



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

VIA EMAIL

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Honorable Tully Shahan
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Mr. Brent Smith
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May 18, 2022

Re: Unlawful Militia Activity & Operation Lone Star

Dear Sheriff Coe, Judge Shahan, and County Attorney Smith,

I am the Executive Director of Georgetown University Law Center's Institute for Constitutional Advocacy and Protection (ICAP). At ICAP, our mission is to defend American constitutional rights and values in and out of court. Over the past several years, as a result of successful litigation ICAP brought against private paramilitary organizations that participated in the Unite the Right rally in Charlottesville, Virginia, in 2017, we have developed an expertise in legal issues related to private paramilitary activity, as well as the regulation of public protests and demonstrations in a manner that protects public safety while respecting individuals' constitutional rights. We have direct experience dealing with private paramilitary activity in the Southwest, and are currently partnering with the District Attorney for Bernalillo County, New Mexico, in an enforcement action against a local private militia that usurped law-enforcement authority during a racial justice demonstration last summer.

I am writing in response to Kinney County's reported tolerance of and cooperation with groups of armed private paramilitary organizations such as the Patriots for America and Women Fighting for America in connection with Operation Lone Star, Texas's initiative to use the state law enforcement apparatus to police immigration.¹ Given the continuing reports of private militia activity

¹ Elizabeth Findell, *In a Texas Border Town, Armed Groups Arrive to Look for Migrants*, THE WALL STREET JOURNAL (Dec. 16, 2021), <https://www.wsj.com/articles/in-a-texas-border-town-armed-groups-arrive-to-look-for->

in your area, we wanted to call your attention to several provisions of Texas law that make clear that these groups have no authority to engage in paramilitary activities at the border or anywhere else in Texas.

I. Background

On March 6, 2021, Texas Governor Greg Abbott and the Texas Department of Public Safety announced “Operation Lone Star,” an initiative to “integrate [the Department of Public Safety] with the Texas National Guard and deploy[] air, ground, marine, and tactical border security assets to high threat areas to deny Mexican Cartels and other smugglers the ability to move drugs and people into Texas.”² This multibillion-dollar effort, for which Governor Abbott recently announced an additional \$495 million in funding to be diverted from other state agencies,³ has resulted in thousands of arrests, the vast majority of which have occurred in Kinney County.⁴ Recent reporting indicates that Sheriff Coe’s office “has arrested at least 50 migrants a week, and often upwards of 120—more than any other county in Texas.”⁵

While those arrests have been officially carried out by state police and military personnel authorized by Governor Abbott pursuant to Operation Lone Star, Kinney County has reportedly entertained the prospect of deputizing militia members from Patriots for America and Women Fighting for America, armed militia groups that have flocked to Kinney County to offer assistance with Kinney County’s efforts under Operation Lone Star.⁶ Although the Texas Department of Safety reportedly pushed back on formal deputization of these militia groups,⁷ and the County has reportedly “backed down”⁸ from its plan to deputize them, reporting indicates that the Sheriff’s office has continued to partner or “work[] closely” with both of these militia groups,⁹ and Sheriff Coe publicly

[migrants-11639668989](#); James Dobbins, *A Texas County Welcomed a Border Militia Last Fall. Now Some Officials Have Grown Weary of It*, Texas Monthly (May 2022), <https://www.texasmonthly.com/news-politics/kinney-county-border-militia/>.

² Press Release, Governor Abbott, DPS Launch “Operation Lone Star” To Address Crisis At Southern Border, Office of the Texas Governor (March 6, 2021).

³ Niki Griswold & Madlin Mekelburg, *Texas allocates additional \$495 million in funding for Operation Lone Star*, Austin American-Statesman (April 29, 2022), <https://www.statesman.com/story/news/2022/04/29/texas-governor-greg-abbott-adds-operation-lone-star-funding-title-42-border-policy-ends/9589052002/>

⁴ Findell, *supra* note 1; Perla Trevizo et al., *Reality Check: Seven Times Texas Leaders Misled the Public About Operation Lone Star* (April 27, 2022), <https://www.propublica.org/article/texas-greg-abbott-border-crisis-facts>. See also Aaron Nelson, *Kinney County Has Embraced Greg Abbott’s Operation Lone Star Like Nowhere Else. It’s Fueling the Hysteria of Some Locals*, TEXAS MONTHLY, Oct. 29, 2021, <https://www.texasmonthly.com/news-politics/operation-lone-star-kinney-county/>. (“With more than 1,300 arrests, overwhelmingly on misdemeanor charges, the Kinney sheriff’s office has caught more migrants, by a wide margin, than all other counties combined. Though hundreds of those apprehended have been released on bond, 792 of the 914 immigrants currently in state prison were arrested in Kinney.”).

⁵ Dobbins, *supra* note 1.

⁶ Arelis R. Hernandez, *Civil rights groups ask DOJ to investigate Texas operation arresting migrants*, Washington Post (Dec. 15, 2021), https://www.washingtonpost.com/immigration/civil-rights-groups-ask-justice-department-to-investigate-discriminatory-texas-operation-that-arrests-migrants-at-border/2021/12/15/183305b0-5da9-11ec-bda6-25c1f558dd09_story.html.

⁷ Findell, *supra* note 1.

⁸ Hernandez, *supra* note 6.

⁹ Findell, *supra* note 1.

praised them.¹⁰ According to recent reports, “[w]hat sets Patriots for America apart from other border militias . . . is how well-organized they’ve become . . . raising nearly \$15,000 via a Christian crowdfunding site and aligning themselves with local government, including local sheriffs like Kinney County Sheriff Brad Coe.”¹¹

Private militia groups are generally well-known for their propensity to engage in violent activity motivated by extremism. The Office of the Director of National Intelligence warned last year that militia violent extremists present one of the “most lethal” domestic violent extremist threats nationwide—a threat that “will almost certainly continue to be elevated throughout 2021.”¹² Given the current climate surrounding immigration in Kinney County—one often wrought with hyperbolic discourse and, in Sheriff Coe’s words, “wild[] rumors”¹³—private militia activity poses a significant threat to the safety not only of immigrants coming into Kinney County, but also to private citizens.

This threat is not new to Texas. In the early 1980s, a group of Vietnamese fishermen sued the Knights of the Ku Klux Klan (KKK) and its militia wing, the Texas Emergency Reserve, to obtain an injunction preventing the KKK from operating as a private military unit, in violation of Texas law, and from engaging in operations intended to intimidate and coerce the plaintiffs from operating their fishing businesses.¹⁴ In enjoining the KKK’s unlawful paramilitary activities, the United States District Court for the Southern District of Texas explained that “[m]ilitary organizations are dangerous wherever they exist, because of their interference with the functioning of a democratic society and because of their inconsistency with the State’s needs in operating its militia.”¹⁵

II. Legal Framework

In order for you to effectively respond to the threat of unlawful private militia activity, we wish to call your attention to existing Texas laws that restrict militia conduct. These laws make clear that the usurpation of law enforcement authority by Patriots for America, Women Fighting for America, or any other private paramilitary organization is illegal under Texas law and should not be condoned or supported.

All 50 states, including Texas, have laws or constitutional provisions that bar private paramilitary activity.¹⁶ The Texas Constitution’s Strict Subordination Clause forbids private military

¹⁰ Dobbins, *supra* note 1 (“Kinney County sheriff Brad Coe praised members of a militia he’d ‘recently met’ as well trained. “They seemed to be all Christian-based,” he said. “Over the years, people have confused the militia with vigilantes, so it’s kind of gotten a bad name, a bad rap, but we wouldn’t be here today if it wasn’t for the first militia in the country.”)

¹¹ Molly Hennessy-Fiske, *This militia patrols the border, stops migrants and shoots video of children. Civil rights groups say they’re racist*, LOS ANGELES TIMES (May 13, 2022), <https://www.latimes.com/world-nation/story/2022-05-13/texas-border-militia>

¹² Office of the Director of National Intelligence, *Domestic Violent Extremism Poses Heightened Threat in 2021* 2 (Mar. 1, 2021), <https://perma.cc/3W7H-KE6U>.

¹³ Nelson, *supra* note 4.

¹⁴ See *Vietnamese Fishermen’s Ass’n v. Knights of the Ku Klux Klan*, 543 F. Supp. 198 (S.D. Tex. 1982).

¹⁵ *Id.* at 218.

¹⁶ Inst. for Const. Advocacy & Protection, *Prohibiting Private Armies at Public Rallies: A Catalog of Relevant State Constitutional and Statutory Provisions* (Sept. 2020)

units from operating outside state authority, requiring that “[t]he military shall at all times be subordinate to the civil authority.” Tex. Const. art. I, § 24. Texas’s Constitution vests the Governor with the “power to call forth the militia to execute the laws of the State, to suppress insurrections, and to repel invasions.” Tex. Const. art. IV, § 7.

Texas is also one of 29 states that prohibit groups of people from organizing as private military units without the authorization of the state government.¹⁷ Texas bans “a body of persons other than the regularly organized Texas military forces, the armed forces of the United States, or the active militia of another state” from “associat[ing] as a military company or organization or parad[ing] in public with firearms in a municipality of the state.” Tex. Gov’t Code § 437.208(a). The statute’s only exception is for “students in an educational institution at which military science is a prescribed part of the course of instruction,” who are permitted to “drill and perform ceremonies with firearms in public” with the consent of the Governor. Tex. Gov’t Code § 437.208(b). These laws are consistent with the Second Amendment, which, as the U.S. Supreme Court has twice made clear, “does not prevent the prohibition of private paramilitary organizations.”¹⁸ As noted above, Texas-based courts have similarly guarded against private militia activity.¹⁹

More generally applicable provisions of Texas law may also apply in prohibiting militia activity. For example, Texas’s statute against impersonating a public servant may be properly applied to militia conduct when members “knowingly purport[] to exercise, without legal authority, any function of a public servant or of a public office.” Tex. Penal Code § 37.11. The provision also bars any individual from “impersonat[ing] a public servant with intent to induce another to submit to the person’s pretended official authority or to rely on the person’s pretended official acts.” *Id.* These statutes are particularly pertinent under the present circumstances because, for example, Patriots for America have patrolled public property to find immigrants who have crossed the border, and—as Patriots for America’s leader has publicly stated—immigrants “encountering heavily armed people may not understand” that those heavily armed people are not authorized members of the state police or military.²⁰ Additionally, weapons offenses or enhanced charges, such as aggravated assault, may apply to armed private militia misconduct. *See, e.g.*, Tex. Penal Code § 22.02 (defining aggravated assault as the “use[] or exhibit[ion] [of] a deadly weapon during the commission of an assault”).

Accordingly, members of Patriots for America and Women Fighting for America are likely acting in violation of Texas laws through their continued patrolling of the border. We are available to consult with you or other local officials about how you might enforce Texas law against groups such as these that are engaged in unauthorized and dangerous border activities. Should we be of potential assistance, please feel free to contact me, or ICAP’s managing director Alex Aronson (aa2595@georgetown.edu), directly.

<https://www.law.georgetown.edu/icap/wpcontent/uploads/sites/32/2018/04/Prohibiting-Private-Armies-at-Public-Rallies.pdf>.

¹⁷ *Id.*

¹⁸ *District of Columbia v. Heller*, 554 U.S. 570, 621 (2008) (citing *Presser v. Illinois*, 116 U.S. 252 (1886)).

¹⁹ *Vietnamese Fishermen’s Association*, 543 F. Supp. at 218 (issuing injunction that prevented the group from operating as a private military unit or engaging in operations intended to intimidate and coerce the plaintiffs from operating their fishing businesses). The statute at issue, Tex. Rev. Civ. Stat. Ann. art. 5780, § 6, was an earlier version that is largely the same as the current version.

²⁰ Findell, *supra* note 1.

Sincerely,

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