



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

July 29, 2021

The Honorable Greg Abbott
Governor of Texas
P.O. Box 12428
Austin, TX 78711-2428

Dear Governor Abbott:

I urge you to immediately rescind Executive Order GA 37, entitled *Relating to the transportation of migrants during the COVID-19 disaster*. The Order purports to mandate that “[n]o person, other than a federal, state, or local law-enforcement official, shall provide ground transportation to a group of migrants who have been detained by [U.S. Customs and Border Protection] for crossing the border illegally or who would have been subject to expulsion under the Title 42 order.” EO GA 37 ¶ 1. As explained below, the Order is both dangerous and unlawful.

The Order would jeopardize the health and safety of noncitizens in federal government custody, federal law enforcement personnel and their families, and our communities. Among other harms, the Order would exacerbate and prolong overcrowding in facilities and shelters and obstruct the federal government’s arrangements with state, local, and non-governmental partners to ensure that released individuals are transported for appropriate COVID-19 testing to address public health concerns. Additionally, because federal law requires individuals processed for release to appear before immigration courts or report to U.S. Immigration and Customs Enforcement offices throughout the country, the Order directly interferes with the implementation of federal immigration law.

The Order violates federal law in numerous respects, and Texas cannot lawfully enforce the Executive Order against any federal official or private parties working with the United States. The United States advances its immigration and public health functions in Texas through a variety of federal officials, contractors, and grantees. Some federal officials who work in Texas on behalf of agencies including the Department of Health & Human Services, the Department of Homeland Security, and the Federal Emergency Management Agency may not be considered “law-enforcement official[s]” exempted from the Order. But, under the Supremacy Clause of the U.S. Constitution, a state may not interfere with or obstruct these federal officials in the performance of their duties. *See Trump v. Vance*, 140 S. Ct. 2412, 2425 (2020) (States can neither “control the operations of the constitutional laws enacted by Congress,” nor impede the Executive Branch’s “execution of those laws.”); *Johnson v. Maryland*, 254 U.S. 51, 56–57 (1920) (holding that state laws cannot “control the conduct of” individuals “acting under and in pursuance of the laws of the United States”).

Likewise, Texas cannot regulate the operations of private parties performing tasks on behalf of the United States. See *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 181 (1988) (“[A] federally owned facility performing a federal function is shielded from direct state regulation, even though the federal function is carried out by a private contractor, unless Congress clearly authorizes such regulation.”); *Boeing Co. v. Movassaghi*, 768 F.3d 832, 840 (9th Cir. 2014) (holding unconstitutional a state law that “directly interfere[d] with the functions of the federal government” by “mandat[ing] the ways in which [a contractor] renders services that the federal government hired [it] to perform”). The Order therefore cannot be applied to private parties working with the federal government to provide transportation for migrants.

Moreover, Texas has no authority to interfere with the United States’ “broad, undoubted power over the subject of immigration” by impairing the United States’ release of individuals and the ability of those individuals to comply with federal immigration law. See *Arizona v. United States*, 567 U.S. 387, 395–416 (2012). To the extent the Order interferes with immigration enforcement, the Order is unconstitutional.

In short, the Order is contrary to federal law and cannot be enforced. Accordingly, consistent with its authorities under federal law, the United States will continue its noncitizen transportation operations unabated. I urge you to immediately rescind the Order. If you do not do so, I am providing notice consistent with Section 1-10.100 of the Justice Department’s *Justice Manual* that the United States intends to pursue all appropriate legal remedies to ensure that Texas does not interfere with the functions of the federal government.

Sincerely,

A handwritten signature in black ink, appearing to read "Merrick Garland", written in a cursive style.

Merrick B. Garland
Attorney General

Cc: The Honorable Ken Paxton
Attorney General of Texas
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