

April 7, 2022

Merrick Garland, Attorney General
Lisa Monaco, Deputy Attorney General
Vanita Gupta, Associate Attorney General
Kristen Clarke, Assistant Attorney General
Christine Stoneman, Chief, Federal Coordination and Compliance
United States Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530

Via email

Re: Texas Migrant Arrest Program under “Operation Lone Star”—Continued Urgent Need for Investigation into Race and National Origin Discrimination by Texas Agencies

Dear Attorney General Garland, Deputy Attorney General Monaco, Associate Attorney General Gupta, Assistant Attorney General Clarke, and Ms. Stoneman,

As we write, the number of daily arrests under the Operation Lone Star (“OLS”) trespass arrest program is roughly doubling—and the state of Texas is expanding its effort to “catch and jail” Black and Latinx migrants even further. In Jim Hogg County, where state troopers have now begun targeting migrants for trespass arrests, more than 60 people have been arrested to date. The OLS trespass arrest program is ballooning exponentially: arrests have expanded to Maverick County; they are slated to begin in Uvalde County by May; and state officials have described expansion to Brooks, Terrell, Webb, and Zapata Counties as well.

The OLS trespass arrest program continues to violate migrants’ civil rights. As we describe below, the cases of eleven Latinx migrants illustrate the range of severe abuses that those arrested under the OLS trespass arrest program continue to experience. Each of these men was jailed for more than three months—one was jailed for almost six months. While in Texas Department of Criminal Justice custody, they endured horrific conditions. They experienced verbal abuse from guards, including abuse based on national origin; were underfed and served food with worms; and were held in a punitive environment where physical abuse and threats of solitary confinement were common. Each was held in these conditions pretrial for months—far beyond the typical days-long time served sentences for convictions under the OLS trespass arrest program.

The civil rights violations and abuse that those detained under the OLS trespass arrest program have endured, from being targeted for arrest to being held in Texas prisons for lengthy periods, demonstrate that state and local officials are effectuating Governor Abbott’s goal: to punish migrants for their presence in Texas. The state continues to subject Black and brown

migrants to targeted arrests and to a separate criminal system riddled with civil rights abuses. Further, recent reporting confirms that Texas state and local authorities, including the Texas National Guard, have partnered with at least one white supremacist vigilante group to detain migrants.

Federal taxpayer dollars—including, in at least one case, federal coronavirus relief—are directly underwriting or indirectly budgetarily supporting state and local agencies’ implementation of the OLS trespass arrest program. But Title VI of the Civil Rights Act of 1964 prohibits this outcome. It is imperative and urgent that the Department of Justice immediately investigate the state and local agencies involved in the migrant arrest program. Pursuant to Title VI, federal funding to state and local agencies discriminating on the basis of race and national origin must be terminated.

The federal government must use all resources at its disposal to end the inherently discriminatory OLS trespass arrest program—and to comply with its obligation to ensure that federal tax dollars do not subsidize discrimination on the basis of race or national origin. On February 23, 2022, we called on DOJ to publicly announce whether an investigation has been opened and the timeline for any investigatory process. We reiterate that call—and continue to urgently raise the civil rights alarm. More than 3,500 people have now been subjected to the abuses of the OLS trespass arrest program. Federal action is urgently necessary to protect the rights of Black and brown migrants.

I. Accelerating Expansion of Operation Lone Star

The accelerating expansion of the OLS trespass arrest program is extremely concerning. In January, Texas announced the expansion of the OLS trespass arrest program immediately north of the Rio Grande Valley, to Jim Hogg County. Now, the program is up and running there: state troopers have arrested over 60 people, and the state has set up a new “processing center” specifically for booking those arrested under the OLS trespass arrest program in Jim Hogg County.¹ The OLS arrest program has also expanded to Maverick County, a border county near Val Verde and Kinney Counties where dozens of arrests have already occurred.² Arrests in Uvalde County, in the same general area, are slated to begin in mid-May.³

State officials have announced plans to expand the program to Brooks, Terrell, Webb, and Zapata Counties. Terrell County is just west of Val Verde County. Brooks and Zapata Counties border the Rio Grande Valley. Webb County, where the city of Laredo is located, will

¹ Maria Ramos Pacheco, *Expansion of Operation Lone Star at Texas Border Proceeding Despite Civil Rights Groups’ Concerns*, Dallas Morning News, Mar. 16, 2022,

<https://www.dallasnews.com/news/politics/2022/03/16/expansion-of-operation-lone-star/>.

² Melissa Federspill, *Imminent Arrests*, Uvalde Leader-News, Mar. 28, 2022,

<https://www.uvaldeleadernews.com/articles/imminent-arrests/>.

³ *Id.*

be the most populous county that will be part of the program. Governor Abbott has hinted at additional expansion.⁴

Further, OLS expansion will likely only exacerbate civil rights violations, including violations of due process, in the separate criminal system set up for OLS. State and local officials have acknowledged that there have been serious due process issues under the program—and admitted they are likely to continue in counties added to the program. DPS Director Steve McCraw acknowledged at a state senate hearing that there “was a capacity issue” regarding “due process”—that the state failed to adequately set up systems commensurate with the number of people it has been arresting in Kinney County.⁵ As Director McCraw put it, “It’s one thing to say that oh hey we can handle that. It’s another thing, all of a sudden, where you’ve got large numbers being booked into jail. . . . If you only have one prosecutor . . . there’s no way one person can keep up with that.”⁶ Director McCraw also stated, regarding arrests in new counties, “The challenge is not knowing—you don’t know what you’re getting into. Because you don’t know how many are actually coming through.”⁷

When a media outlet asked the Webb County Judge about the possibility of constitutional problems in arrest and jailing, he replied, “We haven’t gotten started so maybe some of those issues are going to be speed bumps we’re going to have to address when we do it.”⁸ These statements confirm that state and local officials have not made preparations to ensure that every person arrested under the OLS trespass program is afforded constitutionally required due process protections, and in fact suggest that they will not do so. This is particularly true since state officials refuse to acknowledge the extent of due process violations to date under the program. As the first assistant attorney general testified to the state senate, “I haven’t seen any evidence that any laws or due process rights have been violated in Kinney County.”⁹

II. Continued Severe Civil Rights Violations in the OLS Trespass Criminal System

Rampant civil rights violations within the separate criminal system created by the OLS trespass arrest program continue—and unless halted will continue to cause physical and psychological harm to the increasingly many Black and brown migrants targeted by the state of Texas. More than 3,500 people who have been arrested and jailed under the program have suffered—in conditions clearly set up to maximize punitiveness.

⁴ Jolie McCullough, *Webb County, a Democratic Stronghold, Is Set to Welcome Texas Gov. Greg Abbott’s Controversial Migrant Arrests*, Texas Tribune, Mar. 10, 2022, https://www.texastribune.org/2022/03/10/texas-border-migrant-arrests-webb-county/?mc_cid=b646dce8b1&mc_eid=e0c54c8a4e.

⁵ Texas Senate Border Security Committee Hearing, Mar. 8, 2022, 10:00 AM, https://tlcsenate.granicus.com/MediaPlayer.php?view_id=35&clip_id=16739 (testimony of DPS Director Steve McCraw at approximately 1:32:00).

⁶ *Id.* at approximately 1:14:00.

⁷ *Id.* at approximately 1:17:30.

⁸ McCullough, *Webb County*, *supra* note 4.

⁹ *Id.* at approximately 2:58:30 (testimony of Assistant Attorney General Brent Webster).

The experiences of eleven Latino men jailed under the OLS trespass arrest program for periods ranging from 110 days to over 170 days exemplify the harms of the trespass arrest program. Just Futures Law, Grassroots Leadership, the Immigrant Legal Resource Center, Texas Fair Defense Project, Mijente, and LatinoJustice advocated on behalf of these individuals.¹⁰ Each of the eleven men was jailed at the Segovia Unit, the converted state prison used for OLS in the Rio Grande Valley. Eight are from Honduras; three are from Mexico. Each suffered physical and psychological trauma from their arrest and jailing.

A. Arrest and Booking

Each of the eleven men detained at Segovia (the “Segovia Arrestees”) was arrested under OLS. Each was subsequently taken to Val Verde County, magistrated in a group, and charged with criminal trespass. Each spent one to three days in custody in Val Verde County before being transferred to the Dolph Briscoe Unit of the Texas Department of Criminal Justice (“TDCJ”) in Frio County. They were subsequently transferred to TDCJ’s Manuel A. Segovia Unit in Hidalgo County.

At the Val Verde County processing center, each Segovia Arrestee awaited magistration in a tent structure with hard floors and no accommodations to rest. After a critical mass had been arrested, they were magistrated by a remote judge. In the Val Verde County tent structure, magistration—the proceeding in which an individual is supposed to be notified of the charges against them and their rights—occurs in front of a computer screen with an interpreter over Zoom video conference. Notably, this structure and format is used only for those arrested pursuant to OLS, and not other arrests in Val Verde and Kinney Counties.

The magistration process did not afford the Segovia Arrestees a meaningful opportunity to understand the proceedings. Individuals were ushered in groups to appear one-by-one in front of a web camera, and encouraged only to say that they understood what was happening—when almost no explanation was provided. Most had little understanding of the court system they were in or what was occurring—that bond was being set, that release was contingent on bond payment, or the time frame for any future court date or appointment of counsel. Language and other barriers to understanding were rampant.

Further, none of the Segovia Arrestees received a discernible individualized bail determination as required by Texas Code of Criminal Procedure Article 17.15. Bond amounts varied dramatically and failed to take into account individual ability to pay, ties to the United States, or plans to return to court. The judges conducting magistration did not inquire about the bail factors and set bail in an amount that did not reflect consideration of individual financial situations or the low level of the alleged offense. Any requests for consular notification went unfulfilled.

¹⁰ Most of this section comes directly from these organizations’ request to the Department of Homeland Security for the exercise of prosecutorial discretion regarding these eleven individuals.

B. Lengthy Detention in Texas Prison

Virtually all of the Segovia Arrestees reported experiencing or witnessing abuse by guards while incarcerated. Several reported racist treatment by guards. This included verbal abuse in the form of the following epithets directed toward people in detention (in both English and Spanish)—including slurs based on national origin:

- “Wetback” or “mojado”
- “You need to get out of my country, you don’t belong here”
- “You’re trash” or “basura”
- “Apestoso” (stinking)
- “Stupid,” “motherfucker,” and “you’re going to stay in prison for a very long time”

Several people reported witnessing physical abuse, and fear of direct assaults by guards. Events that Segovia Arrestees witnessed included: a person detained under OLS being struck in the head by a guard; another person being punched in the chest for attempting to refill his water cup without a shirt on; and a third person being pepper sprayed by a guard without justification for doing so.

Further, many of the Segovia Arrestees reported that guards threatened solitary confinement (“el ollo” or “the hole”) as punishment, especially in response to complaints. Some reported people being held in solitary confinement for up to two weeks. This is particularly alarming given the well-documented “grave risk of psychological harm” posed by solitary confinement.¹¹

Most received no information about their charges and had few opportunities to speak with their appointed lawyers while detained.

Finally, virtually all of the Segovia Arrestees reported being underfed, served inedible food, and having food taken from them by guards as a punitive measure. According to each of them, at the Dolph Briscoe Unit where they were initially detained, food was served at bizarre hours. Breakfast was served between 2 and 4 AM, lunch was served at 10 AM, and “dinner”—the last opportunity for food before breakfast—was served at 4 PM. Each of the Segovia Arrestees complained of meager portions of food. Complaints regarding the food that was served included multiple observations of worms in beans; one note of a cockroach on a serving tray; and multiple complaints of severe digestive distress following meals. Multiple individuals stated that they were given less than five minutes to eat their food and that, if they were not able to finish meals in that time, guards would snatch the food away.

Many others arrested under the OLS trespass program endure similar experiences. The Texas Jail Project (TJP) has submitted numerous complaints to the Texas Commission on Jail

¹¹ See, e.g., American Psychological Ass’n, *Psychologist Testifies on the Risks of Solitary Confinement*, Vol. 43, No. 9 (Oct. 2012), <https://www.apa.org/monitor/2012/10/solitary>; Keramet Reiter et al., *Psychological Distress in Solitary Confinement: Symptoms, Severity, and Prevalence in the United States, 2017-2018*, 110 Am. J. Pub. Health (Suppl. 1): S56 (Jan. 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6987940/>.

Standards—in September and November 2021 and in February 2022. Our first complaint included information from a TJP staff member describing myriad abuses reported by individuals detained under the OLS trespass arrest program. TJP has repeatedly submitted complaints to TCJS documenting consistent abuses experienced in detention. But in response, the agency has provided nothing more than perfunctory restatements of their policy.

The Segovia Arrestees were all detained between three and six months (119 and 177 days)—far beyond the days-long time served sentence for misdemeanor trespass convictions under the migrant arrest program.¹² These extremely lengthy detentions, in horrific conditions, effectuate Governor Abbott’s intent of targeting Black and brown migrants for punishment.

III. Further Evidence of Racist Animus, Further Evidence of Partnerships with White Supremacist Vigilante Groups, and Further Federal Funding

As civil rights violations grow under the OLS trespass arrest program, evidence of racist and xenophobic animus underlying the trespass arrest program likewise continues to grow. On March 28, 2022, Kinney County Attorney Brent Smith appeared on an episode of Texas Representative Jeff Cason’s podcast, titled, “Is the Border Crisis Planned?” In response to a question from Rep. Cason about whether migrants are coming to the United States because of “population replacement,” a false white supremacist theory, County Attorney Smith answered that he believed so, and he agreed with Rep. Cason’s suggestion that migration is potentially deliberately driven by outside actors. County Attorney Smith hypothesized that the federal government is “probably” allowing migrants to come to the United States “for repopulation of the country—trying to change the societal structure of the country,” along with “votes” and money for lobbyists.¹³

County Attorney Smith’s and Rep. Cason’s statements are just the latest assertion by Texas officials of the white supremacist conspiracy theory that elites are seeking to change the demographics of the United States by bringing Latinx and Black migrants to the country. Kinney County Sheriff Brad Coe made similar statements on white nationalist Steve Bannon’s podcast.¹⁴ Texas Lieutenant Governor Dan Patrick has also made similar statements, claiming that a “silent revolution” is underway, “trying to take over our country without firing a shot.”¹⁵

¹² The Segovia Arrestees were detained for 119, 122 (two individuals), 124, 125, 134, 136 (three individuals), 137, and at least 177 days.

¹³ *The Texas Border Invasion Pt. 3/Final*, March 28, 2022, <https://www.backroomaccess.com/the-texas-border-invasion-pt-3-final/?fbclid=IwAR1W57oWf4kzokI4ADOXX9UwJ3WnHV6Vkm5JwIf4CNqG0o-mdPSY-epKJcc>.

¹⁴ Steve Bannon’s War Room, Episode 1,283 – Listen to the Witnesses (w/ Rudy Giuliani, Matt Salmon, Kris Kobach, Sheriff Brad Coe, Eddie Gallagher), Sept. 23, 2021, ~ 34:00, <https://harkaudio.com/p/bannons-war-room-warroomorg/episode-1283-listen-to-the-witnesses-with-rudygiuliani-matt-salmon-kris-kobach-sheriff-brad-coe-eddie-gallagher-warroomorg>; see also Feb. 23 Supplemental Complaint III.B.2.

¹⁵ James Barragán, *Dan Patrick warns democrats are allowing in immigrants for “silent revolution,” mirroring language of far-right extremists*, Tex. Tribune (Sept. 17, 2021),

Further, not only are state and local officials justifying their border-related actions in racist terms, state and local law enforcement have partnered with white supremacist vigilante groups to detain migrants. In Maverick County—which is slated to begin OLS trespass arrests—the Texas National Guard has partnered with the Patriots for America militia to detain migrants. As *Texas Monthly* recently reported, in January a reporter accompanied Patriots for America as they patrolled a rural area with the National Guard. The Guard briefed the private group on possible places migrants might be located. Patriots for America found and detained at least five migrants and turned them over to the National Guard. (The group has also partnered with the Kinney County Sheriff’s Office.) The state National Guard’s willingness to work with and alongside a virulently white-supremacist group that built its reputation through protesting Black Lives Matter and the removal of a Confederate statute is particularly alarming.¹⁶

Meanwhile, federal funding continues to pour into Kinney County and other state and local agencies that violate migrants’ civil rights through the OLS trespass arrest program, including those that express racist animus. For example, during the Kinney County Commissioners Court Meeting on March 28, 2022, County Sheriff Brad Coe stated that the Sheriff’s Office would be receiving a vehicle under the Stonegarden program—federal funding to counties for border enforcement.

The Department of Justice has not hesitated to stand up, repeatedly, against blatant civil rights abuses and violations of federal law by the state of Texas. For example, in July 2021, Governor Abbott attempted to bar the ground transportation of groups of migrants within the state. DOJ swiftly acted, recognizing that the executive order was “contrary to federal law.”¹⁷ The migrant arrest program that the state of Texas has created—and the grave civil rights abuses within it—are likewise contrary to federal law. Absent the federal intervention that occurred for the transport ban, the consequences have been far worse. Thousands of people are being subjected to a pretextual system that is inherently discriminatory—targeting Black and brown migrant men for arrest and punishment. Following arrest, they languish for weeks or months in a separate criminal system with horrific detention conditions and severe due process violations. DOJ must urgently move forward with a Title VI investigation and, ultimately, terminate federal funding for all state and local agencies engaging in discrimination.

<https://www.texastribune.org/2021/09/17/texas-dan-patrick-immigrants-democrats-haitians>; see also Original Complaint VI.A.

¹⁶ James Dobbins, *A Texas County Welcomed a Border Militia Last Fall. Now Some Officials Have Grown Weary of It.*, *Texas Monthly*, May 2022, <https://www.texasmonthly.com/news-politics/kinney-county-border-militia/>.

¹⁷ Letter from U.S. Attorney General Merrick Garland to Texas Governor Greg Abbott (July 29, 2021), <http://cdn.cnn.com/cnn/2021/images/07/29/attorney.general.garland.letter.to.the.honorable.greg.abbott..dated.7.29.2021.pdf>.

Sincerely,

Kathryn Huddleston, Staff Attorney
Savannah Kumar, Attorney
Andre Segura, Legal Director
ACLU of Texas
P.O. Box 8306
Houston, TX 77288
713.942.8146
khuddleston@aclutx.org
skumar@aclutx.org
asegura@aclutx.org

Maya Chaudhuri, Legal Fellow
Camilla Hsu, Managing Attorney, Litigation
Amanda Woog, Executive Director
Texas Fair Defense Project
314 E. Highland Mall Blvd #204
Austin, TX 78582
512-637-5220
mchaudhuri@fairdefense.org
chsu@fairdefense.org
awoog@fairdefense.org

Laura Peña, Legal Director, Racial and
Economic Justice
Kassandra Gonzalez, Manne Family Fellow
Alexis Bay, Justice Catalyst Fellow
Texas Civil Rights Project
P.O. Box 219
Alamo, TX 78516
(956) 787-8171 ext. 125
kassandra@texascivilrightsproject.org
bay@texascivilrightsproject.org

American Civil Liberties Union
Detention Watch Network
Immigrant Legal Resource Center
LatinoJustice PRLDEF
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project (NIPNLG)