



August 8, 2022

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*Via Email*

**Re: Customs and Border Protection Collaboration with Texas Department of Public Safety Transport and Detention in Eagle Pass, Texas, Following Governor Greg Abbott's July 7, 2022 Executive Order**

Dear Officer Culliton-González,

On July 7, 2022, Texas Governor Greg Abbott issued an executive order purporting to “authorize and empower the Texas National Guard and the Texas Department of Public Safety to . . . apprehend[] immigrants who cross the border between ports of entry or commit other violations of federal law, and to return [them] to the border at a port of entry.”<sup>1</sup> The *Texas Tribune* has now reported witnessing Texas Department of Public Safety (DPS) officers busing about a dozen men and women, apparently suspected to be migrants, to a commercial vehicle inspection site in Eagle Pass, Texas; detaining them outside for almost three hours; and then transferring them to Border Patrol custody.<sup>2</sup> We write to express serious concern regarding this set of events, and the possibility that similar unilateral arrest, transportation, and detention, followed by transfer to Customs and Border Protection (CBP) custody, may be occurring elsewhere along the Texas-Mexico border.

We urge the Department of Homeland Security not to collaborate with these actions by Texas state police. Specifically, DHS should decline to take custody of individuals in these circumstances, and should prevent Texas state and local officials from detaining individuals on federal property pursuant to Governor Abbott's executive order. We request that the Office of

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<sup>1</sup> Governor Greg Abbott, Executive Order GA 41 (July 7, 2022), <https://gov.texas.gov/uploads/files/press/EO-GA-41.pdf>.

<sup>2</sup> James Barragán and Uriel J. García, *Legal Questions Shroud Gov. Greg Abbott's Move to Bus Migrants Back to the Border*, Tex. Tribune, Aug. 1, 2022, <https://www.texastribune.org/2022/08/01/texas-bus-migrants-ports/>.

Civil Rights and Civil Liberties (CRCL) (1) monitor Eagle Pass and other Texas ports of entry to ensure that DHS acts appropriately; (2) collect and publicize data on the purported state authority for transfers of individuals from DPS to DHS custody; (3) identify gaps in CBP policy and protocols and issue relevant recommendations to CBP; and (4) take all appropriate steps to identify and address civil rights violations that are occurring or may occur as a result of Governor Abbott’s executive order.

## **I. Transport and Detention of Migrants by Texas DPS and Transfer to CBP Custody in Eagle Pass, Texas**

*Texas Tribune* journalists witnessed Texas DPS officers in Eagle Pass transporting men and women to what appears to be federal property, detaining them there for hours, and then turning them over to Border Patrol. The place where the journalists saw the individuals being held is “a commercial vehicle inspection site” across the street from the Moncada Baseball Park in Eagle Pass, near the International Bridge and the related port of entry.<sup>3</sup> This location appears to be the CBP U.S. Customs Commercial Entrance, which is across South Monroe Street and Industrial Boulevard from the baseball park.<sup>4</sup>

The *Texas Tribune* reported that the individuals were transported to the location via Texas Department of Criminal Justice bus. In the first group, roughly 12 individuals—apparently all adults—“were directed toward a truck port where they sat and waited under shade near an outdoor fan for nearly three hours.”<sup>5</sup> During this period, they were detained by DPS and possibly also by members of the Texas National Guard.<sup>6</sup> After hours elapsed, “a federal agent in a white Border Patrol van picked them up and drove them away.”<sup>7</sup> “A few hours later, the process was repeated with a new group of migrants.”<sup>8</sup>

## **II. Legal Issues Regarding DPS’s Transport and Detention of Migrants Before Transfer to Federal Custody**

The unilateral arrest and transport of migrants on immigration grounds by state officers and the detention of migrants on federal property by state officers raise serious legal concerns—including violation of CBP detention conditions standards and protections against discriminatory

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<sup>3</sup> *Id.*

<sup>4</sup> Google Maps, CBP U.S. Customs Commercial Entrance, 1574 Industrial Blvd, Eagle Pass, TX 78852, <https://www.google.com/maps/place/CBP+U.S.+Customs+Commercial+Entrance/@28.6988244,-100.5033039,19z/data=!4m2!1m6!3m5!1s0x865f8d905b664f3d:0xd4980f268ce9d9f7!2sMoncada+Baseball+Park!8m2!3d28.6998857!4d-100.5025689!3m4!1s0x865f8c5b3d6774fb:0x3297c68f5c94ba54!8m2!3d28.6984839!4d-100.5026666>.

<sup>5</sup> Barragán and García, *Legal Questions Shroud Gov. Greg Abbott’s Move to Bus Migrants Back to the Border*, *supra* note 2.

<sup>6</sup> *Id.* (“Members of the Texas National Guard sit in the shade with people who were apprehended by state troopers.”).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

treatment. CBP’s National Standards on Transport, Escort, Detention, and Search set forth standards for vehicles used to transfer migrants, for the conduct of transporting officers, for detention conditions, and for the conduct of officers while detaining individuals.<sup>9</sup> Texas DPS officers are not bound by those same standards in their day-to-day operations. This disparity may lead to migrants being held on federal property in conditions that are not in compliance with the TEDS and that may be dangerous. The DHS Office of Inspector General found earlier this year that an outdoor holding site on the Texas-Mexico border “did not meet TEDS standards on temperature,” with temperatures in excess of 90 degrees.<sup>10</sup> Holding people outside for almost three hours in the South Texas summer poses a risk of heat exhaustion and heat stroke, for example.<sup>11</sup> There are also specific standards that CBP must follow related to treatment of at-risk populations, such as pregnant individuals, elderly individuals, people living with disabilities, and people undergoing certain medical treatment—including “special concern for their particular vulnerability.”<sup>12</sup> Individuals in these populations are frequently at increased risk of heat-related illness.<sup>13</sup> More broadly, DPS officers lack the training that CBP officers receive in detention of migrants. Simply put, migrants are being held on federal property in violation of the TEDS and in potentially dangerous conditions.

Further, there is significant evidence that DPS engages in systematic discrimination against Black and brown migrants and Latinx individuals in South Texas more generally. DPS traffic stops under Governor Abbott’s “Operation Lone Star” anti-immigrant initiative have plain indicia of racial profiling. Tarleton State University researchers’ analysis of 2021 DPS traffic stop data concluded that there is “a reasonable probability that racial profiling is a significant contributor to” disparities in DPS traffic stops between Latinx and white drivers.<sup>14</sup> Our own analysis of DPS officers’ affidavits from Operation Lone Star traffic stops found that DPS officers have regularly prolonged stops on the basis of passengers’ Latinx ethnicity, in violation of federal law and the Constitution.<sup>15</sup> DPS is also targeting Black and brown migrants for arrest

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<sup>9</sup> U.S. Customs and Border Protection, *National Standards on Transport, Escort, Detention, and Search* (TEDS) (Oct. 2015), <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf>.

<sup>10</sup> DHS Office of Inspector General, *Rio Grande Valley Area Border Patrol Struggles with High Volumes of Detainees and Cases of Prolonged Detention but Has Taken Consistent Measures to Improve Conditions in Facilities*, OIG-22-22, January 27, 2022, at 14, <https://www.oig.dhs.gov/sites/default/files/assets/2022-02/OIG-22-22-Feb22.pdf>.

<sup>11</sup> See generally National Integrated Heat Health Information System, <https://www.heat.gov/>.

<sup>12</sup> TEDS, *supra*, at 19 (Standard 5.0, “At-Risk Populations”).

<sup>13</sup> National Integrated Heat Health Information System, *Who Is Most At Risk to Extreme Heat?*, <https://www.heat.gov/pages/who-is-at-risk-to-extreme-heat>.

<sup>14</sup> Tarleton State University Institute for Predictive Analytics in Criminal Justice, *Additional Analysis of State of Texas 2021 Racial Profiling Data: Hispanic Data Analysis Report*, June 14, 2022, at 18 <https://web.tarleton.edu/ipac/wp-content/uploads/sites/12/2022/07/IPAC2021AnnualReportHispanicFindings.pdf>.

<sup>15</sup> ACLU of Texas & Texas Civil Rights Project, *Letter to Attorney General Garland et al., Operation Lone Star: Racial Profiling in Texas Department of Public Safety (DPS) Traffic Stops and High Death*

and greater punishment, in a separate criminal system, under Governor Abbott’s discriminatory “catch-and-jail” scheme.<sup>16</sup> We and partner organizations have filed complaints with the Department of Justice providing substantial evidence of discrimination on the basis of race and national origin in DPS’s actions under Operation Lone Star.<sup>17</sup> In short, Governor Abbott’s efforts to involve DPS in immigration enforcement are leading to discriminatory treatment of Black and brown individuals in South Texas, in violation of the Constitution and federal law. This discriminatory conduct alone provides sufficient reason for the federal government to completely separate itself from DPS’s arrest, transport, and subsequent detention of individuals it believes to be migrants.

### **III. DHS Should Reject Involvement with Texas DPS’s Immigration Enforcement Efforts**

We therefore urge DHS to take swift action both to reject transfers of migrants transported by Texas DPS to DHS custody and to end any detention of migrants on federal property by Texas DPS or by any other state or local agency. DHS should reject any involvement with DPS’s immigration enforcement efforts in South Texas—including with Governor Abbott’s July 7 executive order—to ensure that it has no entanglement whatsoever with the agency’s discriminatory actions. Federal funding cannot further discrimination on the basis of race or national origin. Similarly, detention on federal property not in compliance with the TEDS is inconsistent with federal policy, is not by agents trained as federal immigration agents, and poses risk of severe harm to migrants. DHS must end any use of federal property by DPS and other Texas state and local actors to detain migrants.

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*Toll from DPS Vehicle Pursuits*, July 28, 2022, at 7-12,

[https://www.aclutx.org/sites/default/files/ols\\_traffic\\_stops\\_title\\_vi\\_complaint.pdf](https://www.aclutx.org/sites/default/files/ols_traffic_stops_title_vi_complaint.pdf).

<sup>16</sup> ACLU of Texas et al., Letter to Attorney General Garland et al., *Texas Migrant Arrest Program under “Operation Lone Star”—Urgent Need for Investigation into Race and National Origin Discrimination By Texas Agencies*, Dec. 15, 2021,

[https://www.aclutx.org/sites/default/files/field\\_documents/ols\\_trespass\\_arrest\\_title\\_vi\\_complaint.pdf](https://www.aclutx.org/sites/default/files/field_documents/ols_trespass_arrest_title_vi_complaint.pdf).

<sup>17</sup> Title VI of the Civil Rights Act of 1964 bars discrimination on the basis of race, color, or national origin in programs and activities that receive federal financial assistance. 42 U.S.C. § 2000d *et seq.* This discrimination is in both (1) the design and implementation of Governor Abbott’s Operation Lone Star trespass arrest program, including DPS’s participation in the program, and (2) DPS’s racial profiling and vehicle pursuits in Operation Lone Star traffic stops. ACLU of Texas et al., Letter to Attorney General Garland et al., *Texas Migrant Arrest Program under “Operation Lone Star”—Urgent Need for Investigation into Race and National Origin Discrimination By Texas Agencies*, *supra*; ACLU of Texas & Texas Civil Rights Project, Letter to Attorney General Garland et al., *Operation Lone Star: Racial Profiling in Texas Department of Public Safety (DPS) Traffic Stops and High Death Toll from DPS Vehicle Pursuits*, *supra* note 15.

#### **IV. CRCL Should Investigate, Monitor, and Collect Data**

We request that CRCL investigate whether DPS is in fact transporting migrants to a location near the Eagle Pass port of entry and detaining them while awaiting transfer to CBP custody. If that is in fact occurring, we request the end to such transfers and any and all appropriate further actions regarding violations of applicable law and DHS policy. Further, we request that CRCL:

- (1) Monitor Texas ports of entry, including the Eagle Pass port of entry, to ensure that CBP completely rejects involvement with Governor Abbott's efforts to transport migrants to ports of entry pursuant to his July 7 executive order;
- (2) Collect information on any transfers of individuals from DPS to DHS custody, including under what purported state authority the individuals were held by DPS, and publicize aggregate data;
- (3) Identify gaps in CBP policy and protocols and issue relevant recommendations to CBP; and
- (4) Take all further appropriate steps to identify and address civil rights violations that are occurring or may occur as a result of Governor Abbott's executive order.

Thank you for your time and attention to this complaint. We look forward to your timely response.

Sincerely,

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