

JUN 15 2021

OFFICE OF THE GOVERNOR



GOVERNOR
GREG ABBOTT



GOVERNOR
DOUG DUCEY

June 10, 2021

Dear Fellow Governors:

We write to you regarding our existing Emergency Management Assistance Compact, which empowers our States to help one another in times of *disaster* or *emergency*. Those two words aptly describe the current crisis at America's southern border. On behalf of Texas and Arizona, we respectfully but urgently request that you send all available law-enforcement resources to the border in defense of our sovereignty and territorial integrity.

Securing our border with Mexico is the federal government's responsibility. But the Biden Administration has proven unwilling or unable to do the job. This failure to enforce federal immigration laws causes harms that spill over into *every State*. The cartels will see to it that their deadly fentanyl and human-trafficking victims reach far and wide. The convicted criminals they smuggle into the homeland will bring recidivism with them to far too many of your communities. And although people are now coming to our border from as far away as Senegal, Bangladesh, and Uzbekistan, the cartels are not exactly screening for threats to public health or national security.

Of course, border states like Texas and Arizona are "ground zero" for this crisis and bear a disproportionate share of these burdens. For example, Texas has spent roughly \$3.5 billion since 2014 to help secure the border and protect public safety. Since President Biden took office, Governor Abbott has deployed to the border a thousand troopers from the Texas Department of Public Safety, along with hundreds of soldiers from the Texas National Guard. Governor Ducey has taken similar action, deploying hundreds of soldiers from the Arizona National Guard to the border, and utilizing troopers from the Arizona Department of Public Safety and other law-enforcement partners as part of the Arizona Border Strike Force. Since its inception, the Arizona Border Strike Force has intercepted 284 pounds of fentanyl, which represents tens of millions of lethal doses that will never reach your streets, along with numerous illegal firearms and tens of thousands of pounds of other drugs.

In response to the ongoing surge of illegal border crossings, with the accompanying threats to private property and to the safety of our citizens, Governor Abbott has declared a disaster and Governor Ducey has declared an emergency. Among other legal consequences, these gubernatorial declarations allow our States to call in reinforcements under the Emergency Management Assistance Compact. *See* TEX. HEALTH & SAFETY CODE § 778.001 (enacting the Compact); ARIZ. REV. STAT. § 26-402 (same). Congress consented to the Compact on the heels of enacting the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. *See* Pub.

L. 104-321. With this consent, the terms of the Compact were “transform[ed] . . . into federal law,” to be enforced by the States themselves. *Cuyler v. Adams*, 449 U.S. 433, 440 (1981).

Article I of the Compact “provide[s] for mutual assistance between the [States] in managing any emergency or disaster that is duly declared by the governor of the affected [States], whether arising from natural disaster, . . . community disorders, insurgency, or enemy attack.” When it comes to the Biden Administration’s open-border disaster, our greatest need is for additional law-enforcement personnel and equipment. Pursuant to Article IV, therefore, any officers you can send to Texas or Arizona will be afforded “the same powers . . . , duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services.”

Crucially, this will include the power to arrest migrants who illegally cross the border into our territory. Many of these crossings involve state-law crimes, such as criminal trespassing or smuggling of persons. *See, e.g.*, TEX. PENAL CODE §§ 20.01, 30.05; ARIZ. REV. STAT. § 13-1502; *see also* TEX. PENAL CODE § 12.50 (increasing punishment for criminal trespass in a disaster area). And most of them entail federal-law crimes, too, including illegal entry and illegal reentry. As the U.S. Department of Justice opined in 1996—the same year the Compact won congressional consent—“state and local police may constitutionally detain or arrest aliens for violating the criminal provisions of the Immigration and Naturalization Act.” 20 Op. O.L.C. 26.

Given the staggering number of violations now occurring in Texas and Arizona, additional manpower is needed from any State that can spare it. With your help, we can apprehend more of these perpetrators of state and federal crimes, before they can cause problems in your State. As required by Article III(B) of the Compact, authorized representatives from Texas and Arizona will be contacting their counterparts in your State to prepare an appropriately detailed request for law-enforcement assistance. Texas and Arizona have stepped up to secure the border in the federal government’s absence, and now the Emergency Management Assistance Compact gives your State a chance to stand strong with us.

Sincerely,



Greg Abbott
Governor of Texas



Douglas A. Ducey
Governor of Arizona