

**United States District Court  
Western District of Texas  
Austin Division**

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

GREG ABBOTT, in his capacity as  
Governor of the State of Texas, and  
THE STATE OF TEXAS,

*Defendants.*

No. 1:23-cv-00853-DII

**DEFENDANTS' NOTICE OF  
MOTION TO CONSOLIDATE IN RELATED CASE**

Defendants provide notice to the Court that this lawsuit is one of two pending cases in the Austin Division of the Western District of Texas challenging Texas's installation of foam-and-plastic buoys in the Rio Grande River. The other case is *Epi's Canoe & Kayak Team, LLC v. State of Texas*, No. 1:23-cv-836 (W.D. Tex.) (filed in state court prior to removal on July 7, 2023, removed on July 21, 2023).

Pursuant to the Fifth Circuit's first-to-file rule, Defendants filed the partially opposed Motion to Consolidate in the *Epi's Canoe* case (attached as Exhibit A). As explained in the Motion, as the court where suit was first filed, it is the duty of the *Epi's Canoe* court to determine if the issues presented in this case substantially overlap and, if they do, what to do with the subsequently filed case. *Mann Mfg., Inc. v. Hortex, Inc.*, 439 F.2d 403, 408 (5th Cir. 1971).

Date: August 2, 2023

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

On August 2, 2023, this document was filed electronically through the Court's CM/ECF system, which automatically serves all counsel of record.

/s/ David Bryant