

February 23, 2022

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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

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

Over two months ago, we filed a federal civil rights complaint with the Department of Justice regarding Texas’s “Operation Lone Star” (OLS) migrant arrest program. Against a backdrop of rising anti-immigrant hate in Texas, state and local officials have created a system to arrest and punish Black and Brown migrants. As we explained in our initial complaint, this is a system of state immigration enforcement under the guise of state criminal law. It targets Black and Brown migrants for arrest and prosecution on state criminal trespass charges, channeling them into a separate criminal system in which civil rights violations are rampant. State and local officials have been clear about the racist and xenophobic purpose of the program: to punish migrants for coming to the United States. Meanwhile, OLS trespass arrests continue apace, with more than 2,600 arrests to date.

In December, Texas was implementing this program in two counties. Now, Governor Abbott has begun awarding millions of dollars to more counties to join, and the program is rapidly expanding—currently poised to essentially double in size and expand to a new area of the state. The state is adding a second “processing center” for booking migrants into custody in Jim Hogg County, just north of the Rio Grande Valley. The current expansion is into counties that are not adjacent to the border itself, Jim Hogg and Uvalde. Yet, the goal will be the same—to somehow also identify and target migrants for arrest on misdemeanor trespass charges.

In December, we warned that, absent federal intervention, the OLS trespass arrest program would not only continue but would expand. That has now come to pass. Every day, the program tramples on the rights of Black and Brown migrants and contributes to the escalation of a volatile situation in south Texas as vigilante groups seek to hunt down migrants. Yet the Department of Justice (DOJ) is publicly silent. Our December complaint provided more than

enough information to trigger DOJ's duty to investigate Texas state and local agencies for violations of Title VI of the Civil Rights Act of 1964. However, in an ABC News article published on February 5, DOJ declined to comment as to whether the federal government has opened an investigation into OLS.¹

We submit this addendum to our complaint to provide this and other new information. First, since December, we have analyzed 316 additional accounts of arrests by arresting officers and continued to monitor state and local agencies' implementation of the OLS trespass arrest program. As we detail, the program has continued to target Black and Brown migrants and continued to violate their rights in the program's separate criminal system. Second, we have learned that the Patriots for America vigilante group is directly collaborating with the Kinney County Sheriff's Office, including through repeated meetings and—in at least one instance—in detaining migrants, and that on at least one occasion they seem to have collaborated with the Texas National Guard as well. Third, we have uncovered new evidence that extremist local officials in Kinney County may have been central to the creation of the OLS trespass arrest program—as they are to its implementation. Kinney County officials first proposed a program of arresting migrants on state trespass charges in May 2021—months before the state program went into effect—and reportedly met repeatedly with the governor before the state program's implementation. In light of this new information, we provide additional evidence of Kinney County officials' racist and xenophobic motivations and actions—including the Kinney County Sheriff's meeting with the Patriots for America militia and the Sheriff's Office's partnership with the militia in detaining migrants.

The OLS trespass arrest program is dangerous, oppressive, and illegal. It must end. We request that you investigate the OLS trespass arrest program as swiftly as possible, including immediately initiating a formal investigation under Title VI, if you have not already. We further request that you state publicly, within the next two weeks, whether you have opened an investigation and that you provide a timeline for the expected DOJ determinations of whether, and when and how, to engage regarding the trespass arrest program. The expansion of the OLS trespass arrest program provides a renewed urgency to our prior request. As we explained in December, federal action is urgently necessary to protect the rights of Black and Brown migrants in Texas and to ensure that this kind of pretextual, discriminatory program does not continue to flourish in Texas or spread to other states.

¹ Armando Garcia, *Suicides, Living Conditions Spark Concern Among Texas National Guard Deployed at Border*, ABC News (Feb. 5, 2022, 10:03 AM), <https://abcnews.go.com/US/suicides-living-conditions-spark-concern-texas-national-guard/story?id=82540700>.

I. OLS Trespass Arrest Program Expansion: Opening of a Second Processing Center in Jim Hogg County, Expansion to Uvalde County, Anti-Immigrant State Rhetoric in Arizona

In light of state and local officials' rapid expansion of the program in Texas and the spread to Arizona of the white supremacist "invasion" rhetoric that underpins the OLS trespass arrest program, investigation for violation of federal anti-discrimination protections is even more urgently necessary.

Jim Hogg County—located in south Texas, near the Rio Grande Valley—has accepted a \$3.4 million award from the Office of the Governor “for law enforcement, jail operations, and court administration activities in direct support of Operation Lone Star.”² A new processing center in Jim Hogg County, similar to that in Val Verde County, is now fully operational, managed by the Texas Division of Emergency Management.³ Officials have stated that DPS troopers will begin arresting migrants in the county on state misdemeanor criminal trespass charges.⁴ The purpose of the program, to target individuals for arrest and punishment based on race and national origin, is the same as elsewhere in the state: according to the Jim Hogg County judge, law enforcement “will be finding these noncitizens, and bringing them in before they come into the community.”⁵

The OLS trespass arrest program has also expanded to Uvalde County, which has accepted a \$3.3 million grant in return for adopting the program. The county sheriff has stated that DPS will begin making criminal trespass arrests. As the local news article describing the roll-out put it, “Similar to Kinney County, Uvalde County will now be participating in prosecuting immigrants suspected to have entered the country illegally for trespassing.”⁶

While both Uvalde and Jim Hogg Counties do not directly border Mexico, Governor Abbott has reiterated that the purpose of the OLS trespass arrest program is to arrest individuals based on their national origin, including immigration status, in violation of Title VI. In announcing the additional funding used to support the two counties, Governor Abbott stated that

² Juan Carlos Guerra JIM HOGG County JUDGE, *Governor Abbott Office of the Governor Awards Jim Hogg County \$3.4 Million In Funding for Operation Lone Star*, Facebook (Jan. 18, 2022), <https://www.facebook.com/144671662907821/photos/a.144695389572115/917763645598615/>.

³ *Id.*; Michael Gibson, *Migrant Processing Center in Jim Hogg Now Officially Operational*, KIII (Feb. 9, 2022), <https://www.kiiitv.com/article/news/local/migrant-processing-center/503-06915df3-73fe-4def-8f1f-bd6c3d3aaa53>.

⁴ *Id.*

⁵ *Id.* (video at ~ 0:00:45).

⁶ Julee Keeble, *County Gets \$3.3 Million*, Uvalde Leader-News (Feb. 13, 2022), <https://www.uvaldeleadernews.com/articles/county-gets-3-3-million/>.

he has “creat[ed] a system to arrest and jail illegal migrants trespassing or committing other state crimes in Texas” and described the purpose of OLS as in part “deterring illegal immigration.”⁷

There is every indication that, absent federal intervention, state and local officials in Texas will continue to expand their use of the state criminal system to illegally target Black and Brown migrants for arrest and for placement in a separate criminal process that tramples on their civil rights. Funding is currently plentiful: Governor Abbott announced in late December that his office would award \$38.4 million in funding to localities for OLS.⁸ The grant to Uvalde County is for two years.⁹ And state officials have ambitions for further expansion of the OLS trespass arrest program. The state is reportedly negotiating with local officials in Brooks County—also just north of the Rio Grande Valley—over the potential construction of a third processing center.¹⁰

Beyond Texas, the white supremacist rhetoric that motivates the OLS trespass arrest program is spreading to other states. On February 7, 2022, the Arizona attorney general issued an opinion that claimed that Arizona may “engage in war” at the state’s southern border in light of an “invasion”—laundering the same racist rhetoric that state and local officials in Texas have used to justify the OLS trespass arrest program into a purported legal justification.¹¹ This kind of dangerous political posturing is growing—fueled in part by the use of that rhetoric around Operation Lone Star.

The OLS trespass arrest program and its violations of civil rights law are only becoming more entrenched. DOJ must urgently open an investigation to protect the rights of Black and Brown migrants and to prevent the further spread of this kind of pretextual, discriminatory program—both within Texas and to other states.

II. Continued Accumulation of Evidence that the OLS Trespass Arrest Program Violates Title VI

In the absence of federal intervention, the discrimination against Black and Brown migrants that we described in our initial complaint continues apace. Specifically, law enforcement continues to target migrants and engage in profiling. And the separate criminal system riddled with civil rights abuses in which those arrested for trespass under OLS are placed continues to flourish.

⁷ Press Release, Office of the Texas Governor, Governor Abbott Announces An Additional \$38.4 Million In Funding For Operation Lone Star (Dec. 20, 2021), <https://gov.texas.gov/news/post/governor-abbott-announces-an-additional-38.4-million-in-funding-for-operation-lone-star>.

⁸ *Id.*

⁹ Keeble, *supra* note 6.

¹⁰ Gibson, *supra* note 3.

¹¹ *Re: The Federal Government’s Duty to Protect the States and the States’ Sovereign Power of Self-Defense When Invaded*, Ariz. Att’y Gen. Op. I22-001 (R21-015) (Feb. 7, 2022), https://www.azag.gov/sites/default/files/2022-02/I22_001b.pdf.

A. Ongoing Profiling and Targeting of Migrants in Arrests

1. Probable Cause Affidavits and Unlawful Arrests

Our original complaint analyzed DPS trooper affidavits providing arresting officers' accounts of 168 OLS trespass arrests and concluded that there were severe racial disparities and clear indications of profiling based on race and national origin. We have now analyzed an additional 316 trespass arrests affidavits—277 from arrests in Kinney County and 38 from arrests in Val Verde County. These affidavits support our previous conclusion that trespass arrests under Operation Lone Star are severely racially disparate and evince racial profiling. They further raise serious concerns about irregularities in the Kinney County sheriff's and Kinney County attorney's role as complainants in trespass cases on property that they manage—at the same time that they are key implementers of the trespass program.

These additional arrest affidavits further confirm that almost all arrests under the OLS trespass arrest program are of Latino men. In fact, 100% of the arrests in Kinney County were recorded as “H/M” (Hispanic male). In Val Verde, all but two arrests were recorded as “H/M.” The two exceptions were coded as W (white) but had surnames that are typically associated with Latinx identity¹²—suggesting that they may have been miscoded, a practice that is not uncommon among law enforcement officers.¹³ For Val Verde County, 58.3% describe country of origin and/or perceived immigration status: 50% note perceived immigration status and 10.5% specify country of origin. (Some narratives include both immigration status and country of origin.) In 31% of cases in Kinney County, the arrest narrative describes the individual's country of origin and/or perceived immigration status: 7% specify country of origin and 24% note perceived immigration status. At least one analyzed affidavit in Kinney County specifies race, stating, “I made contact with the Hispanic males and found they were not part of a family unit and were undocumented migrants from Mexico.” The lower numbers for Kinney County are in part because many affidavits from arrests in the county, particularly the many involving arrests at the county rail yard, tend to be barebones and boilerplate.

¹² See *Melendres v. Arpaio*, 989 F. Supp. 2d 822, 837 n.29 (D. Ariz. 2013) (explaining, in a racial profiling case, that “Hispanic names are not a perfect indicator of Hispanic identity” but holding, for purposes of the racial profiling litigation, that “[a] Hispanic surname is nevertheless probative of Hispanic identity”). The last names here are Castillo Cruz and Lopez Perez.

¹³ See, e.g., Richard A. Webster, “*If Everybody's White, There Can't Be Any Racial Bias*”: *The Disappearance of Hispanic Drivers From Traffic Records*, ProPublica (Nov. 22, 2021, 7:00 AM), <https://www.propublica.org/article/if-everybodys-white-there-cant-be-any-racial-bias-the-disappearance-of-hispanic-drivers-from-traffic-records>; Fifteenth Report, Independent Monitor for the Maricopa County Sheriff's Office at 64, *Melendres*, 2:07-cv-02513 (D. Ariz. May 7, 2018) (Dkt. 2279 at 64) (describing “deputies' failure to properly document the race or ethnicity of passengers”).

As before, beyond these bare statistics, the descriptions in the arrest affidavits indicate racial profiling. First, descriptions from arresting officers imply that individuals' perceived immigration status was relevant to the decision to initiate law enforcement action or to arrest. For example, one affidavit states, "I . . . apprehended four suspected illegal aliens. After further investigation, Texas DPS confirmed the four individuals were trespassing on the Burr Ranch and were illegal aliens." Another affidavit says, "While working Operation Lone Star at the gravel pit, National Guard Randy Cantu encountered possible non-citizens. Cantu escorted the non-citizens to Trooper Sylvia Alaniz and Prob. Trooper Cassandra Armas. The non-citizens were identified as . . ." A third describes how law enforcement was "advised of a group of non-citizens trespassing." A fourth states, "Trooper Melvin made contact with the males and identified them as undocumented persons from Mexico."

As is evident from the above, as before, numerous affidavits casually describe individuals as "undocumented" or otherwise describe their perceived immigration status—often apparently based on sight or, as above, appearing to find immigration status as relevant to the arrest determination. For instance, one affidavit states, "I observed 3 undocumented adult males walking." Another narrates, "I saw seven undocumented adult males jumping a clearly marked fence with a 'no trespassing' sign." A third describes other law enforcement informing the affiant "that a total of 2 undocumented male migrants were located." Yet another says, "I arrived on scene and observed 5 UDAs [undocumented adults]" and describes how "all other UDAs [except a family unit] were placed under arrest." This list is far from exhaustive.

Finally, specific to Kinney County, both the county attorney and the county sheriff are complaining witnesses in some affidavits. Kinney County Attorney Brent Smith is the complaining witness—that is, the person pressing charges for criminal trespass—in at least five cases. Further, in July 2021, Kinney County Sheriff Brad Coe publicly mentioned three arrests for trespass on County Attorney Smith's ranch, pursuant to Kinney County's efforts to begin arresting migrants for trespass—presumably making Mr. Smith the complaining witness in those cases as well. Our original complaint documented three cases in which Sheriff Coe was the complaining witness. In these additional affidavits, we have found five additional cases in which Sheriff Coe was the complaining witness.

We are unaware of either County Attorney Smith or Sheriff Coe publicly disclosing their involvement in the OLS trespass arrests as a complaining witness as a potential conflict of interest, or of either of them taking any remedial measures associated with actual or perceived conflicts of interest. This dual involvement is, as we explained in December regarding Sheriff Coe, at minimum yet another concerning irregularity. It is especially so given Kinney County's possible key role in creating as well as implementing the OLS trespass arrest program, described *infra*. The dual involvement raises the possibility that this discriminatory program's design stems

from law enforcement with underlying biases related to their own property, in addition to racism and xenophobia.

2. Texas Attorney General Ken Paxton’s Legal Guidance Providing a Green Light for Racial Profiling

In January 2022, Texas Attorney General Ken Paxton released guidance for “local officials, law enforcement officers, and private property owners” on “basic legal concepts to consider” in light of a purported “border crisis.”¹⁴ This guidance, from the top law enforcement official in the state, is a green light for state and local authorities to engage in profiling on the basis of race and national origin. In fact, Attorney General Paxton’s guidance mischaracterizes Supreme Court rulings erroneously suggesting that discrimination on the basis of race and national origin is permissible so long as it is hidden.

The guidance’s mischaracterization of Supreme Court precedent leaves the reader with the impression that veiled discrimination, including profiling, is permissible. Two of the four Supreme Court cases it chooses to highlight are *Whren v. United States*¹⁵ and *Trump v. Hawaii*.¹⁶ The guidance states, “Under *Whren*, an officer who makes an otherwise permissible arrest—one supported by probable cause—will be able to support that arrest even if a defendant claims that it was motivated by his immigration status. Officers should not be deterred from their duties due to the federal government’s refusal to enforce federal immigration law.”¹⁷ This is, of course, inaccurate: *Whren* is relevant only to whether an arrest violates the Fourth Amendment, and an arrest consistent with the Fourth Amendment may still violate the Fourteenth Amendment’s protections against discrimination on the basis of race, national origin, gender, or other characteristics.¹⁸

As to *Trump*, the guidance states that the case “counsels law-enforcement agencies to avoid statements which can be unfairly construed as demonstrating prejudice against a race, ethnicity, religion, or other identifiable group. . . . In passing new local laws, ensure they are neutral on their face and in application. And avoid the misimpression that any law or its application is motivated by animus toward a particular group.”¹⁹ This is, essentially, an explanation of how to conceal discriminatory animus. Later on, the guidance states, “Texas

¹⁴ Tex. Att’y Gen. Ken Paxton, Border Crisis: Liberty & Justice for Texas (Jan. 24, 2022), [https://www.texasattorneygeneral.gov/sites/default/files/images/child-support/OAG_border_crisis_packet%20\(final%20draft%20001.24.2022\).pdf](https://www.texasattorneygeneral.gov/sites/default/files/images/child-support/OAG_border_crisis_packet%20(final%20draft%20001.24.2022).pdf).

¹⁵ 517 U.S. 806 (1996).

¹⁶ 138 S. Ct. 2392 (2018).

¹⁷ Paxton, *supra* note 14, at 2.

¹⁸ See *Whren*, 517 U.S. at 813 (“We of course agree . . . that the Constitution prohibits selective enforcement of the law based on considerations such as race. . . . [T]he constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause.”).

¹⁹ Paxton, *supra* note 14, at 3.

Police Officers and Sheriffs . . . may arrest anyone that they have probable cause to believe has committed a crime.”²⁰ The document does not discuss the illegality of profiling, and its only mention of race is in its description of *Trump*.

In other words, the guidance facilitates law enforcement’s ongoing, deliberate targeting of Black and Brown migrants under the OLS trespass arrest program. Further, the same white supremacist rhetoric regarding migrants—fear-mongering and dehumanizing—regularly used by state and local officials to justify Operation Lone Star is also present in the guidance. Attorney General Paxton’s claims that Black and Brown migrants are dangerous criminals who carry disease are the same false assertions that racist, nativist politicians have made in the United States since the 1900s.²¹ As the guidance demonstrates, state officials in Texas continue to use racist and xenophobic rhetoric to justify discriminatory actions against Black and Brown migrants.²²

B. A Criminal System Becoming More Separate

1. Separate Standards for Assigned Counsel

Since our original complaint, the distinctions between the criminal system established for OLS prosecutions and that for every other criminal case have deepened. The OLS system not only continues to operate with its own process for appointment of counsel, but now even applies its own standards for assigned counsel. On January 21, 2022, the Chief Justice of the Supreme Court of Texas issued an order authorizing lawyers licensed by other states, but not by Texas, to practice in the state solely for the purpose of representing indigent people charged with state criminal misdemeanors under OLS, but not any other cases.²³ These developments only underscore and entrench the separateness of the system by which OLS arrestees are prosecuted.

2. Continued Rights Violations in the Separate Criminal System

²⁰ *Id.* at 4.

²¹ *Id.* at 1 (“Hundreds of thousands of illegal aliens are pouring over our border. They are temporarily detained—if at all—before being released, and then make their way through your counties, cities, and property. They bring with them property destruction, theft, financial costs, risks of disease, crime, and the cartels.”).

²² Attorney General Paxton is also fueling the vigilantism that accompanies the OLS trespass arrest program and that local officials such as those in Kinney County have encouraged: the guidance solicits from the public “any illegal immigration- or border-related information, complaints, tips, leads, or recommendations,” providing an email address to send the information to the Office of the Attorney General. Paxton, *supra* note 14, at 1.

²³ Emergency Order Regarding Indigent Defense and the Border Security State of Disaster Permitting Out-of-State Lawyers to Practice in Texas Temporarily, Misc. Docket No. 21-9104 (Tex. Jan. 21, 2022), <https://www.txcourts.gov/media/1453498/229007.pdf>.

Outcomes for migrants' criminal cases have been as expected after the remaking of the bench in Kinney County in December 2021. As we explained in our initial complaint, after the Presiding Judge of the Sixth Administrative Judicial Region, Stephen Ables, assigned visiting judges to Kinney County to deal with accumulated cases, those judges granted relief to many migrants seeking release. Kinney County Judge Shahan removed those judges unilaterally in December, without citing any legal authority. He then installed judges of his own choosing. Progress in migrants' cases in the months since has borne out advocates' concerns over the new makeup of the Kinney County judiciary. In contrast to the visiting judges assigned by Judge Ables, judges handpicked by Judge Shahan have denied all applications for release.²⁴

With Kinney County prosecutors dilatory in filing charges and Judge Shahan's chosen judges denying applications for relief, migrants have continued to be detained for long periods of time.²⁵ The results of prolonged pretrial detention in dire conditions are hardly surprising. In one illustrative instance, around 150 men against whom the Kinney County prosecutor had failed to file charges during the statutorily prescribed period of time filed a joint writ of habeas corpus in district court. When the writ was heard on December 13, 2021, the men had been held for between 76 and 107 days.²⁶ At the hearing, the prosecutor's office did not refute that it had failed to file timely charges.²⁷ The court nonetheless denied the writ. By the time the appellate court issued an emergency decision reversing that denial on January 24, 2022, all but four of the appellants no longer had live claims.²⁸ Of the moot cases, 133 had been resolved by pleas of no contest or guilty, according to defense lawyers, to ensure an end to detention.²⁹ 131 of those who entered pleas had been held for over 100 days.³⁰ This in spite of the fact that prosecutors never even purported to have filed charges within the required timeframe of 15 or 30 days. Similar delays continue: one individual in custody as of mid-February had been held more than 164 days.

While in custody, individuals continue to report a lack of meaningful access to counsel, even when counsel is assigned. For example, the Texas Jail Project has received reports from four people in the past two months who have been detained for over four months without any

²⁴ J. David Goodman, *Cases Dismissed, Judges Replaced: Texas Struggles to Prosecute Migrants*, New York Times, Jan. 27, 2022, <https://www.nytimes.com/2022/01/27/us/texas-migrants-operation-lone-star.html>.

²⁵ *Id.* If prosecutors fail to file charges within 15, or, at most, 30 days for misdemeanors of the kind charged in OLS prosecutions, Texas law requires that the defendants be released on personal bond or that their existing bonds be reduced to affordable amounts. *See* Original Complaint at 28.

²⁶ *EX PARTE [NAME REDACTED], et al.*, No. 04-21-00579-CR, 2022 WL 202720 at *1, (Tex. App. Jan. 24, 2022).

²⁷ *Id.* at 3.

²⁸ *Id.* at 2.

²⁹ Advisory for Suggestion of Mootness for 140 Appellants and Response for Remaining Four Appellants, at 1, *EX PARTE [NAME REDACTED], et al.*, No. 04-21-00579-CR, 2022 WL 202720 (Tex. App. Jan. 24, 2022). <https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=be2db5cb-a9fe-441a-b147-61943ce69f74&coa=coa04&DT=Response&MediaID=f8f5d3dd-926e-46ec-94f0-45470bef60f9..>

³⁰ *Id.*

contact with their assigned counsel.³¹ Lacking contact with counsel, detained individuals continue to report having no knowledge of the status of their cases.³² Several detained individuals have expressed being unaware that their cases are criminal rather than civil.³³ Without even the most basic information about their cases, detained individuals are largely powerless to challenge their pretrial detention within the separate criminal system in which they are being processed. In light of all this, it is clearer than ever that federal investigation is required.

3. Inhumane Conditions of Confinement Worsen

The conditions of confinement for people held at the two converted state prisons used for the OLS arrest program—the Dolph Briscoe Unit in Dilley, Texas, and the Segovia Unit in Edinburg, Texas—have further deteriorated since December. The Texas Jail Project has continued to track detained people’s reports of conditions at both facilities, including inadequate medical care and food.³⁴ A lack of adequate medical care at both prisons has put detained people’s lives and well-being at risk.³⁵ Several detained people have reported a continued lack of in-person medical treatment from doctors or nurses.³⁶ Instead, any illness is treated with what appears to be Tylenol.³⁷ At least one prison is not practicing adequate COVID safety, including failure to comply with CDC isolation guidance.³⁸ Detained people suffering from mental illness are also denied necessary treatment or attention.³⁹ One detained person watched another detained individual, who appeared to be mentally ill, scoop garbage into a cup and drink the mixture as guards watched and did nothing.⁴⁰

Detained people continue reporting inadequate food at both OLS trespass arrest prisons. Detained people have continued to receive meals at bizarre times and in small portions, noting that they are given two to five minutes to eat these meals.⁴¹ One man reported finding worms in his beans on at least two occasions.⁴² Another detained person explained that anyone is not able to finish their meal in the allotted minutes, they are forced to discard the remains and go hungry.⁴³

³¹ Sec. Decl. of Benjamin L. Drachman, ¶ 4(a).

³² *Id.*

³³ *Id.*

³⁴ *Id.* ¶ 4(b).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* ¶ 9

⁴² *Id.*

⁴³ *Id.*

As of February 19, 2022, Texas Jail Project has received no response from the Texas Commission on Jail Standards regarding complaints it sent in December 2021 documenting the inhumane conditions of confinement at Briscoe and Segovia.⁴⁴ These inhumane conditions are continuing to put the health and well-being of detained people at serious risk, further urgently necessitating federal investigation.

C. Continued Collusion by Kinney County with Vigilante Groups and Private Citizens to Target Migrants

New information about the scope of the Kinney County Sheriff’s Office’s partnership with private individuals, particularly close partnership with the Patriots for America vigilante group that includes arrests of migrants, underscores the urgent need for federal investigation and intervention.

1. Kinney County’s Collaboration with Patriots for America

There appears to be a thriving partnership between the Kinney County Sheriff’s Office and Patriots for America—one that includes the arrest of migrants and that the Sheriff’s Office contemplates continuing for years. As one militia member put it, “I was in a meeting when I was down there with Samuel Hall [the leader of Patriots for America], meeting with the sheriff. That sheriff supports our organization, supports the Patriots for America 110%.”⁴⁵ Mr. Hall told the *Wall Street Journal* in December that he works closely with Sheriff Coe.⁴⁶ For his part, Sheriff Coe informed the *Wall Street Journal* that he periodically meets with Mr. Hall.⁴⁷ On December 13, 2021, Mr. Hall posted photos from such a meeting on Facebook, including one in which Sheriff Coe has his arm around Mr. Hall.⁴⁸ Mr. Hall wrote that Patriots for America “had a great meeting with Sheriff Coe this morning” and described Patriots for America as “doing all we can to stand in the gap . . . to do what our Federal and State government refuses to do and stand up for our own!”⁴⁹

This partnership between the Kinney County Sheriff’s Office and Patriots for America extends to arrests of migrants and to patrols by the vigilante group. In December, Mr. Hall told the *Wall Street Journal* that Patriots for America calls the Kinney County Sheriff’s Office

⁴⁴ *Id.* ¶ 5.

⁴⁵ Rodney Elijah, *My experience at the Texas Border with Patriots for America militia*, Facebook (Dec. 30, 2021), at ~ 9:15, <https://www.facebook.com/rodney.perez.96/videos/5078830938817149>.

⁴⁶ Elizabeth Findell, *In a Texas Border Town, Armed Groups Arrive to Look for Migrants*, *Wall Street Journal*, Dec. 16, 2021, <https://www.wsj.com/articles/in-a-texas-border-town-armed-groups-arrive-to-look-for-migrants-11639668989>.

⁴⁷ *Id.*

⁴⁸ Samuel Hal, Facebook (Dec. 13, 2021), https://www.facebook.com/permalink.php?story_fbid=419203376602027&id=100055371055772. Mr. Hall goes by “Sanuel Hal” on Facebook, possibly in an effort to evade deplatforming.

⁴⁹ *Id.*

whenever they encounter migrants in the county.⁵⁰ A member of Patriots for America stated in a video posted online that the group keeps the sheriff's office apprised as to where they are in the county.⁵¹

For example, on December 18, Patriots for America detained three migrants and turned them over to a Kinney County sheriff's deputy.⁵² Video footage shows Mr. Hall's group stopping and getting out of their vehicles and repeatedly calling, in Spanish, "sit down!" The individuals addressed by this call sat down. The militia members, at least some of whom were dressed in tactical vests, did not identify themselves as private citizens to the migrants or otherwise make clear that they were not law enforcement. Instead, they questioned those apprehended about their reasons for coming to the United States, their journey, and their families. After Patriots for America detained the migrants, a Kinney County Sheriff's Office deputy arrived on the scene to take the migrants into custody. Following the migrants' transfer to Kinney County Sheriff's Office custody, the deputy thanked the militia members and shook hands with them.⁵³

2. Dangers Posed by Kinney County's Collaboration with Patriots for America

The Kinney County Sheriff's Office's collaboration with Patriots for America is a recipe for rights violations and potential violence due to both the vigilante group's actions, which place migrants and Black and Brown residents of Kinney County at risk of unlawful detention and physical danger, and its underlying white supremacist beliefs. First, the vigilante group "patrols" with firearms. The presence of weapons—in one video, being pointed by a militia member off the side of a vehicle⁵⁴—introduces a high degree of volatility and the potential for violence.

Second, in addition to carrying weapons, Patriots for America members embark on their missions in military-style tactical equipment and, by Mr. Hall's own admission, leave migrants with the impression that members of the group are law enforcement.⁵⁵ Mr. Hall has described his group's goal as "to disrupt and frustrate" migrants.⁵⁶ Video of Patriots for America's December

⁵⁰ Findell, *supra* note 46.

⁵¹ Rgvtruth, *Answering the call*, Rumble (Dec. 26, 2021), <https://rumble.com/vrgfqh-answering-the-call.html> (video at ~ 47:30).

⁵² Samuel Hal, Facebook (Dec. 18, 2021), https://www.facebook.com/permalink.php?story_fbid=422509159604782&id=100055371055772.

⁵³ Rgvtruth, *Patriots for America militia finds illegals on patrol*, Rumble (Jan. 11, 2022), <https://rumble.com/vsed7k-patriots-for-america-militia-finds-illegals-on-patrol.html>. This video is plainly the same set of detentions as in the video posted by Mr. Hall to Facebook on December 18.

⁵⁴ Rgvtruth, *Answering the call*, *supra* note 51 (video at ~ 29:00).

⁵⁵ As the *Wall Street Journal* put it, "Mr. Hall said he doesn't forcibly detain anyone, which would be illegal. That said, he said he realizes that foreigners encountering heavily armed people may not understand that." Findell, *In a Texas Border Town, Armed Groups Arrive to Look for Migrants*, *supra* note 46.

⁵⁶ *E.g.*, Rgvtruth, *Answering the call*, *supra* note 51 (video at ~ 6:30).

18 detention of three migrants clearly shows that those individuals assumed that the militia members were authority figures—asking for help seeking asylum, for example. The repeated directions to them to “sit down,” the military-style gear, and the assumption of authority through—for example—their questioning of the migrants all left the unspoken impression that Patriots for America was in fact law enforcement and that those directed to sit down were not free to leave. With the Kinney County Sheriff’s Office taking over the detention, Patriots for America functioned as unofficial immigration or law enforcement.⁵⁷ Another member of the militia has noted, “Our presence alone . . . we deter them from taking the route that they’re taking. . . . They don’t know who we are. They don’t know if we’re law enforcement.”⁵⁸ Patriots for America members’ recognition that migrants may have the impression that the militia members are law enforcement, combined with the group’s commands to migrants, questioning as if they were authority figures, and appearance in military-style gear and with guns all add up to detention of migrants—resulting in “disrupt[ion] and frustrat[ion]”—by creating an impression of being law enforcement. Ironically, militia members’ actions in detaining migrants can in fact be criminal.⁵⁹

Finally, Kinney County’s entanglement with Patriots for America is horrifying due to the group’s white supremacist ideology. Mr. Hall uses the racist rhetoric of “invasion.”⁶⁰ A fundraising page set up to support Patriots for America falsely claims an “invasion” of Black migrants: “At this moment an invasion of approximately 80,000 Haitians is headed toward our Texas border . . . Patriots for America is now trying to protect and to secure Kinney County.”⁶¹ One member of the militia has publicly described the origins of his involvement as rooted in white supremacy: as stemming from opposition to the Black Lives Matter movement for racial justice and, specifically, the triggering event of Parker County Commissioners considering removing the Confederate statue on the courthouse lawn in Weatherford, Texas. He described bringing a weapon prepared for violence to that protest—“I remember getting mad, and I said, not here . . . and I pumped the shotgun” and drove to Weatherford—and meeting like-minded others that provided the entry point to a movement.⁶² Another member of the militia described the group’s mission in racist terms, saying, “What’s happening at the border is coming this way . . . to our community, to our neighborhood, to our states . . . and we have to stop it.” He went on to expand, further relying on racist tropes: “There are some really bad people that are coming across,” claiming that many people are coming from countries other than Mexico “and not all of

⁵⁷ Rgvtruth, *Patriots for America militia finds illegals on patrol*, *supra* note 53.

⁵⁸ Rodney Elijah, Facebook (Dec. 30, 2021), <https://www.facebook.com/rodney.perez.96/videos/5078830938817149>.

⁵⁹ *See, e.g.*, Tex. Penal Code §§ 20.01(1), 20.02(a).

⁶⁰ Rgvtruth, *Answering the call*, *supra* note 51 (video at ~ 6:30).

⁶¹ Jeff Hauk, *Border Call Relief Fund for Patriots for America*, GiveSendGo, https://givesendgo.com/G2B6U?utm_source=sharelink&utm_medium=copy_link&utm_campaign=G2B6U&fbclid=IwAR0leRhXqO5u0jLMRo-sPmfDr4AUEjGdOFIzxTICEe7CKXzLsRBcd8WX5OI.

⁶² Rgvtruth, *Answering the call*, *supra* note 51 (video at ~ 25:00).

them are good.” He then repeated racist tropes about migrants’ purported lack of morals, ethics, and “heart” due to a “different upbringing,” as well as racist beliefs about migrants’ inherent criminality.⁶³

But, notwithstanding the enormous problems with a group of private armed individuals seeking out migrants, the Kinney County Sheriff’s Office evidently plans for its collaboration with the vigilante group to be a long one. The Patriots for America webpage states that “Kinney County Sheriff Brad Coe anticipates the need for help for an additional 3 years.”⁶⁴ Moreover, the Sheriff’s Office may have played a role in the vigilante group’s presence in the county from early on. A militia member recounted that she became involved because another member “called me up one day at 11:00 and said meet us at the Sheriff’s Office at 4, and so I was on the road by noon, coming down here to meet people I’d never laid eyes on before.”⁶⁵

3. Need for Federal Intervention to End Law Enforcement Collaboration with White Supremacist Vigilante Groups

As with the OLS trespass arrest program broadly, there is an urgent need for federal action to ensure that collaboration with white supremacist vigilante groups and the potential for violence created by white supremacist vigilantism do not flourish in Kinney County or spread elsewhere. Both are currently occurring.

Other vigilante groups are also attracted to Kinney County by the OLS trespass arrest program. In addition to Patriots for America and Women Fighting for America,⁶⁶ a North Texas vigilante group called the Patriot Boys has also been present in Kinney County. One of its leaders was arrested in Kinney County in December for allegedly engaging in violence against law enforcement at the January 6 attack on the U.S. Capitol, including by swinging a large metal pole; recruiting others to join the group and travel to Washington, D.C. for the attack; and engaging in further recruitment afterward.⁶⁷ He was reportedly in Kinney County in response to an interview of Sheriff Coe on Kinney County’s efforts to engage in immigration enforcement by a far-right media outlet: he had traveled to the county himself and mobilized other members of the group to travel with him.⁶⁸

⁶³ Rodney Elijah, Facebook (Dec. 30, 2021),

<https://www.facebook.com/rodney.perez.96/videos/5078830938817149>.

⁶⁴ Patriots for America, *Patriots for America*, <https://www.patriotsforamericamilitia.com/>.

⁶⁵ Rgvtruth, *Answering the call*, *supra* note 51 (video at ~ 17:30).

⁶⁶ *See* Original Complaint at 45-46.

⁶⁷ *See* Findell, *supra* note 46; Press Release, Department of Justice, *Two Texas Men Charged With Assault on Law Enforcement During Jan. 6 Capitol Breach*, Dec. 14, 2021, <https://www.justice.gov/usao-dc/pr/two-texas-men-charged-assault-law-enforcement-during-jan-6-capitol-breach>.

⁶⁸ Jordan Green, *Two Patriot Boys Arrested on Jan. 6 Charges*, Raw Story, Dec. 14, 2021, <https://www.rawstory.com/officer-michael-fanone-2656040043/>.

And other law enforcement agencies may be beginning to collaborate with vigilante groups—a dangerous practice that will, as in Kinney County, result in rights violations and, potentially, violence against migrants. It appears that the Texas National Guard may be collaborating with Patriots for America. A video on Mr. Hall’s Facebook page appears to show him getting out of the same car as a member of the Texas National Guard, responding to migrants arriving from an area with a fire. As the migrants arrive, Mr. Hall appears to assume control, asking them, “Y’all okay? Y’all need any medical?” Three members of the National Guard and a boat with law enforcement are present; the members of the National Guard stand silently.⁶⁹ It is unclear from the video whether this incident occurred in Kinney County or elsewhere.

The atmosphere has, since December, only become more volatile in south Texas. One Patriots for America militia member has described, “We’ll do what we have to do to protect us, our neighbors, and our community.”⁷⁰ Meanwhile, vigilante group activity appears to be flourishing, and Kinney County itself is deepening its collaboration with private individuals to pursue migrants. On January 10, 2022, the Kinney County Commissioners Court met and approved the purchase of a drone in the amount of \$19,316.00 for the Kinney County Sheriff’s Department.⁷¹ During the meeting, the commissioners discussed an evening demonstration with the drone, noting that over 20 migrants were found. To pay for the drone, the county chose to rely on donated funds from Granite Defense Technologies, a Texas corporation that sells drones.⁷² This further militarization of the border via collaboration with private citizens places Black and Brown individuals in south Texas’s border areas in jeopardy—whether or not they are migrants. The potential for violence is very real.

III. Kinney County: Officials’ Apparent Role in Creating the OLS Trespass Arrest Program, and Additional Evidence of Racist, Anti-Immigrant Animus

Since the filing of our initial complaint, we have learned that Kinney County officials proposed a trespass arrest program for migrants in May 2021, before Governor Abbott had even declared a state of disaster; that Kinney County officials have stated that they began arresting migrants for criminal trespass by July 19, 2021, before the state of Texas began doing so; and that Kinney County officials repeatedly met with the governor before the announcement of the

⁶⁹ Sanuel Hal, Facebook (Feb. 12, 2022), https://www.facebook.com/permalink.php?story_fbid=456202799568751&id=100055371055772.

⁷⁰ Rodney Elijah, Facebook (Dec. 30, 2021), <https://www.facebook.com/rodney.perez.96/videos/5078830938817149>.

⁷¹ Agenda, Notice of Regular Open Meeting of the Commissioners Court of Kinney Co., Texas (Jan. 10, 2022), <https://cokinneytx.civicweb.net/Portal/MeetingInformation.aspx?Org=Cal&Id=271> (Item I addresses Kinney County’s purchase of a drone).

⁷² *Our Story*, Granite Defense, <https://www.granitedefense.com/about> (stating that Granite Defense Technologies was founded in 2017 “to serve the Military and Public Safety Communities.”) (last accessed Feb. 23, 2020).

state trespass arrest program. In short, it appears likely that Kinney County officials influenced the development of or even suggested the creation of the OLS trespass arrest program. In our initial complaint, we described rhetoric by state and local officials, in implementing the OLS trespass arrest program, that evinces extremist racist and anti-immigrant animus. We also described how Kinney County officials’ rhetoric and actions encapsulate the interrelationship between racism and xenophobia, on the one hand, and the OLS trespass arrest program, on the other. Based on this new information, Kinney County officials’ extremist rhetoric and actions appear to be not only at the heart of the trespass arrest program’s implementation in their county but also of its very creation.

A. Kinney County Officials’ Discussion of a Trespass Arrest Program

In May 2021—two months before Texas state and local officials began implementing the migrant arrest program, and days before Governor Abbott declared a disaster due to immigration—Kinney County held a rally in Brackettville regarding border issues. A flyer for the event, which included the county seal, stated, “COME JOIN YOUR FELLOW TEXANS AND HELP TAKE BACK OUR STATE!” Speakers included Kinney County Attorney Brent Smith, Kinney County Sheriff Brad Coe, and Texas State Rep. Bryan Slaton, as well as private individuals such as Jaeson Jones of Newsmax and George Rodriguez, host of the El Conservador radio show.⁷³ At the event, Sheriff Coe stated that after working with the county attorney, the county judge, and “several others,” he was “going to start here, locally, we catch them, we’re going to start prosecuting these people that are trespassing on y’all’s property.” He further explained:

And it’s going to be something new. We’re going to try for a quick turn-around process—get them in, book them, magistrate them, take them to court, all to do within 24 to 48 hours. They may be released after time served, but it will give them a criminal record. So if they ever try to apply for something later on in their life, that will flag them.⁷⁴

Further, at a “border security forum” hosted by Texas Rep. Bryan Slayton at the Texas Legislature in July 2021, Sheriff Coe stated that the county had “met with the Governor several times” and that Sheriff Coe and County Attorney Smith had “come up with a plan that we’ve been trying to implement . . . we formulated this back in April . . . anybody that we catch on

⁷³ The flyer is visible as the backdrop to a May 24, 2021 Facebook post on the Kinney County, Texas page titled “Kinney County Border Crisis Rally.” Kinney County, Texas, Facebook (May 24, 2021), <https://www.facebook.com/Kinney-County-Texas-106656308026808/>.

⁷⁴ Be Free, *Border Crisis Rally*, Brackettville Texas, YouTube (May 24, 2021), https://www.youtube.com/watch?v=DmFr3BBVvfU&ab_channel=BeFree.

private property, we will prosecute for criminal trespass.” He described the limiting factors for the Kinney County trespass plan as “jail space” and “lack of funding.”⁷⁵

With the exception of the provided time frame of 24 to 48 hours, the migrant arrest program described by the Kinney County Sheriff in May 2021 was essentially that adopted by Governor Abbott and implemented via state agencies beginning in July 2021. In fact, the Office of the Governor stated—following Sheriff Coe’s own rationale—that for the trespass program, “the goal is . . . to make it less attractive to cross the border” and that the program “has the potential to impact your ability to get citizenship.”⁷⁶ In light of Sheriff Coe’s description of repeated meetings with Governor Abbott and his portrayal of a migrant arrest program before Governor Abbott had declared a state of disaster, it appears likely that Kinney County officials were directly involved in the initial development and creation of the OLS trespass arrest program.⁷⁷ In short, ideas for how to operationalize white supremacist rhetoric are filtering from the counties to the state and back, creating a self-reinforcing system in which state and local authorities move in lockstep to arrest and detain migrants.

B. Additional Evidence of Kinney County Officials’ Racist and Anti-Immigrant Animus

Particularly in light of Kinney County Sheriff Coe’s and County Attorney Smith’s apparent roles in helping create the migrant arrest program, these additional examples of Sheriff Coe’s and County Attorney Smith’s association with white supremacists and use of white supremacist rhetoric regarding migrants provide further evidence of discrimination on the basis of race and national origin necessitating a Title VI investigation. These examples include the expression of racist and xenophobic ideas to justify the migrant arrest program.

Much of the rhetoric used by Sheriff Coe and County Attorney Smith—and others involved in the OLS trespass arrest program—is premised on the false and inflammatory claim that migration across the Texas-Mexico border constitutes an “invasion.” This is white supremacist rhetoric deeply entrenched in American history. The charge of “invasion” is one that

⁷⁵ Bryan Slaton, *Border Security Forum at Capitol with border officials*, Facebook (July 20, 2021), ~ 2:07:00, <https://www.facebook.com/BryanSlatonForTexas/videos/899779100883992/>. Sheriff Coe’s testimony indicates that Kinney County began implementing a version of the OLS trespass arrest program earlier than was previously known—he states that arrests were occurring in Kinney County at least as early as July 19, 2021. *Id.*, ~ 2:07:30 (stating, “Well, our dreams came true—we had three yesterday, and they happened to be on his [gesturing at County Attorney Smith] property”).

⁷⁶ Texas House Appropriations Committee Hearing, H.B. 9, Relating to making supplemental appropriations relating to border security and giving direction regarding those appropriations, Aug. 24, 2021, 8:00 AM, https://tlchouse.granicus.com/MediaPlayer.php?view_id=46&clip_id=22334 (testimony of Office of the Governor Budget Director Sarah Hicks at approximately 3:24:30 and 3:28:45).

⁷⁷ Sheriff Coe also stated at the rally that the county was going to start filing child endangerment charges on parents traveling with children. To our knowledge, this policy has not been implemented to date, either by Kinney County or by any state or local agency in the state of Texas.

has, historically, been levied against Chinese, Japanese, Jewish, German, Mexican, and Muslim immigrants in turn, as well as undocumented immigrants generally.⁷⁸ While Kinney County officials and others attempt to portray this characterization as a legal one, it is in fact the recycling of a deeply racist cultural trope.

1. Association with Racist and Anti-Immigrant Extremists

In addition to making the direct racist and xenophobic statements detailed below, Sheriff Coe and County Attorney Smith have repeatedly associated in a professional capacity with people expressing extremist racist and anti-immigrant ideas. The May 2021 rally hosted by the Kinney County government featured numerous such speakers, many of whom made extremist statements at the event itself. Since May 2021, both Sheriff Coe and County Attorney Smith have continued to appear in a professional capacity with people expressing extremist views, including those who did so at the rally.

Speakers at Kinney County’s “border crisis rally” repeatedly expressed racist and anti-immigrant ideas with no pushback or evidence of disagreement from county officials. Most notably, anti-immigrant radio host George Rodriguez said while speaking at the rally, “My family has been here in Texas for generations, and they were angry with the *mojados* [a slur equivalent to “wetbacks”]—or as my grandmother, *fijate*, my grandmother used to call them, *los pinche mojados* [“the f-ing wetbacks”].” This line generated significant laughter, so much so that Mr. Rodriguez commented on it. At no point did any county official intervene in the event over the use of this racist slur. Mr. Rodriguez further commented that immigration is bringing about a “clash of cultures” because “across the river, *la mordida*—the bribe—it’s common. The value of life is zilch. . . . It is a question of culture. We do not need lower-class cultures.”⁷⁹ Sheriff Coe and County Attorney Smith have subsequently appeared on Mr. Rodriguez’s radio show.⁸⁰

Also at the county-sponsored rally, Warriors for Ranchers founder Mike Miller described how he and County Attorney Smith had stayed up talking until 1:00 in the morning. Mr. Miller then went on to claim that a Border Patrol agent told him that Hondurans “have been capturing kids and harvesting their organs.”⁸¹ Warriors for Ranchers is an anti-immigrant group that

⁷⁸ In fact, the state and local disaster declarations issued to claim “invasion” and justify Operation Lone Star are particularly sound in anti-immigrant animus. As historian Erika Lee points out, “Xenophobia has often used the language of natural disasters to define immigration as a threat.” Erika Lee, *America for Americans: A History of Xenophobia in the United States* at 126 (Basic Books, 2019).

⁷⁹ Be Free, *Border Crisis Rally*, *supra* note 74.

⁸⁰ The El Conservador Radio with George Rodriguez, Jan. 29, 2022, <https://www.listennotes.com/podcasts/el-conservador/1-29-22-the-el-conservador-WYh-4iMIftu/>.

⁸¹ Be Free, *Border Crisis Rally*, *supra* note 74 (video at ~ 1:15:00). In January 2022, there was yet another far-right, anti-immigrant rally in the Rio Grande Valley organized by a militia group leader. *See* Dina

frequently promotes extremist conspiracy theories.⁸² In the following months, County Attorney Smith went on to speak at similar border-focused events outside Kinney County with Mr. Miller.⁸³

Other speakers at the May 2021 Kinney County rally repeatedly portrayed immigration as an “invasion” and migrants as inherently criminal. Goliad County Sheriff Roy Boyd claimed that Texas is experiencing “a Marxist invasion.”⁸⁴ An attorney asserted, “You will not take down our statues, you will not invade our country, and you will not practice and continue to support illegal immigration.”⁸⁵ Another speaker exhorted the crowd to applause, “Call it a border invasion.”⁸⁶ Newsmax correspondent and former Texas Department of Public Safety officer Jaeson Jones warned, “The world is coming now. . . . We have more people coming from around the world than ever before,” invoking “countries with a terrorism nexus.”⁸⁷ Again, all of these comments occurred at a county-sponsored event, with no public pushback from county officials.

Further, as detailed above, Sheriff Coe appeared on Steve Bannon’s War Room podcast twice in fall 2021 to discuss migration in Kinney County and unilateral state and local immigration enforcement. Bannon has repeatedly advocated racist, anti-immigrant positions using his media platforms—including during the shows in which Sheriff Coe appeared.⁸⁸ He has told far-right politicians, “Let them call you racist. Let them call you xenophobes. Let them call you nativist. Wear it as a badge of honor.”⁸⁹ In addition on December 21, 2021, the founder of Patriots for America spoke at a Val Verde County Commissioners’ meeting, stating that the militia group had been working “very closely”⁹⁰ with Sheriff Coe in Kinney County during the

Arevalo, ‘We Stand America’ rally comes to a close, My RGV News (Jan. 30, 2022),

<https://myrgv.com/featured/2022/01/30/we-stand-america-rally-comes-to-a-close/>.

⁸² See, e.g., Facebook, *Warriors for Ranchers*, <https://www.facebook.com/warriorsforranchers/>.

⁸³ Cari Golyzniak, *Gravity Check Hosts Border Invasion Awareness Rally*, *Bandera Bulletin*, <https://www.banderabulletin.com/article/news/gravity-check-hosts-border-invasion-awareness-rally>;

Warriors for Ranchers, Facebook (Aug. 7, 2021)

<https://www.facebook.com/warriorsforranchers/photos/158075609772053> (flyer for event in Pleasanton, Texas featuring Mr. Miller and Mr. Smith).

⁸⁴ Be Free, *Border Crisis Rally*, *supra* note 74 (video at ~ 36:00).

⁸⁵ Be Free, *Border Crisis Rally*, *supra* note 74 (video at ~ 1:52:00)

⁸⁶ Be Free, *Border Crisis Rally*, *supra* note 74 (video at ~ 1:44:00).

⁸⁷ Be Free, *Border Crisis Rally*, *supra* note 74 (video at ~ 2:12:00).

⁸⁸ See, e.g., Frances Stead Sellers and David A. Fahrenthold, “Why Even Let ‘Em In?” *Understanding Bannon’s Worldview and the Policies That Follow*, *Wash. Post*, Jan. 31, 2017,

https://www.washingtonpost.com/politics/bannon-explained-his-worldview-well-before-it-became-official-us-policy/2017/01/31/2f4102ac-e7ca-11e6-80c2-30e57e57e05d_story.html.

⁸⁹ Morgan Winsor, *Steve Bannon: “Let Them Call You Racist . . . Wear It as a Badge of Honor,”* ABC, Mar. 10, 2018, <https://abcnews.go.com/Politics/steve-bannon-call-racist-wear-badge-honor/story?id=53656814>.

⁹⁰ *Val Verde County Commissioners Court Meeting*, YouTube, ~ 1:30, (Dec. 21, 2021), <https://www.youtube.com/watch?v=axMHJ8zntqo>.

“last two and a half, almost three months,”⁹¹ further showing the sheriff’s ongoing association with extremists.

In sum, both Sheriff Coe’s and County Attorney Smith’s choices to repeatedly speak at events or on podcasts that include extreme white supremacist rhetoric, and Kinney County’s choice to host and unquestioningly entertain the ideas of the speakers at the May border meeting, indicate that county leadership is acting based upon white supremacist beliefs.

2. Kinney County Sheriff Brad Coe: Direct Statements

Kinney County Sheriff Brad Coe has made racist and xenophobic statements, including appearing on white nationalist Steve Bannon’s podcast and claiming that “cartels” and “George Soros and crew” are “pushing” migrants into the United States to “change” the country’s “dynamics,” which will in his view lead to the United States “ending up being . . . a Fourth World country.” In addition to the statements we detailed in our initial complaint, these include:

- In speaking to state legislators at a forum at the State Capitol, Sheriff Coe claimed that the “culture” of “illegals” was jeopardizing Kinney County jail personnel’s safety: “My jailers . . . and they’re having to put up with these illegals—these smugglers and everybody—in our jail, and it puts them at high risk []—based on the culture, the language barrier, etc.”⁹²
- In September 2021, Sheriff Coe appeared on Mr. Bannon’s podcast and voiced a commonly held white supremacist theory that global elites are changing countries’ demographics through migration⁹³: “The true part that’s out of control is the fact that the cartels—this is created by the cartels and, I would say, George Soros and crew to push these people in here to try to change the dynamics, the schematics of the United States. We’re going to end up being not a Third World country but a Fourth World country because Biden wants to let them all in. . . . A bunch of these coming in, they’re just here because they think the American dream is we come here, we find a city, and we just sit around and collect money.”⁹⁴
- Sheriff Coe appeared a second time on Mr. Bannon’s podcast in October. In that episode, he claimed that the migration of people across the southern border is, legally, “an invasion,” saying, “That’s exactly what this is.” He also posited that “smallpox,” among

⁹¹ *Id.* (video at ~ 1:37).

⁹² Bryan Slaton, *Border Security Forum at Capitol with border officials*, ~ 2:08:00.

⁹³ See James Barragán, *Dan Patrick Warns Democrats Are Allowing in Immigrants for “Silent Revolution,” Mirroring Language of Far-Right Extremists*, Tex. Tribune, (Sept. 17, 2021), <https://www.texastribune.org/2021/09/17/texas-dan-patrick-immigrants-democrats-haitians/> (describing the Texas lieutenant governor’s similar amplification of this theory in sympathetic media).

⁹⁴ 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-rudy-giuliani-matt-salmon-kris-kobach-sheriff-brad-coe-eddie-gallagher-warroomorg>.

other diseases, is “out there and is coming across the southern border.”⁹⁵ Smallpox is, of course, eradicated worldwide, but the racist and xenophobic idea that non-white migrants carry disease is deeply entrenched. In this episode, Bannon called Sheriff Coe “one of the heroes and patriots that’s on the border.”⁹⁶

- In a brief video regarding Galveston County law enforcement’s presence in Kinney County, Sheriff Coe again used the rhetoric of invasion and suggested that migrants pose a threat: “If they get through here—like I said, going to affect us today, going to affect the interior tomorrow.” He also characterized every single migrant as transporting marijuana, claiming: “The aliens that we’re not catching, that the Border Patrol’s not catching, they’re walking through—that’s what scares me. For every one we don’t catch, that means somebody’s getting dope in another city.”⁹⁷

3. Kinney County Attorney Brent Smith: Direct Statements

Kinney County Attorney Brent Smith has likewise made racist and xenophobic statements, including repeatedly using rhetoric of “invasion” and expressing support for the widely condemned, racist actions of Border Patrol officers in Del Rio in menacing migrants with horses and rope:

- In April 2021, County Attorney Smith appeared on a radio show and espoused his view that continued migration would lead to “losing our country”: “I’ve always known that, you know, illegal aliens were an issue in this county . . . It’s literally like an invasion, something you would normally think you would see on *Red Dawn* or something. . . . And so with illegal immigration, that’s one of the things, there’s something we’ve got to do. . . . This is not sustainable for four years; we cannot do this. We will lose our country, we will lose our state, we will lose our county. It won’t look the same way.” In this appearance, County Attorney Smith also suggested that Texas may unilaterally enforce immigration law, using as an illustration the Texas Rangers’ unilateral deportations of individuals to Mexico in 1915.⁹⁸ This is a troubling example in any event given the clearly established law preventing such actions by state and local law enforcement, and

⁹⁵ Steve Bannon’s War Room, *Episode 1,309 – Incoming Border Insurgence Has Texas County On High Alert (w/ Sheriff Brad Coe, Sophie Mann, Joe Allen)*, Oct. 4, 2021, ~ 29:00, 31:00, <https://www.listennotes.com/podcasts/bannons-war-room/episode-1309-incoming-border-wX0YZzh2dpR/>.

⁹⁶ *Id.* (audio at ~ 28:00).

⁹⁷ BPS, *Galveston County – Border Crisis*, YouTube (Aug. 25, 2021) (video at ~ 2:30), https://www.youtube.com/watch?v=2U_FF6nxN6w.

⁹⁸ The El Conservador Radio with George Rodriguez, Apr. 24, 2021, (audio at ~ 43:30), <https://www.listennotes.com/podcasts/el-conservador/4-24-21-the-el-conservador-i0xKetC3DHR/>.

especially so given the Texas Rangers' widespread abuses of those of Mexican descent in south Texas during this time period.⁹⁹

- On his Facebook page, County Attorney Smith shared a post with a picture of a Border Patrol agent maneuvering a horse toward a Black migrant and menacing the individual with the horse's reins, captioned "Del Rio's newest hero [raised hands emoji]." County Attorney Smith said in a separate post, "These Haitians take advantage of our hospitality, trash our land, and act entitled to be here. The ONLY thing they are entitled to is deportation!"¹⁰⁰
- On his YouTube channel, County Attorney Smith shared a video of a pursuit of people who jumped out of a vehicle. The video shows the use of excessive force in subduing an individual, with the individual lying on the ground with at least one deputy on top of him. Sheriff Coe appears to be present at the arrest and does not intervene. The video is titled "Kinney County Bailout."¹⁰¹

IV. Conclusion: Urgent Need for Immediate DOJ Action

Since our initial complaint two months ago, the need for immediate federal action to investigate violation of Title VI by Texas state and local agencies under the OLS trespass arrest program—and to terminate federal funding for all agencies violating federal anti-discrimination law via the program—has only grown more acute. The OLS trespass arrest program is now expanding to additional counties and a new geographic region of the state, with ambitions for further expansion. The white supremacist rhetoric that fuels the program is spreading throughout the country. The rampant violation of migrants' civil rights by state and local agencies continues. And new evidence demonstrates that Kinney County officials' extreme racist, anti-immigrant views may be at the heart not only of the implementation but also of the creation of the program.

As detailed in our initial complaint and above, state and local officials' intent to target Black and Brown migrants for arrest and punishment in a separate criminal system is clear. State and local agencies have created a state immigration enforcement system under the guise of state

⁹⁹ See, e.g., Simon Romero, *Lynch Mobs Killed Latinos Across the West. The Fight to Remember These Atrocities is Just Starting.*, NY Times, Mar. 2, 2019, <https://www.nytimes.com/2019/03/02/us/porvenir-massacre-texas-mexicans.html>; Ryan Reft, *The Legacy of the Texas Rangers: A Look at the Long History of Violence at the Border*, PBS SoCal VOCES, Oct. 10, 2019, <https://www.pbssocal.org/shows/voces/legacy-texas-rangers-look-long-history-violence-border>; Julia Craven, *The Ugly History Behind Those Border Agents Chasing Haitian Migrants on Horseback*, Slate, Sept. 25, 2021, <https://slate.com/news-and-politics/2021/09/border-patrol-horseback-haitian-migrants-del-rio.html>.

¹⁰⁰ Brent Smith, Facebook (Sept. 21, 2021), <https://www.facebook.com/profile.php?id=16717258>.

¹⁰¹ BPS, *Kinney County Bailout*, YouTube (May 26, 2021), https://www.youtube.com/watch?v=jIech6VGTyc&ab_channel=BPS. "Bailout" is a common slang term in south Texas for a situation in which passengers flee a vehicle that is being pursued by law enforcement, with the implication that they have done so because they are undocumented.

criminal law, fueled by racism and xenophobia. That system is in turn contributing to a volatile atmosphere in south Texas counties with the potential for violence—including private vigilante groups. The OLS trespass arrest program has flourished over the past two months. Absent federal intervention, Texas’s system to punish Black and Brown migrants will only grow and spread—not only throughout the state but potentially throughout the country.

In light of the OLS trespass arrest program’s expansion, we respectfully request that you publicly state that DOJ has begun or will immediately begin investigating state and local agencies’ involvement in the OLS trespass arrest program pursuant to Title VI. Similarly, we respectfully request that you provide a timeline for the completion of the DOJ investigation. We ask that, in the interests of transparency and in light of the urgent threat to Black and Brown migrants’ rights, you provide this information within the next two weeks. There is a grave need for federal civil rights intervention. Please do not hesitate to contact us for additional information or to discuss any of these matters further.

Sincerely,

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