



U.S. Department of Justice
Civil Division

Office of the Assistant Attorney General

Washington, DC 20044

May 15, 2024

By *Electronic Mail*

The Honorable Kevin Stitt
Governor of Oklahoma
Kevin.Stitt@gov.ok.gov

The Honorable Gentner Drummond
Attorney General of Oklahoma
Gentner.Drummond@oag.ok.gov

Re: Oklahoma House Bill 4156 (HB 4156)

Dear Governor Stitt and Attorney General Drummond:

Oklahoma recently enacted a law that purports to create new state crimes tied to the federal prohibitions on unlawful entry and reentry by noncitizens into the United States. The law, HB 4156, is scheduled to become effective on July 1, 2024.

HB 4156 is preempted by federal law and violates the United States Constitution. Indeed, the Oklahoma law is similar to Texas's Senate Bill 4, which has been preliminarily enjoined. *United States v. Texas*, No. 1:23-CV-1537, 2024 WL 861526 (W.D. Tex. Feb. 29, 2024), *appeal pending*, No. 24-50149 (5th Cir.). The United States intends to file suit to enjoin the enforcement of HB 4156 unless Oklahoma agrees to refrain from enforcing the law. The United States is committed to the processing of noncitizens consistent with the Immigration and Nationality Act (INA). HB 4156 is contrary to that goal.

“[T]he Government of the United States has broad, undoubted power over the subject of immigration and the status of” noncitizens. *Arizona v. United States*, 567 U.S. 387, 394 (2012). In recognizing that well-settled power, the Supreme Court has explained that “immigration policy can affect trade, investment, tourism, and diplomatic relations for the entire Nation, as well as the perceptions and expectations of [noncitizens] in this country who seek the full protection of its laws.” *Id.* at 395. “It is fundamental that foreign countries concerned about the status, safety, and security of their nationals in the United States must be able to confer and communicate on this subject with one national sovereign, not the 50 separate States.” *Id.* To that end, Congress has established a comprehensive scheme governing noncitizens’ entry and reentry into the United States, including penalties for unlawful entry and reentry, *see* 8 U.S.C. §§ 1325, 1326. HB 4156, however, seeks to create a separate state immigration scheme by imposing state criminal penalties for violating the federal prohibitions on unlawful entry and

The Hon. Kevin Stitt
The Hon. Gentner Drummond
Page 2

reentry. HB 4156 therefore intrudes into a field that is occupied by the federal government and is preempted.

HB 4156 also conflicts with various provisions of the INA. For example, it interferes with the federal government's ability to enforce the entry and reentry provisions of the INA, and it effectively seeks to regulate noncitizens' unlawful presence in the United States. HB 4156 likewise improperly regulates the international movement of persons in violation of the Foreign Commerce Clause and undermines the United States' foreign relations.

This letter constitutes notice, pursuant to § 1-10.100 and § 4-6.240 of the Justice Manual, that the U.S. Department of Justice intends to bring a lawsuit to enforce the supremacy of federal law and to enjoin the enforcement of HB 4156. If you have not confirmed by May 20, 2024, that Oklahoma will forbear such enforcement, the United States will pursue all appropriate legal remedies to ensure that Oklahoma does not interfere with the functions of the federal government.

Sincerely,

Brian M. Boynton
Principal Deputy Assistant Attorney General