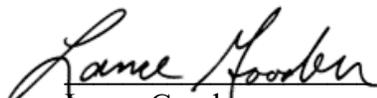
Tim Burchett
Member of Congress



Eric Burlison
Member of Congress



Chuck Edwards
Member of Congress



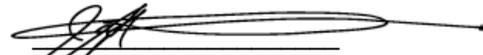
Lance Gooden
Member of Congress



Dusty Johnson
Member of Congress



Marcus J. Molinaro
Member of Congress



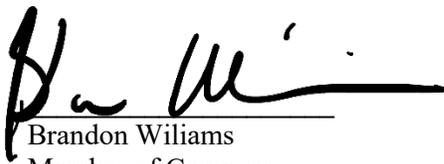
Jeff Van Drew
Member of Congress



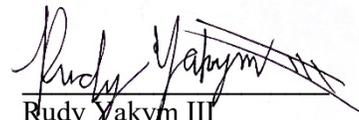
Derrick Van Orden
Member of Congress



Bruce Westerman
Member of Congress



Brandon Williams
Member of Congress



Rudy Yakym III
Member of Congress

cc: The Honorable Rick Larsen, Ranking Member
Committee on Transportation and Infrastructure

The Honorable Grace Napolitano, Ranking Member
Subcommittee on Water Resources and Environment

Enclosure

Attachment A – Requirements for Responding to the House Committee on Transportation and Infrastructure Records Requests in the 118th Congress.