

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

CITY OF EL CENIZO, et al.,

*Plaintiffs,*

v.

STATE OF TEXAS, et al.,

*Defendants.*

No. 5:17-cv-404-OG

[Lead Case]

EL PASO COUNTY, et al.,

*Plaintiffs,*

v.

STATE OF TEXAS, et al.,

*Defendants.*

No. 5:17-cv-459-OG

[Consolidated Case]

CITY OF SAN ANTONIO, et al.,

*Plaintiffs,*

v.

STATE OF TEXAS, et al.,

*Defendants.*

No. 5:17-cv-489-OG

[Consolidated Case]

**DEFENDANTS' MOTION TO  
DISMISS OR TRANSFER TRAVIS  
COUNTY'S COMPLAINT IN  
INTERVENTION (ECF NO. 78)**

On June 20, 2017, the Court granted the Travis County's Motion to Intervene. ECF No. 68. Texas now moves, pursuant to Federal Rules of Civil Procedure 7 and 12(b)(3), and 28 U.S.C. §§ 1404 and 1406, for this Court to dismiss the City's Complaint in Intervention (ECF No. 78) or transfer it for consolidation with a related, first-filed matter pending in this Court's Austin Division, *Texas v. Travis County, Texas, et al.*, No. 1:17-cv-425-SS, in which Travis County is a named defendant.<sup>1</sup> Travis County is located within the Austin Division, has no connection to the San Antonio Division, and alleges that the actions that form the basis of its claims occurred within the confines of the Austin Division. *See* ECF No. 37 ¶¶ 20–44. 28 U.S.C. § 124(d)(1). Venue is thus improper in the San Antonio Division.

In further support of this Motion, Texas incorporates by reference the arguments and authorities raised in its Memorandum of Law in Support of Defendants' Motion to Dismiss or Transfer the Consolidated Cases, ECF No. 32-1, and requests that Travis County's claims be dismissed, or alternatively, transferred to the Austin Division for consolidation with Case No. 1:17-cv-425-SS.<sup>2</sup>

---

<sup>1</sup> On June 20, 2017, the Court held Texas's Motion to Dismiss or Transfer the Consolidated Cases in abeyance pending a decision on subject matter jurisdiction in the Austin Division case. ECF No. 66. Texas is aware of the Court's order but files this Motion to ensure that there is a responsive pleading to the County's operative complaint on file. Moreover, Texas asserts that this case should be dismissed or transferred regardless of the outcome of the Austin Division case.

<sup>2</sup> Courts within the Fifth Circuit have routinely accepted and addressed the merits of arguments that have been incorporated by reference to earlier-filed motions. *See, e.g., Chaverri v. Dole Food Co., Inc.*, 2012 WL 2087409, at \*3 (E.D. La. June 8, 2012) (noting that it was sensible for the defendant to incorporate by reference arguments raised in earlier motions to dismiss because the defendant raised many of the same arguments in those earlier motions); *Phoenix Licensing L.L.C. v. CenturyLink Inc.*, 2015 WL 5786582, at \*1 (E.D. Tex. Sept. 30, 2015). Indeed, in Travis County's reply brief in support of its motion for intervene, the County incorporates by reference its earlier briefing in this case and its briefing in the Austin litigation. *See* ECF No. 47 at 1–2.

Respectfully submitted this the 22nd day of June, 2017.

KEN PAXTON  
Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

BRANTLEY D. STARR  
Deputy First Assistant Attorney General

MICHAEL C. TOTH  
Special Counsel to the First Assistant  
Attorney General

ANDREW D. LEONIE  
Associate Deputy Attorney General

AUSTIN R. NIMOCKS  
Associate Deputy Attorney General

/s/ Darren McCarty  
DARREN MCCARTY  
Special Counsel for Civil Litigation  
Texas Bar No. 24007631  
darren.mccarty@oag.texas.gov

DAVID J. HACKER  
Senior Counsel

JOEL STONEDALE  
Counsel  
Office of Special Litigation  
ATTORNEY GENERAL OF TEXAS  
P.O. Box 12548, Mail Code 009  
Austin, Texas 78711-2548  
Tel.: (512) 936-1414  
Fax: (512) 936-0545

*ATTORNEYS FOR TEXAS*

**CERTIFICATE OF SERVICE**

I, Darren McCarty, hereby certify that on this the 22nd day of June, 2017, a true and correct copy of the foregoing document was transmitted using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

*/s/ Darren McCarty*  
DARREN MCCARTY