

Texas Border Crisis Action Plan: A Plan to Secure the Border with Mexico and Protect the Health, Safety, and Economy of the State of Texas

Authored by Texas Grassroots Leaders for Texas State Government
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"The era of procrastination, of half-measures, of soothing and baffling expedients, of delays is coming to its close. In its place we are entering a period of consequences." — Winston Churchill

1. INTRODUCTION: THE GOVERNMENT-MADE CRISIS

The unprecedented wave of illegal aliens crossing the southern Texas border is an imminent threat to the security, safety, and health of Texas citizens. Moreover, since the Texas southern border is a gateway to the interior of the United States, the same threats will directly impact communities across the US and present serious national security ramifications.

During hearings this year [before the US House and Senate Armed Services Committees](#), Marine Corps Gen. John Kelly, commander of U.S. Southern Command, declared budget cuts are "severely degrading" the military's ability to defend the US southern border. Last year, he said his task force was unable to act on nearly 75 percent of illicit trafficking events. ["I simply sit and watch it go by,"](#) he said. However, the potential threats are even greater. Kelly warned that neglect has created vulnerabilities that can be exploited by terrorist groups, describing a "crime-terror convergence" already seen with Lebanese Hezbollah involvement in the region. In fact, Gov. Rick Perry and [Joshua Katz, an Army veteran and former CIA operations officer](#) who served as Senior Policy Advisor to the Chairman of the House Homeland Security Committee, have both warned that militants from the Islamic State in Iraq and Syria (ISIS) and other terrorist groups may have already slipped across the Mexican border. ISIS has publically declared many times their desire to attack the America homeland. An open border greatly facilitates their terrorist aims.

"Texas can't afford to wait for Washington to act on this crisis and we will not sit idly by while the safety and security of our citizens are threatened. Until the federal government recognizes the danger it's putting our citizens in by its inaction to secure the border, Texas law enforcement must do everything they can to keep our citizens and communities safe." **Governor Rick Perry**

[<http://governor.state.tx.us/news/press-release/19828/>]

[Sources: <http://www.defenseone.com/threats/2014/07/top-general-says-mexico-border-security-now-existential-threat-us/87958/> and http://www.nytimes.com/2014/08/22/us/politics/rick-perry-says-terrorists-could-be-entering-us-along-mexico-border.html?_r=0]

The Federal government is bypassing local governments and relocating illegal alien detainees into Texas communities. **This is an unconstitutional act** – the *de facto* commandeering of state and local (taxpayer-funded) resources and assets by the federal government, an act prohibited by the US Constitution except during official periods of a declared state of war or national emergency. These actions are clearly an unfunded mandate on those communities where the Federal Government places these illegal alien adults and minors.

"The federal government has abdicated its responsibility to secure the border and protect this country from the consequences of illegal immigration, but as Texans, we know how to lead in areas where Washington has failed." **Lt. Governor David Dewhurst** [<http://governor.state.tx.us/news/press-release/19828/>]

Illegal aliens are pouring over the border at a current rate of approximately 1000 to 1500 people a day and 60,000 illegal alien children have been apprehended since October of last year. The Republican candidate for Lt. Governor, Dan Patrick has said that law enforcement officials have told him that somewhere between one in five and one in 10 illegal aliens are actually caught, which means there could be at least five times as many illegal aliens who have entered into the state. "You do the math," Patrick said. [Source: <http://www.breitbart.com/Big-Government/2014/07/21/Texas-State-Senator-100-000-Illegal-Immigrant-Gangsters-in-State>]

"We've heard that firsthand from people who came here who said it to the Border Patrol that the reason why they were coming here was because they thought the president told them that they could come here without any kind of legal consequences."

Texas Attorney General Greg Abbott [KVUE.COM June 27, 2014]

The U.S. Customs and Border Patrol (USCBP) has apprehended more illegal immigrants in the Rio Grande Valley in the first eight months of the current federal fiscal year (over 160,000) than it did for all of fiscal year 2013 (154,453). In May 2014 alone, USCBP reported apprehending more than 1,100 illegal immigrants per day in the Rio Grande Valley. This year, like last year, more than half of the individuals apprehended at the Texas-Mexico border by USCBP are from countries other than Mexico. Additionally, 34,000 unaccompanied alien children (UAC) have been apprehended in Texas so far this year, with estimates that number will reach 90,000 by the end of the fiscal year. By comparison, 28,352 UAC were apprehended in fiscal year 2013. [Source: <http://governor.state.tx.us/news/press-release/19828/>]

"In this current security and humanitarian crisis, the federal government's failure to secure our border is resulting in serious consequences for Texas." **Speaker Joe Straus**
[<http://governor.state.tx.us/news/press-release/19828/>]

Finally, the current Texas border crisis is the direct result of the willingness of both political parties to ignore the rule of law in order to court new constituencies or pursue cheap labor for Big Business interests. In addition, the Obama Administration's immigration policies have directly contributed to the chaos on the border and undermined the national security mission of both the US Immigration and Customs Enforcement (ICE) agency and US Border Patrol Agents:

- On June 15, 2012, DHS [Department of Homeland Security] Secretary Janet Napolitano issued a [memo](#) instructing DHS to **refrain from deporting illegal aliens up to the age of 30**, thereby circumventing congress by administratively enacting the "DREAM Act".
- "Our officers are already **under orders** not to make arrests or even talk to foreign nationals in most cases **unless another agency has already arrested them**; you won't find that written in any public ICE policy." [Source: <http://iceunion.org/file/ice-policy-exercising-prosecutorial-discretion>]
- "Even though illegal entry and visa overstay violations account for the majority of the 11 million illegal immigrants currently residing in the United States, DHS and ICE **have directed ICE officers not to enforce the laws related to these**

offenses." [Source: <http://iceunion.org/download/2738-letter-lawmakers-05-09-13-1.pdf>]

Although there are at least [28 steps President Obama could take right now to address the illegal immigration crisis](#), to date there has been no serious response by the federal government to **stop** the unprecedented influx of illegal entries into Texas. In fact, President Obama has explicitly stated that he would utilize executive power to unconstitutionally bypass Congress and grant legal status to millions of illegal aliens. **Consequently, Texans must take immediate action to address this situation at the State and local levels.**

2. PURPOSE AND SCOPE

The purpose of the Texas Border Crisis Action Plan is to provide thoughtful input from the Texas "liberty movement" grassroots leadership to our elected statewide officials and legislators regarding the national security risk of a wide-open southern border with Mexico. The plan lays out constitutional action steps and the justification for those steps. This plan is a principled response to the border crisis and employs solutions that go far beyond mere participation in the federal "catch and release" program, which only serves to mock the rule of law and undermine our state sovereignty. This plan is an opportunity for the State of Texas to address the serious threats to life, liberty and property posed by the ongoing waves of illegal border crossers and the open border policies of the Federal government.

It is also the purpose of this document to strip away the shield of ignorance that some of our Texas elected officials hide behind. Many times when the grassroots have asked for a special session, the response from a state lawmaker is "What would we do in a special session?" or this is a "Federal issue, not a state issue." This "citizen" constructed action plan will provide sound, principled instruction for such questions and responses.

The scope of the actions proposed in this plan are limited to those we believe the Texas Government can achieve through bold leadership and by following a constitutional path to protect the citizens of Texas.

It is important to note that the principal authors of this plan have actually visited the Texas border on an unannounced tour of the Laredo and Rio Grande Valley Sectors and were not escorted by elected officials. The tour gave them direct access to US Border Patrol spokesmen who were very candid in their descriptions

regarding the Texas Border Crisis and backed up their descriptions by showing proof of a wide-open border.

3. OBJECTIVES

The objectives of this grassroots action plan are:

- Identify the constitutional authority that allows the State of Texas to take unilateral actions necessary to address the Texas Border Crisis.
- Identify specific actions needed to stop the massive influx of illegal migration into the State of Texas – actions made necessary because the Federal Government has failed its constitutional responsibility to secure the border.
- Inform Texas politicians, the media, and the public about the constitutional options and actions the State of Texas may pursue to secure the southern Texas border, thereby protecting Texas and the Nation from criminal elements and security risks.

4. BACKGROUND

Due to willful abandonment of the US Constitution, disrespect for the rule of law, political correctness, and the influence of special interest groups, the border crisis can be laid at the feet of both political parties. However, the open border has been exploited by the Obama Administration, whose stated mission to fundamentally change America has resulted in [policies that undermine our nation's security](#), subject us to criminal aliens and organized crime syndicates, expand human slavery through cheap labor and sex trafficking, and demoralize our border agents. [Never letting a serious crisis go to waste](#), federal documents show the Obama Administration has [advance planned](#) to use the open border as an excuse to push for amnesty, while failing its constitutional duty to secure our nation's border and protect American citizens and legal residents.

"The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence." **US Constitution: Article IV, Section 4. Republican Government**

Therefore, the liberty-minded grassroots leaders of Texas have repeatedly turned to the State government, [asking them to resolve this crisis](#) by claiming constitutional states' rights (10th Amendment) in order to protect Texas citizens and legal residents.

We have asked the Governor to call a special legislative session to deal directly with the Texas border issue and all the associated impacts. We asked for a DPS surge and for the Texas National and State Guard to be mobilized and **charged to close the border to illegal entry**. [July 16, 2014 Austin press conference: <http://www.breitbart.com/Breitbart-Texas/2014/07/18/Activists-Demand-Special-Session-Immediate-Action-from-Perry-Abbott-on-Border-Crisis>]

Indeed, the Governor, Lt. Governor, and Texas House Speaker have authorized and deployed the Department of Public Safety (DPS) to surge in the Rio Grande Valley (RGV) sector. Additionally, the Governor announced he would deploy up to 1,000 Texas National Guard personnel who have volunteered to serve in the RGV border sector. Furthermore, the Speaker has formed a Texas House Select Committee to examine the short-term and long-term impact these deployments would have on the state budget. Unfortunately, none of these measures will stop illegal border crossings as long as the US Border Patrol is prohibited by the Federal Government from securing the border.

Moreover, the Texas units are simply participating in the federal ["catch and release" program](#) since DPS has not been given the charge by the Texas Governor to enforce the rule of law as it applies to turning around illegal border crossers. Texas DPS officers may check legal status during the course of performing law enforcement duties, but they are not authorized by our state government to enforce immigration law. If a trooper discovers an illegal alien during a traffic violation, he or she is taken to jail and ICE is alerted. The Texas State Guard does not even have regular police powers.

When asked by the Texas House Committee on Homeland Security and Public Safety (August 5, 2014) to describe the Texas National Guard's mission as charged by Governor Perry, Adjutant General John Nichols defined the mission scope thus:

"What we've been asked to do specifically is come support DPS and their Operation Strong Safety," Nichols said, adding that **the state hasn't asked the National Guard to detain suspected undocumented immigrants**.

"My command to my folks is, avoid confrontation," he said. **"Our rules of engagement are really rules of non-engagement."** General Nichols added, "If undocumented immigrants try to turn themselves in to National Guard troops, the soldiers are instructed to ask them to sit down and wait for Border Patrol or DPS agents to arrive."

Thus, Texas finds itself locked into a situation with the Federal government refusing to secure the border and state government unwilling to react effectively to the crisis at hand. Indeed, all State surge and State guard deployments will not and cannot stop the illegal alien traffic **once they step foot on US soil since** they are required to turn over any apprehended illegal aliens to the US Border Patrol. Sadly, on Sunday, August 3, 2014, we experienced yet again the **tragic consequences** of the “catch and release” policies of the federal bureaucracy as [US Border Patrol Agent Javier Vega, Jr. was brutally murdered](#) before the watching eyes of his parents, wife and children by two criminal illegal aliens - both of whom had been deported numerous times.

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Apparently, our state officials find themselves paralyzed and unable to think outside the box. Sadly and appallingly, many believe the Federal Government is supreme in all issues related to border security and immigration issues. They fail to comprehend their own constitutional authority and abilities to deal with the current crisis. It is therefore, with utmost urgency, this document is offered to remind state officials of their oath of office, why they were elected, and why they must act. We also offer this plan to our fellow Texans to remind them of the fact that our Founders did not leave us without remedies for a Federal government that refuses to enforce the rule of law.

5. ACTION PLAN FOR THE TEXAS BORDER CRISIS

Although maintaining the security of the US border and enforcement of immigration law is a basic responsibility of the Federal Government, constitutional provisions exist for states should the Federal Government fail to fulfill these responsibilities. In fact, the very Supreme Court case that forced States to provide public education for illegal alien minors (*Plyler v. Doe*) explicitly declares the States have within their powers the ability to stop the flow of illegal aliens across state borders.

“Although the State has no direct interest in controlling entry into this country, that interest being one reserved by the Constitution to the Federal Government, unchecked unlawful migration might impair the State’s economy generally, or the State’s ability to provide some important service. Despite the exclusive federal control of the Nation’s borders, **we cannot conclude that the States are without any power to deter the influx of persons entering the United States against federal law**, and whose numbers might have a discernable impact on traditional state concerns.” [*Plyler*, at 228 n.23]

So with the US Supreme Court’s admission that the States have an interest and the authority to deter the influx of illegal aliens in such numbers that may have a discernable impact on our traditional concerns, the ground work has been laid for the State of Texas to take constitutionally-sound steps to prevent the massive flow of illegal aliens across its borders.

The flood of illegal alien minors, including unaccompanied alien children (UACs), will indeed have a discernable impact on traditional State concerns, will stress State services, and has generally compromise the State budget – especially in the areas of public education, health care, and welfare. For example, the *McKinney-Vento Homeless Assistance Act* delineates educational rights and support for children and youth experiencing homelessness, **including guaranteeing immediate access to a free, appropriate public education**. Federal law identifies a number of living arrangements such as sharing the housing of others, in which inhabitants would qualify for purposes of the Act. Under McKinney-Vento, school districts must appoint a local liaison to ensure, among other things, that (1) children and youth eligible under McKinney Vento are identified; (2) that they immediately enroll in, and have a full and equal opportunity to succeed in, the schools of the district; and (3) they receive educational services for which they are eligible, and referrals to health care services, dental services, mental health services, and other appropriate welfare services.

Although UACs who are in HHS shelters are not eligible for McKinney-Vento services, they [typically spend on average about 35 days in a detention facility](#). The children who are released to live with a sponsor may be eligible on a case-by-case basis under the law’s broad definition, which includes youth who are living with family members in “doubled-up” housing. [Source: <http://www2.ed.gov/policy/rights/guid/unaccompanied-children.html>]

It should be noted that the part of the Plyer decision that pointed to a State’s power to check unrestrained unlawful migration is not limited to educational issues, but can also be applied to hardships on local law enforcement, county/city resources, water and hospital districts, and emergency services due to a massive increase in the illegal alien population.

In addition, the enforcement of immigration law was supported by the US Supreme Court’s ruling, which upheld an important section of Arizona’s SB 1070. The portion ruled constitutional is crucial to unshackling law

enforcement, releasing officers to enforce immigration laws already on the books. The aforementioned section of SB 1070 requires an officer to make a reasonable attempt to determine the immigration status of a person stopped, detained, or arrested if there is reasonable suspicion that person is in the country illegally. By upholding this portion of SB 1070, the US Supreme Court said it was proper for states to partner with the federal government in immigration enforcement. [Source: <http://www.supremecourt.gov/opinions/11pdf/11-182b5e1.pdf>]

Consequently, these US Supreme Court decisions, in conjunction with the constitutional provisions found in Article I Section 10 Clause 3 of the US Constitution, have provided complimentary direction for a State to address the “imminent danger” of the border crisis – a crisis the Federal government refuses to solve. The following sections of this document describe the actions required to invoke constitutional standing to address the Texas border crisis and the recommended executive and legislative actions needed to address the ongoing “imminent danger” state of emergency.

5.1. ACTION TO DECLARE LEGAL STANDING

In order for the State of Texas to assume constitutional (legal) standing to repel further invasion and to address the current state of imminent danger, the State of Texas must formally make a declaration of invasion or imminent danger to invoke Article I Section 10 Clause 3 of the US Constitution.

U.S. Constitution: Article I. Section 10 POWERS PROHIBITED TO THE STATES
...No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, **unless actually invaded, or in such imminent Danger as will not admit of delay.**

Such a formal statement of invasion or imminent danger is accomplished in one of three ways:

- A. The Texas State Legislature can make a finding and pass a resolution declaring that the State is actually being “invaded” or is in such “imminent danger” as necessitates immediate action for the State to bypass traditional Congressional approvals. (To invoke Article I Section 10 Clause 3 of the US Constitution)
- B. The Texas Attorney General can issue advisory opinions or seek declaratory judgments that the State has been “actually invaded” or is in

“imminent danger,” thereby ruling the State has the power under Article I Section 10 Clause 3 of the US Constitution to repel invasion and immediately address all aspects of “imminent danger” to the people of Texas.

- C. The Texas Governor can issue an executive order under the powers granted his office by the Texas Constitution to declare the State under invasion or imminent danger, thereby invoking Article I Section 10 Clause 3 of the US Constitution. The Texas Governor should notify the Texas Congressional Delegation of US Representatives and US Senators that Texas will take decisive action to protect the life, liberty and property of its people.

It is further believed that the method chosen to enact a formal declaration is left up to the States. The course chosen should depend solely upon the immediacy of the invasion or state of imminent danger for which the Federal Government is unable or unwilling to respond. Therefore, Texas will be able to begin protective actions without Federal approval or oversight once the Governor, Attorney General, or State Legislature act to invoke the provisions of Article I Section 10 Clause 3 of the U.S. Constitution.

By assuming its constitutional authority (pursuant to US Constitution: Article 1 Section 10 Clause 3), the sovereign State of Texas will interpose itself between the federal government and its own citizens for their safety and general welfare protections. The State of Texas will thereby assume the lawful position of enforcing already existing laws in order to prevent endangerment to her citizens and legal residents.

When the aforementioned formal constitutional declaration by the Governor, the Attorney General, or the Legislature is made, allowing Texas to act in her own best interest to secure the southern border, a method should also be determined to define the “end of mission” or when the state of imminent danger has passed. When this condition is reached, the State of Texas will return the border security responsibility back to the Federal Government.

The path advocated by this plan is difficult and has never been tried by a State. Never in our country’s history has the Federal Government so neglected its responsibilities to the states. However, Texas should not be solely responsible for border security in perpetuity. When the

Federal government will resume its constitutional duty to protect the southern border from unrestrained illegal entry, the Texas State government will necessarily stand down its border forces. This can only occur once the State of Texas declares the border secure.

The method to declare the emergency over, the invasion stopped, and the associated imminent danger mitigated, should be similar to how the emergency was declared. The Governor, the Texas Attorney General, or the Legislature will need to declare the danger has passed. Border security criteria should be developed with the assistance of state law enforcement and the Texas Military as defined in the state Constitution and should include appropriate performance measures that, once met, will ensure a secure border to protect the health, safety, and economy of Texas and her citizens.

Note: The [Texas Military Forces](#) classification is composed of the three branches of the military in the state of Texas. These branches are the Texas Army National Guard, the Texas Air National Guard, and the Texas State Guard. All three are administered by the state Adjutant General, an appointee of the Governor of Texas, and fall *under the command of the Governor*.

5.2. EXECUTIVE ACTIONS BY THE TEXAS GOVERNOR

As the State's Commander-in-Chief, the Texas Governor is responsible for calling forth and directing state military assets. These assets include both the organized militia and the unorganized militia as described in Section 7.

Texas Constitution: Article 4 Section 7. COMMANDER-IN-CHIEF OF MILITARY FORCES, CALLING FORTH MILITIA

He shall be Commander-in-Chief of the military forces of the State, except when they are called into the actual service of the United States. He shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and to repel invasions.

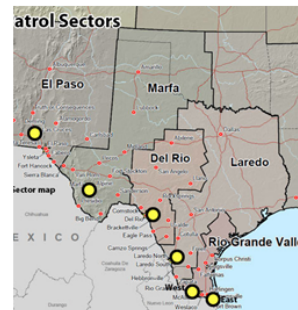
Consequently, the Texas Governor has the authority to call up the State Guard (organized militia) to address the border security situation. He may also mobilize the State Defense Force (part of the "unorganized militia," as defined by 10 U.S.C. §311) and may also commission other able-bodied civilians as the state of "imminent danger" may warrant.

At the time this plan was released, Gov. Perry had called up 1,000 members of the Texas National Guard on a **voluntary basis**, with a majority of the personnel still in training, but had not ordered any established and composed units to the Rio Grande Valley sector of the

border [Figure 1]. [A small contingent of National Guard troops are [already serving](#) as part of a separate operation tasked and funded by the federal government.]

The exact purpose, mission, and authority of the Texas National Guard as described by Guard officials [is in direct conflict with that which has been described by state officials \(primarily Governor Perry\)](#) in media interviews and at political events. During the August 5, 2014, Texas House Committee on Homeland Security and Public Safety, Adjutant General John Nichols made the mission clear, "What we've been asked to do specifically is come support DPS and their Operation Strong Safety," adding that **the state hasn't asked the National Guard to detain suspected undocumented immigrants**. "We're going to be in observation posts, so we won't be patrolling," Nichols told [Military Times](#). "If we see people cross the border then we're going to call the DPS to go interview them." Guard spokeswoman, Lt. Col. Joanne MacGregor, has also stated troops will operate under the Texas Department of Public Safety's "umbrella" and "we will not [exceed their authorities](#)."

Texas Border Facts



- Texas – Mexico border spans approximately 1254 miles of the 1,950 mile US – Mexico border
- Texas border is divided up into five Border Patrol sectors:
 - Rio Grande Valley Sector
 - Laredo Sector
 - Del Rio Sector
 - Marfa Sector
 - El Paso Sector
- It is the Rio Grande Valley sector that is responsible for the overwhelming surge of illegal alien wave migration

Figure 1, courtesy of Mary Huls, *Texas Trail of Tears* presentation at the Iowa Preventing Abuse Conference, August 2014

Words mean things – especially in a crisis. The mission [defined by Guard officials](#) is not what the people of Texas (or the nation) expected after Gov. Perry declared on July 23, 2014, on a [Fox News Hannity special "Securing the Border"](#) that Texas would secure the border:

[July 23, 2014, Hannity Transcripts:](#)

HANNITY: "Have you heard from the president at all since you met with him when I was down with you on the border? Has he gotten back in contact with you?"

PERRY: "No. Obviously, we're moving ahead. We're not going to wait for the federal government, whether it's the

administration or for Washington, D.C. for that matter. The crisis is full-blown. Everyone understands what the issue is here.

And not only have we been dealing with this for a number of years now, it's come to the point where the details of the criminal activities have become so clear that **we no longer can wait for Washington to secure the border. And Texas is going to do it with our law enforcement and with our National Guard...**We can't afford to wait for Washington to secure this border. We've had enough, **and we're going to secure the southern border."**

Clearly, Gov. Perry's orders to the Department of Public Safety and to the Texas National Guard **will not secure the border**, but will likely push the cartels to move into other border sectors to avoid law enforcement. It appears that our Governor has decided to charge state law enforcement with the task of assisting the federal government in its "catch and release" program. **This is unacceptable because it actually does nothing to secure the border by denying illegal entry.**

Yet, it is clear from Gov. Perry's words that he believes the current situation is indeed a state of emergency or imminent danger. In order to pay for the Texas National Guard deployment, it was reported by [The Texas Tribune](#), (8.12.14) that "the governor used a little-known budget rider to classify the border crisis as an emergency and redirect \$38 million in Department of Public Safety funding that was slated for emergency radio infrastructure." This emergency declaration was used rather than the normal "budget execution" process with the legislature or drawing on the state disaster fund. However, Mike Morrissey, the governor's deputy chief of staff and senior advisor, stated "Budget execution would always be our preferred option," but indicated the Governor believed immediate action was called for. Morrissey indicated, "Perry wanted to use the budget execution process with legislators over the next couple of months to procure the next round of funding."

This emergency declaration and statement by Morrissey supports our call for the Governor to assume his executive authority and call an emergency special session of the state legislature in order to lay out the facts of imminent danger presented by the current invasion of illegal aliens and the threats of ISIS. He should outline legislative actions necessary to address the issues, encourage debate on the issues, ask for subsequent actions by state senators and representatives, and garner support from Texas citizens.

An emergency special session of the legislature would facilitate the funding of both the DPS surge and the Texas National Guard deployment. By his own actions, Gov. Perry has already met the criteria needed to call an emergency special session and to invoke Article I Section 10 Clause 3 of the US Constitution to provide the legal basis for Texas to respond decisively to the border crisis.

Texas Constitution: Article 4 Section 8. CONVENING LEGISLATURE ON EXTRAORDINARY OCCASIONS

The Governor may, on extraordinary occasions, convene the Legislature at the seat of Government, or at a different place, in the case that should be in possession of a public enemy or in the case of the prevalence of disease threat. His proclamation therefore shall state specifically the purpose for which the Legislature is convened.

The Governor's ability to deploy effectively the Texas military will largely depend on legislative items related to funding and powers delegated to the militias (e.g., law enforcement powers).

We further recommend the Governor employ military veterans and those recently pink-slipped by the federal government to raise the number of "boots on the ground" needed to deter illegal entry. In addition, we strongly urge an immediate end to our state's participation in the federal "catch and release" program. **The new goal should be to keep illegal crossings from occurring. Doing anything short of preventing illegals from setting foot on Texas soil will not stop the invasion nor will it reduce the state of imminent danger.**

A clear message should be sent to Mexican officials that the State of Texas has assumed its constitutional authority to stop the invasion of illegal entries in order to reduce the danger to its citizens, to the women and children exploited by the cartels and coyotes, and to the interior populations of the United States. Mexican officials should be told that **anyone wishing to seek refuge in the United States should do so via legal ports of entry to Texas** and that anyone seeking to gain entry through tunnels, scaling fences, via ski boats, rafts, or swimming across the Rio Grande River will first be warned and then met with appropriate force.

According to the US Customs and Border Patrol website, Texas has 29 official US ports of entry, more than any other state. These legal ports of entry provide sufficient opportunities for true refugees to seek protection. <http://www.governor.state.tx.us/files/ecodev/USPortsInTexas.pdf>

A strictly military solution is not the only necessary deterrent to illegal entry. Other actions will be required.

There are many issues related to the extremely large numbers of illegal aliens that have entered the State. It is absolutely critical that the “magnets” that encourage illegal migration be addressed. In addition, if Texas is to enter into any “Border States Compact,” the legislature will need to approve any agreements proposed and accepted. Moreover, the relationship with the Federal Government must be redefined and codified in legislation in order to encourage the Federal Government to live up to its constitutional responsibility and close the Texas border to illegal migration.

The Governor of Texas has strong executive power and authority as it relates to law enforcement. Governor Perry should immediately issue an executive order that reflects the language of SB 1070 ruled constitutional by SCOTUS. This would immediately provide strong support for law enforcement, send a message that law and order was being restored in Texas, and set law enforcement free to do their jobs more effectively. Since Texas never participated in ICE’s 287(g) program delegating immigration enforcement authority to state or local law enforcement organizations within their jurisdictions, it is critical that the Governor issue a declaration providing immigration enforcement authority under Article I Section 10 of the US Constitution. The statistics of such apprehensions and the subsequent action or inaction by the federal government should be made public on a regular basis and reported to the Texas Congressional Delegation and Texas Legislature.

Additionally, Gov. Perry should immediately issue an executive order to ban the sanctuary practices and policies in Texas cities, counties, and school districts that prohibit law enforcement agencies from enforcing federal immigration laws. Such sanctuary policies and practices instruct local government employees not to notify the federal government of the presence of illegal aliens. As a result, this breeds a “lawless” culture and eliminates important distinctions between legal resident aliens and illegal aliens, helping illegal aliens access taxpayer-funded government services and programs, which should be reserved for citizens and legal residents. The ban should prohibit the adoption of sanctuary policies under the penalty of becoming ineligible for certain state funding.

Banning sanctuary cities was one of the Governor’s “emergency items” at the beginning of the 82nd legislative session in 2011. During the 82nd legislative session, the House and Senate leadership played political games, never getting to a conference committee bill to reconcile the version passed by each body.

In a [meeting with grassroots leaders on June 28, 2011](#), Governor Perry was asked to either call a special session or take executive action to follow through on his emergency item. Perry promised to take action, but never again raised the issue – although he admitted in a June 28, 2011, press release (the day he met with activists) posted on his official website, that the failure to ban sanctuary cities “will not provide our peace officers with the discretion they need to adequately keep Texans safe from those that would do them harm.” [Source: <http://governor.state.tx.us/news/press-release/16335/>]

Gov. Perry also never responded to a stack of letters hand-delivered to his office on September 19, 2011. [Over 3,000 local activists signed the letter](#), including representatives of over 100 Texas tea party, 9-12, and related grassroots groups. Signatures of representatives of these local groups, in many cases, represented hundreds – even thousands – of local group members.

Meanwhile, the fact that Texas is essentially a “sanctuary state” flies in the face of what State law enforcement is practically shouting from the rooftops and only reinforces the need for state officials to act.

For example, three Department of Public Safety reports clearly define the growing threat of statewide cartel organized crime networks, which include transnational gangs. The reports detail how six of the eight major cartels operate in Texas and provide abundant reasons for the Governor to act immediately to ban sanctuary cities in Texas.

The [2013 Texas Public Safety Threat Overview](#), the [2014 Texas Gang Threat Assessment](#), and the [2014 Assessing the Threat of Human Trafficking in Texas](#) reports clearly warn about the rise of dangerous criminal elements fostered by illegal alien criminals crossing the border. The reports show that the Dallas-Fort Worth metro area – more than 400 miles from the border with Mexico – has become a key “command and control” center for moving drugs and people across the country, according to top state and federal law enforcement officials. DPS Director Colonel Steven McCraw has stated in media reports that Mexican cartels “[constitute the greatest organized-crime threat](#)” to the state.

In a [June 8, 2013, interview](#) with the *Fort Worth Star-Telegram*, McCraw said, “In the last half-dozen years or so, the cartels have expanded beyond drug smuggling to become multifaceted organized-crime groups dealing in

murder, extortion, kidnapping, human trafficking, oil theft, money laundering, auto theft, weapons smuggling and corruption.” Colonel McCraw added, “They’ve evolved. They’ve adapted military tactics to engage each other and the Mexican government. They’ve adopted terrorist tactics that we’ve never seen before in organized crime. There has never been organized crime groups that have been this depraved. McCraw went on to say that cartels have also broadened their “partnerships” with the growing number of Texas gangs. The DPS estimates that the Lone Star State has more than 100,000 gang members. [Source: <http://www.star-telegram.com/2013/06/08/4921705/dfw-is-now-a-command-and-control.html>]

Also addressing this issue is State Senator Dan Patrick (Republican nominee for Texas Lt. Governor) who has indicated that from 2008 to 2012, 143,000 illegal immigrant criminals were arrested and jailed in Texas. Patrick said, “We charged them with 447,000 crimes, a half-million crimes in four years, just in Texas, including over 5,000 rapes and 2,000 murders. We estimate we have 1000,000 gang members here illegally.” [Source: <http://www.breitbart.com/Big-Government/2014/07/21/Texas-State-Senator-100-000-Illegal-Immigrant-Gangsters-in-State>]

As previously cited, Gov. Perry has raised national expectations that Texas is acting on its own to secure the border because the Federal Government refuses to do so. The Governor has been hailed as a strong conservative willing to do what is necessary to protect the citizens of Texas; however, the current actions have done little to stop illegal entries or make Texas a less desirable destination for illegal border crossers. At this point, the State of Texas is simply participating in what [US Border Patrol representatives call the federal “catch and release” program](#). This action plan encourages the Governor to act courageously and decisively, making good on his declaration to secure the Texas southern border with Mexico.

5.3. LEGISLATIVE ACTIONS

The grassroots sees no sense of urgency on the part of State leaders or groups of legislators to shoulder the heavy lifting needed to provide solutions and resolve the Texas border crisis. Since the 82nd Legislative session when Governor Perry listed a ban on sanctuary cities as an “emergency item,” the grassroots have consistently called on the Governor to end sanctuary cities in Texas. Governor Perry has ignored these calls.

Since June, grassroots leaders have called on the Governor to call an emergency special session of the State Legislature to address the grave issues facing Texas due to the dramatic increase in illegal entries. Unfortunately, such calls have not yet been heeded.

Many State Representatives and Senators have also balked at a special session. They claim the border crisis is purely a federal issue or there is nothing significant they can do to address the problem. Obviously, they are wrong on both counts and we categorically reject them.

We are also aware of a reluctance to address the issue before the November General Election. We reject such a shallow and dangerous approach based on political expediency. The safety and security of Texas citizens and legal residents should come first. ***Elected officials should listen to their citizens and law enforcement, not political consultants.***

Texas grassroots conservative leaders believe a majority of our fellow Texans agree with us. According to a [University of Texas/Texas Tribune Poll](#) conducted May 30-June 8 of 1,200 adults, 54% of respondents said they “agree” or “somewhat agree” that people who illegally cross the border should be removed from the country immediately.

Forty percent of those surveyed say they “disagree” or “somewhat disagree” with swift deportation.

The poll, which has a margin of error of 2.8%, also found 73% agree, “we should restrict and control people coming to live in the U.S. more than we do now.”

More recently, an [August 21, 2014, Rasmussen poll](#) found 53% of likely voters believe illegal alien children should not be permitted to attend local public schools. An additional 14% were undecided on the question. The survey of 1,000 Likely Voters was conducted August 16-17, 2014. The margin of sampling error is +/- 3% with a 95% level of confidence.

Seemingly out of step with public opinion, the consistently spoken desire of most state legislators is to wait until the 2015 regular session to address any issues related to the border crisis. We ***strongly*** disagree:

- By waiting for a regular session, the timeline for any legislative solutions will be pushed back at least six months (4 months left in 2014 and two months [60-day rule] after the legislative session starts). During

this time, especially if Obama begins to grant executive amnesty to 5 – 8 million illegal aliens already in the U.S., Texas could potentially have another 500,000 or greater illegal border crossers.

- Secondly, an emergency special session will keep the entire legislative focus on the border crisis issue. If the Texas open border situation is allowed to fester until a regular session, other legislative priorities will cause legislators to lose focus. A vacuum of leadership during a time of crisis is not healthy, not safe, and is not in the best interest of Texas and our law enforcement officers.
- Finally, during a regular session, many Big Business pro-amnesty, open borders, cheap labor [opponents of a secure border and sound Texas immigration policy](#) will have many more legislative procedural tricks at their disposal to stall or stymie common sense legislation needed to protect the health, safety, security, and economy of Texas.

Consequently, the grassroots citizen leaders are proposing several concrete actions the Texas Legislature should take in a special session. Recommended actions for the Texas Legislature to consider are:

1. Immediately fund Texas DPS to allow them to open and man as many checkpoints as needed along the choke-points on BOTH sides of the Border Patrol checkpoints to interdict human smugglers, transnational gang members, and drug shipments. These should be floating checkpoints in order to restrict the cartels' ability to adapt to permanent locations.
2. Establish and fund a dedicated "Texas Border Brigade" under the authority and command of the Texas Rangers (not under the authority of the federal government). This brigade should be composed entirely of field agents, with DPS performing administrative and logistical functions. The brigade should be vested with broad law enforcement powers necessary to track down illegal border crossers and to enforce immigration laws on the books. Hiring preferences should be given to Texas veterans, recently pink-slipped from the US military.
3. Authorize and fund Texas militias (organized and unorganized per U.S.C. Code) to operate on an as-needed basis to assist with the Texas Border

Brigade/DPS under standing orders from the Governor to stop illegal entries.

4. Broaden the powers of Texas Child Protective Services (CPS) to extend into the oversight of illegal alien minors being detained or housed in Federal facilities within the State of Texas. Current policy is that the State does not address any children in Federal custody. However, with the alarming stories of horrible and inhumane conditions inside these facilities and the large numbers of federal facilities being built or contracted within Texas, CPS should be able to exercise state authority regarding these children and close down those facilities that are not up to State regulations.
5. Charge the Texas Comptroller with doing a cost/benefit analysis of illegal immigration on the state of Texas.
6. Stop all Texas social services benefits to illegal aliens. Stopping benefits funded by the Fed Government will be impossible for the foreseeable future. However, Texas should close all loopholes that allow illegals to access state services such as Temporary Assistance to Needy Families (TANF). Texas should end in-state tuition for illegals. In view of this necessary pushback on the federal government for failing to assume its constitutional obligation to secure the borders, it is time for Texas statewide leaders and the Texas legislature to have a serious discussion about the need to reduce the state's dependency on federal funds in our budget. Currently, federal funds represent about 35% of our biennium state budget revenue for 2014-2015 (approximately \$69.6 billion). As was with the case of pushing back on the TSA during the 82nd legislative session, the rogue federal government will likely threaten Texas officials to get them to back down. ***The safety and security of Texas should not be held hostage by the federal government; therefore, Texas needs to be as strong and independent of Washington DC as possible.***
7. Codify in statute the formal end to sanctuary city policies and practices in Texas local governments – under the penalty of becoming ineligible for state funding and services should they resist compliance to this rule of law mandate.
8. Until the border has been declared secure by whatever means recognized by the State legislature, Texas should formally pass legislation "boycotting" products, commerce, and financial services from the

primary countries of origin with respect to a declared emergency border crisis.

9. Make it a crime to employ illegal aliens knowingly, without disregard for the law. Provide the means to verify employment, provide a short grace period, and place a substantial fine upon violators. Make provisions to address **serial violators** with increasing fines, loss of business license, and even jail time for law-breaking employers. Provide a criminal fine to illegals that "misrepresent" themselves to employers and strengthen state laws to address such fraud. Create a private right of action in the Texas Business Code for victims of identity theft. Those businesses that are found "negligent" by not verifying their workers, allowing them to continue employment using stolen identification should be liable in a civil suit for both punitive and actual damages.
10. Seek sound medical advice to identify the possible need to expand the required list of vaccinations necessary to attend Texas public schools. Unfortunately, these "new" vaccination requirements can no longer be restricted to "illegal alien minors" since they are currently not identified as illegal at registration. By being introduced into our communities, they have raised the risk of passing non-native communicable diseases to Texas children.
11. Make Human Trafficking a first-degree felony, punishable by a sentence of 20 years to life. In addition, if persons being trafficked or transported are under 18 years of age, or if the commission of the offense results in death, the offense in the first instance should be a life sentence of imprisonment and in the second instance a "capital" offense, punishable by death. Currently, Texas law (Texas Penal Code §20A.02) (2003) establishes trafficking as a second-degree felony with a sentence of 2 to 20 years imprisonment. If the persons trafficked or transported are under the age of 14, or if the commission of the offense results in death, the offense is a first-degree felony with a sentence of 5 to 99 years imprisonment. Note: The recent Supreme Court case *Kennedy v. Louisiana* outlaws the death penalty for any crime not involving "capital murder" or "capital sabotage." [Source: http://en.wikipedia.org/wiki/Capital_punishment_in_Texas and <http://ncsl.org/research/civil-andcriminal-justice/human-trafficking-laws-in-the-states-updated-nov.aspx>]
12. Immediately suspend all licensing activity between the State and the Federal Government and the

Federal Government's private contractors/subcontractors for any facilities or land use related to the Texas Border Crisis.

13. Immediately invalidate any restrictions placed on border enforcement activities by the State of Texas as regulated by the EPA, BLM, Fish & Wildlife Service and any other Federal Agencies with the purpose of restricting land and airspace access to State officials and law enforcement agencies.
14. Establish legal procedures so that any apprehended illegal aliens (including coyotes and multi-national gang members) will no longer be turned over to the Federal Government, but will be collected and held pending immediate return to their country of origin during the duration of the declared emergency. [This will be difficult when it comes to the Federal Government and the Countries of origin. Texas must be ready to close traffic and commerce coming through Mexico on Texas roads and ports in order to force these countries to take back their citizens.] According to his June 25, 2014, testimony before the US House Judiciary Committee, Brandon Judd, President of the National Border Patrol Council stated, "[no one is afraid of breaking the law.](#)" ***Texas must take decisive action to support law enforcement by making lawbreakers fear the consequences.***
15. Establish "standing" for any legal actions or briefs submitted to the federal judiciary demanding injunctive relief from federal executive orders that are not in the best interests of the State (e.g., declaration of a blanket amnesty by the Obama Administration in violation of Federal law).
16. Form a joint select committee to assess the impacts of the current illegal migration crisis and assess the involvement of the Federal Government, Mexico, and Central American countries in the ongoing border crisis. This committee should ascertain whether the crisis was the result of poor policy choices or through intentional manipulation of immigration policy and border enforcement. Determine if there is evidence of a larger strategy to "fundamentally transform America" via a manufactured electorate, the formation of a special interest entitlement state, and pushing Texas (America) into crisis and economic

collapse ([“Cloward – Piven Strategy¹”](#)). Texans have a right to know if all the misery and expense thrust upon them was purposefully inflicted – and if so, by whom!

17. Challenge *Plyler v. Doe* with regards to educating illegal minors in Texas schools. Note the Plyler decision foresaw unrestricted illegal migration had the potential to damage a State’s economy and traditions. At a minimum, state government should require illegal alien minors to be identified before admission to Texas Schools. While at odds with letters provided by the Administration, ***Texas should challenge the federal government on this matter on the grounds that by assuming her constitutional authority (pursuant to US Constitution: Article 1 Section 10 Clause 3), the sovereign State of Texas is interposing herself between the federal government and her own citizens for their safety and general welfare protections.***

18. Enter into negotiations with other border states to form beneficial compacts to address border security and the impacts of illegal migration.

It is expected that the actions recommended herein form a sound starting point from which the state legislature could expand to decisively address the current border crisis and mitigate the state of imminent danger.

6. STATE COMPACTS

Should other border states follow Texas’ lead and declare themselves under invasion or imminent danger, thereby invoking Article I Section 10 Clause 3 of the U.S. Constitution, they would become eligible to enter into a compact without Congressional approval. These compacts could address issues from disease outbreak protocols to combatting multi-national gangs to sharing of State resources.

The Honorable Joseph E. Schmitz states “As a **constitutional** alternative to secession, states such as Texas, Arizona, New Mexico, California, and Oklahoma - each of which is literally being ‘invaded’ in a constitutional sense by various Mexican criminal insurgencies (MCIs) and jihadists with access to weapons of mass destruction (WMD) - should consider entering into a self-defense ‘compact’ between and among themselves pursuant to

their explicitly reserved power to do so under Article I, Section 10, of the United States Constitution.”

“While entering into a self-defense ‘compact’ under Article I, Section 10, those states should also reaffirm their shared commitments to the principles underlying the Declaration of Independence and Constitution of the United States, starting with the core principles recently reaffirmed by the United States Supreme Court - ironically, in the court’s Obamacare/tax ruling - that our national government is one of limited and enumerated powers, and that each state retains its own sovereignty.” [Source: [Constitutional Alternative to Secession](#), Newsmax, Feb. 19, 2013.]

Finally, a compact of states is the best way of exercising the sovereignty of “we the people” over the Federal Government. James Madison postulated that the Constitution was a “compact” reflecting an agreement by the people of the individual states acting, not as the sovereign of their own states, but rather in concert with the people of other states as the collective sovereign of the national government. The people of the nation— while still identified in terms of the individual states in which they acted—was a different sovereign collectively from the people acting as sovereigns of their respective states.

Consequently, it may well be that no one State can supersede Federal law, but a compact of States directly impacted by a crisis situation may provide a legitimate expression of the “sovereign will of the people” which technically is a higher authority than the Federal government. Note that this reflection regarding the sovereignty of the people is not about usurping Federal authority or a session narrative. It is merely an avenue used to rectify current and immediate failures of the Federal government by the true sovereign of the United States.

7. DISCUSSION CONCERNING MILITIAS

The term “militia” often has a negative connotation in today’s society due to the media’s unrelenting negative portrayals of private militia groups. However, the historical importance of militias in the founding of our nation is without question and is still recognized in the United States Code. The following is an excerpt of that code pertaining to “militias.”

¹ Strategy of forcing political change through orchestrated crisis (Cloward-Piven Strategy) seeks to hasten the fall of capitalism by

overloading government bureaucracy with a flood of impossible demands, thus pushing society into crisis and economic collapse.

10 U.S.C. § 311 - MILITIA: COMPOSITION AND CLASSES

(a) The militia of the United States consists of all able-bodied males at least 17 years of age [*] and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard.

(b) The classes of the militia are—

(1) the organized militia, which consists of the National Guard and the Naval Militia; and

(2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia.

**The Selective Service maintains electronic records for 16 million young men who have registered and are subject to conscription (under 29); most are statutorily classified as the "unorganized militia," i.e., potential assets to help repel invasions.*

The [Texas Military Forces](#) is composed of the three branches of the military in the state of Texas. These branches are the Texas Army National Guard, the Texas Air National Guard, and the Texas State Guard. All three branches are administered by the state Adjutant General, an appointee of the Governor of Texas, and fall under the command of the Governor.

While the Texas Army National Guard and the Texas Air National Guard are subject to nationalization by the Federal government, the Texas State Guard is not a part of the United States Armed Forces. The Texas State Guard is a state defense force that operates under the sole authority of the Texas State government. The federal government recognizes state defense forces under 32 U.S.C. § 109, which provides that state defense forces as a whole may not be called, ordered, or drafted into the armed forces of the United States, thus preserving their separation from the National Guard.

Consequently, we offer two recommendations concerning the Texas State Guard: 1) the Governor and State Legislature should determine the best use of the Texas State Guard with respect to the Texas Border Crisis and equip the them to perform the assigned mission; and, 2) investigate the most expeditious and effective method for incorporating qualified, "unorganized militia" groups into the Texas State Guard on a temporary basis. While we also desire local law enforcement to have the tools they need to fight cartels and transnational gangs that are equipped with military-grade weaponry (See details in DPS documents referenced on page 8), we believe some of the local "federal surplus" equipment found at the local law enforcement level would be best utilized by the Texas State Guard in the border security operation. We encourage a transfer of that needed equipment for state use on the border.

8. CONCLUSION

The citizens of Texas believe that Texas has the constitutional authority to take unilateral action to secure the southern Texas border with Mexico and to protect the health, safety, security, and economy of the State of Texas. Grassroots citizens of Texas have presented a constitutionally sound case for action where approval or oversight from the Federal Government would be irrelevant. ***Texas is not obligated to sue or petition the Federal Government to enforce and secure the border any longer.***

The current and ongoing failure of the Federal Government means that Texas has the constitutional right and the moral obligation to assume its delegated power and its obligation to secure the borders for the security of our State and to deal with the impacts of unrestrained illegal migration.

The fact that there are [more people illegally entering Texas than are born to its citizens](#) is unambiguous evidence that our State is under an invasion directly affecting our citizens' health, safety, security and the Texas budget.

It is clear that our leaders share the same sentiments as the people of Texas based on their remarks to the media and their support for a DPS surge and call up of the Texas National Guard. However, the grassroots consider this threat so grave as to demand that the Texas State Legislature be engaged in addressing the issue as elected representatives of the people.

Therefore, the grassroots citizens of Texas call on Governor Perry to call an emergency special session of the Texas Legislature for the express purpose of passing a resolution declaring that Texas is under invasion and is in imminent danger, thereby invoking Article I Section 10 Clause 3 of the U.S. Constitution.

It is recommended that the special session be called no later than September 1, 2014. This allows the legislature to address immediate legislative priorities related to this crisis and still allow those up for election to campaign during the month of October prior to the November 2014 General Election.

It is expected that once in session, the legislature will take up and address the specific actions listed in section 5.3 of this document. It is also expected that the State Legislature will explore how this crisis arose and

determine the root causes of why the wave migration of illegal aliens occurred.

It is also expected the Texas Governor will work with the Texas Attorney General to act in an effective and decisive manner, utilizing his broad law enforcement powers to mitigate the open border situation immediately. We believe that immediate actions as recommended in sections 5.1 and 5.2 of this document will begin to curtail illegal border crossings when word goes out that Texas will indeed secure its border and restrict illegal entry rather than continue to participate in the federal government's "catch and release" program, which has encouraged a state of utter lawlessness.

We call on our statewide leaders and legislators to adhere to their oaths of office and execute their constitutional obligations to establish justice, provide for the common defense, and secure the blessings of liberty and prosperity for the citizens of Texas.

If any portion of this action plan is deemed unworkable, we call on the Governor, the Attorney General, and the leadership of the State Legislature to specify exactly what prohibits its implementation. We call on them to immediately develop a plan of their own to secure the Texas southern border with Mexico and alleviate the state of imminent danger.

Continuance of the status quo or lack of courage are not acceptable reasons to continue this state of imminent danger for the people of Texas. We call on our elected leaders to act. **May God's Wisdom guide our leaders.**