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Florida Attorney General's Office News Release

AG Moody Seeks Confirmation Biden Administration Will Defend Immigration Statute

TALLAHASSEE, Fla.—Attorney General Ashley Moody today sent a letter to United States Attorney General Merrick Garland to ensure the Biden administration will faithfully defend a long-standing federal immigration statute that prohibits illegal re-entry to the U.S. by illegal aliens. Attorney General Moody is joined by attorneys general from 19 other states in the request.

Attorney General Ashley Moody said, “The president does not have the power to pick and choose the laws he must enforce—he must take care that all laws of the United States are faithfully executed. We need assurance that the Biden administration will defend long-standing federal immigration laws passed to protect Americans. The president needs to prioritize the safety and security of the American people over reckless political games.

“Today, I am joining my colleagues from across the nation to ensure Biden’s Department of Justice will defend a long-standing federal immigration statute. Our nation’s security depends on it.”

The letter seeks written assurances by Sept. 17 that the U.S. Department of Justice will defend 8 U.S.C. § 1326, the law governing illegal re-entry. The letter follows a recent district court ruling in which the Chief Judge for the U.S. District Court for the District of Nevada struck down the law on the baseless ground that the law is unconstitutional.

The state attorneys general are concerned that the DOJ will follow recent patterns of shirking its duty by not defending the law, noting multiple examples in which the Biden administration has demonstrated a habit of “policymaking through the expedient of strategic surrender” in litigation.

This is particularly concerning given the United States’ unprecedented border crisis. In July, the U.S. Border Patrol reported more than 200,000 encounters with migrants along the U.S.-Mexico border, the highest monthly figure in 21 years.

Recently, Secretary of Homeland Security Alejandro Mayorkas acknowledged that the U.S. Department of Homeland Security has lost control of the border, lamenting that the current situation is unsustainable, that it cannot continue, that the system is getting close to breaking, and that we’re going to lose.

In the letter, the attorneys general explain that defense of federal immigration law is one of the most vital tools available to the U.S. government to mitigate the border crisis.

The attorneys general wrote:

“Given that border security had reached the breaking point before Chief Judge Du issued her opinion, just imagine what awaits if you announce your intent not to appeal—an announcement that would, in effect, tell already-deported aliens that they are free to try re-entering again. Indeed, acquiescing in the district court’s opinion would be tantamount to announcing legalization of illegal re-entry. Moreover, under the district court’s reasoning, the United States may well be unable to enforce any immigration laws, which by their nature disparately impact the many billions of people living outside of our borders.”

Although the DOJ filed a notice of appeal, that notice does not require the DOJ to ultimately appeal this monumentally incorrect ruling. The attorneys general requested that Attorney General Garland assure them in writing by Friday, Sept. 17, that the DOJ will faithfully defend the law.

To read a copy of the letter, click here.

Joining Attorney General Moody are the attorneys general from the states of Alabama, Arizona, Arkansas, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah and West Virginia.