No. 25A-___

IN THE

Supreme Court of the United States

JAMES UTHMEIER,
IN HIS OFFICIAL CAPACITY AS FLORIDA
ATTORNEY GENERAL, ET AL.,
Applicants,

v.

FLORIDA IMMIGRANT COALITION, ET AL.,
Respondents.

APPLICATION FOR A STAY PENDING APPEAL IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT AND FURTHER PROCEEDINGS IN THIS COURT

Directed to the Hon. Clarence Thomas, Associate Justice
of the Supreme Court of the United States and Circuit Justice
for the United States Court of Appeals for the Eleventh Circuit

JAMES UTHMEIER
Attorney General of Florida

JEFFREY PAUL DESOUSA
Acting Solicitor General
*Counsel of Record
NATHAN A. FORRESTER
Chief Deputy Solicitor General
ROBERT S. SCHENCK
CHRISTINE PRATT
Assistant Solicitors General
OFFICE OF THE FLORIDA ATTORNEY GENERAL
PL-01, The Capitol
Tallahassee, FL 32399
(850) 414-3300
jeffrey.desousa@myfloridalegal.com

June 17, 2025

Counsel for Applicants

PARTIES TO THE PROCEEDING

The Applicants are James Uthmeier, in his official capacity as the Attorney General of Florida;[1] and Ginger Bowden Madden, Jack Campbell, John Durrett, Melissa W. Nelson, William Gladson, Bruce Bartlett, R.J. Larizza, Brian S. Kramer, Monique H. Worrell, Brian Haas, Katherine Fernandez Rundle, Ed Brodsky, Susan S. Lopez, Larry Basford, Alexcia Cox, Dennis W. Ward, Harold F. Pryor, William Scheiner, Thomas Bakkedahl, and Amira D. Fox, in their official capacities as state attorneys for the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, and Twentieth Judicial Circuits of Florida, respectively.

The Respondents are Florida Immigrant Coalition, Farmworker Association of Florida, Y.M., and V.V.

[1] Plaintiffs originally sued Nicholas B. Cox in his official capacity as the Statewide Prosecutor of the State of Florida. Mr. Cox is no longer serving in this role. Under Florida law, the Attorney General fulfills all Statewide Prosecutor duties until a new Statewide Prosecutor is appointed. *See* Fla. Stat. § 16.56(2).

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Pursuant to this Court's Rules 22 and 23 and the All Writs Act, 28 U.S.C. § 1651, Defendants-Applicants James Uthmeier, as Florida's attorney General, and Florida's 20 state attorneys respectfully apply for a stay of the preliminary injunction issued by the U.S. District Court for the Southern District of Florida, pending appeal before the United States Court of Appeals for the Eleventh Circuit and, if necessary, pending the filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court. Defendants also respectfully request an administrative stay while this Court considers the application.

The "evil effects of illegal immigration" are more than a statistic. *Arizona v. United States*, 567 U.S. 387, 431 (2012) (Scalia, J., concurring in part, dissenting in part). Angel Gabriel Cuz-Choc is just one example. Cuz-Choc illegally entered the

United States from Guatemala, where he is wanted for two murders.[2] In April 2024, he murdered his girlfriend, Coc Choc De Pec, and her four-year-old daughter in Dover, Florida. He chased down De Pec while she fled screaming and killed her with a shovel and a knife. Cuz-Choc hid her body under a tarp. He then stabbed the four-year-old in the head and neck, leaving her to die in a pool of her own blood.[3]

Tragedies like these were front and center when Florida passed SB 4-C in 2025.[4] So too were reports of rampant fentanyl trafficking and other devastating harms killing Florida's citizens and destroying their communities. *See infra* 28–29. To address these concerns, SB 4-C criminalizes the entry into and presence within Florida of those who have illegally entered the United States. Fla. Stat. §§ 811.102, 811.103. That law purposefully tracks federal law to a tee. *See* 8 U.S.C. §§ 1325(a), 1326(a). It also retains common federal-law defenses and intentionally omits any regulation of who should be admitted or removed from the country. That is, SB 4-C "follow[s] the federal direction" about the "appropriate standards for the treatment of [aliens]." *Plyler v. Doe*, 457 U.S. 202, 219 n.19 (1982).

Indeed, SB 4-C was a measured effort by Florida "to protect its sovereignty—not in contradiction of federal law, but in complete compliance with it." *Arizona*, 567

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[2] *State Attorney's Office Seeking Death Penalty for Illegal Alien Responsible for Murdering Girlfriend and Her 4-Year-Old Daughter*, Office of the State Attorney 13th Judicial Circuit (May 15, 2024), https://tinyurl.com/mt2et43r.

[3] *Ibid.*

[4] *See 2/13/25 Senate Special Session C* at 23:00–24:00, Florida Senate (Feb. 13, 2025), https://tinyurl.com/4u6a2myj.

U.S. at 437 (Scalia, J., concurring in part, dissenting in part). SB 4-C's provisions fall squarely within the State's primary "responsibility" in "criminal law enforcement," *Kansas v. Garcia*, 589 U.S. 191, 212 (2020), which remains equally valid in the immigration context absent Congress' "clear and manifest purpose" to override it. *Arizona*, 567 U.S. at 400 (quotation omitted).

The district court nevertheless enjoined Defendants from enforcing SB 4-C. App. 65a. It held that Florida's law was field and conflict preempted by federal immigration law, and that SB 4-C violated the Dormant Commerce Clause. App. 79a, 86a, 89a. Worse still, the district court bound *all* Florida law-enforcement officers, who are not parties to this case. App. 112a. That decision inflicts irreparable harm on Florida and its ability to protect its citizens from the deluge of illegal immigration.

A motions panel of the Eleventh Circuit has now refused to stay that injunction—finding the law "likely" field preempted. App. 9a.

This Court should step in and stay the injunction pending appeal. Federal immigration law supplants neither the State's power to assist federal immigration enforcement nor "the defining characteristic of [its] sovereignty: the power to exclude from the sovereign's territory people who have no right to be there." *Arizona*, 567 U.S. at 417 (Scalia, J., concurring in part, dissenting in part). Not only that, the panel wrongly ignored the district court's decision to flout longstanding equitable principles by binding all of Florida's law-enforcement officers, many of whom are independent constitutional officers with distinct duties and responsibilities. If the Eleventh Circuit ultimately affirms the district court's overbroad injunction, there is thus a "fair

prospect" this Court would reverse on the merits or at least narrow it to the parties. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam).

There is also a "reasonable probability" that four members of this Court would grant certiorari to review the Eleventh Circuit's ruling if it affirms the district court. *Id.* The courts of appeals are struggling to apprehend the proper scope of this Court's decision in *Arizona*. *See infra* 33–34. And the chronic hyper-exertions of equitable relief from district courts encourages plaintiffs to leverage suit against a single state actor to enjoin a host of others who never had their day in court. It presents similar kinds of issues as universal injunctions, permitting lower courts to disregard longstanding equitable principles and circumvent basic concepts of standing, due process, and claim preclusion.

The equities also favor Applicants. "Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (alteration accepted) (citation omitted). Florida is enjoined from enforcing its statute to the detriment of Florida's citizens and the State's sovereign prerogative to protect them from harm. Illegal immigration continues to wreak havoc in the State while that law cannot be enforced. And without this Court's intervention, Florida and its citizens will remain disabled from combatting the serious harms of illegal immigration for years as this litigation proceeds through the lower courts. Meanwhile, Plaintiffs come to the federal courts with unclean hands, seeking to protect

their otherwise illegal conduct from the detection of federal and state authorities. A stay is warranted.

JURISDICTION

This Court, or any Justice thereof, has jurisdiction to issue a stay pending resolution of an appeal before a court of appeals. 28 U.S.C. §§ 2101(f), 1651(a).

STATEMENT

A. Florida's SB 4-C

Earlier this year, Florida passed SB 4-C. 2025 Fla. Laws ch. 2025-2 (2024); App. 315a–19a. That law created two new crimes. The first provision (the entry provision) bars "unauthorized alien[s]" from "knowingly enter[ing]" Florida "after entering the United States by eluding or avoiding examination or inspection by immigration officers." Fla. Stat. § 811.102(1). That conforms to federal law, which criminalizes entry by evading inspection. 8 U.S.C. § 1325(a). To further avoid any conflict with federal law, Florida law defines an "unauthorized alien" as "a person who is unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act" and federal regulations. Fla. Stat. § 908.111(1)(d). SB 4-C also provides that entry is not a crime if "[t]he Federal Government has granted the unauthorized alien lawful presence in the United States or discretionary relief that authorizes the unauthorized alien to remain in the United States temporarily or permanently," or an "unauthorized alien's entry into the United States did not constitute a violation" of federal law. *Id.* § 811.102(4)(a), (c).

The second provision (the reentry provision) criminalizes the entry or presence of "unauthorized alien[s]" in Florida where the federal government has already "denied admission, excluded, deported, or removed" the alien or where the alien "departed the United States during the time an order of exclusion, deportation, or removal is outstanding." *Id.* § 811.103(1). Again, this provision follows federal law. *See* 8 U.S.C. § 1326(a). And Florida provides that an alien does not violate the reentry provision where the alien has express permission to enter from the United States Attorney General or where such permission was not required under federal law. Fla. Stat. § 811.103(1)(a)–(b). Florida carefully crafted both provisions to precisely track, mimic, and depend upon federal immigration law.

B. Procedural History

Plaintiffs are two anonymous illegal immigrants and two organizations who claim to be affected by SB 4-C. App. 300a–04a. Plaintiffs Y.M. and V.V. both assert that they "entered the United States without inspection" some years ago and currently reside in Florida. App. 292a, 295a. Plaintiffs Florida Immigrant Coalition and the Farmworker Association of Florida are nonprofit organizations headquartered in Florida. App. 300a, 302a. They sued Florida's Attorney General, statewide prosecutor, and 20 state attorneys, but chose *not* to sue any law-enforcement officers. App. 297a–98a.

Plaintiffs contended that SB 4-C is preempted by federal law and violates the Dormant Commerce Clause. App. 311a–13a. They moved for a temporary restraining order and a preliminary injunction, App. 271a–90a, and the district court granted the

restraining order *ex parte*, App. 270a. The court stated that its order "prohibit[ed] Defendants and their officers, agents, employees, attorneys, and any person who [is] in active concert or participation with them from enforcing SB 4-C." App. 270a. After learning of subsequent arrests by law-enforcement officers, App. 158a, the court clarified that its TRO also covered any "law enforcement officer with power to enforce SB 4-C," App. 233a.[5] The court later granted a preliminary injunction, App. 65a, again holding that SB 4-C was field and conflict preempted by federal immigration law and violated the Dormant Commerce Clause, App. 78a, and extended its order to all law-enforcement officers, App. 112a.

Defendants appealed. App. 62a. Defendants moved for a stay of that injunction in the district court, App. 54a, and then sought the same relief in the Eleventh Circuit, App. 17a. The district court deferred to the Eleventh Circuit's judgment. App. 52a. A motions panel of the Eleventh Circuit then denied the stay. App. 15a.

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[5] To effectuate the TRO's expansion, district court ordered the Attorney General to notify all law enforcement agencies of its order enjoining them from enforcing SB 4-C. The Attorney General complied by circulating a letter to all relevant agencies. App. 131a–33a. The Attorney General then filed a supplemental brief five days later, at the invitation of the district court, arguing that the court lacked the authority to bind non-party officers. App. 136a. That same day, the Attorney General sent a second letter to law enforcement officers informing them of the supplemental brief and reiterating his position that "it is my view that no lawful, legitimate order currently impedes your agencies from continuing to enforce" SB 4-C. App. 134a–35a. Believing that second letter to potentially be contemptuous, the district court set a show-cause hearing in response to that second letter, which is still pending. *See* App. 112a–13a. The Attorney General stands by his remarks in both letters, mirroring as they do the positions he has argued throughout this litigation—including now before this Court.

In that order, the panel determined that the Attorney General had not made the "strong showing" required for a stay. App. 5a. The panel conceded that the preemption issue was a "closer" question, App. 8a, but ultimately found that federal immigration law likely preempted "the field of alien entry into and presence in the United States." App.8a–9a. The panel then ducked the question of whether non-party law-enforcement officers could be bound under Federal Rule of Civil Procedure 65. App. 9a. In doing so, the Court ignored a question raising fundamental federalism and separation of powers concerns.

Florida now seeks the same relief it sought in the district court and Eleventh Circuit: a stay of that preliminary injunction entirely, or alternatively partial stay to the extent the injunction purports to bind all of Florida's law-enforcement officers, pending appeal and further proceedings in this Court.

REASONS FOR GRANTING THE STAY

Pursuant to Supreme Court Rules 22 and 23 and the All Writs Act, 28 U.S.C. § 1651, a single Justice or the entire Court may stay a district court order pending appeal in the court of appeals. *See, e.g.*, *McHenry* v. *Texas Top Cop Shop, Inc.*, 145 S. Ct. 1 (2025); *Trump v. Hawaii*, 138 S. Ct. 542 (2017); Stephen M. Shapiro et al., *Supreme Court Practice* § 17.6, at 17-13 (11th ed. 2019). To obtain a stay, an application must show "a fair prospect" that the Court would reverse the lower court's judgment, a "reasonable probability" of obtaining certiorari, and a "likelihood" of irreparable harm. *See Hollingsworth*, 558 U.S. at 190. "In close cases the Circuit Justice or

the Court will balance the equities and weigh the relative harms to the applicant and to the respondent." *Id.* Those considerations overwhelmingly support a stay here.

I. If the Eleventh Circuit affirms, there is a fair prospect that this Court will reverse.

The district court's injunction is indefensible both on the merits and in its sweeping breadth. Should the Eleventh Circuit nevertheless affirm, there is a strong likelihood that this Court will reverse.

A. The district court erred on the merits.

States may enact laws aimed to stem the tide of illegal immigration into their borders. Indeed, this Court has never endorsed the view that the INA fully displaces the States from regulating in the field of alien movement, and nothing in SB 4-C poses a conflict with federal law. Just the opposite, Florida's law scrupulously tracks federal law. SB 4-C similarly does not violate the Dormant Commerce Clause, since it is unrelated to economic protectionism.

1. SB 4-C is not field preempted in all applications.

The district court eschewed longstanding preemption principles in holding that SB 4-C is field preempted in all applications. Field preemption is—and should be—a "rare case[.]" *Garcia*, 589 U.S. at 208. To establish field preemption, Plaintiffs must identify a field fully occupied by federal law. *Id.* And, because Plaintiffs bring a facial challenge, they must also show that SB 4-C operates within that field in every application. *See United States v. Salerno*, 481 U.S. 739, 745 (1987). If any application of SB 4-C is not preempted, Plaintiffs lose. *See id.* Because Plaintiffs failed to make either showing, they must lose.

1. Plaintiffs have failed to demonstrate that the movement of illegal aliens is a preempted field. To establish that a field is preempted, Plaintiffs must show that the "clear and manifest purpose of Congress" was a "complete ouster of state power" in that area. *DeCanas v. Bica*, 424 U.S. 351, 357 (1976). That "can be inferred from a framework of regulation" "so pervasive" "that Congress left no room for the States to supplement it," or a "federal interest" "so dominant that the federal system will be assumed to preclude" complementary state laws. *Arizona*, 567 U.S. at 399. Because field preemption is strong medicine, "the relevant field should be defined narrowly." *City of El Cenizo v. Texas*, 890 F.3d 164, 177 (5th Cir. 2018); *see also Hillsborough Cnty. v. Automated Med. Lab'ies*, 471 U.S. 707, 715–16 (1985).

Despite that arduous landscape, the lower courts blithely found that federal law occupied the field of alien movement. That was wrong. Both the district court and the Eleventh Circuit reached these conclusions by extending this Court's opinion in *Arizona v. United States*, 567 U.S. 387 (2012) (holding that Congress had occupied the field of alien registration), to conclude that Congress left no room for state involvement to regulate alien movement. App. 80a–81a, 9a. They (1) focused on how the Immigration and Nationality Act (INA) criminalizes the same activity as state law, App. 79a–88a, 8a–9a, (2) surmised that state enforcement of overlapping crimes could threaten the uniform application of the INA, App. 81a, 8a, and (3) analogized the INA's criminal provisions to *Arizona*'s field-preemption analysis of the INA's alien-registration regime, App. 83a–84a, 8a–9a. In doing so, they overread *Arizona*'s

holding about the INA's alien-registration regime and ran afoul of this Court's more recent decision in *Kansas v. Garcia*, 589 U.S. 191 (2020).

In *Garcia*, Kansas prosecuted aliens under a state identity-theft statute for their use of fraudulent information on employment forms. 589 U.S. at 198. Invoking federal preemption, the defendants challenged their convictions because federal immigration law barred the use of "any information contained in" a federal Form I-9 "for purposes other than for enforcement of" federal law. *Id.* at 196–97.

This Court upheld the convictions. By its measure, Kansas's law was not preempted even though the same information serving as the basis for the prosecutions appeared on the aliens' I-9 forms. *Id.* at 210–11. Federal law simply did not occupy the "field of employment verification," *id.*, because nothing "in the text and structure of the [immigration] statute" indicated a congressional intent to oust States from the field, *id.* at 208. Crucially, the Court rejected the defendants' contention that field preemption "follows directly" from *Arizona*, adopting a narrow—and faithful—reading of that case's field-preemption holding. *Id.* at 210. *Arizona*, the Court stressed, held only that "federal immigration law occupied the field of *alien registration*." *Id.* (emphasis added). Alien registration exemplifies the "rare case[]" for field preemption, *id.* at 208, because the federal law addressed in *Arizona* "ma[de] a single sovereign responsible for maintaining a comprehensive and unified system to keep track of aliens within the Nation's borders." *Id.* (quoting *Arizona*, 567 U.S. at 401–02). But short of "comprehensive and unified" federal regulation, Congress does not preempt an entire field. *Id.*; *see also id.* at 208 (concluding field preemption applies

only where Congress has "legislated so comprehensively" that it "left no room for supplementary state legislation"). Punctuating that holding, the Court clarified that mere "overlap" in state and federal criminal statutes "does not even begin to make a case for conflict preemption." *Id.* at 211.

Plaintiffs have shown no more than that here. The district court deemed SB 4-C preempted because the INA "defines and prohibits illegal entry and reentry and creates specific civil and criminal penalties for violations." App. 82a. Relying on *Arizona*, it reasoned that "[f]ederal regulation of entry and reentry share both traits—comprehensiveness and impact on sensitive foreign relations interests—with that of noncitizen registration and noncitizen transportation and movement." App. 82a. But the INA's entry and reentry crimes are far less detailed than the alien-registration provisions in *Arizona*, which extensively defined what, when, how, and with whom aliens must register. *Compare* 8 U.S.C. §§ 1325, 1326, *with* 8 U.S.C. §§ 1301–06. Those provisions also uniquely limited enforcement of registration crimes to specific "person[s] authorized" by the "Attorney General," 8 U.S.C. § 1304(c)—a limitation Congress has not imposed when it comes to the movement of aliens within the country.

At most, the district court could point to the similar nature of the criminal prohibitions of the INA and SB 4-C. Yet *Garcia* establishes that "overlap" is insufficient to oust the States from a field. *See* 589 U.S. at 212. A contrary view would unwind countless parallel state crimes, from murder to racketeering to child pornography. *See Zyla Life Scis., L.L.C. v. Wells Pharma of Houston, L.L.C.*, 134 F.4th 326,

335 (5th Cir. 2025) (noting "[t]he implications" of this view "are staggering" "[g]iven the extraordinary reach of federal law"); *see also California v. Zook*, 336 U.S. 725, 732 (1949) (rejecting an "automatic 'coincidence means invalidity' theory"). In any event, the relevant field here is the regulation of alien movement once within the country, since that is all that SB 4-C addresses. And the district court could not seriously assert that Congress has comprehensively regulated *that* field.

On top of that, preemption may not be "inferred merely from the comprehensive character" of federal law. *N.Y. State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 415 (1973). In *Arizona*, the Court relied on both comprehensiveness and the unique federal interests involved. *See* 567 U.S. at 400–03. Plaintiffs do not identify any similarly unique federal interests in alien movement, nor do the ones in *Arizona* translate here. There, registration of "perfectly law-abiding" aliens created expectations about the "protection of the just rights of a country's own nationals when those nationals are in another country." *Hines v. Davidowitz*, 312 U.S. 52, 64–66 (1941); *see also Arizona*, 567 U.S. at 401–03 (relying on *Hines*). Those expectations stemmed from "obligations" under treaties and the "customs defining with more or less certainty the duties owing by all nations to alien residents." *Hines*, 312 U.S. at 65. Crimes involving entry and movement, on the other hand, affect only *non*-law-abiding aliens. *Id.* at 64–66.

2. Even if there were some preempted field, SB 4-C would still not be invalid. State laws with only "some indirect effect" on preempted fields are "not pre-empted." *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 308 (1988). The lower courts

suggested that Florida's law is preempted by operating in the fields of alien entry, removal, and admission. Once more leaning on *Arizona*, the Eleventh Circuit stated that SB 4-C was likely preempted because "the removal process is entrusted to the discretion of the Federal Government," App. 8a, noting "the federal government's longstanding and distinct interest in the exclusion and admission of aliens." App. 9a.

But SB 4-C does not directly operate in those fields. SB 4-C is obviously not about removal: It criminalizes aliens entering Florida only after illegally entering the country. This Court found the state law in *Arizona* problematic because it made it a state crime for an alien to be removable, whereas federal law purposefully chose not to criminalize removability. 567 U.S. at 408–09. By contrast, a violation of SB 4-C only occurs where an alien commits a federal crime. *See* Fla. Stat. §§ 811.102(1), 811.103(1); 8 U.S.C. §§ 1325(a), 1326(a). Nor does Florida's law dictate which aliens may enter the country or where or how to enter. SB 4-C faithfully respects federal determinations that an alien may "remain in the United States temporarily or permanently." Fla. Stat. § 811.102(4)(a).

Even if the Court takes a broader view of the field of alien entry, SB 4-C cannot possibly be *facially* field preempted. Florida's law does not directly operate in such a field—even if alien entry extends to criminalizing unlawful entry at the country's borders—in every application. *See Salerno*, 481 U.S. at 745. If an alien enters the country illegally in Texas, remains there for decades, and then travels to Florida, it is hard to say that SB 4-C's criminalization of entering into Florida is impeding on the federal field of entry into the country. In that instance, Florida has not punished

the alien's entry into the *country*, which happened earlier at the Texas border; it has punished the alien's decision to enter *Florida*.

2. SB 4-C is not conflict preempted in all applications.

Plaintiffs have also not surmounted the "high threshold" for conflict preemption. *Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 607 (2011) (plurality opinion). The district court erroneously found that SB 4-C interferes with federal enforcement discretion in the same ways "as the noncitizen registration law struck down in *Arizona*." App. 87a. That oversimplified conclusion cannot be squared with this Court's analysis in *Garcia*.

Most basically, prosecutorial discretion exists regarding every criminal law, so the district court's reasoning would extend to any state law that overlapped with federal law. Again, however, mere "overlap" in federal and state criminal law does not equal preemption. *Garcia*, 589 U.S. at 212. And "the possibility that federal enforcement priorities might be upset is not enough" either. *Id.*; *see also id.* at 202 ("'Invoking some brooding federal interest or appealing to a judicial policy preference' does not show preemption."). Preemption arises instead from "'the Laws of the United States,'" not the "enforcement priorities" or "preferences" of federal officials. *Id.* at 212. Thus, the Court explained in *Garcia* that Kansas's law did not pose an obstacle to federal priorities even though it might make "obtaining the cooperation of unauthorized aliens in making bigger cases" more difficult for the federal government. *Id.* at 211.

Arizona does not compel a different conclusion. Arizona's provision authorizing arrests for removable illegal aliens was conflict preempted because "[a] decision on removability requires a determination whether it is appropriate to allow a foreign

national to continue living in the United States." *Arizona*, 567 U.S. at 409. "Decisions of this nature," the Court wrote, "touch on foreign relations and must be made with one voice." *Id.* Yet SB 4-C does not regulate or implicate these same concerns because it is unrelated to whether an alien should be removed from the country.

3. SB 4-C does not violate the Dormant Commerce Clause.

Finally, the district court wrongly enjoined SB 4-C as violative of the Dormant Commerce Clause. App. 90a. The Dormant Commerce Clause prevents economic discrimination between States, *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023), meaning "measures [purposefully] designed to benefit in-state economic interests by burdening out-of-state competitors," *id.* at 369.

Florida's law has nothing to do with economic protectionism. It does not "benefit in-state economic interests by burdening out-of-state competitors." *Id.* at 369. Rather, it seeks to deter the influx of illegal aliens into Florida (no matter their residence) and prevent the many problems (social, moral, and criminal) that follow.[6]

Citing *Edwards v. California*, 314 U.S. 160 (1941), the district court thought that States may not prohibit any crossing of state borders by individuals because it is "commerce." App. 89a–90a. It is hard to see how illegal immigrants crossing state

[6] Nor does anything in SB 4-C "disclose purposeful discrimination against out-of-state" interests under this Court's balancing framework, *Ross*, 598 U.S. at 379; *see also Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970) ("Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits."), which is why the district court did not even mention the balancing test, App. 90a.

lines is itself commerce. But even if that were somehow true, Congress has affirmatively prohibited the transportation of illegal immigrants, 8 U.S.C. §§ 1324(a)(1)(A)(ii), 1325(a), so the Dormant Commerce Clause does not apply. *See United States v. Texas*, 97 F.4th 268, 332 (5th Cir. 2024) (Oldham, J., dissenting); *see also Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 154 (1982) (because the Dormant Commerce Clause doctrine "safeguards Congress' latent power from encroachment," courts only apply that doctrine "when Congress has not acted or purported to act"). Finally, the law in *Edwards* is easily distinguished because that law was facially protectionist. It barred the transportation of "indigent *non-residents*" into California—expressly discriminating against out-of-state economic interests. 314 U.S. at 174 (emphasis added). SB 4-C does no such thing.

B. This Court is also likely to reverse on the scope of the injunction.

At a minimum, this Court would likely narrow the scope of the injunction. The district court purported to bind all Florida law-enforcement officers, though Plaintiffs never bothered to sue them. And the Eleventh Circuit was incorrect that the Attorney General lacks appellate standing to challenge the overbroad nature of that injunction.

1. The district court lacked authority to bind Florida's law-enforcement officers, who are not parties.

Under Rule 65, a court's order may "bind[] only" those who receive "actual notice" and fall into one of three categories: "(A) the parties; (B) the parties' officers, agents, servants, employees, and attorneys; and (C) other persons who are in active concert or participation with" the parties or their officers or agents. Fed. R. Civ. P. 65(d)(2).

Those categories "embod[y]" the historic limits of equity. *ADT LLC v. NorthStar Alarm Servs., LLC*, 853 F.3d 1348, 1352 (11th Cir. 2017); *Nat'l Spiritual Assembly of Baha'is of U.S. Under Hereditary Guardianship, Inc. v. Nat'l Spiritual Assembly of Baha'is of U.S., Inc.*, 628 F.3d 837, 848 (7th Cir. 2010); *Savarese v. Agriss*, 883 F.2d 1194, 1209 (3d Cir. 1989). The remedial powers of a federal court, after all, are defined by what relief "was traditionally accorded by courts of equity." *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 319 (1999). Traditionally, a litigant was "not bound by a judgment to which she was not a party," *Taylor v. Sturgell*, 553 U.S. 880, 888 (2008), ensuring that all persons "have their day in court," *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 832–33 (2d Cir. 1930).

Because Plaintiffs have not shown that Florida law-enforcement officers fit those criteria, the Court should at least narrow the injunction to cover only Defendants.

i. The first criterion is easy: "It is undisputed that law enforcement agencies are not named parties." App. 102a.

ii. The second criterion is also not met. Law-enforcement officers are not Defendants' "officers, agents, servants, employees, [or] attorneys." Fed. R. Civ. P. 65(d)(2). Rule 65 does not define those terms, so Congress presumptively "incorporate[d] the established [common-law] meaning of these terms." *Cmty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 739 (1989); *see also United States v. Robinson*, 83 F.4th 868, 880 (11th Cir. 2023) (defining "employee" in Rule 65 according to the common law). To fall within the common-law definitions of the categories in Rule

65(d)(2)(B), law-enforcement officers must be subject to Defendants' control and wield authority to act on Defendants' behalf.[7] Neither element is met, because local law-enforcement agencies are independent from prosecutorial agencies under Florida's constitutional scheme.

Under Florida law, law-enforcement and prosecutorial agencies derive powers from separate constitutional[8] and statutory[9] sections. None of those sections grant Defendants control over law-enforcement officials, and Florida law is typically explicit when it grants such control. *See* Fla. Const. art. IV, § 4(b) (creating statewide prosecutor under the Attorney General); Fla. Stat. § 27.18 (permitting state attorneys to hire subordinates). Further underscoring Defendants' lack of control, Defendants cannot remove or discipline law-enforcement officers, nor do law-enforcement agencies draw their funds from Defendants' budgets.

To top it off, many law-enforcement officers are elected by different constituencies, *e.g.*, Fla. Const. art. VIII, § 1(d) (sheriffs), or appointed by different

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[7] *See, e.g.*, Restatement (Third) of Agency §§ 2.01, 2.03 (Am. L. Inst. 2006) (agency); *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 322–23 (1992) (employees); *Clackamas Gastroenterology Assocs., P.C. v. Wells*, 538 U.S. 440, 448 (2003) (servants); *City of Tuscaloosa v. Harcros Chems., Inc.*, 158 F.3d 548, 557 n.9 (11th Cir. 1998) (officers).

[8] *Compare* Fla. Const. art. IV, § 4(b) (creating the Attorney General and statewide prosecutor); *id.* art. V, § 17 (creating state attorneys), *with id.* art. VIII, § 1(d) (creating sheriffs).

[9] *See, e.g.*, Fla. Stat. § 16.01 (Attorney General); *id.* § 27.01 (state attorneys); *id.* § 30.15 (sheriffs); *id.* § 943.04(2)(a) (Florida Department of Law Enforcement); *id.* § 321.05 (Florida Highway Patrol); *see also* City of Miami Charter § 24 (Miami Police Department).

governments, *e.g.*, City of Miami Code of Ordinances § 42-2(a) (police chief appointed by city manager). That is why the Eleventh Circuit has elsewhere recognized the separation between law-enforcement and prosecutorial entities in Florida. *See City of South Miami v. Governor*, 65 F.4th 631, 641 (11th Cir. 2023) (Florida Attorney General cannot "control" local law enforcement).

The district court held that, despite the lack of *legal* control, Defendants exercised enough "practical[]" control over law-enforcement entities to make them Defendants' "agents." DE67 at 38–41. But it is the "*right* to control," not practical control, that defines the agency relationship. *Gen. Bldg. Contractors Assoc. v. Pennsylvania*, 458 U.S. 375, 393–95 (1982) (emphasis added). Practical sway over local officials is legally irrelevant.

iii. Nor are law-enforcement officers invariably in "active concert or participation" with Defendants. Fed. R. Civ. P. 65(d)(2)(C); *ADT*, 853 F.3d at 1352. "[A] court of equity" "cannot lawfully enjoin the world at large," and due process entitles distinct persons to "their day in court." *Alemite*, 42 F.2d at 832–33. This requirement ensures that injunctions comply with due process. *See Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 13 (1945) (injunctions may not be "so broad as to make punishable the conduct of persons who act independently and whose rights have not been adjudged according to law"). Non-parties thus fall within the "active concert or participation" exception in two "limited" circumstances: when they are in "privity" with a party, or when they "aid and abet the party" to violate the injunction. *Robinson*, 83 F.4th at 881–82 (quotations omitted); *see also Nat'l Spiritual Assembly of Baha'is*, 628 F.3d at 840

(recognizing "[t]he common-law rule" that those "who aid and abet a party's violation of the injunction" are in active concert or participation with that party); 13 Moore's Federal Practice § 65.61[2] (2025) (recognizing privity and aiding and abetting as relevant categories).

Law-enforcement officers lack privity with Defendants. "[P]rivity" exists only when a non-party "can be legally identified with an enjoined party," such that enjoining the non-party comports with due process. *Robinson*, 83 F.4th at 884. That designation is reserved for a defendant's "successors and assigns" (inapplicable here) and those with whom [d]efendants share a "legal identity." *Id.* (quotations omitted); *see also Regal Knitwear*, 324 U.S. at 14 (recognizing that "successor and assigns" are part of those who can be in privity with a party); *Nat'l Spiritual Assembly of Baha'is*, 628 F.3d at 849–50 (noting line of circuit court cases approving of the "legal identity" test).

To share legal identity, the non-party must both (1) have "a very close identity of interest" with the party, and (2) exercise "such significant control over the [party] *and* the underlying litigation that it is fair to say that the nonparty had his day in court." *Robinson*, 83 F.4th at 884 (quotations omitted). That "limited class" prevents a party from "circumvent[ing] a valid court order merely by making superficial changes" in form. *Id.* at 883–84.

Law-enforcement officers do not exercise "significant control over the [Defendants]" or "[this] litigation." *Id.* at 884; *see supra* 21–23. They are separate constitutional entities, and law enforcement in Florida cannot issue binding directives to prosecutors. Plaintiffs have never argued otherwise.

Plaintiffs have not shown a sufficient identity of interests either. Law-enforcement officers are interested in arresting and "prevention and detection of crime," Fla. Stat. § 943.10(1), whereas state attorneys and the Attorney General are concerned with prosecution and legal process. That latter role implicates "their status as officers of the court," *Valdes v. State*, 728 So. 2d 736, 739 (Fla. 1999), in which they "represent the interests of the people of the State of Florida, not the interests of [an] arresting police officer." *Gentile v. Bauder*, 718 So. 2d 781, 783 (Fla. 1998). For that reason, a host of courts hold that prosecutors are not in privity with arresting officers.[10]

Next, there is no evidence of aiding and abetting. "[A]n aider and abettor must 'participate in' a crime 'as in something that he wishes to bring about' and 'seek by his action to make it succeed.'" *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, No. 23-1141, 2025 WL 1583281, at *5 (U.S. June 5, 2025) (citing *United States v. Peoni*, 100 F.2d 401, 402 (2d Cir. 1938) (Hand, J.)). Under Rule 65, the underlying offense is a violation of the injunction, which requires that the enjoined party or its agents take some affirmative "act[] in violation of the injunction." *Robinson*, 83 F.4th at 885.

Here, there is no evidence that Defendants have taken or will take any "act[] in violation of the injunction." *Id.* Defendants are fully committed to abiding by the

[10] *See, e.g.*, *Wilson v. Attaway*, 757 F.2d 1227, 1237 (11th Cir. 1985); *Bilida v. McCleod*, 211 F.3d 166, 170–71 (1st Cir. 2000); *McCoy v. Hernandez*, 203 F.3d 371, 374–75 (5th Cir. 2000); *Morgan v. Gertz*, 166 F.3d 1307, 1309 (10th Cir. 1999); *Tierney v. Davidson*, 133 F.3d 189, 196 (2d Cir. 1998); *Washington v. Dewey*, 433 F. Supp. 3d 334, 346 (D. Conn. 2020).

district court's orders while they challenge them. So there is no underlying crime to abet.

2. The Eleventh Circuit's appellate standing holding ignores the clear ways in which the district court order aggrieves the Attorney General.

As a separate basis for denying a stay concerning the scope of the injunction, the Eleventh Circuit "suppose[d]" that if Defendants lacked control over law enforcement, Defendants must lack appellate standing to challenge that scope because the binding of law enforcement "do[es] not affect [Defendants'] interests." App 11a–12a (quotations omitted).

That holding "misapprehends the nature of [appellate] jurisdiction" by treating parts of an order as separable. *GuideOne Specialty Mut. Ins. Co. v. Missionary Church of Disciples of Jesus Christ*, 687 F.3d 676, 682 n.3 (5th Cir. 2012). To obtain appellate standing, "the appealing party need only be aggrieved by a judgment." *Id.* (quotations omitted); *Pedreira v. Sunrise Children's Servs., Inc.*, 802 F.3d 865, 869 (6th Cir. 2015) (appellate standing established when order imposes "some detriment" on a party). And once jurisdiction is established, appellate courts "have broad authority to dispose of district court judgments as they see fit." *GuideOne Specialty*, 687 F.3d at 682 n.3 (citing 28 U.S.C. § 2106). This includes the scope of the injunction.

The Attorney General was "aggrieved" by the judgment. As the "chief state legal officer," Fla. Const. art. IV. § 4, he has a constitutional interest and duty to ensure that the laws are properly enforced by all law enforcement officers. *See Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 277 (2022) ("Respect for state sovereignty must also take into account the authority of a State to structure its

executive branch in a way that empowers multiple officials to defend its sovereign interests in federal court.").

Not only that, but because that order treats law-enforcement officers as his agents, App. 105a, the Attorney General risks contempt though he neither authorizes nor controls their actions. *See PlayNation Play Sys., Inc. v. Velex Corp.*, 939 F.3d 1205, 1213 (11th Cir. 2019) (indicating that a party may be held in contempt for its agents' actions). If the preliminary injunction stands, the Attorney General must therefore devote resources—he already has, in fact—to promoting the compliance of non-parties that he does not control. That is more than enough for appellate standing.

II. If the Eleventh Circuit affirms the district court's overbroad injunction, there is a reasonable probability that this Court will grant certiorari.

For several reasons, this Court is likely to grant review if the Eleventh Circuit affirms the district court's injunction.

A. For one, the preemption issue here is exceptionally important: It strikes at the heart of States' ability to protect their citizens from the devastating effects of illegal immigration. As Presidents of both political parties have agreed, the situation at America's border with Mexico is nothing short of a national "crisis."[11] Border Patrol consistently encounters around 2 million illegal immigrants a year who evade

[11] The White House, *Fact Sheet: President Donald J. Trump Declares a National Emergency at the Southern Border* (Jan. 22, 2025), https://tinyurl.com/yr3j33he; The White House, *Statement from President Joe Biden on the Bipartisan Senate Border Security Negotiations* (Jan. 26, 2024), https://tinyurl.com/33znys4z.

authorities at the border, and those are merely the individuals Border Patrol apprehends.[12] Florida saw record levels of illegal immigration in 2024,[13] and the illegal immigrant population causes an annual strain of over $8 billion to the State fisc, with each Floridian fronting an estimated bill of $5,000 to cover those costs.[14] What is more, in fiscal year 2024, Border Patrol seized enough fentanyl to kill every American several times over.[15] And the flood of fentanyl into the State—largely fueled by the border crisis—killed 5,083 Floridians in 2022, the second-highest of any state in the Nation.[16]

Our constitutional design does not leave States without "power to deter the influx of persons entering the United States against federal law." *Plyler v. Doe*, 457 U.S. 202, 228 n.23 (1982). Since the Founding, States have "enacted numerous laws restricting the immigration of certain classes of aliens." *Arizona*, 567 U.S. at 419 (Scalia, J., concurring in part, dissenting in part). In 1787, for instance, Georgia

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[12] U.S. Customs and Border Protection, *Southwest Land Border Encounters* (last visited June 9, 2025), https://tinyurl.com/mwnx26f8.

[13] Anthony Talcott, *Florida sees record-high illegal immigration. Here's how it affects your wallet*, ClickOrlando (Aug. 20, 2024), https://tinyurl.com/3y5bpvxa.

[14] *See* Federation for American Immigration Reform, *The Fiscal Burden of Illegal Immigration on Florida* (2023) https://tinyurl.com/2p9h7f8v.

[15] Dep't of Homeland Security, *Fact Sheet: DHS Shows Results in the Fight to Dismantle Cartels and Stop Fentanyl from Entering the U.S.* (July 31, 2024), https://tinyurl.com/bf65z7n2; *see also* DEA, *Facts About Fentanyl* (last visited June 9, 2025), https://tinyurl.com/mte3r9px (explaining that 2 milligrams of fentanyl is a fatal dose for an average American).

[16] USA Facts, *Are fentanyl overdose deaths rising in the US?* (last updated Sept. 27, 2023), https://tinyurl.com/mvus7kff.

decreed that "felons transported or banished from another state or a foreign country be arrested and removed beyond the limits of the state." Gerald L. Neuman, *The Lost Century of American Immigration Law (1776-1875)*, 93 Colum. L. Rev. 1833, 1842 (1993). Other States followed suit. *Id.*[17] Several of those laws regulating transport expressly banned that activity even from sister States. *Id.* Respecting state power, Congress in 1866 passed a resolution against foreign pardons for those convicted of assisting in the emigration of convicts in violation of these laws. *See* S.J. Res. 24, 39th Cong., 1st Sess., 14 Stat. 353 (1866).

In addition to regulating the migration of criminals, States also passed laws preventing the movement of indigent aliens[18] and the migration of those suspected of

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[17] In some cases even before the Founding, Connecticut, Delaware, Georgia, Massachusetts, Pennsylvania, South Carolina, and Virginia prohibited the importation of persons who had ever been convicted of crime. Act of Oct. 9, 1788, 1788 Conn. Acts and Laws 367; 1740 Laws of the State of Del. ch. 66.a. § 2, at 166; An Act of Feb. 10, 1787, 1787 Ga. Acts and Resol. 40; Act of Feb. 14, 1789, ch. 61, § 7, 1789 Mass. Acts 98, 100–01; Act of Mar. 27, 1789, ch. 463, 1788–89 Pa. Acts 692; Act of Nov. 4, 1788, 1788 S.C. Acts and Ordinances 5; Act of Nov. 13, 1788, ch. 12, 1788 Va. Acts 9. Shortly after the Founding, Maine, Maryland, New Jersey, New York, and Rhode Island followed suit. *See, e.g.*, Act of Feb. 24, 1821, ch. 22, § 6, 1821 Me. Laws 90, 91–92; Act of Jan. 6, 1810, ch. 138, § 7(3), 1809–10 Md. Laws; Act of Jan. 28, 1797, ch. 611, § 1, 1797 N.J. Acts 131; Act of Apr. 25, 1833, ch. 230, 1833 N.Y. Laws 313; Act of 1798, § 17, 1798 R.I. Laws 357–58.

[18] *See, e.g.*, Act of Feb. 11, 1794, ch. 8, 1794 Mass. Acts & Laws 347; Act of May 24, 1851, ch. 342, § 3, 1851 Mass. Acts & Laws 847, 848; Act of Mar. 7, 1788, ch. 62, § 5, 1788 N.Y. Laws 733, 734; Act of June 27, 1820, ch. 26, 1820 Me. Laws 35; Act of May 14, 1718, ch. 37 N.H. Province Laws 312; Act of June 14, 1820, ch. 1, N.H. Laws 255; Act of June 1847, 1847 R.I. Acts 27; Act of Mar. 29, 1803, ch. 155, § 21, 1801–03 Pa. Laws 507, 525–26.

carrying infectious disease.[19] Neuman, *supra*, at 1846–65; Benjamin J. Klebaner, *State and Local Immigration Regulation in the United States Before 1882*, 3 Int'l Rev. Soc. Hist. 269, 290–95 (1958) (compiling alien migration laws). In each instance, those States acted within their sovereign prerogative to "protect [their] citizens." *Mayor of City of New York v. Miln*, 36 U.S. 102, 141 (1837).

Florida's new law is of a piece with these historical regulations. And Florida is not alone in attempting to stem the tide of illegal immigration. Responding to the immigration crisis, several States have passed similar laws. *See, e.g.*, Tex. Penal Code § 51.02; Okla. Stat. tit. 21, § 1795; Iowa Code § 718C.2; Idaho Code § 18-9004; La. Stat. tit. § 112.12. This growing number of laws—and corresponding lawsuits—

[19] Many of these laws regulated movement of aliens from sister States. *See, e.g.*, Conn. Rev. Stat. tit. 91, §§ 3, 15 (1821); Act of Jan. 1799, ch. 17, § 1, 1799 Del. Laws 47; Act of Nov. 1793, ch. 34, § 2, 1793 Md. Laws; Act of Apr. 8, 1811, ch. 175, § 2, 1811 N.Y. Laws 247; Act of Apr. 10, 1850, ch. 275, tit. 2, Art. 1, § 2, 1850 N.Y. Laws 599; Act of Apr. 17, 1795, ch. 327, § 4, 1795 Pa. Acts 734, 735. That is in addition to laws regulating movement from abroad. *See* Act of June 10, 1803, § 7, 1803 N.H. Laws 7, 11–12; Act of Mar. 10, 1821, ch. 127, §§ 1–2 1821 Me. Laws 443; Act of June 20, 1799, ch. 9, § 8, 1799 Mass. Acts & Laws 308, 311; Act of Dec. 17, 1793, 1793 Ga. Acts and Resol. 25; Act of 1793, ch. 3, § 1, 1793 N.C. Acts 36; Act of Dec. 5, 1793, ch. 19, § 2, 1793 Va. Acts 26; Act of Feb. 3, 1812, § 1, 1812 N.J. Laws 19 (vessels from south of Georgia); Act of Apr. 14, 1820, ch. 229, §§ 4–5, 1820 N.Y. Laws 208, 210 (vessels from Mediterranean, Asia, America south of equator, and Madeira, Canary, Cape de Verd, Western or Bahama islands, as well as vessels passing south of Cape Henlopen, Delaware); Act of Apr. 1, 1803, ch. 178, § 6, 1803 Pa. Acts (vessels from Mediterranean); Act of Apr. 2, 1821, ch. 126, § 1, 1821 Pa. Laws 210 (vessels from south of Cape Fear); Act of Apr. 18, 1825, ch. 212, 1825 N.Y. Laws 322 (giving ports of Canton and Calcutta more favorable treatment than other Asian ports).

implicates "the enforcement of criminal law," which is "among the most important state interests." *Texas*, 97 F.4th at 334 (Oldham, J., dissenting).[20]

Injunctions like the one in this case divest the States of the sovereign police powers they have historically enjoyed to deter illegal immigration and safeguard their residents. That alone would warrant certiorari.

B. The preemption question here also implicates a circuit split. The Third, Fourth, Fifth, and Eleventh Circuits have decided that the criminal provisions of the INA, including harboring and transportation crimes, create preempted fields over activity related to illegal aliens. *See Georgia Latino All. for Hum. Rts. v. Governor of Georgia*, 691 F.3d 1250, 1263–65 (11th Cir. 2012) (preempting Georgia's law criminalizing the transportation, concealment, or inducement of illegal aliens to or within the state by third parties); *United States v. Texas*, 97 F.4th 268, 272 (5th Cir. 2024) (preempting Texas's law prohibiting the entry or reentry of illegal aliens within the state); *United States v. South Carolina*, 720 F.3d 518, 522, 531 (4th Cir. 2013) (preempting South Carolina's law prohibiting the entry into the state or failing to carry proper identification within the state for illegal aliens); *Lozano v. City of Hazelton*, 724 F.3d 297, 316–17 (3d Cir. 2013) (preempting city ordinance prohibiting the hiring or harboring of illegal aliens).

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[20] The United States recently withdrew its complaints against several of these laws, indicating a belief that such laws do not conflict with enforcement of federal immigration law and increasing the need for this Court to resolve questions of state authority in private-plaintiff suits. *See, e.g.*, *United States v. Iowa*, No. 24-2265, 2025 WL 1140834, at *1 (8th Cir. Apr. 15, 2025) (noting that one such withdrawal mooted that case).

Not so in the Eighth Circuit. *See Keller v. City of Fremont*, 719 F.3d 931 (8th Cir. 2013). In *Keller*, that court held that a local ordinance prohibiting "harbor[ing] an illegal alien" in a rental unit was not field preempted by the INA's own criminal prohibition on harboring aliens. *Id.* at 943 (citing 8 U.S.C. § 1324(a)(1)(A)(iii)). The plaintiffs there, like here, argued that Congress occupied the field by criminalizing the practically identical conduct. *Id.* "The doctrine of field preemption is not nearly so expansive," the Eighth Circuit held. *Id.* Merely criminalizing harboring did not "establish[] a 'framework of regulation so pervasive . . . that Congress left no room for the States to implement it.'" *Id.* (quoting *Arizona*, 567 U.S. at 399). And the court noted that, like Florida's SB 4-C, the ordinance was "careful not to prohibit conduct" that is "expressly permitted by federal law." *Id.*

Courts and commentators have also struggled to understand the proper scope and interaction of *Arizona* and *Garcia*. In *Texas*, for example, the debate between the majority and dissent appeared to hinge on the proper reading of *Arizona* in light of *Garcia*. *See* 97 F.4th at 301 (Oldham, J., dissenting) ("Today's majority opinion repeatedly accuses me of recycling points that Justice Scalia made in his dissenting opinion in *Arizona*. But . . . [m]y concerns about the facial, pre-enforcement posture of the injunction in this case come straight from the *Arizona majority's opinion*."). And the Congressional Research Service has remarked that *Garcia* "seemed to

repudiate [*Arizona*'s] reliance on the executive branch's immigration policies or priorities as a basis for the preemption analysis."[21]

C. Certiorari is also likely to correct the district court's flawed vision of equity and the scope of Rule 65. That court adopted—and the Eleventh Circuit permitted—a radically lax view of the degree of control one state official must exercise over another for purposes of agency law, DE67 at 101a–11a, allowing the district court to bind nonparty law-enforcement officers without their "day in court." *Robinson*, 83 F.4th at 884. On the Eleventh Circuit's theory, nonparties who have neither been sued nor served must intervene on appeal to protect interests that they never knew needed vindication.

Even worse, the lower courts' approach would hold the Attorney General and state attorneys liable for the actions of those who they do not control. That would open the door to a harrowing possibility: elected officials of a sovereign state, acting in full accordance with court orders, could be made criminals "against [their] consent, and by the mere rashness or precipitancy or overheated zeal of another." *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 489 (2023). This Court should not countenance that approach.[22]

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[21] Cong. Research Serv., *Federal Preemption and State Authority to Deter the Presence of Unlawfully Present Aliens: An Overview and Issues for the 119th Congress* 17 (May 6, 2025), https://tinyurl.com/bdzax9x6.

[22] The Eleventh Circuit's restrictive view of appellate standing conflicts with other circuits. *See, e.g.*, *GuideOne Specialty Mut. Ins. Co. v. Missionary Church of Disciples of Jesus Christ*, 687 F.3d 676, 682 n.3 (5th Cir. 2012); *United States v. Michigan*, 940 F.2d 143, 151–52 (6th Cir. 1991); *Newsom v. Norris*, 888 F.2d 371, 379–80

These important questions cannot await the full appellate process. If the State is forced to litigate in the ordinary course, Defendants—and Florida's entire law enforcement community, *who are not defendants*—could continue to be enjoined from enforcing SB 4-C for a year, two years, or more. Meanwhile, Florida residents continue to feel the effects of illegal immigration, with all the carnage that epidemic brings in its wake.

III. Absent a stay, Florida will continue to suffer irreparable harm to its sovereign interest in enforcing its laws.

Nor do the equities favor injunctive relief. "Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (quotations omitted). This rule applies with even more force when a statute "reflects legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct." *Virginia v. Hicks*, 539 U.S. 113, 119 (2003) (quotations omitted). Florida's interest in ensuring individuals in its territory are inspected is legitimate. As just one example, traffickers have "successfully smuggl[ed] mass quantities of deadly illicit fentanyl past" federal agents,[23]

(6th Cir. 1989); *Wagner v. Taylor*, 836 F.2d 578, 584–86 (D.C. Cir. 1987); *Fran Welch Real Estate Sales, Inc. v. Seabrook Island Co., Inc.*, 809 F.2d 1030, 1032 (4th Cir. 1987).

[23] *Subcommittee on Border Security and Enforcement Demands Answers in Phase Two of Mayorkas Investigation*, House Committee on Homeland Security (July 13, 2023), https://tinyurl.com/a2udkxt8.

endangering Floridians.[24] There can be no doubt that "enforcement of [SB 4-C] will decrease illegal border crossings and associated harms like drug and human trafficking," *Texas*, 97 F.4th at 334 (5th Cir. 2024) (Oldham, J., dissenting), yet the State is unable to utilize SB 4-C to address this crisis.

The Eleventh Circuit waved away Florida's concerns about the "tsunami of effects from illegal immigration" because it was not convinced that SB 4-C would be a "decisive part of mitigating that harm." App. 14a. It also believed that Florida's cooperation with federal immigration authorities undermined any need to legislate. App. 14a. That is precisely the kind of "freewheeling judicial inquiry" and imposition of "judicial policy preference[s]" this Court has rejected in the preemption context. *See Garcia*, 589 U.S. at 202. It also ignored the whole-of-government approach that Florida and many other States deem necessary to keep their citizens and their borders safe. And it stands to reason that Florida's law offers additional deterrence against those who would come to Florida unlawfully.

IV. The balance of equities favors a stay.

The first three factors overwhelmingly justify a stay. So too does the balance of equities. This is in large part because Plaintiffs have unclean hands. A preliminary injunction is a form of equitable relief, and "he who comes into equity must come with clean hands." *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806,

[24] *AG Moody and Law Enforcement Leaders Sound the Alarm as Deadly Fentanyl Catapults Panhandle Counties to Top Spot for Per Capita Opioid Death Rate in Florida*, Office of Attorney General (Aug. 2, 2023), https://tinyurl.com/ywf9utmh.

814 (1945). Plaintiffs seek a preliminary injunction to protect illegal conduct such as driving without a license, working without authorization, and avoiding detection for criminal illegal entry. "Few things are clearer than that one who comes seeking protection for conduct that he concedes to be criminal has unclean hands within the meaning of this principle." *Combs v. Snyder*, 101 F. Supp. 531, 532 (D.D.C. 1951), *aff'd*, 342 U.S. 939 (1952); *see also Nat'l Coal. of Latino Clergy, Inc. v. Henry*, No. 07-CV-613, 2007 WL 4390650, at *1, *9 (N.D. Okla. Dec. 12, 2007); *Shondel v. McDermott*, 775 F.2d 859, 868 (7th Cir. 1985).[25]

* * *

If a State's police powers are powers at all, they allow a State to criminalize harms destructive to the community. That is why States routinely regulated the movement of illegal aliens before, during, and after the Founding. There is no doubt that the Federal government has an important role in the immigration context, and Florida was cognizant of that fact when it crafted SB 4-C, purposefully aligning the law with federal requirements and objectives. Breezing past this Court's exacting preemption analysis and basic equitable principles, the lower court enjoined the law anyway. That leaves Florida unable to enforce this important new statute—a statute that could have made the difference for innocent victims like Coc Choc De Pec and her four-year-old daughter. It disables, via faulty analysis, an important law

[25] There may be cases where a person's status as an illegal immigrant does not foreclose equitable relief. But it is not this case. Here, Plaintiffs seek to facilitate unrelated violations of law through this lawsuit, and that is fatal to their request for equitable relief.

enforcement measure designed to protect future victims of the violence, drugs, and trafficking fueled by the entry and re-entry into Florida of unauthorized aliens. This Court should intervene, grant the stay pending further proceedings, and free the State to perform its duty of safeguarding its citizens.

CONCLUSION

The application for a stay pending appeal, and pending further proceedings in this Court, should be granted.

Respectfully submitted,

JAMES UTHMEIER
Attorney General of Florida

JEFFREY PAUL DESOUSA
Acting Solicitor General
*Counsel of Record
NATHAN A. FORRESTER
Chief Deputy Solicitor General
ROBERT S. SCHENCK
CHRISTINE PRATT
Assistant Solicitors General
OFFICE OF THE FLORIDA ATTORNEY GENERAL
PL-01, The Capitol
Tallahassee, FL 32399
(850) 414-3300
jeffrey.desousa@myfloridalegal.com

Counsel for Applicants

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