No. 24A-1269

IN THE

Supreme Court of the United States

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

v.

FLORIDA IMMIGRANT COALITION, ET AL.,
Respondents.

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

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

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REPLY IN SUPPORT OF APPLICATION FOR A STAY PENDING APPEAL

The district court enjoined Florida from exercising its core power of sovereignty—its authority to protect its citizens. That injunction, finding Florida's SB 4-C field and conflict preempted and violative of the Dormant Commerce Clause, inflicts irreparable harm on the State and its citizens from the perils of illegal immigration. Far from heeding this Court's direction that a presumption *against* preemption protects state laws like SB 4-C, *Arizona v. United States*, 567 U.S. 387, 400 (2012), that order—and the Eleventh Circuit's refusal to stay it—flipped that presumption on its head. That order should not stand.

Plaintiffs' response carries forward the same mistakes as the district court. Their theory on the merits comes down to the idea that preemption should be drawn from a brooding intuition that immigration, writ large, is inherently and exclusively federal in nature. Congress's criminalization of illegal entry into the country, to Plaintiffs, must mean that Congress ousted the States from regulating the presence of illegal aliens anywhere, even in harmony with federal law.

That understanding finds no support in this Court's precedents. Preemption flows only from "the Laws of the United States" as reflected in their "text and structure," *Kansas v. Garcia*, 589 U.S. 191, 208, 212 (2020), not from ethereal notions of the nature of illegal immigration. As this Court once observed, nothing in the INA's "wording" or structure shows a congressional intent to oust "state regulation touching on aliens in general" or "illegal aliens in particular." *DeCanas v. Bica*, 424 U.S. 351, 358 (1976). Plaintiffs' view, moreover, would leave no role for the States to regulate immigrants in any capacity. That flips the script on this Court's application of the presumption *against* preemption in the immigration context and over 100 years of history. *See Arizona*, 567 U.S. at 400; *see also* Stay Appl. 25–28.

Plaintiffs also fail to counter Defendants' showing that this Court is likely to grant certiorari to address these pressing concerns. The issues presented are critically important to the States, many of which are adopting laws similar to Florida's that deliberately respect *Arizona*'s narrow preemption holdings. *See, e.g.*, Tex. Penal Code § 51.02; Okla. Stat. tit. 21, § 1795; Iowa Code § 718C.2; Idaho Code § 18-9004; La. Stat. tit. § 112.12. Plaintiffs try to patch up the circuit splits that Defendants identified, nitpick statistics, and claim that Florida's "ongoing collaboration with federal enforcement efforts" is enough to stem any negative effects from illegal immigration. Resp. 2. By disagreeing that illegal immigration is a national crisis, Plaintiffs underplay the reality on the ground, putting them squarely at odds with the past two presidents, Stay Appl. 24 n.11, the 18 States that filed in support of Florida, *see* Amicus Br. of Iowa et al., and Florida's own representatives that believed SB 4-C was

needed to address the immigration crisis. And while the current federal administration welcomes state assistance in immigration enforcement, Plaintiffs' argument that this collaboration strengthens their case for preemption ignores that the past administration "refused to enforce the immigration laws enacted by Congress" and balked at such federal-state collaboration in enforcing those laws. *See* Exec. Order No. GA-41, Governor of State of Texas, at 1 (July 7, 2022), https://tinyurl.com/3r4vwxzt.

This Court should stay the injunction and clarify this pressing area of law.

ARGUMENT

I. There is a fair prospect that this Court will reverse any affirmance by the Eleventh Circuit of the district court's injunction.

SB 4-C represents Florida's commonsense effort to combat the flood of illegal immigration into its borders. Plaintiffs and the district court insist that Florida was powerless to adopt that law. A stay is warranted. The most critical stay factor is "who is likely to prevail at the end of this litigation," *Ohio v. EPA*, 603 U.S. 279, 292 (2024), and Florida is overwhelmingly likely to succeed here.

A. The district court erred on the merits.

Plaintiffs have failed to persuasively support the district court's injunction. They claim that SB 4-C is field and conflict preempted because Congress criminalized the same activity and simultaneously granted broad discretion to federal immigration officials, and thus that illegal aliens are insulated from any regulation by the States. Plaintiffs also assert that SB 4-C violates the Dormant Commerce Clause because States may not regulate their own borders. They are wrong.

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

Facial field preemption arises only in the "rare case[]" when plaintiffs establish that Congress has occupied a particular field, *Garcia*, 589 U.S. at 208, and that the state law operates directly in that field in every application, *see United States v. Salerno*, 481 U.S. 739, 745 (1987).[1] Plaintiffs fail at both steps.

[1] Plaintiffs repackage their field preemption arguments as separate conflict preemption arguments. In reality, the idea that SB 4-C would frustrate the "broad discretion Congress gave to federal officials" (in every instance, as Plaintiffs see it) is

a. Plaintiffs first propose that the INA preempts the field of regulating the "presence" of illegal aliens, calling it an "exclusively *federal* power." Resp. 3; *see also* Resp. 21. That is a tall order given the "presumption against the pre-emption of state police power regulations." *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 518 (1992). On Plaintiffs' telling, however, the presumption against preemption is inapplicable in the immigration context because of the "history of significant federal presence" in regulating immigration. Resp. 21 n.12 (citing *United States v. Locke*, 529 U.S. 89, 108 (2000)). This Court has already disagreed. In *Arizona*, for example, the Court applied the presumption and simply found it overcome under the unique circumstances present there. 567 U.S. at 400. And the premise of Plaintiffs' argument is wrong: Focusing on the federal government's history of regulation rather than the States' own regulatory traditions "misunderstands the principle" of the presumption. *Wyeth v. Levine*, 555 U.S. 555, 565 n.3 (2009). As *Wyeth* puts it, the presumption against preemption "accounts for the historic presence of state law"; it does not require "the absence of federal regulation." *Id.*

Next, Plaintiffs surmise that the "federal entry and reentry crimes" reveal a broader intent by Congress to regulate all aspects of alien presence. Resp. 7. That is unpersuasive for two reasons. For one, Plaintiffs' view would render the presumption against preemption meaningless in this context. *But see Arizona*, 567 U.S. at 400 (applying the presumption). Any state regulation of aliens must regulate their

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just another way of saying that Congress has totally excluded the States from regulating here. *See* Resp. 27–30.

presence to some extent; but this Court "has never held that every state enactment which in any way deals with aliens" is preempted, *DeCanas*, 424 U.S. at 355. For another, their arguments are inconsistent with *Garcia*. That case forecloses preemption arguments grounded only in the "overlap" in federal and state criminal law or the "enforcement priorities" of federal officers. *Garcia*, 589 U.S. at 211–12. All preemption arguments must be based in the "text and structure" of federal law showing an intent to exclude States from acting, not merely the existence of similar federal laws. *Id.* at 208.

Plaintiffs dismiss *Garcia* as "h[aving] no bearing here" because that case involved a "generally applicable state identity theft statute." Resp. 26. But *Garcia* outlines a principle: Whether federal laws are preemptive turns on what *Congress* did, not what statute the *state* is enforcing. Unsurprisingly, Plaintiffs are eager to sidestep the textual inquiry required by *Garcia*. When this Court ran that analysis in *DeCanas*, it found that the INA's "central concern" is with regulating "the terms and conditions of admission to the country and the subsequent treatment of aliens *lawfully in the country*." 424 U.S. at 359 (emphasis added). Florida's law does not address aliens lawfully in the country. Even then, the Court found in *DeCanas* that the INA's "wording," "scope," and "detail" did not reveal a congressional intent "to preclude even harmonious state regulation touching on aliens in general," and it certainly did not do so for "illegal aliens in particular." *Id.* at 358–59.

Plaintiffs also invoke the "broad discretion" possessed by the "immigration officials" who enforce the INA. Resp. 22–23. In that vein, Plaintiffs point to the

Executive Branch's unique discretion in the removal context, which entails discretionary calls that implicate foreign-affairs interests that "must be made with one voice," like in alien-registration. *Arizona*, 567 U.S. at 408–10. *Arizona* itself, however, did not treat removal as a preempted field. *See id.* at 408–09. And the federal entry and reentry crimes implicate only ordinary *prosecutorial* discretion; they do not implicate the uniquely federal interest in the administration of the government's foreign affairs.

Regardless, Florida's law does not even interfere with the prosecutorial discretion in the federal entry and reentry crimes. Plaintiffs dredge up dicta from a standing case that immigration prosecutions could implicate "foreign-policy objectives." Resp. 23 (quoting *United States v. Texas*, 599 U.S. 670, 679 (2023)). That is not enough for preemption. *See Garcia*, 589 U.S. at 211–12. A federal prosecutor may decline to prosecute any federal crime based on innumerable considerations, including foreign-policy objectives. Absent a basis to believe that Congress has granted preemptive significance to those objectives in "the text and structure of the statute at issue" (like with alien removal), such considerations do not wipe away state authority. *Id.* at 208.

Plaintiffs also fail in their analogy to the federal alien-registration regime that *Arizona* found as creating field preemption. As Defendants noted, this Court in *Arizona* relied on both the comprehensiveness and the unique federal interests involved in alien registration. Stay Appl. 13. Plaintiffs try to squeeze the federal entry and reentry crimes into that narrow category. They contend that the federal entry and

reentry crimes are both at least as "detailed" and "uniquely federal" as alien registration. Resp. 24–25. While Plaintiffs baldly assert that the federal entry and reentry crimes are more detailed than alien registration (they are not), Plaintiffs never connect that detail to any indications of preemptive intent. *DeCanas*, 424 U.S. at 359 (comprehensiveness is relevant only if it indicates preemptive intent, especially so in immigration where "comprehensiveness" was "expected in light of the nature and complexity of the subject").

The key to *Arizona* (and Plaintiffs' argument for its expansion) is the federal interests at play. Plaintiffs do not even attempt to argue that the federal interests in *Arizona* map on here. Plaintiffs' latest theory is that a person's entry into the nation is "*more* uniquely federal" than the foreign relations implications of alien registration because the power to exclude is "inherent in [the] sovereignty" of a nation. Resp. 25. That argument conflates entry of aliens at the border with regulation of aliens inside the country. This Court has never treated those concepts as equivalent. *See DeCanas*, 424 U.S. at 355, 357–58 (approving of state law regulating employment of illegal aliens while also holding that States may not determine the field of entry); *cf. Arizona*, 567 U.S. at 400–15 (applying field preemption only to one of the four challenged state provisions). At any rate, Plaintiffs mere assertion (at 25) that this area is "*more* uniquely federal" does little to address the concern of preemptive intent and looks like the type of "brooding" federal interests that *Garcia* says courts may not use in determining preemption. *Garcia*, 589 U.S. at 202.

b. Still less have Plaintiffs shown that SB 4-C operates in any occupied field. Their best try on that score is the theory that SB 4-C operates in the fields of alien entry into, and removal from, the country. As they see it, through the INA, Congress gave federal officers "broad discretion" to decide whom to admit and remove. Resp. 22–23. But what of it? SB 4-C does not operate in those fields because Florida does not decide "*who* may enter" or be removed from the country. *Id.* at 22. It instead takes as a given that federal law controls that decision, and simply criminalizes a person's decision to enter or remain in Florida after having violated those federal entry regulations. *See* Fla. Stat. §§ 811.102, 811.103. As understood by this Court, regulations of entry involve "essentially a determination of who should or should not be admitted into the country, and the conditions under which a *legal* entrant may remain." *DeCanas*, 424 U.S. at 355 (emphasis added). Florida's law steers clear of that.

Nor is SB 4-C preempted because it "focuses on entry *into the United States*" as an element of the offenses it creates. Resp. 21. "[T]he fact that aliens are the subject of a state statute does not render it a regulation of" alien entry at the border. *DeCanas*, 424 U.S. at 355. That must be so. A state law does not directly operate in a field merely because one element of a crime turns on federal law. *Cf. Stromback v. New Line Cinema*, 384 F.3d 283, 301 (6th Cir. 2004) (no preemption where an "extra element changes the nature of the [state] action so that it is qualitatively different" from the preemptive federal claim). Core to entry and removal, as Plaintiffs admit, is the ability to determine "*who* may enter, *how* they may enter, [and] *where* they may enter," as well as "broad discretion" to remove aliens from the country. Resp. 22–23.

Florida's law leaves those determinations to federal authorities alone, *see* Fla. Stat. § 811.102(1), (4)(a), (c), and thus does not impermissibly operate in the entry and removal fields. The thought that Congress—through the INA's regulation of alien entry at the border—intended to shield illegal immigrants from differential treatment by the States once in the country is beyond specious. After all, Congress's own laws treat legal and illegal immigrants differently. *See, e.g.*, 8 U.S.C. § 1621 (States must enact specific legislation to grant certain public benefits to illegal aliens).

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

The Dormant Commerce Clause prevents economic discrimination between States. *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 369 (2023). Where a state law does not evince economic discrimination, the Clause is simply agnostic about a state's decision to bar illegal aliens from entering its borders. Stay Appl. 16–17. Indeed, this Court has repeatedly defined discrimination relevant to the Dormant Commerce Clause as "regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *Ross*, 598 U.S. at 369; *see also Or. Waste Sys., Inc. v. Dep't of Envt'l Quality of Or.*, 511 U.S. 93, 99 (1994) (similar). Florida's law does not discriminate in this way. And Plaintiffs lack any response to Defendants' argument that where Congress has affirmatively prohibited some activity, dormant-commerce analysis is inapt. *See United States v. Texas*, 97 F.4th 268, 332 (5th Cir. 2024) (Oldham, J., dissenting); *see also Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 154 (1982) (because the Dormant Commerce Clause doctrine "safeguards Congress' latent power from encroachment," courts only apply that doctrine "when Congress has not acted or purported to act").

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

Nor have Plaintiffs mounted a defense of the district court's overbroad vision of equity and Rule 65. The district court extended its injunction to cover every Florida law-enforcement officer even though they had not been sued. *See* App. 101a–11a. It then imposed on the Attorney General the duty of ensuring that all other state officials comply with its injunction, even though under state law the Attorney General exercises no control over these other officials.

That is a remarkable power grab by a federal judge. Plaintiffs endorse that approach, claiming that every officer in the State is "fully represented" whenever a single state officer is named in the case. Resp. 33. Hardly. Under Florida's system of government, executive power is divvied up among other officials, the Attorney General, local state attorneys, county sheriffs, and municipal police chiefs. *See* Stay Appl. 19–20. Those officials are independent. Absent some special arrangement, one does not speak for or control the others, and vice versa. So by purporting to enjoin Florida's law-enforcement officers (who have not been sued here) without affording them their day in court, the district court erred.

Plaintiffs alternatively argue that the "plain text" of Rule 65 justifies the district court's sweeping injunction. Resp. 36. Rule 65, they observe, permits a district judge to enjoin "not only parties and their 'officers, agents, servants, employees, and attorneys,' but also 'other persons who are in active concert or participation with" them.'" *Id.* And, Plaintiffs say, Florida law-enforcement officers must be "in active concert or participation with" prosecutors any time they make an arrest under SB 4-

C, citing modern definitions of "concert" and "participation." *Id.* That interpretive approach is bankrupt. Congress drafted Rule 65 against the backdrop of the judiciary's traditional equitable limits. Indeed, the equitable powers of federal courts are understood in relation to what "was traditionally accorded by courts of equity." *Grupo Mexicano de Desarrollo, S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 319 (1999). Crucially, the term "in active concert or participation with" is a legal term of art that has long been interpreted to require privity or aiding and abetting. *Royal Knitwear v. NLRB*, 324 U.S. 9, 14 (1945) (explaining that Rule 65 "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," including "aiders and abettors"). Plaintiffs offer no argument that law-enforcement officers either stand in privity with Defendants or aid and abet them.

Plaintiffs dismiss these well-established principles by retreating to the "purpose" of Rule 65, which they claim is to "ensure effective relief." Resp. 37. Yet they ignore the due process and fairness concerns that are equally part of Rule 65's underlying purposes. It may well have been inconvenient for Plaintiffs to sue all the relevant officials they ultimately sought to enjoin. *See* Resp. 35 (complaining of the "extraordinary burdens" involved with suing each of Florida's independent law-enforcement agencies). Litigation often is. To obtain the extraordinary relief of blocking state officials from enforcing a duly enacted state law, the least Plaintiffs could be expected to do was sue the relevant officials.

II. The issues at stake in this case are worthy of certiorari.

In claiming these issues are unworthy of certiorari, Plaintiffs downplay the State's interest in combatting illegal immigration within its borders. Resp. 13–16. Its suggestion that laws like SB 4-C are unnecessary to protect Florida residents from the enormous human costs of illegal immigration are unserious. Florida, 18 other States, and the last two presidential administrations have all agreed that real steps must be taken to stem the tide of illegal immigration. SB 4-C is just one measure among many that promises Floridians some relief from this crisis.

Plaintiffs also deny the existence of a circuit split, Resp. 19–20, but that assertion misunderstands the current situation in the circuits. While multiple circuits have held that the INA field preempts state criminal provisions, *see* Stay Appl. 28, the Eighth Circuit reached the opposite conclusion, Stay Appl. 29. It upheld a local ordinance prohibiting the harboring of an illegal alien in rental units and rejected the claim that the INA's own harboring provisions preempted the field of harboring aliens. *Keller v. City of Fremont*, 719 F.3d 931, 943 (8th Cir. 2013). To be sure, a later panel of the Eighth Circuit declared a law similar to Florida's preempted—but that opinion was vacated, *see United States v. Iowa*, No. 24-2265, 2025 WL 1140834, at *1 (8th Cir. Apr. 15, 2025), making *Keller* the controlling law in that circuit.

Plaintiffs attempt to reconcile *Keller* with the other circuits by characterizing the ordinance in that case as distinct from state alien entry and reentry crimes. Resp. 20. But the split that Florida identified in its stay application turns on the *logic* of *Keller*, which is unquestionably at odds with the reasoning of the other circuits. *Keller*

holds that the ordinary criminal provisions in the INA related to illegal aliens do not create field preemption, *see* 719 F.3d at 943, whereas several other circuits have cited exactly those criminal provisions to justify their conclusions that Congress occupied the field of alien movement.

III. The remaining stay factors support the State.

By blocking Florida from enforcing SB 4-C during the potentially years-long course of litigation, the injunction irreparably injures the State. As this Court recently affirmed, "[a]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Trump v. CASA, Inc.*, No. 24A884, 2025 WL 1773631, at *15 (U.S. June 27, 2025). And Florida's sovereign injury here is not merely abstract: SB 4-C addresses the calamitous effects of illegal immigration in Florida, which threaten both the physical and financial wellbeing of the State's residents. The injunction deprives the State of an important tool otherwise falling within its police power.

It is no answer that Florida also employs other state laws and enforcement actions in its fight against illegal immigration. Resp. 13–15. SB 4-C reflects the considered legislative judgment that *more* tools were needed to mitigate this crisis. And it blinks reality to claim that the federal and state governments had succeeded in totally curbing illegal immigration prior to SB 4-C's enactment. *See Texas*, 97 F.4th at 334 (Oldham, J., dissenting) (noting "that enforcement of" Texas's state immigration law "will decrease illegal border crossings and associated harms like drug and

human trafficking."). Even if not a panacea, SB 4-C undoubtedly contributes to the State's efforts to deter illegal immigration and safeguard its residents.

The balance of equities likewise favors the State. Plaintiffs cannot meet the threshold requirement that "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). Every person to whom SB 4-C applies is a lawbreaker: By definition, each entered the United States illegally. *See* Fla. Stat. §§ 811.102(1)–(2), 811.103(1), (3). The very thrust of their request for injunctive relief is to facilitate their continued evasion of responsibility for violating federal immigration law, effectively allowing them to remain in the shadows. To permit this injunction to stand would undermine the purpose of the clean-hands doctrine: "to discourage unlawful activity." *Branch Banking & Tr. Co. v. S & S Dev., Inc.*, 620 F. App'x 698, 701 (11th Cir. 2015); *see also Combs v. Snyder*, 101 F. Supp. 531, 532 (D.D.C. 1951).

Conclusion

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

Respectfully submitted,

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