



GENTNER DRUMMOND
ATTORNEY GENERAL

May 17, 2024

Via Email

Bryan M. Boynton
Principal Deputy Assistant Attorney General
Brian.M.Boynton@usdoj.gov

Dear Mr. Boynton,

I'm writing in response to your disingenuous letter of May 15, 2024, where you falsely assert that the Biden Administration "is committed to the processing of noncitizens consistent with the Immigration and Nationality Act." One thing that has been glaring over the last 3.5 years is that the Biden Administration is only "committed" to subverting the immigration laws of this country.

My office—and the millions of law-abiding Oklahomans whom it is my privilege to serve—will not accept lectures or threats about immigration from this failed Administration. To do otherwise in this instance would ignore the fundamental safety of our citizens and the integrity of our borders, and it would represent an inexcusable dereliction of my own duty as Oklahoma's chief law officer.

Essentially, your position is that Oklahoma's newly enacted House Bill (HB) 4156 "is preempted by federal law and violates the United States Constitution." Accordingly, you declare your intention to file a lawsuit against the State of Oklahoma if it does not accede to your demands to enjoin its enforcement by this coming Monday. Your misguided demands ignore that Oklahoma has not only the sovereign right, but also the solemn legal obligation, to protect its own borders and its own citizens. You are wrong about our law—and if the Biden Administration sues over it, I will vigorously defend Oklahoma and its people.

Oklahoma's HB 4156 was enacted as a reasoned, direct response to what both the Oklahoma Legislature *and* President Biden have frankly and accurately described as a "crisis" of unlawful immigration. *See* Okla. House Bill No. 4156, 59thLeg., 2nd Reg. Sess., § 1(B); THE WHITE HOUSE, *Statement from President Joe Biden on the Bipartisan Senate Border Security Negotiations* (Jan. 26, 2024). Not surprisingly, President Biden does not mention that this crisis is a direct result of his refusal to enforce the laws passed by Congress. Oklahoma has been forced to address the consequences of President Biden's border failure as best it can. Amid an unprecedented immigration influx, Oklahoma grapples daily with startling and significant economic, health, and public-safety issues. For Oklahoma, inaction is no longer an option.

This crisis was—and remains—avoidable. Nevertheless, Oklahoma is compelled to bear the brunt of the Biden Administration’s own failure to adequately enforce national immigration laws. Acquiescence to this intolerable situation is not in my state’s DNA; neither is surrender. As such, HB 4156 represents a meaningful, common-sense, and legally permissible step toward addressing and correcting that which the Biden Administration has willfully refused to enforce the last 3.5 years. Our law is straightforward: if a person lacks legal authorization to enter the United States, then he or she likewise may not enter and stay in the State of Oklahoma.

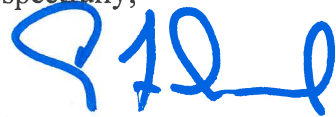
The preemption analysis espoused in your letter is dubious at best. Undoubtedly, the federal government has “broad” authority over the subject of immigration. *Arizona v. United States*, 567 U.S. 387, 394 (2012). But this expansive power has never equated to exclusive power. Notwithstanding your total reliance on it, *Arizona* does not hold that the federal government enjoys complete control over every aspect of our nation’s immigration policy. In *Arizona*, the Court concluded only that the federal government fully occupied the “field of alien registration.” *Id.* at 402. Nowhere does *Arizona*—or any other U.S. Supreme Court decision—say that a state may never enact any legislation whatsoever involving immigration issues. This renders untenable your claim of total preemption.

In any event, HB 4156 does not create a separate immigration system for Oklahoma. This is not even close. Rather, Oklahoma is exercising its concurrent and complementary power as a sovereign state to address an ongoing public crisis within its borders through appropriate legislation. Put more bluntly, Oklahoma is cleaning up the Biden Administration’s mess through entirely legal means in its own backyard—and will resolutely continue to do so by supplementing federal prohibitions with robust state penalties. In short, Oklahoma “has moved to protect its sovereignty—not in contradiction of federal law, but in complete compliance with it. The laws under challenge here do not extend or revise federal immigration restrictions, but merely enforce those restrictions more effectively.” *Arizona*, 567 U.S. at 437 (Scalia, J., concurring in part and dissenting in part).

As a final matter, I wish to describe what enforcement of HB 4156 will and will not look like in Oklahoma. This law is a powerful tool to combat those foreign nationals who enter and remain in this country illegally, and who become involved in serious criminal activity such as illegal marijuana-grow operations, fentanyl distribution, sex trafficking, and labor trafficking. At the same time, I emphasize that racial profiling of any sort is not only unacceptable under any circumstances, but also illegal in Oklahoma. See Okla. Stat. tit. 22, § 34.3 (forbidding racial profiling by any law-enforcement agency and making such offense a misdemeanor). To detain someone who looks, sounds, or acts “foreign” is itself un-American and will never be tolerated by this office.

In our system of cooperative federalism, HB 4156 does not conflict with federal law. For these reasons, Oklahoma cannot and will not forbear the enforcement of HB 4156. My sincere hope is that this Administration will take this opportunity to start enforcing the immigration laws of this country rather than needlessly attacking states' commonsense approaches to combatting the crisis caused by this Administration.

Respectfully,



GENTNER DRUMMOND
Attorney General