[redacted]

Date: 2025-08-06
First Name: Ashley
Last Name: Morgan
Title: N/A
Organization: Self
Address: [redacted]
City: Austin
State: Texas
Zipcode: [redacted]
Phone: [redacted]

Affirm public info: I agree

Regarding: Congressional

Message:
I oppose SB 4 because it violates the Voting Rights Act, wastes taxpayer money and harms Texans.

The proposed maps disenfranchise voters based on their race and redistricting is being used to retaliate against Congressional members who are black or hispanic (i.e. Veasey, Cuellar, Green, Castro, and Crockett). It comes as no surprise that the witness who most passionately supported the maps at the hearing was sporting two confederate flags (1 on his t-shirt and 1 attached to his wheelchair) and spouting nonsense about how God was punishing Texas with the recent floods.

Abbott's proclamation references the DOJ letter asserting evidence exists that the last maps were drawn with race as a predominant consideration. See Exh. 1-2.

Texas is setting itself up to be sued yet again for violations of the VRA. And we're still in litigation over the last maps. This is a waste of taxpayer money.

Texas has a long history of racial gerrymandering and using an extraordinary amount of taxpayer dollars to fight those battles. The legal fight over the 2011 redistricting plan cost Texas taxpayers at least $3.9 million. See Exh. 3-4. And that does not include the 26,986 hours that OAG attorneys wasted on the litigation which they could have used to actually help Texans. So much for being the party of fiscal conservatism.

Non-Anglo groups bear the effects of discrimination in TX in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process. See Exh. 5-7. The new school voucher program further undercuts public schools to the benefit of wealthy and predominantly white families who can afford private school.

Voting in TX is racially polarized and both overt and subtle appeals appear in political campaigns. For example, criminals and dangerous immigrants are always depicted as non-Anglo. Exh. 9. As another example, Luttrell campaigned on crushing anti-racist protestors. Exh. 10. With respect to this dispute over redistricting, Middleton tweeted asking if Wu was "back in China." Exh. 11.

This session, the TX legislature tried to pass a bill to institute what amounts to a poll tax (HB 5337/SB 16). In the hearing in the house, a committee member made jokes about whether Obama was a US citizen, and the bill sponsor refused to admit Obama is a citizen. Exh. 8.

In the hearing on 8/1, Hunter used privilege as a sword and a shield. He was willing to divulge the conclusions of his attorneys that the maps supposedly don't violate the law, but he would not provide the underlying data used to draw the maps nor the identity of the map-drawer(s). He said he had to ask the attorneys what he could say, but that was facetious; the client is the holder of the privilege. Moreover, Hunter has already been told by at least one Judge that such data is not privileged. See Exh. 12.

The claim the new maps are drawn more along county lines is a boldfaced lie. The most populated and most racially diverse counties in Texas are carved up into crazy shapes.

As an Austinite, I want D35 to stay in Austin. I'm dismayed that they are trying to either move Casar to Bexar County or create a situation where he and Doggett have to run against each other in the Austin area. Doggett is the only one who has been able to try to help me navigate the chaos Republicans have unleashed regarding income driven repayment of student loans. The big ugly budget bill and Republican agenda harm the middle class. Millions are losing their healthcare, kids are losing school lunches and SNAP, and the Dept. of Ed. and CFPB have been gutted.

Supporters claim they are "entitled" to take 5 more seats because Trump won the election. He isn't entitled to have TX give him 5 more seats because he's president any more than he's entitled to "grab [women] by the pussy" (his words) because he's a "star."

[redacted]

EXHIBITS TO COMMENTS AGAINST REDISTRICTING

EXHIBIT 1

Dhillon Letter
July 7, 2025

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

July 7, 2025

The Honorable Gregory Abbott
Office of the Governor
Texas Capitol
[redacted]
Austin, Texas 78701
[redacted]

The Honorable Ken Paxton
Office of the Attorney General of Texas
Attention: Austin Kinghorn/Ryan Walters
[redacted]
Austin Texas 78711-2548
[redacted]

Re: Unconstitutional Race-Based Congressional Districts
TX-09, TX-18, TX-29 and TX-33

Dear Governor Abbott and Attorney General Paxton,

This letter will serve as formal notice by the Department of Justice to the State of Texas of serious concerns regarding the legality of four of Texas's congressional districts. As stated below, Congressional Districts TX-09, TX-18, TX-29 and TX-33 currently constitute unconstitutional "coalition districts" and we urge the State of Texas to rectify these race-based considerations from these specific districts.

In *Allen v. Milligan*, 599 U.S. 1, 45 (2023), Justice Kavanaugh noted that "even if Congress in 1982 could constitutionally authorize race-based redistricting under § 2 for some period of time, the authority to conduct race-based redistricting cannot extend indefinitely into the future." 599 U.S. 1, (Kavanaugh, J., concurring). In *SFFA v. Harvard*, the Supreme Court reiterated that "deviation from the norm of equal treatment" on account of race "must be a temporary matter." 600 U.S. 181, 228 (2023). When race is the predominant factor above other traditional redistricting considerations including compactness, contiguity, and respect for political subdivision lines, the State of Texas must demonstrate a compelling state interest to survive strict scrutiny.

It is well established that so-called "coalition districts" run afoul the Voting Rights Act and the Fourteenth Amendment. In *Petteway v. Galveston County*, No. 23-40582 (5th Cir. 2024), the en banc Fifth Circuit Court of Appeals made it abundantly clear that "coalition districts" are not protected by the Voting Rights Act. This was a reversal of its previous decision in *Campos v. City of Baytown*, 840 F.2d 1240 (5th Cir. 1988). In *Petteway*, the Fifth Circuit aligned itself with the Supreme Court's decision in

Bartlett v. Strickland, 556 U.S. 1 (2009), and determined that a minority group must be geographically compact enough to constitute more than 50% of the voting population in a single-member district to be protected under the Voting Rights Act. *See also Thornburg v. Gingles,* 478 U.S. 30 (1986). Opportunity and coalition districts are premised on either the combining of two minority groups or a minority group with white crossover voting to meet the 50% threshold. Neither meets the first *Gingle's* precondition. Thus, the racial gerrymandering of congressional districts is unconstitutional and must be rectified immediately by state legislatures.

It is the position of this Department that several Texas Congressional Districts constitute unconstitutional racial gerrymanders, under the logic and reasoning of *Petteway.* Specifically, the record indicates that TX-09 and TX-18 sort Houston voters along strict racial lines to create two coalition seats, while creating TX 29, a majority Hispanic district. Additionally, TX-33 is another racially-based coalition district that resulted from a federal court order years ago, yet the Texas Legislature drew TX-33 on the same lines in the 2021 redistricting. Therefore, TX-33 remains as a coalition district.

Although the State's interest when configuring these districts was to comply with Fifth Circuit precedent prior to the 2024 *Petteway* decision, that interest no longer exists. Post-*Petteway*, the Congressional Districts at issue are nothing more than vestiges of an unconstitutional racially based gerrymandering past, which must be abandoned, and must now be corrected by Texas.

Please respond to this letter by July 7, 2025, and advise me of the State's intention to bring its current redistricting plans into compliance with the U.S. Constitution. If the State of Texas fails to rectify the racial gerrymandering of TX-09, TX-18, TX-29 and TX 33, the Attorney General reserves the right to seek legal action against the State, including without limitation under the 14th Amendment.

Respectfully,

HARMEET K. DHILLON
Assistant Attorney General
Civil Rights Division

MICHAEL E. GATES
Deputy Assistant Attorney General
Civil Rights Division

EXHIBIT 2

Abbott's Proclamation
July 9, 2025

GOVERNOR GREG ABBOTT

July 9, 2025

FILED IN THE OFFICE OF THE
TEXAS SECRETARY OF STATE
3:00 PM O'CLOCK
JUL 09 2025
Secretary of State

Mr. Adam Bitter, General Counsel
Office of the Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

Dear Mr. Bitter:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation calling an extraordinary session of the 89th Legislature, to convene in the City of Austin, at noon on Monday, July 21, 2025.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,

Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, by the authority vested in me by Article III, Sections 5(a) and 40, and Article IV, Section 8(a) of the Texas Constitution, do hereby call a Special Session of the 89th Legislature, to convene in the City of Austin, commencing at 12:00 p.m. on Monday, July 21, 2025, to consider and act upon the following:

Legislation to improve early warning systems and other preparedness infrastructure in flood-prone areas throughout Texas.

Legislation to strengthen emergency communications and other response infrastructure in flood-prone areas throughout Texas.

Legislation to provide relief funding for response to and recovery from the storms which began in early July 2025, including local match funding for jurisdictions eligible for FEMA public assistance.

Legislation to evaluate and streamline rules and regulations to speed preparedness for and recovery from natural disasters.

Legislation to eliminate the STAAR test and replace it with effective tools to assess student progress and ensure school district accountability.

Legislation reducing the property tax burden on Texans and legislation imposing spending limits on entities authorized to impose property taxes.

Legislation making it a crime to provide hemp-derived products to children under 21 years of age.

Legislation to comprehensively regulate hemp-derived products, including limiting potency, restricting synthetically modified compounds, and establishing enforcement mechanisms, all without banning a lawful agricultural commodity.

Legislation further protecting unborn children and their mothers from the harm of abortion.

Legislation prohibiting taxpayer-funded lobbying, including the use of tax dollars to hire lobbyists and payment of tax dollars to associations that lobby the Legislature.

Legislation, similar to Senate Bill No. 1278 from the 89th Legislature, Regular Session, that protects victims of human trafficking from criminal liability for non-violent acts closely tied to their own victimization.

Legislation that protects law enforcement officers from public disclosure of unsubstantiated complaints in personnel files.

Legislation protecting women's privacy in sex-segregated spaces.

Legislation proposing a constitutional amendment allowing the Attorney General to prosecute state election crimes.

Legislation that provides a revised congressional redistricting plan in light of constitutional concerns raised by the U.S. Department of Justice.

Legislation, similar to Senate Bill No. 648 from the 89th Legislature, Regular Session, that provides strengthened protections against title theft and deed fraud.

Legislation, similar to Senate Bill No. 1253 from the 89th Legislature, Regular Session, that authorizes political subdivisions to reduce impact fees for builders who include water conservation and efficiency measures.

Legislation, similar to Senate Bill No. 2878 from the 89th Legislature, Regular Session, relating to the operation and administration of the Judicial Department of state government.

The Secretary of State will take notice of this action and will notify the members of the legislature of my action.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 9th day of July, 2025.

GREG ABBOTT
Governor

Attested by:

ADAM BITTER
General Counsel
Secretary of State

FILED IN THE OFFICE OF THE SECRETARY OF STATE
3:00pm O'CLOCK
JUL 09 2025

EXHIBIT 3

“Texas: Taxpayers’ tab for redistricting battle nears $4 Million”

Accessed at https://thevotingnews.com/taxpayers-tab-for-redistricting-battle-nears-4-million-houston-chronicle/ on August 5, 2025.

Texas: Taxpayers' tab for redistricting battle nears $4 million | Houston Chronicle

Texans are on the hook for $3.9 million in costs for Attorney General Greg Abbott to fight for Republican-championed redistricting maps, and that number will only grow as a years-long legal fight continues Monday in federal court in San Antonio. A big tally is expected in complicated redistricting litigation, experts say, particularly with the Abbott legal team's aggressive defense of the congressional and legislative maps approved by the GOP-majority Legislature. "Abbott's attitude has been very much 'I'm going to litigate this to the ends of the earth,'" said Michael Li, redistricting counsel at the Brennan Center at New York University School of Law. Abbott's staff said he simply is doing his job as the state's top lawyer and that the responsibility for the costs lies with those who have challenged the maps. Democrats said Abbott is using taxpayer funds as an ATM to defend discriminatory maps. Minority and civil rights groups, including the League of United Latin American Citizens, Mexican American Legislative Caucus and the National Association for the Advancement of Colored People, originally mounted the redistricting challenges in 2011.

Abbott's Democratic opponent in the governor's race, Sen. Wendy Davis, also sued and beat back changes to her Senate district. She, along with several other plaintiffs, was awarded attorney's fees that are not included in the total because Abbott's office is appealing.

ublic Information Act request,
orney general's office.

Abbott spokeswoman Lauren Bean said internal costs include employee salaries that would have been incurred regardless of the cases. The state lawyers have spent 26,986 hours on redistricting litigation.

The total also includes $887,327 for high-powered outside counsel, $447,567 for expert witnesses and $339,996 for travel and other expenses.

Full Article: [Taxpayers' tab for redistricting battle nears $4 million – Houston Chronicle](#).

August 11, 2014

Tags: Greg Abbott | League of United Latin American Citizens | redistricting | Wendy Davis

PREVIOUS
Washington: Election observer with gun spurs open-carry debate | The Columbian

NEXT
Texas: Fight Resumes Over Maps That Curb Latino Power | Bloomberg

Related Posts

EXHIBIT 4

“Texas out of options in bid to avoid legal fees in redistricting case”

Accessed at https://www.statesman.com/story/news/2016/08/29/texas-out-of-options-in-bid-to-avoid-legal-fees-in-redistricting-case/10061210007/ on August 5, 2025.

NEWS

Texas out of options in bid to avoid legal fees in redistricting case

By **Tim Eaton**
Aug 29, 2016

The U.S. Supreme Court on Monday rejected an effort by Texas Attorney General Ken Paxton to withhold legal fees to lawyers representing former state Sen. Wendy Davis and others in a case over redistricting maps.

The high court's decision not to take up the case allows a lower court's ruling to stand. A Washington appellate court last year ordered the state to pay more than $1 million in attorneys' fees in a case challenging district boundaries drawn by the Republican-led Legislature.

Cynthia Meyer, a spokeswoman for Paxton, called the court's decision not to review the case "unfortunate."

“The state shouldn’t have been forced to pay attorney’s fees based on an unconstitutional statute,” she said.

Chad Dunn, a lawyer for the Davis group, said, “We are pleased to finally bring this case to a close.”

Several Hispanic Texans who sued the state expected to take nearly $600,000 of the ordered fees from the state. A group that was led by Davis, who unsuccessfully ran for governor in 2014, and U.S. Rep. Marc Veasey, both Fort Worth Democrats, should be awarded $466,680, and the Texas State Conference of NAACP Branches is owed $32,374, according to the court.

The groups argued that boundaries were drawn to dilute the voting power of Hispanics and African-Americans.

In August, Judge Patricia Millett of the U.S. Court of Appeals for the District of Columbia Circuit admonished state lawyers for their refusal to file the proper documents when they sought to deny the lawyers' fees.

By not following the rules, Texas limited its options, the court said.

The appeals court opinion came a year after U.S. District Judge Rosemary Collyer's order that criticized state lawyers for submitting a legal brief that devoted more effort to complaining than answering the legal issues in the fight over lawyer fees.

"This matter presents a case study in how not to respond to a motion for attorney fees and costs," Collyer, appointed by former President George W. Bush, said in the June 2014 order.

A spokeswoman for former Attorney General Greg Abbott, who originally fought payment of the fees in the redistricting case before becoming governor, said in 2014 that Texas shouldn't be made to pay other parties' legal fees in a case the state considers that it won.

The redistricting saga began in 2011 when the Legislature redrew congressional and legislative district boundaries, a once-a-decade process that followed the 2010 census. At the time, Texas and other jurisdictions mostly in the South needed the federal government's approval before putting into place any change to election law or election procedure.

The state chose to seek approval at a D.C. federal court, which concluded that there was evidence of intentional discrimination, and the state didn't get the approval it sought. The state then appealed to the U.S. Supreme Court.

In the meantime, the state adopted new redistricting maps. And soon after, the high court gutted the provision of the Voting Rights Act that required Texas and other jurisdictions to seek federal approval for election changes. Later, the Supreme Court sent the case back to the D.C. panel of judges. The intervenors then asked for Texas to pay their legal fees. Abbott's office objected.

The federal court responded in June 2014 by granting the legal fees, and the state objected again. And after another round of oral arguments last April, a three-judge federal appeals court panel agreed with the lower court. Paxton appealed to the Supreme Court.

State lawyers now appear to be out of options.

Tim Eaton

Editor's Picks

EXHIBIT 5

"Zero Tolerance Policies in Texas Push Black Students and Latino Students Away from School"

Accessed at https://www.idra.org/research_articles/zero-tolerance-policies-texas-push-black-students-hispanic-students-away-school/#:~:text=White%20students%20represented%2027%25%20of%20enrollment%20but%2014%25%20of%20students,6%25%20of%20females%20were%20suspended on August 6, 2025.

Zero Tolerance Policies in Texas Push Black Students and Latino Students Away from School

Mar 27 2023

Web Story Released with the IDRA Attrition Study (Updated 2022)

Zero tolerance policies likely contribute to high attrition rates of Black students and Latino students in Texas public schools. In an additional analysis to IDRA's annual attrition study (http://www.idra.org/research_articles/attrition-dropout-rates-texas/)released earlier this month, IDRA compared the trend lines for attrition rates to those of discipline data for the state of Texas.

The historical high attrition rate for each race-ethnicity group parallels the period when zero tolerance policies gained momentum in Texas. Lower attrition rates for each group coincide with Texas' legislative attempts to relax zero tolerance approaches under specific circumstances.

Zero tolerance was originally used for drug enforcement, but it expanded in public schools into a policy of punitive and exclusionary consequences for student infractions, regardless of severity or circumstances. While zero tolerance practices vary, the general approach is the same: removing students who disrupt the learning environment. However, there is no research to support that zero tolerance makes schools any safer.

In Texas, data are collected on several types of disciplinary actions: in-school suspension, out-of-school suspension, referral to disciplinary alternative education programs (DAEP), referral to juvenile justice alternative education programs (JJAEP) and expulsion. A review of these data show disproportionately high disciplinary action rates for students of color and males.

> **"This has huge consequences as the data show nationally that children are up to 10 times more likely to drop out of high school if they've been expelled or suspended. They also are much more likely to experience academic failure."**
>
> *– Dr. María "Cuca" Robledo Montecel, IDRA president emerita*

In-School Suspension

Each year from 2005-06 to 2018-19, Black students received in-school suspensions nearly two times the rate they comprised in the total population.

- In 2018-19, Black students represented 13% of public school enrollment in Texas, but 26% of students receiving in school suspensions.
- In comparison, white students represented 27% of enrollment but 22% of students receiving in-school suspensions. On average, 26% of Black students are suspended compared to 8% of white students.
- Latino students represented 53% of enrollment and 49% of students suspended. On average, 9% of Latino students received in school suspensions.
- Males represented 51% of the 2018-19, total enrollment but 71% of the students suspended in-school. On average, 12% of males compared to 6% of females received in-school suspensions.

Out-of-School Suspension

As with in-school suspensions, Black students received out-of-school suspensions significantly more than the rate they comprised in the total population from 2005-06 through 2018-19, school years.

- In 2018-19, Black students represented 13% of public school enrollment in Texas, but 32% of students receiving out-of-school suspensions.

- White students represented 27% of enrollment but 14% of students receiving out-of-school suspensions. On average, 11% of Black students are suspended compared to 2% of white students.
- Latino students represented 53% of enrollment and 50% of students receiving out-of-school suspensions. On average, 4% of Latino students received out of school suspensions.
- Males represented 51% of the 2018-19, total enrollment but 70% of the students receiving out-of-school suspensions. On average, 12% of males compared to 6% of females were suspended.

Other Forms of Discipline

Annual discipline summaries also provide information on students removed from the classrooms in several other categories including disciplinary alternative education program (DAEP), juvenile justice alternative education program (JJAEP) and expulsions. DAEPs were established for criminal offenses – drug related activities, gun violations and assault – all violations that had been punishable by referral to the Texas JJAEP system.

Because not all areas of the state had access to JJAEP facilities, DAEPs were presented as a means for creating options that would remove serious offenders from regular school settings, including many small school districts and those rural communities where no JJAEP facilities existed.

Instead, students as young as six years old were removed from their kindergarten classes and sent to DAEPs for "discipline" problems. And students often can't catch up academically because many of their teachers are not qualified to teach them, and those who are qualified are unable to coordinate with the students' "sending" schools.

IDRA's analysis of school discipline data (http://www.idra.org/resource-center/zero-tolerance-policies-push-students-away/?preview_id=52861&preview_nonce=9bf315a576&_thumbnail_id=-1&preview=true) was released in November 2016 with its high school attrition study (http://www.idra.org/resource-center/despite-graduation-rate-progress-texas-appears-stuck-losing-one-fourth-high-schoolers/). Key findings show:

- Each year from 2005-06 to 2018-19, in Texas, Black students received in-school suspensions nearly two times the rate they comprised in the total population.
- While numbers of disciplinary actions have been declining in recent years, in 2014-15 there were 807,845 exclusionary discipline actions across Texas.
- Students in special education comprise 9.5% of the student population but make up 19.3% of out-of-school suspensions in 2014-15.
- Economically disadvantaged students comprise 61.2% of the student population but make up 81.5%t of out-of-school suspensions and over 76.1% of in-school suspensions and DAEP actions in 2014-15.
- Students as young as 6 years old were removed from their kindergarten classes and sent to DAEPs for "discipline" problems. Many of their DAEP teachers are not qualified to teach them, and those who are qualified are unable to coordinate with the students' "sending" schools.

It should be noted that expulsions and suspensions are in violation of civil rights laws if they are found to be administered in such a way that targets minority students.

> **"Children do not make bad schools; Bad policies make bad schools. The good news is that when it comes to transforming bad policies in education, we don't need to take wild guesses: educators are already showing what works. The best, high-impact innovations value youth of all backgrounds, without exception; are built around sound information and metrics; engage families and communities as key partners in academic success; and assure that students have access to quality teaching and a high quality curriculum."**
>
> *-Dr. María "Cuca" Robledo Montecel*

It doesn't have to be this way

There is no research to support that zero tolerance makes schools any safer. While zero tolerance was ostensibly created to respond to issues where students are at risk of harm, only 5% of disciplinary actions in recent years involved the possession of a weapon. Violent crime in juvenile populations is down, but it was already decreasing since 1991 (Kang-Brown, et al., 2013).

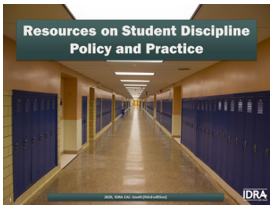
What is indeed clear is the mounting amount of data on the disproportionality of discipline actions in schools. For example, as the Office for Civil Rights' research shows, preschool students face a disproportionately high rate of suspension. According to the data, "Young children who are expelled or suspended are as much as 10 times more likely to drop out of high school, experience academic failure and grade retention, hold negative school attitudes, and face incarceration than those who are not" (U.S. Department of Health and Human Services, & U.S. Department of Education, 2014). And nationally, Black students are 3.8 times as likely to be subject to out-of-school suspension as white students. And they are 2.3 times as likely to be referred to law enforcement or subject to a school-related arrest than white students (U.S. Department of Education, 2016).

Zero tolerance is one of six school policies that lead to higher dropout rates (http://www.idra.org/wp-content/uploads/2016/12/6-Policies-that-Lead-to-Higher-Dropout-Rates.pdf) (see below). School systems and policymakers in Texas and the nation must ensure that the necessary reforms and actions be taken to provide equal education opportunity for every child in Texas regardless of race, color and gender.

Below are data tables and resources for educators, communities and policymakers.

IDRA's **Quality School Action Framework™** guides communities and schools in identifying weak areas and strengthening public schools' capacities to graduate and prepare all students for success. IDRA's book, *Courage to Connect: A Quality Schools Action Framework™ (http://www.idra.org/couragetoconnect/)* shows how communities and schools can work together to be successful with all of their students.

Sign up to receive notices from IDRA (https://visitor.r20.constantcontact.com/manage/optin?v=001XppecIs5j3w8auluPym-w9rDidNTdIuaEqQRe-f1uhFoTuF4SZShZnHOEbGsErzp0dDLUSxM3CIujRDwcOKsM3a1MiiUnsbnaVLOCfap5axNo9g57FKCuNySZREgwDIdovqvvhD5WDuHQ%3D%3D)

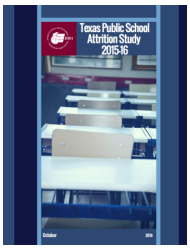


See IDRA's eBook: Resources on Student Discipline Policy and Practice

There are a number of things educators and policymakers in Texas can do to make sustainable changes that will reduce bias and help all students stay in school to learn. IDRA's eBook, Resources on Student Discipline Policy and Practice (https://www.idra.org/wp-content/uploads/2020/02/Student-Discipline-Policy-and-Practice-IDRA-eBook-2020-Feb.pdf), points to several tools and best practices for educators.

See IDRA's Infographic: 6 School Policies that Lead to Higher Dropout Rates

Zero tolerance is one of six school policies that lead to higher dropout rates as outlined in IDRA's infographic. (https://www.idra.org/resource-center/6-school-policies-lead-higher-dropout-rates/)



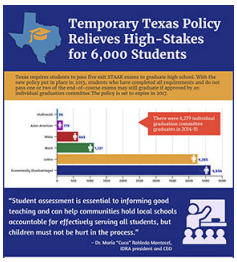
See the full study of high school attrition in Texas

Despite Graduation Rate Progress, Texas Appears Stuck at Losing One-Fourth of High Schoolers

In early November 2016, the U.S. Department of Education reported the nation has reached an all-time high in graduation rates and Texas is near the top.

Yet, IDRA's analysis – which examines time series data – found that the attrition rate in Texas has risen for the first time in 18 years. Though just an increase of 1 percentage point, Texas schools have been losing between 26% and 24% of high school students annually for the last five years.

See IDRA's latest study of high school attrition in Texas (http://www.idra.org/resource-center/despite-graduation-rate-progress-texas-appears-stuck-losing-one-fourth-high-schoolers/).



See IDRA's supplemental analysis of individual graduation committees

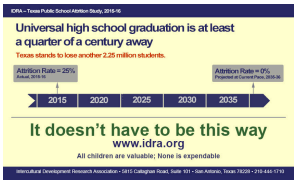
Temporary Policy Relieves High-Stakes for 6,000 Students

Use of individual graduation committees unlocks diplomas for qualified students according to IDRA's analysis released with our latest attrition study.

Students who are economically disadvantaged, Latino or African American benefited most from the alternative graduation policy established by the Texas legislature in SB149.

But this policy is set to expire in 2017.

See IDRA's analysis, (http://www.idra.org/resource-center/temporary-policy-relieves-high-stakes-6000-students/) released on November 14, 2016.



See IDRA's forecast analysis

Texas High Schools Stand to Lose Over 2 Million Students in Coming Years

By the time today's kindergarteners are 18, Texas will still not have reached universal high school education. In fact, while today's toddlers play with board books, they cannot count on earning a diploma.

IDRA reports that Texas will not reach an attrition rate of zero until 2035-36. At this pace, the state will lose more than 2 million students. IDRA's forecast analysis was released this month with its high school attrition study.

See IDRA's forecast analysis, (http://www.idra.org/resource-center/texas-high-schools-stand-lose-2-million-students-coming-years/)released on November 21, 2016.

IDRA is a non-profit organization. Our mission is to achieve equal educational opportunity for every child through strong public schools that prepare all students to access and succeed in college. Contact IDRA at: www.idra.org (http://www.idra.org/) • www.idraseen.org (http://www.idraseen.org) • https://www.facebook.com/IDRAed/ (https://www.facebook.com/IDRAed/) • contact@idra.org (mailto:contact@idra.org) • 210-444-1710.

EXHIBIT 6

“Racial disparities in health care persist in Texas, new study finds”

Accessed at https://www.keranews.org/health-wellness/2024-04-18/racial-disparities-health-care-texas on August 6, 2025.

Racial disparities in health care persist in Texas, new study finds

KERA | By Elena Rivera

Published April 18, 2024 at 3:31 PM CDT

Yfat Yossifor / KERA

A receptionist looks over paperwork in a waiting area Friday, July 7, 2023, at LBU Community Clinic.

According to a new report from the Commonwealth Fund, Texas has more severe racial and ethnic health disparities than other states in the Southwest.

Black and Hispanic Texans are more likely to be uninsured, die from avoidable causes and not have access to health care than other racial groups.

Sara Collins, the senior scholar of health care coverage and access with the Commonwealth Fund, said one reason for the disparities is a lack of health insurance.

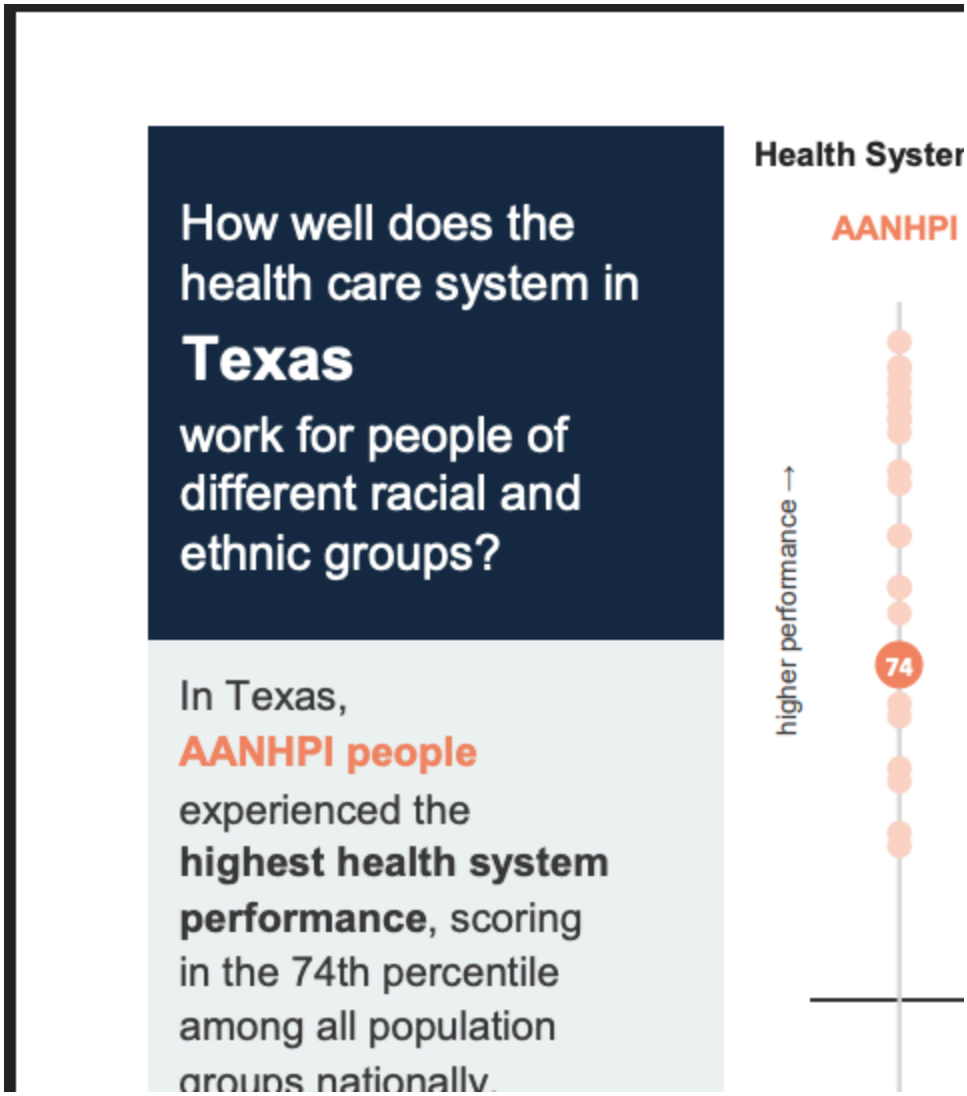
“Giving everybody access to health insurance coverage is really the first step in addressing a lot of the issues that we're seeing across the country,” she said.

KERA
All Things Considered

On average, Collins said states that have expanded Medicaid coverage to low-income adults had better outcomes and narrower disparities than states that haven't. Texas is one of 10 states that has yet to expand Medicaid.

"Cost is the big barrier to getting health care," she said. "So, once you have that financial ability to access the health care system, that falls away."

1 / 3



Another reason for the disparities between groups is racism and discrimination in the health care system. Patients of color experience worse care for issues like heart disease, pregnancy complications, and pain management, all linked to preventable conditions that lead to premature death.

KERA
All Things Considered

responsiveness and prioritization to address those kinds of issues that are that are manifesting in such wide disparities in health outcomes, preventable mortality in particular."

The report recommends lawmakers and policymakers address these disparities through better access to health insurance, diversifying the health care workforce, and investing in social services that help people manage their health over time.

Elena Rivera is KERA's health reporter. Got a tip? Email Elena at erivera@kera.org

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Tags Health & Wellness | KERA News | Health & Wellness | Medicaid | Medical Racism | public health | health insurance | racism | mortality

Elena Rivera

Elena Rivera is the health reporter at KERA. Before moving to Dallas, Elena covered health in Southern Colorado for KRCC and Colorado Public Radio. Her stories covered pandemic mental health support, rural community health access issues and vaccine equity across the region.

See stories by Elena Rivera

KERA
All Things Considered

EXHIBIT 7

Black and Hispanic Texans Face Higher-Than-Average Unemployment Rates

Yearly unemployment rates since 2013 in Texas.

Select demographic:

Race/ethnicity | Gender | Education | Age

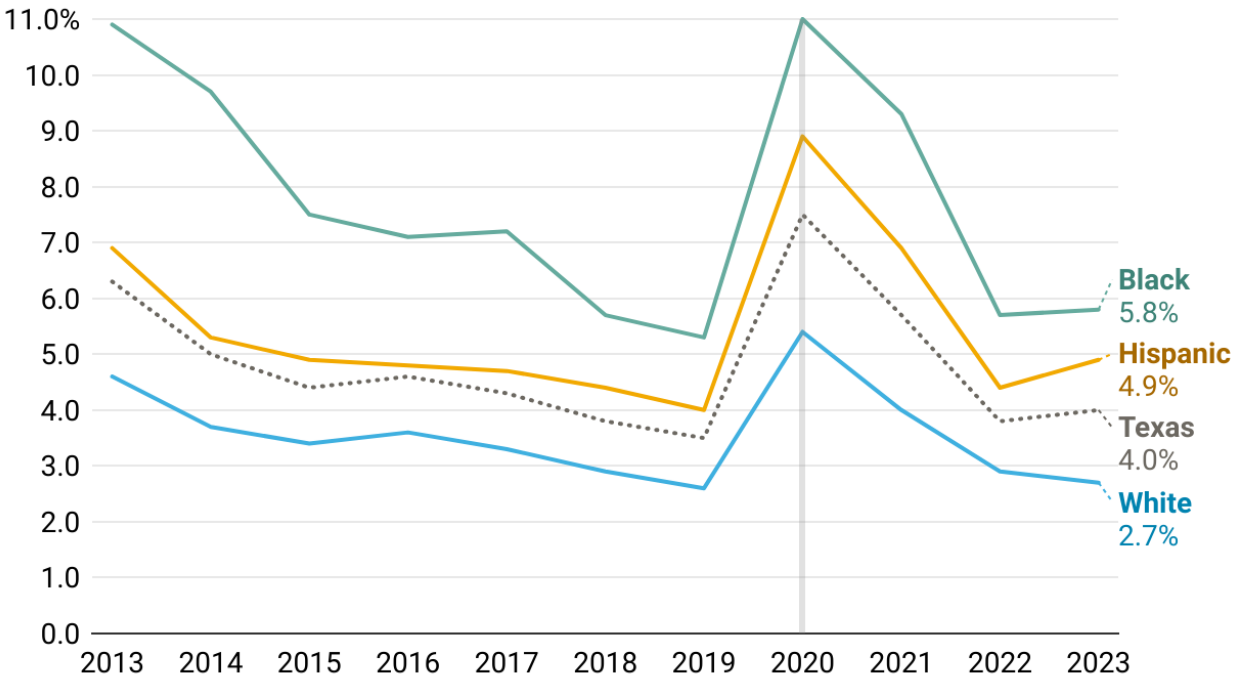


Chart: Every Texan
Source: Economic Policy Institute analysis of Current Employment Statistics Survey, 2024
Notes: Racial and ethnic groups are mutually exclusive. "Hispanic" includes Hispanic/Latino of any race, while "White" and "Black" refer to non-Hispanic whites and non-Hispanic Blacks, respectively. Gray line indicates 2020 recession year.

EVERY TEXAN

Accessed at https://everytexan.org/2024/08/12/the-texas-workforce-is-resilient-and-undervalued/ on August 6, 2025.

EXHIBIT 8

https://house.texas.gov/videos/21811
2:11:00 – 2:11:50

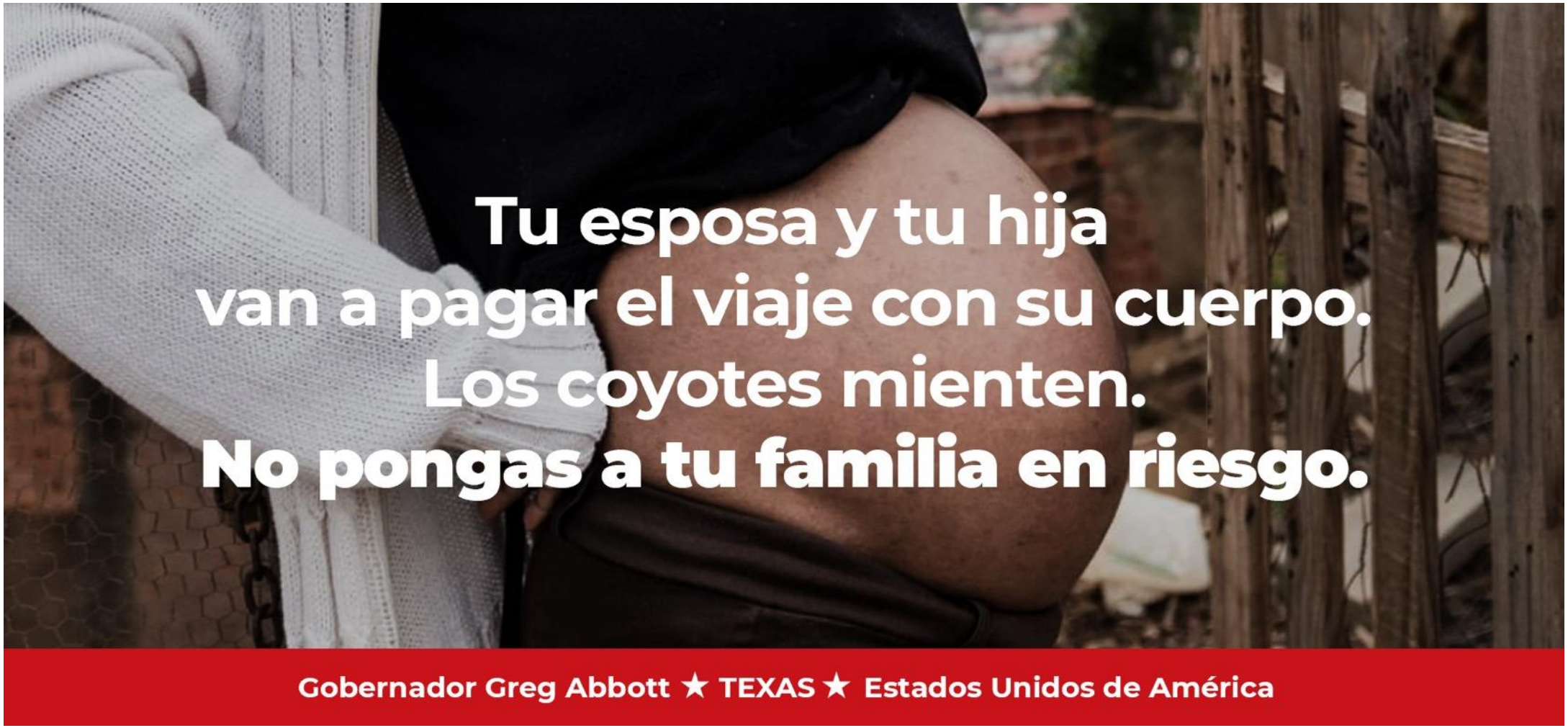
EXHIBIT 9

Abbott's 2024 Anti-Immigration Billboard Campaign

Accessed at https://gov.texas.gov/news/post/governor-abbott-unveils-billboard-campaign-to-dissuade-migrants-from-making-dangerous-journey-to-texas on August 6, 2025 via embedded link to https://gov.texas.gov/uploads/files/press/Texas_Billboard_Campaign.pdf.

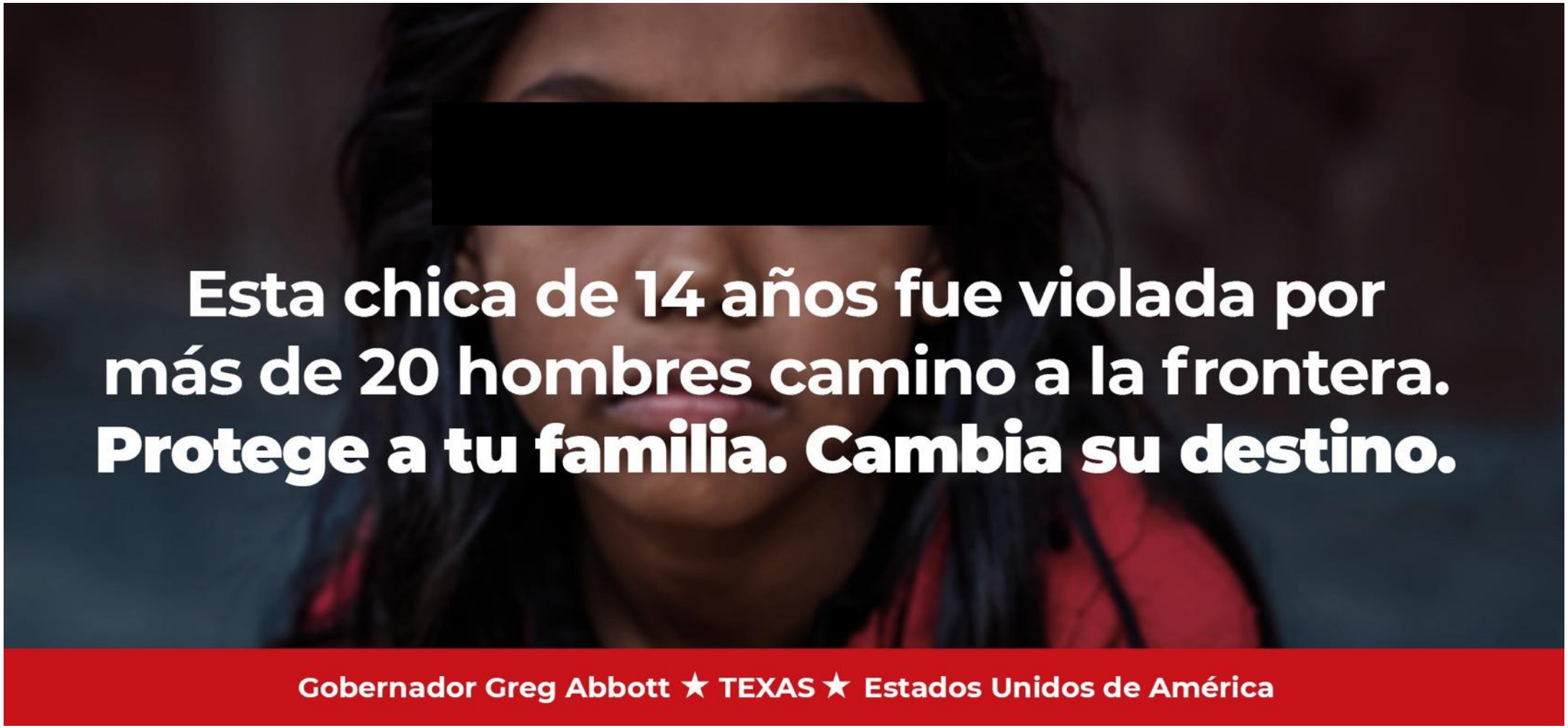
CENTRAL AMERICA

Many girls who try to migrate to Texas are kidnapped.
For the sake of your family, stop.



Your wife and daughter will pay for the trip with their bodies.
Coyotes lie. Don't put your family at risk.

How much did you pay to have your daughter raped?
Many girls are raped by the coyotes you hire.



This fourteen-year-old girl was raped by more than 20 men on her way to the border. Protect your family. Change their fate.

MEXICO: SPANISH

Stop. If you cross the border illegally into Texas, you will be jailed.

Don’t come to Texas illegally. You’ll be arrested.

Final warning. If you cross the border illegally, you will be prosecuted and incarcerated.

Danger Ahead. If you cross into Texas illegally, you will regret it forever.

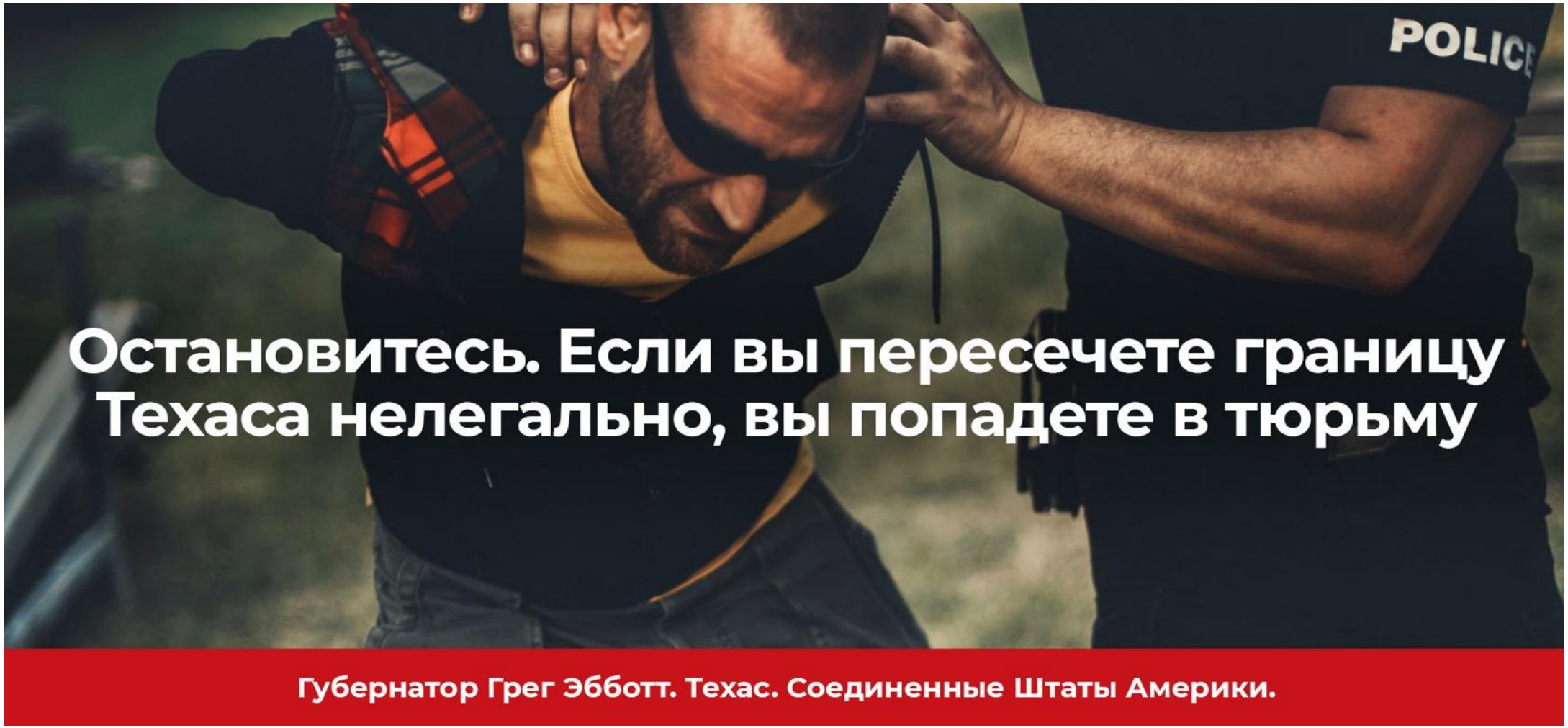
Stop. If you cross the border illegally into Texas, you will be jailed.

MEXICO:
MULTI LANGUAGE

Don't come to Texas illegally. You'll be arrested.

Don't come to Texas illegally. You'll be arrested.

MEXICO: RUSSIAN



Stop. If you cross the border to Texas illegally, you will go to jail.

MEXICO: CHINESE

Danger ahead: If you cross the border illegally, you'll regret it forever.

MEXICO: ARABIC

If you thought the journey to the border was harsh, just wait until you see what life in jail is like.

EXHIBIT 10

Ad advocating that Luttrell will "crush the woke mob" available at: https://americanjournalnews.com/morgan-luttrell-texas-congressional-leadership-fund-ad/

EXHIBIT 11


Post
Mayes Middleton
@mayes_middleton
Is Gene Wu back in China?
1:05 PM · Aug 4, 2025 · 314.7K Views
418
173
527
10
Read 418 replies

EXHIBIT 12

Order on Motion to Compel Discovery

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, *et al.*,	§	
***Plaintiffs*,**	§	**EP-21-CV-00259-DCG-JES-JVB**
	§	**[Lead Case]**
EDDIE BERNICE JOHNSON, *et al.*,	§	
	§	**&**
***Plaintiff-Intervenors*,**	§	
v.	§	**All Consolidated Cases**
GREG ABBOTT, *in his official capacity as Governor of the State of Texas*, ***et al.*,**	§	
***Defendants*.**	§	

ORDER

Before the Court is the United States' Renewed Motion to Compel hundreds of withheld documents from Thomas Bryan and Eric Wienckowski (collectively "Respondents").[1] As background, Texas Representative Todd Hunter hired Butler Snow LLP (a law firm) to assist with redistricting matters.[2] Relevant here, Butler Snow hired Mr. Bryan (as an expert demographer) "to work on all four of the maps subject to this litigation."[3] Mr. Bryan then hired

[1] Renewed Mot., ECF No. 634.

[2] *See League of United Latin Am. Citizens v. Abbott*, No. 3:21-CV-00299-DCG-JES-JVB, 2022 WL 3353409, at *1 (W.D. Tex. Aug. 12, 2022) [hereinafter *First Order to Compel*] (Order requiring Thomas Bryan and Eric Wienckowski ("Respondents") to produce documents and/or a privilege log to the United States) (providing background on Respondents' relationship to this litigation).

[3] *See id.*

Eric Wienckowski, to assist in "duties [that] were the same or similar" to those of Mr. Bryan.[4] Respondents thus served as expert consultants to Butler Snow.

In May 2022, the United States subpoenaed Respondents.[5] In response, Respondents "made broad privilege claims and asserted that they would not produce any documents the United States had requested."[6] After Respondents declined to produce any of the requested documents by the deadline,[7] the United States moved to compel Respondents to comply with its non-party document subpoenas.[8]

The Court granted the United States' motions in part and ordered Respondents "to produce documents and/or a privilege log to the United States."[9] In that Order, the Court further indicated that the United States could renew its motions if Respondents failed to comply with the Order.[10]

The United States has now filed a Renewed Motion to Compel arguing that "Respondents have failed to comply with the Court's order" because Respondents:

(1) "continue to withhold nearly a thousand relevant documents based on claims of attorney-client privilege";

(2) "have failed to produce a compliant privilege log, as hundreds of entries use the same vague and conclusory language"; and

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[4] *Id.* (outlining the terms of Mr. Bryan's Engagement Letter and noting that "'Mr. Wienckowski is a consulting-only expert who was hired by Butler Snow LLP's consulting-only expert [Mr. Bryan] to assist Butler Snow LLP'" (quoting Obj. Subpoena, Resp. Ex. 4, ECF No. 390–4, at 16)).

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *See* Mot. Compel Bryan, ECF No. 407; Mot. Compel Wienckowski, ECF No. 384.

[9] *First Order to Compel* at *1.

[10] *Id.* at *6.

(3) "have improperly redacted those few documents that have been disclosed."[11]

The United States thus asks the Court to "enforce its prior order and compel Respondents to produce in full approximately 974 withheld documents and 74 redacted documents."[12] For the reasons that follow, the Court grants the United States' Renewed Motion in part.

I. LEGAL STANDARD

Federal Rule of Civil Procedure 45(d)(2)(B)(i) allows a party who has served a subpoena on a non-party to "move the court . . . for an order compelling production."[13] In turn, Rule 45(e)(2)(A) mandates that "[a] person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must (i) expressly make the claim; and (ii) describe the nature of the withheld documents . . . in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim."[14]

II. DISCUSSION

In its Renewed Motion, the United States argues that Respondents have incorrectly withheld approximately 974 relevant documents and improperly redacted an additional 74 documents based on claims of attorney-client privilege. The United States specifically argues that:

(1) "the attorney-client privilege does not apply to the 603 documents containing statistical analyses and draft maps";

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[11] Renewed Mot. at 2.

All page citations in this Order refer to the page numbers assigned by the Court's CM/ECF system, not the document's internal pagination.

[12] *Id.*

[13] FED. R. CIV. P. 45(d)(2)(B)(i).

[14] FED. R. CIV. P. 45(e)(2)(A)(i)–(ii).

(2) "the attorney-client privilege also does not apply to the 371 withheld emails" concerning "preliminary planning based on estimates, working concepts of districts, and scheduling meetings" "because Respondents have not carried their burden to prove that they provide primarily legal advice, as opposed to strategic, policy, or political information"; and

(3) "Respondents have also improperly redacted 74 documents because they contain nonlegal information." These documents include emails and their attachments with information concerning "hourly rates, hours spent on particular tasks, and descriptions of services performed, as well as unidentifiable blocks of text" redacted.[15]

Respondents oppose the United States' Renewed Motion.[16] The Court will address the parties' arguments below.[17]

1. Draft Maps and Statistical Analyses (603 Documents)

Respondents argue that because the draft maps and statistical analyses at issue were prepared by Respondents *at the direction of* law firm Butler Snow and "were necessary for the firm's lawyers to provide legal advice to their clients," such documents "fit squarely within the confines of the attorney-client privilege" and thus need not be produced.[18] Notably, while Respondents themselves are not attorneys, they argue that their roles as expert consultants for attorneys (*i.e.*, for the Butler Snow law firm) shield their work and communications under the attorney-client privilege. The United States, on the other hand, argues that because these

[15] Renewed Mot. at 4–5 (cleaned up).

[16] The Court notes that while Respondents do not waive their claims of privilege under the work product doctrine, they "recognize that the Court previously ruled that the work product doctrine does not apply to the documents" at issue. Resp., ECF No. 640, at 10 n.2. The Court therefore notes, but does not address, Respondents' assertions of work product protections.

[17] *See supra* note 16.

[18] Resp. at 8.

documents contain factual and non-legal information, they are not covered by the privilege.[19] The Court agrees with the United States.

As an initial matter, the Court has already rejected the proposition that "revealing the analyses or data" underlying redistricting proposals "reveals [] privileged communication."[20] Specifically, earlier in this case,[21] the Court rejected the argument that "redistricting documents concerning redistricting proposals are not merely factual" but instead "are communications."[22] Rather, the Court concluded that "[b]lanket protection for [such] documents as 'communications'" would reduce "to a nullity" "the principle that the privilege does not shield

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[19] Renewed Mot. at 6.

[20] *See League of United Latin Am. Citizens v. Abbott*, No. 3:21-CV-00299-DCG-JES-JVB, 2022 WL 2921793, at *6–7 (W.D. Tex. July 25, 2022) [hereinafter *Legislators Order*], *vacated*, 2023 WL 4697109 (5th Cir. 2023) (vacating the Court's Order on legislative privilege grounds), *on remand*, 2023 WL 8880313 (W.D. Tex. Dec. 21, 2023) (resolving only issues of legislative privilege while declining to address the attorney-client privilege).

Accordingly, the Court adheres to its prior rulings regarding the attorney-client privilege, which the Fifth Circuit did not address.

See also Ohio A. Philip Randolph Inst. v. Smith, No. 1:18cv357, 2018 WL 6591622, at *3 (S.D. Ohio Dec. 15, 2018) (ordering the production of "facts, data, and maps" over assertions of attorney-client privilege); *First Order to Compel* at *4 (citing *Ohio A. Philip Randolph* approvingly for the proposition that facts, data, and maps are not covered by the attorney-client privilege).

[21] In February and March 2022, the United States served subpoenas *duces tecum* on Texas legislators, their staff, and a staff member of the Texas Legislative Council ("the Legislators") "seeking documents including redistricting proposals, legislative communications, and data used during the redistricting process." *See Legislators Order* at *1.

As noted above, the Court rejected the Legislator's claims of privilege based on attorney-client privilege, the work-product doctrine, and the legislative privilege. While the Fifth Circuit vacated the Court's Order as to its application of the *legislative* privilege, the Fifth Circuit did not address the Court's application of the *attorney-client privilege* or *work-product doctrine*. The Court thus follows its prior Order insofar as the attorney-client privilege and work-product doctrine apply. *See supra* note 20.

[22] *Id*. at *6; *see id.* (rejecting the Legislators' "several examples of how a document containing factual information might well also contain data further manipulated for purposes of describing or evaluating a particular proposal, to thereby effectuate a privileged communication between client and attorney" (cleaned up) (quoting Legislators' Resp., ECF No. 379, at 4)).

underlying facts."[23] Accordingly, the Court held that documents containing redistricting data and related factual information were "not categorically shielded by attorney-client privilege"[24] and required the Legislators produce the data and analyses underlying redistricting proposals.[25] However, to protect any valid claims of attorney-client privilege, the Court allowed the Legislators to produce a redacted version "[t]o the extent any document has annotations or notes implicating bona fide legal advice or containing privileged material."[26]

Thus, in an analogous context, the Court has already rejected the Respondents' argument that documents containing statistical analyses and draft maps are protected by attorney-client privilege.[27] The Court thus follows its prior rulings on attorney-client privilege[28] and orders Respondents to produce the 603 documents containing data and statistical analyses. In accordance with previous directives from the Court, Respondents may redact annotations or notes implicating bona fide legal advice.

2. Emails with Butler Snow Employees and Other Consultants (371 Documents)

The United States additionally argues that "Respondents have failed to prove that the attorney-client privilege applies to the remaining emails exchanged with Butler Snow consultants and attorneys," which (according to the Respondents' privilege log) concern "working concepts

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[23] *Id.* at *7.

[24] *Id.*

[25] *Id.* at *13 (ordering Legislators to produce documents "relating to underlying facts concerning the 2021 Texas State House Redistricting Plan and the 2021 Texas Congressional Redistricting Plan, including those set forth on pages 1–25, 232–255, and 315–356" of ECF No. 351-7).

[26] *Id.* at *7.

[27] Resp. at 8 (arguing that the documents "were necessary for the firm's lawyers to provide legal advice to their clients" and "contain[ed] expert consulting analysis that is inseparable from, is connected to, and underlies legal advice Butler Snow provided to its clients").

[28] *See generally Legislators Order* at *6–11.

of districts," "preliminary planning based on estimates," and "scheduling meetings."[29] In support of its claim, the United States argues that Respondents have failed to meet the privilege's procedural and substantive requirements.[30]

Procedurally, the United States maintains that Respondents' second revised privilege log is deficient because it "repeats boilerplate across all of the logged emails," "relies on vague descriptions," and "is replete with conclusory language."[31] Substantively, the United States argues that "[e]ven putting the second revised privilege log's deficiencies aside, Respondents have not carried their burden of proving that all of the emails are primarily legal, as there are strong bases to believe they instead engaged in political/partisan, nonlegal analysis."[32]

To address the United States' substantive argument, the Court has already determined in a prior Order that communications with Butler Snow and outside mapping consultants (like Respondents)[33] "may well be privileged as containing legal advice."[34] Thus, assuming, without

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[29] Renewed Mot. at 4, 7–8.

[30] *Id.* at 7 ("[T]o prove that the attorney-client privilege applies to the remaining emails exchanged with Butler Snow consultants and attorneys . . ., as a procedural matter, Respondents must specifically assert privilege with respect to particular documents." (cleaned up) (quoting *United States v. El Paso Co*., 682 F.2d 530, 539 (5th Cir. 1982))); *id.* ("And substantively, Respondents must show that the emails were made for the primary purpose of securing either a legal opinion or legal services." (cleaned up) (emphasis omitted) (quoting *Equal Emp. Opportunity Comm'n v. BDO USA*, 876 F.3d 690, 695 (5th Cir. 2017))).

[31] *Id.* at 8–9.

[32] *Id.* at 9.

[33] Notably, Mr. Bryan (one of the Respondents in the instant matter) was also subject to the Court's previous Order. *See Legislators Order* at *11 (concluding that just because "these consultants assisted on 'technical' matters does not categorically move their work beyond the scope of the attorney-client privilege . . . [because] such technical work may well have been necessary in reviewing the legality of the proposed legislation and compliance with the Voting Rights Act").

[34] *See id.* (ordering Legislators to produce documents from Butler Snow and its consultants to the Court for *in-camera* inspection).

deciding, that Respondents' privilege log *is* deficient,[35] "a genuine question as to whether [the email communications] contain[] privileged communications" still remains.[36]

When faced with an inadequate privilege log, the court may:

(1) "permit the party another chance to submit a more detailed log";

(2) "deem the inadequate log a waiver of the privilege";

(3) "conduct an *in camera* inspection of the withheld documents"; or

(4) "conduct an *in camera* inspection of a select sample of the withheld documents."[37]

Thus, the Court will conduct an *in-camera* review in order to determine whether emails with Butler Snow employees and consultants are privileged.[38] The Court thus orders Respondents to produce the contested emails to the Court for *in-camera* inspection[39] (as it did last time such an issue came before the Court).[40]

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[35] *See* Renewed Mot. at 8–9; Reply, ECF No. 657, at 5–7 (arguing that Respondents' second revised privilege log is still deficient and thus waives any privilege claims).

[36] *Logue v. Rand Corp.*, 610 F. Supp. 3d 399, 401 (D. Mass. 2022).

[37] *Civic Center Site Dev., LLC v. Certain Underwriters at Lloyd's London (Consortium #9226)*, No. 23-1071, 2023 WL 5974843, at *4 (E.D. La. Sept. 14, 2023).

[38] *Logue*, 610 F. Supp. 3d at 401 (indicating that when a "genuine question as to whether [an email] contains privileged communications" arises, courts "can and perhaps should conduct an in camera review to settle the issue" "[e]ven if the amended privilege log is now deemed to claim a legitimate privilege").

[39] *See In re Grand Jury Subpoena* (Mr. S.), 662 F.3d 65, 70 (1st Cir. 2011) ("[I]n camera reviews should be encouraged, not discouraged. In that spirit, federal courts commonly—and appropriately—conduct such reviews to determine whether particular documents are or are not privileged.").

See also SEC v. Navellier Assoc., Inc., No. 17-cv-11633, 2019 WL 285957, at *4 (D. Mass. Jan. 22, 2019) ("[T]he decision to conduct an in camera review generally lies within the discretion of [the] court."); *In re Grand Jury Subpoena* (Mr. S.), 662 F.3d at 70 ("When, as in this case, the assertion of privilege is subject to legitimate dispute, the desirability of in camera review is heightened. Even if the parties do not explicitly request such a step, a district court may be well advised to conduct an in camera review" (internal citations omitted)).

[40] *See Legislators Order* at *10–11 ("The Legislators have shown these documents may well be privileged as containing legal advice. That these consultants assisted on 'technical' matters does not

3. Redacted Invoicing Information (74 Documents)

In its Renewed Motion, the United States further argues that Respondents produced 74 emails with improperly redacted descriptions of services performed, hourly rates, and amounts.[41] The United States argues that such documents are relevant to the United States' claims "insofar as they describe the nature, quantity, and value of analysis requested . . . and performed."[42]

Respondents, on the other hand, argue that the redacted materials on the invoices submitted to Butler Snow describe the work they performed for the law firm in detail and are thus privileged. Specifically, Respondents maintain that their redactions to "(1) the narratives describing in detail the work Respondents performed for Butler Snow; and (2) the line-item hourly payments . . . made to Respondents" were justified.[43]

When last faced with this issue, the Court required the Legislators to produce all retention agreements and invoices relating to any legal services provided throughout the redistricting legislation.[44] Still, the Court allowed the Legislators to redact such documents "[t]o the extent [any such] invoices include[d] descriptions that implicate[d] legal advice."[45]

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categorically move their work beyond the scope of attorney-client privilege . . .. Nevertheless, just because attorneys are involved in the process does not automatically shield the work of such technical experts, nor does it necessarily protect all communications between the parties. The documents must be produced to the Court for *in-camera* inspection.").

[41] Renewed Mot. at 4.

[42] *Id.* at 6 & n.1.

[43] Resp. at 10.

[44] *See Legislators Order* at *13.

[45] *Id.*

In the instant matter, Respondents have already provided the United States with responsive emails and attachments containing invoicing information.[46] However, a cursory review of the redacted documents at issue makes it clear that the Court must clarify the type of information that the Respondents may redact.[47]

The Court uses one of the Respondents' produced emails to illustrate.[48] For instance, an email produced by Respondents regarding the "April 2021 Invoice for Texas Redistricting Services" has been so heavily redacted that the Court cannot determine whether the contents are protected by the attorney-client privilege; all but one paragraph in the two-page email have been completely blacked-out.[49] Not only that, but the contents of one of the email's attachments (titled "Appendix 1 2010 to 2020 Census Block Geography Correspondence Changes") have been completely redacted.[50] Again, without more, it is impossible for the Court to determine whether the redacted information is in fact privileged. Finally, upon reviewing Respondents' redactions on the email's second attachment (titled "Appendix 2 March 2021 Summary Invoice"), it becomes clear to the Court that Respondents' redactions are plainly over-broad—at

[46] *Compare id.* at *8 (indicating that the Legislators *withheld* retention agreements and invoices and were thus ordered to produce such documents but were able to make any necessary redactions), *with* Renewed Mot. at 4 (indicating that the Respondents already *produced* 74 emails and attachments but with heavy redactions).

[47] *See, e.g.*, Exhibit 3, ECF No. 634-4 (documents with redactions produced by Respondents), at 42–71 (exemplifying, for instance, that Respondents incorrectly redact the "Description" column in its entirety on each invoice provided).

[48] *Id.* at 56–59 (example of Respondents' redactions on a two-page email with two appendices).

[49] *Id.* at 56–57 (providing only one paragraph of substantive text in a two-page email).

[50] *Id.* at 58 (illustrating that aside from the title, the entire document (Appendix 1) has been redacted).

least in this instance.[51] In particular, Respondents have (incorrectly) redacted in their entirety the columns describing (1) the service they provided to Butler Snow and (2) the number of hours spent doing so.[52]

What's worse is that Respondents' privilege log contains near-identical boilerplate claims of privilege for each entry of a similar type (*i.e.*, each monthly invoice email and its related attachments are described with the same generalized boilerplate language).[53] Thus, the Court cannot determine whether Respondents' redactions are proper.

For one, the Fifth Circuit has specifically held that "the general nature of services [provided] is not protected by the [attorney-client] privilege."[54] "As another general rule, client

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[51] *See id*. at 59 (illustrating that on the "March 2021 Summary Invoice," the date and net amount of money are provided, while the description of the task and the number of hours performed are redacted).

[52] *Id.* (redacting in full descriptions of the services provided and the amount of hours spent on each service).

In response to the United States' Renewed Motion, Respondents maintain that "federal courts routinely hold that narratives on invoices describing legal work fall within the scope of the attorney-client privilege." Resp. at 10–11 (citing cases). However, Respondents' selective readings of the cases they cite is unavailing. For example, one of the cases Respondents rely on to support their redactions describing the work performed and number of hours doing so also stands for the proposition that "[b]illing records and hourly statements which do not reveal client communications usually are not privileged." *Cottier v. City of Martin*, No. CIV 02-5021, 2007 WL 4568989, at *3 (D.S.D. Dec. 19, 2007); *see* Resp. at 10–11 (citing *Cottier* to justify redactions). Furthermore, the same courts that Respondents rely on have held that "[a] blanket claim of privilege is not sufficient, and it is not the Court's responsibility to peruse the documents and pick out privileged information." *E.g.*, *Cottier*, 2007 WL 4568989, at *3. Thus, without a more precise privilege log explaining Respondents' redactions, the Court cannot determine whether Respondents' redactions correctly fall within the scope of privilege. *See infra* note 53 and accompanying text.

[53] *See, e.g.*, Exhibit 1, ECF No. 634-2 (Respondents' revised Privilege Log), at 71 (describing eight of the documents that Respondents produced with redactions with identical privilege log descriptions—"Confidential invoice from Butler Snow consultant describing work performed at the direction of Butler Snow attorneys that was relied upon by Butler Snow attorneys in providing advice to their clients").

[54] *Nguyen v. Excel Corp.*, 197 F.3d 200, 206 (5th Cir. 1999); *see also Monroe's Estate v. Bottle Rock Power Corp.*, No. 03-2682, 2004 WL 737463, at *11 (E.D. La. Apr. 2, 2004) ("[T]he purpose for which an attorney was retained and the steps taken by the attorney discharging his obligations are not privileged.").

identities and fee arrangements are not protected as privileged."[55] Thus, "financial transactions between the attorney and client, including the compensation paid by or on behalf of the client are not within the privilege except in special circumstances not present here."[56]

In applying this standard, district courts have held that "[i]t follows that billing statements and hourly records also fall short of attorney-client privilege protection."[57] Accordingly, "attorney[s'] retainer agreements," "information relating [to] billing, contingency fee contracts, fee-splitting arrangements, hourly rates, hours spent by attorneys working on the litigation, [] payment [of] attorney's fees," "[b]illing statements, phone logs, transmittal letters, fax cover sheets and/or records which simply reveal the amount of time spent, the amount billed and the type of [fee] arrangement are fully subject to discovery."[58] Thus, Respondents' claims of

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[55] *Taylor Lohmeyer Law Firm P.L.L.C. v. United States*, 957 F.3d 505, 510 (5th Cir. 2020) (cleaned up) (quoting *In re Grand Jury Subpoena for Att'y Representing Crim. Defendant Reyes-Requena*, 926 F.2d 1423, 1431 (5th Cir. 1991)); *see also Crum & Forster Specialty Ins. Co. v. Great W. Cas. Co.*, No. EP-15-cv-00325-DCG, 2016 WL 10459397, at *8 (W.D. Tex. Dec. 28, 2016) ("The Fifth Circuit has long recognized the general rule that matters involving the payment of attorney's fees are not generally privileged." (cleaned up) (quoting *In re Grand Jury Subpoena*, 913 F.2d 1118, 1123 (5th Cir. 1990))); *Hill v. Hunt*, No. 3:07-CV-02020-O, 2008 WL 4108120, at *7 (N.D. Tex. Sept. 4, 2008).

[56] *United States v. Davis*, 636 F.2d 1028, 1044 (5th Cir. Unit A Feb. 1981) (cleaned up); *see also Hunter v. Copeland*, No. Civ.A. 03-2584, 2004 WL 1161368, at *5 (E.D. La. May 24, 2004) ("[S]tatements and invoices . . . [and] fee arrangements are [] outside the protection of the attorney-client privilege."); *Reynolds v. State Farm Ins. Co.*, No. 06-3203, 2007 WL 9811024, at *3 (E.D. La. Oct. 29, 2007) ("Correspondence about, payments of and invoices for attorney's fees are not protected from discovery by the attorney-client privilege. The invoices themselves are merely a byproduct of the fact of the representation and are not protected by any of the asserted privileges or doctrines." (cleaned up) (quoting *Stonehenge/Fasa-Tex., JDC, L.P. v. Miller*, No. Civ.A. 3:94-CV-0912-G, 1998 WL 826880, at *1 (N.D. Tex. Nov. 23, 1998))).

[57] *Hunter*, 2004 WL 1161368, at *5; *see also Stonehenge/Fasa-Texas*, 1998 WL 826880, at *2–3 (holding that invoices are not protected from discovery by the attorney-client privilege or the work product doctrine since they are "merely a byproduct of the fact of the representation").

[58] *Monroe's Estate v. Bottle Rock Power Corp.*, No. 03-2682, 2004 WL 737463, at *11 (E.D. La. Apr. 2, 2004); *see also S. Scrap Material Co. v. Fleming*, No. Civ.A. 01-2554, 2003 WL 21474516, at *13 (E.D. La. June 18, 2003) ("Information relating to billing, contingency fee contracts, fee-splitting arrangements, hourly rates, hours spent by attorneys working on litigation, and payment of attorney's fees does not fall within the attorney-client or the work product privilege.").

attorney-client privilege as applied to their invoicing information (*e.g.*, the amount of time spent on a particular task and the descriptions of services performed) are misplaced.[59]

Accordingly, the Court orders Respondents to re-produce the 74 documents at issue to the United States *without* redactions as to the general description of each service performed,[60] the accompanying number of hours spent on each task,[61] and the respective hourly rate[62] (at the very least).[63] The Court further orders Respondents to re-review these documents and ensure that any redactions are in accordance with this Order and the legal standard as described therein.[64]

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[59] *See, e.g.*, *Taylor Energy Co., L.L.C. v. Underwriters at Lloyd's London Subscribing to Ins. Coverage Evidence by Pol'y No. HJ109303*, No. 09-6383, 2010 WL 3952208, at *2 (E.D. La. Oct. 7, 2010) ("This Court finds that information such as contingency fee contracts, hourly rates, hours spent by attorneys working on this litigation, attorney's fees charged and costs incurred are not confidential communications and are therefore not privileged. Invoices are not protected from discovery by the attorney-client privilege. The invoices themselves are merely a byproduct of the fact of the representation and are not protected by any of the asserted privileges." (cleaned up) (quoting *Stonehenge/Fasa-Texas, JDC, L.P. v. Miller*, 1998 WL 826880, at *1)).

[60] *Nguyen*, 197 F.3d at 206 (General descriptions of the work provided are not protected by the attorney-client privilege.).

[61] *Taylor Energy Co.*, 2010 WL 3952208, at *2 (The number of "hours spent by attorneys working on this litigation . . . are not 'confidential communications' and are therefore not privileged.").

[62] *Id.* ("[H]ourly rates . . . are not 'confidential communications' and are therefore not privileged.").

[63] *E.g.*, *Chaudhry v. Gallerizzo*, 174 F.3d 394, 402 (4th Cir. 1999) ("Typically, the attorney-client privilege does not extend to billing records and expense reports.").

[64] The Court notes that Respondents' email correspondence about/associated with these payment documents may also be subject to disclosure. *Reynolds*, 2007 WL 9811024, at *3 ("Correspondence about, payments of and invoices for attorney's fees are not protected from discovery by the attorney-client privilege." (cleaned up) (quoting *Stonehenge/Fasa-Texas, JDC, L.P. v. Miller*, 1998 WL 826880, at *1)).

Furthermore, any redactions must be indicated on a revised privilege log. At present, Respondents' most recent privilege log[65] fails to provide the level of specificity required.[66] Specifically, Respondents' privilege log "does not set forth facts that suffice to establish that each element of the privilege claimed is applicable."[67] The Court thus reminds Respondents that they may *only* redact information that reveals a "specific research or litigation strategy which would be entitled to protection from disclosure."[68] Should Respondents continue redacting documents

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[65] *See, e.g.,* Exhibit 1 at 71 (providing the same non-specific description for eight entries); *id.* at 70 (indicating that all documents contain "[c]onfidential redistricting analysis performed at the direction of Butler Snow attorneys relied upon in providing advice to their clients").

[66] *See Taylor Energy Co.*, 2010 WL 3952208, at *2 ("For example, privilege log entries that state that the documents address 'legal advice' lack sufficient information. Further, the mere assertion of a lawyer that responsive materials or information are attorney-client privileged . . . is not evidence establishing that the information is privileged." (cleaned up) (quoting *Estate of Manship*, 232 F.R.D. 552, 561 (M.D. La. 2005))).

While Respondents argue that the privilege log standards for nonparties, such as themselves, are less rigorous than those for parties, *see* Resp. at 13–14, their argument is unavailing. *See, e.g.*, *Am. Federation of Musicians of the U.S. & Canada v. Skodam Films, LLC*, 313 F.R.D. 39, 46 (N.D. Tex. 2015) ("A non-party's Rule 45(d)(2)(B) objections to discovery requests in a subpoena are subject to the same prohibition on general or boiler-plate objections and requirements that the objections must be made with specificity and that the responding party must explain and support its objections. The Court can see no reason to distinguish the specificity required in a non-party's written objections to document requests in a subpoena from that required in a party's objections to document requests that the Federal Rules authorize as to parties." (cleaned up)); *id.* (noting that "Rule 45(e)(2) governs a non-party's withholding of information on the grounds of privilege" and is "substantively identical to Rule 26(b)(5)'s requirements as to a responding party"); *id*. (concluding that "general or so-called boilerplate or unsupported objections are improper under Rule 45(d)(2)(B)").

[67] *Taylor Energy Co.*, 2010 WL 3952208, at *2 (indicating that "[d]ocument descriptions such as 'Email forwarding attorney client communication,' 'Email regarding attorney input and advice regarding anticipated litigation issues,' and 'Email forwarding attorney report' fail[ed] to set forth adequate facts for this Court—and for plaintiff—to determine whether the claimed privilege protects the document from disclosure"). *Compare id*. *with* Exhibit 1 at 70 (using the same vague and non-descript language for *each* entry (*e.g.*, "Confidential redistricting analysis . . . relied upon in providing advice to their clients") that courts have found insufficient).

[68] *Chaudhry*, 174 F.3d at 402 (4th Cir. 1999) (quoting *Clarke v. Am. Com. Nat'l Bank*, 974 F.2d 127, 130 (9th Cir. 1999)); *see also id.* 402–03 (citing *In re Grand Jury Proceedings*, 33 F.3d 342, 354 (4th Cir. 1994) for the proposition that "the determination as to whether attorney billing statements are privileged hinges on whether the statements reveal something about the advice sought or given").

under a claim of attorney-client privilege, the Court orders Respondents to provide an updated privilege log "identifying any responsive documents, the author(s) of the document, the recipient(s) . . . of the document, the subject matter of the document, the date of the document, and *a specific explanation of why the document is privileged or excluded from discovery*" as required by the Federal Rules of Civil Procedure.[69]

While Respondents argue that they have satisfied the aforementioned standard,[70] they are incorrect. As far as the Court can tell, Respondents have not addressed any of the redactions they have made in the 74 documents at issue with the required specificity. For instance, in the example described above (a heavily redacted invoice email with two documents attached), Respondents' privilege log merely recites a boilerplate "description" and adds: "Produced on 10.19 2022 with confidential/privileged information redacted."[71] This, however, is not enough; Respondents must provide the Court with enough information to be able to determine whether the redacted information classifies as a *confidential* communication made for the *primary* purpose of legal advice or services (and is thus protected by attorney-client privilege).[72] Moreover, Respondents must provide the Court with a privilege log that explicitly explains why

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[69] *Cinclips, LLC v. Z Keepers, LLC*, No. 8:16-cv-1067-T-23JSS, 2017 WL 1065560, at *2 (M.D. Fla. Mar. 21, 2017) (emphases added); *see, e.g.*, FED. R. CIV. P. 26(b)(5)(A) ("When a party withholds information otherwise discoverable by claiming that the information is privileged . . . the party must" "describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.").

See also supra note 66 (noting that Rule 45(e)(2)'s requirements are "substantively identical" to those provided by Rule 26(b)(5)).

[70] *See* Resp. at 14–15.

[71] *See* Exhibit 1 at 71 (providing the same text for that document and seven separate log entries) *and supra* note 53 discussing the identical boilerplate "description" columns for those entries.

[72] *See, e.g.*, *United States v. Robinson*, 121 F.3d 971, 974 (5th Cir. 1997) (providing the standard for attorney-client privilege).

the document is privileged in accordance with the directives in this Order. The Court warns Respondents that "where descriptions in the privilege log fail to meet this standard, then disclosure [of the document in full] is an appropriate sanction."[73]

4. Withheld Documents

Finally, the United States alleges that Respondents may still have unlogged and unproduced documents in their possession—namely, unlogged and unproduced attachments to emails. According to the United States, "[d]ocuments already produced by Respondents suggest that [Respondents] may continue to withhold other relevant documents that have not been logged."[74] Specifically, the United States claims that Respondents have redacted "attachment notations" from the emails they have produced (*i.e.*, the United States claims Respondents have redacted the area and associated text where attachments to an email are typically indicated). Moreover, the United States maintains that Respondents have failed to indicate the existence of such attachments (and their contents) in their privilege log.[75] Respondents do not appear to address the United States' argument.[76]

The Court thus orders Respondents to:

(1) **re-review** each email they have produced to the United States and **remove** any redactions to "attachment notations" in those emails;
(2) **re-produce** the responsive emails (without redactions to any "attachment notations") and indicate any changes on the privilege log;
(3) **produce** and **log** any associated attachments; and

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[73] *Taylor Energy Co.*, 2010 WL 3952208, at *1 (cleaned up) (quoting *Smithkline Beecham Corp. v. Apotex Corp.*, 193 F.R.D. 530, 534 (N.D. Ill. 2000)).

[74] Renewed Mot. at 11.

[75] *Id.* ("Respondents did not produce any additional documents that may have been attached to other redacted or withheld emails. Yet redacted documents appear to withhold information regarding attachments." (internal citation omitted)).

[76] *See* Reply at 6 ("Respondents do not address the United States' argument that they have waived discovery protections over any remaining unlogged and unproduced responsive documents.").

(4) (if any redactions are made) **indicate** the *specific* reason that such information is privileged and redacted on their privilege log.[77]

Furthermore, the Court prohibits Respondents from redacting any "attachment notations" in any future productions.

The Court reminds Respondents of their obligation to produce a compliant privilege log.[78] "Rule 26(b)(5)(A) requires production of a log when a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial preparation material."[79] To be compliant, Respondents must include all documents *and* their attachments in their privilege log. Furthermore, for *every* withheld document and *all* redactions, Respondents must provide a description of the document/redaction detailed enough to enable the United States to assess the validity of Respondents' attorney-client privilege claim.

The Court orders Respondents to file an updated privilege log once they have complied with the directives in this Order and provided the United States with the documents this Order requires. The Court warns Respondents that failure to comply with this Order and create a sufficient privilege log may result in a waiver of Respondents' privilege claims.[80] Thus,

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[77] *See AIDS Healthcare Found., Inc. v. City of Baton Rouge/Par. of E. Baton Rouge Through City of Baton Rouge Div. of Hum. Dev. & Servs.*, No. 17-229-BAJ-RLB, 2019 WL 1546937, at *1 (M.D. La. Apr. 9, 2019) ("[Defendant] must clarify whether any attachments have been withheld from production and, to the extent such attachments have been withheld, the subject matter of the attachment and the basis for withholding the attachment.").

[78] *First Order to Compel* at *4–5.

[79] *Lewis v. Galliano Marine Serv., LLC*, No. 19-7878, 2020 WL 6947428, at *2 (E.D. La. Apr. 24, 2020) (cleaned up) (quoting *Benson v. Rosenthal*, No. CV 15-782, 2016 WL 1046126, at *9 (E.D. La. Mar. 16, 2016)); *see also id.* ("The Federal Rules of Civil Procedure make clear that when documents are withheld *or information is redacted*, a privilege log needs to be produced." (emphasis added)).

[80] *See First Order to Compel* at *4 ("Respondents have not yet waived their privilege claims. The United States has not argued that Respondents have continually failed to adhere to Rule 26's prescriptions." (cleaned up) (quoting *BDO USA*, 876 F.3d at 697)).

Respondents must log and/or produce all documents and attachments that are responsive to the United States' request. Any withheld and/or unlogged document must therefore be produced.

CONCLUSION

The Court **GRANTS** the United States' "Renewed Motion to Compel Production of Bryan and Wienckowski Documents" (ECF No. 634) **IN PART**.

Respondents are **ORDERED** to produce documents concerning draft maps and statistical analyses (603 documents).

Respondents are **ORDERED** to **RE-REVIEW** the documents they provided to the United States that contain redacted invoicing information. Respondents must then **REMOVE** all redactions that: (1) describe the nature of the service provided; (2) provide an hourly rate; and (3) list the number of hours spent on each service/task. Therefore, Respondents must **INCLUDE** general descriptions of the work provided and all line-item information relating to the payment/cost of such work *and* the amount of time spent. Respondents must then **RE-PRODUCE** these unredacted versions of the documents (74 documents) to the United States and **INDICATE** any changes and remaining claims of privilege on an updated privilege log.

Respondents are **ORDERED** to produce to the Court for *in-camera* inspection all emails with Butler Snow attorneys and consultants (371 documents).

Respondents are **ORDERED** to produce any document where the work-product doctrine is Respondents' only claim of protection.

Respondents are **ORDERED** to remove any "attachment notation" redactions from the emails they previously provided to the United States and **RE-PRODUCE** unredacted versions of these documents to the United States. Respondents must additionally **PRODUCE** and **LOG** any attachments associated with these emails.

Respondents are **ORDERED** to produce a revised privilege log for any withheld document and any document that contains redactions. Respondents' privilege log **MUST INCLUDE** specific and detailed descriptions of the document and any redactions so that the Court and the United States may assess the veracity of Respondents' claims of privilege.

Lastly, Respondents are **ORDERED** to **PRODUCE** any withheld or unlogged documents where no privilege validly applies under the terms of this Order.

Respondents may *only* redact documents where annotations or notes implicate bona fide legal advice.

Respondents are **ORDERED** to produce these documents within 14 days of this Order by **September 23, 2024**. Furthermore, Respondents **SHALL FILE** a revised privilege log also by that date on **September 23, 2024**.

So ORDERED and SIGNED this 9th day of September 2024.

DAVID C. GUADERRAMA
SENIOR U.S. DISTRICT JUDGE

And on behalf of:

Jerry E. Smith
United States Circuit Judge
U.S. Court of Appeals, Fifth Circuit

-and-

Jeffrey V. Brown
United States District Judge
Southern District of Texas