No. 25A-___

In the

Supreme Court of the United States

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

v.

FLORIDA IMMIGRANT COALITION, ET AL.,
Respondent.

APPENDIX

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In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-11469

FLORIDA IMMIGRANT COALITION,
FARMWORKER ASSOCIATION OF FLORIDA,
Y.M.,
V.V.,

Plaintiffs-Appellees,

versus

ATTORNEY GENERAL, STATE OF FLORIDA,
STATEWIDE PROSECUTOR OF THE STATE OF FLORIDA,
STATE ATTORNEY, FIRST JUDICIAL CIRCUIT OF FLORIDA,
STATE ATTORNEY, THE SECOND JUDICIAL CIRCUIT OF FLORIDA,
STATE ATTORNEY, THIRD JUDICIAL CIRCUIT OF FLORIDA,
et al.,

Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:25-cv-21524-KMW

Before JILL PRYOR, NEWSOM, and KIDD, Circuit Judges.

BY THE COURT:

Florida's legislature recently passed, and its governor signed, a law creating two immigration-related state crimes. A federal district court soon granted a request to preliminarily enjoin a number of state officials from enforcing those crimes. Florida's Attorney General appealed. Before us now is a motion to stay the district court's preliminary injunction, and a motion to expedite the appeal. We deny the motion for a stay and grant in part the motion to expedite.

I

This suit is about recent Florida legislation known as "SB 4-C." As relevant here, SB 4-C created two new state-law crimes. *See* Fla. Stat. §§ 811.102, 811.103 (2025). One forbids "unauthorized alien[s]" from "knowingly enter[ing]" Florida "after entering the United States by eluding or avoiding examination or inspection by immigration officers." *Id.* § 811.102(1). The other forbids the entry

into Florida or the presence in Florida of an "unauthorized alien" when the federal government has "denied admission, excluded, deported, or removed" him or when he "departed the United States during the time an order of exclusion, deportation, or removal is outstanding." *Id.* § 811.103(1). (For ease of reference, if somewhat imprecisely, we refer to § 811.102 and § 811.103 simply as "SB 4-C.")

Litigation ensued. Two non-profits and two individuals sued (in their official capacities) Florida's Attorney General, Florida's Statewide Prosecutor, and the state attorneys of Florida's 20 judicial districts; the plaintiffs also moved for a temporary restraining order and a preliminary injunction preventing the defendants from enforcing SB 4-C. The plaintiffs further moved for class certification. The district court issued an ex parte temporary restraining order "prohibiting Defendants and their officers, agents, employees, attorneys, and any person who are in active concert or participation with them from enforcing SB 4-C." Order at 14, Dkt. No. 28.

Despite the temporary restraining order, there are indications that enforcement of SB 4-C did not halt completely. According to the plaintiffs, some unknown number of arrests pursuant to SB 4-C took place *after* the district court entered the order. Following a hearing on the motion for a preliminary injunction—and, it seems, in light of the reports of arrests—the district court extended the temporary restraining order and, quoting Federal Rule of Civil Procedure 65, clarified that:

> The TRO shall be interpreted to include among those "who are in active concert or participation with" Defendants or their officers, agents, employees, or attorneys, and thus prohibited from enforcing SB 4-C, the following: any officer or other personnel within any municipal or county police department within Florida, the Florida Department of Law Enforcement, or the Florida Highway Patrol, and any other law enforcement officer with power to enforce SB 4-C.

Omnibus Order at 1, Dkt. No. 49 (quoting Fed. R. Civ. P. 65(d)(2)(C)).

The Attorney General objected to the district court's interpretation of the temporary restraining order. Shortly after the district court issued the clarification, he sent a letter to various Florida law enforcement agencies explaining his view that the order was impermissibly broad, while also saying that the court "instructed my office to notify you that all Florida law enforcement agencies at present must refrain from enforcing Sections 811.102 and 811.103." Dkt. No. 57-2 at 2. A few days later he sent a second letter reiterating his view that the district court lacked the authority to extend its order to non-party law-enforcement officials. The letter added:

> Judge Williams ordered my office to notify you of the evolving scope of her order, and I did so. But I cannot prevent you from enforcing [SB 4-C], where there remains no judicial order that properly restrains you from doing so. As set forth in the brief my office filed today, it is my view that no lawful, legitimate order

> currently impedes your agencies from continuing to enforce [SB 4-C].

Dkt. No. 57-1 at 2.

The district court soon converted the temporary restraining order into a preliminary injunction, and provisionally certified two Rule 23(b)(2) classes. *Fla. Immigrant Coal. v. Uthmeier*, No. 25-21524-CV, 2025 WL 1423357 (S.D. Fla. Apr. 29, 2025). Like the clarified temporary order, the preliminary injunction expressly extends to all of Florida's law enforcement officials. The two classes are broad and include more or less any person who could be in violation of either of the two SB 4-C crimes. In the same order the district court directed the Attorney General to show cause why the second letter did not warrant holding him in contempt or sanctioning him.

The Attorney General appealed the grant of the injunction, and then moved for a stay of the injunction pending appeal, and to expedite the appeal.

II

We deny the motion for a stay. When a party requests a stay of an injunction pending appeal, we consider: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *League of Women Voters of Fla., Inc. v. Fla. Sec'y of State*, 32 F.4th 1363, 1370 (11th Cir. 2022) (citation modified). "Ordinarily the first factor is the most important." *Garcia-Mir v.*

Meese, 781 F.2d 1450, 1453 (11th Cir. 1986). "But the movant may also have his motion granted upon a lesser showing of a substantial case on the merits when the balance of the equities identified in factors 2, 3, and 4 weighs heavily in favor of granting the stay." *Id.* (citation modified). We conclude that the stay factors do not favor the Attorney General here.

We discuss—very briefly, given this emergency posture—the following issues: (1) whether the plaintiffs have Article III standing; (2) whether they have a cause of action; (3) whether SB 4-C is preempted by the Immigration and Nationality Act; (4) whether the preliminary injunction should extend to non-party law-enforcement officials; and (5) the non-merits stay factors.

A

At very least, the individual plaintiffs, V.V. and Y.M., seem likely to succeed in showing that they have Article III standing. Both essentially concede that they are guilty of violating SB 4-C: According to the complaint, V.V. presently resides in Florida, has been deported in the past, and reentered the United States without inspection in 2014; Y.M. also resides in Florida and entered the United States without inspection decades ago. Compl. ¶¶ 16, 26–27, Dkt. No. 1. And police in Florida have apparently already made arrests under SB 4-C. The individual plaintiffs therefore likely can satisfy the Article III standing requirements to mount a pre-enforcement challenge to SB 4-C. *See Socialist Workers Party v. Leahy*, 145 F.3d 1240, 1245 (11th Cir. 1998) (explaining that a plaintiff may demonstrate Article III standing in a pre-enforcement challenge if

"(1) it was threatened with application of the statute; (2) application is likely; or (3) there is a credible threat of application").

B

The plaintiffs are also likely to succeed in showing that their suit falls under *Ex parte Young*, 209 U.S. 123 (1908), which generally permits an official-capacity suit against a state officer who is alleged to be committing "an ongoing violation of federal law," *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002) (citation modified). It is true that Congress may foreclose *Ex parte Young* actions—but Congress's "intent to foreclose" is generally expressed only when (1) it "express[ly] provi[des] [] one method of enforcing a substantive rule" and (2) the relevant federal-law right is "judicially unadministrable." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 328–29 (2015) (citation modified). Neither condition seems to be satisfied here. To be sure, as the Attorney General says, the Immigration and Nationality Act is enforced by the Secretary of Homeland Security. But the plaintiffs do not seek to enforce immigration laws; instead, they argue that, by way of the Supremacy Clause *and* the Immigration and Nationality Act, SB 4-C is unconstitutional. Congress has not established any "one" method for enforcing federal preemption occasioned by the Immigration and Nationality Act. Nor do the interpretive questions here seem to involve the kind of "sheer complexity" that signals Congressional intent to "preclude the availability of equitable relief." *Id.* The Attorney General therefore has not made a "strong showing" on this issue.

C

The preemption question is a closer one. But we're mindful that the burden in this posture is for the Attorney General to make a "strong showing" that he is likely to succeed on the merits. And we do not think he tips the balance in his favor.

A few cases guide our thinking. First, *Arizona v. United States*, 567 U.S. 387 (2012). There, the Supreme Court took the view that "[f]ederal law specifies limited circumstances in which state officers may perform the functions of an immigration officer" and emphasized "the principle that the removal process is entrusted to the discretion of the Federal Government." *Id.* at 408–09. Second, *Georgia Latino Alliance for Human Rights v. Governor of Georgia*, 691 F.3d 1250 (11th Cir. 2012). In that case, we concluded that "[t]he INA provides a comprehensive framework to penalize the transportation, concealment, and inducement of unlawfully present aliens." *Id.* at 1263. And we pointed out that "the federal government has clearly expressed more than a peripheral concern with the entry, movement, and residence of aliens within the United States." *Id.* at 1264 (citation modified). Third, *United States v. Alabama*, 691 F.3d 1269 (11th Cir. 2012). There, we recognized that "[t]he power to exclude and the related federal power to grant an alien permission to remain 'exist as inherently inseparable from the conception of nationality.'" *Id.* at 1293 (quoting *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 318 (1936)).

The eventual application of preemption doctrine in this case is sure to be quite involved. After all, field preemption is "rare."

Kansas v. Garcia, 589 U.S. 191, 208 (2020). And we emphasize that this order does not definitively resolve the preemption issue. But at this preliminary stage, we cannot conclude that the Attorney General has made the necessary "strong showing." A state statute is field preempted when "Congress, acting within its proper authority, has determined [that the field] must be regulated by its exclusive governance." *Arizona*, 567 U.S. at 399. "The intent to displace state law altogether can be inferred from a framework of regulation so pervasive that Congress left no room for the States to supplement it or where there is a federal interest so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Id.* (citation modified). It seems likely—given the federal government's longstanding and distinct interest in the exclusion and admission of aliens, and the Immigration and Nationality Act's extensive regulation of alien admission—that this principle is satisfied with respect to the field of alien entry into and presence in the United States. Accordingly, the Attorney General has not made a "strong showing" that the district court was wrong to conclude that SB 4-C is likely field preempted.

D

The Attorney General asks that we at least stay the district court's preliminary injunction insofar as it extends to non-party law-enforcement officials. We decline to do so.

It may be that the district court was wrong to enjoin non-party law-enforcement officials from using SB 4-C. After all, it seems that in at least some respects, the Attorney General (and the

other named defendants) are distinct entities from at least many of Florida's law enforcement officials. *Contrast* Fla. Const. art. IV, § 4(b) (creating the office of the Attorney General), *and id.* art. V, § 17 (creating the office of state attorney in each judicial district), *with id.* art. VIII, § 1(d) (providing for the election of county sheriffs). And in analogous contexts we've sometimes been skeptical about arguments that statewide officials control local officials. *Cf., e.g.*, *Lewis v. Governor of Alabama*, 944 F.3d 1287, 1296–1305 (11th Cir. 2019) (en banc); *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1253–58 (11th Cir. 2020); *City of S. Miami v. Governor*, 65 F.4th 631, 640–45 (11th Cir. 2023). Distinctions like this can matter because federal courts' "power is . . . limited": Courts enjoin particular officials from enforcing a statute—they do not enjoin the statute itself. *Jacobson*, 974 F.3d at 1255. That said, we recognize that the precise interpretation of Rule 65(d)(2)'s boundaries is tricky.

Nevertheless, at this preliminary stage, we deny even a partial stay. That is because, whether he is right or wrong about his control over other law-enforcement officials, the Attorney General has not made a "strong showing" on this issue.

Suppose that the plaintiffs are right, and the Attorney General, the state attorneys, and the various law enforcement officials are all (in effect) a single monolithic entity. In that case, the relevant standard for assessing the scope of the district court's order is the principle "that remedies should be limited to the inadequacy that produced the injury in fact that the plaintiff has established, and [be] no more burdensome to the defendant than necessary to

provide complete relief to the plaintiffs." *Georgia v. President of the U.S.*, 46 F.4th 1283, 1303 (11th Cir. 2022) (citation modified). The order's scope seems consistent with that principle—again, supposing that the plaintiffs are right. The plaintiffs sought and obtained a sweeping provisional class certification, and so the relevant parties to the litigation (for our purposes) are essentially all people against whom SB 4-C might be enforced. The Attorney General criticizes what he calls a "universal" injunction, but he does not meaningfully contest the propriety of the class certification in the stay motion. And in any event, this kind of provisional class certification is not unheard of. *Cf. A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1369 (2025). Accordingly, on the plaintiffs' theory of the relatedness between the Attorney General and state law-enforcement agencies, it seems sensible for the district court to enjoin from implementing SB 4-C the various officials who might be a part of the enforcement effort. Otherwise, the efficacy of the district court's order would be thwarted.

Alternatively, suppose that the Attorney General is correct: Florida's law-enforcement officers are totally separate entities over which he has no meaningful control; they have different sources of authority in state law; and they serve separate functions under Florida's constitution. If that is true, then we doubt that the Attorney General has Article III standing to appeal the portion of the district court's order enjoining other state law-enforcement officials.

"It is a jurisdictional requirement that litigants establish their standing not only to bring claims, but also to appeal judgments."

Henderson v. Ford Motor Co., 72 F.4th 1237, 1244 (11th Cir. 2023) (citation modified); *accord Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997) ("The standing Article III requires must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance." (citation modified)). Hence, "[o]nly a litigant who is aggrieved by the judgment or order may appeal." *Wolff v. Cash 4 Titles*, 351 F.3d 1348, 1354 (11th Cir. 2003) (citation modified). The problem for the Attorney General is that, on his own theory, he is *not* aggrieved by the portion of the district court's order enjoining non-party law-enforcement officials. Instead, it is those (separate) law-enforcement officials who are aggrieved—and the Attorney General, having effectively disavowed any relationship to them, is (apparently) seeking to vindicate *their* rights and mitigate *their* injuries. That is not consistent with Article III's limits on our jurisdiction, even though the Attorney General clearly *does* have standing to appeal the bulk of the district court's order. *Cf. id.* ("Thus, it is entirely possible that named defendants in a trial proceeding, who would doubtless have appellate standing for the purposes of challenging some final rulings by the trial court, could lack standing to appeal other trial court rulings that do not affect their interests.").

That is not to say that nobody can challenge the district court's extension of its injunction to non-parties. Although "[g]enerally, one not a party lacks standing to appeal an order in that action," *id.* (citation modified), we have recognized that "a nonparty may be sufficiently bound by a judgment to qualify as a party for purposes of appeal . . . when the nonparty is purportedly bound by

an injunction," *AAL High Yield Bond Fund v. Deloitte & Touche LLP*, 361 F.3d 1305, 1310–11 n.10 (11th Cir. 2004); *accord, e.g.*, *SEC v. Stanford Int'l Bank, Ltd.*, 112 F.4th 284, 291 (5th Cir. 2024); *United States v. Kirschenbaum*, 156 F.3d 784, 794 (7th Cir. 1998); *In re Piper Funds, Inc.*, 71 F.3d 298, 301 (8th Cir. 1995); *Hilao v. Est. of Marcos* (*In re Est. of Marcos Human Rights Lit.*), 94 F.3d 539, 544 (9th Cir. 1996). Accordingly, if the various enjoined state law-enforcement officials are displeased with the district court's order, they likely may appeal from it. But they have not done so here.

The Attorney General may be right about his control over other law-enforcement officials. But it is not entirely obvious, and we conclude that—whether he is right or wrong about the district court's authority under Rule 65(d)—he has not made a "strong showing."

E

Last of all, we consider the non-merits stay factors. *See Garcia-Mir*, 781 F.2d at 1453. Four considerations seem especially relevant to us.

First, the Attorney General plausibly argues that he may be irreparably harmed by the preliminary injunction because "the inability [of a State] to enforce its duly enacted [laws] clearly inflicts irreparable harm on the State." *Abbott v. Perez*, 585 U.S. 579, 602–03 n.17 (2018); *see Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). This would matter a great deal had the Attorney General made a strong showing on the merits. But because his success is quite uncertain, this particular harm is less

relevant. *Cf. Scott v. Roberts*, 612 F.3d 1279, 1297 (11th Cir. 2010) ("[T]he public, when the state is a party asserting harm, has no interest in enforcing an unconstitutional law.").

Second, the Attorney General also says that vindicating "the State's power to stem the tsunami of effects from illegal immigration is critical." Mot. to Expedite at 5. But even assuming that "effects from illegal immigration" is an irreparable harm, we are not sure how this particular law could be a decisive part of mitigating that harm. Federal officials of course already enforce immigration law—and many Florida law-enforcement agencies have entered into agreements with the Department of Homeland Security that allow local police to enforce federal immigration law.

Third, the equities seem to cut against the Attorney General—and in any event do not cut in his favor—given his seemingly defiant posture vis-à-vis the district court. Again, he may well be right that the district court's order is impermissibly broad. But that does not warrant what seems to have been at least a veiled threat not to obey it. *See In re Novak*, 932 F.2d 1397, 1400 (11th Cir. 1991) ("[A]n order duly issued by a court having subject-matter jurisdiction over a case or controversy before it, and personal jurisdiction over the parties to that case or controversy, must be obeyed, regardless of the ultimate validity of the order.").

Finally, the public interest (as we see it) is served by maintaining the pre-SB 4-C status quo. Certainty and predictability will be promoted by limiting enforcement of SB 4-C at least until this litigation has reached a more decisive point.

⋆ ⋆ ⋆

We therefore deny the motion for a stay. This is a difficult case, and this order does not finally resolve the issues. The parties will have another bite at the apple once they reach the "merits" of the preliminary-injunction appeal. And, should the preliminary injunction become permanent, the parties would then have a third bite on appeal. But at this stage, and given the accelerated timeline, we are not persuaded that the Attorney General has carried his burden to obtain the extraordinary relief he seeks.

III

The Attorney General also moved for expedited consideration of the stay pending appeal and to expedite the appeal. Insofar as some of his proposed deadlines have already passed, his request to expedite consideration of the motion to stay has been effectively denied. We however grant his motion to expedite the appeal and direct that the case be calendared for oral argument at the next available sitting.

IV

For the foregoing reasons, the appellants' motion to stay the injunction pending appeal is **DENIED**.

Appellants' motion to expedite the appeal is **GRANTED IN PART**.

The Clerk is **DIRECTED** to place this appeal on the argument calendar for the week of October 6, 2025, in Atlanta.

Briefing shall proceed in keeping with the current schedule, as set by the briefing notice issued on May 20, 2025.

No. 25-11469

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FLORIDA IMMIGRANT COALITION, ET AL.,
Plaintiffs-Appellees,

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JAMES UTHMEIER,
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Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of Florida
No. 1:25-cv-21524-KMW

APPELLANTS' MOTION TO STAY INJUNCTION PENDING APPEAL

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May 7, 2025

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Defendants certify that, to the best of their knowledge, the following is a complete list of interested persons as required by Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 to 26.1-3:

1. Amdur, Spencer
2. Bakkendahl, Thomas
3. Bartlett, Bruce
4. Basford, Larry
5. Brodsky, Ed
6. Campbell, Jack
7. Chavez, Paul R.
8. Choi, Grace
9. Costello, David M.
10. Cox, Alexcia
11. Cox, Nicholas B.
12. DeSousa, Jeffrey P.
13. Durrett, John
14. Farmworker Association of Florida, Inc.
15. Florida Immigrant Coalition

16. Fox, Amira D.
17. Gladson, William
18. Godshall, Amy N.
19. Goodman, Hon. Jonathan
20. Greer, Alana J.
21. Haas, Brian
22. Haskell, Miriam F.
23. Jadwat, Omar
24. Kacou, Amien
25. Kramer, Brian S.
26. Lamia, Christine
27. Larizza, R.J.
28. LaRocca, Christina I.
29. Lopez, Susan S.
30. Madden, Ginger Bowden
31. Mann, William C.
32. Nelson, Melissa
33. Pratt, Christine K.
34. Pryor, Harold F.
35. Roman, Oscar S.

36. Rundle, Katherine Fernandez

37. Scheiner, William

38. Schenck, Robert S.

39. Stafford, William III

40. Steinberg, Hannah

41. Tilley, Daniel B.

42. Uthmeier, James

43. V.V.

44. Wiese, Evelyn

45. Williams, Hon. Kathleen M.

46. Wofsy, Cody

47. Worrell, Monique H.

48. Y.M.

No publicly traded company or corporation has an interest in the outcome of this case or appeal.

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INTRODUCTION

"From the beginning of our country, criminal law enforcement has been primarily a responsibility of the States, and that remains true today." *Kansas v. Garcia*, 589 U.S. 191, 212 (2020). Even in the immigration context, "the historic police powers of the States are not superseded unless that was the clear and manifest purpose of Congress." *Arizona v. United States*, 567 U.S. 387, 400 (2012) (cleaned up). As a result, states are not 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), just as at the Founding, *Mayor of City of New York v. Miln*, 36 U.S. (11 Pet.) 102, 132-33 (1837). When Congress "prescribe[s] what it believes to be appropriate standards for the treatment of [aliens], the States may, of course, follow the federal direction." *Plyler*, 457 U.S. at 219 n.19.

Florida did nothing more in enacting SB 4-C. To aid the United States in curbing illegal immigration within the State's borders, SB 4-C criminalizes the entry into Florida of those who have illegally entered the United States. Fla. Stat. §§ 811.102, 811.103. That law tracks federal law to a tee. *See* 8 U.S.C. §§ 1325(a), 1326(a)(2). It also retains federal-law defenses and says nothing of who should be admitted or removed from the country. As Justice Scalia observed, Florida "has moved to protect its sovereignty—not in contradiction of federal law, but in complete compliance with it." *Arizona*, 567 U.S. at 437 (Scalia, J., concurring in part, dissenting in part). "If securing its territory in this fashion is not within the power of [Florida], we should cease referring to it as a sovereign State." *Id.*

Despite those principles, the district court preliminarily enjoined Defendants from enforcing SB 4-C. That was error. Plaintiffs lack a cause of action to enforce federal immigration law. They also have failed to prove their facial challenge—"the most difficult challenge to mount"—because they cannot show that "no set of circumstances exists under which the Act" would comply with federal immigration law and the Dormant Commerce Clause. *United States v. Salerno*, 481 U.S. 739, 745 (1987). And in all events, the district court's order wrongly binds all of Florida's law-enforcement officers—who are not parties, not the parties' agents, and not acting in concert with the parties—flouting longstanding equitable principles entitling every litigant to "their day in court." *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 832-33 (2d Cir. 1930) (Hand, J.).

The Court should stay the injunction.

BACKGROUND

A. SB 4-C

In 2025, Florida passed SB 4-C. 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). 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 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 "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. 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).

B. Procedural History

Plaintiffs are two anonymous individuals and two organizations who claim to be affected by SB 4-C. DE1 ¶¶ 8-29. They sued Florida's Attorney General, the statewide prosecutor, and Florida's 20 state attorneys, but no law-enforcement officers. DE1. They also sought to certify a class. DE5.

Plaintiffs contended that SB 4-C is preempted by federal law and violates the Dormant Commerce Clause. DE1 ¶ 68-77. They moved for a temporary restraining order and a preliminary injunction, DE4, and the district court granted the restraining order *ex parte*, DE28. 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." DE28 at 14. After learning of arrests by law-enforcement officers, DE50 at 6:5-18, the court clarified that its TRO also covered any "law enforcement officer with power to enforce SB 4-C," DE49 at 1.

That court later granted a preliminary injunction. DE67. It held that SB 4-C was field and conflict preempted, and violated the Dormant Commerce Clause. *Id.* at 14. It extended its order to all law-enforcement officers. *Id.* at 48.[1]

Defendants appealed. DE68. On April 30, Defendants moved for a stay of that injunction, DE69, and the district court's delay in ruling on that motion amounts to a "faile[ure] to afford the relief requested." *Al Otro Lado v. Wolf*, 952 F.3d 999, 1006 n.5 (9th Cir. 2020).

ARGUMENT

This Court may stay an injunction pending appeal. Fed. R. App. P. 8(a)(2). In evaluating a stay request, the Court considers: (1) whether the applicant has shown a strong likelihood of success on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether a stay will substantially injure the other parties; and (4) the public interest. *League of Women Voters of Fla. v. Fla. Sec'y of State*, 32 F.4th 1363, 1370 (11th Cir. 2022). Where the latter three factors "weigh[] heavily in favor of granting

[1] The district court set a show-cause hearing to evaluate whether the Attorney General violated that order by expressing his legal position that the court's order could not be lawfully extended to every Florida law-enforcement officer. DE67 at 48-49.

the stay," a stay may be "granted upon a lesser showing of a 'substantial case on the merits.'" *Id.* Because each factor favors Defendants, this Court should stay the injunction or, at least, the scope of relief.

I. DEFENDANTS ARE LIKELY TO SUCCEED IN OVERTURNING THE UNIVERSAL INJUNCTION.

A. Plaintiffs lack a cause of action to enforce federal immigration law.[2]

At the outset, Plaintiffs have no "cause of action" to enforce the federal Immigration and Nationality Act (INA). *Davis v. Passman*, 442 U.S. 228, 239 (1979). They rely solely on an equitable cause of action, DE1 at 13-14, which fails because the "fairest reading" of the INA shows that "Congress [has] displace[d]" "equitable relief," and Plaintiffs "cannot, by invoking [courts'] equitable powers, circumvent" that statutory limit. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 328-29 (2015).

The INA's text bears that out. The statute charges the Secretary of Homeland Security "with the administration and enforcement" of the INA unless another part "relate[s] to the powers, functions, and duties conferred upon" other Executive Branch officers. 8 U.S.C. § 1103(a)(1). Some examples of carveouts are the federal bars on illegal entry and reentry, which provide for enforcement by particular federal officers—criminal and civil suits by a U.S. Attorney. 8 U.S.C. § 1329 (vesting enforcement in the U.S. Attorney for suits under "this subchapter"); *see* 8 U.S.C. §§ 1324, 1326, 1330.

[2] Below, Defendants explained that Plaintiffs lack standing. *See* DE40 at 5-8. Due to space constraints, Defendants will reserve those arguments for their opening brief.

Because federal law "expressly confers enforcement authority on" specific federal officers, it "preclud[es] enforcement by" private plaintiffs. *Corey v. Rockdale Cnty.*, No. 1:22-cv-3918, 2023 WL 6242669, at *5 (N.D. Ga. Aug. 28, 2023); *see also Armstrong*, 575 U.S. at 328 (similar). That congressional limit makes sense, as prosecution is a "core executive power." *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 219 (2020); *see also Safe Sts. All. v. Hickenlooper*, 859 F.3d 865, 902-05 (10th Cir. 2017) (rejecting preemption challenge to Colorado's marijuana laws under the Controlled Substances Act).

The district court wrongly held that Congress displaced Plaintiffs only from prosecuting a person for crimes, not from enforcing implied preemption created by those same provisions. DE67 at 12 n.8. To the court, Plaintiffs "do[] not seek to enforce the INA, but seek[] to avoid prosecution under a state law preempted by the INA." *Id.* Yet implied preemption stems from Congress's "clear and manifest purpose" in a statute to displace state law, and enforcing that purpose *is* enforcing the statute's rules. *Arizona*, 567 U.S. at 400. After all, if the INA contained an express preemption provision, Plaintiffs would be enforcing that provision by suing to preempt a state law; implied preemption is an implicit version of that same scenario.

Nor does the INA grant Plaintiffs privately enforceable, "personal rights." *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284-85 (2002). When suing in equity, the plaintiff must come armed with a federal law endowing it with privately enforceable rights, *see Safe Sts. All.*, 859 F.3d at 902-04, bestowed "in clear and unambiguous terms," *Gonzaga*, 536 U.S. at 290. The only right Plaintiffs identify is the right not to be regulated because of

preemption, but that is insufficient. For a statute to grant rights, "its text must be phrased in terms of the persons benefited." *Id.* at 284. If anything, the INA restricts Plaintiffs' rights by criminalizing their conduct.

B. SB 4-C is not preempted by federal immigration law.

This Court is also likely to reverse on the merits. The district court found that SB 4-C is facially field- and conflict-preempted. *See* DE67 at 22, 25. Under the standard for Plaintiffs' facial challenge, if any application of SB 4-C is not preempted, Plaintiffs lose. *Salerno*, 481 U.S. at 745.

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

Field preemption is a "rare case[.]" *Garcia*, 589 U.S. at 208. To establish field preemption, Plaintiffs must identify a field fully occupied by federal law. *Id.* Then Plaintiffs must show that SB 4-C operates within that field in every application. *See Salerno*, 481 U.S. at 745. They fail at both steps.

a. 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 field must be narrowly defined. *See Hillsborough Cnty. v. Automated Med. Lab'ys*, 471 U.S. 707, 715-16 (1985).

Against that backdrop, the district court suggested that the INA preempts the field of any "movement of noncitizens." DE67 at 16. The statute does not support that sweeping vision of preemption. The district court relied on the supposed "comprehensive" nature of the INA and amorphous federal interests. DE67 at 16-18. But all the district court cited for that premise is "[t]he INA defines and prohibits illegal entry and reentry." *Id.* That Congress has criminalized conduct far from shows that it also foreclosed state laws. *See Garcia*, 589 U.S. at 212. Such a view would unwind countless overlapping state crimes, from manufacture of narcotics to fraud and murder.

The district court's analogy to alien registration—the sole field the Supreme Court has held preempted by the INA—was also inapt. DE67 at 16-17 (citing *Arizona*, 567 U.S. at 400-02). The INA's entry and reentry crimes are far less detailed than the alien-registration provisions, which define extensively 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 limit enforcement of registration crimes to specific "person[s] authorized" by the "Attorney General." 8 U.S.C. § 1304(c). Unsurprisingly, the Court has declined to extend *Arizona*. *See Garcia*, 589 U.S. at 210.

Regardless, preemption may not be "inferred merely from the comprehensive character" of federal law alone. *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 Arizona*, 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). 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." *Id.* at 65. But entry crimes affect only *non-law-abiding* aliens. *Id.* at 64-66. The district court claimed that *Arizona* did not differentiate based on law-abiding status, DE67 at 20, but *Arizona* incorporated the explanation in *Hines*, which *did*, for why Congress created alien-registration "as a harmonious whole." 567 U.S. at 401.

Georgia Latino Alliance for Human Rights v. Governor of Georgia, 691 F.3d 1250 (11th Cir. 2012), does not hold otherwise. DE67 at 17. There, this Court held that the INA preempted the field of "transportation, harboring, and inducement of unlawfully present aliens." *Ga. Latino*, 691 F.3d at 1266. But transporting and harboring are special because Congress has specifically limited state participation to arrest under federal law. *Id.* at 1264 (citing 8 U.S.C. § 1324(c)). Though claiming that the INA similarly 'confin[es] the prosecution of [illegal entry and reentry] to federal court,"' the district court cited nothing to support that conclusion. DE67 at 18. Nor could it, as the federal entry and reentry crimes contain nothing like Section 1324(c). If the district court was referring to the idea that federal crimes are prosecuted in federal court, that just describes the consequences of "overlap" in criminal law. *Garcia*, 589 U.S. at 212.

b. Even if there were field preemption over alien entry and removal, SB 4-C is still not preempted. State laws with only "some indirect effect" on that field "[are] not pre-empted." *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 308 (1988). Florida's law does not directly operate in the field of alien entry in every application. *See Salerno*, 481 U.S. at 745. Nor does it regulate admission or the process of removal. 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). And where an alien travels unassisted into Florida, it does not directly implicate the separate field of "prohibitions on the transportation" "of unlawfully present aliens," *Ga. Latino*, 691 F.3d at 1266, because someone *other than the alien* must provide that transportation.

2. Plaintiffs have not shown that SB 4-C is 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 (2012) (plurality opinion). The district court erroneously found that SB 4-C interferes with federal enforcement discretion. DE67 at 23.

Prosecutorial discretion inheres in every criminal law, so that argument would unabashedly apply to every federal crime. Yet nothing about the "overlap" in federal and state criminal law demands preemption. *Garcia*, 589 U.S. at 212. And "the possibility that federal enforcement priorities might be upset is not enough" either. *Id.* Preemption

arises from "'the Laws of the United States,'" not federal officers' "enforcement priorities." *Id.*

Georgia Latino is not to the contrary. That case dealt with "transportation" by other individuals "of unlawfully present aliens"—and this Court was concerned that state enforcement of overlapping crimes would "threaten the uniform application of the INA" and potentially implicate foreign-policy interests unmoored from the INA's text and structure. *Ga. Latino*, 691 F.3d at 1266. That reasoning defies *Garcia* and should not be extended. *See* 589 U.S. at 202, 212.

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

The Dormant Commerce Clause, at its "very core," prevents economic discrimination between states, *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 369 (2023), meaning "measures [purposefully] designed to benefit in-state economic interests by burdening out-of-state competitors," *id.* Occasionally, courts look to a "more ambitious" and disfavored theory to "smoke out a hidden protectionism," *id.* at 371, 379, comparing "the burden imposed on interstate commerce" to see if it is "clearly excessive in relation to the putative local benefits," *id.* at 377.

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; 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. The unnamed Plaintiffs prove that: Though they are Florida residents, they are subject to SB 4-C. And

nothing "disclose[s] purposeful discrimination against out-of-state" interests under the Supreme Court's balancing framework. *Id.* at 379.

The district court cited *Edwards v. California*, 314 U.S. 160 (1941), to say that states may not prohibit any crossing of state borders by individuals because it is "commerce." DE67 at 25-26. But if that is commerce, Congress has affirmatively prohibited it, 8 U.S.C. §§ 1324(a)(1)(A)(ii), 1325(a), and so the Dormant Commerce Clause does not apply. *United States v. Texas*, 97 F.4th 268, 332 (5th Cir. 2024) (Oldham, J., dissenting). Still more, the law in *Edwards* was clearly 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).

D. Alternatively, the district court lacked authority to bind Florida's law-enforcement officers, who are not parties.

At a minimum, this Court should narrow the scope of the injunction. *See* Order, *Garcia v. Exec. Dir., Fla. Comm'n on Ethics*, No. 23-12663 (11th Cir. Nov. 30, 2023). 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); *see also United States v. Robinson*, 83 F.4th 868, 878 (11th Cir. 2023). That "embod[ies]" the historic limits of equity. *ADT LLC v. NorthStar Alarm Servs., LLC*, 853 F.3d 1348, 1352 (11th Cir. 2017). 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*, 42 F.2d at 832-33.

Because Plaintiffs have not shown that Florida law-enforcement officers fit those criteria, the Court should narrow the injunction to cover only Defendants and those who, as a matter of fact, aid or abet efforts by Defendants to violate the injunction.

1. The first criterion is easy: "It is undisputed that law enforcement agencies are not named parties." DE67 at 38.

2. The second criterion also is not met. Law-enforcement officers are not Defendants' "officers, agents, servants, employees, [or] attorneys." Fed. R. Civ. P. 65(d)(2). Though Rule 65 does not define those terms, 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 Robinson*, 83 F.4th at 880 (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.[3] Neither element is met, because local law-enforcement agencies are independent from prosecutorial agencies under Florida's constitutional scheme.

[3] *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).

Florida law makes that division clear. *See Peppers v. Cobb County*, 835 F.3d 1289, 1294 (11th Cir. 2016) (Georgia district attorney was "a legal entity separate from the County" because distinct constitutional provisions created those entities). In Florida, law-enforcement and prosecutorial agencies derive powers from separate constitutional[4] and statutory[5] 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's office); 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 governments, *e.g.*, City of Miami Charter ch. 42, § 42-2 (police chief appointed by city manager). This Court has thus 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).

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[4] *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).

[5] *See, e.g.*, Fla. Stat. § 16.01 (Attorney General); Fla. Stat. §§ 27.02-.13, 27.18-.25 (state attorneys); Fla. Stat. § 30.15 (sheriffs); Fla. Stat. § 943.04(2)(a) (Florida Department of Law Enforcement); Fla. Stat. § 321.05 (Florida Highway Patrol); *see also* City of Miami Charter § 24 (Miami Police Department).

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. *General Bldg. Contractors v. Pennsylvania*, 458 U.S. 375, 393-95 (1982). So practical sway over local officials does not matter. If such indirect control established agency, every law-enforcement officer could bind the Attorney General to contracts, Restatement (Third) of Agency § 6.01, or subject him to liability under *respondeat superior*, *id.* § 7.07. That is not the law. *Cf. State v. Spradlin*, 12 S.W.3d 432, 434 (Tenn. 2000) ("[p]olice officers" lack "authority to bind the [] attorney general" "not to prosecute").

In any event, the district court's evidence of practical control was weak. First, the court thought that the Attorney General's "power to file suit" against local officials established sufficient control. DE67 at 39 n.24. This Court rejected that premise in *Jacobson v. Florida Secretary of State*, 974 F.3d 1236, 1253 (11th Cir. 2020) ("That the Secretary must resort to judicial process if the Supervisors fail to perform their duties underscores her lack of authority over them.").

Next, the district court cited the Attorney General's tweets discussing "direction[s]" he has given to law-enforcement officials. DE67 at 39-40. Those directions, of course, recognize a partnership between law enforcement and the Attorney General, but they establish no "right to control." *General Bldg. Contractors*, 458 U.S. at 393-95. Plus, most of those tweets involved law-enforcement agencies headed by a multi-

member board on which the Attorney General sits. *See* Fla. Stat. § 20.201 (Florida Department of Law Enforcement); Fla. Stat. § 20.24 (Florida Highway Patrol). In context, the tweets at most reflect that the Attorney General may direct law enforcement when acting on a controlling board. That does not give him control over those agencies in his singular capacity. *See Support Working Animals v. Governor of Fla.*, 8 F.4th 1198, 1204 & n.4 (11th Cir. 2021).

Finally, the district court noted that the Attorney General is Florida's "chief legal officer," and that Florida courts give his opinions "careful consideration." DE67 at 40-41. Yet as the district court acknowledged in the same breath, the Attorney General's opinions are "not binding." *Id.*

3. 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 each person to "their day in court." *Alemite*, 42 F.2d at 832-33. 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.

a. 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 Defendants share a "legal identity." *Id.* To share legal identity, the non-party must have both (1) "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." *Id.* That "limited class" prevents a party from "circumvent[ing] a valid court order merely by making superficial changes" in form. *Id.* at 884-85.

It is elemental that law-enforcement officers do not exercise "significant control over the [Defendants]" or control over "[this] litigation." *Robinson*, 83 F.4th at 884; *see supra* 14-16. 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 Attorneys 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. This Court has held, for example, that a sheriff, "neither individually nor as sheriff," "shared an identity of interest" with the "prosecutor in [a] criminal case." *Wilson v. Attaway*, 757 F.2d 1227, 1237 (11th Cir. 1985).

b. Next, there is no evidence of aiding and abetting. Such a showing requires (1) "the commission of the underlying offense by someone" other than the abettor, (2) "a voluntary act or omission" by the abettor, and (3) "a specific intent that such act or omission promote the success of the underlying criminal offense." *Havens v. James*, 76 F.4th 103, 115 n.13 (2d Cir. 2023); *see also United States v. Roosevelt Coats*, 8 F.4th 1228, 1248 (11th Cir. 2021). 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 district court's orders while they challenge them. So there is no "underlying crime" to abet. *Rosemond v. United States*, 572 U.S. 65, 70 (2014).

c. Despite this Court's instructions in *Robinson* and *ADT*, the district court engaged with none of that analysis. It simply forged its own test for whether parties are acting in concert or participation. DE67 at 42 (asking whether there was "a purposeful acting of two or more persons together or toward the same end" or "a purposeful acting of one in accord with the ends of the other"). That defies precedent.

Compounding the problem, the district court erred under its own standard. It reasoned that law-enforcement officers "purposeful[ly] act[] . . . together or toward the same end" as the named Defendants because they "conduct arrests" so that prosecutors may "prosecute charges." DE67 at 42. But Florida prosecutors are enjoined from

prosecuting crimes under SB 4-C, so prosecutors may not work "together" with "or toward the same end" as law enforcement to enforce SB 4-C. *Id.* Even more, the district court's underlying premise—that arrests are merely precursors to prosecution—is wrong. Officers may arrest "for a wide variety of purposes," like deterrence or public safety, even if those purposes are "wholly unrelated to a desire to prosecute for crime." *Terry v. Ohio*, 392 U.S. 1, 13 (1968).

The court also incorrectly asserted that privity between state officials is irrelevant when suing "state officials in their official capacities" because such suits are "no different from a suit against the State." DE67 at 45 n.31. The entire point of *Ex Parte Young* is that suits against state officials *are* different than suits against the State. *See Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 255 (2011) (Suit against a state official could proceed because "he is not the State."). Were it otherwise, a plaintiff would need standing to sue just one state actor to open the spigot to injunctive relief against all state actors. That ignores *Jacobson, Support Working Animals,* and *City of South Miami,* which teach that a plaintiffs may not obtain relief against "independent officials" merely by suing one state officer. *Jacobson*, 974 F.3d at 1253.

Last, the district court's understanding of state-actor litigation flouts traditional notions of claim preclusion. Privity in this context is the same as privity in the res-judicata context. *ADT*, 853 F.3d at 1352. On the district court's understanding of privity, though, rulings against one state actor would bind in future cases against all state

actors. This Court has rejected that view. *See Hercules Carriers, Inc. v. Claimant State of Fla., Dep't of Transp.*, 768 F.2d 1558, 1580 (11th Cir. 1985).

II. THE REMAINING EQUITABLE FACTORS SUPPORT A STAY.

The equities favor a stay. "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). Even more so when a law regulates "harmful, constitutionally unprotected conduct." *Virginia v. Hicks*, 539 U.S. 113, 119 (2003).

Plaintiffs also have unclean hands. *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945) ("[H]e who comes into equity must come with clean hands."). They seek to protect illegal conduct, such as driving without a license or working without authorization. DE4-4 ¶¶ 8–9 (VV); DE4-5 ¶ 7 (YM); DE4-2 ¶ 20 (WA). That they cannot do. *See Shondel v. McDermott*, 775 F.2d 859, 868 (7th Cir. 1985).

CONCLUSION

The Court should stay the injunction or, at minimum, stay it insofar as the injunction applies to law-enforcement officers.

Dated: May 7, 2025

Respectfully submitted,

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/s/ Robert S. Schenck
Assistant Solicitor General

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/s/ Robert S. Schenck
Assistant Solicitor General

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Southern District of Florida

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PAPERLESS ORDER. THIS MATTER is before the Court *sua sponte*. On April 29, 2025, the Court granted Plaintiffs' Motion for Preliminary Injunction. (DE [67].) The same night, Defendants filed a Notice of Interlocutory Appeal to the United States Court of Appeals for the Eleventh Circuit ("Eleventh Circuit"). (DE [68].) On April 30, 2025, Defendants filed a Motion for Stay Pending Appeal of Preliminary Injunction (DE [69]) ("Motion for Stay"). Defendants did not request an expedited ruling or briefing schedule for the Motion to Stay, so the Court maintained the usual briefing schedule specified in Local Rule 7.1(c)(1). S.D. Fla. L.R. 7(c)(1) (generally requiring a response within fourteen days of a motion's filing and any reply within seven days of the response). Pursuant to that schedule, any reply by Defendants is due by May 21, 2025.

On May 7, 2025, despite the requirement that a "party must ordinarily move first in the district court for... a stay of the judgment or order of a district court pending appeal[,]" including "an

order suspending, modifying, restoring, or granting an injunction," Defendants moved in the Eleventh Circuit for a stay of the injunction pending appeal. Fed. R. App. P. 8(a)(1); *see* Appellants' Motion to Stay Injunction Pending Appeal, *Fla. Immigrant Coal. v. Att'y Gen., Fla.*, 25-11469 (11th Cir. May 7, 2025), ECF 6. The motion filed before the Eleventh Circuit did not include a "show[ing] that moving first in the district court would be impracticable[.]" Fed. R. App. P. 8(a)(2)(A)(i). Five days later, Defendants requested the Eleventh Circuit to expedite briefing and ruling on their request. *See* Appellants' Time-Sensitive Motion to Expedite Consideration of Stay Pending Appeal and to Expedite Appeal, *Fla. Immigrant Coal.*, 25-11469 (11th Cir. May 12, 2025), ECF 12.

A Court "retain[s] jurisdiction to grant [a] request for a stay despite the fact that a notice of appeal... was filed prior to the request for a stay." *Matter of Miranne*, 852 F.2d 805, 806 (5th Cir. 1988) (citing Federal Rule of Civil Procedure 62); *see also Doe v. Trump*, 284 F. Supp. 3d 1172, 1176 (W.D. Wash. 2018) (concluding the court had "jurisdiction to consider [d]efendants' emergency motion to stay the preliminary injunction despite the pending appeal[,]" as part of "preserv[ing] the status quo or ensur[ing] compliance with its earlier orders") (citations omitted). Nonetheless, in order to avoid the usual problems that counsel against district and circuit courts exercising "dual jurisdiction[,]" now that Defendants have filed a duplicate motion to stay in the Eleventh Circuit, the Court will wait to consider Defendants' Motion to Stay (DE [69]) until the Eleventh Circuit indicates its position on this matter. *United States v. Roemmele*, 506 F. App'x 891, 892 (11th Cir. 2013) (describing the general rule, based on interests of judicial economy and fairness to parties, that when an appeal is filed, "the district court is divested of jurisdiction to take *any* action with regard to the matter except in aid of the appeal") (emphasis in the original) (quotations omitted). Signed by Judge Kathleen M. Williams on 5/19/2025. (cgd)

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UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

FLORIDA IMMIGRANT COALITION, *et al.*, *Plaintiffs*, v. JAMES UTHMEIER, in his official capacity as Attorney General for the State of Florida, *et al.*, *Defendants*.	No. 1:25-cv-21524-KMW

DEFENDANTS' MOTION FOR A STAY PENDING APPEAL OF PRELIMINARY INJUNCTION

In 2025, Florida enacted SB 4-C. To aid the United States in curbing illegal immigration (and to quell the rush of fentanyl trafficking and gang violence that accompanies it), SB 4-C criminalizes the entry into Florida of those who have illegally entered the United States by evading federal inspection. Fla. Stat. §§ 811.102, 811.103. That law tracks federal law to a tee. *See* 8 U.S.C. §§ 1325(a), 1326(a)(2). It also retains common federal-law defenses and says nothing of who should be admitted or removed from the country. That law does nothing more than exercise Florida's inherent sovereign authority to protect its citizens by aiding the enforcement of federal immigration law. 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).

On April 29, 2025, this Court granted a preliminary injunction. DE67. This Court accepted Plaintiffs' arguments that the Plaintiffs have standing and a cause of action to challenge that law, *id.* at 5-12 & n.8, that federal law facially preempts SB 4-C, *id.* at 13-25, and that SB 4-C is facially unconstitutional under the Dormant Commerce Clause doctrine, *id.* at 25-26. The Court also granted provisional class certification, certifying a class for everyone who would ever be subject to SB 4-C. *Id.* at 28-37. The Court thus preliminarily enjoined enforcement of the statute, and did

so for every person by finding that every single possible application of SB 4-C was unlawful. *Id.* at 47–48. The defendant-side of who the injunction bound was also broad—this Court ruled that beyond the named Defendants in the case, all law enforcement in the State were also bound to adhere to this Court's order because it "found that there is a substantial likelihood that S.B. 4-C is unconstitutional." *Id.* at 46, 48. All Defendants—the Florida Attorney General, Florida Statewide Prosecutor, and all Florida State Attorneys—have appealed. DE68.

Defendants respectfully requests that the Court stay that injunction pending that appeal. As Defendants explained in their response to the motion for a preliminary injunction, Plaintiffs lack standing, lack a cause of action, federal law does not facially preempt SB 4-C, and the Dormant Commerce Clause does not condemn that law on its face either. *See* DE40 at 5-20. And even if the Court disagrees that a stay is warranted because of the merits, it should at least stay its injunction pending appeal to the extent it binds Florida's law-enforcement officers, who are neither parties nor the agents of Defendants, and who are not currently acting in concert with Defendants to enforce SB 4-C. Such expansive relief contravenes both Federal Rule of Civil Procedure 65 and established remedial limits on the Court's authority. DE56.

ARGUMENT

The Court may stay its own injunction order pending appeal. Fed. R. Civ. P. 62(d); *see* Fed. R. App. P. 8(a)(1)(A) (requiring parties "ordinarily" to "move first in the district court" for such relief). Whether to grant a stay pending appeal turns on four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *League of Women Voters of Fla. v. Fla. Sec'y of State*, 32 F.4th 1363, 1370 (11th Cir. 2022) (citation omitted). Where "the balance of equities . . . weighs heavily in favor of granting the stay," a

stay may be "granted upon a lesser showing of a 'substantial case on the merits.'" *Id.* (citation omitted) (omission in original). Each of the stay factors weighs toward granting a stay.

Scope of relief aside, Defendants are likely to succeed because no Plaintiff has standing, no Plaintiff has a cause of action to enforce federal law, because SB 4-C is fully consistent with federal law, and because SB 4-C does not violate the Dormant Commerce Clause. Though this Court disagreed with those arguments in granting a preliminary injunction, the issues are at the very least close enough to warrant a stay.

Start with standing. The individual, unnamed Plaintiffs lack standing because they have failed to allege sufficient facts to know whether they are presently engaging, or will imminently engage, in conduct that violates SB 4-C. At best, they allege speculative travel plans. DE40 at 6. Nor do they have any legally protected interest in vindicating illegal, unrelated conduct. *Id.* And their standing to sue the state attorneys is far from clear, as those individual Plaintiffs could be prosecuted only by the state attorney from the jurisdiction where their crimes were committed. *Id.* at 7. As for the organizational plaintiffs, their associational standing hinges on the individual Plaintiffs who, again, lack standing, and their organizational standing based on a diversion of resources lives or dies on nothing more than their bald assertion that they will have to spend money to combat the effects of SB 4-C. *Id.* at 7-8; *see also City of South Miami v. Governor*, 65 F.4th 631, 639 (11th Cir. 2023) (an organization cannot "spend its way into standing"). Even if those organizations could show Article III standing, they still have not met the requirements of third-party standing to raise the rights of others—namely they show no hindrance to people affected by SB 4-C from raising their own rights. DE40 at 8.

Next, a cause of action. Plaintiffs need a cause of action to bring their preemption claim—but they lack an express, implied, or equitable cause of action to enforce the INA. As explained in

Defendants' response, the INA forecloses all of those theories by assigning the enforcement of the INA to the Secretary of Homeland Security or other identified federal officials. *Id.* at 8-11. That detailed enforcement regime reveals a congressional intent not to bestow a private right of action. The background of criminal and immigration enforcement, where private rights are at their lowest, only serves to reinforce that conclusion. *Id.* at 10. Nor does the INA give personal rights necessary to create a cause of action. *Id.* at 10-11. At the very least, the organizational Plaintiffs lack a cause of action because their claim departs drastically from the historic moorings of equitable causes of action that plaintiffs traditionally used to preemptively raise defenses to enforcement proceedings at law. *Id.* at 11.

On the merits, Plaintiffs have also failed on their burden to show that SB 4-C is facially preempted by federal immigration law, either by field or conflict preemption. *Id.* at 12-18. That facial theory requires that SB 4-C have no valid applications. *See United States v. Salerno*, 481 U.S. 739, 745 (1987). On field preemption, their arguments for constitutional and statutory preemption depart from history. DE40 at 13-14. And all they identify as evidence of statutory preemption is the fact that Congress also criminalized illegal entry into the country and vague federal interests in immigration and foreign affairs. *Id.*at 14-15. But neither argument is viable after the Supreme Court decision in *Kansas v. Garcia*, 589 U.S. 191 (2020); and their analogies to *Arizona v. United States*, 567 U.S. 387 (2012), and *Georgia Latino Alliance for Human Rights v. Governor of Georgia*, 691 F.3d 1250 (11th Cir. 2012), that discussed different fields are inapt. DE40 at 14-16. As for conflict preemption, Plaintiffs have not come close to establishing the high burden of demonstrating facial preemption. Florida has not regulated immigration, created immigration classifications, or interfered with federal enforcement discretion inconsistent with congressional purposes. *Id.* at 16-18.

SB 4-C is also not facially violative of the Dormant Commerce Clause. *Id.* at 18-20. The theory is inferred from congressional silence and, at its "very core," is concerned with preventing economic discrimination between sister states. *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 369 (2023). But Florida's law does not accomplish economic protectionism—it is a criminal provision premised on the moral, social, and criminal effects of illegal immigration. Nor does it discriminate between in- and out-of-state economic interests: Both Florida and non-Florida residents are equally subject to the law's strictures. DE40 at 18-19. Plaintiffs' lead case for their Dormant Commerce Clause argument, *Edwards v. California*, 314 U.S. 160 (1941), confirms that point, as the law there barred the transportation of "indigent *non-residents*," and thus expressly discriminated against out-of-state economic interests. *Id.* at 174 (emphasis added). And Plaintiffs cannot possibly make out a Dormant Commerce Clause claim based on conduct that Congress itself made illegal. DE40 at 19. Even if all that were wrong, Florida's law is still justified by legitimate local purposes that no adequate alternative regulation could serve. *Id.* at 19-20.

Should the Court reject those arguments on the merits, the Defendants have a strong likelihood of succeeding in their contention that any injunction must be limited to the parties. This Court's injunction binding nonparty law enforcement officers in Florida sweeps too broadly. As explained in Defendants' supplemental brief, Rule 65 limits the scope of injunctive relief to the parties, individuals who are subject to their control and authority, and those who help the parties evade an injunction. DE56 at 4-6. Law enforcement officers in Florida do not fit into any of those categories. *Id.* at 6-14. What is more, the equitable authority of the federal courts is "bounded by both historical practice and traditional remedial principles," *Georgia v. President of the United States*, 46 F.4th 1283, 1303 (11th Cir. 2022), and one of those principles is that "injunctive relief operates on specific parties," *id.* at 1307; *see also Scott v. Donald*, 165 U.S. 107, 117 (1897)

(finding an injunction "objectionable because it enjoin[ed] persons not parties" and who were not "represent[ed]" by or in a "conspiracy" with the named defendants). And historically, the most analogous equitable remedy—the injunction to stay proceedings at law—was "directed only to the parties." 2 Joseph Story, *Commentaries on Equity Jurisprudence as Administered in England and America* § 875, at 166 (2d ed. 1839).

Finally, the balance of the equities heavily favors staying the injunction. And because those factors strongly favor a stay, Defendants may succeed under the "lesser showing" of a "substantial case on the merits." *League of Women Voters*, 32 F.4th at 1370. First, Defendants will suffer irreparable harm without a stay. "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). Second, the "balance of harms" and the "public interest" both favor a stay as well. *Swain v. Junior*, 958 F.3d 1081, 1090 (11th Cir. 2020). If the injunction were not stayed, the State would suffer the sovereign harm of having one of its laws enjoined, while continuing to suffer from the effects of illegal immigration. Meanwhile, the individual Plaintiffs continue with their violations of federal and state law and the organizational Plaintiffs seek to further that unlawfulness. *See* DE4-4 ¶¶ 8-9 (VV seeks to work without authorization); DE4-5 ¶ 7 (YM seeks to travel out of state at an unspecified time); DE4-2 ¶ 20. While the Defendants realize the Court has rejected its arguments on the merits, the Defendants have at the very least made out a "substantial case." *League of Women Voters*, 32 F.4th at 1370. Combined with the equities, that showing warrants a stay.

CONCLUSION

For these reasons, the Court should stay the injunction pending appeal.

CERTIFICATE OF CONFERRAL

Defendants conferred with all parties prior to filing this motion. Plaintiffs oppose the motion.

/s/ *Robert S. Schenck*
Assistant Solicitor General

Respectfully submitted on April 30, 2025.

JAMES UTHMEIER
Attorney General

/s/ *Robert S. Schenck*
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by electronic service through the CM/ECF Portal on April 30, 2025, to all counsel of record.

/s/ *Robert S. Schenck*
Assistant Solicitor General

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

FLORIDA IMMIGRANT COALITION, *et al.*, *Plaintiffs*, v. JAMES UTHMEIER, in his official capacity as Attorney General for the State of Florida, *et al.*, *Defendants*.	No. 1:25-cv-21524-KMW

NOTICE OF APPEAL

Notice is hereby given that the Defendants James Uthmeier, in his official capacity as the Attorney General of Florida; Nicholas B. Cox, in his official capacity as the Statewide Prosecutor of the State of Florida; 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, appeal to the United States Court of Appeals for the Eleventh Circuit this Court's Order (ECF No. 67).

Respectfully submitted on April 29, 2025.

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by electronic service through the CM/ECF Portal on April 29, 2025, to all counsel of record.

/s/ *Robert S. Schenck*
Assistant Solicitor General

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 25-21524-CV-WILLIAMS

FLORIDA IMMIGRANT COALITION, *et al.*,

Plaintiffs,

v.

JAMES UTHMEIER, *et al.*,

Defendants.
_____/

OMNIBUS ORDER

THIS MATTER is before the Court on Plaintiffs' Motion for a Preliminary Injunction (DE 4) and Plaintiffs' Motion for Class Certification (DE 5). Both Motions are fully briefed.[1] On April 18, 2025 and April 29, 2025, the Parties presented oral argument on the Motions before the Court (the "***Hearings***"). (DE 48; DE 66.) For the reasons set forth below, the Motion for Preliminary Injunction (DE 4) is **GRANTED** and the Motion for Class Certification (DE 5) is **GRANTED IN PART AND DENIED IN PART**..

I. BACKGROUND

On February 13, 2025, Florida Senate Bill 4-C ("***S.B. 4-C***" or the "***Statute***") went into effect. (DE 1 ¶ 40.) S.B. 4-C creates two new state law offenses: "Illegal entry by adult unauthorized alien[2] into this state" and "Illegal reentry of an adult unauthorized

[1] Defendants filed responses in opposition to both Motions (DE 40; DE 44), and Plaintiffs replied (DE 45; DE 46).

[2] The various statutes and cases discussed within this Order use a variety of terms, in additional to "alien," to describe a noncitizen or foreign national in the United States. *See* United States Citizenship and Immigration Services, Glossary (last visited Apr. 27, 2025) (defining an "Alien" as "[a]ny person not a citizen or national of the United States" as defined under federal law), https://www.uscis.gov/tools/glossary. For clarity and

alien." Fla. Stat. §§ 811.102–.103. Section 811.102(1) prohibits any "unauthorized alien who is 18 years of age or older"[3] from "knowingly enter[ing] or attempt[ing] to enter" Florida "after entering the United States by eluding or avoiding examination or inspection by immigration officers" ("***illegal entry***"). A first conviction for illegal entry is a first-degree misdemeanor, requiring a mandatory minimum sentence of nine months' imprisonment, while subsequent convictions are felonies with escalating mandatory minimum sentences. Fla. Stat. § 811.102(1)–(3). Under subsection 811.103(1), an adult "unauthorized alien" commits a third-degree felony, if they "enter[], attempt[] to enter, or [are] at any time found in" Florida after "having been denied admission, excluded, deported, or removed or having departed the United States during the time an order of exclusion, deportation, or removal is outstanding" ("***illegal reentry***"). Fla. Stat. § 811.103(1). Importantly, the scheme requires courts to presume that "no conditions of release can reasonably assure the presence" of any individual arrested under either provision and to order their detention without bond pending disposition of the case. Fla. Stat. §§ 811.102(5), 811.103(4).

On April 2, 2025, Plaintiffs filed a Class Action Complaint (DE 1) ("***Complaint***"), seeking injunctive relief barring enforcement of S.B. 4-C by state and local officials and a declaration that the law violates the United States Constitution's Supremacy and Commerce Clauses. (DE 1 at 17.) Plaintiffs include individuals V.V. and Y.M. (collectively

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consistency, when not quoting a source, the Court will use the phrase "noncitizen" throughout this Order.

[3] An "unauthorized alien" is defined as anyone unlawfully present in the United States under the Immigration and Nationality Act and any other applicable federal law. Fla. Stat. § 811.101(2) (referencing Fla. Stat. § 908.111).

"***Individual Plaintiffs***"), who allege they are at risk of arrest and prosecution under the Statute, and two grassroots membership organizations, Farmworker Association of Florida, Inc. ("***FWAF***") and Florida Immigrant Coalition ("***FLIC***") (collectively "***Organizational Plaintiffs***"), which support members who are similarly at risk. (*Id.* ¶¶ 8, 11–24, 26–28.) On the same day, Plaintiffs sought class certification and a Temporary Restraining Order ("***TRO***") pausing enforcement of S.B. 4-C pending the Court's consideration of their request for a preliminary injunction. (DE 4; DE 5.) On April 4, 2025, the Court entered a TRO "prohibiting Defendants and their officers, agents, employees, attorneys, and any person who are in active concert or participation with them from enforcing" S.B. 4-C for fourteen days. (DE 28 at 14.) Then, on April 18, 2025, the Court held a Hearing on whether to convert the TRO into a preliminary injunction. (DE 48.) At the conclusion of the Hearing, the Court set an additional Hearing for April 29, 2025 and extended the TRO until that time. The Court reconvened on April 29, 2025, to address the scope of injunctive relief. (DE 66.) Neither Party introduced evidence, so the Court relies on the Parties' written briefs, supplemented by their oral arguments at the Hearings.

II. LEGAL STANDARD

Rule 65 of the Federal Rules of Civil Procedure authorizes courts to grant a preliminary injunction before final judgment in limited circumstances. The purpose of this injunctive relief is to "preserve the status quo until the district court renders a meaningful decision on the merits." *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1231 (11th Cir. 2005) (citation omitted). To merit a preliminary injunction, Plaintiffs must show:

> (1) a substantial likelihood of success on the merits; (2) that the preliminary injunction is necessary to prevent irreparable injury; (3) that the threatened injury outweighs the harm the preliminary injunction would cause the other

> litigant; and (4) that the preliminary injunction would not be averse to the public interest.

Gissendaner v. Comm'r, Ga. Dep't of Corr., 779 F.3d 1275, 1280 (11th Cir. 2015) (quoting *Wellons v. Comm'r, Ga. Dep't of Corr.*, 754 F.3d 1260, 1263 (11th Cir. 2014)). Plaintiffs "bear[] the burden of persuasion to clearly establish all four of these prerequisites." *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1247 (11th Cir. 2016) (internal quotations omitted).

A district court "may provisionally certify a class for purposes of a preliminary injunction." *Al Otro Lado, Inc. v. McAleenan*, 423 F. Supp. 3d 848, 870 (S.D. Cal. 2019) (citing *Meyer v. Portfolio Recovery Assoc., LLC,* 707 F.3d 1036, 1043 (9th Cir. 2012)); *see also Kaiser v. Cnty. of Sacramento*, 780 F. Supp. 1309, 1312 (E.D. Cal. 1991) ("The court has provisionally certified the class . . . pending modification or decertification should it become clear that the class is not maintainable. . . . Accordingly, the court may continue to grant injunctive relief on a class-wide basis."). However, Plaintiffs have the burden of "meeting the threshold requirements" for class certification. *Id.*

Rule 23(a) provides that a class may be certified only if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). "These four prerequisites of Rule 23(a) are commonly referred to as 'numerosity, commonality, typicality, and adequacy of representation.'" *Valley Drug Co. v. Geneva Pharms., Inc.*, 350 F.3d 1181, 1188 (11th Cir. 2003). Further, the class action must fall into one of categories enumerated in Rule 23(b). Fed. R. Civ. P. 23(b). Plaintiffs seek class

certification under Rule 23(b)(2), which applies when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole[.]" Fed. R. Civ. P. 23(b)(2).

As the Parties seeking class certification, Plaintiffs have "the burden of proof," to show that the requirements of Rule 23 are "'in fact' satisfied." *Brown v. Electrolux Home Prods., Inc.*, 817 F. 3d 1225, 1233 (11th Cir. 2016) (quoting *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013)). Still, when determining whether the requirements for class certification are met, the Court "should not consider the merits of [Plaintiffs'] claim[s]" except to the extent "necessary to determine whether the requirements of Rule 23 will be satisfied." *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1358 (11th Cir. 2009) (citations omitted).

III. DISCUSSION

The Court begins by addressing whether Plaintiffs have standing to seek their requested relief. *See Wiand v. ATC Brokers Ltd.*, 96 F.4th 1303, 1311 (11th Cir. 2024) (noting that "standing is a threshold jurisdictional question" and without establishing standing a "district court [is] not empowered to reach any merits question"). Then, the Court will discuss the merits of the Motions. Finally, the Court will address the scope of injunctive relief.

A. Plaintiffs have standing to bring this action.

Plaintiffs who invoke "the jurisdiction of a federal court bear[] the burden to show '(1) an injury in fact, meaning an injury that is concrete and particularized, and actual or imminent, (2) a causal connection between the injury and the causal conduct, and (3) a

likelihood that the injury will be redressed by a favorable decision.'" *CAMP Legal Def. Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 1269 (11th Cir. 2006) (quoting *Granite State Outdoor Advert., Inc. v. City of Clearwater*, 351 F.3d 1112, 1116 (11th Cir. 2003)).

Plaintiffs must "support each element of standing with the manner and degree of evidence required at the successive stages of the litigation. At the preliminary injunction stage, then, the plaintiff must make a clear showing that she is likely to establish each element of standing." *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (citations and quotations omitted).[4] "The Supreme Court has been clear that standing in no way depends on the merits of the plaintiff's claim . . . [s]o [courts] generally assess plaintiffs' standing assum[ing] that on the merits the plaintiffs would be successful in their claims." *Polelle v. Fla. Sec'y of State*, 131 F.4th 1201, 1211 (11th Cir. 2025) (citations and quotations omitted).

Defendants argue that all Plaintiffs lack standing. However, "[w]here only injunctive relief is sought, only one plaintiff with standing is required." *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1333 (N.D. Ga. 2018); *see also Greater Birmingham Ministries v. Sec'y of State for State of Ala.*, 992 F.3d 1299, 1317 (11th Cir. 2021); *Glassroth v. Moore*, 335 F.3d 1282, 1293 (11th Cir. 2003). Nonetheless, the Court analyzes standing for each individual and organizational Plaintiff and finds that all have standing.

1. Individual Plaintiffs

[4] The Court notes that, in *Murthy*, the Supreme Court's analysis reflected the fact that the parties had taken discovery. *Murthy*, 603 U.S. at 58 ("Where, as here, the parties have taken discovery, the plaintiff cannot rest on 'mere allegations,' but must instead point to factual evidence."). Here, no discovery has been conducted. *See also Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 108 (10th Cir. 2024) ("The type of evidence that must be presented to make this showing depends on the necessity and status of discovery in the case.").

"Injury in fact reflects the statutory requirement that a person be adversely affected or aggrieved, and it serves to distinguish a person with a direct stake in the outcome of a litigation—even though small—from a person with a mere interest in the problem." *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1340 (11th Cir. 2014) (quoting *United States v. Students Challenging Regul. Agency Procs.*, 412 U.S. 669, 689 n.14 (1973)). An injury-in-fact is "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical[.]" *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (citations omitted). Defendants argue that Individual Plaintiffs have failed to offer concrete plans to exit or enter Florida and therefore fail to establish an injury. Defendants also argue that Individual Plaintiffs have no legally protected interest in the conduct they seek to vindicate. The Court addresses each point in turn.

a. Concrete Injury

V.V. is a FWAF member who was previously deported and last reentered the United States without inspection in 2014. (DE 1 ¶ 16.) She now lives in Immokalee, Florida with her husband and her four U.S. citizen children. (*Id.*) Plaintiff Y.M. is a FLIC member living in Florida, who entered the United States without inspection more than twenty years ago. (*Id.* ¶¶ 26–27.) Y.M. leaves Florida twice a year with her minor U.S. citizen son who has a disability. (*Id.* ¶¶ 26, 28.) Individual Plaintiffs argue that they are at imminent risk of arrest and detention as they are subject to prosecution and imprisonment under S.B. 4-C. (*Id.* ¶ 59.) It is irrelevant that they have not yet been arrested or prosecuted: "When an individual is subject to [the threatened enforcement of a law], an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law."

Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158 (2014). "When the harm alleged is prospective, as it [is] here, a plaintiff can satisfy the injury-in-fact requirement by showing imminent harm. While the threatened future injury cannot be merely hypothetical or conjectural, probabilistic harm is enough." *Arcia*, 772 F.3d at 1341 (citations omitted).

Plaintiff V.V., whose prospective prosecution would fall under S.B. 4-C's illegal reentry provision, need not allege any travel plans. Under that provision, V.V. is subject to arrest, detention, and prosecution if she "is at any time found in this state." Fla. Stat. § 811.103(1). Therefore, her affidavit attesting to her prior deportation, reentry without inspection, and current residence in Florida, is sufficient to demonstrate a concrete injury. Plaintiff Y.M. has attested that she leaves the state twice a year and intends to continue doing so. Defendants characterize this testimony as the type of "'some day' intentions" disavowed by the Supreme Court in *Lujan*. However, in *Lujan*, the plaintiffs—who alleged their injury was based on their hope to one day return to Sri Lanka to view endangered species—testified that they "had no current plans" to return, saying, "[n]ot next year, I will say. In the future." *Lujan*, 504 U.S. at 564. Those allegations are in stark contrast to Y.M.'s testimony that she intends to travel in and out of state multiple times this year.[5] *See also Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1161 (11th Cir. 2008) ("Immediacy requires only that the anticipated injury occur with some fixed period of time in the future, not that it happen in the colloquial sense of soon or precisely within a certain number of days, weeks, or months.").

[5] It is worth noting that nothing in standing jurisprudence "requires a plaintiff who wishes to challenge the constitutionality of a law to confess that he will in fact violate that law." *Susan B. Anthony List*, 573 U.S. at 163.

Other courts have found that a plaintiff has "suffered an injury in fact [when] she's established 'a realistic danger of sustaining direct injury' from 'the statute's operation or enforcement.'" *Farmworker Ass'n of Fla., Inc.*, 734 F. Supp. 3d at 1321 (quoting *Ga. Latino All. for Hum. Rts. v. Governor of Ga.*, 691 F.3d 1250, 1257 (11th Cir. 2012) ("***GLAHR***")). Law enforcement agencies in Florida have already made numerous arrests pursuant to S.B. 4-C—both before and after the Court's entry of the TRO in this matter—which the Court finds evinces a realistic probability that Individual Plaintiffs could be subject to arrest and prosecution under S.B. 4-C.

b. Legally Protected Interest

Defendants' argument that Plaintiffs have no legally protected interest is based on a misinterpretation of the right Plaintiffs seek to vindicate. Rather than seeking to drive without licenses, work without legal authorization, or seek to obtain transportation in violation of federal and state law, as Defendants contend, Plaintiffs simply wish not to be arrested and prosecuted under a law that violates constitutional principles of federalism. Numerous other federal courts have recognized this right as a legally protected interest. *See GLAHR*, 691 F.3d 1257–62; *Farmworker Ass'n of Fla.*, 734 F. Supp. 3d at 1321–29; *see also Polelle*, 131 F.4th at 1212 ("[P]laintiffs allege a legally protected interest when they meet the 'low bar' of pointing to some arguable or colorable federal or constitutional interest.").

2. Organizational Plaintiffs

"An organization can establish Article III standing either 'through its members [or] . . . through its own injury in fact.'" *City of S. Mia. v. Governor*, 65 F.4th 631, 637 (11th Cir. 2023) (quoting *Ga. Ass'n of Latino Elected Offs., v. Gwinnett Cnty. Bd. of Registration*

& Elections, 36 F.4th 1100, 1114 (11th Cir. 2022)). As an initial matter, it is necessary to clarify Plaintiffs' theory of standing: FWAF does not assert organizational standing based on diversion of resources and neither FWAF nor FLIC seek to assert the rights of third parties. Accordingly, to the extent Defendants' briefing covers such arguments, they will not be addressed.

"To establish associational standing, an organization must prove that its members 'would otherwise have standing to sue in their own right.'" *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1249 (11th Cir. 2020) (citations omitted). When analyzing associational standing, "plaintiff-organizations [are required] to make specific allegations establishing that at least one identified member had suffered or would suffer harm." *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009). V.V. is a member of both FWAF and FLIC, and Y.M. is a member of FLIC. (DE 4-3 ¶¶ 15, 19.) As discussed, *supra*, Individual Plaintiffs have standing to sue in their own right. Furthermore, both organizations allege that they have members—beyond Individual Plaintiffs—who would suffer harm if S.B. 4-C is not enjoined. Accordingly, the Court finds that the organizational plaintiffs have standing under the theory of associational standing.[6]

3. Traceability & Redressability

"The latter two requirements [of standing]—traceability and redressability—often travel together, and where, as here, a plaintiff has sued to enjoin a government official from enforcing a law, he must show, at the very least, that the official has the authority to enforce the particular provision that he has challenged, such that an injunction prohibiting

[6] Because the Court finds the Organizational Plaintiffs each have associational standing, it does not need to reach Plaintiffs' arguments that FLIC also has standing under a diversion of resources theory.

enforcement would be effectual." *Support Working Animals, Inc. v. Governor of Fla.*, 8 F.4th 1198, 1201 (11th Cir. 2021). Put another way, "[w]hen traceability and redressability are at stake, the key questions are who caused the injury and how it can be remedied." *City of S. Mia.*, 65 F.4th at 640.

To determine redressability, the Court focuses "on whether the *injury* that a plaintiff alleges is likely to be redressed through the litigation." *Sprint Commc'ns Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 287 (2008) (emphasis in original). Defendants argue that Plaintiffs lack standing to sue all state attorneys but raise no arguments related to standing as to the Attorney General or Statewide Prosecutor. The Court, in its prior order, found Plaintiffs had standing to sue all Defendants. In this order, the Court only addresses traceability and redressability as to the state attorneys.

The injuries facing Plaintiffs are arrest and prosecution under S.B. 4-C. State attorneys are state officials charged with "prosecut[ing] or defend[ing] on behalf of the state *all* suits, applications, or motions, civil or criminal, in which the state is a party[.]"[7] Fla. Stat. § 27.02 (emphasis added). State attorneys are tasked with prosecuting violations of S.B. 4-C and Defendants do not dispute this delegation of responsibility. Instead, they argue that V.V. only has standing against the state attorney who could prosecute her in the city she resides in, and that Y.M. would only have standing against the state attorney assigned to the jurisdiction where she will reenter the state. These geographic strictures fail for several reasons. First, V.V. would be subject to prosecution anywhere and "any time" she is "found [within the] state." Fla. Stat. § 811.103(1). Second, because V.V. is a farmworker, she travels around the state and out of state for such work.

[7] There are certain exceptions to this duty, none of which are relevant here.

(DE 4-4 ¶ 8.) Y.M. does the same for personal travel. (DE 4-5 ¶ 7.) Neither must detail their precise paths of travel through each state attorney's jurisdiction to support standing. *See Drewniak v. U.S. Customs and Border Prot.*, 554 F. Supp. 3d 348, 363–64 (D.N.H. 2021) (Plaintiffs' allegation that he would continue using a main intrastate highway to travel between two areas in New Hampshire created a sufficient risk of being stopped at a random CBP checkpoint for Article III standing, despite Plaintiff not alleging a precise route or timing of travel); *see also Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979) ("When the plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.") (internal quotations omitted). Defendants' arguments assume a rigidity of travel that does not comport with the pleadings, case authority, or the realities of modern movement.

Because the state attorneys' authority to prosecute violations of S.B. 4-C would cause Plaintiffs' injuries, enjoining them from doing so will directly redress those injuries. Put another way, Plaintiffs' requested relief—an order declaring the entry and reentry provisions of S.B. 4-C to be unlawful and enjoining the state attorneys from prosecuting people under those provisions—will directly resolve Plaintiffs' reasonable fear that the challenged law will be enforced against them or their members by those Defendants. Given that Plaintiffs have standing, the Court will address the remainder of the factors governing their request for a preliminary injunction.[8]

[8] Defendants advance a final threshold argument, namely that Plaintiffs lack a "cause of action" for their suit because the Supremacy Clause does not provide one and the Immigration and Nationality Act (INA) displaces equitable relief through its own detailed

B. Plaintiffs have met the criteria for issuance of a preliminary injunction.

As stated above, to succeed on a motion for preliminary injunction Plaintiffs must show: "(1) a substantial likelihood of success on the merits; (2) that the preliminary injunction is necessary to prevent irreparable injury; (3) that the threatened injury outweighs the harm the preliminary injunction would cause the other litigant; and (4) that the preliminary injunction would not be averse to the public interest." *Gissendaner*, 779 F.3d at 1280 (citation omitted). The Court addresses each requirement in turn.

1. Likelihood of success on the merits

Plaintiffs argue S.B. 4-C violates the Supremacy Clause by creating a statutory scheme in an area exclusively reserved for the federal government that conflicts with

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remedial scheme. (DE 40 at 8–11) (relying on *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326–29 (2015)). First, Plaintiffs have never advanced the theory that their suit is pursuant to a "cause of action" granted by the Supremacy Clause—instead, they are invoking the Court's equitable jurisdiction pursuant to *Ex parte Young*. *See Armstong,* 575 U.S. at 325, 326 (reiterating the well-accepted principles that the Supremacy Clause "certainly does not create a cause of action" but that, "as [the Supreme Court] has long recognized, if an individual claims federal law immunizes him from state regulation, the court may issue an injunction upon finding the state regulatory actions preempted") (citing *Ex parte Young*, 209 U.S. 123, 155–156 (1908)).

Second, just days ago, Judge Ruiz squarely rejected Defendants' argument that the INA displaces equitable relief in a thorough, well-reasoned analysis in a case involving a preemption challenge to enforcement of another state immigration scheme. *Farmworker Ass'n of Fla., Inc. v. Uthmeier*, No. 23-CV-22655 (S.D. Fla. Apr. 17, 2025), DE 137 at 5–14. The Court will not rehash all the issues with Defendants' position in the same depth here. In short, however, the fact that the INA delegates general "administration and enforcement" to the Secretary of Homeland Security, *see* 8 U.S.C. § 1103(a)(1), and prosecution of federal entry and reentry offenses to United States attorneys, *see* 8 U.S.C. § 1329, in no way demonstrates a Congressional intent to displace equitable relief when a party does not seek to *enforce* the INA, but seeks to avoid prosecution under a state law preempted by the INA. *See Farmworker Ass'n of Fla., Inc.*, No. 23-CV-22655, DE 137 at 10–11 (concluding the INA does not contain a "sole remedy," foreclosing equitable relief). Therefore, Plaintiffs' ability to invoke equitable jurisdiction under *Ex Parte Young* remains intact.

existing federal immigration law and its enforcement. (DE 4 at 5); *see* U.S. Const. art. VI (making federal law the "supreme Law of the Land"). In other words, they argue that S.B. 4-C is "field preempted" and "conflict preempted" by federal immigration law governing entry, reentry, and continued presence of noncitizens. (*Id.* at 6, 11.) Plaintiffs further contend that S.B. 4-C runs afoul of the Commerce Clause's implicit limitation on states' power to restrict the interstate movement of people. (*Id.* at 14); *see* U.S. Const. art. I, § 8, cl. 3 (giving Congress the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes"). For the reasons set forth below, the Court agrees that, at this early stage, Plaintiffs have shown they are likely to succeed on the merits.

a. Supremacy Clause

When analyzing whether a state law is preempted by a federal scheme, "the purpose of Congress is the ultimate touchstone." *Marrache v. Bacardi U.S.A., Inc.,* 17 F.4th 1084, 1094 (11th Cir. 2021) (quoting *Wyeth v. Levine*, 555 U.S. 555, 565 (2009)). Congressional intent to preempt state law is most readily discernable when it is "explicitly stated in the [federal] statute's language." *Cipollone v. Liggett Grp., Inc.,* 505 U.S. 504, 516 (1992) (describing express preemption); *see also Marrache*, 17 F.4th at 1094 (describing an "express statement on preemption" as preferrable).[9] However, state law can also be "impliedly preempted" by federal law in cases of conflict preemption and field preemption. *Marrache*, 17 F.4th at 1094.

Conflict preemption occurs "where it is impossible for a private party to comply with both state and federal laws . . . [or] the challenged state law stands as an obstacle to the

[9] Plaintiffs do not argue any such explicit statutory language is present here.

accomplishment and execution of the full purposes and objectives of Congress." *Crosby v. Nat'l Foreign Trade Council*, 520 U.S. 363, 373–74 (2000) (internal citation and quotations omitted). A state law is field preempted when it regulates conduct "in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance." *Arizona v. United States*, 567 U.S. 387, 399 (2012) (holding the field of noncitizen registration is field preempted). "The categories of preemption are not rigidly distinct . . . [and] field pre-emption may be understood as a species of conflict pre-emption." *Nat'l Ass'n of State Utility Consumer Advocs. v. Fed. Commc'n Comm'n*, 457 F.3d 1238, 1252 (11th Cir. 2006) (quoting *Crosby*, 530 U.S. at 372 n.6). Of course, the Court will not assume Congress intended to supersede the historic police powers of the States "in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained." *Marrache*, 17 F.4th at 1095 (quoting *Nat'l Ass'n of State Util. Consumer Advocs.*, 457 F.3d at 1252). However, both the nature of the subject matter and the extensive scheme of regulation authored by Congress over decades support the Court's analysis set out below.

i. Field Preemption

Courts may infer an intent to displace state law from a "framework of regulation so pervasive that Congress left no room for the States to supplement it, or where there is a federal interest so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Arizona*, 567 U.S. at 399 (alterations accepted and internal quotations omitted).

"For nearly 150 years, the Supreme Court [and other federal courts have] held that the power to control immigration—the entry, admission, and removal of noncitizens—is *exclusively* a federal power." *United States v. Texas*, 97 F.4th 268, 278–79 (5th Cir. 2024). Most recently, courts established that federal law preempts any state scheme in the fields of noncitizen registration and the transport and movement of noncitizens, both closely related to illegal entry and reentry. In fact, in those cases, courts grouped federal entry and reentry provisions together with the other fields as part of "the larger context of federal statutes criminalizing the acts undertaken by aliens and those who assist them in coming to, or remaining within, the United States." *GLAHR*, 691 F.3d at 1264; *Arizona*, 567 U.S. at 395–96 (describing the INAs "extensive and complex" scheme as not just covering noncitizen registration, but also "who may not be admitted to the United States," "[u]nlawful entry and unlawful reentry into the country," and "which aliens may be removed from the United States") (citing 8 U.S.C. §§ 1325, 1326, the federal entry and reentry provisions S.B. 4-C is modeled after).

First, in *Arizona*, the Supreme Court held that the field of noncitizen registration was fully occupied by the comprehensive immigration scheme created in 1952 by the Immigration and Nationality Act ("***INA***"), 8 U.S.C. § 1101, *et seq*. 567 U.S. at 401–02; s*ee also Patel v. Garland*, 596 U.S. 328, 331 (2022) ("Congress has comprehensively detailed the rules by which noncitizens may enter and live in the United States. When noncitizens violate those rules, Congress has provided procedures for their removal."). The Supreme Court found that the noncitizen registration provisions within this scheme "provide a full set of standards . . . including the punishment for noncompliance. It was designed as a 'harmonious whole.'" *Id.* at 401 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 72 (1941)).

Further, the Court noted the importance to U.S. foreign relations of having "a single sovereign responsible for maintaining a comprehensive and unified system" to track noncitizens. *Id.* at 401–02. "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.* at 395; *see also Hines*, 312 U.S. at 64 ("One of the most important and delicate of all international relationships, recognized immemorially as a responsibility of government, has to do with the protection of the just rights of a country's own nationals when those nationals are in another country.").

The Eleventh, Ninth, and Fourth Circuits found these principles apply with equal force to the federal government's regulation of noncitizen transport and movement. *See, e.g.*, *GLAHR*, 691 F.3d at 1263–64 (holding the "INA provides a comprehensive framework to penalize the transportation, concealment, and inducement of unlawfully present aliens," preempting a Georgia state law regulating the same conduct); *United States v. Alabama*, 691 F.3d 1269, 1287 (11th Cir. 2012) (agreeing with *GLAHR* and holding Alabama's similar law was field preempted); *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1026 (9th Cir. 2013) (same for Arizona law); *United States v. South Carolina*, 720 F.3d 518, 530–32 (4th Cir. 2013) (same for South Carolina law). The INA creates prohibitions for offenses relating to noncitizen transport and movement, specifies criminal and civil penalties, and delegates enforcement of the provisions to United States attorneys. *GLAHR*, 691 F.3d at 1263–64 (citing 8 U.S.C. §§ 1324, 1329). "Like the federal registration scheme addressed in *Arizona*, [this is] a 'full set of standards' to govern the unlawful transport and movement of aliens." *Id.* at 1264 (quoting *Arizona*, 567 U.S. at

401). Further, restricting the movement of noncitizens into and within the United States by criminalizing those who transport, conceal, or encourage their movement impacts "the status, safety, and security of [foreign] nationals in the United States" such that foreign countries "must be able to confer and communicate on this subject with one national sovereign, not the 50 separate states." *Whiting*, 723 F.3d at 1023–24.

Federal 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. The INA defines and prohibits illegal entry and reentry and creates specific civil and criminal penalties for violations. 8 U.S.C. §§ 1325 (entry), 1326 (reentry). The reentry provision in particular recognizes the need for nuanced immigration decisions. For instance, it provides differing penalties for those reentering without prior convictions and those reentering after "commission of three or more misdemeanors" involving specified offenses or "an aggravated felony," those reentering after being excluded from the United States after committing terrorist activities, and those reentering after being removed prior to completion of a prison sentence. 8 U.S.C. § 1326(b)(1)–(4), (c). And like the provisions regarding noncitizen transportation addressed in *GLAHR*, the INA "confin[es] the prosecution of [illegal entry and reentry] to federal court" and "limit[s] the power to pursue those cases to the appropriate United States Attorney." *GLAHR*, 691 F.3d at 1265; *see* 8 U.S.C. § 1329. Together, these provisions provide "a full set of standards governing [entry and reentry], including the punishment for noncompliance" and methods of enforcement. *Arizona*, 567 U.S. at 401. They were "designed as a harmonious whole . . . reflecting a Congressional decision to foreclose any state regulation in the area." *Id*.

Second, the criminalization of unauthorized noncitizen entry and reentry into the United States impacts "the status, safety, and security" of foreign nationals in an even more direct way than the regulation of noncitizen transport. *Arizona*, 567 U.S. at 395. "[T]he protection of the just rights of a country's own nationals when those nationals are in another country" is "one of the most important and delicate of all international relationships." *Arizona*, 567 U.S. at 395 (quoting *Hines,* 312 U.S. at 64). Therefore, the federal government has a strong foreign relations interest in being the sole entity setting policy for the treatment of foreign nationals coming across the U.S. border and moving throughout the country. *Texas,* 97 F.4th at 283–84 ("Field preemption of the entry . . . of noncitizens is indicated by the breadth of the United States' power 'to control and conduct relations with foreign nations,' and the reasons for the existence of that power.") (quoting *Arizona*, 567 U.S. at 395).

Defendants resist the great weight of this authority by positing hollow distinctions between the INA provisions involving the noncitizen registration and transportation and movement fields, and the illegal entry and reentry field. (DE 40 at 14–16.) First, Defendants argue "the INA's entry and reentry crimes are far less detailed than those for alien registration." (*Id.* at 14.) But apart from citing the few statutory provisions that govern each, Defendants provide no support for this claim. (*Id.*)

Next, Defendants argue that the unique federal interests at stake in the noncitizen registration field analyzed in *Arizona*—maintaining reciprocal expectations for the treatment of foreign nationals in other countries—is not implicated by restrictions on noncitizen movement into and throughout the U.S. (*Id.* at 15.) According to Defendants, noncitizen registration impacts "perfectly law-abiding" noncitizens, while entry crimes

"inherently affect only non-law-abiding [noncitizens]," so have a "more muted impact on 'amity and commerce' between nations." (*Id.*) (quoting *Hines,* 312 U.S. at 64–66).

Notably, the *Arizona* Court did not make this strained differentiation. Rather, it spoke broadly about the interest that foreign governments have in the "status, safety, and security of their nationals" abroad, and the corollary need for federal governance of immigration and noncitizen status to prevent States from "tak[ing] action that would undermine foreign relations[.]" *Arizona*, 567 U.S. at 395. This makes sense, given that the noncitizen registration provision at issue in *Arizona* expressly exempted persons lawfully present in the United States. Ariz. Stat. § 13-1509(F). And even if it did not, those who would be subject to *Arizona*'s noncitizen registration provision would also be in violation of the federal noncitizen registration provision, *see* 8 U.S.C. § 1304(e), just as those who would be in violation of S.B. 4-C are also in violation of the federal entry or reentry law. Therefore, there is no difference between the "law-abiding" status of individuals subject to the two laws, nor between the strength of the federal governments' interests in managing treatment of foreign nationals across the two contexts.[10]

[10] Defendants also attempt to undermine the precedential value of *GLAHR* and *Alabama*, saying "transport and harboring are special because, as [the GLAHR court] noted, Congress had specifically limited state participation in those crimes to arrest under federal law." (DE 40 at 15) (citing *GLAHR*, 691 F.3d at 1266 (citing 8 U.S.C. § 1324(c)). Yet, the fact that the INA allows state officials to make arrests for transport and harboring crimes but not for entry and reentry crimes undercuts Defendants' position. Congress knew how to carve out a role for states to play in immigration enforcement and chose to exclude state law enforcement entirely from enforcement of federal entry and reentry provisions. *See United States v. Pate*, 84 F.4th 1196, 1202 (11th Cir. 2023) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (internal quotations omitted). This is additional evidence of congressional intent to foreclose state participation in the field.

Accordingly, courts across the country have unanimously held that nearly identical state illegal entry and reentry laws recently enacted are likely preempted by federal immigration law governing noncitizen entry. *See e.g., United States v. Iowa*, 126 F.4th 1334, 1346 (8th Cir. 2025) (affirming preliminary injunction against Iowa's illegal entry and reentry law, after holding the law conflicts "with federal law because it creates a parallel scheme of enforcement for immigration law"), *vacated as moot*, No. 24-2265, 2025 WL 1140834 (8th Cir. Apr. 15, 2025); *Texas*, 97 F.4th at 287–88 (holding Texas had not shown its illegal entry scheme was not both field and conflict preempted by federal law); *United States v. Oklahoma*, 739 F. Supp. 3d 985, 999 (W.D. Okla. 2024) ("[T]here is strong support for the conclusion that Congress has legislated so comprehensively in the field of noncitizen entry and reentry that it left no room for supplementary state legislation.") (internal quotations omitted), *appeal filed*, No. 24-6144 (10th Cir. 2024); Memorandum Decision and Order, *Idaho Org. of Res. Councils Inc. v. Labrador*, No. 25-cv-00178 (D. Idaho Apr. 29, 2025) (issuing preliminary injunction prohibiting enforcement of a similar Idaho law), ECF No. 84.[11]

Provisions within S.B. 4-C that define illegal entry and reentry through reference to federal law,[12] or create affirmative defenses where the federal government has given

[11] Defendants studiously ignore the precedential impact of these cases in their briefing. And when the Court asked for clarification on how these cases, and *Texas*, 97 F.4th 268, in particular, impact their position, Defendants conceded, "I suppose that we just disagree with the Fifth Circuit." (DE 50 at 46.) Defendants' disagreement with existing precedent is a hallmark of their argument. *See* (DE 40 at 16 n.12) (arguing, "[t]o the extent [*GLAHR*] and *Alabama* are not distinguishable from this case . . . those cases should be overturned by the Eleventh Circuit.").

[12] *See* Fla. Stat. § 811.101(2) (referencing Fla. Stat. § 908.111).

an individual reprieve from deportation or removal,[13] do not save the statute from constitutional infirmity. "Where Congress occupies an entire field . . . even complementary state regulation is impermissible." *Arizona*, 567 U.S. at 401; *see also Texas*, 97 F.4th at 286 (dismissing Texas's argument that illegal reentry provisions which "mirror" the federal equivalent are permissible as "ignor[ing] the basic premise of field preemption—that States may not enter, in any respect, an area the Federal Government has reserved for itself.") (internal quotations omitted).[14] Therefore, S.B. 4-C is likely field preempted by federal entry and reentry laws.

ii. Conflict Preemption

"[S]tate laws are [also] preempted when they conflict with federal law." *Arizona*, 567 U.S. at 399. This includes when compliance with both laws is a "physical impossibility[,]" but also when a challenged law simply impedes "the accomplishment and execution of the full purposes and objectives of Congress." *Id.* (first quoting *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–43 (1963) and then quoting *Hines*, 312 U.S. at 62). For example, even when Arizona imposed a state law penalty for conduct already proscribed by the federal government—willful failure to complete or carry an "alien registration" card—the Supreme Court concluded that "[permitting] the State to impose

[13] *See* Fla. Stat. § 811.102(4).

[14] Potentially aware of the issues with characterizing S.B. 4-C as a complement to federal entry and reentry laws, Defendants later switch course and argue that S.B. 4-C "does not directly operate in the field of entry, admission, and removal of noncitizens" because it "primarily regulates entry into Florida—not entry into the country." (DE 40 at 15.) But in this way, S.B. 4-C is no different than the state analogues in *Arizona, GLAHR,* and other similar cases. Glossing onto a federal crime the requirement that the prohibited conduct take place within a given state does not remove the problematic convergence between the schemes.

its own penalties for the federal offenses here would conflict with the careful framework Congress adopted." *Arizona*, 567 U.S. at 402. The state could prosecute violations even when federal officials determined they would "frustrate federal policies." *Id.*; *see also GLAHR*, 691 F.3d at 1265 ("By confining the prosecution of federal immigration crimes to federal court, Congress limited the power to pursue those cases to the appropriate United States Attorney."). Further, inconsistencies between penalties under the state and federal schemes create an actual conflict. *Arizona*, 567 U.S. at 402–03 (state laws precluding a sentence of probation conflicted with federal laws allowing probation for the same conduct).

S.B. 4-C appears to suffer from the same debilities as the noncitizen registration law struck down in *Arizona*. First, it gives state officials authority to prosecute illegal entry or reentry in cases where federal actors may choose not to. Even if federal and state officials choose to commence parallel dual prosecutions under both laws, S.B. 4-C's mandatory detention provision limits federal law enforcement discretion to recommend pre-trial release and obstructs federal courts' ability to conduct proceedings requiring defendants' presence. Relatedly, state officials are free to prosecute a charge under S.B. 4-C even while a federal immigration proceeding is underway, which may determine that the defendant may remain lawfully present under federal law. *See Texas*, 97 F.4th at 279 (noting as problematic the possibility that under Texas' illegal entry laws, a defendant could be removed through the state proceeding "before federal proceedings that would permit her to remain in the United States lawfully have been initiated or concluded"). Finally, S.B. 4-C requires mandatory prison sentences for state law violations where the INA allows for a fine or probation for the equivalent federal crime. *Compare* Fla. Stat. §

811.102(1) (mandating a minimum of a nine-month prison sentence for a first illegal entry conviction), *with* 8 U.S.C. § 1325(a) (authorizing a maximum prison sentence of six months but not mandating any incarceration upon a first improper entry).

Rather than address any of these conflicts, Defendants invoke the general principle that "nothing about the 'overlap' in federal and state criminal law demands preemption." (DE 40 at 17) (citing *Kansas v.* Garcia, 589 U.S. 191, 212 (2020)).[15] It is of course true that any overlap between federal and state laws does not create a *per se* conflict. But S.B. 4-C does not just share some overlapping features with federal entry and reentry laws—it creates an entirely separate enforcement scheme for essentially the same conduct regulated by the federal government. The Fifth Circuit in *Texas* considered and rejected these exact overlap arguments,[16] concluding, when "two separate remedies are brought to bear on the same activity," "conflict is imminent." *Texas*, 97 F.4th at 289; *see also* Brief for Appellants at 25–27, *Texas*, 97 F.4th 268 (No. 24-50149), 2024 WL 1220010 (citing *Garcia* to make the same conflict preemption arguments Defendants

[15] *Garcia* involved a claim that Kansas' general fraud statute is preempted by provisions of the federal Immigration Reform and Control Act of 1986 ("***IRCA***"), which (1) require employees to provide certain personal information to employers on an I-9 form used verify the employees' work authorization, and (2) prohibit the use of the information contained in the form for most purposes aside from work authorization verification. *Id.* at 195–96, 200 (quoting 8 U.S.C. § 1324a(b)(5)). Respondents were convicted under the Kansas statute after providing the same false information on certain tax-withholding forms, which they provided on their I-9 forms. *Id.* at 198–99. The Court concluded that "the mere fact that state laws like the Kansas provisions at issue overlap to some degree with federal criminal provisions does not even begin to make a case for conflict preemption." *Id.* at 212. The incidental overlap between the general fraud statute at issue in *Garcia* and the IRCA is simply not comparable to the complete overlap between the conduct prohibited by S.B. 4-C and federal entry and reentry provisions.

[16] Once again, Defendants do not engage in any meaningful discussion of that case. *See supra* n.8. Rather, they cite the dissent as a guide for this Court's determination. (DE 40 at 11, 19.)

make here). Because S.B. 4-C imposes a different pretrial detention and penalty scheme and shifts enforcement discretion to state officers for essentially the same conduct proscribed by federal law, S.B. 4-C is likely conflict preempted.

b. Commerce Clause

Plaintiffs also argue S.B. 4-C violates the Commerce Clause, which gives Congress power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const. art. I, § 8, cl 3; *see* (DE 4 at 14). That power "encompasses the movement in interstate commerce of persons as well as commodities." *United States v. Guest*, 383 U.S. 745, 758–59 (1966); *see also Edwards v. California*, 314 U.S. 160, 172 (1941) ("[I]t is settled beyond question that the transportation of persons is 'commerce,' within the meaning of" the Commerce Clause.). Implicit in congressional power to regulate interstate commerce is an "implicit or 'dormant' limitation on the authority of the States to enact legislation affecting interstate commerce." *Fla. Transp. Servs., Inc. v. Miami-Dade Cnty.*, 703 F.3d 1230, 1243 (11th Cir. 2012). When a scheme "directly regulates or discriminates against interstate commerce" it will generally be "struck down . . . without further inquiry." *Bainbridge v. Turner*, 311 F.3d 1104, 1109 (11th Cir. 2002).[17]

Plaintiffs assert that S.B. 4-C facially discriminates against interstate commerce by criminalizing entry across Florida's border only by certain noncitizens. (DE 4 at 14–15.) Although the Court has determined that a preliminary injunction is appropriate based on

[17] A law may be excepted from this nearly per se rule if it is shown to "advance a local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *Id.* (quoting *New Energy Co. of Indiana v. Limbach*, 486 U.S. 269, 278 (1988)). But given that S.B. 4-C basically duplicates existing federal law, it is unlikely Florida can make a showing that its state law version is necessary in this context.

Plaintiffs' preemption argument, it should be noted that courts have determined similar statutes violate the dormant commerce clause on this basis. *See, e.g.*, *Edwards,* 314 U.S. at 174, 177 (striking down California's ban on transportation of indigent nonresidents into the state because it had the "plain and sole function" of restricting interstate commerce); *United States v. Texas*, 719 F. Supp. 3d 640, 679 (W.D. Tex. 2024) (holding "[o]n its face, [Texas' illegal entry law] discriminates against foreign commerce," so violates the dormant commerce clause).[18] Therefore, at this juncture, the Court finds that Plaintiffs' Commerce Clause analysis also supports their request for a preliminary injunction.

2. Irreparable injury

Plaintiffs argue that, absent an immediate pause to enforcement of S.B. 4-C, they will suffer irreparable harm by being placed at risk of arrest, prosecution, and detention under an unconstitutional state statute. (DE 4 at 17.[19]) In their Supplemental Response, Plaintiffs note several reports documenting recent arrests pursuant to S.B. 4-C. (DE 23

[18] At the April 18, 2025 Hearing, Defendants cited the district court opinion in *United States v. Arizona* as counter-authority. *United States v. Arizona*, 703 F. Supp. 2d 980 (D. Ariz. 2010), *aff'd*, 641 F.3d 339 (9th Cir. 2011), *aff'd in part, rev'd in part and remanded*, 567 U.S. 387 (2012), *and aff'd in part, rev'd in part*, 689 F.3d 1132 (9th Cir. 2012). (DE 50 at 50.) There, the district court judge preliminarily enjoined several Arizona immigration provisions after finding they were preempted by federal law. The appeal of the court's order eventually led to the Supreme Court decision *Arizona,* 567 U.S. 387. While the court granted the injunction on preemption grounds, it rejected the United States' argument that Arizona's noncitizen transport prohibition likely violated the dormant commerce clause. *Id.* at 1002–04. However, the court based that decision on its determination that the Arizona law "does not restrict or limit which aliens can enter Arizona." *Id.* at 1003. S.B. 4-C contains explicit language as to which noncitizens may enter Florida. Additionally, neither the Ninth Circuit nor Supreme Court discussed the commerce clause issue in their decisions. Consequently, the district court's analysis in *Arizona* is both inapplicable and unpersuasive here.

[19] The Court uses CM/ECF page numbering, which appears in the top right corner of all filings.

at 2.) One news source quotes the Brevard County Sheriff Wayne Ivey stating his office was "seeing cases like this six to seven times a week." Space Coast Daily, First Arrest Made Under Florida's New Immigration Law Happens in Brevard County (Mar. 13, 2025), https://perma.cc/D3DQ-UNKA. And, as noted during the Hearing on April 18, 2025, more than a dozen persons in Leon County, including a United States citizen, have been arrested even after the Court entered the TRO enjoining enforcement of S.B. 4-C. (DE 50 at 12.) As discussed, *supra,* Individual Plaintiffs' declarations confirm they are at risk of arrest and prosecution given ongoing enforcement of the S.B. 4-C. Likewise, Organizational Plaintiffs' declarations support the conclusion that a subset of their members may be susceptible to the law's enforcement. (DE 4-2 at 3–4; DE 4-3 at 3–4) (attesting to the many FWAF and FLIC members without documentation who entered or reentered without inspection and regularly travel between Florida and other states). Because "Plaintiffs are under the threat of state prosecution for crimes that conflict with federal law," a preliminary injunction is necessary to mitigate the risk of irreparable harm from S.B. 4-C. *GLAHR*, 691 F.3d at 1269.

3. Balance of equities and public interest

For similar reasons, the balance of equities and the public interest favor granting a preliminary injunction. "These two factors merge when, as here, the government is the opposing party." *Farmworker Ass'n of Fla.,* 734 F. Supp. 3d at 1342. The harm to Defendants from briefly suspending enforcement of S.B. 4-C is minimal, especially given that similar federal provisions already exist and may be enforced against appropriate

persons in Florida.[20] More importantly, the Court has already determined Plaintiffs are likely to succeed on the merits, and Defendants have "no legitimate interest in enforcing an unconstitutional law." *Honefund.com Inc. v. Governor*, 94 F.4th 1272, 1283 (11th Cir. 2024) (internal quotations omitted).

C. Provisional class certification is appropriate.

Plaintiffs ask the Court to issue provisional class certification "for the purpose of issuing a temporary restraining order or preliminary injunction," and then "consider any outstanding questions before proceeding to full class certification." (DE 5 at 2.) Plaintiffs propose the following two classes, which draw from the language of S.B. 4-C's two offense provisions to capture anyone "potentially subject" to their enforcement:

> [A]ny person not a citizen or national of the United States who may now or in the future enter or attempt to enter the state of Florida after entering the United States by eluding or avoiding examination or inspection by immigration officers [("***Proposed Entry Class***")].
>
> [A]ny person not a citizen or national of the United States who may enter, attempt to enter, or be found in the state of Florida after the person has been denied admission to or excluded, deported, or removed from the United States; or has departed from the United States while an order of exclusion, deportation, or removal was outstanding [("***Proposed Reentry Class***")].

(*Id.* at 2.) Plaintiffs propose that Individual Plaintiffs Y.M. and V.V. and Organizational Plaintiffs FLIC and FWAF be the class representatives. (*Id.* at 5–6.)

[20] State and local law enforcement agencies may also enter into written agreements, called 287(g) agreements, giving officers within those agencies power to enforce federal immigration law. 8 U.S.C. § 1357. Florida entities account for nearly 50% of all 287(g) agreements nationwide. United States Immigration and Customs Enforcement, Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act (last visited Apr. 27, 2025) (providing database listing 208 out of 455 active 287(g) agreements as being with Florida agencies), https://www.ice.gov/identify-and-arrest/287g.

Plaintiffs have the burden of showing these class definitions meet the numerosity, commonality, typicality, and adequacy of representation requirements of Rule 23(a). Fed. R. Civ. P. 23(a). Plaintiffs must also show that Defendants have "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345–46 (2011) (quoting Rule 23(b)(2)).

1. Numerosity

Numerosity requires that the classes be "so numerous that joinder of all members is impracticable" Fed. R. Civ P. 23(a)(1). Generally, "a class size of more than forty is adequate." *Ibrahim v. Acosta*, 326 F.R.D. 696, 699 (S.D. Fla. 2018) (citing *Cheney v. Cyberguard Corp.*, 213 F.R.D. 484, 489–90 (S.D. Fla. 2003)).

The most recently released United States Department of Homeland estimate is that there are around 10,990,000 unauthorized immigrants in the United States, including 9,760,000 who are eighteen years of age or older. Bryan Baker & Robert Warren, Off. of Homeland Sec. Stat., U.S. Dep't of Homeland Sec., Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2018-January 2022 (2024), https://perma.cc/ABZ6-Q3R7.[21] Around 590,000 of those unauthorized immigrants reside in Florida. *Id.* at 17. Those people have various inter-state travel habits, and many have no doubt been removed, deported, or left while such orders were outstanding. Given

[21] The Court may take judicial notice of government agency reports. *See Dimanche v. Brown*, 783 F.3d 1204, 1213 n.1 (11th Cir. 2015) (taking judicial notice of a Florida Department of Corrections annual statistics report); *Terrebonne v. Blackburn,* 646 F.2d 997, 1000 n.4 (5th Cir. 1981) ("Absent some reason for mistrust, courts have not hesitated to take judicial notice of agency records and reports."); *Flathead-Lolo-Bitterroot Citizen Tas Force v. Montana*, 98 F. 4th 1180, 1189 (9th Cir. 2024) (noting that "the Federal Rules of Evidence do not strictly apply in the preliminary injunction context").

these statistics, by any accounting, the number of people who fit into Plaintiffs' proposed classes far exceeds the required number of more than forty.

2. Commonality and Typicality

Commonality is met when there are "questions of law or fact common to the class[es.]" Fed R. Civ P. (23)(a)(2). "Commonality requires the [P]laintiff[s] to demonstrate that the class members have suffered the same injury. This does not mean merely that they have all suffered a violation of the same provision of law . . . . Their claims must depend on a common contention—for example, [in a Title VII context,] the discriminatory bias on the part of the same supervisor." *Duke*, 564 U.S. at 350.

Meanwhile, typicality ensures "the claims or defenses of the representative parties are typical of the claims or defenses of the class[es.]" Fed. R. Civ P. (23)(a)(3). The inquiry "turns on 'whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named class plaintiffs, and whether other class members have been injured by the same course of conduct.'" *Gayle v. Meade*, 614 F. Supp. 3d 1175, 1231 (S.D. Fla. 2020) (quoting *In re Checking Account Overdraft Litig.*, 286 F.R.D. 645, 653 (S.D. Fla. 2012)). This nexus exists when "claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory." *Id.* (quoting *In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 686 (S.D. Fla. 2004)).

> [T]he commonality and typicality requirements . . . tend to merge. Both serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.

Dukes, 564 U.S. at 349 n.5 (internal quotations omitted).

Here, members of the proposed classes plainly advance the same contention. All members of the Proposed Entry Class will make the same facial constitutional challenges to S.B. 4-C's entry provision, and the members of the Proposed Reentry Class will engage in the same challenge for the Statute's reentry provision. Therefore, the "class-wide proceeding [will] generate common answers apt to drive the resolution of the litigation." *Id.* at 350. It follows that typicality is also met, as the class representatives challenge the same provisions of S.B. 4-C on the same legal grounds and seek the same relief as the unnamed class members.

Defendants argue commonality is defeated because the Court "would need to answer a myriad of questions" related to individuals' travel habits, ages, and immigration statutes to determine whether a given person is within one of the classes. (DE 44 at 8.) But this misapprehends the inquiry. "[F]or purposes of [commonality], even a single common question will do[.]" *Dukes*, 564 U.S. at 359 (internal quotations omitted and alterations accepted). In this case, the common questions are core to resolving Plaintiffs' claims and providing effective relief: whether the entry and reentry provisions violate the Supremacy Clause or Commerce Clause.

Defendants repackage this same argument to challenge the proposed classes' typicality. (DE 44 at 9) (arguing Plaintiffs do not meet typicality "when so many class members 'may' 'potentially' qualify for one or more of the numerous affirmative defenses the statute makes available to them"). This again misunderstands the purpose of the requirement. Typicality ensures that the interests of representatives are "so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Dukes*, 564 U.S. at 349 n.5. Despite the potential for some class members to

invoke an affirmative defense during a prosecution under S.B. 4-C inapplicable to others, they are all subject to arrest and detention under the law. Thus, the type and source of their injuries are shared. So are their claims and requested relief. *See Gayle*, 614 F. Supp. 3d at 1231 (individuals confined across three detention centers under similar conditions exposing them to illness meet typicality, despite individual differences in the detention facility and personal risk factors). Therefore, commonality and typicality are met.

3. Adequacy of representation

The class must also be structured such that named Plaintiffs "fairly and adequately protect the interests of the class". Fed. R. Civ. P. 23(a)(4). Adequacy of representation depends on "(1) whether plaintiffs' counsel are qualified, experienced, and generally able to conduct the proposed litigation and . . . (2) whether plaintiffs have interests antagonistic to those of the rest of the class." *Cheney,* 213 F.R.D. at 495 (internal quotations omitted). Defendants do not contest that these requirements are met.

Plaintiffs' counsel includes a large team of attorneys who have significant experience litigating class actions, immigration cases, and cases seeking injunctive relief, including from laws similar to S.B. 4-C. (DE 5-1.) Counsel has confirmed no conflicts of interest exist and that they pledge to devote the resources required to effectively litigate this case. (DE 5 at 13.) Therefore, Plaintiffs' counsel are able to conduct the proposed litigation.

Likewise, the named Plaintiffs' interests are aligned with the class members' for the same reasons outlined in the Court's typicality discussion. The class members are those subject to enforcement of S.B. 4-C by virtue of being noncitizens who entered or reentered the United States without inspection with plans to enter or reenter Florida, or

are present in Florida after reentering the United States. The named Plaintiffs each fall into one of these categories. *See* (DE 4-4 at 1; DE 4-5 at 2–3) (declarations of V.V. and Y.M.). Therefore, Rule 23(a)(4)'s adequacy of representation requirement is also met.

4. Rule 23(b)(2)

Defendants also do not contest that this case fits within the Rule 23(b)(2) category. Rule 23(b)(2) "has been liberally applied in the area of civil rights." *Braggs v. Dunn*, 317 F.R.D. 634, 667 (N.D. Ala. 2016). Indeed, "some courts have gone so far as to say that the rule's requirements are 'almost automatically satisfied in actions primarily seeking injunctive relief.'" *Id.* (quoting *Baby Neal v. Casey*, 43 F.3d 48, 59 (3d Cir. 1994). "The critical inquiry is whether the class members have suffered a common injury that may properly be addressed by class-wide injunctive or equitable relief." *Ibrahim* , 326 F.R.D. at 701 (S.D. Fla. 2018) (citing *Holmes v. Continental Can Co.*, 706 F.2d 1144, 1155 (11th Cir. 1983)); *see also Dukes*, 564 U.S. at 360 ("The key to the (b)(2) class is 'the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.'").

The proposed class members all face the common risk of being subject to enforcement of S.B. 4-C, a law Plaintiffs claim is unconstitutional. *See Susan B. Anthony List*, 573 U.S. at 161 (holding the threat of prosecution pursuant to an unconstitutional statute was an injury-in-fact). That injury would be addressed for all members of each class through a class-wide injunction preventing enforcement of the law's entry and reentry provisions. And Plaintiffs' facial constitutional challenge to both provisions of S.B.

4-C would result in class-wide injunctions if meritorious. Consequently, this case fits squarely into the category described in Rule 23(b)(2).

5. Defendants' other objections

Defendants' other objections to Plaintiffs' proposed classes revolve around the stated concern that the proposed classes are "amorphous and imprecise." (DE 44 at 6–7) (arguing the classes are not "adequately defined and clearly ascertainable" because they include anyone "who '*may* enter, attempt to enter, or be found in the State," do not define "a 'particular time period' during which harms will occur," and do not distinguish between people who "may have different immigration histories, which may qualify them for affirmative defenses under S.B. 4-C and eliminate the possibility of injury in fact." (emphasis added) (quoting *Fisher v. Ciba Specialty Chems. Corp.*, 238 F.R.D. 273, 301 (S.D. Ala. 2006); *see also* (*id.* at 7*)* (describing Plaintiffs' classes as "overbroad" because they include individuals who are merely "potentially subject to [S.B.] 4-C" so do not "match [Plaintiffs'] claim that Florida is harming the smaller group of individuals who are actually subject to" the law) (internal quotations omitted).

Defendants misperceive what is required in a case like this for classes to be deemed ascertainable. Defendants cite cases in which plaintiffs sought class certification to obtain class-wide damages for past harms. *See, e.g., Cherry v. Dometic Corp.*, 986 F.3d 1296, 1300 (11th Cir. 2021) (requesting class certification under Rule 23(b)(3) to seek damages); *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1264 (11th Cir. 2019); (same); *Fisher*, 238 F.R.D. at 277, 296 (same). But classes constructed to seek prospective class-wide injunctive relief are inherently different from those formed to seek backward-looking damages. *Shelton v. Bledsoe*, 775 F.3d 554, 560 (3d Cir. 2015)

("Though classes certified under Rule 23(b)(3) and Rule 23(b)(2) all proceed as 'class actions,' the two subsections actually create two remarkably different litigation devices."). "Because the focus in a [Rule 23](b)(2) class is more heavily placed on the nature of the remedy sought, and because a remedy obtained by one member will naturally affect the others, the identities of individual class members are less critical in a [Rule 23](b)(2) action than in a [Rule 23](b)(3) action." *Id.* at 561 (citing *Dukes*, 564 U.S. at 362–63). In fact, courts within the Eleventh Circuit have expressed "serious reason to doubt that the judicially created ascertainability requirement applies to Rule 23(b)(2) classes." *Braggs*, 317 F.R.D. at 671.[22] In this case, where Plaintiffs allege class members face risks of future harm, Defendants' claim that the class definitions must "specify a particular group harmed during a particular time period via a particular manner," is untenable. *Fisher*, 238 F.R.D. at 301; *see also Shook v. El Paso Cnty*, 386 F.3d 963, 972 (10th Cir. 2004) ("[W]hile the lack of identifiability is a factor that may defeat Rule 23(b)(3) class certification, such is not the case with respect to class certification under Rule 23(b)(2). . . . In fact, many courts have found Rule 23(b)(2) well suited for cases where the composition of a class is not readily ascertainable; for instance, in a case where the plaintiffs attempt to bring a suit on behalf of a shifting prison population.") (citations omitted).

[22] The Eleventh Circuit has described classes generally as needing to be "adequately defined and clearly ascertainable," but has not had occasion to analyze in-depth how ascertainability differs between class actions under 23(b)(3) and 23(b)(2). *Cherry*, 986 F.3d at 1302 (internal quotations omitted); *AA Suncoast Chiropractic Clinic, P.A. v. Progressive American Insurance Company*, 938 F.3d 1170, 1174 (11th Cir. 2019) (relying on a 23(b)(3) case when articulating the rule that "[e]very class must be 'adequately defined and clearly ascertainable.'") (quoting *Little v. T-Mobile USA, Inc.,* 691 F.3d 1302, 1304 (11th Cir. 2012)).

Nevertheless, class definitions must not be so broad that "many or most of the putative class members" will not be able to show that they have Article III standing if it comes time for the Court to grant relief. *Cordoba*, 942 F.3d at 1273 (while it is not necessary for unnamed class members to "prove their standing before a class could be certified," the likelihood that putative class members have standing "is assuredly a relevant factor that a district court must consider when deciding whether and how to certify a class"). It is "well-established that the [C]ourt may, in its discretion, modify the definition of the proposed class to provide the necessary precision or to correct other deficiencies." *Rivera v. Harvest Bakery Inc.*, 312 F.R.D. 254, 267 (E.D.N.Y. 2016) (alterations accepted and internal quotations omitted). Plaintiffs' proposed class definitions contain two deficiencies that increase the likelihood of there being class members who cannot show imminent risk of enforcement under S.B. 4-C: (1) Plaintiffs neglect to require that class members are eighteen years or older, an element of S.B. 4-C's entry and reentry offenses, and (2) Plaintiffs include those who merely "may" enter, attempt to enter, or be found in the state of Florida. Correcting for these two deficiencies will ensure that an individual will qualify as a class member as soon as they meet the elements of either S.B. 4-C offense, and so are at concrete and imminent risk of enforcement. *Shook*, 386 F.3d at 972 (recognizing the fluidity of class membership as a feature in Rule 23(b)(2) cases); *Kenneth R. ex rel. Tri-County CAP, Inc./GS v. Hassan*, 293 F.R.D. 254, 264 (D.N.H. 2013) ("[W]here certification of a (b)(2) injunctive class is sought, actual membership of the class need not be precisely delimited because notice to the members is not required.") (quotations omitted and alterations accepted). Therefore, the Court will provisionally certify two classes, defined as follows:

> Any person eighteen years of age or older, who is not a citizen or national of the United States who enters or attempts to enter the state of Florida after entering the United States by eluding or avoiding examination or inspection by immigration officers ("***Entry Class***").
>
> Any person eighteen years of age or older, who is not a citizen or national of the United States who enters, attempts to enter, or is in the state of Florida after the person has been denied admission to or excluded, deported, or removed from the United States; or has departed from the United States while an order of exclusion, deportation, or removal was outstanding ("***Reentry Class***").

D. Scope of the Injunction

Having established that a preliminary injunction is warranted, the Court addresses the scope of the injunction. Following the Court's entry of a TRO, local law enforcement agencies continued to make arrests for purported violations of S.B. 4-C. *See, e.g.*, (DE 57-6). Defendants argue that law enforcement agencies, who are not named defendants in this action, are not bound by the Court's orders. For the reasons set forth below, the Court finds that local law enforcement agencies[23] are bound by the Court's Order and cannot make arrests pursuant to S.B. 4-C unless the Court enters a future order dissolving the injunction or a higher reviewing court modifies or overrules this Order.

Federal Rule of Civil Procedure 65 provides that a Court's injunctive power binds the parties; the parties' officers, agent, servants, employees, and attorneys; and other persons who are in active concert or participation with the parties or their officers, agents, servants, employees, and/or attorneys. Fed. R. Civ. P. 65(d)(2).

[23] To avoid any confusion, the Court clarifies that local law enforcement agencies, as used in this section, refers to statewide law enforcement agencies such as Florida Highway Patrol and Florida Department of Law Enforcement, along with any other municipal or county law enforcement agencies throughout the state of Florida who present cases to the named state attorneys and the Attorney General for prosecution.

> This [rule] is derived from the common[-]law doctrine that a decree of injunction not only binds the parties defendant but also those identified with them in interest, in 'privity' with them, represented by them or subject to their control. In essence it is that defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding.

Regal Knitwear Co. v. N.L.R.B., 324 U.S. 9, 14 (1945). It is undisputed that law enforcement agencies are not named parties in this action. Defendants argue that Florida's law enforcement officers are not: (1) Defendants' officers, agents, servants, employees, or attorneys; or (2) invariably in active concert or participation with Defendants. The Court addresses each argument in turn.

1. Agents and Servants

"Rule 65(d) 'cannot be read to restrict the inherent power of a court to protect its ability to render a binding judgment.'" *USA v. Robinson*, 83 F.4th 868, 878–79 (11th Cir. 2023) (quoting *U.S. v. Hall*, 472 F.2d 261, 267 (5th Cir. 1972)). "An injunction is not a game of whack-a-mole where the Court must repeatedly issue new injunctions to address the Defendants' post-injunction craftiness." *Id.* at 885. As both Parties agree, the agent or servant inquiry turns on whether the bound Party controls the other. *See* (DE 56 at 6) ("To fall within the common-law definition of all the categories listed in Rule 65(d)(2), law-enforcement officers must be subject to Defendants' control and wield authority to act on Defendants' behalf."); (DE 57 at 13) (citing *Regal Knitwear Co.*, 324 U.S. at 14 (injunction binds "those . . . subject to [Defendants'] control").

Defendants argue that they are unable to exercise control over law enforcement officials because "Plaintiffs have identified no legal authority empowering Defendants to discipline law-enforcement officers in a managerial capacity"; "law-enforcement offices do not receive their funding from Defendants' coffers"; and "many law-enforcement

officials are either directly elected by local constituencies" or "appointed by local governments." (DE 56 at 7−8.)

In responding to these assertions, Plaintiffs submitted copies of letters sent by Defendant Attorney General Uthmeier ("***AG Uthmeier***") to the Mayor of Orlando and the City Council of Fort Meyers pursuant to his authority under Florida Statute 908.107, threatening removal of those officials from their offices based on his perception that they had failed to use their best efforts to support the enforcement of federal immigration law.[24] (DE 57-3; DE 57-4.) Furthermore, the Court is aware of multiple posts on AG Uthmeier's social media, directing state law enforcement agencies, like Florida Highway Patrol ("***FHP***"), Florida Fish and Wildlife Commission ("***FWC***"), and Florida Department of Law Enforcement ("***FDLE***") to act. For instance, on March 27, 2025, AG Uthmeier tweeted from his official account, "Today, at my direction, FDLE and FWC executed a search warrant at the Gulf World Marine Park in Panama City Beach." @AGJamesUthmeier,

[24] In addition to the threat of removal, the statutory section allows AG Uthmeier to "file suit against a local governmental entity or local law enforcement agency" for any violation of state laws mandating cooperation with the federal government in the enforcement of federal immigration law. Fla. Stat. § 908.107(2). A government official's threat to file suit is the "employ[ment of] the coercive apparatus of the government" and "an overt threat of specific punishment." *See Kando v. City of Long Beach*, No. 21-56199, 2023 WL 3092304 at *1 (9th Cir. Apr. 26, 2023) (discussing the coercive impact of a government official's threat to file suit in the context of a first-amendment retaliation claim). Certainly, AG Uthmeier's power to file suit is, practically speaking, a form of control over local law enforcement. The Defendants rely on the court's analysis in *Jacobson* to rebut the claim of control. (DE 56 at 8.) In *Jacobson*, the Eleventh Circuit concluded that the Secretary of State's ("***Secretary***") power to bring suits to enforce the performance of any duties of a county supervisor of elections was insufficient to show the Secretary of State's traceability for standing purposes to a law implemented by those supervisors. *974 F.3d* at 1253–54. First, the court was engaged in a standing analysis, not an inquiry under Rule 65(d)(2). Second, in *Jacobson*, the record showed that the power to file suit was "the *only* means of control the Secretary has over the Supervisors." *Id.* at 1253. The Court notes AG Uthmeier's power to file suit as just one of several means of control of law enforcement agencies that he enjoys.

Twitter (Mar. 27, 2025, 4:29 p.m.), https://perma.cc/HAJ8-MMU2. The next day, he announced, "At my direction, the [FHP] and [FDLE] will monitor the planned 'TeslaTakedown' events across Florida tomorrow. . . . If these protests, turn violent, we will do what's necessary to restore order and hold offenders accountable." @AGJamesUthmeier, Twitter (Mar. 28, 2025, 5:49 p.m.), https://perma.cc/YSV7-LU44.[25] Those statements by the party Defendant support a conclusion that he exerts a measure of control over state and local law enforcement agencies' criminal enforcement efforts, including those related to immigration.[26]

AG Uthmeier's asserted control over state law enforcement agencies is grounded in his constitutional and statutory authority over those agencies. The Attorney General is the "chief state legal officer" and a member of the Governor's three-member Cabinet. Fla. Const. art. IV. § 4. As a member of the Cabinet, AG Uthmeier is one of the heads of FDLE

[25] Pursuant to this Court's Order (DE 49), on April 18, 2025, AG Uthmeier sent a letter to the law enforcement community notifying "that all Florida law enforcement agencies at present must refrain from enforcing" S.B. 4-C. (DE 57-2 at 2.). He continued, "Please instruct your officers and agents to comply with [the Court's] directives." (*Id.* at 3.) Then, on his own initiative, on April 23, 2025, AG Uthmeier sent a follow-up letter to the law enforcement community reversing his prior directive. (DE 57-1.) It said, "I cannot prevent you from enforcing §§ 811.102 and 811.103, where there remains no judicial order that properly restrains you from doing so." (*Id.* at 2.) Aside from the clear misstatement that there is "no judicial order" that restrains law enforcement from arresting individuals pursuant to S.B. 4-C, AG Uthmeier's assessment that the order does not "properly" restrain them demonstrates his active effort to counsel law enforcement. As discussed at April 29, 2025 Hearing, this letter will be the subject of a separate proceeding.

[26] The Court takes judicial notice of these communications "to establish that the matters had been publicly asserted" by AG Uthmeier, not for the truth of the matters asserted therein. *Sec. & Exch. Comm'n v. Fiore*, 416 F. Supp. 3d 306, 329 (S.D.N.Y. 2019); *see also Roth v. Jennings*, 489 F.3d 499, 509 (2d Cir. 2007) (judicial notice of documents was appropriate at the Rule 12(b)(6) motion to dismiss stage "to determine what statements they contained . . . not for the truth of the matters asserted.") (cleaned up); *Flathead*, 98 F. 4th at 1189.

and FHP. Fla. Stat. § 20.201 (creating FDLE and making the Governor and Cabinet "head[s] of the department");[27] Fla. Stat. § 20.24 (creating the Department of Highway Safety and Motor Vehicles ("***DHSMV***"), headed by the Governor and Cabinet, and creating FHP as a division of DHSMV).[28] Further, AG Uthmeier is empowered to "give an official opinion and legal advice . . . on any question of law relating to the official duties" of any state or local officer. Fla. Stat. § 16.01(3). "Although an opinion of the Attorney General is not binding on a court, [Florida courts give it] careful consideration and generally [regard it] as highly persuasive." *Am. Home Assur. Co. v. Nat'l R.R. Passenger Corp.*, 908 So. 2d 459, 473 (Fla. 2005).[29]

Based on AG Uthemeier's own statements directing the conduct of law enforcement actors, which appear to be premised on his structural authority over state and local law enforcement agencies, the Court finds that both are bound by the preliminary injunction pursuant to a theory of agency with AG Uthmeier.

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[27] For example, AG Uthmeier is empowered to directly assign FHP patrol officers to his office for security services. Fla. Stat § 321.04(4).

[28] Defendants' reliance on *Support Working Animals* is misplaced. In that case, the Eleventh Circuit held only that "the Attorney General is not *the* head of FDLE" but is instead "*one of several* heads of the FDLE." *Support Working Animals, Inc.*, 8 F.4th at 1204 (citing Fla. Stat. § 20.201) (emphasis in original). That there are other Florida Cabinet members that may exercise control over the FDLE does not change the Court's analysis.

[29] It should be noted that, though local law enforcement budgets may not be directly under AG Uthmeier's control, his office controls a number of funds from which money may flow to or benefit law enforcement agencies throughout the state. *See e.g.,* (DE 56 at 8 n.5) (describing AG Uthmeier's authority to "give grants to sheriffs" from the Crim Stopper Trust Fund created by Florida Statute § 16.555); Fla. Stat. § 16.54 (establishing the Florida Crime Prevention Training Institute Revolving Trust Fund which funds various crime prevention programs for law enforcement personnel). This access to funding can be construed as another form of control.

2. Active Concert or Participation

"[A] district court may bind nonparties 'who are in active concert' with a defendant, Fed. R. Civ. P. 65(d)(2)(C), . . . when a plaintiff validly invokes federal jurisdiction by satisfying the traceability and redressability requirements of standing against a defendant." *Jacobson*, 974 F.3d at 1255. As discussed, *supra*, Plaintiffs have validly invoked the Court's jurisdiction and established standing. Therefore, the only question remaining before the Court is whether local law enforcement departments are in active concert or participation with Defendants.

"Subsection C's active concert or participation criterion is directed to the actuality of concert or participation, without regard to the motives that prompt the concert or participation." *Al Otro Lado v. Wolf*, 497 F. Supp. 3d 914, 929 (S.D. Cal. 2020). Put another way,

> [t]he phrase 'in active concert or participation' in no respect implies any conspiratorial, devious, or insidious intent or design by [the parties]. The phrase 'in active concert or participation' stands in Rule 65 in the ordinary and usual sense and means a purposeful acting of two or more persons together or toward the same end, a purposeful acting of one in accord with the ends of the other, or the purposeful act or omission of one in a manner or by a means that furthers or advances the other.

Est. of Kyle Thomas Brennan v. Church of Scientology Flag Serv. Org., Inc., No. 809-CV-264-T-23EAJ, 2010 WL 4007591, at *2 (M.D. Fla. Oct. 12, 2010). "An arrest is the initial stage of a criminal prosecution." *Terry v. Ohio*, 392 U.S. 1, 26 (1968). Therefore, when law enforcement agencies conduct arrests pursuant to S.B. 4-C, they do so in order for named Defendants to file and prosecute charges under the Statute. In other words, law enforcement agencies conduct arrests to allow the named Defendants to enforce S.B. 4-C by initiating prosecution. As Defendants acknowledged during oral argument: "There is

clearly a partnership between Florida prosecutors and Florida law enforcement." April 29, 2025 Oral Argument at 33:42, No. 25-cv-21524 (S.D. Fla.). *See Doe v. Harris*, No. C12-5713, 2013 WL 144048, at *12 (N.D. Cal. Jan. 11, 2013) ("Even if the Attorney General does not have absolute control and direction over local law enforcement, it cannot be disputed that, as to the collection of sex offender registration data, local law enforcement at least acts 'in active concert or participation with' the Attorney General, if not as her agent."); *Blackard v. Memphis Area Med Ctr. For Women, Inc.*, 262 F.3d 568, 576 (6th Cir. 2001) ("Plaintiffs' definition of 'in active concert or participation' is overly narrow and does not comport with the law. It is not necessary that the enjoined party control the third party in order for the third party to be bound by the injunction. The third party is bound by an injunction if that party is identified with the named, enjoined party in interest, in 'privity' with it, represented by it **or** subject to its control.") (emphasis in original); *ACLU v. Johnson*, 194 F.3d 1149, 1163 (10th Cir. 1999) (scope of district court's preliminary injunction properly included district attorneys tasked with enforcing the law because the suit was a facial challenge to a state criminal statute, and district attorneys prosecute criminal cases on behalf of the state).[30]

[30] The close partnership between state attorneys and law enforcement agencies in Florida's criminal justice system is mandated by a myriad of state statutory and judicial circuit regulatory law. *See e.g.*, Fla. Sta. § 27.255 (declaring any investigator employed by a state attorney to be a law enforcement officer, with full powers of arrest); Fla. Stat § 985.145(5)–(6) (requiring a state attorney to notify the arresting law enforcement agency when a juvenile is arrested and subsequently referred to mental health services or a diversionary program); Fla. Stat. § 914.25 (2)–(4) (requiring any law enforcement officer who identifies an at-risk victim or witness in a covered criminal case to notify the prosecuting state attorney, requiring the state attorney to notify FDLE if the at-risk person needs to be relocated, and requiring the state attorney and any investigating law enforcement agency to temporarily relocate the individual); Fla. Stat. § 943.1740 (requiring any law enforcement agency's use of force policy to incorporate an independent review of the use of force by the state attorney of that agency's judicial

Defendants argue that the Eleventh Circuit's reasoning in *City of South Miami v. Governor* precludes the Court's order from being binding upon law enforcement. (DE 56 at 8–9.) The Court disagrees. In *City of South Miami*, the Eleventh Circuit made clear that it's holding that plaintiffs did not have standing was based on a lack of evidence developed in that particular record and did not foreclose the possibility that a different record including different evidence could have established that named defendants exerted control over the law enforcement. 65 F.4th at 642 ("The record contains no evidence—none—that Governor DeSantis would use his suspension authority to encourage racial profiling. . . . The organizations' failure to produce any evidence to trace any injury to the governor and attorney general does not foreclose the possibility that these officials could be proper defendants on a different record, as our precedents make clear.") Here, even prior to any formal discovery, there is evidence that AG Uthmeier has used his authority to encourage local law enforcement to continue making arrests under a law the Court has, for the time being, found unconstitutional. *See* (DE 57-1) (letter from AG Uthmeier to the law enforcement community freeing them to make arrests pursuant to S.B. 4-C and

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circuit); Fla. Stat. § 985.12 (mandating that state attorneys, local law enforcement agencies, and others, collaborate to create juvenile delinquency citation programs in each judicial circuit in Florida); Sixth Jud. Circ. of Fla. L.R. 2021-043 (requiring a local law enforcement agency to forward to the state attorney any affidavit alleging a violation of a protective order); Seventeenth Jud. Circ. of Fla. L.R. 2021-28-UFC (A1) (establishing a juvenile civil citation program whereby local law enforcement agencies in Broward County must forward all qualifying juvenile referral arrest forms to the state attorney and the state attorney must notify the sending law enforcement agency if any additional information is needed to make a prosecution decision).

It is clear from these, along with many other areas of partnership, that local law enforcement agencies act in concert with state attorneys in the operation of the criminal system. The Court acknowledges that the State Attorney Defendants are to this point adhering to the Court's TRO in advising partnering law enforcement officers not to make arrests pursuant to S.B. 4-C.

disavowing the TRO's effect on law enforcement officers). AG Uthmeier's role in providing legal advice to state and local law enforcement officials, see *supra*, creates a stark contrast to the record in *City of South Miami*.

In any event, the separation between local law enforcement and Defendants still does not foreclose local law enforcement from falling within the scope of the Court's Order. "[T]he 'active concert or participation' clause *supposes* legal distinctiveness; if [local law enforcement and Defendants] were the *same* party, the order would be binding directly. The 'active concert or participation' clause is designed to prevent what may well have happened here: the addressee of an injunction, eager to avoid its obligations, persuades a friendly third party to take steps that frustrate the injunction's effectiveness." *Lindland v. U.S. Wrestling Ass'n, Inc.*, 227 F.3d 1000, 1006 (7th Cir. 2000).

Finally,[31] the Court finds that the logical outcome of Defendants' argument raises grave constitutional concerns. "It is basic to [the Supremacy Clause] that all conflicting

[31] The Court views the Parties' arguments regarding privity to be tangential to the issue at hand. Privity, at least in the narrow conception Defendants propose, is not necessary where there is no need to adduce a special relationship between persons because the action is against state officials in their official capacities. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989) ("Obviously, state officials literally are persons. But a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. As such, it is no different from a suit against the State itself.") (citations omitted).

But even if some notion of privity can inform a case like this, Defendants' reliance on *Wilson v. Attaway*, 757 F.2d 1227, 1237 (11th Cir. 1985), and *Hargis v. City of Orlando*, 586 F. App'x 493, 498 (11th Cir. 2014), is misplaced. In those cases, courts held officer-defendants in section 1983 cases claiming false arrest were not collaterally estopped by adverse state criminal court rulings. *Wilson*, 757 F.2d at 1237–38; *Hargis*, 586 F. App'x at 497–98. In that context, the "prosecutors represent the interests of the people of the State . . ., not the interests of the arresting police officer[s]. *Hargis*, 586 F. App'x at 498 (alteration accepted). In this case, Plaintiffs are seeking prospective, forward relief from enforcement of an allegedly unconstitutional law, and law enforcement agencies and state prosecutors have the same interest in enforcing that law. Neither Plaintiffs, Defendants, nor the Court have found any authority applying the construct of privity to

state provisions be without effect." *Maryland v. Louisiana*, 451 U.S. 725, 728 (1981); *see also Irving v. Mazda Motor Corp.*, 136 F.3d 764, 767 (11th Cir. 1998) ("[S]tate law that conflicts with federal law is 'without effect.'") (quoting *Cipollone*, 505 U.S. at 516). And though it is clear Defendants disagree with the Court's analysis, since April 4, 2025, the Court has found that there is a substantial likelihood that S.B. 4-C is unconstitutional. "As a fundamental proposition, orders of the court must be obeyed until reversed by orderly review. . . . If the order appears to be incorrect, the proper course of action lies in review[.]" *Kleiner v. First Nat. Bank of Atlanta*, 751 F.2d 1193, 1208 (11th Cir. 1985) (citations omitted); *see also Evans v. Williams*, 206 F.3d 1292, 1299 (D.C. Cir. 2000) ("[A] party faced with an invalid injunction must have the injunction modified or vacated; he cannot simply ignore it."); *Walker v. City of Birmingham*, 388 U.S. 307, 314 (1967) ("[I]f the injunction was erroneous, jurisdiction was not thereby forfeited, that the error was subject to correction only by the ordinary method of appeal, and disobedience to the order constituted contempt.").

"The Fourth Amendment protects the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. Because arrests are seizures of persons, they must be reasonable under the circumstances." *D.C. v. Wesby*, 583 U.S. 48, 56 (2018). "[T]he 'reasonableness' of an arrest is, in turn, determined by the presence or absence of probable cause for the arrest." *Skop v. City of Atlanta*, 485 F.3d 1130, 1137 (11th Cir. 2007). "Probable cause to arrest exists when law enforcement officials have facts and circumstances within their

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relationships between law enforcement agencies and state prosecuting entities in cases seeking prospective relief from enforcement of an allegedly unconstitutional state criminal law.

knowledge sufficient to warrant a reasonable belief that the suspect had committed or was committing a crime." *Id.* (quoting *United States v. Floyd*, 281 F.3d 1346, 1348 (11th Cir. 2002)). Further, "[i]t is axiomatic that seizures have purposes," and "when those purposes are spent, further seizure is unreasonable." *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020). "At the time of the founding and still today, the primary purpose of an arrest is to ensure the arrestee appears to answer charges." *Id.* (describing probable cause, which justified an arrest and initial detention, as having been "exhausted" once the purpose for the detention was fulfilled); *Terry*, 392 U.S. at 26 ("An arrest is the initial stage of a criminal prosecution."). To posit, as Defendants do, that law enforcement may arrest individuals for conduct they know has no current legal basis to sustain criminal charges, is to upend Fourth Amendment jurisprudence in its entirety. *Terry*, 392 U.S. at 9 ("No right is held more sacred, or is more carefully guarded . . . than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.").

IV. CONCLUSION

For the reasons set forth above, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiffs' Motion for a Preliminary Injunction (DE 4) is **GRANTED**.
2. Plaintiffs' Motion for Provisional Class Certification (DE 5) is **GRANTED IN PART AND DENIED IN PART**.
3. The Court **PROVISIONALLY CERTIFIES** the Entry Class and Reentry Class, as defined, *supra*, for the purpose of issuing the Preliminary Injunction.
4. Plaintiffs' counsel are **APPOINTED** as provisional class counsel.

5. The Court **ENTERS** a Preliminary Injunction prohibiting Defendants and their officers, agents, employees, attorneys, and any persons who are in active concert or participation with them from enforcing S.B. 4-C, codified as Florida Statutes sections 811.102–.103, against any member of the Entry Class or Reentry Class. The preliminary injunction shall include among those "who are in active concert or participation with" Defendants or their officers, agents, employees, or attorneys, and thus prohibited from enforcing S.B. 4-C, the following: any officer or other personnel within any municipal or county police department within Florida, the Florida Department of Law Enforcement, or the Florida Highway Patrol, and any other law enforcement officer with power to enforce S.B. 4-C. (DE 28 at 14); *see also* Fed. R. Civ. P. 65(d)(2)(C) (including "other persons who are in active concert or participation with" the parties or the parties' officers, agents, servants, employees, and attorneys among those bound by any injunction). The preliminary injunction shall also prohibit any person covered by the preliminary injunction from filing or maintaining any charge pursuant to Florida Statute sections 811.102 or 811.103.

6. On or before **May 12, 2025**, Defendant Attorney General Uthmeier shall **SHOW CAUSE** why he should not be held in contempt or sanctioned for violating this Court's TRO (DE 28; DE 49) through sending his April 23, 2025 letter to law enforcement agencies in Florida advising them, in part, that "no lawful, legitimate order currently impedes [their] agencies from continuing to enforce" S.B. 4-C. (DE 57-1 at 2.); *see also supra* pp. 40–41 n.25. Plaintiffs may file a brief detailing their position regarding AG Uthmeier's response to show cause on or before **May 22,**

2025. The Parties are **COMPELLED** to attend a **Show Cause Hearing** on **May 29, 2025 at 2:00 p.m.** before the Honorable Kathleen M. Williams in Room 11-3 of the Wilkie D. Ferguson, Jr. United States Courthouse, located at 400 North Miami Avenue in Miami, Florida. Defendants must be prepared to discuss why sanctions should not be imposed for AG Uthmeier's failure to comply with a Court order.

DONE AND ORDERED in Chambers in Miami, Florida, on this 29th day of April, 2025.

KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

FLORIDA IMMIGRANT COALITION, *et al.*, *Plaintiffs*, v. JAMES UTHMEIER, in his official capacity as the Attorney General of the State of Florida, *et al.*, *Defendants*.	Case No. 1:25-cv-21524-KMW

PLAINTIFFS' RESPONSE TO DEFENDANTS' SUPPLEMENTAL BRIEF ON THE SCOPE OF TEMPORARY RESTRAINING ORDER

INTRODUCTION

Defendants' supplemental brief makes a radical argument: Despite this Court's Temporary Restraining Order finding S.B. 4C unconstitutional and halting its enforcement, law enforcement officers across the state may make hundreds or even thousands of arrests under the unconstitutional law. Indeed, in their view, this Court is *powerless* to enjoin any arrests under this illegal law, no matter how clear the Court makes its order, and instead each and every law enforcement agency must be formally joined to this litigation—and every other challenge to unconstitutional state laws.

Yet more troublingly, Defendants appear to have *encouraged* future arrests despite the Court's clear directive. The Attorney General sent a letter to all law enforcement officers in the state expressing "[his] view that no lawful, legitimate order currently impedes your agencies from continuing to enforce" S.B. 4C. Ex. A. Of course, this Court's Order extending the TRO could not have been clearer that all law enforcement officers are barred from conducting arrests under S.B. 4C. And neither the Attorney General nor any other person may decline to comply with a court order even if they believe (wrongly) that it is not "lawful [or] legitimate." *Id.* After all, "it is firmly settled that a court order 'must be obeyed' until it is 'reversed for error' by the issuing court or a 'higher' one. *J.G.G. v. Trump*, No. 25-766, 2025 WL 1119481, at *8 (D.D.C. Apr. 16, 2025) (quoting *Walker v. City of Birmingham*, 388 U.S. 307, 314 (1967)).

Even setting aside this apparent effort to undermine the Court's order, Defendants' position is baseless. Courts have long held that law enforcement officers who participate in enforcing an enjoined law are bound where, as here, they act in concert with the enjoined parties to carry out prohibited conduct and are provided with notice of the injunction. Additionally, privity exists because, in a lawsuit challenging the validity of a state law, the interests of law enforcement and prosecutors are identical: enforcing state law and defending it against facial constitutional challenge. Law enforcement officers have also aided and abetted violations of this Court's injunction by arresting individuals under the enjoined provisions. And, contrary to Defendants' position, Florida law gives the Attorney General control over law enforcement when it comes to immigration issues. Defendants' arguments to the contrary misunderstand the scope of Federal Rule of Civil Procedure 65(d)(2), misapply settled law, and, if accepted, would invite evasion of judicial authority. "[A]n injunction is not a game of whack-a-mole where the Court must repeatedly issue new injunctions to address the Defendants' post-injunction craftiness."

United States v. Robinson, 83 F.4th 868, 885 (11th Cir. 2023) (citation omitted). This Court should confirm the scope of its orders.

BACKGROUND

This suit challenges the legality of S.B. 4C, a criminal law that purports to authorize law enforcement officers to arrest, prosecutors to prosecute, and judges to convict noncitizens for state law immigration crimes. Plaintiffs sought a preliminary injunction and temporary restraining order, emphasizing the threat of arrest both as a reason the law is preempted and as an imminent harm requiring rapid relief. *See, e.g.*, Dkt. 4 at 1, 4, 8, 10-11 ("if unilateral *arrests* alone were enough for preemption in *Arizona*, then unilateral arrests, prosecutions, and detention under S.B. 4C must be preempted as well"); *id.* at 16 ("Since enacting S.B. 4C, law enforcement agencies in Florida have already made several arrests pursuant to these laws. Plaintiffs are at risk of being next.") (footnote omitted); *id.* at 17 (noting harm to public trust if state officers make arrests); Dkt. 23 at 2 (urging speed given "increasing reports that state officials have already begun arresting noncitizens under the statute").

On April 4, 2025, this Court issued a TRO enjoining enforcement of S.B. 4C's illegal entry and reentry provisions, finding that Plaintiffs demonstrated a strong likelihood of success on the merits and that enforcement of the law would cause irreparable harm. Dkt. 28. On the questions of standing and irreparable injury, the Court emphasized the "risk of arrest" that Plaintiffs had established. *Id*. at 5-6; 12-13. Pursuant to Fed. R. Civ. P. 65(d)(2), the Court barred any enforcement by Defendants; "their officers, agents, employees, attorneys," *and* "any person who are in active concert or participation with them." *Id*. at 14. Defendants subsequently filed an opposition to a preliminary injunction and sought clarification on the scope of the upcoming hearing, *see* Dkt. 32, 40, but never sought any clarification of the clear sweep of the TRO. *See McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949) (noting parties could have sought "clarification or construction of the order").

Instead, Florida law enforcement officers proceeded to make an unknown number of arrests under the enjoined provisions. For example, on April 16, 2025, Juan Carlos Lopez-Gomez, a U.S. citizen, was arrested by the Florida Highway Patrol under S.B. 4C's illegal entry provision during a traffic stop, despite presenting valid identification. *See, e.g.*, Ex. F. Plaintiffs became aware of two other specific arrested individuals, and received information about as many as 13 arrests in just one judicial district—almost all performed by the Florida Highway Patrol.

Tr. 12:3-7, Dkt. 50. That number is likely a dramatic undercount, as FHP operates throughout Florida's 67 counties.

Plaintiffs raised these arrests with the Court during the preliminary injunction hearing on April 18, 2025, and Defendants took the position that the TRO does not bind any law enforcement agents in Florida. The Court extended the TRO, making explicit that it binds all law enforcement officers in the State. Dkt. 49 at 1. It also required the State to provide notice to all such officers. *Id.* at 2. The Attorney General issued two seemingly contradictory letters to law enforcement, the second of which appears to invite officers to ignore the Court's Order. Ex. A ("I cannot prevent you from enforcing [S.B. 4C,] where there remains no judicial order that properly restrains you from doing so . . . it is my view that no lawful, legitimate order currently impedes your agencies from continuing to enforce" S.B. 4C).

The Court ordered supplemental briefing regarding the proper scope of the preliminary injunction should the Court order one. Dkt. 49 at 2. Defendants filed a brief contending that the Court is powerless to enjoin law enforcement officers under Fed. R. Civ. P. 65(d)(2). Dkt. 56 ("Supp. Br.").

ARGUMENT

Federal Rule of Civil Procedure 65(d)(2) provides that a court's injunction may bind not only "the parties" but also "the parties' officers, agents, servants, employees, and attorneys" as well as "other persons who are in active concert or participation with" the parties or their agents. This provision codifies the common law rule that courts may prevent enjoined parties from circumventing injunctions. *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945). The Eleventh Circuit has explained that Rule 65(d) "embodies, rather than limits the common law powers of the district court." *Robinson*, 83 F.4th at 878 (citation omitted); *see also United States v. Hall*, 472 F.2d 261, 267 (5th Cir. 1972) (similar). A court's jurisdiction over nonparties who violate its injunctive order is "necessary to the proper enforcement and supervision of a court's injunctive authority and offends no precept of due process." *Waffenschmidt v. MacKay*, 763 F.2d 711, 716 (5th Cir. 1985); *see also* Fed. R. Civ. P. 71 (procedure for enforcing an order "against a nonparty" subject to it "is the same as for a party").

The Eleventh Circuit has accordingly recognized that under Rule 65(d), injunctions may apply to five categories of people and organizations: (1) the parties; (2) the parties' officers, agents, servants, employees, and attorneys; (3) other persons who are in active concert or

participation with the parties or their officers, agents, servants, employees, and attorneys; (4) others in "privity" with the parties, including "nonparties otherwise legally identifiable with the enjoined party"; and (5) "those who aid and abet those in privity with an enjoined party." *Robinson*, 83 F.4th at 878-79 (cleaned up).

In the context of this case—a challenge to the validity of a state statute brought against the Attorney General and prosecutors across the state—law enforcement agencies easily fit within several of these categories, any one of which is sufficient for an injunction in this case to bind them. First, law enforcement agencies are in active concert and participation with Defendants because the arrests they make are a condition precedent to, and can only be justified by reference to, prosecutions under S.B. 4C. Indeed, if prosecutors may not prosecute purported violations of S.B. 4C, the arrests are unlawful. Second, they are in privity with Defendants because, in this challenge to the validity of a state statute, law enforcement agencies and prosecutors have identical interests: enforcing and defending the facial validity of state law. Third, for similar reasons law enforcement's arrests aid and abet prosecutions under S.B. 4C. And fourth, at least in the context of this case, law enforcement officers are Defendants' agents because Attorney General Uthmeier has exercised control over their immigration-related activities. Thus, an injunction in this case properly covers law enforcement agencies.

Indeed, in comparable cases across the country, federal courts have enjoined criminal statutes without naming law enforcement. *See, e.g., Farmworker Ass'n of Fla. v. Moody*, 734 F. Supp. 3d 1311, 1344 (S.D. Fla. 2024) (enjoining "Defendants and their officers, agents, servants, employees, and attorneys—and others in active concert or participation with them."); *Idaho Org. of Res. Councils Inc. v. Labrador*, No. 25-cv-00178, ECF No. 16 at 9 (D. Idaho Mar. 27, 2025) ("Court enters a TRO preserving the status quo by prohibiting Defendants and their officers, agents, employees, attorneys, and any person who are in active concert or participation with them from enforcing the [challenged statute]."); *United States v. Iowa*, 737 F. Supp. 3d 725, 751 (S.D. Iowa 2024) ("Defendants are hereby ENJOINED from enforcing Senate File 2340 pending further proceedings."), *vacated as moot*, No. 24-2265, 2025 WL 1140834 (8th Cir. Apr. 15, 2025); *United States v. Oklahoma*, 739 F. Supp. 3d 985, 1007 (W.D. Okla. 2024) ("Oklahoma is hereby ENJOINED from enforcing H.B. 4156 pending further proceedings."); *Valle del Sol Inc. v. Whiting*, No. 10-cv-1061, 2012 WL 8021265, at *7 (D. Az Sept. 5, 2012) ("preliminarily enjoining the enforcement of" challenged statute), *aff'd*, 732 F.3d 1006 (9th Cir. 2013). On

Defendants' view, those orders—each of which was (like this Court's TRO) predicated in part on the harms *of arrests*—were nullities as to any future arrests. That cannot be and is not correct.

The implications of Defendants' argument are dramatic—threatening to render scores of injunctions toothless. In cases challenging the validity of state criminal laws, courts routinely extend injunctions to law enforcements officers who are not parties to the suit. *See, e.g., Am. Booksellers Ass'n, Inc. v. Webb*, 590 F. Supp. 677, 693 (N.D. Ga. 1984) ("Likewise, the Attorney General's appearance in this case clearly served to represent the rights and interests of other subordinate state law enforcement officials, not named as parties to this action, who might seek to enforce the challenged Act. Accordingly, these state law enforcement officials also will be bound by the Court's injunction, and plaintiffs will thus enjoy state-wide interim relief from enforcement of the Act's display provisions."); *Ind. C.L. Union Found., Inc. v. Superintendent, Ind. State Police*, 470 F. Supp. 3d 888, 909 n.9 (S.D. Ind. 2020) ("The Court finds that all law enforcement agencies and prosecutors in Indiana are acting in concert with the parties in the enforcement of [the invalid statute], and that this Order and the preliminary injunction applies to those entities as well."); *Rhode v. Bonta*, 713 F. Supp. 3d 865, 888 (S.D. Cal. 2024) (enjoining from implementing a law "Attorney General . . . and those duly sworn state peace officers and federal law enforcement officers who gain knowledge of this injunction order or know of the existence of this injunction order"); *Doe #1 v. Lee*, No. 16-cv-02862, 2021 WL 1264433, at *2 n.1 (M.D. Tenn. Apr. 5, 2021) (noting that "other agencies and law enforcement officers will need to abide by this injunction once they are provided notice"); *Doe v. Harris*, No. C12-5713, 2013 WL 144048, at *2 (N.D. Cal. Nov. 7, 2012) (noting that order applies "to all California state and local law enforcement officers") (citation omitted). Such orders reflect the settled principle that courts may enjoin those necessary to prevent ongoing enforcement of unconstitutional laws, even if they are not formally named as parties.

I. LAW ENFORCEMENT OFFICERS ARE IN ACTIVE CONCERT AND PARTICIPATION WITH DEFENDANTS.

The Supreme Court has long made clear that Rule 65's "in active concert or participation" provision is essential to prevent enjoined parties from nullifying judicial orders by acting through others. *Regal Knitwear Co.*, 324 U.S. at 14. Without this safeguard, injunctions would be rendered hollow, courts would be powerless to enforce compliance, and equitable authority would collapse into an empty formality. Rule 65(d)(2) ensures that injunctions bind not only the named parties but also, with notice, those who are in active concert or participate in the

enjoined conduct. Courts have repeatedly recognized that binding nonparties in this way is not an exception to due process but a necessary feature of effective judicial relief. *Robinson*, 83 F.4th at 884.

There can be no doubt that under the plain text of the Rule, law enforcement acts in both active concert and participation with the defendant prosecutors and Attorney General. "Concert" means "agreement in a design or plan*." Jeffers v. United States*, 432 U.S. 137, 149 (1977). "Participation" means "taking part in something." *Participation*, Merriam Webster's Dictionary. Importantly, these terms do not require that an enjoined party exercise direct control over the third party. *See Blackard v. Memphis Area Med. Ctr. for Women, Inc.,* 262 F.3d 568, 576 (6th Cir. 2001) ("It is not necessary that the enjoined party control the third party in order for the third party to be bound by the injunction."); *Harris*, 2013 WL 144048, at *12 ("Even if the Attorney General does not have absolute control and direction over local law enforcement, it cannot be disputed that, as to the [challenged conduct], local law enforcement at least acts 'in active concert or participation with' the Attorney General, if not as her agent.").

Florida law enforcement's arrests under S.B. 4C are textbook examples of active concert and participation. Arrests and prosecutions are not separate, independent events—they are linked stages in the enforcement of criminal statutes. Indeed, "[a]n arrest is the initial stage of a criminal prosecution." *Terry v. Ohio*, 392 U.S. 1, 26 (1968). Without an arrest, there can be no prosecution; without prosecution, the statute cannot be enforced. Arresting individuals under S.B. 4C directly advances the common goal of enforcement of an unconstitutional law, and thus is in clear violation of the order under Rule 65. Likewise, an arrest for a violation of S.B. 4C can only be justified by reference to a future prosecution; police have no free-floating power to arrest for crimes independent of criminal prosecutions. *See Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020) ("It is axiomatic that seizures have purposes. When those purposes are spent, further seizure is unreasonable . . . [a]t the time of the founding and still today, the primary purpose of an arrest is to ensure the arrestee appears to answer charges."). And this Court has already recognized that arrests and prosecutions under S.B. 4C are coordinated harms. Dkt. 28 at 5 ("[T]here is a realistic probability that Individual Plaintiffs could be subject to arrest and prosecution under S.B. 4-C.").

Florida's institutional design eliminates any doubt. Florida's Constitution and statutes create an integrated framework in which arrests by law enforcement lead to prosecution by state

attorneys to achieve the State's objective of enforcing statutes like S.B. 4C. *See* Fla. Const. art. V, § 17 (State Attorneys prosecuting officers of trial courts); Fla. Stat. § 27.02(1) (State Attorneys prosecute criminal cases on behalf of the state); *id.* § 16.56(1)(a) (Attorney General and Statewide Prosecutor prosecute state crimes). Law enforcement officers making arrests under S.B. 4C are not acting independently; they are integral stages in the State's enforcement machinery.

The specific statutory authorities applicable to immigration arrests only sharpen the point. The Florida Department of Law Enforcement ("FDLE")—an agency overseen by the Governor and Cabinet, including the Attorney General—"shall *coordinate* and *direct* the law enforcement . . . responses . . . to immigration enforcement incidents within or affecting this state." *Id.* § 943.03(14) (emphasis added); Fla. Const. art. IV, § 4(a) (Cabinet composed of the Attorney General, among others); Fla. Stat. § 20.201(1) (establishing the Governor and Cabinet as head of FDLE). S.B. 4C is precisely the type of immigration enforcement initiative contemplated by this mandate, and the Attorney General—through his role in jointly overseeing FDLE—exercises direct authority over law enforcement's implementation of such immigration statutes.[1]

A similar structure governs the Florida Highway Patrol ("FHP"), which is within the Department of Highway Safety and Motor Vehicles ("DHSMV")—an agency overseen by the Governor and Cabinet, including the Attorney General. *See* Fla. Const. art. IV, § 4(a) (Cabinet composed of the Attorney General, among others); Fla. Stat. § 20.24(1) (establishing the Governor and Cabinet as head of DHSMV); *id.* § 20.24(2)(a) (establishing FHP within DHSMV). FHP's arrests under S.B. 4C are thus not the product of independent plans, but rather reflects coordinated steps within a unified enforcement apparatus.

Defendants do not grapple with the obvious application of the Rule's terms. Instead, they try to narrow the meaning of the Rule to cover only those in privity and who aid and abet named parties. Supp. Br. 9. As explained below, the Court's Order is proper under those standards. But, regardless, Defendants cite no case that has ever so held, particularly in the context of a suit against governmental defendants and seeking to bind other governmental defendants.

[1] Defendants rely on *Support Working Animals, Inc. v. Governor of Florida*, 8 F.4th 1198, 1204 & n.4 (11th Cir. 2021), Supp. Br. 6 n.2, but that case confirmed that the Attorney General was "*one of several heads* of the FDLE," and merely held that the Attorney General had neither enforced nor threatened to enforce the challenged gambling statute. *Support Working Animals, Inc.*, 8 F.4th at 1204 & n.4. That reasoning has no application here.

Rather, the language Defendants cite in cases like *Robinson* address the idea that Rule 65(d)(2) may have more limited application when it comes to *private* persons being bound by an order to which they are not a party and who might raise questions of due process. *See Robinson*, 83 F.4th at 881, 884 (discussing whether private persons have had their "day in court"); Supp. Br. 15 (Plaintiffs' interpretation "makes a mockery of due process"); *id*. at 9-10. But here, the injunction binds only state and local governmental officials in their *official* capacities. And as the Supreme Court has long held, a suit against a government official in their official capacity "is not a suit against the official but rather is a suit against the official's office," and thus "is no different from a suit against the State itself." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989). Because Plaintiffs here sued numerous state officers to bar enforcement of a state statute, there is no due process problem with enjoining *other* state officers from doing so as well. This Court's orders against nonparty state officers are likewise ultimately orders against the State itself. *Lewis v. Clarke*, 581 U.S. 155, 162 (2017). And the State, of course, has had and will continue to have full procedural opportunities to contest this Court's rulings. In any event, the State has no constitutional right to due process. *See South Carolina v. Katzenbach*, 383 U.S. 301, 323-24 (1966) (rejecting state's Due Process argument).

The Tenth Circuit's decision in *American Civil Liberties Union v. Johnson* illustrates this point. 194 F.3d 1149 (10th Cir. 1999). In that suit against the Governor and Attorney General, nonparty district attorneys challenged their inclusion in an injunction, urging that they "received no notice of, nor have they participated in, this action." *Id*. at 1163. The Court easily rejected the idea that those government officers had a separate right to a day in court, noting that "[t]his action is a facial challenge to a New Mexico statute, brought against the governor and attorney general of New Mexico in their official capacities," and thus "is an action against the State of New Mexico." *Id*. The court had no need to look beyond the plain language of the Rule when it came to binding official-capacity state officers in a facial challenge to a state law. So too here: Florida law enforcement officers arresting under S.B. 4C are acting in active concert and participation with Defendants and are properly bound by the Court's Order. *See also Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1255 (11th Cir. 2020) (indicating, in context of governmental defendant and nonparties, that a district court may enjoin "nonparties 'who are in active concert' with a defendant"); *Harris*, 2013 WL 144048, at *12 (applying plain text of rule to government nonparties); *Entergy Nuclear Vt. Yankee, LLC v. Shumlin*, No. 1:11-CV-99 JGM, 2013 WL

121016, at *2 (D. Vt. Jan. 9, 2013) (distinguishing between application of Rule 65 to private and governmental nonparties).

In short, law enforcement arrests under the enjoined provisions of S.B. 4C are not isolated or discretionary acts. They are indispensable acts that form part of a coordinated state policy—a common design and plan with Defendants—to enforce an unconstitutional statute. Law enforcement agencies and officers fall squarely within Rule 65's "in active concert or participation" provision, and they are bound by this Court's injunction.

II. LAW ENFORCEMENT OFFICERS ARE IN PRIVITY WITH THE ENJOINED DEFENDANTS AND ACTED TO ADVANCE THEIR INTERESTS.

Even if privity were required, it is satisfied here. Defendants argue otherwise, contending that law enforcement agencies are "separate legal entities" over which Defendants have no control. Supp. Br. 11. But even if that were true—which it is not, *see infra*—privity does not require formal agency or control. It simply requires that law enforcement agencies be represented, which is clearly the case here given that this lawsuit challenges the constitutionality of a state law. The challenge is really against the State and is defended by the State's Attorney General. *See Regal Knitwear Co.*, 324 U.S. at 14 (injunction "not only binds the [] defendant[s] but also those . . . represented by them").

"'Privity' is a flexible legal term, comprising several different types of relationships." *EEOC v. Pemco Aeroplex, Inc.*, 383 F.3d 1280, 1286 (11th Cir. 2004) (explaining that privity "can arise in a number of circumstances"). For the purposes of determining whether an injunction binds a nonparty, privity exists where it "would be reasonable to conclude that [the party's] rights and interests have been represented and adjudicated in the original injunction proceeding." *ADT LLC v. NorthStar Alarm Servs., LLC*, 853 F.3d 1348, 1352 (11th Cir. 2017).

That standard is easily satisfied in this case: a challenge to the constitutionality of a state statute. As explained above, this suit against Defendants in their official capacities is effectively a suit against the State itself. *See Summit Med. Assocs., P.C. v. Pryor*, 180 F.3d 1326, 1336 (11th Cir. 1999) (*Ex parte Young* "doctrine has, ... been described as a legal "fiction" because it creates an imaginary distinction between the state and its officers"). Law enforcement officers in their official capacities are likewise representatives of the State exercising the powers of the State; they have no "rights and interests" in the enforcement of the challenged law apart from those already represented here. *ADT*, 853 F.3d at 1352. Moreover, Plaintiffs' claims are that the

state statute is facially unconstitutional. So law enforcement officers would have no arguments to make that would be any different from those advanced by Defendants. Indeed, Defendants *are* representing those officers in seeking to limit the Court's injunction. And they notably offer no actual arguments or interests that diverge from those of the State already advanced in this litigation—that is, the interest in enforcing S.B. 4C as much as possible.[2]

Defendants instead argue that prosecutors are generally not in privity with arresting officers because the prosecutor's interest is "that justice shall be done," while "officers have little if any direct interest in prosecution." Supp. Br. 12 & n.6 (internal quotation marks omitted). But Defendants' cited cases involve a very different context: lawsuits against arresting officers in their *personal capacity* for damages under § 1983. *See, e.g., Wilson v. Attaway*, 757 F.2d 1227, 1236-37 (11th Cir. 1985); *Hargis v. City of Orlando*, 586 F. App'x 493, 498 (11th Cir. 2014) (both cited by Defendants). In these cases, the arresting officer (as an individual human, rather than as an official representative of the state) has a uniquely *personal* interest in a damages case against them in their personal capacity. And the arresting officer does not stand in privity with the prosecutor in the criminal prosecution because "[p]rosecutors represent the interests of the people . . . not the interests of the arresting police officer," and police officers have no greater interest in the outcome of criminal proceedings "than any other citizen of [the] state." *Hargis*, 586 F. App'x at 498 (citation omitted). Thus, Defendants' cases are inapposite.

In sum, Defendants provide no reason why, under the circumstances of this challenge to the validity of a state law, law enforcement's interests would not be represented. Nor could they—indeed, surely the State's Attorney General is an adequate representative of the state itself, which is the true defendant of interest here. Accordingly, the injunction binds law enforcement agencies and officers. *Regal Knitwear Co.*, 324 U.S. at 14 (injunction not only binds defendants but also those represented by them).

III. LAW ENFORCEMENT AID AND ABET ENFORCEMENT OF S.B. 4C.

Rule 65(d)(2) also includes those who aid, abet, cooperate with, or facilitate the enjoined conduct. *Regal Knitwear Co.*, 324 U.S. at 14; *Robinson*, 83 F.4th at 885; *ADT*, 853 F.3d at 1352. Defendants attempt to cabin this rule by importing rigid notions of criminal accomplice liability into civil injunction proceedings. Supp. Br. 13-14. But this approach misapprehends fundamental

[2] To the extent any law enforcement agencies and officers had additional or different arguments, they could always file an amicus brief.

principles of civil aiding and abetting law.

Indeed, as the Supreme Court recently reaffirmed in *Twitter, Inc. v. Taamneh*, civil aiding and abetting does not import all the immutable components of its criminal counterpart. 598 U.S. 471, 486 (2023) (citing *Halberstam v. Welch*, 705 F.2d 472, 489 (D.C. Cir. 1983)). Rather, civil liability turns not on rigid criminal frameworks but on whether the nonparty "consciously, voluntarily, and culpably participate in or support the relevant wrongdoing." *Id.* at 505.

Florida law enforcement officers here plainly participated in violating this Court's injunction by arresting individuals under the enjoined provisions of S.B. 4C. Each arrest could only be justified as a predicate to prosecution under the enjoined law—but such prosecution would, of course, require a party defendant to directly violate the Court's injunction, *supra*. By initiating the enforcement chain, law enforcement sought to induce and further violations of the Court's injunction by the party Defendants. *See Twitter*, 598 U.S. at 506 (explaining that aiding and abetting attaches when assistance materially furthers wrongful acts); *Goya Foods, Inc v. Wallack Mgmt. Co.*, 290 F.3d 63, 75 (1st Cir. 2002) ("the challenged action must be taken for the benefit of, or to assist").

Moreover, the Attorney General, through his joint role overseeing the FDLE, has clear authority to direct the law enforcement response to S.B. 4C. Yet he has failed to exercise that authority to bring state law enforcement into compliance. To the contrary, the Attorney General has seemingly encouraged continued enforcement of the enjoined provisions, issuing a letter to law enforcement agencies declaring his "view that no lawful, legitimate order currently impedes your agencies from continuing to enforce Florida's new illegal entry and reentry laws." Ex. A.

Finally, Defendants' reliance on *Alemite Mfg. Corporation v. Staff* is misplaced. Supp. Br. 14. That case stands for the proposition that an injunction may not "enjoin the world at large" absent aiding and abetting. 42 F.2d 832, 832-33 (2d Cir. 1930). But the Court has not sought to do so; rather, it has barred the State's officers from enforcing an unconstitutional statute. Where, as here, law enforcement officers assist in the enforcement of an invalidated statute, they fall well within Rule 65(d)(2).[3] *See Waffenschmidt*, 763 F.2d at 714 (holding nonparties aided and

[3] *Jacobson* is of no help to Defendants. It confirmed that "a district court may bind nonparties 'who are in active concert' with a defendant" so long as "a plaintiff validly invokes federal jurisdiction by satisfying the traceability and redressability requirements of standing against a defendant." 974 F.3d at 1255. There, the Court found a lack of standing against the named official. *Id*. Here, as the Court already held, Plaintiffs have standing.

abetted enjoined parties); *Reliance Ins. Co. v. Mast Const. Co.*, 84 F.3d 372, 377 (10th Cir. 1996) (similar).

IV. LAW ENFORCEMENT OFFICERS ARE DEFENDANTS' AGENTS AND SERVANTS.

Finally, in the context of this case, law enforcement officers are Defendants' agents and servants because Defendants exercise control over their conduct. *See Regal Knitwear Co*., 324 U.S. at 14 (injunction binds "those . . . subject to [Defendants'] control").

Florida law requires that "any official responsible for directing or supervising [state and local law enforcement agencies] shall use best efforts to support the enforcement of federal immigration law." Fla. Stat. § 908.104(1). In Defendants' view, S.B. 4C constitutes an effort to assist in the enforcement of federal immigration law. Dkt. 40 at 1 (asserting S.B. 4C "aid[s] the United States in curbing illegal immigration"). And contrary to Defendants' contention that they lack "the power to discipline" local law enforcement, Supp. Br. 7, Florida law allows the Attorney General to suspend and to file suit against a local law enforcement agency officers for declaratory or injunctive relief for a violation of these provisions. Fla. Stat. § 908.107(2).

Relying on these laws, the Attorney General has repeatedly threatened local officials who fail to fully embrace immigration enforcement, even threatening to remove these officials from office. *See, e.g.*, Ex. C (claiming mayor had violated Florida laws described above and threatening that "[f]ailure to abide by state law may result in the enforcement of applicable penalties, including but not limited to being held in contempt, declaratory or injunctive relief, and removal from office . . . ."); Ex. D (claiming city council had violated Florida laws described above and making same threats of being held in contempt, declaratory or injunctive relief, and removal from office); Ex. G (threatening that if a local official "takes action to impede or prevent law enforcement from . . . get[ting] these people back where they came from, then I do believe the law is violated and that there will be penalties for that").

Additionally, Defendant Uthmeier exercises control over whether law enforcement enforces an invalid law because, as Florida's "chief state legal officer," Fla. Const. art. IV § 4, the Attorney General "[g]ives an official opinion and legal advice in writing on any question of law[,]" Fla. Stat. § 16.01. Indeed, in this very case, the Attorney General wrote to all law enforcement agencies on April 18, 2025 requesting that they "please instruct [their] officers and

agents to comply with [this Court's] directives." Ex. B.[4] Just days later, on April 23, 2025—and prior to this Court issuing any ruling on these issues—the Attorney General sent a follow-up letter expressing his "view that no lawful, legitimate order currently impedes . . . agencies from continuing to enforce Florida's new illegal entry and reentry laws." Ex. A. These letters only underscore Defendants' authority and control over law enforcement agencies and their enforcement of the statute at issue here. Thus, Defendants exercise control over law enforcement.

V. LAW ENFORCEMENT OFFICERS ARE LIABLE FOR ARRESTING UNDER AN ENJOINED LAW.

Finally, it is worth noting the implication of Defendants' position for law enforcement officers themselves. Law enforcement may detain or arrest individuals only when supported by reasonable suspicion or probable cause of a *crime*. *See Skop v. City of Atlanta*, 485 F.3d 1130, 1137 (11th Cir. 2007) (stating reasonable suspicion and probable cause require "belief that the suspect had committed or was committing a crime"). But this Court enjoined S.B. 4C's illegal entry and reentry provisions because they were preempted and thus are now "without effect." *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981) ("It is basic to this constitutional command that all conflicting state provisions be without effect."); *Irving v. Mazda Motor Corp.*, 136 F.3d 764, 767 (11th Cir. 1998) ("state law that conflicts with federal law is without effect." (citation omitted)). Arrests under those enjoined provisions are therefore not just properly barred by this Court's orders under Fed. R. Civ. P. 65(d)(2); they are also unconstitutional. Courts have long recognized that arrests made pursuant to enjoined or invalidated statutes violate the Fourth Amendment because such statutes cannot furnish probable cause. *See Michigan v DeFilippo*, 443 U.S. 31, 38 (1979) ("Police are charged to enforce laws until and unless they are declared unconstitutional."); *Cooper v. Dillon*, 403 F.3d 1208, 1223 (11th Cir. 2005) (enforcing an unconstitutional state statute "caused the deprivation of [plaintiff's] constitutional rights").

Furthermore, arrests on probable cause of a crime are only reasonable if the officer can expect that a prosecution for that crime may follow. After all, the entire point of criminal arrests are for criminal prosecutions. If the police know that no prosecution will follow, because all such prosecutions statewide are barred by this Court's order, then the basis for arrest disappears and it becomes a Fourth Amendment violation. *See Williams*, 967 F.3d at 634.

[4] States attorneys named as Defendants in this case have similarly instructed law enforcement to refrain from enforcing S.B. 4C. *See* Ex. E.

Law enforcement officers executing arrests under S.B. 4C are therefore acting without legal authority and in direct violation of the Fourth Amendment. Yet Defendants seemingly encouraged law enforcement to proceed with such arrests by asserting that nothing "impedes [law enforcement] agencies from continuing to enforce Florida's new illegal entry and reentry laws." Ex. A. Defendants' irresponsible conduct appears to invite a wave of unlawful arrests, civil rights violations, and inevitable litigation. The Court should put an end to this once and for all.

CONCLUSION

The Court should conclude that all orders it has issued and may issue can properly apply to all law enforcement officers in Florida.

Date: April 26, 2025

Respectfully submitted,

/s/ Amien Kacou

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by electronic service through the CM/ECF Portal on April 26, 2025, to all counsel of record.

/s/ / *Amien Kacou*
Amien Kacou

EXHIBIT B

JAMES UTHMEIER
ATTORNEY GENERAL
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April 18, 2025

VIA EMAIL
Florida Department of Law Enforcement
Florida Highway Patrol
Florida Sheriffs
Florida Police Chiefs

Re: *Fla. Immigrant Coal. et al. v. Uthmeier et al.*, No. 25-cv-21524 (S.D. Fla.)

Dear Florida law enforcement community,

On April 4, 2025, U.S. District Judge Kathleen M. Williams issued an *ex parte* temporary restraining order prohibiting the Attorney General, the statewide prosecutor, the state attorneys, as well as "their officers, agents, employees, attorneys, and any persons who are in active concert or participation with them" from enforcing Florida Statutes Sections 811.102 and 811.103. *See* DE28, *Fla. Immigrant Coal. v. Uthmeier*, No. 1:25-cv-21524. On April 18, the court extended her temporary restraining order through April 29 and clarified verbally that her order covers all law enforcement officers in the State of Florida. And the court further instructed my office to notify you that all Florida law enforcement agencies at present must refrain from enforcing Sections 811.102 and 811.103.

I must note my disagreement with this order. For reasons my office has argued and will further outline in court, this clarification of Judge Williams' prior order is both wrong on the merits and overbroad in its scope. The Federal Rules of Civil Procedure empower the federal courts to enjoin parties, their officers, agents, employees, attorneys, and any persons who are in active concert or participation with those parties from taking certain actions. But independent law enforcement agencies are not parties in this case. At most, a district court may enjoin the law enforcement community when it is acting in concert or participating with the named defendants to enforce these statutes and, as my office will soon explain, the court's current injunction exceeds that equitable limitation. I should also note that while my office represents the current defendants named in this case, it does not represent nonparties like your law enforcement agencies. My office will nevertheless continue to press these scope-of-relief arguments in the district court and, as appropriate, in the U.S. Court of Appeals for the Eleventh Circuit.

That said, the court directed my office to notify your agencies of its clarification that law enforcement officers should take no steps to enforce Sections 811.102 and 811.103, including through arrests or detentions based on suspected violations of those provisions. Please instruct your officers and agents to comply with Judge Williams' directives.

A copy of the temporary restraining order is attached below.

Sincerely,

James Uthmeier
Attorney General
Office of Attorney General James Uthmeier

EXHIBIT A

OFFICE OF THE ATTORNEY GENERAL

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April 23, 2025

VIA EMAIL
Florida Department of Law Enforcement
Florida Highway Patrol
Florida Sheriffs
Florida Police Chiefs

Re: *Fla. Immigrant Coal. et al. v. Uthmeier et al.*, No. 25-cv-21524 (S.D. Fla.)

Good afternoon,

I write to provide an update on my Friday, April 18 letter. In that communication, I notified you that U.S. District Judge Kathleen M. Williams believed all law enforcement agencies in Florida were bound by an *ex parte* temporary restraining order she issued on April 4, 2025 in *Fla. Immigrant Coal. v. Uthmeier*, No. 1:25-cv-21524, a case in which *no law enforcement agencies are parties*. I explained that I believed her after-the-fact expansion of her order to nonparties was wrong, and that my office would be arguing as much in short order. Today, my office filed a brief explaining why her order cannot possibly restrain Florida's law enforcement agencies from enforcing Florida Statutes Sections 811.102 and 811.103. We will continue to argue that position—including on appeal as soon as possible.

That said, I want to make clear what I expressed in my April 18 letter. Judge Williams ordered my office to notify you of the evolving scope of her order, and I did so. But I cannot prevent you from enforcing §§ 811.102 and 811.103, where there remains no judicial order that properly restrains you from doing so. As set forth in the brief my office filed today, it is my view that no lawful, legitimate order currently impedes your agencies from continuing to enforce Florida's new illegal entry and reentry laws.

Sincerely,

James Uthmeier
Attorney General of Florida

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

FLORIDA IMMIGRANT COALITION, *et al.*, *Plaintiffs*, v. JAMES UTHMEIER, in his official capacity as Attorney General for the State of Florida, *et al.*, *Defendants*.	No. 1:25-cv-21524-KMW

DEFENDANTS' SUPPLEMENTAL BRIEF ON THE SCOPE OF TEMPORARY RESTRAINING ORDER

A "deep-rooted historic tradition" in American law is that "everyone should have his own day in court." *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, 847 (7th Cir. 2010). When they do, "[a] court's injunction may require a person to do or refrain from doing a particular act." *United States v. Robinson*, 83 F.4th 868, 873 (11th Cir. 2023) (Rosenbaum, J.). But a court's order is not like a legislature's enactment, "which can apply to everyone." *Id.* "A court's judgment binds only the parties to a suit, subject to a handful of discrete and limited exceptions." *Smith v. Bayer Corp.*, 564 U.S. 299, 312 (2011). A plaintiff's choice of whom to sue thus has real consequences that the plaintiff cannot casually evade.

This Court has enjoined Defendants—Florida's Attorney General, statewide prosecutor, and state attorneys—from enforcing the criminal prohibitions in Florida's SB 4-C. DE28 at 14; DE1 ¶¶ 30–32. But at the preliminary-injunction hearing on April 18, 2025, this Court ordered supplemental briefing on whether its injunction may flow beyond the parties. DE49 at 2. More specifically, the Court asked whether, in enjoining the named Defendants, it may also bind all

Florida law-enforcement officials "tasked with enforcing SB 4-C," even if they are not parties, are separately elected, and not subject to Defendants' control. Tr. 63:20–25.

It cannot. Those law-enforcement officers do not fit into the "traditional understanding of whom a federal injunction binds." *Robinson*, 83 F.4th at 878. They are not parties. Nor are they Defendants' "officers or agents," for Defendants have no power to control or direct their behavior. Fed. R. Civ. P. 65(d)(2)(B). And they are not invariably "in active concert or participation" with the Defendants, *Robinson*, 83 F.4th at 878, because independent law-enforcement officers are not "in privity" with Defendants, *id.* at 881. While the Attorney General communicated the Court's view that law enforcement should not make arrests under SB 4-C, he did so solely to comply with this Court's order—which Defendants maintain is unlawful.

At most, this Court's injunction may extend only to non-party law-enforcement officers that "aid and abet" Defendants in violating the injunction, *id.* at 879—a vanishingly narrow group, seeing that Defendants have committed to abide by this Court's orders. The Court's injunction is overbroad to the extent it declares otherwise.

BACKGROUND

I. Florida's Governmental Structure

Florida's Constitution divides the State's executive power across independent offices, some of which are endowed with shares of the State's litigation power. At the statewide level, the Attorney General serves as Florida's "chief state legal officer." Fla. Const. art. IV § 4(b). His job is to "attend to, in behalf of the state, all suits or prosecutions, civil or criminal or in equity, in which the state may be a party" in state appellate and federal courts. Fla. Stat. § 16.01(4). He also appoints and oversees the Office of the Statewide Prosecutor, which prosecutes certain crimes of statewide interest. Fla. Const. art. IV § 4(b). By contrast, at the local level, state attorneys prosecute

crime in Florida courts. *See* Fla. Const. art. V, § 17; Fla. Stat. § 27.02(1). They are elected by local constituents within the State's 20 judicial circuits. *Id.*; Fla. Stat. § 27.01.

Separate from those prosecuting offices are various law-enforcement officials with the power to "make arrests" and "whose primary responsibility is the prevention and detection of crime." Fla. Stat. § 943.10(1). Those offices mainly include:

- Florida's sheriffs, who are constitutional officers elected at the county level in Florida's 67 counties. Fla. Const. art. VIII, § 1(d).
- Municipal police departments, which the municipality typically appoints. *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *see also, e.g.*, City of Miami Charter, § 24 (establishing a police department).
- The Florida Highway Patrol—a state agency headed by the Governor and his Cabinet, Fla. Stat. § 20.24(1)—which "enforce[s] all laws regulating and governing traffic, travel, and public safety" on "the state highways." Fla. Stat. § 321.05(1).
- The Florida Department of Law Enforcement (FDLE)—a state agency headed by the Governor and his Cabinet, Fla. Stat. § 20.201(1)—authorized to "investigate violations of any of the criminal laws of the state" if it receives a "written order of the Governor" and "the direction of [FDLE's] executive director." Fla. Stat. § 943.04(2)(a).

II. Procedural History

Florida's SB 4-C creates two new crimes for unlawfully present aliens for entering the State (absent some federal permission to remain in the country). Fla. Stat. §§ 811.102(1), (4), 811.103(1). Plaintiffs have sued to enjoin that law. DE1. As Defendants, Plaintiffs named the

Attorney General of Florida, the statewide prosecutor, and all of Florida's 20 state attorneys. DE1 ¶¶ 30–32. Defendants are all prosecutors; Plaintiffs have not sued any law-enforcement officers.

Plaintiffs moved for a temporary restraining order and a preliminary injunction the same day that they filed their complaint. DE4. This Court granted that order *ex parte* two days later. DE28. Tracking Federal Rule of Civil Procedure 65, 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." DE28 at 14.

At the hearing on Plaintiffs' motion for a preliminary injunction, Plaintiffs raised questions about the scope of the restraining order because of alleged arrests made by law-enforcement officers in Florida. Tr. 7:3–14. The Court requested supplemental briefing to determine whether its order could lawfully reach Florida's law-enforcement officers under Rule 65. DE49 at 2. The Court also clarified that, for purposes of its current injunction, Defendant's officers, agents, and those "who are in active concert or participation with" Defendants include "any officer or other personnel within any municipal or county police department within Florida, the Florida Department of Law Enforcement, or the Florida Highway Patrol, and any other law enforcement officer with power to enforce SB 4-C." DE49 at 1.

ARGUMENT

Courts may not "erase a duly enacted law from the statute books." *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1255 (11th Cir. 2020). Rather, they may enjoin only specific "officials from taking steps to enforce a statute." *Id.*

Like Article III, Federal Rule of Civil Procedure 65 governs the scope of that injunctive power. 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). Injunctive relief may not extend beyond those individuals. *See Robinson*, 83 F.4th at 878.

That list tracks the historic limits of equity. In Rule 65, Congress "embod[ied]" the traditional limits of equitable power and codified the background principles that had long guided equity courts. *ADT LLC v. NorthStar Alarm Servs., LLC*, 853 F.3d 1348, 1352 (11th Cir. 2017). Fundamental to those principles was the idea that a litigant is generally "not bound by a judgment to which she was not a party." *Taylor v. Sturgell*, 553 U.S. 880, 884, 892, 898 (2008); *see also Smith*, 564 U.S. at 312. Rule 65 honors those traditional principles by generally limiting a court's injunctive power to parties, those acting on behalf of parties, or those helping parties avoid the court's order. *See Robinson*, 83 F.4th at 878, 881.

Because most (if not all) law-enforcement officers fall outside of those criteria, the Court should narrow its injunction to cover only Defendants and those who aid or abet any effort by Defendants to violate the Court's injunction.

I. Florida's law-enforcement officers are not parties.

The first criterion is easy: Florida's law-enforcement officers are not parties. Plaintiffs did not "name" them "as defendant[s]" in their complaint or "serv[e] [them with] process." *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999) ("[O]ne becomes a party officially, and is required to take action in that capacity, only upon service of a summons or other authority-asserting measure stating the time within which the party served must appear and defend."); *see also Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 395 U.S. 100, 110 (1969) (similar); Fed. R. Civ. P. 4(a). Plaintiffs conceded as much at the hearing, acknowledging that they could "amend" their complaint to add "all of the law enforcement agencies" as parties. Tr. 8:7–16. Nor have Plaintiffs attempted to show standing to sue those entities—another requisite for establishing

the Court's jurisdiction over those individuals. *See Murthy v. Missouri*, 603 U.S. 43, 61 (2024) ("[P]laintiffs must demonstrate standing for each claim that they press against each defendant[.]").

II. Florida's law-enforcement officers are not Defendants' officers, agents, servants, employees, or attorneys.

Nor are law-enforcement officers Defendants' "officers, agents, servants, employees, [or] attorneys." Fed. R. Civ. P. 65(d)(2). Though Rule 65 does not define those terms, "where Congress uses terms that have accumulated settled meaning under the common law," it "incorporate[s] the established meaning of these terms." *Cmty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 739 (1989); *see also Robinson*, 83 F.4th at 880 (defining "employee" in Rule 65 according to the common law). To fall within the common-law definition of all the categories listed in Rule 65(d)(2), law-enforcement officers must be subject to Defendants' control and wield authority to act on Defendants' behalf.[1] Yet Plaintiffs have offered nothing to suggest that Defendants control Florida's law-enforcement officials or have authorized them to act for Defendants. To the contrary, law-enforcement agencies are independent and distinct from prosecutorial agencies under Florida's constitutional scheme.[2]

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[1] *See, e.g.*, Restatement (Third) of Agency §§ 2.01, 2.03 (Am. L. Inst. 2006) (establishing those principles for agency); *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 322–23 (1992) (stating that "when Congress has used the term 'employee' without defining it," the Court looks to a multi-factor test related to the "hiring party's right to control the manner and means by which the product is accomplished"); *Clackamas Gastroenterology Assocs., P.C. v. Wells*, 538 U.S. 440, 448 (2003) ("A servant is a person employed to perform services in the affairs of another and who with respect to the physical conduct in the performance of the services is subject to the other's control or right to control." (quoting Restatement (Second) of Agency § 220(1) (1957)); *City of Tuscaloosa v. Harcros Chems., Inc.*, 158 F.3d 548, 557 n.9 (11th Cir. 1998) ("At common law, senior officers of a corporation normally are agents and servants of the corporation."); Restatement (Second) of Agency § 2 cmt. c (1958) ("[T]he officers of a corporation or a ship, . . . all of whom give their time to their employers, are servants equally with the janitor[.]").

[2] Nor does it matter that the Attorney General sits on the board governing the Highway Patrol and FDLE. The Eleventh Circuit has rejected an argument that the Attorney General and

The constitutional and statutory provisions governing law enforcement and prosecutors make that division clear. *See Peppers v. Cobb County*, 835 F.3d 1289, 1294 (11th Cir. 2016) (finding a district attorney under Georgia law to be "a legal entity separate from the County" because both entities were created by distinct constitutional provisions). In Florida, law-enforcement and prosecutorial agencies derive their respective powers from separate constitutional[3] and statutory[4] sections. None of those sections grant prosecutorial entities like Defendants control over law-enforcement officials. Florida law is typically explicit when it grants one state actor control over another and drapes the latter with the former's authority. *See, e.g.*, Fla. Const. art. IV § 2 (lieutenant governor "perform[s] such duties" that are "assigned by the governor"); *id.* § 4(b) (creating statewide prosecutor under the Attorney General's office); Fla. Stat. § 27.18 (permitting state attorneys to hire subordinates); *id.* § 30.07 (sheriffs appoint sheriff deputies).

A host of other factors underscore the divide between Defendants and law enforcement. For one, although the power to control typically accompanies the power to discipline, *Free Enterprise Fund v. Public Co. Acct. Oversight Bd.*, 561 U.S. 477, 498 (2010) ("[E]xecutive power without the Executive's oversight . . . subverts the President's ability to ensure that the laws are faithfully executed—as well as the public's ability to pass judgment on his efforts."), Plaintiffs have identified no legal authority empowering Defendants to discipline law-enforcement officers in a

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FDLE were fungible by nature of that relationship. *Support Working Animals v. Governor of Fla.*, 8 F.4th 1198, 1204 & n.4 (11th Cir. 2021).

[3] *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).

[4] *See, e.g.*, Fla. Stat. § 16.01 (creating powers and duties of the Attorney General); Fla. Stat. §§ 27.02–.13, 27.18–.25 (creating powers and duties of the state attorney); Fla. Stat. § 30.15 (creating powers and duties of the sheriffs); Fla. Stat. § 943.04(2)(a) (giving the FDLE power of investigation in certain circumstances); Fla. Stat. § 321.05 (creating powers and duties of the Florida Highway Patrol); City of Miami Charter § 24 (creating the Miami Police Department).

managerial capacity. For another, law-enforcement offices do not receive their funding from Defendants' coffers, but from state, county, and municipal budget appropriations. *See, e.g.*, Fla. Stat. § 30.49 (sheriffs' offices budgets); *FY 2023-24 FTE and Funding Summary*, Florida Department of Law Enforcement, https://tinyurl.com/yfawt83a.[5] Finally, many law-enforcement officials are either directly elected by local constituencies, *e.g.*, Fla. Const. art VIII § 1(d) (country sheriffs), or are appointed by local governments, *e.g.*, City of Miami Charter § 42-2 (police chief appointed by city manager). They are thus accountable to political constituencies distinct from the Attorney General and state attorneys. *Morris v. Bd. of Estimate*, 831 F.2d 384, 392 (2d Cir. 1987) (Different elected officials "primarily represent the interests of the different constituencies that elect them."); *see also Jacobson*, 974 F.3d at 1253 (order against the Secretary of State would not govern local-government officials who were "not appointed" by the Secretary).

The Eleventh Circuit has 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). In *City of South Miami*, plaintiffs argued that their alleged injury—discriminatory arrest by law-enforcement officers—was "traceable to the . . . attorney general . . . because [he has] sufficient control over local law enforcement." *Id.* The Eleventh Circuit rejected the claim. Because the plaintiffs "offered nothing to prove" that the attorney general could "control" law enforcement or "curtail" injuries committed by "local officials who [were] not parties to th[e] action," their injuries were not traceable to the Attorney General. *Id.* at 641–42; *see also Jacobson*, 974 F.3d at 1253 (voting injuries caused by local Supervisors of Elections were not traceable to Secretary of State

[5] While the Attorney General may give grants to sheriffs under its crime stoppers program, that money is not from his coffers but flows from other sources. *See* Fla. Stat. § 16.555.

because "Supervisors are independent officials under Florida law who are not subject to the Secretary's control").

That analysis governs here. Plaintiffs have not shown that Defendants "control" the many local law-enforcement officials "who are not parties to this action," *City of South Miami*, 65 F.4th at 642, nor do Defendants understand their offices to have such power. Plaintiffs therefore cannot establish that those law-enforcement officials are Defendants' "officers, agents, servants, employees, [or] attorneys." Fed. R. Civ. P. 65(d)(2)(B).

III. Florida's law-enforcement officers are not invariably in active concert or participation with Defendants.

Because law-enforcement officers are neither parties nor agents of the parties, this Court's injunction may reach them only when they are in "active concert or participation" with Defendants. Fed. R. Civ. P. 65(d)(2)(C). That is a narrow circumstance. *See ADT*, 853 F.3d at 1352. After all, "a court of equity . . . cannot lawfully enjoin the world at large," and basic notions of due process entitle each person to "have their day in court." *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 832–33 (2d Cir. 1930) (Hand, J.). For that reason, courts generally may bind only parties, *Smith*, 564 U.S. at 312, and usually may bind non-parties under the "active concert or participation" exception only when a party is attempting to avoid the injunction through "craftiness" with the non-party, *Robinson*, 83 F.4th at 885. 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 bound by the injunction in carrying out prohibited acts." *Id.* at 881–82.

Plaintiffs have not shown that all "law enforcement officer[s] with power to enforce SB 4-C" fit within those limited categories. DE49 at 1.

1. To begin, law-enforcement officers lack privity with Defendants. "[P]rivity" is a "legal conclusion" about the relationship between two individuals. *ADT*, 853 F.3d at 1352. It 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. To satisfy due process, there must be "extremely close identification between the enjoined party and the nonparty legally identified with it," so "that it is fair to say that the nonparty had his day in court" and that their rights were adjudicated "when the injunction was issued." *Id.* That standard mirrors the privity standard in claim preclusion, which also determines when a person's rights are litigated by another party in another forum. *See ADT*, 853 F.3d at 1352; *Nat'l Spiritual Assembly of Baha'is*, 628 F.3d at 856–57.

The Eleventh Circuit has identified just two instances of privity under Rule 65. A defendant has privity with its "successors and assigns"—a circumstance inapplicable here. *Robinson*, 83 F.4th at 884. Next, a defendant has privity with a non-party who shares the same "legal identity." *Robinson*, 83 F.4th at 884. To share a legal identity, the non-party must have both (1) "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 when the injunction was issued." *Id.* (quoting *Nat'l Spiritual Assembly*, 628 F.3d at 853). That "limited class of [enjoinable] nonparties" prevents a party from "circumvent[ing] a valid court order merely by making superficial changes" in form. *Id.* at 884–85; *Tice v. Am. Airlines, Inc.*, 162 F.3d 966, 973 (7th Cir. 1998) ("[U]nless a formal kind of successor interest is involved . . . , there should be some indication . . . that the second party either had participated or had a legal duty to participate."). At the same time, strict adherence to the elements of legal identity is necessary to "keep the scope of contempt liability within the limits of due process." *Robinson*, 83 F.4th at 884.

Try as they might, Plaintiffs cannot squeeze law-enforcement officers into the "very limited [legal-identity] category." *Nat'l Spiritual Assembly*, 628 F.3d at 856.

First, the law-enforcement officers do not exercise "significant control over the [Defendants]," nor have they exercised any control over "[this] litigation." *Robinson*, 83 F.4th at 884. As explained, the Attorney General, state attorneys, and law enforcement are all separate legal entities, with Defendants and law-enforcement agencies exercising no control over each other. *See supra* 6–9. Nor have law-enforcement agencies participated in or directed any part of Defendants' litigation strategy.

Second, even if the lack of control were not dispositive, that lack of control at minimum magnifies Plaintiffs' need to show a substantial parity of interests. *See Taylor*, 553 U.S. at 894, 901 (something more than "identity of interests and some kind of relationship between parties and nonparties" is needed for privity); *see also* 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2956 & n.27 (Westlaw 3d ed. April 2025) ("Privity is not established merely because persons are interested in the same question or desirous of proving the same set of facts[.]").

Plaintiffs have not met that great burden. The interests for law-enforcement officers are to arrest in the pursuit of "prevention and detection of crime." Fla. Stat. § 943.10(1); *see also* Fla. Stat. § 30.15 (noting that sheriffs are tasked with "be[ing] conservators of the peace in their counties"); Fla. Op. Att'y Gen. 83-94 (1983) (state attorneys are not "law enforcement officers"). By contrast, state attorneys and Attorneys General are concerned with prosecution and legal process. State attorneys in Florida represent the state in the state trial courts, Fla. Stat. § 27.02(1), and the Attorney General is the "chief state legal officer," Fla. Const. art. IV, § 4(b), tasked with representing the state in state appellate and federal courts, Fla. Stat. § 16.01(4)–(5). Thus, state attorneys and the Attorney General "fulfill a unique role, which is both quasi-judicial and quasi-executive." *Valdes v. State*, 728 So. 2d 736, 739 (Fla. 1999); *State ex rel. Landis v. S.H. Kress & Co.*, 155 So.

823, 828 (Fla. 1934) ("The office of Attorney-General is, in many respects, judicial in its character[.]"). That role implicates "their status as officers of the court," *Valdes*, 728 So. 2d at 739, 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); *cf. Hercules Carriers, Inc. v. Claimant State of Fla., Dep't of Transp.*, 768 F.2d 1558, 1580 (11th Cir. 1985) (finding two separately created state agencies to not be in privity based on their "different functions," "responsibilit[ies]," and interests involved).

That divergence of interests is reflected in a legion of cases holding that prosecutors are not in privity with arresting officers.[6] Even when those matters involve the same arrest that resulted in criminal prosecutions, the "interests and incentives of the individual police or officials" are not aligned with the prosecution. *Bilida*, 211 F.3d at 170. The prosecutor "is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all." *Berger v. United States*, 295 U.S. 78, 88 (1935). That sovereign goal—put simply—is broader: "not that it shall win a case, but that justice shall be done." *Id.*; *see also Standefer v. United States*, 447 U.S. 10, 25 (1980) (The goal of criminal prosecution includes the "safeguarding the rights of the individual defendant."). A prosecutor's job is thus not to "demonstrate that the officers had performed their functions properly." *McCoy*, 203 F.3d at 375. On the other side of the coin, officers have little if any direct interest in prosecution, and they cannot "call witnesses, . . . direct the examination of the State's witnesses, . . . [or] choose

[6] *See, e.g.*, *Wilson v. Attaway*, 757 F.2d 1227, 1236–37 (11th Cir. 1985); *Hargis v. City of Orlando*, 586 F. App'x 493, 498 (11th Cir. 2014); *see also, e.g.*, *Bilida v. McCleod*, 211 F.3d 166, 170 (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, 195–96 (2d Cir. 1998); *Duncan v. Clements*, 744 F.2d 48, 51–52 (8th Cir. 1984); *Davis v. Eide*, 439 F.2d 1077, 1078 (9th Cir. 1971); *Washington v. Dewey*, 433 F. Supp. 3d 334, 346 (D. Conn. 2020).

the counsel who represented the State." *Kinslow v. Ratzlaff*, 158 F.3d 1104, 1105–06 (10th Cir. 1998). Though police have a "working relationship" with prosecutors, "it is not 'sufficiently close' to establish privity." *Dewey*, 433 F. Supp. 3d at 346.

Where officers are separately elected, as several types of officers are here, they serve even more fundamentally different interests—those of different electorates. "Government officials are expected as a part of the democratic process to represent and to espouse the views of a majority of their constituents." *Keller v. State Bar of Cal.*, 496 U.S. 1, 12 (1990). But the law-enforcement officers here are elected by different jurisdictions with different constituencies. *Supra* 2–3. Even in the same jurisdiction, those officers may feel as if the mandate from their constituencies differs from other elected officials in the same place. The unique interests of separately elected officials make the doctrine of privity ill-suited to this context.

2. Nor is there any evidence that all law-enforcement officers in Florida are "aid[ing] and abet[ting]" Defendants in violating this Court's injunction. *Robinson*, 83 F.4th at 885. To aid and abet, one must help another person commit a crime though "he has not personally carried [the crime] out." *Rosemond v. United States*, 572 U.S. 65, 70 (2014).[7] That requires three elements to be met: (1) "the commission of the underlying offense by someone" other than the abettor, (2) "a voluntary act or omission" by the abettor, and (3) "a specific intent that such act or omission promote the success of the underlying criminal offense." *Havens*, 76 F.4th at 115 n.13; *see also United States v. Roosevelt Coats*, 8 F.4th 1228, 1248 (11th Cir. 2021). In the context of 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. That

[7] "The elements of criminal aiding and abetting parallel the requirements of Rule 65(d)." *Havens v. James*, 76 F.4th 103, 115 n.13 (2d Cir. 2023); *see also Reid*, 490 U.S. at 739.

requirement flows from the proposition that one cannot aid and abet their own actions alone. *See Nigro v. United States*, 117 F.2d 624, 630 (8th Cir. 1941) ("[H]e may not be convicted for aiding and abetting another in the commission of a crime *unless the other has actually committed the crime*." (emphasis added)).

At the outset, it is unlikely that any law-enforcement officer will ever aid and abet a violation of this Court's injunction, as Defendants have not taken, and will not take, any "act[] in violation of the injunction." *Robinson*, 83 F.4th at 885. Defendants are fully committed to abiding by this Court's orders. So long as they do so, there will be no "underlying crime" for officers to aid or abet. *Rosemond*, 572 U.S. at 70.

But even if Defendants were to violate the injunction, it's not true that *every* law-enforcement officer aids and abets a violation of the injunction *every* time they arrest under SB 4-C. Rather, officers will aid and abet only when their arrest "promote[s] or facilitates the commission" the Defendants' own violation. *Id.* at 71. For example, if an officer arrested a migrant under SB 4-C in coordination with Defendants, they would aid and abet a violation of this Court's injunction. In that instance, the Defendants and those officers would certainly be at the mercy of the "court's awesome civil and criminal contempt powers." *Project B.A.S.I.C. v. Kemp*, 947 F.2d 11, 16 (1st Cir. 1991). But in the many cases where officers arrest without any connection to or involvement from Defendants, those officers aid and abet nothing, and thus fall beyond this Court's equitable reach. Anything more would empower this Court to "enjoin the world at large" and "to declare conduct unlawful," *Alemite*, 42 F.2d at 832–33—an act forbidden by circuit precedent. *See Jacobson*, 974 F.3d at 1255 ("[F]ederal courts have no authority to erase a duly enacted law[.]").

* * *

It is worth pausing to consider how Plaintiffs' vision of equity would upend other areas of law. As they see it, once the Court holds a state law unconstitutional, it may enjoin *any person*

from enforcing the law, even non-parties removed from the named defendants. *See* Tr. 7:3–14. Even worse, it would hold the Attorney General and state attorneys liable for the actions of those who they cannot control and have not encouraged in any way. 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).

Plaintiffs' interpretation of court power makes a mockery of due process, standing, and equitable limits. Their theory permits the court to enjoin law-enforcement agencies that will never "have their day in court." *Alemite*, 42 F.2d at 833. And while the Supreme Court has explained that "standing is not dispensed in gross" and so "plaintiffs must demonstrate standing for each claim that they press against each defendant, and for each form of relief that they seek," *Murthy*, 603 U.S. at 61 (cleaned up), Plaintiffs' proposal would allow them to enjoin every state executive officer by showing standing to sue just one of them. Not only that, their theory tramples the equitable limits of the federal courts, which are bounded by "historical practice and traditional remedial principles," *Georgia v. President of the United States*, 46 F.4th 1283, 1303, (11th Cir. 2022), including the limit that "injunctive relief operates on specific parties," *Id.* at 1307; *see also Scott v. Donald*, 165 U.S. 107, 117 (1897) (finding an injunction "objectionable because it enjoin[ed] persons not parties" and who were not "represent[ed]" by or in a "conspiracy" with the defendants).

CONCLUSION

To sum up, this Court lacks equitable authority to enjoin all non-party "law enforcement officer[s] with power to enforce SB 4-C." DE49 at 1. Rather, this Court's injunction may reach only law-enforcement officers who aid and abet Defendants in violating the injunction; it may not enjoin law-enforcement officers acting without Defendants' involvement or coordination. The Court should clarify its injunction accordingly.

Respectfully submitted on April 23, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by electronic service through the CM/ECF Portal on April 23, 2025, to all counsel of record.

/s/ *Robert S. Schenck*
Assistant Solicitor General

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:25-cv-21524-KMW

FLORIDA IMMIGRANT COALITION, *et al.*,

Plaintiffs,

vs.

JAMES UTHMEIER, *et al.*,

Defendants.

Miami, Florida

April 18, 2025

10:03 AM - 12:03 PM

Pages 1 to 80

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING

HELD BEFORE THE HONORABLE KATHLEEN M. WILLIAMS

UNITED STATES DISTRICT JUDGE

LANCE W. STEINBEISSER, FCRR, RPR, FPR-C
Federal Certified Realtime Reporter
United States District Court
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Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

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(Call to the Order of the Court.)

THE COURTROOM DEPUTY: Calling Case 25-cv-21524, Florida Immigrant Coalition, et al., versus Uthmeier, et al.

Counsel, please state your appearances for the record, starting with the plaintiff.

MR. ROMAN: Good morning, Your Honor. Oscar Sarabia from the ACLU on behalf of plaintiffs.

THE COURT: Good morning.

MR. WOFSY: Good morning, Your Honor. Cody Wofsy, ACLU, for plaintiffs.

THE COURT: Good morning.

MS. GODSHALL: Good morning, Your Honor. Amy Godshall from the ACLU of Florida, for the plaintiffs.

MS. HASKELL: Good morning. Miriam Haskell, for plaintiffs, from Community Justice Project.

THE COURT: Good morning, Ms. Haskell.

MR. CHAVEZ: Good morning, Your Honor. Paul Chavez, Americans for American Justice, for plaintiffs.

MR. KACOU: Good morning, Your Honor. Amien Kacou, ACLU Florida for plaintiffs.

THE COURT: Good morning.

MR. MANN: Good morning, Your Honor. Will Mann, Community Justice Project, for plaintiffs.

MR. TILLEY: Good morning. Daniel Tilley, ACLU of Florida, for plaintiffs.

THE COURT: Good morning.

I don't know that we accepted so many. Do you all have chairs? Okay. All right.

MR. SCHENCK: Good morning, Your Honor. Robert Schenck for the defendants.

THE COURT: Good morning.

MR. COSTELLO: Good morning. David Costello for the defendants.

THE COURT: Good morning, Mr. Costello.

MS. PRATT: Good morning, Your Honor. Christine Pratt for the defendants.

THE COURT: Good morning.

MS. LAMIA: Good morning. Christine Lamia for the defendants.

THE COURT: Good morning, and everyone may be seated.

First, a few administrative details. We were unclear, Mr. Santorufo and I, how Mr. Uthmeier's name was pronounced and I don't want to do it inappropriately -- oh, good because we had that same --

MR. SCHENCK: There's much debate about that point. I believe it's pronounced Uthmeier.

THE COURT: Uthmeier, all right.

Second, even though you have all just announced your appearances, I can tell, because I have the talent, some of you are very rapid speakers -- Ms. Haskell knows all about

this public service announcement -- and some of you did not take advantage of the microphone. So let me just say if you are going to be presenting argument on behalf of your client, please speak slowly for our court reporter and please speak clearly into a microphone.

All right. We're here this morning on the plaintiffs' motion for a preliminary injunction. I have received briefing, a response, replies from all the parties. So let us just get to it.

Plaintiffs, it's your motion, and you may begin.

And let me also say, for your benefit, if you wish to come to the podium -- if you wish to just stay there because your materials are there, what I'm going to advise you to do is I appreciate your standing. Go ahead and sit down because the mic -- whoever designed these courtrooms should be taken out back -- but it would benefit our court reporter if you had better access to the microphone.

So go ahead, sir.

MR. ROMAN: Thank you, Your Honor.

May it please the Court. Florida's SB 4-C, illegal entry and re-entry provisions, create new state immigration crimes, intruding into a field of dominant federal interest and conflicting with a comprehensive statutory and regulatory enforcement scheme.

As this Court has recognized and as many others

across the country have confirmed, such state laws that touch on immigration of entry and re-entry are unlawful. This Court should provisionally certify the class and issue a preliminary injunction.

Before turning to the preliminary injunction factors, Your Honor, I wanted to bring to the Court's attention about possible TRO violations that this Court issued.

We have been aware of and have confirmed at least three arrests since this Court issued its temporary restraining order --

THE COURT: Other than Mr. Lopez-Gomez.

MR. ROMAN: Yes, Your Honor. That includes one US citizen who has received a lot of coverage but two others that we have just confirmed, but we are still receiving reports of other arrests still.

And we raised this with the defendants yesterday through an email asking them to look into this matter. They responded yesterday.

Our understanding of their position is that because law enforcement is not in concert or participation with defendants, law enforcement is not bound by this TRO.

THE COURT: Okay. I'm just going to have you stop right there because I want to make certain I understand.

The defendants' position is that police officers, highway patrolmen, sheriffs are not bound by the injunction

because they can implement unconstitutional statutes all by themselves.

MR. ROMAN: That is our understanding, Your Honor, that because defendants are not in active concert or participation with law enforcement, they are not bound by it. And we don't know either whether defendants provided any type of notice to law enforcement.

And we obviously find that concerning and we disagree with that analysis. We think that law enforcement make arrests to prosecute, which defendants do, and so they are bound by this TRO, and I think that implications and the logic of that would be standing because even our own plaintiffs would be subject to arrest and would not be covered by the TRO.

THE COURT: I'm so confused by this -- well, I guess I'll ask the State at some point because I don't think in the 40 years I've practiced predominantly in the criminal law of justice arena that police officers or federal agents can, on their own, determine to effectuate unconstitutional laws or by that the rational extension is they can just make it up as they go along because they're not bound by court rulings or they don't answer to state officials. That's concerning that they don't work in concert with state officials.

How would we remedy that? Would you expand your focus in terms of the lawsuit or is it just going to be a show

cause situation for me, which I was hoping we would be able to avoid? I was hoping that state attorneys would withdraw prosecutions and advise their law enforcement partners of the pendency of this case, but if that's not going to be, then I guess we're going to have a really crowded courtroom in a few days, but all right, go ahead.

MR. ROMAN: Yes, Your Honor. I think we agree. We also find this very concerning. And regardless of what the Court decides to do about past TRO violations, we respectfully do ask the Court in extending the TRO or issuing a preliminary injunction to explicitly include law enforcement agencies in its order and ask that defendants provide notice to the law enforcement agencies, but we'll follow the Court's direction on this. We are also willing to amend all of the law enforcement agencies, if necessary. But we will follow the Court's lead on this, Your Honor.

THE COURT: Well, I mean, I guess that gets us into the question I was going to ask about class. I honestly, though, when I got this, didn't understand why a class was needed. Certainly I wasn't confused. I didn't think you were confused. It appears some other people are confused, and the best way to alleviate that confusion is to just say, "Do not enforce this law until the litigation has resolved or whatever," because if there can be no discernment between the force of the law as to the individuals much less whether there

should be arrests, I don't see where defining a class helps.

And I think the law is fairly clear. Judge Altman referenced it, the Eleventh Circuit has restated it, that a universal injunction, a statewide injunction as to an immigration matter is entirely appropriate.

I think definition of a class would -- and maybe I'm not understanding the argument -- would confuse the issue for the people who are supposed to be adhering to the parameters of the injunction.

MR. ROMAN: Yes, Your Honor. I think the Court can issue statewide relief without a class. But even the recent Supreme Court case of Labrador v. Poe, Justice Gorsuch there suggested that the more straightforward path to providing statewide relief is to certify a class -- and that is why we are bringing one here -- to leave no doubt in place that this merits statewide relief in addition to all of the other reasons, providing complete relief to plaintiffs because this involves an immigration policy, and the court should enforce uniform immigration policies. We agree with that.

THE COURT: Right, but I don't think -- Justice Gorsuch wasn't presented with a situation where despite clear language in an order people were willy-nilly continuing to arrest because that doesn't seem -- I'm very startled by your representation. I had heard about Mr. Lopez-Gomez, and then he was released. And I'm assuming the charges are going to be

dropped for many reasons, not the least of which was the injunction. But I was unaware of any other issues. So --

MR. ROMAN: Yes, Your Honor. And in light of these recent what we think are TRO violations, I think it's even more reason to at least provisionally certify the class to leave no doubt that this TRO applies statewide and to everybody.

THE COURT: Well, not a citizen or a national. Maybe we have to take that out because there seem to be issues. So your request is that I provisionally certify in the two classes that you have already submitted at Docket Entry 5, I think.

MR. ROMAN: Yes, Your Honor.

THE COURT: Okay.

MR. ROMAN: Unless the Court has further questions about the TRO violations or the class, I can move on to the preliminary injunction factors.

THE COURT: Okay. I actually wanted first to hear from you about the dormant commerce clause because the parties seem to occupy two ends of a continuum and I'm trying to see if courts have found their way to a more nuanced approach. So I guess my first question about the commerce clause is other than Edwards, which you cite, and the district court in Texas, who's issued the injunction -- the injunction was upheld by the Fifth Circuit -- has there been any other analysis with

regard to the application of the dormant commerce clause with facts similar or even with an immigration context like this?

MR. ROMAN: Your Honor, we're not aware of that, but I think that Texas, the United States lower court case, is directly applicable here, which, as you mentioned, Your Honor, was upheld at least as to the stay --

THE COURT: Right.

MR. ROMAN: -- in the Fifth Circuit, but there is no doubt that the United States Supreme Court has held that the movement of people is commerce. And any law that facially discriminates against interstate commerce like SB 4-C does, creating a barrier for certain noncitizens does violate the dormant commerce clause.

In any event, the Court need not reach that point because this SB 4-C, the entry and re-entry provisions are clearly field preempted. So if the Court decides that this may be a little tricky, it could easily find that the law is field preempted, though we still do assert that it is clearly, under Supreme Court precedent, invalid under the dormant commerce clause.

THE COURT: Okay. All right. I didn't put a time limitation, although I don't anticipate being here all day, but I imagine each side won't need more than a half hour. I'll let you go ahead. And if we need more time for various things, including why there is this difficulty in

understanding the force of the injunctive relief, we can take that up at the end of the argument.

MR. ROMAN: Yes, Your Honor. And we have also, just to inform the Court, learned of at least 13 arrests just in Leon County by Florida Highway Patrol. And we are still confirming these details, but we have become aware of these, just to inform the Court.

THE COURT: I just -- you can't possibly be ready to stand up as an officer of the Court and tell me that this order has no force and effect for the activities of the Florida Highway Patrol.

MR. SCHENCK: Your Honor, I understand that these allegations are very serious, but that is our understanding of the order, both in terms of a plain reading of how far the order extends as well as the Court's authority to bind nonparties who aren't before the Court. So I'm happy to address all of this now, Your Honor, because I understand that this is very serious.

THE COURT: You know, I would have gladly embraced that representation but for your suggesting that police officers aren't bound by an order finding a law unconstitutional and unenforceable. You are segmenting and threading needles that might be appropriate in a legal argument where you are looking at nuance or perhaps trying to establish a point of view that may ultimately prevail but that

is not now supported by the law.

But to suggest that police officers have an independent right to disregard the law or disregard a Court order is an astounding representation. And while I didn't think I would need to refer to the Fourth Circuit's order of yesterday because we did not have that problem here, apparently we do, about the power of the executive to ignore what is being asked of it.

How would the order have any meaning whatsoever, any meaning whatsoever if police officers could just go ahead and, "Oh, I'm going to arrest you on this and I'm going to take you to jail. Oh, but the state attorney's going to let you go because there's that order"?

So false arrest? Are you subjecting police officers to money damages and false arrest actions or 1983 actions by this tortured idea that they are not bound by this order? Because having represented law enforcement and having litigated against them and presiding, I don't think they would like that.

MR. SCHENCK: Your Honor, our understanding of the TRO and the Court's power doesn't mean that local law enforcement or law enforcement agencies in general can simply disregard a court order. I would never make that type of representation to you.

THE COURT: Okay.

MR. SCHENCK: But I think the difference here is that the scope of the Court's order does not extend to these agencies. And the reason why is because they're not parties to this case. And under Florida law our defendants, the state attorneys, the statewide prosecutor, does not have control over independent state entities like Florida highway or like the judiciary, and that's been recognized by the Eleventh Circuit in the Jacobson versus Florida Secretary of State case and also in the City of South Miami case where the plaintiffs in the City of South Miami tried to make the same argument.

They sued the governor and they tried to hold him accountable for -- and the attorney general -- and tried to hold them accountable for the actions of local law enforcement agencies. And the court there said, "A court order against the governor, against the attorney general, wouldn't have any effect because local law enforcement was not bound by that order because they're not parties to the court."

And I understand that this is serious, Your Honor. As I read the scope of the order, it states that --

THE COURT: So if I were to allow ore tenus the plaintiffs to add the Florida Highway Patrol, Miami-Dade Police Department, Leon County Police, which, by the way, I would think they had a lot more important things to do than the 13 arrests that I'm hearing about. But, again, I don't have anything to do with overseeing their authority nor, I

guess, their personnel placement. But if I were to allow them to amend and then issue the order, then we'd be okay?

MR. SCHENCK: I do believe this is a result of plaintiffs' failure to add those agencies as parties before the Court. I'm not sure how to go about the process of, you know, exactly amending their complaint and serving those individuals as defendants, but I think that's --

THE COURT: Right. Because I already found the law in a preliminary context, and I would hear from defendants and plaintiffs as we litigated and took discovery. Preliminarily, I have enjoined anyone to enforce the law. Fairly clear, fairly -- and you're telling me that it doesn't apply to the Florida Highway Patrol, who apparently, you're saying, can arrest on a law, which has been found to be unconstitutional in this context, without repercussion, without reference to the state attorneys, and without meaning, it would appear.

MR. SCHENCK: Well, I have three responses, Your Honor.

THE COURT: Okay.

MR. SCHENCK: The first is as to the scope of your order, the order states that you've entered a TRO prohibiting defendants and their officers, agents, employees, attorneys --

THE COURT: Right, there it is, their officers, agents. The state attorneys don't investigate. The state attorneys don't collect evidence. Their officers and agents

are the police departments who go, who investigate crime and then bring them cases, just like the feds, just like the FBI. Those officers and agents are enjoined by that order.

MR. SCHENCK: I disagree, Your Honor. Under Florida law, these independent state agencies are not agents or officers of the state attorneys. They're independent, and the state attorneys have no control over what Florida Highway Patrol does. They can't direct them to initiate arrests. They don't have that level of control over the Florida Highway Patrol or other local law enforcement agencies that would give them the type of control that would give the Court the authority to bind them without having them as parties. That's our argument here today.

And I would also note that the state attorneys unanimously agree that they are bound by the TRO, and they've committed to abide by the scope of the TRO as they understand it. So when cases come before them, they are declining prosecution, Your Honor. And I understand that this difference that's drawn from Florida law between law enforcement and the state attorneys may be frustrating, but that is something that the Eleventh Circuit has said you have to take into account when figuring out the scope of court authority to bind individuals.

THE COURT: Respectfully, the City of Miami situation, entirely different, not at all like this where a

law designed -- designed to be implemented by police officers is under review.

And so I guess you're also going to have to tell me whether by, you know, Monday morning or in a show cause hearing soon what the state attorneys are doing so the police officers are out there arresting people, because we can, taking them to a jail, and the duty state attorney is like, "Oh, no, let this person go." There is no such basis. It took two days for Mr. Lopez-Gomez, and he had a birth certificate. Why aren't these people being released immediately?

MR. SCHENCK: Well, as I understand it -- so we got the email from plaintiffs' counsel late yesterday, and we immediately began looking into this and looking into the information that they supplied and trying to figure out exactly what was going on on the ground. We reached out to, you know -- we reached out to the state attorneys -- we tried to reach out to the state attorneys. I wasn't able to get the state attorneys for those specific arrests on the line, given that -- I believe their offices had closed by the time we got the email yesterday.

But I will say that at least in the case of Mr. Lopez-Gomez -- I believe that ICE had specifically had a detainer there asking the officers to hold that individual. I'm not a hundred percent sure on that, but I believe that was

the case. So I think that may be the reason why they were holding him for that period.

THE COURT: Well, I don't think you're reading the Eleventh Circuit precedent correctly. Again, I think you are threading a very, very small needle, and unless you want this to be a continual show cause forum every week, I think we need to get clear on what the injunction means.

I'm going to send you some cases, Counsel, but I don't think it hews that closely, and you'd best have your state attorneys on duty through the night so that these people don't -- aren't falsely imprisoned. The arrest -- I guess you'll say that by their authority the police officers can do this, but once they're in your custody, that's false imprisonment. I don't think that anybody wants that. And I, frankly, am astounded and don't understand this argument.

And I thought this would just be a footnote to today's discussion, but it's clear this is going to have to be briefed, and I think everybody should plan on being here next week because I don't know if Judge Altman and Judge Ruiz -- if they know about this inability to have their orders adhered to by the police officers, but --

Okay. I'll come back to the defense later. I interrupted you, Counsel.

MR. ROMAN: No problem, Your Honor.

Two things on what the defense counsel just said

about the Jacobson and South Miami cases. Those cases are about Ex Parte Young and not about who was in concert or participation with. And respectfully, defendants should have sought clarification of the TRO order if there was any doubts that law enforcement was included or wasn't included.

THE COURT: Well, that's a good point. Because there was clarification about whether I was going to talk about class certification. So if there was some concern about what any persons who are in active concert with, there is no, oh, well, you don't have authority over -- I think, by the way, Mr. Uthmeier has said that he has control over at least all the state attorneys, so he could have told them, "This means, as well, those persons who are in active concert with," but I take your point, Counsel.

MR. ROMAN: Thank you, Your Honor.

And we're happy to follow the Court's lead on this and do additional briefing, if necessary.

THE COURT: I mean, I'm fairly clear, but I think for purposes of a record and to be entirely transparent, I think we are going to have to do briefing on this. I can't imagine it needs to be extensive, but before you all leave today, I'll set the schedule and argument. I'll have to go back and check my calendar for next week.

MR. ROMAN: Thank you, Your Honor.

And one final point, just to add on these TRO

violations, as I mentioned before, I think with even more reason to certify the class and issue universal leave to protect even US citizens from getting arrested here.

Turning to the merits now, Your Honor. SB 4-C is field preempted. There's a dominant federal interest in the entry and re-entry of noncitizens that leaves no room for state regulation. The Eleventh Circuit has been clear in Georgia Latino that there is a dominant federal interest in the entry, movement, and residence of noncitizens within the United States. And this has only been confirmed time and time again in Alabama with Judge Altman and the FWAF case and the countless other similar court decisions across the country that have struck down similar state and re-entry crimes there.

THE COURT: So I mean, I just want to be clear on this. My injunctive order is not a standalone. Judge Altman in this district entered a similar order. Judge Ruiz just affirmed and confirmed that order. The district judge in Texas ordered and the injunction was upheld. At least there was no stay entered by the Fifth. A judge in Oklahoma entered a similar order, and a judge in Iowa entered a similar order, and the stay was denied by the Eighth Circuit? Do I have that right?

MR. ROMAN: Yes, Your Honor. And one additional, just last week as well, the state of Idaho, similarly.

THE COURT: Okay. All the I states, Idaho, Iowa --

Texas.

All right. And in that regard, though -- well, maybe you'll get to the Armstrong in a moment. Go ahead.

MR. ROMAN: Yes, Your Honor.

And related to this but also its own independent field preemption is courts have found that there's a comprehensive statutory and regulatory enforcement scheme here that, as this Court has recognized, leaves no state to compliment or intrude upon that field. And this was again confirmed in Georgia Latino, in Alabama, in FWAF with Judge Altman, and in all the other court cases.

Going specifically into Georgia Latino, though it was a 1324 harboring and transportation provision, in that same analysis it discussed 8, USC, 1325, the entry provision, when it found that the movement of entry -- that the field of entry, movement, and residence of noncitizens is a dominant federal interest that states are not permitted to regulate.

So this Court, as other courts have done across the country, can simply strike down the entry and re-entry provisions solely on the field preemption standard.

THE COURT: My understanding is not only field preemption but conflict preemption, especially when there are mandatory detention provisions, mandatory sentences that have no resonance and are actually contrary to the federal system.

MR. ROMAN: That is correct, Your Honor. But all the

conflict preemption reasons, as in Arizona v. United States has held, only underscore the reason for field preemption and has said that when it was analyzing Section 6, the -- excuse me, Section 3, the noncitizen registration under the conflict preemption, and at the end, it mentioned that all of these reasons only underscore that.

And as you mentioned, Your Honor, and this Court has previously held, there's a stark mismatch as well that leads to the conflict preemption analysis.

I can move on to the conflict preemption analysis, but if the Court has any other questions about field preemption, I'm happy to answer.

THE COURT: No, I think most all of my questions are answered by Georgia Latino and Arizona v. United States.

Nobody -- well, maybe they do. I guess that gets us into the abrogation discussion in terms of Georgia Latino, but I think, as you point out, Duke Energy sided with approval and there have been several other Georgia cases, and no one has mentioned an abrogation issue, but --

MR. ROMAN: That is correct, Your Honor. Plaintiffs here do have a suit in equity that was only reaffirmed by Armstrong. And Georgia Latino was not abrogated, as the Court just mentioned, through the analysis under Duke and the Eleventh Circuit.

There is nothing here that displaces a suit in

equity. There's no other alternative specific enforcement scheme. Plaintiffs here are not seeking to enforce the entry -- the federal entry or re-entry provision or really any --

THE COURT: I didn't think so, but I was confused there for a moment. I mean, you're not asking for federal immigration to come find you. You're asking to be free from a duplicate system which imposes conflicting penalties and actually confuses an already complicated system, as the defense has acknowledged.

MR. ROMAN: That is correct, Your Honor.

And the second factor that Armstrong had identified is -- also not present here -- where we're seeking a rule to enforce a rule of decision that is not too vague for a judicial system to administer. Indeed, as many other courts have held, they can find preempted -- they can strike down preempted state laws that intrude on a federal dominant interest or conflict with a comprehensive regulatory scheme. So plaintiffs here clearly have a suit in equity.

Finally, turning to just the irreparable harm, Your Honor, and -- so I can leave some time for rebuttal -- this Court has clearly held that plaintiffs here will suffer harm. Indeed, the recent TRO violations confirm that they are at great risk of even being arrested and detained under SB 4-C. And defendants have no constitutional right in enforcing a

preempted law.

THE COURT: All right. Thank you, Counsel.

On behalf of the defense?

MR. SCHENCK: Good morning, Your Honor. May it please the Court. Robert Schenck for the defendants. I'm joined by co-counsel David Costello and Christine Pratt. And I will be presenting on the preliminary injunction issues. And to the extent the Court wants to hear about it, Christine Pratt is prepared to discuss any class certification issues the Court may be interested in.

So I want to start by noting that plaintiffs have a handful of issues with their lawsuit, including standing, the lack of a cause of action, and that their claims on the merits also fail. I'm happy to take these issues in any order that the Court wants to hear because I know you wanted to keep the hearing a little bit shorter --

THE COURT: I think we've already probably blown any timelines I had anticipated, but take it in whatever order you --

MR. SCHENCK: Sure. Yeah, yeah. I would just like to start with standing, Your Honor. There's usually two sets of plaintiffs here. There's the individual plaintiffs and the organizational plaintiffs, so they present different standing problems.

I'll start with the individual plaintiffs and

specifically what I think is the lowest hanging fruit here. You know, plaintiffs at best have standing to sue one of the state attorneys over the re-entry provision in this case, and that would be Amira Fox, and that would be plaintiff -- I believe it's VV -- who claims to have actually been deported before, so that would make her subject to the re-entry provision.

I just want to walk through our thoughts on this. So for the entries -- there's two criminal provisions; right? There's the entry crime and the re-entry crime. For the entry crime, the crime occurs where a person enters the state of Florida, and under Florida law, the only state attorney with jurisdiction to prosecute is where the crime is committed. And plaintiffs haven't given us any details about their travel plans so that we could know which state attorney could prosecute them.

And when it comes to VV, although it's true the re-entry crime occurs wherever a person is physically present, we only know that VV has been present in Immokalee, Florida, which is where Amira Fox is the state attorney. So putting those propositions together, we think that there is only standing to sue Amira Fox under the re-entry provision.

THE COURT: Okay. I don't understand your argument. So your argument is premised on some very narrow, narrow views of reality. So the found-in, which is an all-encompassing, I

might add, provision, at least as it's been viewed federally, can be prosecuted in any county, in any city, in any part of Florida, if you go to the neighboring Costco you're found in. So I don't see how that -- I don't see how your argument applies to that.

And the entry, you know, by boat, by -- I don't see how that works either.

MR. SCHENCK: Well, so let me take a step back --

THE COURT: Oh, and then the third -- because I'm going to give you --

MR. SCHENCK: Sorry.

THE COURT: No, no, it's not your thought. I'm just --

Also, didn't Judge Altman pretty much address this in Farmworkers as far as the association and the individuals? And wasn't this also fairly much addressed in -- I call it GLAHR. It's Georgia Latino -- and all the other cases in Texas, Oklahoma, Iowa, and now Idaho? Idaho.

MR. SCHENCK: So my understanding is certainly the court in Georgia Latino and in Farmworkers -- Judge Altman -- found standing, but I don't believe this issue was raised and actually fully litigated before those courts, what we're talking about here. I don't believe that -- I don't believe that the state attorneys, certainly on the Georgia case -- I don't believe that the state attorneys' standing was fully

litigated in Farmworkers.

And typically what we think of holdings is that an issue -- you know, an issue that is not really raised to the Court's attention and actually decided is merely a drive-by jurisdictional ruling. That doesn't have precedential effect. So I don't think something like this was actually presented in those cases and resolved.

THE COURT: Well, no pun intended -- and I'm going to tell Judge Altman he did a drive-by ruling -- but wasn't his case involving transportation movement? I mean, wasn't that actually the fulcrum of the discussion and so --

MR. SCHENCK: I may be misremembering, and so I apologize if I am. I believe in that case the state attorney simply stepped out of the case and just agreed to be bound by whatever ruling the court came up with on the merits. And so I don't think there are individualized --

THE COURT: And is that an option here? Because wouldn't that make all of the briefing and show cause hearings infinitely preferable to that? Because Judge Altman and Judge Ruiz have fairly much given me a template to follow for these issues and very -- two opinions, 40 pages and 36, very scholarly, very definitive.

MR. SCHENCK: Well, the state attorneys are not required to step out of the case. And I think in this case they're making the decision not to.

THE COURT: Of course they are.

MR. SCHENCK: But I want to take a step back. I may have gone too fast with my argument and --

THE COURT: Okay.

MR. SCHENCK: -- gone over too many things --

THE COURT: Okay.

MR. SCHENCK: -- at once without kind of fully explaining myself. I apologize.

THE COURT: No, no.

MR. SCHENCK: So in order to demonstrate standing, plaintiffs need to show that an injury is certainly impending. And they can't just rely on speculation; right? That's Lujan. That's a variety of Supreme Court cases. So when it comes to, for example, the re-entry provision -- let's just take VV for a second.

VV has not told us that she's going to travel to every county in Florida. She hasn't told us where she's going to go anywhere. I mean, she says that she wants to go to New Jersey. We understand that. But we have no idea how she's going to get there, when she's going to get there. And I think what that shows is beyond Immokalee, Florida. She hasn't shown that an injury of prosecution is remotely possible in any other county in Florida. That's the argument when it comes to trying to understand which plaintiffs have standing against which defendants.

THE COURT: Okay.

MR. SCHENCK: So I'd love to turn to the cause of action analysis, Your Honor.

So when it comes to the cause of action, what plaintiffs assert here is a cause of action in equity. And Armstrong tells us that Congress can displace those causes of action in equity. And they have also told us that you need rights to have a cause of action in federal court. And we think both of those factors counsel against giving individuals cause of action and equity here.

When it comes to Armstrong, the court said that courts can't avoid equitable limitations -- sorry -- they can't avoid statutory limitations by appeal to equitable authority. And in this case -- you know, the INA is very clear. It's supposed to be enforced by federal officers. And specifically the criminal provisions from which they draw preemption from are supposed to be enforced by the US Attorney. And so I think that makes it clear that Congress wanted the US attorneys to litigate suits under that provision and we think that that would extend to, for example, these types of lawsuits.

So I think that that makes congressional intent to displace an equitable cause of action pretty clear here. And I will also note, as we mentioned in our briefing, that plaintiffs lack the kind of rights -- privately enforceable

rights, not just rights but privately enforceable rights to bring a cause of action in federal court.

THE COURT: But there's no -- and I may be misapprehending your argument. And Lord knows my LexisNexis skills are suspect, but I have found no case that has adopted your view of Armstrong. There is a Tenth Circuit case -- and I was looking for it -- MV -- where the plaintiffs sued for services under Medicaid and the Tenth Circuit said Armstrong doesn't preclude this. That is too narrow a view. No circuit has adopted Armstrong.

And to come back to our circuit, Georgia Latino stands for the proposition that plaintiffs can sue in equity. Plaintiffs have standing. And didn't Judge Wilson, who we will all miss greatly -- he knew about Armstrong. He knew it was coming because in Footnote 7 he said, "Oh, I'm aware of the dissent of Chief Justice Roberts and Douglas. I'm aware that this position is moving through the Supreme Court. Don't worry. This is not that. This is not that."

And that is why the Eleventh Circuit has not referenced Armstrong because it's not the same situation. It is appropriate in equity, as Judge Altman found. It is appropriate that the plaintiffs can proceed in that way. So I don't understand how you tell me that Armstrong means this when the Tenth Circuit has said it doesn't mean that. When the Eleventh Circuit anticipated Armstrong coming and said

this situation is not that -- and direct me to a court that says Armstrong is what you tell me it is.

MR. SCHENCK: So -- there's a lot of questions there, Your Honor.

THE COURT: There are. I know, I know.

MR. SCHENCK: I'm going to take them one step at a time.

So just starting with the courts that have discussed Armstrong, I think the Hickenlooper case is probably the closest case on this point --

THE COURT: What is that? No, the case name.

MR. SCHENCK: Hickenlooper versus Safe Streets Alliance. That's also a Tenth Circuit case. I'm admittedly not aware, Your Honor, of the case that you referenced.

THE COURT: I'm going to find it before you leave. I absolutely am going to find it.

MR. SCHENCK: But I can give you -- I mean, we cited it in our papers, the Hickenlooper case --

THE COURT: I found it. MG through Garcia versus Armijo, 117 F.4th 1230, 2024, "The district court did not err clearly or otherwise in concluding Armstrong has no application. To be clear, numerous courts have refused to give Armstrong the breathtaking sweep HSD seeks to attribute to it. The Court rejects this legally unsound suggestion."

I mean, that's pretty pointed language. That was

about services. That was about children actually getting services. It wasn't about money, which Armstrong seems to have been cabined -- more money -- looking for more money. No, no, this is not the vehicle for that.

MR. SCHENCK: I'm just reading the opinion now, Your Honor.

THE COURT: That's okay. And I'll give you a chance to take a look at that, but you had other -- the Hickenlooper --

MR. SCHENCK: Yeah, so Hickenlooper predates the Garcia case by a couple of years in the Tenth Circuit, and we cited that in our papers. We think that that is a pretty close situation where a state was trying to sue -- or sorry -- private individuals were trying to sue -- I believe it was state officials -- for their activities, which the plaintiffs claimed were preempted by the Controlled Substances Act, and they said there was no cause of action because that type of criminal law is enforced by federal authorities.

But I just want to move on to Georgia Latino as well.

THE COURT: Okay.

MR. SCHENCK: I understand that in Georgia Latino Judge Wilson looked at the -- looked at the -- you know, the Douglas case from the Supreme Court where Chief Justice Roberts had dissented, and my understanding is that he said that the -- the dissent is not intention with our resolution

of the issue.

THE COURT: Correct.

MR. SCHENCK: He said, "It is not even necessary to decide whether the supremacy clause can ever provide a cause of action --

THE COURT: Because that is -- the labeling of something doesn't make it so. And I think courts -- in Duke Energy, the cite was, "Oh, there is a cause of action" -- and people keep putting it in scare quotes -- because that's not what the plaintiffs are asserting and that's not what the plaintiffs in all these other cases were asserting that they had a private cause of action in equity. They are asking a court to enjoin the enforcement of what they believe to be an unconstitutional scheme, law, whatever it is.

And I think people keep getting tripped up on that private cause of action when universally the courts say that's not what we're talking about. We know that's what's being argued. We know that that keeps coming to us, but that's not what we're talking about.

MR. SCHENCK: Well, I understand Armstrong, Your Honor, to do two things. The first thing is it says, "The supremacy clause does not provide a cause of action." And it purports to put limits on the type of equitable cause of action that you're describing because it's discussing equitable causes of action or Ex Parte Young, which is

precisely the types of preemption claims that individuals bring all the time. They're asserting the same at least type of equitable cause of action that was discussed in Armstrong. And Armstrong, in our view, rejected the rationale of Georgia Latino, which purported to find Ex Parte Young as being grounded in the supremacy clause, and it gave us a new analysis to understand whether an equitable cause of action, like this one, has been displaced by Congress.

And so what we're asking is the Court to run through that analysis and ask whether Congress has put a statutory limit on the enforcement of the INA. And as far as -- I do want to address two more of the Court's questions. My understanding -- I understand that the -- in Farmworkers, the defendants raised the cause of action issue. My understanding was originally Judge Altman actually did not address the cause of action issue, and defendants had to move for reconsideration.

I understand that Judge Ruiz ruled on the order for reconsideration. I have not read that order yet, but --

THE COURT: It will truncate your argument considerably because Judge Ruiz was as clear as, I think, some of these other cases that the cause of action exists, and puts aside any of these Armstrong considerations.

MR. SCHENCK: Well, that's --

THE COURT: Again, I don't stand alone. I only have

to point up to Judge Altman and across to Judge Ruiz and my work here is done.

MR. SCHENCK: I understand, Your Honor. We respectfully disagree, but I understand we may be at odds in terms of that. One more response to your questions here.

THE COURT: Okay.

MR. SCHENCK: Just on the Newton case, I believe the Newton case was just discussing whether there was federal question jurisdiction. I understand there's a cite to Georgia Latino, but the holding in Newton was just about federal question jurisdiction over preemption claims, which we're not saying that there isn't federal question jurisdiction over -- obviously, preemption raises a federal question.

THE COURT: But they did -- again, parenthetically -- and you're absolutely right that it was an entirely different issue in Newton. But Newton, which is 2018, cites Georgia Latino and then describes the holding in Georgia Latino that there exists an implied right of action to assert a preemption claim seeking injunctive relief -- you know, other citations omitted. So it didn't receive. It didn't clear up. It didn't say, "Oh, no, we're going to Heisman that ruling." It cited it with approval to go on to the other issues which are not what we -- you're absolutely right, not what we're talking about today.

MR. SCHENCK: Right. I understand. I guess we just

take a narrower view of Newton, Your Honor.

THE COURT: Okay.

MR. SCHENCK: I know we're going way past our 30 minutes now but --

THE COURT: That's all right. I have interrupted you and that is not your fault.

MR. SCHENCK: No, I want to be as helpful as I can to the Court. I know you have a lot of questions about this.

So I just want to turn to the merits of this case and just to discuss the preemption analysis and the dormant commerce clause analysis. Obviously, today, we talked about the different theories that plaintiffs have brought under field and conflict preemption under the INA.

I just want to make clear that I think that there also is no preemption under the constitution, which appears to be a theory that plaintiffs might be advancing in their papers, but we just think that's inconsistent with the understanding of what Congress' power was at the framing that Congress did not, at least for the first 100 years of the constitution, exclusively regulate immigration to the exclusion of the states. In fact, it was the opposite. The states were broadly left to regulate aliens and their rights for the first 100 years of the --

THE COURT: I have this up here. I've had it up here with me for 35 years. So I would recommend to you

Federalist 42 and then there's also the purpose of the Constitution -- to establish a uniform rule of naturalization.

Now, granted, they didn't have Border Patrol, Customs, INS. That was to come. And that law and that statutory scheme has been developed, which is the plaintiffs' point. It is a long-standing, highly developed, very specific set of terms. But I think the founders were pretty clear about what it is they wanted because they felt that -- and again, it's in 42 -- "The new constitution has, with great propriety, made provision by authorizing the general government to establish a uniform rule of naturalization."

As text goes, pretty clear. I'm not taking that up. I mean, we have enough to do with preemption and Hickenlooper and Armstrong and everybody else, but I mean, if we're going to go back, back, I think Hamilton, Madison, Jay, and the guys thought that there were matters that were of the general government -- taxes, foreign nations, naturalization, and immigration.

MR. SCHENCK: Well, I can certainly give a brief response and then move on to the statutory arguments, Your Honor. I think there's a difference between naturalization and the regulation of immigration. As the founders sought, naturalization was the process of obtaining citizenship. And typically, the framers, at least reflected in the debates over the first federal Naturalization Act, reflects that they

thought Congress had exclusive authority over the process of becoming a citizen of naturalization --

THE COURT: Right.

MR. SCHENCK: -- but before then, the states could determine the rights. That's how we view that kind of founding understanding, but I'm happy to move on to plaintiffs' statutory arguments --

THE COURT: Okay.

MR. SCHENCK: -- which are based in field and conflict preemption. So let's just take them one at a time.

As for field preemption, plaintiffs say that the INA occupies the field of entry, movement, and removal of aliens, but there's no real evidence, in our view, that Congress occupied the field of alien movement writ large. And Florida's law does not operate in the fields of alien entry into the country or removal from the country.

THE COURT: But wasn't Arizona all about alien movement, Arizona v. United States? I mean, we're all agreed that's still good law.

MR. SCHENCK: Certainly Arizona is good law, Your Honor.

THE COURT: Okay. So wasn't there discussion there? I mean -- no?

MR. SCHENCK: Not that I'm aware of, Your Honor. I mean, they probably detailed in the background section

different aspects of the INA. But Arizona, in its holding, was about alien registration and then removal.

THE COURT: Okay.

MR. SCHENCK: So I mean, I want to take each in turn because I think we have different arguments. There are a lot of fields in play. You have different fields of preemption. So I think different arguments apply to different ones.

So I'm going to start with the field of alien movement, which, as far as that goes, we would say it's not really a preempted field. The evidence that plaintiffs give you that Congress preempted, the field of alien movement, is that Congress criminalized similar activity here, and they believe that there's a dominant federal interest in alien movement writ large. But neither of those rationales, we think, supports field preemption over alien movement. And I would direct Your Honor to Kansas v. Garcia, which gave us two really important points.

The first is that the overlap in the scope of federal and state criminal law is not the basis for even conflict preemption let alone the rarer type of field preemption. If that rationale were true -- right? -- we would see vast swaths of state criminal law just being wiped off the books, whether it be murder crimes, fraud crimes, drug crimes --

THE COURT: Right.

MR. SCHENCK: -- but that's not how we do preemption

analysis. We look to whether Congress' clear and manifest purpose was by establishing this crime. Did we want to wipe away state regulation? And I don't think beyond that parallel criminalization we have any evidence here.

The second proposition that Kansas gives us is that unmoored federal interest -- right? -- these kind of freewheeling interests that are unmoored from the text and structure of the statute at issue can't be the basis for preemption. And so, again, their argument for showing a dominant federal interest is again to point back to the parallel criminalization, and it's kind of circular. The parallel criminalization that Kansas tells us is not enough.

And I want to just briefly touch on Arizona, Your Honor, because you brought that up --

THE COURT: Well -- okay. So we're clear, Kansas, which I don't think that analysis has prevailed in Texas, Iowa, Oklahoma, or Idaho -- but Kansas has to do with fraud statutes, identity statutes. You can't go in and say you're Bob when you're John, or you can't show documents about being here that aren't actually valid. It doesn't say anything about your status, as you say, an alien -- as they would say undocumented persons. It's about straight-up fraud. And so in that regard, your analysis that, no, there's no preemption on murder, of course not, but Kansas doesn't really tell us anything about the situation here.

MR. SCHENCK: So I want to make a couple of comments, Your Honor. First of all, we use the term aliens only because that's the term in the INA.

THE COURT: I wasn't --

MR. SCHENCK: Yeah, I understand.

THE COURT: Right. Because it makes a difference to the parties involved --

MR. SCHENCK: I understand.

THE COURT: -- and I want to be clear about that.

MR. SCHENCK: I completely understand, Your Honor.

Just getting back to Kansas.

THE COURT: Okay.

MR. SCHENCK: I actually think Kansas does have some helpful stuff for us -- I think both Kansas and Arizona do -- because they make clear that the same preemption analysis -- right? -- the presumption against preemption, that states have traditionally regulated an area of criminal law, I think those cases do help us because they establish that the same preemption principles apply even when the state is regulating immigrants.

And now, it's true that the statute in Kansas admittedly was a broader general criminal statute. But in Arizona, the courts still apply the presumption against preemption, and it still found field preemption for very specific reasons that I'm happy to get into that I don't think

apply here.

THE COURT: Okay.

MR. SCHENCK: So as far as Arizona goes, I don't think that these general criminal provisions in the INA are nearly as comprehensive as the alien registration scheme, which detailed far more granular details about a civil registration scheme that did have some criminal consequences.

And I also think that Arizona involved unique federal interests and foreign affairs that aren't present here. Arizona relied on an earlier case, Hines v. Davidowitz. And in that case, the Court gave a very clear explanation of why alien registration schemes need to be exclusive, and it's because of these longstanding law of nations and treaty obligations, going way back, that protected the rights of perfectly -- what they called perfectly law-abiding aliens.

And the same rationale doesn't apply here because, by definition, individuals who illegally enter the country or illegally re-enter after being deported are not perfectly law-abiding, whereas states or nations are very concerned about the treatment of their law-abiding aliens and making sure when you are law abiding and you are present in a country, it's clear how you register, how you keep your lawful status with the federal government. That was the concern with the alien registration regime in Arizona, as we understand it.

THE COURT: Okay. But isn't there kind of a -- so

you're saying that the INA entry/re-entry is not so comprehensive like the scheme in Arizona --

MR. SCHENCK: Yes.

THE COURT: -- so as to prevent a state scheme, but it is so comprehensive it displaces equitable remedy under Ex Parte Young? I got stuck there.

MR. SCHENCK: I understand, Your Honor.

No, I think that those two analyses are separate. So the question under Armstrong is whether Congress wanted to displace private enforcement.

THE COURT: Right.

MR. SCHENCK: Right.

And it's clear who they wanted to enforce, the federal INA. But it's a different question than whether Congress' clear and manifest purpose was that a separate sovereign, the states, are allowed to have parallel laws that are even consistent with federal interests. I think that's a much harder showing than what's involved in Armstrong.

THE COURT: But you also argue -- I think this is your response. You also argue that 4-C just touches, does not directly operate on the field of noncitizen entry because it primarily regulates entry into Florida, and then in the page before, you say it mirrors federal law, so it's all good. I'm getting whipsawed by that. And granted, it may be me. But how do those two positions exist in equipoise or otherwise?

MR. SCHENCK: Right. So I guess what we would say is -- there are different arguments, we would say, related to alien entry into the country as opposed to movement. This section that I am talking about is mainly about movement once you're inside the country. Right? I think it's a different question when we talk about how the federal government has regulated the field of alien entry into the country and removal from the country.

I don't think that it's fair to say that we operate in the field, at least in this preliminary facial posture, in every application of the statute in the field of alien entry because we leave those determinations up to the federal government. The federal government tells us -- right? -- who can enter the country, who can be removed from the country, who gets admitted, who gets removed from the United States.

And so our law is consistent with federal law because we respect those federal interests and we also respect those interests when it comes to the affirmative defenses. Right? If the federal government says, "No, you can come in" or if someone came here illegally and said, "Nope, you can stay. We'll give you a visa or we'll give you discretionary relief from unlawful status," Florida law respects that determination. And so I think that goes to conflict but it also goes to Plyler's command that when the federal government gives you a direction about the treatment of certain aliens,

you can certainly follow the federal direction.

I want to make one more point just about this section as far as it goes to Georgia Latino. I understand they talk about Georgia Latino. We think there are primary distinctions from that case. First of all, it dealt with a different set of crimes, so I don't think the case is directly on point. It dealt with transportation, which is done by other individuals.

But I think even on its own terms, Georgia Latino is distinguishable because it highlighted at a -- and put a lot of emphasis on the fact that under the transportation provisions in the INA, Congress had specifically limited state participation to arrest under federal law. And that's where it's cited at 8, USC, 1324(c). And the entry and re-entry crimes into the country under the INA do not have a provision like that. So I think even under its own terms, Georgia Latino is distinguishable.

THE COURT: Okay. So you're distinguishing the Eleventh Circuit. These provisions are the same or similar to Texas, which is currently now in a state of limbo, I guess.

MR. SCHENCK: Yeah. I mean, again, there are a lot of different states doing things and there's a lot of litigation. Sometimes it's hard to keep track of all of them. Certainly to the extent --

THE COURT: I've got copies, if you want them.

MR. SCHENCK: Well, my understanding is that it's a

fairly lengthy opinion. But I would say to the extent that Texas disagrees with our analysis, I think that we've brought up a lot of points that show just how lofty the plaintiffs' burden is given this facial challenge, given its preenforcement, given that it's a preemption challenge where there's a presumption against preemption. To the extent it disagrees with our application of the principles to this law, I suppose that we just disagree with the Fifth Circuit. But also, I would say, my understanding is the Fifth Circuit law may have gone further by allowing state officials to remove individuals from the country, and that is something that looks nothing like Florida's law.

THE COURT: I thought that was Iowa, but I could be wrong.

MR. SCHENCK: It may have been both. It may have just been Texas. I'm honestly not sure, Your Honor.

THE COURT: Okay.

MR. SCHENCK: So I'd love to move to conflict preemption to keep us trucking along.

THE COURT: Yes. How about five more minutes? Will that do it for conflict preemption?

MR. SCHENCK: Absolutely, Your Honor. I'm happy to just reiterate that we don't think we regulate immigration directly. We don't think that this creates immigration classification as they see it.

I want to spend maybe a little bit more time on the prosecutorial discretion point because that was brought up in Georgia Latino in Arizona.

THE COURT: Okay.

MR. SCHENCK: Again, I think that Kansas v. Garcia is instructive here because Kansas says, "Presumption flows from the laws of Congress, not the whims of the federal officers." So in order to find conflict preemption based on prosecutorial discretion of a federal crime -- right? -- that's their claim that prosecutorial discretion given to federal officers who enforce crime is preemptive at state enforcement. I think you would have to show that it was the clear and manifest purpose of Congress that that prosecutorial discretion be exclusive of the state's ability to prosecute these crimes.

Again, I think that triggers our discussion about how their argument would apply to a lot of different federal crimes. And I don't see them pointing to anything that shows that prosecutorial discretion of these crimes is special in a way that wouldn't apply to the federal murder statute or the federal wire fraud statute or drug trafficking. I just think that, in general, we don't think of prosecutorial discretion as creating preemptive interest. It's the laws of Congress. And they have to show why Congress thought that this discretion was special, and I don't see that in the text and structure of the federal statute at issue.

THE COURT: Okay.

MR. SCHENCK: And one last point on that. I just want to highlight the facial challenge here because to the extent we're getting into conflict preemption, I think that admits that there's at least some instances in which state enforcement priorities would not conflict with federal enforcement priorities; otherwise, we would have just -- right? -- field preemption. So to the extent that we're at conflict preemption, where there's a possibility of aligning federal and state interests, the facial standard would require the plaintiffs to show that Florida's law conflicts in every application of the statute.

So and just for --

THE COURT: You know what? I'm going to stop you there only because you told me you didn't have a chance to read Judge Ruiz's opinion. And I think Footnote 8 on page 12 of his opinion is a fairly concise and focused recap of the law. He does compare to your case Hines versus Davidowitz.

I don't think, again, any other court currently or going back to 2012 or 2010 that has examined this type of challenge has concurred with your assessment about the standard and what was required to mount a preenforcement challenge to a law. And lucky for me in Farmworkers Association, it pretty much is the same group of new statutes.

MR. SCHENCK: Well, Your Honor, we certainly

understand your concern. You know, I think that to the extent the courts have disagreed with our kind of analysis, which we think flows from first principles and is consistent with Supreme Court and Eleventh Circuit precedent -- you know, sometimes courts get it wrong.

THE COURT: That's true; sometimes they do. But my job at this juncture is to adhere to the fidelity of the law that is currently governing the Supreme Court, the Eleventh Circuit, look to the Fifth, the Eighth, the Tenth, and my colleagues here in the building, and let you then take issue. But I take your point. I knew you hadn't had a chance to look at it --

MR. SCHENCK: I apologize, Your Honor.

THE COURT: No. It was yesterday. It --

MR. SCHENCK: Let's just say it's been a busy week.

THE COURT: It has been a busy week. I saw no television shows last night of any fun -- or movies -- not that Judge Ruiz isn't a good read before slumber.

MR. SCHENCK: I'm sure that he is a fantastic read.

THE COURT: He is.

MR. SCHENCK: So I just want to move to just one point of dormant commerce.

THE COURT: Sure.

MR. SCHENCK: I think you got the gist of our argument from the papers.

THE COURT: Yes.

MR. SCHENCK: I just want to say I do actually know of a court that agreed with us.

THE COURT: Okay.

MR. SCHENCK: That would be the district court in Arizona, actually, the case that went up to the Supreme Court. In that case -- I believe the cite is -- and obviously, you know, the -- my understanding is that the -- none of the courts on appeal took issue with this determination because they just kind of narrowed it to the preemption analysis --

THE COURT: The district court in the Arizona case we're talking about?

MR. SCHENCK: The Arizona case, Your Honor. That's 703 -- if you want the cite --

THE COURT: Just to be clear, the Supreme Court did not agree with that district court.

MR. SCHENCK: Well, it -- I actually don't believe either the Fifth Circuit or -- sorry -- the Ninth Circuit or the US Supreme Court actually addressed the dormant commerce analysis.

THE COURT: Okay.

MR. SCHENCK: Because actually, you had asked earlier of the plaintiffs --

THE COURT: On the commerce clause.

MR. SCHENCK: And obviously -- right -- those, you

know -- there was some concern about dormant commerce raised in that case.

THE COURT: I got it.

MR. SCHENCK: I think that that analysis by the district court is instructive. It noted, like our law, that there's no -- there was no discrimination between in and out of state economic interest because it doesn't draw differences between where persons are residents, where they live. It applies to everyone writ large, and that's not what the dormant commerce clause is concerned with. And it expressly addresses the Edwards case.

And so, you know, I think for the reasons that we've put in our papers and for the reasons that the district court in Arizona described, you should disagree with their dormant commerce analysis.

THE COURT: Okay. Thank you for the clarification.

MR. SCHENCK: Your Honor, would you like to hear about class certification?

THE COURT: Sure. Again, I don't understand how this is a meaningful discussion in light of the fact that apparently agencies and agents and others acting in concert with the state attorneys appear to think they have no relationship to a valid court order. It doesn't matter what the class is.

So with that, I'm happy to hear, generally speaking,

what the defendant's position is on the drawing of a class.

MR. SCHENCK: Can I confer with co-counsel for just one second, Your Honor.

THE COURT: Sure.

MR. SCHENCK: So, yeah, we just want to discuss how the class certification is essential to the scope of relief in this case. So I think it would be helpful on that issue --

THE COURT: Okay.

MR. SCHENCK: -- any other questions you had about class certification.

THE COURT: All right. And again, I like charts and I think in that way. So basically, you disagree as to the viability of the lawsuit and all, but should it come to something, you agree that a class certification is a component that needs to be addressed by the Court.

MS. PRATT: Yes, Your Honor. May it please the Court. Christine Pratt for the defendants.

If this Court wants to issue an injunction, it's necessary, first, to certify a class. Eleventh Circuit precedent is very clear on this point. Georgia versus President of the United States, decided in 2022, was very clear.

In addition, the plaintiffs here understand this as well. That's why they sought class certification. So I think we're sort of on the same page with that. And what's so

necessary here about certifying the class is that before a court can issue injunctive relief, it's necessary to give -- it's necessary to tailor that relief to the parties. So injunctive relief operates on specific parties, not geographic territories. That's Georgia versus President of the United States.

So making that clear, Your Honor, a lot of the issues that we raised in our response to the motion for class certification really turns on the plaintiffs' definition of the class. They characterize it as per all individuals who, quote, are potentially subject to the law and who may violate the law. So all the problems stem from that characterization. Because of that language, the class is not adequately defined because plaintiffs must specify a particular group harmed during a particular crime.

THE COURT: Well, they exempted citizens. That didn't seem to work. So I don't know how, honestly, this can be drawn to satisfy your concerns. The law is pretty clear. You don't have to actually be picked up. It's just the threat of it. And 13 arrests while the injunction is pending, plus a citizen, I don't know how to actually define the class that comports with your concerns about the law and the plaintiffs' concerns about the law that doesn't just do what I thought the injunction did, which is this law is not enforceable right now.

MS. PRATT: I understand, Your Honor. It's a great problem that the plaintiffs in this case did not name defendants who have power over arrest.

THE COURT: I don't think that's their problem, Counsel. Let me be clear. I think that is your problem.

MS. PRATT: I understand, Your Honor.

THE COURT: I think your view of the scope of the injunction and the law is, in a generous characterization, torture.

MS. PRATT: I understand, Your Honor.

THE COURT: And I don't think it needs to be. I don't think this issue needed to be before the Court. And I honestly don't think -- well, anyway, full sentence, period.

MS. PRATT: So, you know, tailoring my response specifically to class certification.

THE COURT: Yes.

MS. PRATT: When we get into the issues of ascertainability --

THE COURT: Okay. That's a good point. And I did want to talk about that briefly. Sorry. I keep interrupting you.

If you have a provisional class, isn't that something that the litigation, then, works out with subclasses or elimination of classes? I don't think -- and plaintiffs are free to correct me if I'm wrong -- I don't think a provisional

class means that that is indeed what will ultimately be certified. It means that there is some direction now. And my point was but that didn't work -- it wouldn't have worked very well in light of what we're hearing about the defendants' view of the scope.

But isn't what you're going to be talking to me about -- isn't that something you would litigate and there would be some discovery and --

MS. PRATT: Yes, Your Honor, but it is the plaintiffs' burden to allege facts sufficient to show exactly what parties we're speaking about, who will receive the relief. And they haven't carried that burden here. And precedent is very clear that where plaintiffs fail to carry their burden, the Court should decline class certification. They've also brought us here on a short timetable asking for extraordinary relief. So it bears saying that plaintiffs need to properly allege who this class should be. They should allege an actually ascertainable class, a class that has commonality and typicality.

THE COURT: Okay. And just out of curiosity, and I know we have all been working diligently, have you proposed any type of -- is there a case out there that you feel draws cabins class in a way that would be analogous to or consistent with your concerns here?

MS. PRATT: Well, sure, Your Honor. So, you know,

one case where I think there's a lot of really good discussion about a class, especially when it comes to commonality, which touches on ascertainability, is Williams v. Mohawk Industries. That's 568 F.3d 1350 in the Eleventh Circuit, decided in 2009. So I think there's some language there. But ultimately, Your Honor, as I said, it really is the plaintiffs' burden here.

And when we talk about courts amending complaints for the plaintiffs, the courts will never do that. And so I think in this situation as well, it's a fair request. It's what the law requests of plaintiffs, which is simply to allege sufficient facts. They just haven't done that here. It's all much too speculative. Just much more needs to be there.

THE COURT: Okay. Any other comment before I turn to rebuttal for plaintiffs? And then I'm going to take a brief moment. I need to go check my calendar, and we'll talk about next steps, but no --

MR. SCHENCK: No more, Your Honor. Thank you.

THE COURT: Okay, counsel.

MR. ROMAN: Thank you, Your Honor.

I'll address each of the points in order that defendants brought up.

First, starting with standing, they argue that there is speculation here, but the declarations -- and this Court has recognized that what they intend to do is not hypothetical. And Judge Altman, in his Footnote 4, explicitly

stated that Article 3 does not require the exact date and time of plaintiffs' intention, and here it doesn't require the exact location.

And second, defendants don't contest that the attorney general is in concert with the state attorneys, so their argument is besides the point. They are all covered here. So we don't know why they would object to all of the state attorneys being defendants.

THE COURT: Well, I think -- okay. I think the issue is the police who seem to be operating on their own without any direction from state attorneys or fidelity themselves to court order or law, which is concerning.

MR. ROMAN: We agree, Your Honor. We were just making that argument towards the state attorneys, that they wanted to limit that.

Turning to the cause of action. Yeah, I did read Judge Ruiz's opinion yesterday, and it squarely rejects defendants' arguments on all points that they have brought up, so I won't belabor that.

In terms of Safe Streets, we breached this in the Oklahoma case. And the footnotes there confirmed that people subject to prosecution can still use Ex Parte Young as a shield and bring a suit in equity, so it did not foreclose any suit in equity here, even those cases that defendants cite.

Turning to preemption, we do not rely on the

constitution alone. The Congress has since enacted a very comprehensive statutory and regulatory scheme that does not allow even complimentary state regulations into this as courts have held. Your Honor pointed out Kansas v. Garcia and the differences there. That did not touch directly on immigration and thus is inapplicable here where SB 4-C directly regulates federal entry and re-entry.

Turning to Arizona, Arizona did not apply a presumption against preemption, and there is no such presumption, whereas here defendants seek to regulate in a field where there has been a history of significant federal presence.

Finally, defendants talk about the 1324c providing, as a basis, that allows state officers to arrest for the federal harboring and transportation crimes, but by them pointing to that shows that the adjacent 1325 and 1326 that do not have that explicit command that allows federal agents to arrest shows that they cannot do so here or, even less, create their own state crimes that do the same.

THE COURT: Let me -- oh, I'm sorry. Go ahead.

MR. ROMAN: Yes. In terms -- I'll just make a final point about conflict and the dormant clause.

In terms of conflict, in a field preempted case like this, there is no application that would be constitutional. In addition to that, defendants ignore, and what this Court

has already recognized mismatches between, SB 4-C and its federal counterpart.

And in terms of the dormant commerce clause, the Texas court has held that the movement of people is commerce. There's different bases to find a violation of dormant commerce clause. One of them is just the movement of persons, which this law violates.

THE COURT: Right.

MR. ROMAN: In terms of class certification, I wanted to make two points. Recently, the Supreme Court took up the birthright case, which brings up the questions about nationwide relief and which is why -- even more reason that this Court should provisionally certify the class. It's a more straightforward way to provide statewide relief here. And these classes are capable of determination. Recently, the Court in Idaho had no problem certifying classes there that had -- provisionally certifying classes there that had similar definitions.

THE COURT: That was going to be my question. So the Idaho court provisionally certified classes in a similar context.

What about Oklahoma and Texas? I am unaware.

MR. ROMAN: There are no classes there.

THE COURT: It was just a prohibition.

MR. ROMAN: Yes, Your Honor, statewide prohibition.

But the Idaho court did provisionally certify an entry and a re-entry class, similar to the law here.

THE COURT: Okay.

MR. ROMAN: The final two points, Your Honor, is we would respectfully request that the Court issue a TRO extension or a preliminary injunction today explicitly saying that it covers law enforcement officials, to do away with any ambiguity.

And the very last thing I'll bring up to bring to the Court's attention is that Jacksonville recently enacted Ordinance 147-E, which is a copycat of SB 4-C, illegal entry and re-entry provisions. They only replace the words "Florida" with the "City of Jacksonville." And so we are still looking into plaintiffs there, but we may amend our complaint here, Your Honor.

THE COURT: Okay. All right. So -- actually, I may not have to go back. So let's talk about the confusion as to who is covered by this injunctive relief.

If I were to give the parties until -- tell me what kind of timeline you would like, plaintiff, and then I'll ask the defense what their workload would allow for, and then we can go from there.

MR. ROMAN: I think whatever the Court sets, Your Honor, we're willing to work on a fast briefing schedule, if that's what the Court wants. We defer to the Court on that.

THE COURT: Well, it's clear to me that I'm going to be extending the TRO, so the question is -- and under Rule 65, for good cause -- clearly good cause. But would it be next week or the week after? I don't want this to linger. I think everyone has worked diligently. I have the briefing. We've had the argument. But this is an unanticipated impediment, and I want to hear from the parties, but I want to know with the idea that it is not going to languish or linger for weeks and weeks. What kind of timeline?

So if I were to say, Plaintiffs, I would like to hear from you by Tuesday or Wednesday, and then, State, I would like to hear from you by the end of the week or the Monday following and then we'll set a hearing for this -- for that second week. Is that doable for everyone with the idea that the TRO is going to be extended?

MR. ROMAN: Yes, Your Honor. We would respectfully request that defendants submit a brief first since they are --

THE COURT: That's fair, yes.

MR. ROMAN: -- and so we can respond.

THE COURT: Okay.

MR. ROMAN: But that schedule does work for us.

THE COURT: Okay. All right. So we'll just flip that. What would be a good time if I were to ask you for a brief by next -- and if you need -- this is not a trick question.

MR. SCHENCK: I know. I know.

THE COURT: I'm honestly asking you what your calendars and schedules are like so I give you the opportunity to really look at the issue. I know you have people to talk to, undoubtedly. You know what? I am going to take five minutes. I'm going to give you time to confer.

MR. SCHENCK: We would greatly appreciate it.

THE COURT: All right. Thank you.

(Recess from 11:43 AM to 11:52 AM.)

THE COURT: I was having technical difficulties. So tell me -- I have time -- well, I don't, but I'm going to make time -- either Friday, May 2nd, in the morning -- that's two weeks, and it will give you enough time to file/respond -- or Tuesday, April 29th, in the afternoon.

MR. SCHENCK: So, Your Honor, I think for our side, actually the April 29th date would be better, and I'm also happy to address the speed of any briefing as well.

THE COURT: Okay. How about plaintiffs? Would you all be available on that?

MR. ROMAN: Yes, Your Honor, we have no objection to the April 29th date.

THE COURT: Okay. All right. So then, for the defense, when would you like to file your brief? You have until -- because I would like to read them -- and if I'm going to see you in the afternoon -- so if you were to file by

Wednesday at noon --

MR. SCHENCK: Yeah, that would work for us.

THE COURT: Okay. And then, Plaintiffs, when would you like to respond?

MR. ROMAN: Could we get until the 26th, Your Honor?

THE COURT: Sure. What day is that?

MR. ROMAN: That's a Saturday.

THE COURT: Yes, sure. Saturday at -- because I'm not up till midnight -- Saturday at noon? 3:00?

MR. ROMAN: 5:00 PM, end of business.

THE COURT: Okay. All right.

MR. ROMAN: Thank you, Your Honor.

THE COURT: And then if there's a reply, I think we can take that up Tuesday morning in oral argument. Or if you needed to say something, if you absolutely were compelled to, by no later than Monday at 3:00 -- Monday, the 28th.

Okay. So I am going to extend the TRO until, now, end of business Tuesday, the 29th. And let me be clear about the parameters of that TRO, if I was not before.

The injunction applies to the named defendants and any person in active concert with them enforcing SB 4-C. If there is a question as to who that might be, that would be any local police officers, FDLE, FHP, anyone tasked with enforcing SB-4. That language, that order, that scope is in force and effect through the TRO as I have clarified or modified,

whichever you believe it is, it is the TRO, and it will be in force until Tuesday, April 29th.

I'm assuming that as -- this is what we're talking about. This is what the briefing will be about -- the scope, and so we can have a discussion that Tuesday afternoon about what the parties have promulgated and submitted. But until that time, I expect that that will be the scope.

I also expect that the state attorneys named and the attorney general will themselves give active guidance and facilitation to police officers about this order and the injunction and give them notice, and we can take up the viability of that on the 29th. But that will be the modification/clarification, whatever "cation" you see it as, that is what the order means.

All right. With that and with our new briefing schedule -- oh, do I need to give you a page limit?

MR. SCHENCK: I think it would be helpful.

THE COURT: Okay. 15. I mean, it's a very discrete issue, but no more than 15 pages.

MR. SCHENCK: Your Honor --

THE COURT: Yes.

MR. SCHENCK: -- if I might inquire.

I just wanted to understand what you imagined as the scope of the briefing. Are you mostly interested in the application of the prior TRO to the arrests the plaintiffs

have raised?

THE COURT: Well, I'll leave that to you. It may give context to the discussion, but if it's not clear, I think it's made clear. When I issued the injunction, it never occurred to me that police officers would not be bound. It never occurred to me that state attorneys or the attorney general wouldn't give direction to law enforcement so that these unfortunate arrests wouldn't happen. I had no thought that we would be having this conversation. I was prepared for Armstrong and Garcia and Arizona but not that the Florida Highway Patrol, FDLE would be acting independently.

And I am still operating under the assumption that they were doing so not deriving from malfeasance but misfeasance. They didn't know. So it is incumbent upon you to let your clients know they need to let their law enforcement partners, acting in concert with them, know about this so that they can conform and comport their behavior accordingly.

And again, these arrests could be put in context. But I'm not -- I'm looking to -- going forward to making this order meaningful and, quite frankly, to making Judge Ruiz's order meaningful because I don't want him to run into this buzz saw because I don't think -- well, I won't speak for Judge Ruiz, but I'll let him speak for me because he wrote such a wonderful order.

MR. SCHENCK: I think we understand the scope of the briefing order. We appreciate that, Your Honor.

THE COURT: Okay. With that, anything else on behalf of either the plaintiffs or the defendants?

MR. ROMAN: Two questions, Your Honor. We also get 15 pages --

THE COURT: Yes.

MR. ROMAN: -- the same as the defendants.

And second, will you be provisionally certifying the classes here?

THE COURT: I think that's something I'm going to hold until I see you on the 29th because I think by clarifying/modifying my TRO to be clear who it's covering, I don't think I need to necessarily do anything on that right now. I mean, obviously, I'm going to take that up for the final decision on injunctive relief, should I decide to enter the preliminary injunction. And since the defense and the plaintiffs are in agreement, it seems that provisional class certification is key, then likely that will be the case.

But I think in the intervening, what, 12 days or whatever, I don't think I need to go there.

MR. ROMAN: Thank you, Your Honor. Nothing further from the plaintiffs.

THE COURT: Okay. And you know what? If you could send me, obviously, a copy of the defense -- was it Oklahoma

that you said had the provisional --

MR. ROMAN: Idaho, Your Honor.

THE COURT: Idaho. It was one of the vowel states. If you could forward that, let counsel have a copy, I would appreciate that greatly.

MR. ROMAN: Yes, Your Honor.

THE COURT: Okay. Anything else on behalf of the defense?

MR. SCHENCK: Nothing further from the defense, Your Honor.

THE COURT: All right. Thank you all for being so well prepared today, and I will see you back here Tuesday, April 29th, at 1:30.

(Proceedings adjourned at 12:03 PM.)

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcription of the record of proceedings in the above-entitled matter prepared from my stenotype notes.

DATE: 20th of April, 2025

/s/Lance W. Steinbeisser
Lance W. Steinbeisser,
FCRR, RPR, FPR-C
Official Court Reporter
United States District Court
Southern District of Florida
Miami, Florida

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 25-21524-CV-WILLIAMS

FLORIDA IMMIGRANT COALITION, *et al.*,

Plaintiffs,

v.

JAMES UTHMEIER, *et al.*,

Defendants.
_____/

OMNIBUS ORDER

THIS MATTER is before the Court following the April 18, 2025 Preliminary Injunction Hearing ("***Hearing***") in this matter. (DE 48.) For the reasons set forth at the Hearing, it is **ORDERED AND ADJUDGED** as follows:

1. The Temporary Restraining Order ("***TRO***") (DE 28) is **EXTENDED** and shall remain in effect through **April 29, 2025 at 5:00 p.m.** or until further order of the Court. The TRO shall be interpreted to include among those "who are in active concert or participation with" Defendants or their officers, agents, employees, or attorneys, and thus prohibited from enforcing SB 4-C, the following: any officer or other personnel within any municipal or county police department within Florida, the Florida Department of Law Enforcement, or the Florida Highway Patrol, and any other law enforcement officer with power to enforce SB 4-C. (DE 28 at 14); *see also* Fed. R. Civ. P. 65(d)(2)(C) (including "other persons who are in active concert or participation with" the parties or the parties' officers, agents, servants, employees, and attorneys among those bound by any TRO). The TRO shall also be interpreted to prohibit any person

covered by the TRO from filing or maintaining any charge pursuant to Florida Statutes section 811.102 or 811.103.

2. Defendants shall **IMMEDIATELY** provide actual notice of the TRO to all named Defendants and their officers, agents, employees, attorneys, and any person who is in active concert or participation with them and who has not already received actual notice.
3. A Status Conference regarding the scope of the TRO/Preliminary Injunction ("***PI***") is **SET** for **April 29, 2025 at 1:30 p.m.** before the Honorable Kathleen M. Williams in Room 11-3 of the Wilkie D. Ferguson, Jr. United States Courthouse, located at 400 North Miami Avenue in Miami, Florida.
4. Defendants shall file a joint brief not exceeding fifteen (15) pages, explaining Defendants' interpretation of the proper scope of the TRO/PI by **April 23, 2025 at 12:00 p.m.** Plaintiffs shall file a joint response brief not exceeding fifteen (15) pages by **April 26, 2025 at 5:00 p.m.** Any joint reply brief by Defendants must be filed by **April 28, 2025 at 3:00 p.m.** and may not exceed five (5) pages.

DONE AND ORDERED in Chambers in Miami, Florida, on this 18th day of April, 2025.

KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

FLORIDA IMMIGRANT COALITION, *et al.*, *Plaintiffs*, v. JAMES UTHMEIER, in his official capacity as Attorney General for the State of Florida, *et al.*, *Defendants*.	No. 1:25-cv-21524-KMW

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

"From the beginning of our country, criminal law enforcement has been primarily a responsibility of the States, and that remains true today." *Kansas v. Garcia*, 589 U.S. 191, 212 (2020). Even in the immigration context, the Supreme Court has recognized that "the historic police powers of the States are not superseded unless that was the clear and manifest purpose of Congress." *Arizona v. United States*, 567 U.S. 387, 400 (2012) (cleaned up). As a result, states are not 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), just as was true at the Founding, *Mayor of New York v. Miln*, 36 U.S. (11 Pet.) 102, 132–133 (1837). Rather, states retain inherent sovereign authority to protect their citizens by aiding the enforcement of federal immigration law. So when "the Federal Government . . . prescribe[s] what it believes to be appropriate standards for the treatment of [aliens], the States may, of course, follow the federal direction." *Plyler*, 457 U.S. at 219 n.19.

Florida did nothing more in enacting SB 4-C. To aid the United States in curbing illegal immigration (and to quell the rush of fentanyl trafficking and gang violence that accompanies it), SB 4-C criminalizes the entry into Florida of those who have illegally entered the United States by evading federal inspection. Fla. Stat. §§ 811.102, 811.103. That law tracks federal law to a tee. *See* 8 U.S.C. §§ 1325(a), 1326(a)(2). It also retains common federal-law defenses and says nothing of who should be admitted or removed from the country. Just as Justice Scalia observed, Florida "has moved to protect its sovereignty—not in contradiction of federal law, but in complete compliance with it." *Arizona*, 567 U.S. at 437 (Scalia, J., concurring in part, dissenting in part). "If securing its territory in this fashion is not within the power of [Florida], we should cease referring to it as a sovereign State." *Id.*

Plaintiffs have not shown otherwise. To begin with, they lack standing and a cause of action to enforce federal immigration law. On the merits, they are wrong that Florida's law is preempted or violates the Dormant Commerce Clause. 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." *Id.* at 417. Nor does excluding illegal aliens implicate the Dormant Commerce Clause, for that act has nothing to do with state economic protectionism against sister states.

To top it off, Plaintiffs bring "the most difficult challenge to mount," *United States v. Salerno*, 481 U.S. 739, 745 (1987)—a facial challenge. That choice requires the Plaintiffs to "establish that no set of circumstances exists under which the Act would be valid." *Id.* Plaintiffs cannot meet that "heavy burden." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 200 (2008).

The Court should deny injunctive relief.

STATEMENT OF THE CASE

I. THE CRISIS AT THE SOUTHERN BORDER

Both President Trump and President Biden agree, the situation at America's border with Mexico is nothing short of a national "crisis."[1] Border Patrol consistently encounters around 2 million illegal immigrants a year who evade authorities at the border, and those are merely the individuals Border Patrol apprehended.[2] In fiscal year 2024 alone, Border Patrol seized enough fentanyl to kill every single American several times over—27,000 pounds.[3] The epidemic of illegal immigration reverberates throughout the Nation, including in Florida. Those illegal immigrants create a cost of nearly $182.1 billion nationwide, including healthcare, education, and other social

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[1] 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.

[2] U.S Customs and Border Patrol, *Southwest Land Border Encounters* (last visited Apr. 15, 2025), https://tinyurl.com/mwnx26f8.

[3] 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 Apr. 15, 2025), https://tinyurl.com/mte3r9px (explaining that 2 milligrams of fentanyl is a fatal dose for an average American); Wikipedia, *Pound (mass)* (last visited Apr. 15, 2025), https://tinyurl.com/4xc4ykc7 (there are .45359237 kilogram, or 453,592.37 milligrams, in one pound of fentanyl).

safety nets.[4] Florida itself saw record levels of illegal immigration in 2024.[5] That population strains the State fiscally to the tune of over $8 billion, leading to Florida spending $4 billion more on education and $1.6 million more on criminal law enforcement, each Floridian fronting an estimated bill of $5,000 on those effects.[6] The costs for Floridians are more than simply economic, it also cost them their lives—the flooding of fentanyl into the State, again largely fueled by the border crisis, killed 5,083 Floridians in 2022, the second-highest of any state in the Nation.[7] Yet again, that deadly potion led the State to spend more dollars and cents, as Florida led the nation with 2,089 fentanyl-seizure operations in 2023.[8]

II. SB 4-C

In 2025, the Florida Legislature passed SB 4-C. That law created two new crimes. The first provision (the entry provision) bars "unauthorized alien[s]" "18 years of age or older" from "knowingly enter[ing] or attempt[ing] to enter this state 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). 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." Fla. Stat. § 908.111(1)(d); *see id.* (Florida law "shall be interpreted consistently with any applicable federal statutes, rules, or regulations."). SB 4-C 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. Fla. Stat.

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[4] House Republican Policy Committee, *Real Life Impacts of the Border Crisis* 2 (2024), https://tinyurl.com/ycx6wkv8.

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

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

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

[8] Office of the Attorney General James Uthmeier, *VIDEO: AG Moody and FDLE Announce Third Straight Decrease in Statewide Drug Deaths, As Florida Leads Nation in Fentanyl Seizures* (July 9, 2024), https://tinyurl.com/yc7edrft.

§ 811.102(4)(a), (c). Further respecting federal law, state officers must notify federal authorities that they have arrested these unlawfully present aliens. Fla. Stat. § 811.102(7)(a).

The second provision (the reentry provision) criminalizes the entry or presence of "unauthorized alien[s]" "18 years of age or older" where the federal government has "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." Fla. Stat. § 811.103(1). Again, this provision follows federal law—which criminalizes the reentry or presence of aliens that the federal government excluded, deported, or removed or who have an ongoing order of exclusion, deportation, or removal against them. 8 U.S.C. § 1326(a). And Florida provides that an alien's entry or presence does not violate the reentry provision when the alien has express permission to enter from the United States Attorney General or "was not required to obtain such advance consent" under federal law. Fla. Stat. § 811.103(1)(a), (b).

III. FACTUAL BACKGROUND

Plaintiffs are two anonymous individuals and two organizations. DE1 ¶¶ 8–29. Plaintiffs YM and VV both allege to have "entered the United States without inspection" some years ago and currently reside in Florida. DE4-5 ¶¶ 2, 5; DE4-4 ¶¶ 2, 5–6. YM has "applied for a U visa," but the federal government has not yet resolved her application. DE4-5 ¶ 6. VV has reentered the United States after deportation, and she has not sought "to adjust [her] status" since. DE4-4 ¶¶ 6–7. Both Plaintiffs allege some vague desire to leave Florida and return: YM "generally leave[s] Florida for family vacation approximately twice a year" and "plan[s] to continue this travel going forward," DE4-5 ¶ 7, and VV "traveled to New Jersey during harvesting season to pick blueberries, and" she wants "to do so again during the next season," DE4-4 ¶ 8.

Plaintiffs Florida Immigrant Coalition (FIC) and the Farmworker Association are nonprofit organizations headquartered in Florida. DE1 ¶¶ 8, 17. FIC has individual and organizational members (including the Farmworker Association and YM). DE4-3 ¶¶ 15, 18. The Farmworker Association has individual members, including YM. DE4-2 ¶ 21. It also has a member, WA, who is not a plaintiff but who claims to have "entered the United States without inspection," and "generally travels outside of Florida on occasion for holidays." DE4-2 ¶ 20.

Plaintiffs sued Florida's Attorney General, the statewide prosecutor, and Florida's 20 state attorneys to enjoin any enforcement of SB 4-C. DE1. They also seek to certify a class to enjoin all of SB 4-C's applications. DE5. The class would reach anyone who "avoid[ed] examination or

inspection by immigration officials" and "who may now or in the future enter or attempt to enter the state of Florida," and those who may want to be in Florida "after the person has been denied admission to or excluded, deported, or removed from the United States." DE1 ¶ 61.

Plaintiffs allege that SB 4-C is preempted by federal law and violates the Dormant Commerce Clause. DE1 ¶ 68–77. They moved for a temporary restraining order and a preliminary injunction, DE4, and the Court granted the restraining order, DE28.

STANDARD OF REVIEW

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 24 (2008). To obtain a preliminary injunction, plaintiffs must show that (1) they have a substantial likelihood of success on the merits; (2) they will suffer irreparable injury absent the injunction; (3) their threatened injury outweighs the harm the injunction may cause to Defendants; and (4) the injunction would not be adverse to the public interest. *Swain v. Junior*, 961 F.3d 1276, 1284–85 (11th Cir. 2020).

ARGUMENT

I. THE PLAINTIFFS LACK STANDING TO ATTACK SB 4-C.

To have standing under Article III, plaintiffs must show injury in fact, traceability, and redressability. *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020). The injury must be "concrete and particularized" and "actual and imminent, not conjectural or hypothetical." *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). For there to be traceability and redressability to a particular defendant, a plaintiff "must show, at the very least, that the [specific] official has the authority to enforce the particular provision that he has challenged." *Support Working Animals v. Governor of Fla.*, 8 F.4th 1198, 1201 (11th Cir. 2021). And even after showing Article III standing, an organization must also show third-party standing if they raise the legal rights of others, which "allows a narrow class of litigants to assert the legal rights of others." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 393 n.5 (2024). Plaintiffs have cleared none of those hurdles.

A. The unnamed, individual Plaintiffs lack standing.

Both individual Plaintiffs lack standing. So does WA who, though not a Plaintiff, is a member of the Farmworker Association by which the organizations hope to establish standing. DE4-2 ¶ 20 (the Farmworker Association's declaration relying on injuries to WA); DE4-3 ¶ 18 (FIC's declaration relying on the Farmworker Association to establish its standing).

To start, a plaintiff lacks injury if he fails to allege that he is presently engaging, or will imminently engage, in conduct that violates the challenged statute. *See Wilson v. State Bar of Ga.*, 132 F.3d 1422, 1428–29 (11th Cir. 1998); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 564 (1992). None of the individuals identified by Plaintiffs meets that bar. WA, YM, and VV offer "merely speculative" travel wishes without any "concrete plans" to exit or enter Florida. *Lujan*, 504 U.S. at 561, 564; *see also* DE4-2 ¶ 20 (WA alleging that "[s]he generally travels outside of Florida on occasion for holidays, including Christmas and spring break, and then returns to Florida"); DE4-5 ¶ 7 (YM alleging that she "generally leave[s] Florida for family vacation approximately twice a year," and, at some unspecified future time, "plan[s] to continue this travel"); DE4-4 ¶ 8 (VV alleging that she "frequently travel[s] outside of Florida for work," "ha[s] traveled to New Jersey during harvesting season to pick blueberries," and "intend[s] to do so again during the next season" without giving any more details). And Plaintiffs offer nowhere near enough facts to show that the individuals they identify fall outside of SB 4-C's statutory defenses. DE4-2 ¶ 20 (providing only that WA "entered the United States without inspection in 2003," and saying nothing about her status with the federal government). They have thus failed to show that they are engaging, or will soon engage, in conducted proscribed by SB 4-C.

Next, a plaintiff lacks injury if he has no "legally protected interest" in the conduct he seeks to vindicate. *Lujan*, 504 U.S. at 560. A plaintiff who complains "that government action will make his criminal activity more difficult lacks standing because his interest is not legally protected." *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1093 (10th Cir. 2006) (en banc); *see also E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 764 (9th Cir. 2018) (finding that asylum-seekers did not have standing to assert a right to cross the border illegally). Here, each individual seeks to vindicate their ability to engage in unrelated illegal conduct: whether it be continuing to drive without a license, their inability to continue working without legal authorization, or their ability to obtain transportation in violation of federal and state law. DE4-4 ¶¶ 8–9 (VV seeks to work without authorization); DE4-5 ¶ 7 (YM seeks to travel out of state at an unspecified time); DE4-2 ¶ 20 (WA seeks to travel out of state at some unspecified future time). But this conduct violates laws that Plaintiffs do not challenge, so it is not legally protected. Fla. Stat. § 322.03 (making driving without a license a crime); 8 U.S.C. § 1324a(a) (making working without authorization unlawful); Fla. Stat. § 448.095 (similar); 8 U.S.C. § 1324(a)(1)(A) (barring knowing or reckless transportation of aliens); Fla. Stat. § 787.07 (similar).

Finally, Plaintiffs at least lack standing to sue *all* of the state attorneys, given that only the state attorneys where their offenses were committed could prosecute them. *See* Fla. Stat. § 910.03; *see also Support Working Animals*, 8 F.4th at 1201 (traceability and redressability requires a showing that the "official [sued] has the authority to enforce the particular provision that he has challenged"). Nor does it matter that Plaintiffs seek to represent a statewide class. As will be explained in the Defendants' response to class certification, any class action would exclude relief against additional state attorneys. *Griffin v. Dugger*, 823 F.2d 1476, 1483 (11th Cir. 1987) ("A named plaintiff in a class action who cannot establish the requisite case or controversy between himself and the defendants simply cannot seek relief for anyone—not for himself, and not for any other member of the class."); *Murthy v. Missouri*, 603 U.S. 43, 61 (2024) ("[P]laintiffs must demonstrate standing for each claim that they press" against each defendant, "and for each form of relief that they seek[.]"). As for VV, the only state attorney who could prosecute her in Immokalee, Florida, for her presence there is Amira Fox. As for YM, her failure to allege any concrete plans about her travel makes it impossible to know where she would "enter" Florida, so it is unclear which state attorney would have jurisdiction to prosecute her.

B. The organizational Plaintiffs lack standing.

An organization may show standing through either associational standing (injury to its members) or organizational standing (injury to itself). *See City of South Miami v. Governor*, 65 F.4th 631, 637 (11th Cir. 2023). Neither works for FIC or the Farmworker Association.

As for associational standing, FIC and the Farmworker Association cannot show that any of "its members would otherwise have standing to sue in their own right." *Jacobson*, 974 F.3d at 1249 (quotations omitted). None of the individuals identified—YM, VV, or WA—have standing for the reasons outlined above. And while FIC claims that the Farmworker Association is a member with its own standing, the Farmworker Association itself has not shown associational standing—the only members it has identified are WA and VV, who lack standing—and as explained next, the Farmworker Association has not shown organizational standing.

Nor can the Farmworker Association rely on organizational standing through a diversion of resources theory. The Farmworker Association does not even allege that it would have to divert resources. FIC, who claims that the Farmworker Association is one of its members, DE4-3 ¶ 18, says that its organizational members "that serve immigrants" will be forced "to divert significant

resources from existing programs." DE4-3 ¶ 20. But it does not even allege that the Farmworker Association will, and the Farmworker Association's declaration never alleges diversion. DE4-2.

Even if it did, FIC does not explain how SB 4-C "forc[es] [the Farmworker Association] to divert resources to counteract" illegal acts. *Browning*, 522 F.3d at 1165 (emphasis added). It simply concludes that SB 4-C will cause it "to divert significant resources from existing programs," DE4-3 ¶ 20, without providing any details on how SB 4-C will cause diversion, *see City of South Miami*, 65 F.4th at 639 (an organization cannot "spend its way into standing").

Nor has the Farmworker Association shown, as it must, that any injury is "closely connected to the diversion." *Id.* at 638–39. The Association must show "what harm [it] is seeking to counteract and how its diversion of resources is aimed" at preventing that harm. *Cousins v. Sch. Bd. of Orange Cnty.*, No. 6:22-cv-1312, 2023 WL 5836463, *6 (M.D. Fla. Aug. 16, 2023) (Berger, J.). But it identifies no steps that it is taking to counteract SB 4-C, nor how those steps ameliorate any alleged harms. *See id.* (noting that the plaintiff failed "to show any logical connection between" the diversion of resources and "combating the alleged injuries").

C. The organizational Plaintiffs lack third-party standing.

Article III aside, the organizational Plaintiffs have also not established third-party standing to assert the rights of illegal aliens. To do so, they must at least identify a "hindrance" that those aliens face in "protect[ing] [their] own interests." *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004). But this very case proves there is no hindrance, as two individual plaintiffs have sued. DE4-4 ¶ 5; DE4-5 ¶ 5. So third-party standing is unwarranted. *See Kowalski*, 543 U.S. at 133–34.

II. PLAINTIFFS LACK A CAUSE OF ACTION TO ENFORCE FEDERAL IMMIGRATION LAW.

1. Next up, Plaintiffs have failed to identify an express, implied, or equitable "cause of action" to enforce the federal Immigration and Nationality Act (INA). *Davis v. Passman*, 442 U.S. 228, 239 (1979). The Supremacy Clause certainly does not provide one, *see Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326 (2015), and the INA itself says nothing about any private party suing to enforce that Act, *see* 8 U.S.C. §§ 1324, 1329 (vesting enforcement in the U.S. Attorney to "prosecute every suit," whether "civil [or] criminal," "brought by the United States . . . under the provisions of this subchapter"). This express public-enforcement mechanism shuts the door on any implication that the INA empowers private parties to sue. *See In re Wild*, 994 F.3d 1244, 1255 (11th Cir. 2021) (en banc); *see also Saavedra Bruno v. Albright*, 197 F.3d 1153, 1162

(D.C. Cir. 1999) (stating that Section 1329 "mak[es] clear that district court jurisdiction founded on the immigration statute is confined to actions brought by the government").

Plaintiffs thus invoke an equitable cause of action, DE1 at 13–14, which fails because "Congress [has] displace[d] . . . equitable relief." *Armstrong*, 575 U.S. at 329. When the "fairest reading" of a statute shows that Congress intended to preclude private enforcement, parties "cannot, by invoking [courts'] equitable powers, circumvent" that statutory limit. *Id.* at 328–29.[9]

So it is here. Congress established a reticulated enforcement scheme for use by particular federal officers. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 74 (1996) (where Congress created a "detailed remedial scheme," federal courts "should hesitate before casting aside those limitations and permitting an action against a state officer based upon *Ex parte Young*"). The INA charges the Secretary of Homeland Security "with the administration and enforcement" of the INA unless another part "relate[s] to the powers, functions, and duties conferred upon" other Executive Branch officers. 8 U.S.C. § 1103(a)(1). Some examples of carveouts are the federal bars on illegal entry and reentry, which, as just noted, provide for enforcement by particular federal officers—criminal and civil suits by a U.S. Attorney. 8 U.S.C. § 1329; *see also* 8 U.S.C. §§ 1324, 1326, 1330 (providing that "fine[s], penalt[ies] or expenses imposed or incurred" under several sections of Subchapter II may be "recovered by civil suit, in the name of the United States"). Because federal law "expressly confers enforcement authority on the Secretary" and other federal officers, it "preclud[es] enforcement by" private plaintiffs. *Corey v. Rockdale Cnty.*, No. 1:22-cv-3918, 2023 WL 6242669, at *5 (N.D. Ga. Aug. 28, 2023); *see also Armstrong*, 575 U.S. at 328 ("express provision" for government enforcement "suggests that Congress intended to preclude" private enforcement).[10]

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[9] In *Georgia Latino Alliance for Human Rights v. Governor of Georgia*, the Eleventh Circuit understood the Supremacy Clause to supply a cause of action to enforce the INA, *see* 691 F.3d 1250, 1261 (11th Cir. 2012), but that analysis has been abrogated by *Armstrong*, 575 U.S. at 324–25 ("It is equally apparent that the Supremacy Clause is not the source of any federal rights and certainly does not create a cause of action." (citation omitted)).

[10] Congress also provided for limited private enforcement of the INA through the Racketeering Influence and Corrupt Organizations (RICO) Act, under which a private party may sue to recover damages for transportation and harboring offenses under the INA. 18 U.S.C. §§ 1961(1)(F), 1962, 1964(c). "Congress's decision to create a limited private cause of action" only further solidifies "that the omission of a general private right of action in the [INA] should . . . be understood as intentional." *Coal. for Competitive Elec., Dynegy, Inc. v. Zibelman*, 272 F.Supp.3d 554, 565 (S.D.N.Y. 2017) (quotation omitted).

That statutory bar is even clearer given the background principles of criminal and immigration law, where private rights and interests are at their nadir. *See Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 261 & n.8 (2011) (providing that *Ex parte Young* claims "cannot occur unless the" plaintiff "has been given a federal right of" his or her "own to vindicate . . . under the . . . statute"). Criminal prosecution is a "core executive power." *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 219 (2020). "No case during the last generation creates a private right of action to enforce a statute cast in the form of a criminal prohibition[.]" *Isr. Aircraft Indus. Ltd. v. Sanwa Bus. Credit Corp.*, 16 F.3d 198, 200–01 (7th Cir. 1994).

Private enforcement of criminal laws is particularly inappropriate. The INA, like other criminal statutes, vests enforcement in federal authorities whom Congress trusted to exercise that discretion "through a system of centralized enforcement." *Smith v. Hickenlooper*, 164 F. Supp. 3d 1286, 1292–93 (D. Colo. 2016); *see also, e.g.*, *Safe Sts. All. v. Hickenlooper*, 859 F.3d 865, 902–05 (10th Cir. 2017) (rejecting a preemption challenge to Colorado's marijuana laws because Congress displaced private enforcement of the Controlled Substances Act). That is even more so when Plaintiffs' whole theory of preemption is that immigration regulation "is exclusively a federal power." DE4 at 8 (emphasis omitted). Though they are wrong that states are entirely excluded from regulating in or near this realm, the "one voice" they propose to elevate would in any event not be theirs to control. *See Arizona*, 567 U.S. at 409–10. Congress exercised its "broad discretion" and "power over the manner of the[] implementation" of the INA by "leav[ing] the enforcement of federal law to federal actors." *Armstrong*, 575 U.S. at 325–26.

Nor does the INA even grant Plaintiffs privately enforceable, "personal rights." *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284–85 (2002). When suing in equity, the plaintiff must come armed with a federal law endowing it with privately enforceable rights. *See Safe Sts. All.*, 859 F.3d at 899–904. To do so, Plaintiffs must show that the statute is intended to bestow a personal right "in clear and unambiguous terms." *Gonzaga*, 536 U.S. at 290. The only right they identify is the right to not be regulated because of field and conflict preemption, but that is insufficient to establish a cause of action. The statute must do more than "focus on the person[s] regulated," *Alexander v. Sandoval*, 532 U.S. 275, 289 (2001); "its text must be phrased in terms of the persons benefited." *Gonzaga*, 536 U.S. at 284. Any implicit preemption is merely an effort to "maintain[] uniformity in the administration of the federal regulatory [scheme]," not to grant private rights. *Golden State*

Transit Corp. v. City of Los Angeles, 493 U.S. 103, 110–12 (1989). Nothing in the INA establishes such a right. If anything, it restricts Plaintiffs' rights by criminalizing their conduct.

2. At the very least, the organizational Plaintiffs cannot sue in equity here. Whether the organizational Plaintiffs may sue in equity depends on whether granting them relief aligns with the relief "traditionally accorded by courts of equity" at the Founding. *Grupo Mexicano de Desarrollo S.A., v. All. Bond Fund, Inc.*, 527 U.S. 308, 318–19 (1999). It does not.

As Judge Oldham recently observed, the *Ex parte Young* action is available only to private plaintiffs "to preemptively assert 'in equity . . . a defense that would otherwise have been available in the State's enforcement proceedings at law.'" *United States v. Texas*, 97 F.4th 268, 310 (5th Cir. 2024) (Oldham, J. dissenting) (quoting *Douglas v. Indep. Living Ctr. of S. Cal., Inc.*, 565 U.S. 606, 619–20 (2012) (Roberts, C.J., dissenting, joined by Scalia, Thomas, and Alito, JJ.)). *Ex parte Young* traces its roots to "anti-suit injunctions," which "[a]s classically understood," "permit potential defendants in legal actions to raise in equity a defense available at law." *Mich. Corr. Org. v. Mich. Dep't of Corr.*, 774 F.3d 895, 906 (6th Cir. 2014). That makes sense in terms of Founding-era equitable principles—a court in equity would not act unless there was "no adequate remedy at law," and that occurred when an individual had a legal defense, "enforcement actions [we]re imminent[,] . . . and the moving party lack[ed] the realistic option of violating the law once and raising its federal defenses." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381 (1992). Even if the INA did not displace private enforcement, *Ex parte Young* at most protects an individual who claims that "federal law immunizes him from state regulation." *Armstrong*, 575 U.S. at 326. In other words, it protects only those who are "direct targets of regulation." Caleb Nelson, *"Standing" and Remedial Rights in Administrative Law*, 105 Va. L. Rev. 703, 715 (2019). That is not to say that these preemption claims cannot be raised, as individual Plaintiffs may do so as a defense to a state enforcement proceeding. But the organizational Plaintiffs may not.

FIC and the Farmworker Association are not such plaintiffs. They do not preemptively raise federal preemption as "a defense that would otherwise have been available in the State's enforcement proceedings at law," *Whole Women's Health v. Jackson*, 595 U.S. 30, 53 (2021) (Thomas, J., concurring in part and dissenting in part), or otherwise seek immunity from state regulation, because they are not regulated by SB 4-C. Their claims should be rejected.

III. SB 4-C IS NOT PREEMPTED BY FEDERAL IMMIGRATION LAW.

Plaintiffs assert that SB 4-C is preempted on its face. *See* DE4 at 8–10; DE5 at 2. The scope of that challenge reflects their deliberately broad request to enjoin enforcing SB 4-C against anyone who "may now or in the future" violate the entry or reentry provisions. DE5 at 2. That ambitious choice requires them to show "that no set of circumstances exists under which the Act would be valid." *Salerno*, 481 U.S. at 745. In other words, if even one application of SB 4-C is not preempted, Plaintiffs lose. *See id.* That high standard flows from the "disfavored" nature of such broad relief. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008).

Plaintiffs attempt to meet that exacting burden through the doctrines of field preemption and conflict preemption stemming from federal immigration law. They have not come close.

A. Plaintiffs have not shown that SB 4-C is field preempted in all applications.

Field preemption occurs only in the "rare case[]" where state law "fall[s] into a field that is implicitly reserved exclusively for federal regulation." *Kansas v. Garcia*, 589 U.S. 191, 208 (2020). To establish that SB 4-C is field preempted, Plaintiffs must first identify a field that federal law has fully occupied. *Id.* Then Plaintiffs must show that SB 4-C operates within that field in all its applications. *See Salerno*, 481 U.S. at 745. They have failed at both steps.

1. 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 enforcement of state laws on the same subject." *Arizona v. United States*, 567 U.S. 387, 399 (2012). Because field preemption is strong medicine, the field must be narrowly defined. *See Hillsborough Cnty. v. Automated Med. Lab'ys*, Inc., 471 U.S. 707, 718 (1985). And even in the arena of immigration, "courts should assume that" Congress has "not superseded" the "historic police powers of the States." *Arizona*, 567 U.S. at 400.

Against that backdrop, Plaintiffs suggest that the Constitution and the INA each preempt the field of "entry, movement, and residence of aliens within the United States." DE4 at 8–9. Neither of those sources, however, supports their sweeping vision of field preemption.

Start with the Constitution. No text in the Constitution, nor any discussion from the Framing, clearly expresses an intent that only federal law may govern the "entry, movement, and residence of aliens." Plaintiffs at best ask the Court to surmise that intent from the penumbras and

emanations of the federal government's "power to establish a uniform Rule of Naturalization, its power to regulate Commerce with foreign Nations, and its broad authority over foreign affairs." DE4 at 7 n.1 (citation omitted). That is nowhere near clear enough to establish preemption.

And the Framers would never have agreed to that power grab. Far from evincing an exclusive federal authority over alien rights, early practice was to leave alien rights entirely to the states. *See* Allison Brownell Tirres, *Ownership Without Citizenship: The Creation of Noncitizen Property Rights*, 19 Mich. J. Race & L. 1, 20 (2013) (describing early practice; "the federal government's control over naturalization did not translate into control over most other alien rights, which remained the province of the states"). The text and debates over the first Naturalization Act revealed a sharp distinction between immigration and naturalization—Congress claimed exclusive authority to regulate naturalization, but it shared with the states the power to determine what rights flowed to immigrants before naturalization. *See id.* at 15–20; *see also* 1 Annals of Cong. 1162 (1790) (Representative Seney explaining that, "We can go no further than to prescribe the rule by which it can be determined who are, and who are not citizens; but we cannot say they shall be entitled to privileges in the different States"). Had the Framers thought the Constitution entrusted all immigration matters exclusively to the federal government, "[t]he delegates . . . would have rushed to the exits." *Arizona*, 567 U.S. at 436 (Scalia, J., concurring in part, dissenting in part).

Even more, Plaintiffs' all-consuming view of federal immigration power flouts a century of post-Framing history. Congress left the states with "exclusive" authority to regulate aliens for the first 100 years of the Nation, including alien travel into their sovereign lands. *Id*. at 417–21; *see* Gerald L. Neuman, *The Lost Century of American Immigration Law (1776-1875)*, 93 Colum. L. Rev. 1833, 1846–59 (1993).[11] For instance, Jefferson wrote in condemnation of the Alien and Sedition Acts "that alien friends are under the jurisdiction and protection of the laws of the state wherein they are [and] that no power over them has been delegated to the United States, nor prohibited to the individual states, distinct from their power over citizens." Kentucky Resolutions of

[11] Even before the Founding, Massachusetts, Pennsylvania, South Carolina, and Virginia prohibited the importation of persons who had ever been convicted of crime. 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, No. 1542, 1788 S.C. Acts 5; Act of Nov. 13, 1788, ch. 12, 1788 Va. Acts 9. 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, § 3, 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 348, 358.

1798, reprinted in J. Powell, *Languages of Power: A Sourcebook of Early American Constitutional History* 131 (1991). Given that history, it is no surprise that the Supreme Court "has never held that every state enactment which in any way deals with aliens" is preempted by the Constitution. *DeCanas*, 424 U.S. at 355. The "historic police powers of the States" remain even in its immigration cases. *Arizona*, 567 U.S. at 400. Indeed, except for the blip of the Alien Act of 1798, Congress did not enact any immigration statutes until the late 1800s. *Arizona*, 567 U.S. at 421 (Scalia, J., concurring in part, dissenting in part).

Plaintiffs have not clearly shown that the INA preempts their chosen field either. They claim that the "comprehensive" nature of the INA and amorphous federal interests gleaned from its text establish Congress's intent to control entirely the movement of aliens. DE4 at 8–9. But the only evidence Plaintiffs cite for that premise is the INA's "criminaliz[ation of alien] entry and reentry between ports of entry" and the transportation and harbor of those aliens. *Id.* That Congress has criminalized conduct, however, far from shows that it also foreclosed state laws on the subject. *See Garcia*, 589 U.S. at 212 ("Our federal system would be turned upside down if we were to hold that federal criminal law preempts state law whenever they overlap[.]"). Such a view would unwind countless overlapping state crimes, from manufacture and sale of narcotics, to racketeering and conspiracies, to fraud and murder. Nor is there anything inherently different about criminal laws targeted at illegal aliens. *See DeCanas*, 424 U.S. at 357 (requiring "a demonstration that complete ouster of state power . . . was the clear and manifest purpose of Congress" to field preempt state laws related to illegal immigrants). To the contrary, when the federal government has "prescribed what it believes to be appropriate standards for the treatment of [certain aliens], the States may, of course, follow the federal direction." *Plyler*, 457 U.S. at 219 n.19.

Plaintiffs also contend that the INA's alien-entry framework is even "more" comprehensive than its framework for alien registration, the sole field that the Supreme Court has held preempted by the INA. DE4 at 8–9 (citing *Arizona*, 567 U.S. at 400–03). Hardly. The INA's entry and reentry crimes are far less detailed than those for alien registration, which detail extensively what, when, how, and with whom aliens are to register. *Compare* 8 U.S.C. §§ 1325, 1326, *with* 8 U.S.C. §§ 1301–1306. And it provides that those provisions are to be enforced by the "person[s] authorized under regulations issued by the Attorney General to register aliens." 8 U.S.C. § 1304(c). The Court has consistently declined to extend *Arizona*, *see Garcia*, 589 U.S. at 210, and nothing in the alien-entry scheme warrants doing so here.

In any event, it would not matter even if the criminal alien-entry aspect of the INA were more comprehensive than the alien-registration aspect. 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). Rather, in *Arizona*, the Court relied on both the statute's comprehensiveness and the unique federal interests involved in alien registration. *Arizona*, 567 U.S. at 400–03. Plaintiffs do not identify any similarly unique federal interests in alien movement about the states, nor do the ones identified in *Arizona* translate to this context. 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). 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." *Id.* at 65. That does not apply to entry crimes, which inherently affect only *non-law-abiding* aliens, and thus have a more muted impact on "amity and commerce" between nations. *Id.* at 64–65.

In a final effort, Plaintiffs ask this Court to extend *Georgia Latino* and *Alabama*. DE4 at 9–10. There, the Eleventh Circuit held that the INA preempted the field of "prohibitions on the transportation, harboring, and inducement of unlawfully present aliens." *Georgia Latino*, 691 F.3d at 1266; *see also United States v. Alabama*, 691 F.3d 1269, 1287 (11th Cir. 2012). But transport and harboring are special because, as *Georgia Latino* noted, Congress had specifically limited state participation in those crimes to arrest under federal law. *Georgia Latino*, 691 F.3d at 1264 (citing 8 U.S.C. § 1324(c)).

2. Even if there were some field preemption beyond *Arizona*, SB 4-C is still not preempted. It is not enough that a state law touches on a preempted field, because laws with only "some indirect effect" on that field "[are] not pre-empted." *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 308 (1988). Florida's law does not directly operate in the field of "entry, admission, and removal of noncitizens," DE4 at 7, in a way that would meet the facial challenge standard. *See Salerno*, 481 U.S. at 745. Through SB 4-C, Florida primarily regulates entry into Florida—not entry into the country. Nor does it regulate admission or the discretionary process of removal—it does not determine who is to be admitted or who will be removed from the country, decisions left to the federal government. SB 4-C faithfully respects federal-law defenses when federal law authorizes the alien to "remain in the United States temporarily or permanently." Fla. Stat. § 810.102(4)(a). And where an alien travels by themselves into Florida, it does not implicate the separate field of

"prohibitions on the transportation, harboring, and inducement of unlawfully present aliens," *Georgia Latino*, 691 F.3d at 1266, because someone *other than the alien* must provide that transportation, harboring, or inducement.[12] In that case, Florida's law would have, at most, "some indirect effect" on that field insufficient for facial preemption. *Schneidewind*, 485 U.S. at 308.

B. Plaintiffs have not shown that SB 4-C is 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 (2012) (plurality opinion). Plaintiffs argue that SB 4-C impermissibly regulates immigration, creates immigration classifications, and interferes with federal enforcement discretion. None of that is true.

1. Florida has not acted "unilaterally to regulate immigration without any input from the Federal Government" to "achieve its own immigration policy," contrary to *Arizona*. DE4 at 11 (quoting *Arizona*, 567 U.S. at 408). This part of *Arizona* dealt with Arizona's Section 6, which made it a state crime for an alien to be removable. *Arizona*, 567 U.S. at 408. But the Court stressed that federal law does not make it "a crime for a removable alien to remain present in the United States" and that "the removal process is entrusted to the discretion of the Federal Government." *Id.* at 408–09; *see also INS v. Lopez–Mendoza*, 468 U.S. 1032, 1038 (1984). The process of removal thus entails unique discretionary calls by the Attorney General of whether, even if a person is technically removable, "it is appropriate to allow a foreign national to continue living in the United States." *Arizona*, 567 U.S. at 409. Those discretionary calls also implicated unique foreign-affairs interests like those in alien-registration. *Id.*

By contrast, Florida's SB 4-C mirrors federal *criminal* law and does not regulate removal. Federal law criminalizes the unlawful entry of aliens by evading inspection, 8 U.S.C. § 1325(a), and Florida regulates a subset of that criminal activity: entry into Florida after evading inspection, Fla. Stat. § 811.102(1). Federal law also criminalizes the unlawful reentry while an order of deportation, exclusion, or removal is pending. 8 U.S.C. § 1326(a). Florida, yet again, regulates only a subset of that activity: the entry into Florida after the same type of federally criminalized reentry. Fla. Stat. § 811.103(1). SB 4-C thus creates a parallel crime based on the unique harms to Floridians, causing no conflict.

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[12] To the extent *Georgia Latino* and *Alabama* are not distinguishable from this case, Defendants preserve for appeal that those cases should be overturned by the Eleventh Circuit.

2. Next, Plaintiffs argue that SB 4-C conflicts with federal law because it does not define "lawful presence" and thus creates an immigration classification. *See* DE4 at 13–14 (claiming that this term has "no general meaning in immigration law"). But SB 4-C does not deviate from federal law, and instead hinges on federal law. Even though the statute does not define what it means to be lawfully or unlawfully present, the statute "borrows from federal standards to verify lawful presence." *Estrada v. Becker*, 917 F.3d 1298, 1304 (11th Cir. 2019). As this Court noted in its TRO opinion, DE28 at 1 n.2, Florida law makes clear that the lawfulness of an alien's presence is determined "according to the terms of the federal Immigration and Nationality Act," and "shall be interpreted consistently with any applicable federal statutes, rules, or regulations," Fla. Stat. § 908.111(1)(d); *see also* Fla. Stat. § 811.101(2). Florida law also exempts individuals where the federal government has granted the "alien lawful presence . . . or discretionary relief that authorizes the unauthorized alien to remain in the United States temporarily or permanently," which is a commonsense way of saying that federal authorities have let an alien stay in the United States. Fla. Stat. § 811.102(4)(a). That does not turn on "state-created criteria," but rather "looks to federal standards to verify lawful presence." *Estrada*, 917 F.3d at 1304 (quotations omitted).

3. Finally, Plaintiffs argue that enforcement of SB 4-C conflicts with the prosecutorial discretion entrusted to federal agents over immigration crimes. DE4 at 12; *see also* DE28 at 10. But prosecutorial discretion inheres in every criminal law, so that argument would unabashedly apply to every federal crime. Yet nothing about the "overlap" in federal and state criminal law demands preemption. *Garcia*, 589 U.S. at 212. And "the possibility that federal enforcement priorities might be upset is not enough to provide a basis for preemption." *Id.* Preemption arises from "'the Laws of the United States,'" not federal officers' "criminal law enforcement priorities." *Id.*

Nor do *Georgia Latino* and *Alabama* solve this case. Those cases dealt with "transportation, harboring, and inducement of unlawfully present aliens" by other individuals—and the Eleventh Circuit was concerned with the idea that state enforcement of overlapping crimes would "threaten the uniform application of the INA," and potentially implicate foreign-policy interests unmoored from the text and structure of the INA. *Ga. Latino All. for Hum. Rights v. Governor of Ga.*, 691 F.3d 1250, 1266 (11th Cir. 2012); *see also* DE4 at 12 (pointing to vague "foreign-policy objectives" of the INA). That reasoning is inconsistent with *Garcia* and need not be further extended. 589 U.S. at 212 ("Our federal system would be turned upside down if we were to hold that federal criminal law preempts state law whenever they overlap."); *see also id.* at 202 (stating that

"brooding federal interest or appealing to a judicial policy preference" cannot establish preemption (quotations omitted)). Plaintiffs fail to show conflict preemption.

IV. SB 4-C DOES NOT VIOLATE THE DORMANT COMMERCE CLAUSE.

Plaintiffs next allege that SB 4-C violates the Dormant Commerce Clause. The Dormant Commerce Clause, at its "very core," is concerned with preventing economic discrimination between states. *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 369 (2023) (quotations omitted). It promotes interstate comity by preventing "state laws driven by . . . economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *Id.* (quotations omitted). Courts thus look to whether a law "purposely discriminate[s] against out-of-state economic interests." *Id.* at 371; *see also Or. Waste Sys., Inc. v. Dep't of Envt't Quality of State of Or.*, 511 U.S. 93, 99 (1994) (discrimination "means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter"). In doing so, courts are careful to chart the narrow course between "rebuff[ing] attempts of states to advance their own commercial interests by curtailing the movement of articles of commerce . . . [and] generally supporting their right to impose even burdensome regulations in the interest of local health and safety." *H.P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 535 (1949). Occasionally, courts look to an even "more ambitious theor[y]," *Ross*, 598 U.S. at 371, that "the burden imposed on interstate commerce" is "clearly excessive in relation to the putative local benefits," *id.* at 377 (quotations omitted). Yet that disfavored theory is merely another way of applying the Dormant Commerce Clause's core theory by "smok[ing] out a hidden protectionism." *Id.* at 379 (quotations omitted).

Florida's law has nothing to do with economic protectionism or disturbing the "national market for competition." *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 299 (1997). It does not target out-of-state economic interests on its face or in its intent, but is designed to deter the influx of illegal aliens into Florida (no matter where they might reside) and prevent the many problems—social, moral, and criminal—that would follow. *See infra* notes 14–15. In that way, Florida's law does not "benefit[]" in-state "economic interests" at the expense of "burden[ing]" "out-of-state economic interests." *Or. Waste Sys.*, 511 U.S. at 99. The unnamed Plaintiffs prove this point: Though they are Florida residents, they are subject to SB 4-C all the same. It also does not matter that SB 4-C might "have the 'practical effect of controlling' extraterritorial behavior." *Ross*, 598 U.S. at 374. Nor do the law's practical effects "disclose purposeful discrimination against out-of-

state businesses" under the Supreme Court's balancing framework. *Id.* at 379. Florida's law involves precisely the type of weighing of "economic costs (to some) against noneconomic benefits (to others)" that the Court disclaimed in *Ross*. *Id.* at 381 (plurality opinion). Florida's SB 4-C was passed "to vindicate a variety of interests, many noneconomic," and "[n]o neutral legal rule guides the way" in evaluating SB 4-C. *Id.*

Plaintiffs cite to *Edwards v. California*, 314 U.S. 160 (1941), to state that any crossing of state borders by individuals is "commerce" that a state is per se prohibited from regulating. DE4 at 16. Even if the transportation of individuals is commerce, it is one that Congress has affirmatively prohibited. 8 U.S.C. § 1325(a) (criminalizing entry into the country by evading inspection); 8 U.S.C. § 1324(a)(1)(A)(ii) (criminalizing the transportation of illegally present aliens anywhere in the country). "[T]here is no basis for concluding that the dormant [] Commerce Clause applies to commerce that violates federal law." *Texas*, 97 F.4th at 332 (Oldham, J., dissenting).

What is more, the law in *Edwards* was clearly protectionist. California banned the knowing transportation of indigent persons into the State based on the theory that "each community should care for its own indigent" and that those indigents would create "problems of . . . finance." 314 U.S. at 165–67. Further, that law barred the transportation of "indigent *non-residents*"—expressly discriminating against out-of-state economic interests. *Id.* at 174 (emphasis added). In that way, the policy of "economic isolation" in *Edwards*—a type of policy "that had plagued relations among the Colonies," *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 338 (2008) (quotations omitted)—fits neatly in the "very core" of the Dormant Commerce Clause, *Ross*, 598 U.S. at 369 (quotations omitted). By contrast, states "retain[ ] broad regulatory authority to protect the health and safety of its citizens." *Maine v. Taylor*, 477 U.S. 131, 151 (1986). Florida's law thus looks nothing like the law in *Edwards*.[13]

Finally, even if the law were discriminatory, a state may justify its law by showing that the law "serves legitimate local purposes that could not adequately be served by available

[13] In reality, Plaintiffs attempt to fit a right to interstate travel in the Dormant Commerce Clause, though the Supreme Court has recognized such a right in the Privileges and Immunities Clause and the Privileges or Immunities Clause. *See Saenz v. Roe*, 526 U.S. 489, 500–04 & n.13 (1999) (characterizing *Edwards* as vindicating the right to travel under the Privileges and Immunities and Privileges or Immunities Clauses). But those latter clauses provide rights only to "[c]itizens" and Plaintiffs cannot avoid that limitation by artfully pleading a dormant-commerce violation. U.S. Const. art. IV, § 2, cl. 1, amend. XIV, § 1.

nondiscriminatory alternatives." *Id.* That is the case here, as SB 4-C serves legitimate local benefits, and there are no less discriminatory alternatives to achieve those ends.

IV. THE BALANCE OF THE EQUITIES DO NOT FAVOR AN INJUNCTION.

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 law . . . 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. For example, traffickers "successfully smuggl[e] mass quantities of deadly illicit fentanyl past" federal agents,[14] endangering Floridians.[15]

Moreover, 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, 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. That they cannot do. *See Shondel v. McDermott*, 775 F.2d 859, 868 (7th Cir. 1985). To be clear, Defendants do not contend that a person's status as an illegal immigrant always forecloses equitable relief. Here, however, Plaintiffs seek to facilitate unrelated violations of law through this lawsuit, and that is fatal to their request for equitable relief.

CONCLUSION

The Court should deny injunctive relief.

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[14] *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.

[15] *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 James Uthmeier (Aug. 2, 2023), https://tinyurl.com/ywf9utmh.

Respectfully submitted on April 15, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by electronic service through the CM/ECF Portal on April 15, 2025, to all counsel of record.

/s/ *Robert S. Schenck*
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 25-21524-CV-WILLIAMS

FLORIDA IMMIGRANT COALITION, *et al.*,

Plaintiffs,

v.

JAMES UTHMEIER, *et al.*,

Defendants.
_____/

ORDER

THIS MATTER is before the Court on Plaintiffs' Motion for a Temporary Restraining Order ("***TRO***") and Preliminary Injunction (DE 4) ("***Motion***").[1] For the reasons set forth below, the Motion (DE 4) is **GRANTED**.

I. BACKGROUND

On February 13, 2025, Florida Senate Bill 4-C ("***S.B. 4-C***") went into effect. S.B. 4-C creates two new state law offenses: 'Illegal Entry by Adult Unauthorized Alien into This State' and 'Illegal Reentry of an Adult Unauthorized Alien.' Fla. Stat. §§ 811.102–.103. Section 811.102(1) prohibits any "unauthorized alien who is 18 years of age or older"[2] from "knowingly enter[ing] or attempt[ing] to enter" Florida "after entering the United

[1] Plaintiffs have personally served Defendants James Uthmeier, Nicholas B. Cox, and Jack Campbell. (DE 23 at 1.) Plaintiffs have conferred with Arthur I. Jacobs, who purports to represent all state attorney Defendants, and sent him copies of the Complaint, Motion for TRO, and all other filings thus far via email. (*Id.*) This, along with the facts contained within the declarations attached to Plaintiffs' Class Action Complaint (DE 1), fulfills the procedural requirements for issuance of a TRO. Fed. R. Civ. P. 65(b)(1).

[2] An "unauthorized alien" is defined as anyone unlawfully present in the United States under the Immigration and Nationality Act and any other applicable federal law. Fla. Stat. § 811.101(2) (referring to section 908.111).

States by eluding or avoiding examination or inspection by immigration officers" ("***illegal entry***"). A first conviction for illegal entry is a first-degree misdemeanor, requiring a mandatory minimum sentence of nine months' imprisonment, while subsequent convictions are felonies with escalating mandatory minimum sentences. Fla. Stat. § 811.102(1)–(3). Under subsection 811.103(1), an adult "unauthorized alien" commits a third-degree felony, if they "enter[], attempt[] to enter, or [are] at any time found in" Florida after "having been denied admission, excluded, deported, or removed or having departed the United States during the time an order of exclusion, deportation, or removal is outstanding" ("***illegal reentry***"). Importantly, the scheme requires courts to presume that "no conditions of release can reasonably assure the presence" of any individual arrested under either provision and to order their detention without bond pending disposition of the case. Fla. Stat. §§ 811.102(5), 811.103(4).

On April 2, 2025, Plaintiffs filed a Class Action Complaint (DE 1) ("***Complaint***"), seeking injunctive relief barring enforcement of S.B. 4-C by state and local officials and a declaration that the law violates the United States Constitution's Supremacy and Commerce Clauses. (DE 1 at 17.) Plaintiffs include individuals V.V. and Y.M. (collectively ("***Individual Plaintiffs***"), who allege they are at risk of arrest and prosecution under the statute, and two grassroots membership organizations, Farmworker Association of Florida, Inc. ("***FWAF***") and Florida Immigrant Coalition ("***FLIC***") (collectively "***Organizational Plaintiffs***"), which support members who are similarly at risk.[3] (*Id.* ¶¶ 8,

[3] Plaintiffs filed a Motion for Class Certification (DE 5), seeking certification of two classes with individuals potentially subject to the "illegal entry" and "illegal reentry" provisions of S.B. 4-C. (DE 5 at 1.) That motion is pending before the Court.

11–24, 26–28.) On the same day, Plaintiffs sought a TRO pausing enforcement of S.B. 4-C pending the Court's consideration of their request for a preliminary injunction. (DE 4.)

II. LEGAL STANDARD

Rule 65 of the Federal Rules of Civil Procedure authorizes courts to grant a preliminary injunction or temporary restraining order before final judgment in limited circumstances. The purpose of this injunctive relief is to "preserve the status quo until the [Court] renders a meaningful decision on the merits." *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1231 (11th Cir. 2005). The primary difference between a preliminary injunction and TRO is that a TRO "may be entered before the defendant has an adequate opportunity to respond." *Dragados USA, Inc. v. Oldcastle Infrastructure, Inc.*, No. 20-cv-20601, 2020 WL 733037, at *2 (S.D. Fla. Feb. 13, 2020). As such, the duration of a TRO is limited to fourteen days, absent an extension for good cause. Fed. R. Civ. P. 65(b)(2).

To merit a TRO, as with a preliminary injunction, Plaintiffs must show:

> (1) a substantial likelihood of success on the merits; (2) that the [TRO] is necessary to prevent irreparable injury; (3) that the threatened injury outweighs the harm the [TRO] would cause the other litigant; and (4) that the [TRO] would not be averse to the public interest.

Gissendaner v. Comm'r, Ga. Dept. of Corr., 779 F.3d 1275, 1280 (11th Cir. 2015) (quoting *Wellons v. Comm'r, Ga. Dept. of Corr.*, 754 F.3d 1260, 1263 (11th Cir. 2014)); *see also Windsor v. United States*, 379 F. App'x 912, 916–17 (11th Cir. 2010) (explaining that "the four criteria for obtaining a preliminary injunction are identical to those for issuance of a temporary restraining order"). Plaintiffs bear "the burden of persuasion to clearly establish all four of these prerequisites." *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1247 (11th Cir. 2016).

III. DISCUSSION

As a preliminary matter, the Court must address Plaintiffs' standing to seek their requested relief. *See Farmworker Ass'n of Fla. v. Moody*, 734 F. Supp. 3d 1311, 1321 (S.D. Fla. 2024) (deciding the "threshold matter" of the plaintiffs' standing before reaching the merits of their preliminary injunction request). Next, the Court will discuss why the four factors relevant to injunctive relief favor granting a TRO in this case.

A. Plaintiffs have standing to bring this action.

Plaintiffs who invoke "the jurisdiction of a federal court bear[] the burden to show '(1) an injury in fact, meaning an injury that is concrete and particularized, and actual or imminent, (2) a causal connection between the injury and the causal conduct, and (3) a likelihood that the injury will be redressed by a favorable decision.'" *CAMP Legal Def. Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 1269 (11th Cir. 2006) (quoting *Granite State Outdoor Advert., Inc. v. City of Clearwater*, 351 F.3d 1112, 1116 (11th Cir. 2003)).

"Injury in fact reflects the statutory requirement that a person be adversely affected or aggrieved, and it serves to distinguish a person with a direct stake in the outcome of a litigation—even though small—from a person with a mere interest in the problem." *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1340 (11th Cir. 2014) (quoting *United States v. Students Challenging Regul. Agency Procs.*, 412 U.S. 669, 689 n.14 (1973)). An injury-in-fact is "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (citations omitted).

1. Individual Plaintiffs

V.V. is a FWAF member who was previously deported and last reentered the United States without inspection in 2014. (DE 1 ¶ 16.) She now lives in Florida with her husband and her four U.S.-citizen children. (*Id.*) Y.M. is a FLIC member living in Florida, who entered the United States without inspection more than twenty years ago. (*Id.* ¶¶ 26–27.) Y.M. leaves Florida twice a year with her minor U.S.-citizen son who has a disability. (*Id.* ¶¶ 26–27.) Individual Plaintiffs argue that they are at imminent risk of arrest and detention as they are subject to prosecution and imprisonment under the language of S.B. 4-C. (*Id.* ¶ 59.) "When the harm alleged is prospective, as it was here, a plaintiff can satisfy the injury-in-fact requirement by showing imminent harm. While the threatened future injury cannot be merely hypothetical or conjectural, probabilistic harm is enough." *Arcia*, 772 F.3d at 1341 (citations omitted). As law enforcement agencies in Florida have already made several arrests pursuant to S.B. 4-C, the Court finds that there is a realistic probability that Individual Plaintiffs could be subject to arrest and prosecution under S.B. 4-C. It is irrelevant that they have not yet been arrested or prosecuted: "When an individual is subject to [the threatened enforcement of a law], an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). Consequently, Individual Plaintiffs have sufficiently established an injury-in-fact for standing purposes.

2. Organizational Plaintiffs

For the reasons discussed, *infra,* the Court finds that Individual Plaintiffs have standing. Therefore, it is unnecessary for the Court to engage in a full standing analysis of the claims made by Organizational Plaintiffs. *See Greater Birmingham Ministries v.*

Sec'y of State for State of Alabama, 992 F.3d 1299, 1317 (11th Cir. 2021); *see also Glassroth v. Moore*, 335 F.3d 1282, 1293 (11th Cir. 2003) ("Having concluded that those two plaintiffs have standing, we are not required to decide whether the other plaintiff . . . has standing."). *But see Farmworker Ass'n of Fla.*, 734 F. Supp. 3d at 1328 (finding farmworker association had organizational standing to challenge alien transportation law because the law's enforcement would impair the organization's ability to engage in its projects and divert resources to counteracting the law's effects).

3. Traceability & Redressability

Finally, "[w]hen traceability and redressability are at stake, the key questions are who caused the injury and how it can be remedied." *City of S. Miami v. Governor*, 65 F.4th 631, 640 (11th Cir. 2023). Here, the injury is arrest and prosecution under S.B. 4-C. Plaintiffs contend that Defendant Attorney General of Florida and the remaining Defendants are empowered to enforce S.B. 4-C. (DE 1 ¶ 30–32.) Therefore, at this juncture, Plaintiffs' threatened arrest and prosecution are traceable to Defendants based on their general authority to enforce and bring prosecutions under the criminal laws of Florida. *See Georgia Latino All. for Human Rts. v. Governor of Georgia*, 691 F.3d 1250, 1260 (11th Cir. 2012) ("***GLAHR***") (plaintiffs' risk of arrest and prosecution under criminal law was traceable to passage of the bill and redressable by an injunction).

To determine redressability, the Court focuses "on whether the *injury* that a plaintiff alleges is likely to be redressed through the litigation." *Sprint Commc'ns Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 287 (2008) (emphasis in original). "[I]t must be the effect of the court's judgment on the defendant—not an absent third party—that redresses the plaintiff's injury, whether directly or indirectly." *Lewis v. Governor of Alabama*, 944 F.3d

1287, 1301 (11th Cir. 2019) (citations omitted). Defendants are state officials tasked with the enforcement of S.B. 4-C and empowered to prosecute individuals who do not comply with the law. As Defendants' authority to enforce S.B. 4-C causes Plaintiffs' injuries, enjoining Defendants from doing so will directly redress those injuries. Put another way, Plaintiffs' requested relief—an order declaring the entry and reentry provisions of S.B. 4-C to be unlawful and enjoining Defendants' from enforcing those provisions—will directly redress Plaintiffs' reasonable fear that the challenged law will be enforced against them or their members by Defendants. Given that Plaintiffs have standing, the Court will address the remainder of the factors governing their TRO request.

B. Plaintiffs have fulfilled the criteria for issuance of a TRO

In order to obtain a TRO, Plaintiffs must establish the four prerequisites noted *supra* p. 3. The Court addresses each.

1. Likelihood of success on the merits

Plaintiffs argue S.B. 4-C violates the Supremacy Clause by creating a statutory scheme in an area exclusively reserved for the federal government that conflicts with existing federal immigration law and its enforcement. (DE 4 at 5); *see* U.S. Const. art. VI (making federal law the "supreme Law of the Land"). Plaintiffs further contend that S.B. 4-C runs afoul of the Commerce Clause's implicit limitation on states' power to restrict the interstate movement of people. (DE 4 at 14); *see* U.S. Const. art. I, § 8, cl. 3 (giving Congress the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes"). The Court agrees that, at this early stage, Plaintiffs have shown they are likely to succeed on the merits.

a. Supremacy Clause

States are preempted under the Supremacy Clause "from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance." *Arizona v. United States*, 567 U.S. 387, 399 (2012) (holding the field of alien registration is field preempted). In 1952, Congress passed the Immigration and Nationality Act ("***INA***"), 8 U.S.C. § 1101, *et seq.*, a comprehensive framework regulating the entry, presence, and removal of noncitizens. *See Patel v. Garland*, 596 U.S. 328, 331 (2022) ("Congress has comprehensively detailed the rules by which noncitizens may enter and live in the United States. When noncitizens violate those rules, Congress has provided procedures for their removal."); *GLAHR*, 691 F.3d at 1263–64 ("T]he federal government has clearly expressed more than a 'peripheral concern' with the entry, movement, and residence of aliens within the United States . . . and the breadth of [the INA] illustrates an overwhelmingly dominant federal interest in the field.") (holding Georgia's statutes criminalizing transporting, moving, harboring, or inducing an illegal alien to enter the state were field preempted); *see also* 8 U.S.C. §§ 1325, 1326 (creating a federal statutory scheme criminalizing illegal entry and reentry into the United States). Thus, the federal government has exercised its "broad, undoubted power over the subject of immigration and the status of aliens." *Arizona*, 567 U.S. at 394. As in the areas of alien registration and transportation, the INA's comprehensive regulation over noncitizen entry and reentry likely preempts any state regulation covering the field.

Provisions within S.B. 4-C that define illegal entry and reentry through reference to federal law,[4] or create affirmative defenses where the federal government has given

[4] *See supra* n.2.

an individual reprieve from deportation or removal,[5] do not save the statute. "Where Congress occupies an entire field . . . even complementary state regulation is impermissible." *Arizona*, 567 U.S. at 401; *see also United States v. Texas*, 97 F.4th 268, 286 (5th Cir. 2024) (dismissing Texas's argument that illegal reentry provisions which "mirror" the federal equivalent are permissible as "ignor[ing] the basic premise of field preemption—that States may not enter, in any respect, an area the Federal Government has reserved for itself.") (internal quotations omitted).

Moreover, "state laws are preempted when they conflict with federal law." *Arizona*, 567 U.S. at 399. This includes when compliance with both laws is a "physical impossibility[,]" but also when a challenged law simply impedes "the accomplishment and execution of the full purposes and objectives of Congress." *Id.* (first quoting *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–43 (1963) and then quoting *Hines v. Davidowitz*, 312 U.S. 52, 62 (1941)). For example, even when Arizona imposed a state law penalty for conduct already proscribed by the federal government, willful failure to complete or carry an alien registration card, the Supreme Court concluded that "[permitting] the State to impose its own penalties for the federal offenses here would conflict with the careful framework Congress adopted." *Arizona*, 567 U.S. at 402. The state could prosecute violations even when federal officials determined they would "frustrate federal policies." *Id.*; *see also GLAHR*, 691 F.3d at 1265 ("By confining the prosecution of federal immigration crimes to federal court, Congress limited the power to pursue those cases to the appropriate United States Attorney."). Further, inconsistencies between penalties under the state and federal schemes create a conflict. *Arizona*, 567

[5] *See* Fla. Stat. § 811.102(4).

U.S. at 402–03 (state laws precluding a sentence of probation conflicted with federal laws allowing probation for the same conduct).

S.B. 4-C appears to suffer from the same infirmities as the alien registration law struck down in *Arizona*. First, it gives state officials authority to prosecute illegal entry or reentry in cases where federal actors may choose not to. Even when federal officials choose to commence dual prosecutions under both laws, S.B. C-4's mandatory detention provision limits federal law enforcement discretion to recommend pre-trial release and obstructs federal courts' ability to conduct proceedings requiring defendants' presence. Additionally, S.B. 4-C requires mandatory prison sentences for state law violations where the INA allows for a fine or probation for the equivalent federal crime. *Compare* Fla. Stat. § 811.102 (mandating a minimum of a nine-month prison sentence for a first illegal entry conviction), *with* 8 U.S.C. § 1325(a) (authorizing a maximum prison sentence of six months but not mandating any incarceration upon a first improper entry).

Finally, across the country, courts have concluded that nearly identical illegal entry and reentry laws are likely preempted on both grounds by federal immigration law governing noncitizen entry. *See e.g., United States v. Iowa*, 126 F.4th 1334, 1346 (8th Cir. 2025) (affirming preliminary injunction against Iowa's illegal entry and reentry law, after holding the law conflicts "with federal law because it creates a parallel scheme of enforcement for immigration law."); *Texas*, 97 F.4th at 287–88 (holding Texas had not shown its illegal entry scheme was not both field and conflict preempted by federal law); *United States v. Oklahoma*, 739 F. Supp. 3d 985, 999 (W.D. Okla. 2024) ("[T]here is strong support for the conclusion that Congress has legislated so comprehensively in the field of noncitizen entry and reentry that it left no room for supplementary state

legislation.") (internal quotations omitted), *appeal filed*, No. 24-6144 (10th Cir. 2024); Ex Parte Temporary Restraining Order, *Idaho Org. of Res. Councils Inc. v. Labrador*, No. 25-cv-00178- AKB (D. Idaho Mar. 27, 2025) (issuing TRO against similar Idaho law), ECF No. 16.

In short, "[f]or nearly 150 years, the Supreme Court has held that the power to control immigration—the entry, admission, and removal of noncitizens—is *exclusively* a federal power." *Texas*, 97 F.4th at 278–79. Plaintiffs persuasively posit that S.B. 4-C unlawfully encroaches upon that power.

b. Commerce Clause

Plaintiffs also argue S.B. 4-C violates the Commerce Clause, which gives Congress power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const. art. I, § 8, cl 3; *see* (DE 4 at 14). That power "encompasses the movement in interstate commerce of persons as well as commodities." *United States v. Guest*, 383 U.S. 745, 758–59 (1966); *see also Edwards v. California*, 314 U.S. 160, 172 (1941) ("[I]t is settled beyond question that the transportation of persons is 'commerce', within the meaning of the" Commerce Clause). Implicit in Congress's power to regulate interstate commerce is an "implicit or 'dormant' limitation on the authority of the States to enact legislation affecting interstate commerce." *Fla. Transp. Servs., Inc. v. Miami-Dade Cnty.*, 703 F.3d 1230, 1243 (11th Cir. 2012). When a scheme "directly regulates or discriminates against interstate commerce" it will

generally be "struck down . . . without further inquiry." *Bainbridge v. Turner*, 311 F.3d 1104, 1109 (11th Cir. 2002).[6]

Here, Plaintiffs assert that S.B. C-4 facially discriminates against interstate commerce by criminalizing entry across Florida's border only by certain noncitizens. (DE 4 at 14–15.) Although the Court has determined that a TRO is appropriate based on Plaintiffs' preemption argument, it should be noted that courts nationwide have determined similar statutes violate the dormant Commerce Clause on this basis. *E.g.*, *Edwards,* 314 U.S. at 174, 177 (striking down California's ban on transportation of indigent nonresidents into the state because it had the "plain and sole function" of restricting interstate commerce); *United States v. Texas*, 719 F. Supp. 3d 640, 679 (W.D. Tex. 2024) (holding "[o]n its face, [Texas' illegal entry law] discriminates against foreign commerce," so violates the dormant Commerce Clause). Therefore, at this juncture, Plaintiffs' Commerce Clause analysis also supports their request for a TRO.

2. Irreparable injury

Plaintiffs argue that, absent an immediate pause to enforcement of S.B. 4-C, they will suffer irreparable harm by being placed at risk of arrest, prosecution, and detention under an unconstitutional state statute. (DE 4 at 16.) In their Supplemental Response, Plaintiffs note several reports documenting recent arrests pursuant to S.B. 4-C. (DE 23 at 2.) One news source quotes the Brevard County Sheriff Wayne Ivey stating his office was "seeing cases like this six to seven times a week." Space Coast Daily, First Arrest Made Under

[6] A law may be excepted from this nearly per se rule if it is shown to "advance a local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *Id.* (quoting *New Energy Co. of Indiana v. Limbach*, 486 U.S. 269, 278 (1988)). But given that S.B. 4-C basically duplicates existing federal law, it is unlikely Florida can make a showing that its state law version is necessary.

Florida's New Immigration Law Happens in Brevard County (Mar. 13, 2025), https://perma.cc/D3DQ-UNKA. As discussed, *supra* pp. 5–6, the individual Plaintiffs' declarations confirm they are at risk of arrest and prosecution given ongoing enforcement of the S.B. 4-C. Likewise, the Organizational Plaintiffs' declarations support the conclusion that a subset of their members may be susceptible to the law's enforcement. (DE 4-2 at 3–4; DE 4-3 at 3–4) (attesting to the many FWAF and FLIC members without documentation who regularly travel between Florida and other states). Because "Plaintiffs are under the threat of state prosecution for crimes that conflict with federal law," a TRO is necessary to mitigate the risk of irreparable harm from S.B. 4-C. *GLAHR*, 691 F.3d at 1269.

3. Balance of equities and public interest

For similar reasons, the balance of equities and the public interest favors granting a TRO. "These two factors merge when, as here, the government is the opposing party." *Farmworker Ass'n of Fla.,* 734 F. Supp. 3d at 1342. The harm to Defendants from briefly suspending enforcement of S.B. 4-C is minimal, especially given that similar federal provisions already exist and may be enforced against appropriate persons in Florida. More importantly, the Court has already determined Plaintiffs are likely to succeed on the merits, and Defendants have "no legitimate interest in enforcing an unconstitutional law." *Honefund.com Inc. v. Governor*, 94 F.4th 1272, 1283 (11th Cir. 2024) (internal quotations omitted).

IV. CONCLUSION

For the reasons set forth above, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiffs' Motion for a Temporary Restraining Order (DE 4) is **GRANTED**.

2. The Court **ENTERS** a TRO prohibiting Defendants and their officers, agents, employees, attorneys, and any person who are in active concert or participation with them from enforcing SB 4-C, codified as Florida Statutes sections 811.102–.103. This TRO shall last **fourteen (14) days** from the date of this Order.

3. A Preliminary Injunction Hearing is **SET** for **April 18, 2025 at 10:00 a.m.** before the Honorable Kathleen M. Williams in Room 11-3 of the Wilkie D. Ferguson, Jr. United States Courthouse, located at 400 North Miami Avenue in Miami, Florida.

DONE AND ORDERED in Chambers in Miami, Florida, on this 4th day of April, 2025.

KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

FLORIDA IMMIGRANT COALITION, *et al.*,

Plaintiffs,

v.

JAMES UTHMEIER, in his official capacity as the Attorney General of the State of Florida, *et al.*,

Defendants.

Case No. _____

EXPEDITED MOTION

PLAINTIFFS' MOTION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

Florida's new law, S.B. 4C, attempts to wrest control of immigration from the federal government. Under S.B. 4C, Florida may unilaterally arrest, prosecute, and detain large categories of noncitizens for illegal entry and reentry with no federal supervision or involvement. S.B. 4C flies in the face of well-established precedent from the Supreme Court, the Eleventh Circuit, this Court, and every other court to have considered a law like this one. For 150 years, the Supreme Court has repeatedly reaffirmed that immigration is an exclusively federal power and that states may not engage in unilateral enforcement. *See, e.g., Arizona v. United States*, 567 U.S. 387, 410 (2012). The Eleventh Circuit has repeatedly rejected similar attempts by states to set up their own versions of federal immigration crimes. *See Ga. Latino All. for Hum. Rts. v. Governor of Ga.*, 691 F.3d 1250, 1264 (11th Cir. 2012) ("*GLAHR*"); *United States v. Alabama*, 691 F.3d 1269, 1285-87 (11th Cir. 2012). And just last year, this Court enjoined another attempt by Florida to create its own immigration offense. *Farmworker Association of Florida v. Moody*, 734 F. Supp. 3d 1311, 1332 (S.D. Fla. 2024) ("*FWAF*"). Additionally, in the last year, courts across the country have unanimously rejected state entry laws like S.B. 4C. *See, e.g., United States v. Texas*, 97 F.4th 268 (5th Cir. 2024); *United States v. Iowa*, 126 F.4th 1334 (8th Cir. 2025); *United States v. Oklahoma*, 739 F. Supp. 3d 985 (W.D. Okla. 2024); *Idaho Org. of Res. Councils Inc. v. Labrador*, No. 25-cv-00178 (D. Idaho Mar. 27, 2025) (ECF No. 16).

Like those laws, S.B. 4C violates the Supremacy Clause and Commerce Clause and should be enjoined. Because it went into effect immediately upon enactment, Plaintiffs respectfully ask the Court to issue a temporary restraining order immediately to prevent S.B. 4C's enforcement while the Court considers this motion for a preliminary injunction.

BACKGROUND

A. Congress's Pervasive Regulation of Immigration

"The Government of the United States has broad, undoubted power over the subject of immigration and the status of [noncitizens]." *Arizona*, 567 U.S. at 394. In the Immigration and Nationality Act ("INA"), Congress created a pervasive system to regulate entry into and continued presence in the United States. *See generally* 8 U.S.C. §§ 1101, 1151–1382. As the Fifth Circuit observed, "[t]his system is comprehensive, complex, and national in scope." *Texas*, 97 F.4th at 285.

On the criminal side, unlawful entry and reentry into the country are federal offenses, along with various other provisions related to irregular entries. 8 U.S.C. §§ 1325, 1326; *see also, e.g., id.* §§ 1321, 1323, 1324 (criminalizing the "unauthorized landing of [noncitizens]," "unlawful bringing of [noncitizens]," and the "[b]ringing in and harboring [noncitizens]"). Unlawful entry and reentry are prosecuted in federal court, with charges brought at the discretion of federal prosecutors, subject to rules and exceptions specified by Congress. *Id.* § 1329.

On the civil side, Congress has specified categories of noncitizens who may be denied admission to the United States, 8 U.S.C. § 1182, including those who enter between ports of entry, *see id.* § 1182(a)(6). Congress has also specified which noncitizens may be detained pending a decision on whether they are to be removed. *See id.* §§ 1225, 1226. Congress has established several alternative procedures to decide whether a person who entered without inspection will be removed, including full removal proceedings with trial-like processes subject to administrative and judicial appeals, *id.* § 1229a, and expedited removal proceedings, which are a shortened process applicable to recent border crossers, *id.* § 1225(b)(1). Congress also enacted numerous protections that are available despite unlawful entry, including asylum, visas

for victims of crime and trafficking, cancellation of removal, and classification as a Special Immigrant Juvenile for noncitizens under 21 years of age, all of which may lead to permanent residency and citizenship. *Id.* §§ 1101(a)(15)(U), 1101(a)(15)(T), 1101(a)(27)(J), 1158(a)(1), 1229b(b), 1231(b)(3). Given the complexities of the immigration system, federal discretion and control are vital. *See Arizona*, 567 U.S. at 396 ("A principal feature of the removal system is the broad discretion exercised by immigration officials.").

B. Florida S.B. 4C

S.B. 4C severely intrudes on this complex and exclusively federal system by establishing two new state crimes that criminalize entry into the state. *See* S.B. 4C (codified at Fla. Stat. §§ 811.102-103)

Specifically, S.B. 4C creates a new state crime for "[i]llegal entry," which is committed where "an unauthorized alien . . . knowingly enters or attempts to enter this state after entering the United States by eluding or avoiding examination or inspection by immigration officers." Fla. Stat. § 811.102(1). Affirmative defenses are available if the federal government has granted the noncitizen "lawful presence" or "discretionary relief that authorizes the unauthorized alien to remain in the United States temporarily or permanently"; the noncitizen is "subject to relief under the Cuban Adjustment Act of 1966"; or the noncitizen's entry into the United States was not a violation of 8 U.S.C. § 1325. *Id.* § 811.102(4). A person convicted of this crime must be sentenced to a mandatory minimum of nine months in prison. *Id.* § 811.102(1). If the person has one prior conviction for this crime, the mandatory minimum is one year and one day, and if the person has two prior convictions for this crime, the mandatory minimum is two years. *Id.* § 811.102(2).

S.B. 4C also creates a new state crime for "[i]llegal reentry," which is committed where

"an unauthorized alien . . . . after having been denied admission, excluded, deported, or removed or having departed the United States during the time an order of exclusion, deportation, or removal is outstanding, thereafter enters, attempts to enter, or is at any time found in [Florida]." *Id.* § 811.103(1). There is no criminal liability if the Attorney General consented to an individual's reapplying for admission, or if such consent was not required. *Id.* A person convicted of this crime must be sentenced to a mandatory minimum of one year and one day in prison. *Id.* § 811.103(2). If the person has three or more prior convictions for a misdemeanor or a felony, the mandatory minimum is two years, and if the person has a prior conviction for a forcible felony, the mandatory minimum is five years. *Id.* § 811.103(3).

With respect to both crimes, S.B. 4C provides that, "unless release is otherwise required," the court "shall presume that no conditions of release can reasonably assure the presence of an unauthorized alien arrested for a violation of this section," and the court "must order the unauthorized alien to be detained pending the disposition of the case." *Id.* §§ 811.102(5), 811.103(4). S.B. 4C additionally provides that, upon making an arrest for illegal entry or illegal reentry, the arresting law enforcement agency shall notify Immigration and Customs Enforcement of the noncitizen's arrest and "provide any known information relating to" the noncitizen. *Id.* §§ 811.102(7)(a), 811.102(6)(a).

STANDARD OF REVIEW

A preliminary injunction is warranted if the moving party establishes: "(1) substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest." *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998).

The four criteria for obtaining a preliminary injunction are identical to those for a temporary restraining order. *See Windsor v. United States*, 379 F. App'x 912, 916-17 (11th Cir. 2010).

ARGUMENT

I. Plaintiffs Are Likely to Succeed on the Merits Because S.B. 4C Is Preempted.

S.B. 4C sets out to establish a Florida-specific immigration system. Specifically, it creates a state crime of "Illegal Entry" tied to the federal offense of unlawful entry into the United States, and a state crime of "Illegal Reentry" tied to the federal offense of unlawful reentry. Under this new system, state police, prosecutors, and judges—who are not trained to make these complex immigration determinations—will punish entry and reentry without federal control or input. But entry and continued presence are quintessentially federal fields that Florida may not regulate because they are central to the federal government's exclusive immigration authority and Congress's comprehensive immigration scheme. Moreover, S.B. 4C conflicts with federal law in numerous ways, including by usurping federal discretion and control over sensitive immigration decisions and instead giving state officials unilateral control.

A. S.B. 4C Is Preempted Because It Intrudes on the Exclusively Federal Field of Entry.

Courts may infer field preemption from either a "federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject," or "a framework of regulation 'so pervasive . . . that Congress left no room for the States to supplement it.'" *Arizona*, 567 U.S. at 399 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). When it comes to regulating entry into the United States, both alternatives are satisfied.

"Policies pertaining to the *entry* of aliens and their right to remain here are entrusted exclusively to Congress." *Arizona*, 567 U.S. at 409 (quoting *Galvan v. Press,* 347 U.S. 522, 531

(1954)) (emphasis added) (cleaned up). Ever since Congress began systematically regulating immigration, the Supreme Court has been crystal clear: Regulation of entry into the United States is an exclusively federal matter from which the States are excluded. *See, e.g.*, *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1875) ("The passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to Congress, and not to the States."); *Truax v. Raich*, 239 U.S. 33, 42 (1915) ("The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal government."); *Hines v. Davidowitz*, 312 U.S. 52, 62 & n.10 (1941) (noting the "continuous recognition by this Court" of "the supremacy of the national power . . . over immigration"); *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 419 (1948) ("The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States [and] the period they may remain," and "the states are granted no such powers"); *De Canas v. Bica*, 424 U.S. 351, 354 (1976) ("Power to regulate immigration is unquestionably exclusively a federal power."); *Plyler v. Doe*, 457 U.S. 202, 228 n.23 (1982) (recognizing that "the State has no direct interest in controlling entry into this country, that interest being one reserved by the Constitution to the Federal Government" and noting "the exclusive federal control of this Nation's borders").

That unbroken line of precedent is grounded in the principle that immigration powers are "inherent in [the] sovereignty" of the United States as a nation. *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892). The federal government's sovereign authority includes the power "to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe." *Id.*; *see also Fong Yue Ting v. United States*, 149 U.S. 698, 711 (1893); *Arizona*, 567 U.S. at 394-95. States, by contrast, are not endowed with such "powers of external sovereignty." *United States v. Curtiss-Wright Exp. Corp.*, 299

U.S. 304, 316-18 (1936).[1]

The Eleventh Circuit has thus recognized "an overwhelmingly dominant federal interest" in the field of "entry, movement, and residence of aliens within the United States." *GLAHR*, 691 F.3d at 1264. And the Fifth Circuit, which found a similar Texas law preempted, explained that: "the entry, admission, and removal of noncitizens . . . is *exclusively* a federal power." *Texas*, 97 F.4th at 278-79.

Consistent with this dominant federal interest, Congress, through the INA, has enacted a "pervasive" framework to regulate individuals' entry and presence in the United States, and particularly "unauthorized alien[s]"—the same people Florida is attempting to regulate through S.B. 4C. *Arizona*, 567 U.S. at 399. The Eleventh Circuit has accordingly recognized "[t]he comprehensive nature" of "federal statutes criminalizing the acts undertaken by aliens and those who assist them in coming to, or remaining within, the United States." *GLAHR*, 691 F.3d at 1250; *see Texas*, 97 F.4th at 286 (holding similar Texas law field preempted based on "detailed statutory scheme" governing the "unlawful entry and reentry of noncitizens," which indicates that Congress "occupies the entire field"); *Lozano v. City of Hazleton*, 724 F.3d 297, 315 (3d Cir. 2013) (explaining that the INA contains a "comprehensive scheme" concerning "the terms and conditions of admission to the country").

"The [INA's] 'central concern' is the 'entry and stay of aliens' in the United States." *Texas*, 97 F.4th at 280 (citing *DeCanas v. Bica*, 424 U.S. 351, 359 (1976)). It contains detailed rules about who can enter the country. *See, e.g.*, 8 U.S.C. §§ 1153, 1184. For people who enter the country without authorization, the federal scheme contains a variety of enforcement

[1] The federal government's exclusive authority derives from multiple constitutional sources, including its "power to establish a uniform Rule of Naturalization, its power to regulate Commerce with foreign Nations, and its broad authority over foreign affairs." *Toll v. Moreno*, 458 U.S. 1, 10 (1982) (cleaned up, citations omitted); *see also Hines*, 312 U.S. at 62.

mechanisms: Congress has criminalized entry and re-entry between ports of entry, 8 U.S.C. §§ 1325, 1326, as well as efforts to assist or facilitate entry between ports, 8 U.S.C. §§ 1323, 1324, 1327, 1328, 1329. Congress has provided a detailed set of standards and procedures to determine when people who enter without inspection may be arrested and detained by federal officials. *See, e.g.*, 8 U.S.C. §§ 1225(b), 1226(a)-(c), 1182(d)(5)(A). And Congress has frequently amended this scheme, including multiple significant amendments to the provisions most relevant here. *See United States v. Texas*, 719 F. Supp. 3d 640, 665, 665 n.12 (W.D. Tex. 2024) (noting history of "countless statutes and treaties" to support field preemption). The federal entry scheme is as complex and "pervasive" as it gets, and therefore leaves "no room for the States to supplement it." *Arizona*, 567 U.S. at 399.

The Supreme Court and the Eleventh Circuit have held similar state attempts to regulate basic immigration matters to be field preempted. In *Arizona*, the Court invalidated Section 3 of Arizona's law, which criminalized failure to carry a federal noncitizen registration form, because Congress had already occupied that field, which implicated the federal government's external sovereign authority. *Id.* at 400-03. Everything *Arizona* said about noncitizen registration applies with even greater force to the "sensitive topic of noncitizens entering the country." *Texas*, 97 F.4th at 283. The federal entry scheme squarely addresses an aspect of the federal government's external sovereignty and is at least as pervasive as the alien registration laws—if not significantly more so. And, as with registration, if a state entry law "were valid, every State could give itself independent authority to prosecute federal [entry] violations, diminishing the Federal Government's control over enforcement[,] . . . detracting from the integrated scheme of regulation created by Congress," and allowing prosecution "even in circumstances where federal officials in charge of the comprehensive scheme determine that prosecution would frustrate

federal policies." *Arizona*, 567 U.S. at 402 (cleaned up); *see also Texas*, 97 F.4th at 292 (describing *Arizona*'s concern that a state could imprison noncitizens "who federal officials determine should not be" prosecuted).

The Eleventh Circuit and courts within this district have likewise held multiple state laws to be field preempted based on the "overwhelmingly dominant interest" in the "entry, movement, and residence of aliens within the United States" and the "comprehensive nature" of federal regulation in this area." *GLAHR*, 691 F.3d at 1264 (holding that a Georgia law that prohibited, *inter alia*, transporting or moving an undocumented person was field preempted); *Alabama*, 691 F.3d at 1285-87 (similar); *FWAF*, 734 F.Supp.3d at 1332 (similar). Because S.B. 4C also attempts to regulate within the field of the "entry, movement, and residence of aliens within the United States," it is likewise preempted.

In a preempted field like this, even state laws that have "the same aim as federal law and adopt[] its substantive standards" are invalid, because the "basic premise of field preemption" is clear: "States may not enter, *in any respect*, an area the Federal Government has reserved for itself." *Arizona*, 567 U.S. at 402 (emphasis added); *see also Alabama*, 691 F.3d at 1287 (concluding that the state was "prohibited from enacting concurrent state legislation in this field of federal concern"). And here, there is a "further intrusion upon the federal scheme," *Arizona*, 567 U.S. at 402-03, because S.B. 4C's state entry crime imposes penalties that are more severe than those permitted under federal law. *Compare* Fla. Stat. §§ 811.102(1) (mandatory minimum of nine months), *with* 8 U.S.C. § 1325(a) (maximum sentence of six months). These mismatches with "federal law simply underscore the reasons for field preemption." *Arizona*, 567 U.S. at 403.

In sum, when it comes to regulating noncitizens' entry into the United States, the case for field preemption is straightforward. "Congress established a comprehensive framework to

identify *who* may enter, *how* they may enter, *where* they may enter, and *what* penalties apply for those who enter unlawfully." *Texas*, 97 F.4th at 283; *GLAHR*, 691 F.3d at 1250 (citing "comprehensive" framework of "federal statutes criminalizing the acts undertaken by aliens and those who assist them in coming to, or remaining within, the United States"). As a result of this pervasive scheme—and because for 150 years the Supreme Court has reiterated that states lack authority over such matters—no state has successfully seized the federal government's prerogatives and set up its own state-law alternative immigration system. S.B. 4C is field preempted and should be immediately enjoined.

B. S.B. 4C Is Preempted Because It Conflicts with the Federal Immigration System.

In addition to field preemption, S.B. 4C is conflict preempted because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Arizona*, 567 U.S. at 399 (cleaned up). This is true for several related reasons.

First, S.B. 4C violates *Arizona*'s core teaching that states cannot act unilaterally to regulate immigration "without any input from the Federal Government." *Arizona*, 567 U.S. at 408. Letting Florida unilaterally arrest, detain, and prosecute noncitizens for entry and reentry crimes would allow it to "achieve its own immigration policy," *id.*—a result that *Arizona* repeatedly rejects.

Section 6 of the challenged Arizona law allowed state officers to make warrantless arrests of noncitizens who were possibly removable. The Court held that the provision was preempted because it allowed "unilateral state action" that disregarded the "significant complexities involved in enforcing federal immigration law" and usurped the federal government's ability to exercise discretion and weigh competing humanitarian, foreign policy, and other considerations. *Id*. at 407-10. Section 3—the registration scheme discussed above—was similarly preempted

because (among other things) it allowed unilateral state prosecutions for what were effectively violations of federal law. Such "independent authority to prosecute" would upend the "careful framework Congress adopted," "diminish the Federal Government's control over enforcement," and "frustrate federal policies." *Id.* at 401-02 (cleaned up). Thus, the through line of the entire *Arizona* decision is that federal law does not allow "unilateral state action" in the field of immigration enforcement. *Id.* at 410; *see also Texas*, 97 F.4th at 289-90; *United States v. Texas*, 586 F. Supp. 3d 574, 583-84 (W.D. Tex. 2022) (enjoining state executive order for this reason). And if unilateral *arrests* alone were enough for preemption in *Arizona*, then unilateral arrests, prosecutions, and detention under S.B. 4C must be preempted as well.

Second, S.B. 4C frustrates Congress's statutory scheme by preventing federal authorities from balancing a range of interests in deciding how to process noncitizens who enter the United States. A "principal feature" of the immigration system is the "broad discretion" Congress gave to federal officials. *Arizona*, 567 U.S. at 396. Specifically, Congress has provided federal Executive Branch officials a range of tools to address noncitizens who enter without legal authorization, including criminal charges under 8 U.S.C. §§ 1325 or 1326. *See id.* at 395-96, 409. "By confining the prosecution of federal immigration crimes to federal court, Congress limited the power to pursue those cases to the appropriate United States Attorney." *GLAHR*, 691 F.3d at 1265. Such federal discretion is critical because it "implicates not only 'normal domestic law enforcement priorities' but also 'foreign-policy objectives,'" and "immediate human concerns." *United States v. Texas*, 599 U.S. 670, 679 (2023) (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 490-91 (1999)); *see also Arizona*, 567 U.S. at 395-96.

S.B. 4C takes away this critical federal discretion. Indeed, under S.B. 4C, Florida has "the power to bring criminal charges against individuals for violating a federal law even in

circumstances where federal officials in charge of the comprehensive scheme determine that the prosecution would frustrate federal policies," *id.* at 402, harm relations with a foreign country, undermine humanitarian protections, jeopardize a criminal investigation, or conflict with our international obligations. *Id.* at 396-97, 408 (citing these as reasons why unilateral state action is preempted); *see also GLAHR*, 691 F.3d at 1265 (similar). S.B. 4C thus casts aside the "federal concerns [and] the priorities that Congress has explicitly granted executive agencies the authority to establish" with respect to enforcement of the Nation's immigration laws. *Id.* at 1265. Indeed, as the Eleventh Circuit has observed, "[e]ach time a state enacts its own [law] parallel to the INA, the federal government loses 'control over enforcement of the INA, thereby 'further detract[ing] from the integrated scheme of regulation created by Congress.'" *Id.* at 1266 (warning of "fifty individual attempts to regulate immigration-related matters"). For these reasons, the Eleventh Circuit has concluded that similar laws allowing states to unilaterally enforce immigration law were conflict preempted. *Id*. at 1266-67. The same reasoning applies to S.B. 4C.

Third, there are multiple "inconsistenc[ies] between" S.B. 4C's entry and reentry crimes "and federal law," *Arizona*, 567 U.S. at 402-03. Indeed, S.B. 4C "creates a new crime unparalleled in the federal scheme." *GLAHR*, 691 F.3d at 1266. Although federal law prohibits a noncitizen from entering the United States between ports of entry, 8 U.S.C. § 1325, "[o]nce inside the territory . . . it is not (and has never been) a federal crime . . . to migrate into another state," *GLAHR*, 691 F.3d at 1266. However, S.B. 4C makes it a crime to knowingly enter or attempt to enter Florida. Fla. Sta. § 811.102(1). As the Eleventh Circuit held with respect to Georgia and Alabama's attempts to regulate the transportation of noncitizens, "such additional regulation conflicts with federal law" even where state officials may "argue that the objectives of

federal law and [state law] are the same." *GLAHR*, 691 F.3d at 1266; *see also Alabama*, 691 F.3d at 1287 (quoting *Hines*, 312 U.S. at 66-67) (holding Alabama law to be conflict preempted because it "mandates enforcement of 'additional or auxiliary regulations' that the INA does not contemplate"). The inconsistencies between S.B. 4C and federal law are underscored by S.B. 4C's sentencing scheme, which requires a mandatory minimum sentence of nine months imprisonment'—three months longer than the maximum sentence for the equivalent federal crime. Fla. Sta. § 811.102(1). As a result of these inconsistencies, S.B. 4C is conflict preempted. *See Arizona*, 567 U.S. at 402-03 (holding Section 3 of Arizona law to be preempted based on "inconsistency between § 3 and federal law with respect to penalties"); *GLAHR*, 691 F.3d at 1266; *Alabama*, 691 F.3d at 1287.

Fourth, S.B. 4C overrides Congress's intent by granting state officials authority to make decisions regarding a noncitizen's immigration status. "The federal government alone . . . has the power to classify non-citizens." *Villas at Parkside Partners v. City of Farmers Branch, Tex.*, 726 F.3d 524, 536 (5th Cir. 2013) (en banc) (citing *Arizona*, 567 U.S. at 407-09). Given the "significant complexities involved in enforcing federal immigration law," Congress has entrusted the process to "federal officers who have received training." *Id.* at 408-09. Yet, S.B. 4C places state officials in the "impermissible position" of enforcing state law "based on their immigration status determinations without federal direction and supervision." *Farmers Branch*, 726 F.3d at 532 (citing *Arizona*, 567 U.S. at 413).

Under S.B. 4C, state officials untrained in immigration law are tasked with deciding whether "[t]he Federal Government has granted . . . lawful presence in the United States." Fla. Sta. § 811.103(4). That term has no general meaning in immigration law that applies to the question of whether a noncitizen should be permitted to enter or remain in the United States;

rather, those questions are answered through federal removal proceedings as well as Executive discretion. And with no federal "definition that would be applicable" in this context, S.B. 4C "open[s] the door to conflicting state and federal rulings." *Farmers Branch*, 726 F.3d at 533, 536. S.B. 4C similarly requires state officials to make other determinations about federal immigration law that may conflict with federal determinations. *See, e.g.,* Fla. Sta. § 811.103(4)(c) (whether exceptions to 8 U.S.C. § 1326(a) apply); *id.* § 811.103(1) (whether someone was "denied admission" or departed while "an order of exclusion, deportation, or removal is outstanding").

II. Plaintiffs Are Likely to Succeed on the Merits Because S.B. 4C Violates the Commerce Clause.

The Constitution provides that Congress may "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const. art. I, § 8, cl. 3. The Commerce Clause also has a dormant component that prevents a State "from retreating into economic isolation" by passing laws that discriminate against interstate commerce. *Dep't of Revenue v. Davis*, 553 U.S. 328, 338 (2008) (citation omitted); *see Ore. Waste Sys., Inc. v. Dep't of Env't Quality*, 511 U.S. 93, 99 (1994). "The clearest example of [such] legislation is a law that overtly blocks the flow of interstate commerce at a State's borders." *City of Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978); *see also Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 521 (1935) (holding that states cannot "set a barrier to traffic between one state and another"). The Supreme Court has thus repeatedly invalidated laws that constitute an "attempt by one State to isolate itself from a problem common to many by erecting a barrier against the movement of interstate trade." *Philadelphia*, 437 U.S. at 628; *see id.* at 627-28 (collecting cases).

"[P]recedents firmly establish[] that the federal commerce power surely encompasses the movement in interstate commerce of *persons* as well as commodities." *United States v. Guest*,

383 U.S. 745, 758-59 (1966) (emphasis added). Thus, it is interstate commerce for a person to travel from one state to another. *Covington & C. Bridge Co. v. Kentucky*, 154 U.S. 204, 218 (1894) (explaining that "to travel in person from Cincinnati to Covington" constitutes interstate commerce); *Hoke v. United States*, 227 U.S. 308, 320 (1913) (similar).

Recognizing that the movement of persons into and out of a state is interstate commerce, the Supreme Court held in *Edwards v. California*, 314 U.S. 160 (1941) that the Commerce Clause was violated where California attempted to "fenc[e] out indigent immigrants"—that is, people seeking to move there from out of state. *Philadelphia*, 437 U.S. at 627 (citing *Edwards*, 314 U.S. at 173-74 (1941)). There, California "assert[ed] that the huge influx of migrants into California in recent years has resulted in problems of health, morals, and especially finance." *Id.* at 173. California thus contended "that a State may close its borders to the interstate movement of paupers." Brief for Respondent at 2, *Edwards v. California*, 314 U.S. 160 (1941) (No. 588), 1941 WL 52964, at *2. But the Supreme Court concluded that California's statute violated the Commerce Clause's "prohibition against attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders." *Edwards*, 314 U.S. at 173.

So too here. S.B. 4C "overtly blocks the flow of interstate commerce at a State's borders," *Philadelphia*, 437 U.S. at 624, by banning certain noncitizens—namely those who irregularly entered the United States—from the State of Florida. Because S.B. 4C discriminates against interstate commerce by banning certain categories of immigrants from entering Florida, S.B. 4C "is virtually per se invalid" under the Commerce Clause. *Ore. Waste Sys., Inc.*, 511 U.S. at 99. S.B. 4C thus violates the Commerce Clause. *See United States v. Texas*, 719 F. Supp. 3d at 678 (concluding that Texas's illegal entry and reentry law violated the Dormant Commerce

Clause "because it regulates the movement of noncitizens across [a] . . . border").

III. Plaintiffs Will Suffer Irreparable Injury Absent an Injunction.

Absent an injunction, Plaintiffs will suffer irreparable harm by being placed at risk of arrest, prosecution, and detention under a state statute preempted by federal law.

The Eleventh Circuit has held that irreparable harm exists where, as here, "[p]laintiffs are under the threat of state prosecution for crimes that conflict with federal law." *GLAHR*, 691 F.3d at 1269. This Court has come to the same conclusion, recognizing that "the threat of criminal prosecution" under a preempted state law "constitutes irreparable harm for purposes of a preliminary injunction. *FWAF*, 734 F. Supp. 3d at 1338 (internal quotation marks omitted); *see also, e.g., Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (similar); *Ga. Latino All. for Hum. Rts. v. Deal*, 793 F. Supp. 2d 1317, 1339 (N.D. Ga. 2011), *aff'd in part, rev'd in part sub. nom. Ga. Latino All. for Hum. Rts. v. Governor of Ga.*, 691 F.3d 1250 (11th Cir. 2012) (similar); *Villas at Parkside Partners v. City of Farmers Branch*, 577 F. Supp. 2d 858, 878 (N.D. Tex. 2008), aff'd 675 F.3d 802 (5th Cir. 2012), *aff'd en banc* 726 F.3d 524, 536 (5th Cir. 2013) (similar).

Since enacting S.B. 4C, law enforcement agencies in Florida have already made several arrests pursuant to these laws.[2] Plaintiffs are at risk of being next. Because Plaintiffs and their members are under the threat of state prosecution for these crimes, Plaintiffs will suffer irreparable injury absent an injunction.

IV. The Balance of Equities and Public Interest Support an Injunction.

The balance of equities tips decisively in favor of the Plaintiffs, and an injunction is strongly in the public interest. In contrast to the real and severe harms faced by Plaintiffs, the

[2] *See, e.g.*, @FLSBIE X (Mar. 19, 2025, 3:45 PM), https://perma.cc/T47H-42GZ (stating that noncitizens had been arrested under S.B. 4C).

State has no legitimate interest in enforcing an unconstitutional law or regulating in an exclusively federal arena. *Alabama*, 691 F.3d at 1301 ("[W]e discern no harm from the state's nonenforcement of invalid legislation"); *see also Trans World Airlines, Inc. v. Mattox*, 897 F.2d 773, 784 (5th Cir. 1990) (states faced no injury from injunction of preempted regulation).

The public interest also clearly favors an injunction. States' "[f]rustration of federal statutes and prerogatives [is] not in the public interest." *Alabama*, 691 F.3d at 1301; *GLAHR*, 691 F.3d at 1269 (concluding that "enforcement of a state law at odds with the federal immigration scheme is neither benign nor equitable"); *Texas*, 719 F.Supp.3d at 698-99 (same). That is particularly so where state action invades federal domains and interferes with federal foreign relations. *See, e.g.*, *Odebrecht Constr., Inc. v. Sec'y, Fla. Dep't of Transp.*, 715 F.3d 1268, 1290 (11th Cir. 2013).

Additionally, S.B. 4C will erode the public trust that law enforcement has worked to create with migrant communities that is integral to public safety. *See Texas*, 719 F.Supp.3d at 698 ("Because SB 4 authorizes state police officers to arrest many unauthorized noncitizens, victims of abuse or human trafficking will risk arrest and removal if they report their crimes," making "noncitizen crime victims less likely to report violent crimes."); *Make the Rd. N.Y. v. Pompeo*, 475 F. Supp. 3d 232, 270 (S.D.N.Y. 2020) (enjoining public charge rule due to its chilling effect on immigrants seeking services).

V. This Court Should Grant an Injunction That Extends to All Members of the Provisional Class.

Plaintiffs have concurrently filed a motion for class certification establishing their compliance with the requirements of Rule 23. Plaintiffs reincorporate those arguments here and request this Court issue provisional class certification. This Court should grant provisional class certification and issue a temporary restraining order and preliminary injunction that protects all

members of the provisional class, as courts regularly do in these circumstances. *See Tefel v. Reno*, 972 F. Supp. 608, 618 (S.D. Fla. 1997) (granting temporary restraining order and provisional class certification); *Whitaker v. Perdue*, No. 4:06-cv-0140-CC, 2006 WL 8553737, at *1 (N.D. Ga. June 29, 2006) (similar); *Carrillo v. Schneider Logistics, Inc.*, 2012 WL 556309, at *9 (C.D. Cal. Jan. 31, 2012) (courts "routinely grant provisional class certification for purposes of entering injunctive relief"), *aff'd*, 501 F. App'x 713 (9th Cir. 2012); *Al Otro Lado v. Wolf*, 952 F.3d 999, 1005 n.4 (9th Cir. 2020) (approving class certification for purposes of entering injunctive relief); *see also Georgia v President of the U.S.*, 46 F.4th 1283, 1306 (11th Cir. 2022) (citing "class certification under Rule 23" as a mechanism by which "nonparties with similar interests" may "seek the protection of injunctive relief").

Even without a class, a statewide injunction would still be necessary to protect the Plaintiffs. The Eleventh Circuit has explained that enjoining a policy in full is warranted "where it is necessary to provide complete relief to the plaintiffs [or] to protect similarly situated nonparties, . . . where the plaintiffs are dispersed throughout the United States, when immigration law is implicated, or when certain types of unconstitutionality are found." *Florida v. Dep't of Health & Hum. Servs.*, 19 F.4th 1271, 1282 (11th Cir. 2021). All those factors are present in this case. A statewide injunction is necessary to provide complete relief to the plaintiffs in this case. Indeed, one Plaintiff, FLIC, not only has dozens of individual members but also has 85 member organizations located across the state that will be affected by S.B. 4C; another Plaintiff, FWAF, has thousands of members statewide. Additionally, as the Eleventh Circuit has recognized, the need for a universal injunction is strong where, as here, "immigration law is implicated, or when certain types of unconstitutionality are found." *Florida*, 19 F.4th at 1282; *see also GLAHR*, 691 F.3d at 1269 (affirming statewide injunction in preemption case).

Thus, the Court should issue statewide relief.

VI. Bond Should Be Waived.

The Court should dispense with any bond requirement in granting Plaintiffs classwide interim relief. "[I]t is well-established that the amount of security required by [Rule 65(c)] is a matter within the discretion of the trial court, and the court may elect to require no security at all." *BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Servs.*, LLC, 425 F.3d 964, 971 (11th Cir. 2005) (internal citation omitted); *see also Carillon Importers, Ltd. v. Frank Pesce Int'l Grp. Ltd.*, 112 F.3d 1125, 1127 (11th Cir. 1997) ("The amount of an injunction bond is within the sound discretion of the district court."). This is especially true where, as in this case, "demanding a bond from the party seeking the injunction would injure the constitutional rights of the party or the public[.]" *Univ. Books & Videos, Inc. v. Metro. Dade Cnty.*, 33 F. Supp. 2d 1364, 1374 (S.D. Fla. 1999) (internal citation omitted). Plaintiffs have concurrently filed a motion for class certification establishing their compliance with the requirements

CONCLUSION

For the foregoing reasons, the Court should issue a temporary restraining order to a provisionally certified class and set a hearing to consider the motion for a preliminary injunction.

Date: April 2, 2025

Respectfully submitted,

/s/ Amy Godshall

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** Motion pro hac vice forthcoming*

Attorneys for Plaintiffs

DECLARATION OF Y.M.

I, Y.M., hereby declare under the penalty of perjury under the laws of the United States of America:

1. I make this declaration based on my personal knowledge, except where I have indicated otherwise. If called as a witness, I could and would testify competently and truthfully to these matters.
2. I am a citizen of Honduras. I am 40 years old. I currently live in Gainesville, Florida. I am a member of the Florida Immigrant Coalition.
3. I live with my 15-year-old son, who is a United States citizen. My son has developmental delays and has received speech therapy since he was 3 years old.
4. I am the sole caretaker for my son. I provide him with financial, emotional and other support.
5. I entered the United States without inspection when I was 17 years old. I have not left the United States since that time.
6. I applied for a U visa in approximately 2022 based on the abuse that my son's father perpetrated against me. I am currently waiting for my application to be adjudicated.

7. I generally leave Florida for family vacation approximately twice a year. For example, we recently traveled to Georgia and came back to Florida. I plan to continue this travel going forward.
8. I worry that officers might arrest and detain me for violating S.B. 4C. If I am arrested and detained under S.B. 4C, I fear that I won't be able to take care of my son, who relies on me to take care of him. It would be devastating not to be able to be there for him.
9. I do not want my name to become public with this lawsuit as I fear that revealing my identity will create a risk of retaliation by federal, state, or local law enforcement officials and may result in my arrest, detention, and separation from my son. I also fear that my son's father may retaliate against me if he learns the details of my U visa application. I am also very worried about the social stigma and harassment my son and I might face if details of our identities, personal lives, medical conditions, and immigration history are made public.

I declare under penalty of perjury under the laws of the United States of America that the information provided above is true and correct.

Executed on April 2, 2025 in Gainesville, Florida

_____

Y.M.

DECLARATION OF V.V.

I, V.V., hereby declare under the penalty of perjury under the laws of the United States of America:

1. I make this declaration based on my personal knowledge, except where I have indicated otherwise. If called as a witness, I could and would testify competently and truthfully to these matters.
2. I am a citizen of Guatemala. I am 35 years old. I currently live in Immokalee, Florida.
3. I live with my husband and my four U.S.-citizen children, who are 1, 3, 7, and 14 years old.
4. I am a member of Farmworker Association of Florida, Inc. and of Florida Immigrant Coalition.
5. I entered the United States without inspection for the first time in 2005. Soon after that, I was detained and deported.
6. My latest entrance without inspection into the United States was in 2014. I have lived in the country continuously since then.
7. I currently have no application to adjust my status in the United States.
8. I frequently travel outside of Florida for work. For instance, I have traveled to New Jersey during harvesting season to pick blueberries, and I intend to do so again during the next season.

9. I am worried that officers might arrest and detain me for violating S.B. 4C. I was previously deported and reentered the United States without inspection or permission by the U.S. government. As explained above, I also travel outside of Florida for work, but I always intend to return to the state where my family lives.

10. I do not want my name to become public with this lawsuit as I fear that revealing my identity will create a risk of retaliation by federal, state, or local law enforcement officials and may result in my arrest and detention.

11. I am also deeply concerned about the social stigma and harassment I may face if details about my identity, personal life, and immigration history become public. I am especially worried for my children, all of whom are minors, who I fear may also be targeted and harassed. I have heard that some immigrants have been recently targeted by federal, state, and local officials because of their speech and participation in litigation.

I declare under penalty of perjury under the laws of the United States of America that the information provided above is true and correct.

Executed on April 1, 2025, in Immokalee, Florida

V.V.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

FLORIDA IMMIGRANT COALITION; FARMWORKER ASSOCIATION OF FLORIDA, INC.; Y.M.; and V.V.,

Plaintiffs,

v.

JAMES UTHMEIER, in his official capacity as the Attorney General of the State of Florida; NICHOLAS B. COX, in his official capacity as the Florida Statewide Prosecutor; GINGER BOWDEN MADDEN, in her official capacity as State Attorney for the First Judicial Circuit of Florida; JACK CAMPBELL, in his official capacity as State Attorney for the Second Judicial Circuit of Florida; JOHN DURRETT, in his official capacity as State Attorney for the Third Judicial Circuit of Florida; MELISSA NELSON, in her official capacity as State Attorney for the Fourth Judicial Circuit of Florida; WILLIAM GLADSON, in his official capacity as State Attorney for the Fifth Judicial District of Florida; BRUCE BARTLETT, in his official capacity as State Attorney for the Sixth Judicial Circuit of Florida; R.J. LARIZZA, in his official capacity as State Attorney for the Seventh Judicial Circuit of Florida; BRIAN S. KRAMER, in his official capacity as State Attorney for the Eighth Judicial Circuit of Florida; MONIQUE H. WORRELL, in her official capacity as State Attorney for the Ninth Judicial Circuit of Florida; BRIAN HAAS, in his official capacity as State Attorney for the Tenth Judicial Circuit of Florida; KATHERINE FERNANDEZ RUNDLE, in her official capacity as State Attorney for the Eleventh Judicial Circuit of Florida; ED BRODSKY, in his official capacity as State Attorney for the Twelfth

Case No. _____

CLASS ACTION COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Judicial Circuit of Florida; SUSAN S. LOPEZ, in her official capacity as State Attorney for the Thirteenth Judicial Circuit of Florida; LARRY BASFORD, in his official capacity as State Attorney for the Fourteenth Judicial Circuit of Florida; ALEXCIA COX, in her official capacity as State Attorney for the Fifteenth Judicial Circuit of Florida; DENNIS W. WARD, in his official capacity as State Attorney for the Sixteenth Judicial Circuit of Florida; HAROLD F. PRYOR, in his official capacity as State Attorney for the Seventeenth Judicial Circuit of Florida; WILLIAM SCHEINER, in his official capacity as State Attorney for the Eighteenth Judicial Circuit of Florida; THOMAS BAKKEDAHL, in his official capacity as State Attorney for the Nineteenth Judicial Circuit of Florida; and AMIRA D. FOX, in her official capacity as State Attorney for the Twentieth Judicial Circuit of Florida,

Defendants.

INTRODUCTION

1. This action challenges Florida's Senate Bill 4-C ("S.B. 4C"), now codified at Fla. Stat. §§ 811.101-.103 (2025), which purports to give Florida state officials unprecedented power to arrest, detain, and prosecute noncitizens in the State of Florida. Under this novel system, the State of Florida has created its own immigration crimes, completely outside the federal immigration system. State police will arrest noncitizens for these entry and re-entry crimes; state prosecutors will bring charges in state courts; and state judges will determine guilt and impose sentences. The federal government has no control over, nor any role at all in, these arrests and prosecutions.

2. S.B. 4C violates the Supremacy Clause of the United States Constitution. Immigration is a quintessentially federal authority. Congress has created a carefully calibrated immigration system over time, engaging in debate and grappling with nuances to produce the detailed provisions governing people's entry into the United States and their right to remain here. And Congress placed all the relevant tools and decision-making authority in the hands of federal officials—in keeping with the federal government's well established exclusive immigration powers and the sensitive foreign policy implications of these powers.

3. S.B. 4C jettisons this system, grasping control over immigration from the federal government and giving State officers the power to prosecute immigration crimes on their own. In doing so, S.B. 4C declares the State off-limits to entire categories of immigrants, many of whom have or are seeking federal permission to be in the United States.

4. S.B. 4C also violates the Commerce Clause because it impermissibly regulates people's entry into Florida, and it imposes unacceptable burdens on interstate and foreign commerce.

5. Plaintiffs hereby file this complaint for declaratory and permanent injunctive relief. Plaintiffs will seek a temporary restraining order and a preliminary injunction to enjoin

enforcement of S.B. 4C immediately.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

7. Venue is proper in the Southern District of Florida because a substantial portion of the relevant events occurred or will occur in the District and a substantial number of Plaintiffs are located in the District. 28 U.S.C. § 1391(b). Defendants are sued in their official capacity. Each Defendant resides within the State of Florida.

PARTIES

A. Plaintiffs

8. Plaintiff Farmworker Association of Florida, Inc. ("FWAF") is a non-profit organization with headquarters in Apopka, Florida and offices throughout the state, including in Homestead, Fellsmere, Immokalee, and Pierson.

9. FWAF is a grassroots and community-based membership organization with nearly 12,000 members.

10. FWAF's mission is to support and to build power among farmworkers and rural low-income communities. FWAF's programs focus primarily on encouraging farmworkers' civic participation, building farmworker coalitions, supporting workers' rights, improving working conditions, advocating for immigrants' rights, and safeguarding farmworkers' health and safety.

11. FWAF serves seasonal workers, most of whom are immigrants who travel to Florida with the seasons to harvest crops. To do so, FWAF's members travel back and forth between Florida, Georgia, and Alabama, crossing back into Florida multiple times per year.

12. FWAF's members include individuals who would be subject to prosecution under S.B. 4C. They will be directly affected by the disruption, uncertainty, and fear created by S.B. 4C.

13. Many of these members entered the United States without inspection and now have a wide range of immigration statuses and histories. For example, FWAF members include: naturalized citizens, asylees, lawful permanent residents ("LPR"), humanitarian parole recipients, holders of a visa for temporary agricultural workers ("H-2A visa"), recipients of Deferred Action for Childhood Arrivals ("DACA"), holders of Temporary Protected Status ("TPS"), recipients of Special Immigrant Juvenile Status ("SIJS"), former unaccompanied minors who were released to relatives or sponsors and were permitted to stay in the United States under the custody of the Office of Refugee Resettlement ("ORR"), federal protection beneficiaries, such as persons covered under the Violence Against Women Act ("VAWA"), holders of a visa for Victims of Human Trafficking ("T visa"), holders of a visa for Victims of Criminal Activity ("U visa"), and persons possessing orders to withhold and/or defer their removal.

14. FWAF members also include people who have submitted applications for a wide range of immigration benefits and relief that have yet to be resolved, people who are currently in removal proceedings, people who have been released from federal custody with and without federal notices to appear in immigration court, and people who entered unlawfully and have not subsequently had contact with federal immigration authorities.

15. FWAF member W.A. is a 36-year-old national of Mexico who lives in Apopka, Florida. W.A. lives with her two U.S. citizen children, who are 8 and 13. She entered the United States without inspection in 2003, when she was 17 years old, and has lived in the country continuously since then. W.A. generally travels outside of Florida on occasion for holidays, including Christmas and spring break, and then returns to Florida. She fears being arrested under S.B. 4C's Illegal Entry provision and fears having to be separated from her children.

16. Individual Plaintiff V.V. is a 35-year-old national of Guatemala who lives in Immokalee,

Florida and is a member of FWAF. She lives with her husband and her U.S.-citizen children, who are 1, 3, 7, and 14 years old. V.V. was previously deported, and she last reentered the United States without inspection in 2014. She fears being arrested under S.B. 4C's Illegal Reentry provision and is deeply concerned about being separated from her husband and U.S.-citizen children.

17. Plaintiff Florida Immigrant Coalition ("FLIC") is a non-profit organization with headquarters in Miami, Florida and team members throughout the state, including in Broward, Palm Beach, Orange, Osceola, and Duval.

18. FLIC is a grassroots and community-based membership organization with nearly more than 100 individual members and 85 member organizations.

19. FLIC's mission is to grow the connection, capacity, and consciousness of communities to strengthen pro-immigrant power in Florida. FLIC is dedicated to strengthening community ties, enhancing capabilities, and raising awareness to increase the impact of pro-immigrant initiatives across Florida that help our neighbors, community, and friends.

20. FLIC's members travel back and forth between Florida and other states for myriad reasons, including work, visits to family members, and travel.

21. FLIC's members include individuals who would be subject to prosecution under S.B. 4C. They will be directly affected by the disruption, uncertainty, and fear created by S.B. 4C.

22. Many of these members entered the United States unlawfully and now have a wide range of immigration statuses and histories. For example, FLIC members include: naturalized citizens, asylees, LPRs, humanitarian parole recipients, H-2A visa holders, recipients of DACA, TPS holders, recipients of SIJS, former unaccompanied minors who were released to relatives or sponsors and were permitted to stay in the U.S. under the custody of ORR, federal protection

beneficiaries, such as persons covered under VAWA, holders of T visas, holders of U visas, and persons possessing orders to withhold and/or defer their removal.

23. FLIC members also include people who have submitted applications for a wide range of immigration benefits and relief that have yet to be resolved, people who are currently in removal proceedings, people who have been released from federal custody with and without federal notices to appear in immigration court, and people who entered unlawfully and have not subsequently had contact with federal immigration authorities.

24. FLIC members also include organizations whose members, in turn, include individuals who would be subject to prosecution under S.B. 4C. They will be directly affected by the disruption, uncertainty, and fear created by S.B. 4C.

25. FLIC members also include organizations that serve immigrants, whose daily operations will be upended by S.B. 4C. S.B. 4C will force these organizations to divert significant resources from existing programs. S.B. 4C will strain already scarce resources and staff capacity, make the organizations' work more costly and difficult, require additional funding and personnel, divert resources to entirely new lines of work, and hinder client communication and services that are central to the organizations' activities. S.B. 4C will significantly burden the organizations' abilities to fulfill their missions through their programs and activities.

26. Individual Plaintiff Y.M. is a 40-year-old citizen of Honduras. She lives in Gainesville, Florida with her U.S.-citizen son, who is a minor with a disability. She is a member of FLIC.

27. Y.M. entered the United States without inspection more than twenty years ago and has not left the United States since that time. She submitted a U visa application in 2022, which is still pending.

28. Y.M. leaves Florida about twice per year on family vacations; her family recently traveled

to Georgia. She is worried about the risk of arrest or detention under S.B. 4C's Illegal Entry provision. If detained under S.B. 4C, she fears that she will be separated from her U.S.-citizen child, who has a disability, for whom she is the primary caretaker and provider.

29. Individual Plaintiff V.V. is also a member of FLIC.

B. Defendants

30. Defendant James Uthmeier is the Attorney General of Florida, the chief legal officer of the State. Fla. Const. art. IV, § 4(b). He is sued in his official capacity. In that capacity, he is responsible for the enforcement of S.B. 4C. The Attorney General is required to appear in the courts on behalf of the State of Florida. Fla. Stat. § 16.01(4). Under Florida law, the office of Attorney General also encompasses the Office of Statewide Prosecution. Fla. Const. art. IV § 4(b). This office has concurrent jurisdiction with state attorneys to prosecute alleged violations of certain criminal laws, including violations of S.B. 4C. *See id.*; Fla. Stat. § 16.56(1)(a)(15).

31. Defendant Nicholas B. Cox is the Statewide Prosecutor of the State of Florida, appointed by Defendant Attorney General Uthmeier. *See* Fla. Const. art. IV § 4(b); Fla. Stat. § 16.56(2). The Statewide Prosecutor has concurrent jurisdiction with state attorneys to prosecute alleged offenses, including violations of S.B. 4C. *See* Fla. Stat § 16.56(1)(a)(15). As Statewide Prosecutor, Defendant Cox has the power to, among other duties, "conduct hearings at any place in the state; summon and examine witnesses; require the production of physical evidence; sign informations, indictments, and other official documents; [and] confer immunity." Fla. Stat. § 16.56(3).

32. Defendants State Attorneys 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 are the 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. They are proper defendants because they are the prosecuting officers of all trial courts in their respective circuits. Fla. Const. art. V, § 17.

STATEMENT OF FACTS

A. Legal Background: Comprehensive Federal Immigration System

33. The federal government has exclusive power over immigration. *See, e.g., Arizona v. United States*, 567 U.S. 387, 394-95 (2012).

34. Congress has created a comprehensive system of federal laws regulating and enforcing immigration in the Immigration and Nationality Act ("INA"). *See* 8 U.S.C. § 1101 et seq.

35. Federal immigration statutes and the associated implementing regulations and precedential administrative law decisions form an exceptionally detailed, complex, and finely reticulated regulatory regime. Congress has frequently amended the relevant provisions of the INA, including by passing particularly significant legislation in 1952, 1965, 1980, 1986, 1990, 1996, 2000, 2001, 2005, and 2008, along with dozens of other Acts modifying the immigration regime in countless ways. Immigration legislation is proposed in every single Congress and frequently forms a point of major national debate.

36. The INA contains complex and exclusive procedures for determining immigration and citizenship status and for determining whether an individual may lawfully enter and remain in the United States, either temporarily or permanently. *See, e.g.*, 8 U.S.C. § 1229a(a)(3). Under federal law, there is no single, readily ascertainable category or characteristic that establishes whether a

particular person may or may not be permitted to enter or to remain in the United States. The answer to that question can only be reached through the processes outlined in the INA and may depend on the discretionary determinations of federal officials.

37. Many people who enter the United States between ports of entry ultimately obtain federal authorization to remain in the United States temporarily, indefinitely, or permanently.

38. Congress has established that entry into the United States is a crime under certain circumstances. 8 U.S.C. § 1325 ("Improper Entry by Alien") provides criminal penalties for noncitizens who, inter alia, enter the United States at any time or place other than as designated by immigration officers. Similarly, 8 U.S.C. § 1326 ("Reentry of Removed Aliens") provides criminal penalties for noncitizens who reenter the United States without authorization after entry of an order of removal.

39. Prosecution for the federal entry and reentry crimes are matters of federal discretion. Federal agents and policymakers may choose to deploy these tools—or not—for a wide range of reasons, including national priorities, migration patterns, international relationships, and humanitarian concerns.

B. S.B. 4C

40. On February 13, 2025, Governor Ron DeSantis signed S.B. 4C into law. It went into effect immediately.

41. S.B. 4C created two new state law offenses: "Illegal Entry by Adult Unauthorized Alien Into This State" and "Illegal Reentry of an Adult Unauthorized Alien." S.B. 4C §§ 3-4 (codified at Fla. Stat. §§ 811.102-.103).

42. Each of these offenses can only be committed by an "unauthorized alien," which S.B. 4C defines as any person who is "unlawfully present in the United States according to the terms of the

federal Immigration and Nationality Act." S.B. 4C §§ 3(1), 4(1) (codified at Fla. Stat. §§ 811.102(1), 811.103(1)); Fla. Stat. § 908.111(1)(d).

43. A noncitizen who is 18 years of age or older commits a violation of "Illegal Entry" if he or she "knowingly enters or attempts to enter this state after entering the United States by eluding or avoiding examination or inspection by immigration officers." S.B. 4C § 2(1) (codified at Fla. Stat. § 811.102(1)).

44. "[A]ffirmative defense[s] to prosecution" for "Illegal Entry" exist if (1) the federal government has granted the noncitizen lawful presence in the United States or discretionary relief that authorizes the noncitizen to remain in the United States temporarily or permanently; or (2) the noncitizen is subject to relief under the Cuban Adjustment Act of 1966; or (3) the noncitizen's entry into the United States did not constitute a violation of 8 U.S.C. § 1325(a). S.B. 4C § 3(4) (codified at Fla. Stat. § 811.102(4)). The statute does not define "lawful presence" or "discretionary relief."

45. A noncitizen is also exempt from arrest for "Illegal Entry" if he or she "was encountered by law enforcement during the investigation of another crime that occurred in this state and the unauthorized alien witnessed or reported such crime or was a victim of such crime." S.B. 4C § 3(3) (codified at Fla. Stat. § 811.102(3)).

46. S.B. 4C does not provide a defense for people currently seeking asylum, other humanitarian protection, or any other relief available under federal law.

47. A first violation of "Illegal Entry" is a misdemeanor of the first degree punishable by a mandatory minimum term of imprisonment of 9 months. A second subsequent violation is a felony punishable by a mandatory minimum term of imprisonment of 1 year and 1 day. Any subsequent violation is a felony punishable by a mandatory minimum term of imprisonment of 2 years. S.B.

4C § 3(1)-(2) (codified at Fla. Stat. § 811.102(1)-(2)).

48. S.B. 4C also created a crime of "Illegal Reentry." This provision makes it a crime if a noncitizen who is 18 years or older "enters, attempts to enter, or is at any time found in this state" after they have been "denied admission, excluded, deported, or removed, or ha[ve] departed the United States during the time an order of exclusion, deportation, or removal is outstanding." S.B. 4C § 4(1) (codified at Fla. Stat. § 811.103(1)).

49. A noncitizen is not subject to the "Illegal Reentry" provision if they are located outside the United States and (1) the U.S. Attorney General has "expressly consented to [their] reapplication for admission"; or (2) they were "not required to obtain such advance consent under the Immigration and Nationality Act." S.B. 4C § 4(1) (codified at Fla. Stat. § 811.103(1)).

50. A violation of "Illegal Reentry" is a felony punishable by a mandatory minimum term of imprisonment of 1 year and 1 day. S.B. 4C § 4(2) (codified at Fla. Stat. § 811.103(2)). A noncitizen is subject to a mandatory minimum term of imprisonment of 2 years if they have three or more prior convictions for a misdemeanor or a felony, and 5 years if they have a prior conviction for a forcible or aggravated felony. S.B. 4C § 4(3) (codified at Fla. Stat. § 811.103(3a)).

51. Noncitizens arrested for "Illegal Entry" or for "Illegal Reentry" must be detained pending disposition of the case. S.B. 4C §§ 3(5), 4(4) (codified at Fla. Stat. §§ 811.102(5), 811.103(4)).

52. Noncitizens charged with or convicted of either provision are not eligible for a "civil citation, prearrest or post arrest diversion program, or other similar program[s]." S.B. 4C §§ 3(6), 4(5) (codified at Fla. Stat. §§ 811.102(6), 811.103(5)); Fla. Stat. §§ 901.41, 921.00241.

53. Upon a noncitizen's arrest for "Illegal Entry" or "Illegal Reentry," the arresting law enforcement agency must notify and provide information to: (1) Immigration and Customs Enforcement ("ICE") and (2) the Department of Law Enforcement. S.B. 4C §§ 3(7), 4(6) (codified

at Fla. Stat. §§ 811.102(7), 811.103(6)).

54. S.B. 4C applies statewide, without any exception.

55. S.B. 4C's new state system to regulate immigration completely bypasses and conflicts with the federal system.

56. S.B. 4C requires state officers to make complex determinations of federal immigration status, and to arrest and to detain people who are convicted of the new state crimes—all without any direction, input, or involvement whatsoever from federal officials.

57. S.B. 4C does not make any exception for people who entered the country unlawfully but have since begun the process of obtaining federal immigration status, even for those whom the federal immigration system has authorized to remain in the country.

58. The law will subject thousands of immigrants who enter Florida, including asylum seekers and immigrants applying for other federal immigration benefits and status, to criminal punishment. By subjecting these categories of immigrants to criminal punishment, S.B. 4C effectively banishes large categories of immigrants whose immigration cases are pending, and to whom the federal government may eventually grant lawful status, permanent residence, and citizenship.

59. As explained above, the harms of S.B. 4C will be felt acutely by the Individual Plaintiffs, who are subject to prosecution and to imprisonment under the law, as well as FWAF and FLIC, whose membership includes individuals who are subject to prosecution and to imprisonment under the law.

CLASS ACTION ALLEGATIONS

60. FWAF, FLIC, and the Individual Plaintiffs bring this action under Federal Rules of Civil Procedure 23(a) and 23(b)(2) on behalf of themselves and two classes of other persons similarly situated.

61. FWAF, FLIC, and the Individual Plaintiffs seek to represent the following two classes: (1) The Entry Class: any person not a citizen or national of the United States who may now or in the future enter or attempt to enter the state of Florida after entering the United States by eluding or avoiding examination or inspection by immigration officers; and (2) The Reentry Class: any person not a citizen or national of the United States who may enter, attempt to enter, or be found in the state of Florida after the person has been denied admission to or excluded, deported, or removed from the United States; or has departed from the United States while an order of exclusion, deportation, or removal was outstanding.

62. The proposed classes satisfy the requirements of Rule 23(a)(1) because each respective class is so numerous that joinder of all members is impracticable. Hundreds if not thousands of noncitizens will be subjected to arrest, detention, and prosecution under S.B. 4C and its implementation by Defendants. The proposed classes also include numerous future noncitizens who will enter Florida and will be subjected to S.B. 4C.

63. The proposed classes satisfy the commonality requirements of Rule 23(a)(2). The members of the respective classes are subject to a common practice: arrest, detention, and prosecution under S.B. 4C contrary to the Supremacy Clause and/or Commerce Clause. The suit also raises questions of law common to members of the proposed classes, including whether S.B. 4C and its implementation violate the Supremacy Clause and/or Commerce Clause as to the Entry Class and the Reentry Class.

64. The proposed classes satisfy the typicality requirements of Rule 23(a)(3), because the claims of the representative Individual Plaintiffs are typical of the claims of their respective classes. Additionally, FWAF and FLIC represent the claims of their members, and those members' claims are typical of the claims of the classes. Each proposed class member, including the

representative Individual Plaintiffs and FWAF and FLIC members, will experience or face the same principal injury (arrest, detention, and prosecution), based on the same government practice (S.B. 4C and its implementation), which is unlawful as to the respective classes because it violates the Supremacy Clause and/or Commerce Clause.

65. The proposed classes satisfy the adequacy requirements of Rule 23(a)(4). The representative Plaintiffs seek the same relief as the other members of their respective classes—among other things, an order declaring S.B. 4C unlawful and an injunction preventing enforcement of S.B. 4C. In defending their rights and the rights of their members, the representative Plaintiffs will defend the rights of all proposed class members in their respective classes fairly and adequately.

66. The proposed classes are represented by experienced attorneys from the American Civil Liberties Union Foundation Immigrants' Rights Project, the American Civil Liberties Union Foundation of Florida, and Americans for Immigrant Justice. Proposed Class Counsel have extensive experience litigating class action lawsuits and other complex systemic cases in federal court on behalf of noncitizens, including cases asserting very similar claims to the claims asserted here.

67. The proposed classes also satisfy Rule 23(b)(2). Defendants will act on grounds generally applicable to the classes by subjecting them to arrest, detention, and prosecution under S.B. 4C. Injunctive and declaratory relief is therefore appropriate with respect to the respective classes as a whole.

CLAIMS FOR RELIEF
Claim One: Preemption; Equity
(Against all Defendants)

68. Plaintiffs repeat and reallege all paragraphs above and incorporate them by reference as

though fully set forth herein.

69. The Supremacy Clause, Article VI, Section 2, of the U.S. Constitution provides that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land."

70. Federal law preempts state law in any area over which Congress expressly or impliedly has reserved exclusive authority or which is constitutionally reserved to the federal government, or where state law conflicts or interferes with federal law.

71. S.B. 4C violates the Supremacy Clause because it attempts to regulate matters that are exclusively reserved to the federal government and because it operates in a field over which Congress has exercised exclusive authority.

72. S.B. 4C further violates the Supremacy Clause because it conflicts with federal laws, contradicts federal admission and release decisions, imposes burdens and penalties not authorized by and contrary to federal law, creates its own immigration classifications, and directs state officers to take unilateral immigration enforcement actions.

73. Plaintiffs may sue to obtain injunctive relief against S.B. 4C in equity.

Claim Two: Commerce Clause; Equity; 42 U.S.C. § 1983
(Against all Defendants)

74. Plaintiffs repeat and reallege all paragraphs above and incorporate them by reference as though fully set forth herein.

75. The Constitution gives Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States." U.S. Const. art. I, § 8, cl. 3. The Commerce Clause not only gives Congress this power, but also bars states from interfering with Congress's regulation of interstate commerce.

76. S.B. 4C violates the Commerce Clause because it impermissibly regulates people's entry into Florida and their movement across state borders. It therefore imposes unacceptable burdens on interstate commerce.

77. Plaintiffs may sue to obtain injunctive relief against S.B. 4C in equity and under 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs request that the Court grant the following relief:

a. Declare that the entry and reentry provisions of S.B. 4C are unlawful;

b. Preliminarily and permanently enjoin Defendants from enforcing the entry and reentry provisions of S.B. 4C;

c. Require Defendants to direct their officers, agents, and employees to cease enforcement of S.B. 4C's entry and reentry provisions;

d. Grant Plaintiffs' costs of suit, reasonable attorneys' fees, and other expenses pursuant to 28 U.S.C. § 1988; and

e. Grant any other and further relief that this Court may deem fit and proper.

Date: April 02, 2025

Respectfully submitted,

/s/ Amy Godshall

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** Motion pro hac vice forthcoming*

Attorneys for Plaintiffs

West's Florida Statutes Annotated
Title XLVI. Crimes (Chapters 775-899)
Chapter 811. Unauthorized Aliens, Nationality, and Immigration

West's F.S.A. § 811.101

811.101. Definitions

Currentness

As used in this chapter, the term:

(1) “Removal” means the departure from the United States of an unauthorized alien after any proceeding under 8 U.S.C. ss. 1225, 1228, 1229, or 1229a or any agreement in which an unauthorized alien stipulates to his or her departure from the United States as part of a criminal proceeding under federal or state law.

(2) “Unauthorized alien” has the same meaning as in s. 908.111.

Credits
Added by Laws 2025, c. 2025-2, § 2, eff. Feb. 13, 2025.

<See, also, repealed and renumbered Chapter 811, which related to Larceny; Receiving Stolen Goods; Related Crimes.>

West's F. S. A. § 811.101, FL ST § 811.101
Current with laws, joint and concurrent resolutions and memorials in effect from the 2025 Special Session C and through May 30, 2025, of the 2025 first regular session.

End of Document

 KeyCite Yellow Flag
Unconstitutional or Preempted Validity Called into Doubt by Florida Immigrant Coalition v. Uthmeier, S.D.Fla., Apr. 29, 2025

West's Florida Statutes Annotated
Title XLVI. Crimes (Chapters 775-899)
Chapter 811. Unauthorized Aliens, Nationality, and Immigration

West's F.S.A. § 811.102

811.102. Illegal entry by adult unauthorized alien into this state

Currentness

(1) Except as provided in subsection (2), an unauthorized alien who is 18 years of age or older and who knowingly enters or attempts to enter this state after entering the United States by eluding or avoiding examination or inspection by immigration officers commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person convicted of a violation of this subsection must be sentenced to a mandatory minimum term of imprisonment of 9 months.

(2)(a) An unauthorized alien who has one prior conviction for a violation of this section and who commits a second violation of subsection (1) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person convicted of a violation of this paragraph must be sentenced to a mandatory minimum term of imprisonment of 1 year and 1 day.

(b) An unauthorized alien who has two or more prior convictions for a violation of this section and who commits a subsequent violation of subsection (1) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person convicted for a violation of this paragraph must be sentenced to a mandatory minimum term of imprisonment of 2 years.

(3) An unauthorized alien may not be arrested for a violation of this section if the unauthorized alien was encountered by law enforcement during the investigation of another crime that occurred in this state and the unauthorized alien witnessed or reported such crime or was a victim of such crime.

(4) It is an affirmative defense to prosecution under this section if:

(a) The 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;

(b) The unauthorized alien is subject to relief under the Cuban Adjustment Act of 1966; or

(c) The unauthorized alien's entry into the United States did not constitute a violation of 8 U.S.C. s. 1325(a).

(5) Notwithstanding any other law, and unless release is otherwise required by the State Constitution or the United States Constitution, the court shall presume that no conditions of release can reasonably assure the presence of an unauthorized alien

arrested for a violation of this section at his or her trial and must order the unauthorized alien to be detained pending the disposition of the case.

(6) An unauthorized alien who commits a violation of this section is not eligible for a civil citation, prearrest or postarrest diversion program, or other similar program, including, but not limited to, any program described in s. 901.41 or s. 921.00241.

(7) Upon making an arrest for a violation of this section, the arresting law enforcement agency shall:

(a) Notify Immigration and Customs Enforcement of the United States Department of Homeland Security of the unauthorized alien's arrest and provide any known information relating to the unauthorized alien; and

(b) Notify the Department of Law Enforcement of the unauthorized alien's arrest and provide information relating to the unauthorized alien, which must include his or her fingerprints, photograph, and any other biometric information necessary to identify the unauthorized alien.

Credits

Added by Laws 2025, c. 2025-2, § 3, eff. Feb. 13, 2025.

<See, also, repealed and renumbered Chapter 811, which related to Larceny; Receiving Stolen Goods; Related Crimes.>

West's F. S. A. § 811.102, FL ST § 811.102

Current with laws, joint and concurrent resolutions and memorials in effect from the 2025 Special Session C and through May 30, 2025, of the 2025 first regular session.

End of Document

 KeyCite Yellow Flag
Unconstitutional or Preempted Validity Called into Doubt by Florida Immigrant Coalition v. Uthmeier, S.D.Fla., Apr. 29, 2025

West's Florida Statutes Annotated
Title XLVI. Crimes (Chapters 775-899)
Chapter 811. Unauthorized Aliens, Nationality, and Immigration

West's F.S.A. § 811.103

811.103. Illegal reentry of an adult unauthorized alien

Currentness

(1) An unauthorized alien who is 18 years of age or older commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she, after having been denied admission, excluded, deported, or removed or having departed the United States during the time an order of exclusion, deportation, or removal is outstanding, thereafter enters, attempts to enter, or is at any time found in this state. An unauthorized alien does not commit a violation of this subsection if, before the unauthorized alien's reembarkation at a place outside the United States or his or her application for admission from a foreign contiguous territory:

(a) The Attorney General of the United States expressly consented to his or her reapplication for admission; or

(b) With respect to an unauthorized alien who was previously denied admission and removed, the unauthorized alien establishes that he or she was not required to obtain such advance consent under the Immigration and Nationality Act, as amended.

(2) Except as provided in subsection (3), an unauthorized alien who violates subsection (1) must be sentenced to a mandatory minimum term of imprisonment of 1 year and 1 day.

(3)(a) An unauthorized alien who has three or more prior convictions for a misdemeanor or a felony, other than a forcible felony as defined in s. 776.08 or an aggravated felony as defined in 8 U.S.C. s. 1101, and who commits a violation of subsection (1) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person convicted of violating this paragraph must be sentenced to a mandatory minimum term of imprisonment of 2 years.

(b) An unauthorized alien who has a prior conviction for a forcible felony as defined in s. 776.08 or an aggravated felony as defined in 8 U.S.C s. 1101 and who commits a violation of subsection (1) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person convicted of a violation of this paragraph must be sentenced to a mandatory minimum term of imprisonment of 5 years.

(4) Notwithstanding any other law, and unless release is otherwise required by the State Constitution or the United States Constitution, the court shall presume that no conditions of release can reasonably assure the presence of an unauthorized alien arrested for a violation of this section at his or her trial and must order the unauthorized alien to be detained pending the disposition of the case.

(5) An unauthorized alien who commits a violation of this section is not eligible for a civil citation, prearrest or postarrest diversion program, or other similar program, including, but not limited to, any program described in s. 901.41 or s. 921.00241.

(6) Upon making an arrest for a violation of this section, the arresting law enforcement agency shall:

(a) Notify Immigration and Customs Enforcement of the United States Department of Homeland Security of the unauthorized alien's arrest and provide any known information relating to the unauthorized alien; and

(b) Notify the Department of Law Enforcement of the unauthorized alien's arrest and provide information relating to the unauthorized alien, which must include his or her fingerprints, photograph, and any other biometric information necessary to identify the unauthorized alien.

Credits

Added by Laws 2025, c. 2025-2, § 4, eff. Feb. 13, 2025.

<See, also, repealed and renumbered Chapter 811, which related to Larceny; Receiving Stolen Goods; Related Crimes.>

West's F. S. A. § 811.103, FL ST § 811.103
Current with laws, joint and concurrent resolutions and memorials in effect from the 2025 Special Session C and through May 30, 2025, of the 2025 first regular session.

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No. 25A-___

In the

Supreme Court of the United States

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

v.

FLORIDA IMMIGRANT COALITION, ET AL.,
Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I am a member in good standing of the bar of this Court and that on this 17th day of June 2025, I filed a copy of the foregoing Application for a Stay Pending Appeal in the United States Court of Appeals for the Eleventh Circuit and Pending Further Proceedings in This Court to be served by e-mail on the counsel identified below, and that a hard copy will be served on each counsel by overnight delivery on the 17th day of June 2025. All parties required to be served have been served.

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