



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 7, 2022

The Honorable Matt Krause  
Chair, House Committee on General Investigating  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

**Via E-Mail**

Re: Whether the federal government has failed to uphold its obligations to protect Texas from invasion under article IV, section 4 of the United States Constitution, and whether Texas has the sovereign power to defend itself from invasion (RQ-0454-KP)

Dear Representative Krause:

You requested an attorney general opinion regarding whether the federal government has failed to uphold its obligations to protect Texas from invasion under article IV, section 4 of the United States Constitution, and whether Texas has the sovereign power to defend itself from invasion. No doubt exists about the Biden Administration's failure to curtail the massive illegal immigration occurring at the border or its failure to protect our national security interests from the dangers that immigration poses. Since the beginning of the Biden Administration, I have filed twenty-eight lawsuits challenging various actions of the federal government. Eleven of those lawsuits relate directly to the immigration crisis.<sup>1</sup> I will continue to file immigration-related lawsuits until the federal government fulfills its duty to secure our borders from the flood of illegal aliens entering Texas daily.

The issue you raise in your opinion request involves a potential claim under consideration by States and State Attorneys General across the country in our efforts to stop illegal immigration. While we consider that and similar new claims against the federal government, it would be improper, and could compromise Texas's litigation strategy, to comment on and telegraph the State's position and arguments on this issue through an advisory Attorney General opinion.

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<sup>1</sup>See, e.g., *Texas v. Mayorkas*, No. 2:22-cv-00094-Z (N.D. Tex. filed April 28, 2022); *Texas v. Walensky*, No. 6:22-cv-00013 (S.D. Tex. filed April 22, 2022); *Texas v. Biden*, No. 2:22-cv-00014-M (N.D. Tex. filed Jan. 28, 2022); *Texas v. Biden*, No. 6:21-cv-00052 (S.D. Tex. filed Oct. 21, 2021) (demanding that the federal government continue to build the border wall with funds appropriated by Congress); *Texas v. Biden*, No. 4:21-cv-00579-P (N.D. Tex. filed April 22, 2021); *Texas v. Biden*, No. 2:21-cv-00067-Z (April 13, 2021); *Texas v. United States*, No. 6:21-cv-00003 (S.D. Tex.).

Furthermore, I take very seriously decisions that could impact the lives of our Texas National Guard soldiers and their families. I am the son of an Air Force veteran, a father to one active servicemember and father-in-law to two active servicemembers. I understand the sacrifices that our military servicemembers will make if the State of Texas declares an invasion or defends itself where the federal government has failed to protect our beautiful state. I will cautiously and deliberately consider any action I take that could put their lives at risk.

Section 402.042(c)(2) requires this office to issue attorney general opinions within 180 days of receipt of a valid request or to notify the requestor in writing that the opinion will be delayed or not rendered and state the reasons for the delay or refusal. For the reasons explained above, please consider this letter to be your notice under section 402.042(c)(2) of our reasons for declining to issue an opinion.

Sincerely,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON  
Attorney General of Texas

Attachment: Request No. 0454-KP

cc: Mr. Jonathan E. Meyer, General Counsel, U.S. Department of Homeland Security  
The Honorable Greg Abbott, Governor of Texas  
Mr. Luis Saenz, Chief of Staff, Office of the Governor  
Mr. James Sullivan, General Counsel, Office of the Governor  
Texas Freedom Caucus  
Ms. Susan M. Redford, Executive Director, Texas Association of Counties  
Mr. Michael Pichinson, General Counsel, Texas Association of Counties  
Ms. Elizabeth Lippincott, Legislative Affairs, Texas Border Coalition  
Ms. Jennifer Allmon, Executive Director, Texas Catholic Conference of Bishops  
Mr. Robert Henneke, General Counsel, Texas Public Policy Foundation  
Mr. Chris Byrnes, General Counsel, The Heritage Foundation

TEXAS HOUSE *of* REPRESENTATIVES

**RECEIVED**

*By Opinion Committee at 3:30 pm, Mar 28, 2022*



**RQ-0454-KP**

**FILE# ML-49099-22**

**I.D.# 49099**

**COMMITTEE ON GENERAL INVESTIGATING**

*Chair Matt Krause • Vice Chair Victoria Neave*

March 28, 2022

Office of the Attorney General  
Attention: Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548  
opinion.committee@oag.texas.gov

Re: Whether the federal government has failed to uphold its obligations to protect Texas from invasion under Article IV, Section 4 of the U.S. Constitution, and whether Texas has the sovereign power to defend itself from invasion?

Dear General Paxton:

President Biden has failed to enforce federal immigration laws and stop the surge of illegal aliens coming into Texas along the Mexico border. I am writing to ask for your legal opinion of whether or not the federal government has failed—intentionally or unintentionally—to uphold its obligations to protect our state from invasion under Article IV, Section 4 of the U.S. Constitution and whether Texas has the sovereign power to defend itself from such invasion. Undoubtedly, you are aware of the circumstances at the Texas-Mexico border, but the House Committee on General Investigating held a hearing on April 20, 2021, which disclosed important and relevant information on this topic from numerous Texas agencies.<sup>1</sup>

Recently, the Arizona Attorney General issued an opinion determining that the lawlessness and violence at the Arizona border constitutes “actually invaded” and “invasion” under the U.S. Constitution and that Arizona retained the sovereign power under the U.S. Constitution to defend itself from such an invasion.<sup>2</sup> I found the Arizona opinion’s analysis and conclusions compelling.

Please expedite your response on this urgent matter for the safety and protection of Texas residents. Thank you for your attention to this request.

Sincerely,

A handwritten signature in black ink that reads "Matt Krause".

Matt Krause  
Chairman  
Texas House Committee on General Investigating

<sup>1</sup> Issues Regarding the Status of Immigrants at the Texas-Mexico Border: Hearing Before the Comm. on Gen. Investigating, 87th Leg., R.S. (2021), <https://capitol.texas.gov/tlodocs/87R/handouts/C2802021042008001/C2802021042008001.pdf>.

<sup>2</sup> The Federal Government’s Duty To Protect the States And The States’ Sovereign Power Of Self Defense When Invaded, Ariz. Att’y Gen. Op. No. I22-001 (February 7, 2022), [https://www.azag.gov/sites/default/files/2022-02/I22\\_001b.pdf](https://www.azag.gov/sites/default/files/2022-02/I22_001b.pdf).

Capitol Office: E2.170 • P.O. Box 2910 • Austin, Texas 78768-2910 • (512) 463-0780

**Members:** Stephanie Klick, Reggie Smith, John Turner

*Darren Keyes, Committee Clerk & General Counsel*

*Darren.Keyes\_hc@house.texas.gov*