

# TO SECURE THE BORDER, TEXAS GOV GREG ABBOTT SHOULD SHUT IT DOWN

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## AMERICA IS OUR COUNTRY NOT THEIRS

Amid the churn of recent headlines about inflation and Russia's war on Ukraine, you might have missed what's happening right now on the southwest border — not the ongoing border crisis, but something very much related to it.

For the past few days, commercial traffic between the United States and Mexico has ground to a halt.

On Monday (4/11), Mexican truckers blocked north and southbound lanes on the Mexico side of the Pharr-Reynosa International Bridge in Pharr, Texas. They did it to protest Texas Gov. Greg Abbott's decision last week to order state troopers to inspect all northbound commercial trucks, something usually done by federal authorities.

The state inspections immediately caused massive delays at ports of entry all along the border, triggering a second protest by truckers waiting to cross into El Paso on Monday afternoon, with trucks blocking both northbound and southbound lanes in Juarez.

This is no small thing. The volume of international traffic in question is massive. At the port of entry in Laredo, Texas, about 20,000 commercial trucks cross the border every day. Hundreds of billions of dollars in trade flow over the Texas-Mexico border every year. The entire system is a well-oiled machine. Throwing a wrench into it, even a minor one, could create a different sort of crisis at the border.

But it might be worth it.

The backstory here is that Abbott issued those inspection orders last week in response to the Biden administration's plans to cancel Title 42, the public health order invoked by then-President Trump at the onset of the pandemic. For the past two years, Title 42 has enabled federal authorities to expel illegal immigrants quickly amid an historic surge in illegal immigration.

*It's not too much to say that Title 42 is the last remaining tool the federal government has to control record-high levels of illegal immigration. Every other policy the Trump administration implemented to secure the border has been rescinded or neutered by Biden, and on May 23, Title 42 will be gone too.*

As my colleague Jordan Boyd has explained in some detail, the border will then be effectively open to almost anyone. Instead of arresting 150,000 or 200,000 illegal immigrants a month, federal authorities will be dealing with a half-million migrants or more each month, possibly as many as 18,000 a day.

Those are numbers far beyond the federal government's ability to detain or even process. The only choice federal officials will have in that situation is to immediately release migrants they catch crossing illegally, or not detain them in the first place, rendering the border effectively lawless.

*What's coming, in other words, is a border surge of historic and almost unimaginable proportions, and it is happening as a direct result of Biden's policy choices. The crisis about to unfold is 100 percent avoidable, and 100 percent Biden's fault.*

Abbott's response to Biden ending Title 42 was to issue a series of executive orders last week that seemed designed to gin up headlines and media coverage rather than actually secure his state's 1,200-mile border with Mexico.

The order that got the most attention wasn't the inspections that have snarled commercial traffic on the international bridges but Abbott's plan to charter buses and flights to transport migrants released from federal custody to Washington, D.C. "Evacuating" them, as the order puts it.

Federal government wants to open the border? Fine, let those fat cats in Washington deal with the illegals! So goes the thinking, if not the rhetoric.

Abbott's busing order is quite obviously a stunt — a cheap shot at Biden that makes no effective use of his considerable powers as governor of Texas. It will almost certainly not result in even one migrant showing up in Washington who was not already headed in that direction, especially given that transport to the nation's capital must be "voluntary."

Such stunts are to be expected with Abbott, though. I saw first-hand late last year how his sprawling "Operation Lone Star," which purports to use state law enforcement to secure the border in the face of federal inaction, is almost entirely political theater.

Don't get me wrong, it's expensive and logistically complex, but given the narrowness of its scope and the legal constraints the Abbott administration has imposed on its application, Operation Lone Star hasn't made a dent in the number of illegal immigrants crossing the border into Texas, and it never will.

*So too with this unserious busing scheme. If Abbott were serious about securing the border, he wouldn't announce a plan to transport migrants to Washington but a plan to take them back to Mexico — immediamente.*

Ken Cuccinelli, who served as deputy secretary of Homeland Security and director of U.S. Citizenship and Immigration Services in the Trump administration, is among those who have rightly argued that the border crisis

amounts to an “invasion” under Article I, Section 10, Clause 3 of the U.S. Constitution.

*In the face of federal inaction, he argues, states like Texas have the authority to arrest and remove illegal immigrants, securing the border entirely with state law enforcement.*

Under normal circumstances, immigration enforcement of course falls entirely under federal purview. States, even border states like Texas, have a limited role in it. But these are not normal circumstances.

The relevant section of the Constitution that Cuccinelli and others point to says this: “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 delay.”

Those last two phrases are what Cuccinelli’s argument hinges on. Indeed, there’s a strong case already that *Texas is being “actually invaded” and that the situation “will not admit delay.”* When a half-million migrants show up on the border in June after Title 42 is gone, there will be no question that the state is being actually invaded and that the situation will not admit delay.

There’s almost no chance, however, that Abbott will ever agree with such an interpretation of the Constitution or even seriously consider taking action based on it. Too bad, because it would not only focus Biden’s attention on the border but also force a reckoning over an important constitutional question: if the federal government is derelict in its duties, do states have the right to act on their own?

But Abbott could dodge that reckoning while still challenging Washington to address the border crisis. The complete shutdown of commercial traffic on the border this week presents an opportunity for Abbott, if he can seize it.

By ordering state inspections of commercial trucks coming in from Mexico, Abbott has demonstrated the leverage he could have over policymakers in Mexico in much the same way Trump did in May 2019, when he threatened a 5 percent tariff on all Mexican imports unless Mexico cracked down on illegal immigration and intercepted the large migrant caravans trekking toward the U.S. border.

Mexican President Andrés Manuel López Obrador responded immediately to avoid the ruinous tariffs, and illegal immigration quickly plummeted.

Admittedly, forcing commercial traffic between the United States and Mexico to grind to a halt will also harm the Texas economy — just as Trump’s threatened 5 percent tariff on Mexican imports would have in 2019 — but it will hurt Mexico worse and more quickly, which means it has a chance of working, by motivating Mexican officialdom and by forcing the Biden administration to engage.

But it will only work if Abbott comes out like Trump did and explains what he’s doing and why. Given the protests and the delays at the ports of entry, which were already up to 12 hours at some crossings on Monday, Abbott should hold a press conference later this week and explain that the entire situation is entirely of Biden’s making.

He must explain that all Biden needs to do to reopen international trade along the U.S.-Mexico border is to reverse course on the cancellation of Title 42, which he could do with one phone call. He could also call on López Obrador to put pressure on Biden to keep Title 42 in place.

Abbott has real leverage here, and he should go out of his way to ensure that everyone knows it. He could say, “Because Biden will not secure this border, as governor of Texas I have a duty to protect the people of this state,

so I'm shutting it down." Something like that. He might even enjoy it.

If Abbott wants headlines, that will do it. It might also help secure the border.

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*John Daniel Davidson is senior editor at The Federalist.*

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