

Office of the General Counsel  
U.S. Department of Homeland Security  
Washington, DC 20528



Homeland  
Security

January 23, 2024

Ken Paxton, Esq.  
Attorney General  
State of Texas  
300 West 15th Street  
Austin, Texas 78711

Dear Attorney General Paxton:

I write to draw your attention to the U.S. Department of Homeland Security (DHS), U.S. Customs and Border Protection's (CBP, together the Department) property interest in the approximate 2.5-mile stretch of the Rio Grande in the area of Shelby Park and areas south of Shelby Park in Eagle Pass, Texas (hereinafter "Shelby Park area"), to address certain allegations made by the State which we believe are either inaccurate or require clarification or confirmation, and again to demand access to the Shelby Park area.

As you are aware, yesterday, the Supreme Court vacated the injunction prohibiting the Department from cutting or moving the concertina wire that Texas had placed along the border except in case of emergency, and restored the Department's right to cut and move the concertina wire placed by Texas in order to perform their statutory duties. The Department must also have the ability to access the border in the Shelby Park area that is currently obstructed by Texas.

The State has alleged that Shelby Park is open to the public, but we do not believe this statement is accurate. To our knowledge, Texas has only permitted access to Shelby Park by allowing public entry for a memorial, the media, and use of the golf course adjacent to Shelby Park, all while continuing to restrict U.S. Border Patrol's access to the park. Please clarify the scope of access Texas permits to the public.

Pursuant to federal law enabling the U.S. government to condemn property rights essential to control and guard the borders of the United States, 8 U.S.C § 1103(b), the Department acquired permanent real estate interests in and around Eagle Pass in 2008 to support the construction and maintenance of border barriers in and around the Shelby Park area. *See, e.g.,* Final Judgment, *United States v. 233 Acres of Land*, 2:08-cv-00003-AM (W.D. Tex. Feb. 16, 2016) (ECF No. 147) (J. Moses). For much of the property, including the property that runs north and south between Ryan Street and Shelby Park, the Department acquired fee simple interest from the City of Eagle Pass via condemnation as well as from private landowners. The attached map depicts the permanent interests administered by the Department in and around Eagle Pass. Because the Department owns property rights to the areas depicted on the attached map, we demand that

you immediately remove any and all obstructions on it, which include the access points into Shelby Park near the intersections of Ryan and Main Streets and Ryan and Rio Grande Streets, as well as the access points on Ford Street and the two access points on the end of Ryan Street.

In addition, in 2018, the Department acquired from the City of Eagle Pass a perpetual easement for the construction, operation, and maintenance of a road leading to and including the Shelby Park boat ramp and extending south along the river past Turtle Creek. Although Texas is now allowing Border Patrol to access the boat ramp with restrictions, we ask that Border Patrol be granted full access consistent with the perpetual easement.

Your letter of January 17, 2024 asserts that Texas will “allow[] prompt entry into Shelby Park by any U.S. Border Patrol personnel responding to a medical emergency.” The State’s Supreme Court filing of January 17, 2024, also seems to assert that the gate south of the Shelby Park Area –through which one Border Patrol agent was able to enter on January 15, 2024, to drive north – will remain open. Please confirm that both assertions will remain true.

In sum, we require full access to the Shelby Park area currently obstructed by Texas, including but not limited to the following locations to patrol the border and directly monitor the Rio Grande River consistent with U.S. Border Patrol’s responsibility and statutory authorities:

- Access to Eagle Pass International Bridge Port of Entry II, also known as Camino Real International Bridge, from the Loop 480 access road, 24 hours a day. This is to include beneath the port of entry as well.
- Access through the federal border barrier entrances described above located on Ford Street, Main Street, near the intersection of Rio Grande Street and Ryan Street, and the two entrances on the end of Ryan Street, for Border Patrol to move through and conduct line watch duties and patrol within the Shelby Park area 24 hours a day.
- Full access to the boat ramp located at Shelby Park Main Street entrance, consistent with the perpetual easement.
- Unrestricted access to the entire Shelby Park area during emergency circumstances, including but not limited to, assistance to other agents and officers as well as medical and rescue operations.

By January 26, 2024, please confirm that the State will provide U.S. Border Patrol with the access described above. If the State refuses the requested access in part, but not in whole, please specify what access you intend to deny.

Sincerely,

Jonathan E. Meyer  
General Counsel

Enclosure