



GOVERNOR GREG ABBOTT

July 30, 2021

The Honorable Merrick Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Dear Attorney General Garland:

This letter responds to your letter dated July 29, 2021, in which you state that my Executive Order GA-37 “would jeopardize the health and safety of noncitizens.” It is clear from the arguments in your letter that the State of Texas and the federal government face a constitutional crisis.

The authority that you assert to protect noncitizens directly conflicts with my authority, and duty, to protect citizens of Texas and the United States. The constitutions and laws of the United States and of Texas empower me, as Governor, to protect the health and safety of Texans. *See, e.g.*, U.S. Const. amend. X; Tex. Const. art. IV, §§ 1, 10; Tex. Gov’t Code ch. 418. Your actions, combined with the actions and omissions of the Biden Administration, directly conflict with my authority as Governor; and, candidly, conflict with the duty and obligation imposed on the Biden Administration to apply and enforce the immigration laws passed by the United States Congress.

The Biden Administration is failing and refusing to enforce immigration laws by allowing migrants to unlawfully enter into the United States. No doubt, the Constitution authorizes the federal government, not states, to administer the immigration process. However, the Constitution does not allow the Biden Administration to fabricate its own immigration laws. *See, e.g., United States v. Texas*, 136 S. Ct. 2271 (2016) (per curiam); *DHS v. Regents of Univ. of Cal.*, 140 S. Ct. 1891, 1921–26 (2020) (Thomas, J., dissenting). Instead, the Administration is limited to applying laws enacted by Congress.

Worse, the Biden Administration is knowingly admitting hundreds of thousands of unauthorized migrants, many of whom the federal government knows full well have COVID-19. To be clear, the Biden Administration is knowingly importing COVID-19 into Texas from across the border and knowingly exposing Texans and Americans to that disease. While the Biden Administration is openly pondering looming shutdowns and mandates on U.S. citizens to control the spread of

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COVID-19, at the same time the Administration is knowingly worsening the problem by importing COVID-19 at extreme rates.

Under long-established emergency response laws used by Texas in partnership with the federal government, I have the authority to control the movement of people to contain the spread of a disaster. Tex. Gov't Code § 418.018(c). An obvious application of that standard is to limit the movement of people who are likely to have COVID-19. The assertion of this authority in Executive Order GA-37 is limited only to intra-state movement. It in no way interferes with either inter-state or international movement.

There are several actions the Biden Administration can take to avert a constitutional showdown while also addressing the public health concerns that my Executive Order seeks to achieve.

First, the Administration can ensure that any unauthorized migrants it allows to enter the United States remain only on federally owned or operated land. Already, the federal government is operating multiple migrant facilities along the border, presumably in ways that minimize or eliminate the potential for migrants infected with COVID-19 to transmit the disease to Texans. The federal government has the resources and capability to house those migrants while minimizing the transportation of infected migrants into Texas cities and towns.

Alternatively, the Biden Administration could simply enforce the existing federal immigration laws and stop admitting migrants who are not authorized by Congress to be admitted. That would substantially reduce the importation of COVID-19 while also fulfilling the federal government's role to faithfully execute the laws of the United States.

My office remains committed to working with you and the Department of Justice to ensure that we achieve the twin goals of applying the laws of the United States and of this state, while also preventing the knowing importation of COVID-19 into our communities.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Abbott". The signature is fluid and cursive, with a prominent "G" and "A".

Greg Abbott  
Governor

GA: jod