



**U.S. Department of Justice**

**Civil Rights Division**

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*Assistant Attorney General  
950 Pennsylvania Ave, NW - RFK  
Washington, DC 20530*

August 16, 2021

Honorable Ken Paxton  
Attorney General of Texas  
Office of the Attorney General  
300 W. 15th Street  
Austin, TX 78701

Steven C. McCraw  
Director, Texas Department of Public Safety  
5805 North Lamar Blvd  
Austin, TX 78752-4431

Dear Attorney General Paxton and Director McCraw:

On July 29, 2021, Attorney General Garland sent a letter urging Governor Abbott to rescind immediately his recently issued executive order No. GA-37, titled "Relating to the transportation of migrants during the COVID-19 disaster" (GA-37).<sup>1</sup> The Attorney General's letter explained that GA-37 is "dangerous and unlawful," and warned that the executive order, if implemented, would substantially impede federal immigration enforcement. The following day Governor Abbott made clear that the State would not rescind GA-37. Thereafter, the Department of Justice (the Department) filed suit against Governor Abbott and the State of Texas (the State) challenging GA-37;<sup>2</sup> the Department also sought immediate relief from the State's efforts to directly obstruct critical federal government functions. That lawsuit has resulted in a temporary injunction enjoining the State and the Governor from implementing GA-37 on the grounds that it likely violates the Supremacy Clause of the United States Constitution because it conflicts with, and poses an obstacle to, federal immigration law and improperly regulates the federal government's day-to-day operations.

The Department writes now to advise you that enforcing GA-37 may also violate federal constitutional provisions and statutes that protect individuals' civil rights. The Fourth Amendment of the U.S. Constitution protects individuals against unreasonable searches and seizures, and the Fourteenth Amendment guarantees equal protection of the laws to all persons within a State's jurisdiction, whether or not they are citizens. Texas must, of course, comply with those constitutional commands.

Title VI of the Civil Rights Act of 1964 and Title I of the Omnibus Crime Control and Safe Streets Act of 1968, along with their implementing regulations, prohibit programs or

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<sup>1</sup> Attorney General Merrick B. Garland's Letter to The Honorable Greg Abbott, July 29, 2021, <https://www.justice.gov/opa/page/file/1418991/download>. See <https://perma.cc/T3NL-E58J>, permanent record of: [https://gov.texas.gov/uploads/files/press/EOGA-37\\_transportation\\_of\\_migrants\\_during\\_COVID\\_IMAGE\\_07-28-2021.pdf](https://gov.texas.gov/uploads/files/press/EOGA-37_transportation_of_migrants_during_COVID_IMAGE_07-28-2021.pdf).

<sup>2</sup> See *United States v. Texas*, No. 3:21-cv-173 (W.D. Tex.).

activities receiving federal financial assistance or federal funding from discriminating against any person on the basis of race, color, national origin, sex, or religion. *See* 42 U.S.C. § 2000d, *et seq.* (Title VI as amended); 28 C.F.R. §§ 42.101-42.112 (Title VI regulations); 34 U.S.C. § 10228(c) (Safe Streets Act as amended); 28 C.F.R. § 42.203 (Safe Streets Act regulation). Title VI applies to all recipients of federal funds, and the Safe Streets Act reinforces the non-discrimination requirement with respect to Department grantees (including law enforcement agencies). The Texas Department of Public Safety (DPS) alone currently receives more than \$9.7 million in open grants from the Department of Justice. DPS also regularly receives federal forfeiture proceeds through the Department's Equitable Sharing Program: \$549,749 in the 2020 fiscal year. Additionally, through the Department's Edward Byrne Justice Assistance Grant Program (JAG), local jurisdictions in Texas (including over one hundred law enforcement agencies) currently have more than \$28.5 million in open grants.<sup>3</sup>

The Department has serious concerns that enforcement of GA-37 will result in law enforcement agencies violating the constitutional and statutory provisions discussed in the preceding two paragraphs. In particular, GA-37 mandates the Texas Department of Public Safety to stop any vehicle based on a "reasonable suspicion" of a violation of the order's restriction on ground transportation of broad categories of non-U.S. citizens.<sup>4</sup> But GA-37 identifies no basis on which a DPS trooper might formulate such "reasonable suspicion" that someone is providing "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." This directive inherently encourages unconstitutional and discriminatory stops, detentions, and arrests of racial or ethnic minorities, and invites the unlawful profiling and targeting of people based on perceived or actual national origin. Furthermore, GA-37 empowers the Texas Department of Public Safety to reroute vehicles to ports of entry and impound vehicles "if a violation is confirmed," yet provides no mechanism by which a DPS trooper could confirm a violation of the order.

The wide-reaching restriction of GA-37 and its constitutionally-suspect enforcement are likely to prompt unlawful discrimination by public and commercial transportation providers on the basis of race, ethnicity and national origin. The order may also have a chilling effect on individuals' constitutional right to travel.

The Department of Justice has a strong interest in protecting rights secured by the U.S. Constitution and ensuring full compliance with the anti-discrimination provisions of Title VI, the Safe Streets Act, and other civil rights statutes. The Attorney General has authority under the Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. § 12601, to bring a civil suit against state and local law enforcement entities when they engage in a pattern or practice of

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<sup>3</sup> For example, during just the current 2021 fiscal year, JAG grant allocations to local jurisdictions in Texas total \$7,873,494.

<sup>4</sup> As detailed in the Department's lawsuit, GA-37 restricts the travel of broad categories of non-U.S. citizens, including: non-U.S. citizens in U.S. Customs and Border Protection custody; non-U.S. citizens in U.S. Immigration and Customs Enforcement or U.S. Department of Health and Human Services custody; non-U.S. citizens transferring between different facilities of the same agency, between different agencies, or to nongovernmental partner organizations; non-U.S. citizens released from custody through parole, conditional release, voluntary departure commitments or other lawful mechanism; and unaccompanied non-U.S. citizen children. *See Texas Complaint* ¶¶ 12-15.

conduct that deprives persons of their rights under the Constitution or laws of the United States. The federal government also has authority to bring civil lawsuits in federal court seeking affirmative relief to enforce Title VI, the Safe Streets Act, and their implementing regulations.

Additionally, the implementing regulations for both Title VI and the Safe Streets Act impose regular data collection and record keeping obligations on all recipients, and authorize the Department to require the submission of information and data necessary to examine whether these non-discrimination requirements are being met. 28 C.F.R. § 42.106(b)-(c); 28 C.F.R. § 42.207(a)(1)-(2). Transparent administration of federally-funded law enforcement practices is critical to the United States' obligation to ensure that public funds are not being used to finance unlawful discrimination. The Department therefore reminds you of these data collection and record preservation obligations.

The Department's Civil Rights Division is always available to help ensure that recipients of federal financial assistance meet their anti-discrimination obligations. Please contact Christine Stoneman, Chief of the Federal Coordination and Compliance Section in the Department's Civil Rights Division, at 202-307-2222, if you have any questions or wish to discuss this further.

Sincerely,



Kristen Clarke

Assistant Attorney General  
Civil Rights Division