No. 24A1269

In the Supreme Court of the United States

JAMES UTHMEIER, ATTORNEY GENERAL OF FLORIDA, ET AL.,

Applicants,

v.

FLORIDA IMMIGRANT COALITION, ET AL.,

Respondents.

ON APPLICATION FOR STAY PENDING APPEAL FROM THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR AMERICA FIRST LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF APPLICANTS

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America First Legal Foundation is a nonprofit organization dedicated to promoting the rule of law in the United States by ensuring due process and equal protection for every American citizen and encouraging understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. AFL has a substantial interest in this case. Ensuring compliance with the Nation's immigration laws, protecting national sovereignty, and promoting the rule of law are core institutional interests at the heart of its mission.*

SUMMARY OF THE ARGUMENT

Facing States in this country is "an unprecedented flood of illegal immigration." Exec. Order No. 14159 § 1, 90 Fed. Reg. 8443 (Jan. 20, 2025). These illegal immigrants can "present significant threats to national security and public safety, committing vile and heinous acts against innocent Americans." *Ibid.* Some are "engaged in hostile activities, including espionage, economic espionage, and preparations for terror-related activities." *Ibid.* And "[m]any have abused the generosity of the American people, and their presence in the United States has cost taxpayers billions of dollars at the Federal, State, and local levels." *Ibid.* Thus, the United States recently reiterated its "obligation to prioritize the safety, security, and financial and economic well-being of Americans," including by working with "State and local law enforcement agencies." *Id.* §§ 1, 11.

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* In accordance with Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person or entity, other than *amicus curiae*, its members, or its counsel, made a monetary contribution to its preparation or submission.

The State of Florida especially suffered from the influx of illegal immigrants "[o]ver the last 4 years." *Id.* § 1. Not only did its citizens face safety and employment challenges from illegal immigration, but its public health and welfare systems—funded by taxpaying citizens—were drained. To address these severe burdens, Florida recently prohibited entry into and presence within Florida by illegal immigrants. Fla. Stat. §§ 811.102, 811.103. Florida's definition of "unauthorized alien" tracks the definition in "the federal Immigration and Nationality Act" and "shall be interpreted consistently with any applicable federal statutes, rules, or regulations." *Id.* § 908.111(1)(d); see *id.* § 811.101(2). After making an arrest under this law, Florida law enforcement must notify the federal Department of Homeland Security with details about the unauthorized alien. This statute promotes the federal interest in using "all available law enforcement tools to faithfully execute the immigration laws of the United States." Exec. Order. No. 14159 § 6(c).

Yet the courts below held that challengers to the law were likely to succeed in showing that Florida law is preempted by the federal law that it mirrors. That holding was in error. Preemption requires some conflict between federal and state law; mere overlap is not enough. But there is no conflict here: Florida law prohibits entry into and presence in Florida by individuals not lawfully authorized to be anywhere in the United States. Federal law does not guarantee the ability of unauthorized aliens to enter Florida or any other State. Thus, the lower courts erred in holding that the challengers were likely to succeed on their preemption claim, and the Court should grant a stay.

ARGUMENT

I. Preemption requires a federal–state conflict; overlap is not enough.

"The Supremacy Clause establishes that federal law 'shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.'" *PLIVA, Inc.* v. *Mensing*, 564 U.S. 604, 617 (2011) (quoting U.S. Const. art. VI, cl. 2). Under this Clause, "state law is naturally preempted to the extent of any conflict with" federal law. *Crosby* v. *Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000). But it cannot be preempted absent a conflict. The States have general police power to legislate unless prohibited by the Constitution. See U.S. Const. amend. X; *id.* art. I, § 10; *Gregory* v. *Ashcroft*, 501 U.S. 452, 457–58 (1991). So only if federal law requires preemption of state law—either expressly or impliedly, because the laws are in contradiction—must state law yield. See *Kurns* v. *R.R. Friction Prods. Corp.*, 565 U.S. 625, 630 (2012). Otherwise, state law cannot be superseded. See *Wyeth* v. *Levine*, 555 U.S. 555, 565 (2009).

The courts below relied on field preemption, a type of implied preemption. Under this doctrine, "state law is pre-empted where it regulates conduct in a field that Congress intended the Federal Government to occupy exclusively." *English* v. *Gen. Elec. Co.*, 496 U.S. 72, 79 (1990). Field preemption is properly "understood as a species of conflict pre-emption: A state law that falls within a pre-empted field conflicts with Congress' intent (either express or plainly implied) to exclude state regulation." *Id.* at 79 n.5. Of course, if Congress's intent is express, then express preemption can be found. So field preemption becomes relevant only when Congress declined to

expressly preempt state law, it is possible to comply with both sets of laws, *and* there is no direct conflict otherwise between the laws.

Field preemption is—and should be—"rare." *Kansas* v. *Garcia*, 589 U.S. 191, 208 (2020); see *id.* at 214 n.* (Thomas, J., concurring). Indeed, the doctrine sits uneasily with modern principles of statutory interpretation and federalism. "[A]t the outset of th[e] [field preemption] analysis courts must confront a puzzler: how could Congress have 'left no room for supplementary state regulation' when the [federal] statute le[aves] open the precise type of state regulation at issue?" Note, *Preemption As Purposivism's Last Refuge*, 126 Harv. L. Rev. 1056, 1068 (2013). "[M]erely because the federal provisions [a]re sufficiently comprehensive to meet the need identified by Congress d[oes] not mean that States and localities [a]re barred from identifying additional needs or imposing further requirements in the field." *Hillsborough Cnty.* v. *Automated Med. Lab'ys, Inc.*, 471 U.S. 707, 717 (1985).

"Presumptions have their place in statutory interpretation, but only to the extent that they approximate reality." *Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369, 399 (2024). And "the doctrine that comprehensive regulation automatically provides evidence of congressional intent to preempt ignores alternative interpretations of that intent in a way that potentially distorts the result that would be reached upon a fair reading of the statute." S. Gardbaum, *The Nature of Preemption*, 79 Corn. L. Rev. 767, 812 (1994). After all, "Congress may perfectly plausibly intend or not intend to preempt the states regardless of the pervasiveness of its scheme of regulation." *Ibid.* For instance, "Congress may intend that states be allowed to supplement federal

regulation," it "may not have considered whether or not to preempt," or it "may have considered preemption without reaching any conclusion." *Ibid.* "[O]rdinary statutory interpretation" thus "provides little support for any analysis suggesting that extensive occupation of a field automatically creates a presumption of intent to preempt." *Ibid.* If anything, field preemption seems to be "artificially imposed on the interpretive process as a holdover from the period before the radical expansion in the scope of Congress's interstate commerce power." *Ibid.* By making unfounded assumptions about congressional intent, field preemption may "undercut the principle that it is Congress rather than the courts that pre-empts state law." *Chamber of Com. of U.S.* v. *Whiting*, 563 U.S. 582, 607 (2011) (plurality opinion).

Field preemption is also often "inconsistent with modern federalism and its presumption that states retain concurrent powers." Gardbaum, *supra*, at 812. "[B]ecause the States are independent sovereigns in our federal system, [courts] have long presumed that Congress does not cavalierly pre-empt state-law causes of action." *Medtronic, Inc.* v. *Lohr*, 518 U.S. 470, 485 (1996). "States may have a legitimate interest in punishing or providing redress for wrongs even if federal law already does so." *Zyla Life Scis., LLC* v. *Wells Pharma of Houston, LLC*, 134 F.4th 326, 333 (CA5 2025). For instance, "[t]he Federal Government is not the only one with an interest in criminalizing murder or rape." *Ibid.*; see *California* v. *Zook*, 336 U.S. 725, 738 (1949) ("[T]he State may punish . . . for the safety and welfare of its inhabitants; the nation may punish for the safety and welfare of interstate commerce. There is no conflict."). And "the Federal Government often has an interest in allowing parallel

state regulation." *Zyla*, 134 F.4th at 333. It has "limited resources" so "often welcomes state aid in enforcing shared legal norms." *Id.* at 334.

For all these reasons, courts must carefully "look for special features warranting pre-emption" based on supposed federal occupation of a regulatory field. *Hillsborough*, 471 U.S. at 719. "[O]therwise, deliberate federal inaction could always imply pre-emption, which cannot be." *Puerto Rico Dep't of Consumer Affs.* v. *Isla Petroleum Corp.*, 485 U.S. 495, 503 (1988). Mere "overlap" is not enough. *Garcia*, 589 U.S. at 211. As shown next, the courts below failed here to identify any special features warranting preemption of Florida's regulation of entry into and presence within the State.

II. Federal law does not preempt Florida's law.

As this Court has explained, "[t]he question whether the regulation of an entire field has been reserved by the Federal Government is, essentially, a question of ascertaining the intent underlying the federal scheme." *Hillsborough*, 471 U.S. at 714. Generally, "[s]uch an intent may be inferred from a scheme of federal regulation so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it, or where an Act of Congress touches a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *English*, 496 U.S. at 79 (cleaned up).

Critically, however, "'[t]here is no federal preemption in vacuo,' without a constitutional text, federal statute, or treaty made under the authority of the United States." *Garcia*, 589 U.S. at 202 (quoting *Puerto Rico*, 485 U.S. at 503). While the

Court has "frequently said that pre-emption analysis requires ascertaining congressional intent," it has "never meant that to signify congressional intent in a vacuum, unrelated to the giving of meaning to an enacted statutory text." *Puerto Rico*, 485 U.S. at 501. Rather, "[e]vidence of pre-emptive purpose is sought in the text and structure of the statute at issue." *CSX Transp., Inc.* v. *Easterwood*, 507 U.S. 658, 664 (1993); see *Garcia*, 589 U.S. at 202 ("'Invoking some brooding federal interest or appealing to a judicial policy preference' does not show preemption."); see also *Arizona* v. *Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 14 (2013) ("[T]he statutory text accurately communicates the scope of Congress's pre-emptive intent.").

Preemption analysis begins with "a careful comparison between the allegedly pre-empting federal requirement and the allegedly pre-empted state requirement." *Medtronic*, 518 U.S. at 500. Here, federal law prohibits entry into and presence in the United States by certain unauthorized aliens. 8 U.S.C. §§ 1325, 1326. Florida law, in turn, prohibits entry into and presence in Florida by the same set of unauthorized aliens. Fla. Stat. §§ 811.102, 811.103. It also requires that "the arresting law enforcement agency" notify the federal government of the alien's arrest. *Id.* §§ 811.102(7), 811.103(6).

There is no conflict between these provisions. Specifically, there is no conflict between the United States excluding unauthorized aliens and Florida excluding the same unauthorized aliens. The courts below did not explain a plausible reading of the federal statutes that would suggest Congress disapproved of state efforts to limit entry by persons whose entry it was also prohibiting. Florida is not regulating the

entry or reentry of anyone into the United States. It is only regulating the entry or reentry of a group of people with respect to Florida—and echoing the federal regulation. By "us[ing] the Federal Government's own definition of 'unauthorized alien,'" Florida "has taken the route *least* likely to cause tension with federal law." *Whiting*, 563 U.S. at 611 (emphasis added); cf. *Medtronic*, 518 U.S. at 495 (no preemption where state "duties parallel federal requirements"); *Zook*, 336 U.S. at 735 (explaining that "there is no conflict in terms, and no possibility of such conflict, [when] the state statute makes federal law its own"); *Zyla*, 134 F.4th at 334–35 (collecting "many state statutes [that] incorporate federal criminal requirements").

Indeed, there would not be a conflict even if Florida law swept beyond the federal law about alien entry, for nothing in the federal statutes cited by the challengers gives unauthorized aliens or anyone else the right to enter Florida. By analogy, suppose that Florida banned the entry or presence of persons convicted of any federal crime. The statutory preemption question would be whether any federal statute required Florida to allow convicted criminals to enter or remain in the state. Absent such a statute, that Congress had criminalized the underlying conduct—or imposed its own limitations on criminals' interstate movements—does not suggest an intent to guarantee individuals the right to enter particular states.

So too here. The federal statutes set a regulatory floor for entry and reentry into the United States. Nothing in the text of the relevant provisions suggests that Congress wanted that floor to be a ceiling for individual States, too. Congress knows how to preempt state laws pertaining to immigration when it wants to. See, *e.g.*, 8

U.S.C. § 1324a(h)(2) (preempting certain state laws "imposing civil or criminal sanctions" "upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens"). But it did not do so here. And "[l]aws designed to deter, or even prohibit, unlawfully present aliens from residing within *a particular locality* are not tantamount to immigration laws establishing who may enter or remain in the country." *Keller* v. *City of Fremont*, 719 F.3d 931, 941 (CA8 2013).

Courts may not "seek[] out conflicts between state and federal regulation where none clearly exists." *English*, 496 U.S. at 90. Yet the courts below "draw exaggerated inferences from" generic descriptions of federal immigration law as "comprehensive." *Puerto Rico*, 485 U.S. at 503; see App. 8a, 264a. One might wonder whether the short statutes in §§ 1325 and 1326 can fairly be characterized as "comprehensive," at least in a way that would not apply to the whole federal code. At any rate, "[a] sound preemption analysis cannot be as simplistic as that." *Virginia Uranium, Inc.* v. *Warren*, 587 U.S. 761, 778 (2019) (opinion of Gorsuch, J.). Supposed "comprehensiveness" only matters to preemption if "a comprehensive federal scheme intentionally leaves a portion of the regulated field without controls." *Puerto Rico*, 485 U.S. at 503. Only in that circumstance—when there is federal "inaction joined with action"—can a "pre-emptive inference can be drawn." *Ibid.*

But there is nothing like that here, for there is no relevant "inaction" prescribed by these federal statutes. They prohibit the same thing as Florida law does: entry and presence by unauthorized aliens. The federal statutes do not suggest any intent to prohibit overlapping state regulation. And "[w]ithout a text that can . . . plausibly be

interpreted as prescribing federal pre-emption[,] it is impossible to find that" entry into Florida without state consequence is "mandated by federal law." *Puerto Rico*, 485 U.S. at 501. Invocation of broad-brush descriptions "of legislation at the expense of the terms of the statute itself . . . prevents the effectuation of congressional intent." *Bd. of Governors of Fed. Rsrv. Sys.* v. *Dimension Fin. Corp.*, 474 U.S. 361, 374 (1986).

The courts below also extrapolated from field preemption of alien *registration* statutes in *Arizona* v. *United States*, 567 U.S. 387, 401 (2012) ("field of alien registration"), to field preemption of "control[ling] immigration" broadly. App. 267a; see App. 8a–9a. But this Court "has never extended field preemption to any part of the immigration laws beyond alien registration." *United States* v. *Texas*, 97 F.4th 268, 298 (CA5 2024) (Oldham, J., dissenting). That federal law might "create a comprehensive and unified system" for alien *registration* does not mean that federal law comprehensively regulates immigration generally or entry into each State specifically. *Garcia*, 589 U.S. at 210.

What's more, this invocation of a broader field underscores the danger that field preemption may "give[] the courts power to affect the federal-state balance by choosing the level of generality at which to define the relevant field." Note, *supra*, at 1067. Because of that danger, this Court has repeatedly warned that courts must carefully identify "the boundaries of th[e] field before [saying] that it has precluded a state from the exercise of any power reserved to it by the Constitution." *DeCanas* v. *Bica*, 424 U.S. 351, 360 n.8 (1976); see *Garcia*, 589 U.S. at 208 (rejecting an effort to

"define the supposedly preempted field more broadly"). Nothing in §§ 1325 or 1326 reflects a preemptive intent with respect to alien entry or presence.

The district court discerned purported conflicts between Florida and federal law because an alien might be penalized under state law but escape or suffer less penalty under federal law, for instance, when "federal actors may choose not to" prosecute illegal immigrants. App. 266a. But that is true of every regime with overlapping federal and state regulation. A murderer might face heightened state law consequences—for instance, in periods when the federal government refuses to seek the death penalty—but no one could suggest that the federal prohibitions on murder conflict with state prohibitions. "[I]n the vast majority of cases where federal and state laws overlap, allowing the States to prosecute is entirely consistent with federal interests." *Garcia*, 589 U.S. at 212. So it is here, given that Florida's prosecution of its law mimics and is directly tied to enforcement of federal law. Cf. Off. Legal Couns., *Non-Preemption of the Authority of State and Local Law Enforcement Officials to Arrest Aliens for Immigration Violations* (2002), https://perma.cc/TS4N-J4D5 (explaining that States may make arrests for federal immigration law violations).

The implications of the district court's contrary theory "are staggering," particularly "[g]iven the extraordinary reach of federal law" in the modern era. *Zyla*, 134 F.4th at 335. "Practically any conduct the State wants to regulate is already regulated by the Federal Government." *Ibid.* So if the federal system is to be preserved, States cannot be prevented "from regulating [any]thing federal law touches." *Ibid.* As this Court said in *Garcia*, "[o]ur federal system would be turned

upside down if [courts] were to hold that federal . . . law preempts state law whenever they overlap." 589 U.S. at 212; see *California* v. *ARC Am. Corp.*, 490 U.S. 93, 105 (1989) ("[S]tate causes of action are not pre-empted solely because they impose liability over and above that authorized by federal law."); see also *Villas at Parkside Partners* v. *City of Farmers Branch*, 726 F.3d 524, 577–78 (CA5 2013) (Jones, J., dissenting) ("[C]ourts do not normally call this phenomenon 'conflict preemption.' Instead, we call it 'federalism.'").

Last, the Eleventh Circuit emphasized "the federal government's longstanding and distinct interest in the exclusion and admission of aliens." App. 9a. But as this Court has recognized, States have their own interest in "immigration policy," for they "bear[ ] many of the consequences of unlawful immigration." *Arizona*, 567 U.S. at 397. "The problems posed to the State by illegal immigration must not be underestimated." *Id.* at 398; see *Plyler* v. *Doe*, 457 U.S. 202, 228 n.23 (1982) (recognizing that "unchecked unlawful migration might impair the State's economy generally, or the State's ability to provide some important service[s]"). So it is unremarkable that Florida would choose to implement its own regulations to address the many burdens of illegal immigration into the State. And there is no predominant "federal interest in a situation in which the state law is fashioned to remedy local problems," especially when it operates "only with respect to individuals whom the Federal Government has already declared cannot" be in the United States. *DeCanas*, 424 U.S. at 363. The challengers here failed to show "evidence that Congress has unmistakably ordained exclusivity of federal regulation in this field." *Id.* at 361 (cleaned up).

CONCLUSION

For these reasons, the Court should grant a stay.

Respectfully submitted,

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