No. 26-0171

In the Supreme Court of Texas

IN RE STATE OF TEXAS,
Relator.

On Petition for Writ of Mandamus
to the Fifteenth Court of Appeals

BRIEF FOR THE GOVERNOR OF TEXAS AS AMICUS CURIAE IN SUPPORT OF RELATOR

GREG ABBOTT
Governor of Texas

Office of the Governor
P.O. Box 12428
Austin, Texas 78711
Tel.: (512) 936-3306
Fax: (512) 463-1932

TREVOR W. EZELL
General Counsel
State Bar No. 24109849
Trevor.Ezell@gov.texas.gov

JASON T. BRAMOW
Deputy General Counsel

Counsel for Amicus Curiae
Governor Greg Abbott

SUPPLEMENTAL IDENTITY OF AMICUS CURIAE AND COUNSEL

Amicus Curiae Governor of Texas:
Greg Abbott, Governor of Texas

Appellate Counsel for Amicus Curiae Governor of Texas:
Trevor W. Ezell (lead counsel)
Jason T. Bramow
Office of the Governor
P.O. Box 12428
Austin, Texas 78711
Tel.: (512) 936-3306
Fax: (512) 463-1932
Trevor.Ezell@gov.texas.gov

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INTEREST OF AMICUS CURIAE

Over the past decade, Harris County has increased property taxes for more than 5 million Texans by almost 60%. Perhaps this seemingly endless assault on homeowner equity and private property rights could be forgiven if county officials at least stewarded those tax dollars wisely. But Harris County has added insult to the injury: It has taxed Texans out of their homes only to reroute taxpayer funds to illegal aliens, bankrolling their efforts to avoid being removed from the United States by federal immigration officials.

As Governor of the State of Texas, Greg Abbott is committed to securing new legislation that limits the ability of local governments to hike property taxes. *See* Eric Revell, *Abbott Unveils 5-point Plan to Overhaul Texas Property Taxes, Targeting Relief for Homeowners*, FOX BUSINESS (Feb. 13, 2026), https://perma.cc/9NNU-F76D. But he is also tasked by the Texas Constitution with causing the *existing* laws "to be faithfully executed." TEX. CONST. art. IV, §§ 1, 10. That includes ensuring statewide fiscal integrity and preventing political subdivisions—like Harris County—from inflating their budgets to subsidize federal immigration litigation wholly outside of county responsibilities.

Commissioners courts do not possess "'general authority over the county business.'" *Canales v. Laughlin*, 214 S.W.2d 451, 453 (Tex. 1948) (quoting *Mills Cnty. v. Lampasas Cnty.*, 40 S.W. 403, 404 (Tex. 1897)); *Bland v. Orr*, 39 S.W. 558,

559 (Tex. 1897) (commissioners courts lack "general control over the finances of a county, such as is ordinarily conferred upon the directors of a private corporation"). Instead, they may exercise only the powers "'specifically conferred upon them'" by statute or by the Constitution. *Canales*, 214 S.W.2d at 453 (quoting *Anderson v. Wood*, 152 S.W.2d 1084, 1085 (Tex. 1941)). Neither the Constitution nor statutes authorize Harris County to make payments to private attorneys to render legal services to third parties—just to keep in our communities unvetted aliens whose first act in this Country was committing a federal (and state) crime.

That helps explain *why* the payments at issue here violate the Gift Clause of the Texas Constitution. TEX. CONST. art III, § 52(a). Expenditures satisfy the Gift Clause "when (1) the expenditure is not gratuitous but instead brings a public benefit; (2) the predominant objective is to accomplish a legitimate public purpose, not to provide a benefit to a private party; and (3) the government retains control over the funds to ensure that the public purpose is in fact accomplished." *Borgelt v. Austin Firefighters Ass'n, IAFF Local 975*, 692 S.W.3d 288, 301 (Tex. 2024). Harris County's expenditures incentivize services contracts to which it is not a party and disserve the public good by opposing

efforts to remove criminals from our Country. The program is unlawful on its face, and mandamus is necessary to end the wasteful spending that props it up.[1]

ARGUMENT

I. The Sudden Emergency Posture of this Case Is Not a Reason to Get the Law Wrong.

For almost *five years*, Harris County has been re-routing ever-increasing taxpayer funds to private attorneys to help keep illegal aliens in the United States. It is unclear why the Attorney General only recently challenged these payments, seeking an expedited ruling from the Fifteenth Court of Appeals in 15 days. *See* Mot. for Temp. Relief, *Texas v. Harris County*, No. 15-25-00231-CV (Tex. App.—[15th Dist.] Dec. 30, 2025). Perhaps the Attorney General only recently learned of this program; perhaps the office's attention was focused elsewhere; perhaps some other factor dictated a desire for a ruling before a particular date. The Governor will not speculate.

In any event, this emergency—whether artificial or sincere—predictably compressed review before the Fifteenth Court. Emergency litigation often forces courts to undertake the solemn task of judicial decision-making "on a short fuse without benefit of full briefing and oral argument." *Does 1–3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in denial of application for injunctive relief). In the opinion of some, the end result of being forced to hazard a guess—"with 'little time, scant briefing, and no argument'"—may be "an under-

[1] No fee was paid or will be paid for preparing this brief. *See* TEX. R. APP. P. 11(c).

reasoned emergency order." *Trump v. Boyle*, 145 S. Ct. 2653, 2656 (2025) (Kagan, J., dissenting from grant of application for stay) (quoting *Trump v. Wilcox*, 145 S. Ct. 1415, 1419 (2025) (Kagan, J., dissenting from grant of application for stay)). Any shortcomings in the lower court's decision here can easily be attributed to the challenges posed by expedited review. As this Court is aware, attempts to move quickly can result in missteps, not only by denying emergency relief but also by granting it. *See, e.g.*, *In re Tex. House of Representatives*, 704 S.W.3d 830, 831 (Tex. 2024) (order granting a functional stay of execution absent any meritorious claim), *superseded by* 702 S.W.3d 330 (Tex. 2024).

But for better or worse, this case is here *now*. Regardless of any delay in the case arriving and regardless of its haste upon arrival, courts are tasked with getting the law right. That is the judicial duty—to say what the law requires, even when time is short. *See, e.g.*, Order, *In re State*, No. 26-0199 (Tex. Mar. 3, 2026); Order, *In re State*, No. 26-0200 (Tex. Mar. 3, 2026).

The State, moreover, is entitled to special consideration when it comes to time. For example, time generally does not run against the sovereign (*nullum tempus occurrit*). *State v. Durham*, 860 S.W.2d 63, 67 (Tex. 1993). Nor is the State subject to certain other equitable constraints like estoppel. *Tex. Co. v. State*, 281 S.W.2d 83, 88 (Tex. 1955). That is for good reason. The State of Texas is a large, many-splendored thing, comprised of three distinct branches that are themselves comprised of hundreds of distinct officers, agencies, and divisions. *See* TEX. CONST. art. II, § 1; Non-Party Office of the Governor's Reply in Support of Motion to Quash at 4–9, *State v. TikTok Inc.*, No. D-1-GN-25-003118 (250th

Dist. Ct. Feb. 13, 2026). The citizenry, meanwhile, are harmed as long as Harris County flouts the Constitution. *In re State*, 711 S.W.3d 641, 648 (Tex. 2024). The People of Texas, acting through the Attorney General, ought not to be penalized for the discovery of some harm late in the day. *Cf.* TEX. GOV'T CODE § 402.004. The fact that this case has government entities on both sides makes no difference because these venerable maxims are decidedly asymmetrical. *See, e.g.*, *Link v. Murphy*, 2 Wilson 21 (Tex. App. 1883) ("the maxim *nullum tempus occurrit regi* does not apply in favor of a county").

II. Paying Private Attorneys to Represent Someone Else—in the Tribunals of a Different Sovereign—Is Plainly Gratuitous.

As this Court has observed before, the Texas Constitution is replete with safeguards against the profligate use of taxpayer dollars. *See, e.g.*, TEX. CONST. art. III, §§ 50, 51, 52; *id.* art. XI, § 3; *id.* art. XVI, § 6(a). The State, in this challenge, focuses on Article III, Section 52(a). As relevant here, that provision says: "the Legislature shall have no power to authorize any county … to grant public money or thing of value … to any individual, association or corporation whatsoever." Harris County is, of course, a "county." Taxpayer funds for legal services are "public money." And the immigration attorneys receiving those funds invariably qualify as an "individual, association or corporation." It may be that Section 52(a)'s proscription is as broad as its text suggests.

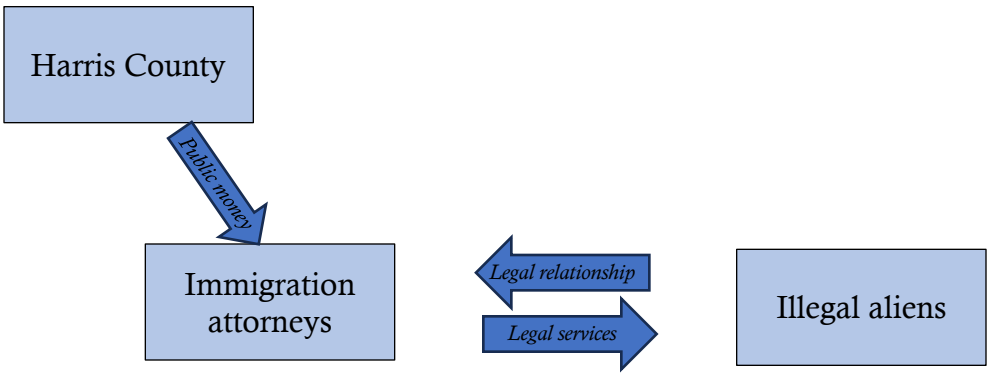
But this Court's precedents construing that text suffice for this dispute.[2] A challenged expenditure can evade the Gift Clause only if "(1) the expenditure is not gratuitous but instead brings a public benefit; (2) the predominant objective is to accomplish a legitimate public purpose, not to provide a benefit to a private party; *and* (3) the government retains control over the funds to ensure that the public purpose is in fact accomplished." *Borgelt*, 692 S.W.3d at 301 (emphasis original). Taking first things first, a payment is not "'gratuitous'" only "'if the political subdivision receives return consideration.'" *Id.* at 301 (quoting *Tex. Mun. League Intergovernmental Risk Pool v. Tex. Workers' Compensation Comm'n*, 74 S.W.3d 377, 383 (Tex. 2002)). Receiving *some* consideration, in other words, is the absolute bare minimum in any effort to evade the Gift Clause.

This Court has held that "[t]he Gift Clause does not supplant … basic contract-law principle[s]." *Id.* at 302. Presumably that includes black letter concepts like sufficient consideration and privity of contract. A contract is formed only where two or more parties exchange consideration. RESTATEMENT (FIRST) OF CONTRACTS §§ 15, 19, 75 (1932). Only those parties have "privity to the contract [and] to the consideration." *House v. Houston Waterworks Co.*, 31 S.W. 179, 180 (Tex. 1895); *see Bradford v. Knowles*, 14 S.W. 307, 309 (Tex. 1890)

[2] The Gift Clause applies here, notwithstanding its focus on "the Legislature." *Cf. Borgelt*, 692 S.W.3d at 299 nn.9–10. "Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities." *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 362 (2009). Accordingly, counties "represent no sovereignty distinct from the state and possess only such powers and privileges" as the Legislature confers upon them. *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 430 (Tex. 2016).

(one who provided "the consideration … was undoubtedly a privy"). Ordinarily, only those privies can sue to enforce the contract—and only against other privies. *See Blumberg v. Mauer*, 37 Tex. 2, 7 (Tex. 1873).

The arrangement Texas challenges here is simple: Harris County provides taxpayer dollars to immigration attorneys. Immigration attorneys, in turn, provide legal services to illegal aliens who retain them to challenge their removal under federal law. A visual demonstrates the arrangement:



Harris County is not privy to such services contracts between immigration attorneys and the aliens whom they represent. And it receives no consideration whatsoever. It is true enough, as Harris County says, that attorneys are expected to use the funds to provide legal services. Opp. at 5. The problem is those legal services are not provided *to the County*. This case, therefore, is the opposite of *Borgelt*: There, Austin actually received "firefighting services [provided] to the City"; here, Harris County pays out public money for legal services provided to someone else. 692 S.W.3d at 301. Whatever indirect and imagined benefit the County may claim flows from those services is "speculative" and "therefore no consideration in law at all." *Gilmore v. Hayworth*, 26 Tex. 89, 91 (Tex. 1861).

In fact, Harris County is so far removed from that arrangement that it would not even qualify as a third-party beneficiary under ordinary contract-law principles. Any representation agreement entered into between immigration attorneys and aliens challenging their removal from the United States cannot possibly "stipulate" that those attorneys will "do some … act for the benefit of a third person"—*i.e.*, Harris County—as if the "the promise is made" really for the County's benefit. *Mack Sadler & Co. v. Talley Bros.*, 3 Willson 572, 573 (Tex. App. 1889). How do we know that?

Because such an arrangement would violate an attorney's ethical obligations. An attorney's duties of loyalty, competence, diligence, notification, etc., run *only* to his client—not to a party fronting money for the representation. *See, e.g.*, TEX. R. PROF'L CONDUCT 1.01, 1.02, 1.03. For good measure, Texas ethics rules specifically provide that: "A lawyer shall not permit a person who recommends, employs, or *pays* the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services." *See* TEX. R. PROF'L CONDUCT 5.04(c) (emphasis added). Attorneys cannot contract away those ethical duties. If the attorneys participating in the challenged program take their oaths seriously, then Harris County cannot possibly be a beneficiary of the legal services those attorneys provide to their alien clients.

This case does not present any difficult questions about the "sufficiency" of consideration or whether such consideration ultimately "predominates" over some spillover benefit to private parties. *Tex. Mun. League*, 74 S.W.3d at 384; *see,*

e.g., *City of Lubbock v. Phillips Petroleum Co.*, 41 S.W.3d 149, 161 (Tex. App.—Amarillo 2000, no pet.) (finding consideration was "so grossly inadequate" as to be insufficient). Rather, "there is no need to determine the adequacy of consideration under these provisions because there *is no consideration*" at all. *City of McAllen v. State*, 706 S.W.3d 503, 513 (Tex. App.—Austin 2024, pet. granted) (emphasis original); *see* Tex. Att'y Gen. Op. No. GA-0252 (2004) ('agreements' for "no or merely nominal return consideration" violate the Constitution's Gift Clause).

III. It Is Not a Legitimate Public Purpose to Bankroll Opposing Government Efforts to Enforce the Immigration Laws.

Even if Harris County receives *some* consideration from the challenged program (it does not), the program still serves no "legitimate" and "predominant" public purpose. *Borgelt*, 602 S.W.3d at 304. The Fifteenth Court was right to observe that a "public purpose" may often be in the eye of the beholder. Slip Op. at 7. But at the same time, this Court has made clear that the public purpose requirement is meaningful and that courts must police it. "Something purely adverse to the public interest would presumably never qualify as predominantly serving the *public* interest." *Borgelt*, 692 S.W.3d at 306 (emphasis original). Losing sight of that would be a shortcut to "repealing the Gift Clauses' ban" on making unlawful gifts of taxpayer resources. *In re State*, 711 S.W.3d at 647. The Gift Clause's outer limits are not defined by a local bureaucrat's imagination.

The claim that the County seeks a benefit based on a phantasmal "economic interest in its sizeable immigrant population and workforce" is both untrue and unavailing. Opp. at 3. The County admits it does not screen would-be participants for: their demonstrated contributions to the local community or its economy; the likely merit of their request for discretionary relief, like asylum or withholding of removal; or their criminal history—whether here or abroad. MR.151–152, 185. That is ironic, given the only thing known about the group targeted for benefit is that, as a class, they have a proven criminal propensity. For any alien who enters this Country illegally, his first act on American soil was flouting our laws and committing crimes. *See* 8 U.S.C. § 1325; TEX. PENAL CODE § 51.02(a); *see also* MR.185 (conceding that "[a]ll" program participants "are not legally in the United States"). The County's retort—so what "if a few individuals with a criminal history were able to obtain program services"?—lays bare how lost it truly is. Opp. at 9.

Even if that farfetched justification is real, it is inadequate. The Constitution does not sanction this anything-goes-in-the-name-of-economic-development theory. Theoretically, "any boost in overall consumer spending is good for the economy." *In re State*, 711 S.W.3d at 647. A creative mind can imagine a hypothetical chain long that is enough to make that claim here:

> Taxpayer funds facilitate representation of an illegal alien → counsel successfully defends against alien's removal → successful alien chooses to remain living in Harris County → alien independently obtains work authorization from the federal government → productive alien pays local taxes → recuperated taxes somehow exceed the cost originally spent on representation.

What was true in *In re State*, therefore, is likewise true here: This view "comes close to repealing" the Gift Clause and must be rejected. *Ibid.*[3]

Meanwhile, the County's claim that legal representation "can serve a public purpose" all by itself proves too much. Opp. at 7. Could Dallas County pay for the Cowboys to sue over trademark infringement? Could it subsidize an antitrust lawsuit against the NFL? Could it bankroll the litigation costs of other businesses? Or are criminals facing deportation uniquely favored? That would make little sense, given "[t]he Constitution does not guarantee a freestanding right to government-provided counsel in an immigration hearing." *Al-Saka v. Sessions*, 904 F.3d 427, 433 (6th Cir. 2018) (Sutton, J.) (collecting cases). In fact, federal law clearly says: "In any removal proceedings before an immigration judge … the person concerned shall have the privilege of being represented (*at no expense to the Government*) by such counsel … as he shall choose." 8 U.S.C. § 1362 (emphasis added).[4] Cross-subsidizing representation in federal

[3] Such hypotheticals conveniently fail to acknowledge the proven costs that aliens impose on Texas and its citizens. *See, e.g.*, Kate Norum, *Texas Reports More Than $1B Spent on Health Care for Undocumented Immigrants in 2025*, KVUE (Jan. 20, 2026), https://perma.cc/6L68-TR7K; Press Release, Office of the Texas Governor, *Governor Abbott Thanks U.S. House for Passing $12 Billion Border Reimbursement* (May 22, 2025), https://perma.cc/MCL7-PFRC; Steven A. Camarota & Karen Zeigler, *Welfare Use by Immigrants and the U.S.-Born, 2024*, CENTER FOR IMMIGRATION STUDIES (Feb. 4, 2026), https://tinyurl.com/48kchrbm (reporting that 59% of alien households use major welfare programs); Merrill Matthews, Opinion, *Estimating Illegal Immigration's Cost to Public Education*, THE HILL (Jan. 31, 2023), https://tinyurl.com/mfm7xdu3 (discussing consequences of *Plyler v. Doe*, 457 U.S. 202 (1982)).

[4] This statutory entitlement to retain and use counsel is likely all that the Sixth Amendment guarantees in the criminal context, too. *See Garza v. Idaho*, 586 U.S. 232, 258–264 (2019) (Thomas & Gorsuch, J.J., dissenting) (arguing *Johnson v. Zerbst*, 304 U.S. 458

tribunals—that not even the federal government is willing to pay for—is a solution in search of a problem.

All that is left, then, is a bare desire to stymie the federal government's efforts to remove illegal aliens from the United States. Harris County largely admits this purpose animates the challenged program. Sure, it says providing counsel facilitates due process values and may reduce backlogs in federal immigration proceedings. Opp.at 3, 7. But what the County is most eager to tout is that its program makes it harder to effectuate removals: "Without representation, these individuals are much more likely to be removed from the country." Opp. at 10. That, in essence, is the very sort of interest this Court has rejected before.

In *Borgelt*, this Court observed that "if a governmental contract had as its goal paying for something whose purpose was solely to oppose the government, it would be quite hard to see any plausible public benefit." 692 S.W.3d at 306. As an example, this Court hypothesized about a city that chose "to pay for political consultants or lobbyists whenever an individual firefighter wanted to attack the department's policies or positions." *Ibid.* That interest, in other words, would not be a "legitimate" one—even though people could arguably debate the wisdom of the fire department's policies.

That is exactly what is happening here. The federal government is committed to "[e]nforcing the Nation's immigration laws," including by

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(1938), and *Gideon v. Wainwright*, 372 U.S. 335 (1963), deviate from the original meaning of the Sixth Amendment).

"ensuring the successful enforcement of final orders of removal." Exec. Order No. 14159, 90 Fed. Reg. 8443 (Jan. 20, 2025). Governor Abbott has ordered Texas personnel to assist federal actors with "investigating, apprehending, detaining, and removing illegal aliens found in Texas." Exec. Order No. GA-54, 50 Tex. Reg. 810 (Jan. 29, 2025). Meanwhile, Harris County is paying private attorneys "solely to oppose the government" in removal proceedings. *Borgelt*, 692 S.W.3d at 306. Such self-cannibalization, by a subordinate creature of state government, can "never qualify as predominantly serving the *public* interest." *Ibid.*

This is especially true considering that Harris County's power to expend taxpayer funds is constitutionally circumscribed. *See City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28 (Tex. 2003); TEX. CONST. art. V, § 18(b); *id.* art. XI, § 3. The "predominant objective" of expenditures must be the "accomplish[ment of] a legitimate public purpose" that is "'directly connected with'" a governmental function. *Borgelt*, 692 S.W.3d at 301, 304; *Davis v. City of Taylor*, 67 S.W.2d 1033, 1034 (Tex. 1934)). If Harris County would like to help facilitate the enforcement of immigration laws, that is one thing. *See* TEX. GOV'T CODE § 752.053. But providing private counsel to private parties in effort to prevent removals by the federal government is wholly outside of the County's responsibilities.

* * *

If the County's approach here wins the day, it could just as well light money on fire with its eyes closed. After all, doing so could conceivably provide a source

of heat for the homeless. Thankfully, such abdication of the responsibility to faithfully steward taxpayer dollars is the very thing the Texas Constitution's Gift Clauses protect against.

PRAYER

The County's use of taxpayer funds to provide attorneys in federal immigration proceedings is unsupported by any consideration and serves no legitimate public purpose. For these reasons, the Governor respectfully urges the Court to grant the petition for a writ of mandamus.

Respectfully submitted.

GREG ABBOTT
Governor of Texas

/s/ Trevor W. Ezell
TREVOR W. EZELL
General Counsel
State Bar No. 24109849
Trevor.Ezell@gov.texas.gov

JASON T. BRAMOW
Deputy General Counsel

Counsel for Amicus Curiae
Governor Greg Abbott

CERTIFICATE OF COMPLIANCE

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/s/ Trevor W. Ezell
TREVOR W. EZELL

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Beth Klusmann		beth.klusmann@oag.texas.gov	3/19/2026 10:36:43 PM	SENT
William FCole		William.Cole@oag.texas.gov	3/19/2026 10:36:43 PM	SENT
Ben Mendelson		Ben.Mendelson@oag.texas.gov	3/19/2026 10:36:43 PM	SENT
Nancy Villarreal		nancy.villarreal@oag.texas.gov	3/19/2026 10:36:43 PM	SENT
Christopher Garza		Christopher.Garza@harriscountytx.gov	3/19/2026 10:36:43 PM	SENT
Eleanor Matheson		eleanor.matheson@harriscountytx.gov	3/19/2026 10:36:43 PM	SENT
Jonathan Fombonne		jonathan.fombonne@harriscountytx.gov	3/19/2026 10:36:43 PM	SENT
Edward Swidriski		Edward.Swidriski@harriscountytx.go	3/19/2026 10:36:43 PM	SENT
William Peterson		william.peterson@oag.texas.gov	3/19/2026 10:36:43 PM	SENT
Victor Hernandez		victor.hernandez@oag.texas.gov	3/19/2026 10:36:43 PM	SENT
Teagen Fessenden		teagen.fessenden@oag.texas.gov	3/19/2026 10:36:43 PM	SENT
Garrett Gray		garrett.gray@oag.texas.gov	3/19/2026 10:36:43 PM	SENT
Jason Bramow		jason.bramow@gov.texas.gov	3/19/2026 10:36:43 PM	SENT
Trevor Ezell		trevor.ezell@gov.texas.gov	3/19/2026 10:36:43 PM	SENT
Amy Ruzicka		amy.ruzicka@gov.texas.gov	3/19/2026 10:36:43 PM	SENT