No. 24A1269

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.

TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT

OPPOSITION TO APPLICATION FOR A STAY

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CORPORATE DISCLOSURE STATEMENT

In accordance with United States Supreme Court Rule 29.6, Respondents Florida Immigrant Coalition and Farmworker Association of Florida each state that they do not have a parent corporation, and have not issued any stock owned by a publicly held company.

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INTRODUCTION

Various states have passed laws like Florida Senate Bill 4-C ("S.B. 4-C") in the last two years, and every single court to have considered them—including the district court, App. 78a, and the court of appeals, App. 9a, below—has faithfully applied *Arizona v. United States*, 567 U.S. 387 (2012) and this Court's other decisions, holding the laws preempted. *See United States v. Texas*, 97 F.4th 268, 298 (5th Cir. 2024); *United States v. Iowa*, 126 F.4th 1334, 1353 (8th Cir. 2025), *vacated as moot*, 2025 WL 1140834 (8th Cir. Apr. 15, 2025); *Padres Unidos de Tulsa v. Drummond*, No. CIV-24-511-J, 2025 WL 1573590, at *1 (W.D. Okla. June 3, 2025); *Idaho Org. of Res. Councils v. Labrador*, No. 1:25-CV-00178-AKB, 2025 WL 1237305, at *11 (D. Idaho Apr. 29, 2025) ("*IORC*"); *United States v. Texas*, 719 F. Supp. 3d 640, 674, 678–79 (W.D. Tex. 2024); *United States v. Iowa*, 737 F. Supp. 3d 725, 749 (S.D. Iowa 2024). The lower courts have not been "struggling," Stay App. 4, to apply this Court's precedents to these statutes; to the contrary, as the Fifth and Eighth Circuits observed, these laws present a case of "quintessential field preemption," *Texas*, 97 F.4th at 282, and create a serious "obstacle to the exercise of the discretion that Congress gives to federal officials charged with enforcing federal immigration law." *Iowa*, 126 F.4th at 1347.

Nevertheless, Applicants-Defendants ("Defendants") now seek an emergency stay. But they entirely fail to establish any emergency. They suggest that a stay is warranted merely because the district court enjoined a state statute—the same assertion all states could advance, scores or hundreds of times every year.

Defendants also invoke a single homicide case, but of course the injunction does not impair their ability to address that crime using Florida's existing non-immigration criminal laws, or to lawfully cooperate with the federal government's immigration authorities. Defendants' other claimed harms are the same kinds of costs that this Court has found too "attenuated" to support standing, *United States v. Texas*, 599 U.S. 670, 680 n.3 (2023)—and moreover, many of those costs are not harms at all, because they are for the education and healthcare of U.S.-citizen children. Ultimately, Defendants never adequately explain why, especially given Florida's extensive and ongoing collaboration with federal enforcement efforts, the State must *also* be allowed to enforce its own state immigration system outside of federal supervision and control while this expedited litigation proceeds. The Court should decline Defendants' attempt to use the already busy emergency docket to provide "a merits preview . . . on a short fuse without benefit of full briefing and oral argument" where no exigency exists. *See Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring).

A stay is also inappropriate because Defendants' legal arguments are not certworthy. As noted above, courts have unanimously held this kind of law unconstitutional, so there is no circuit split. Defendants' efforts to manufacture one rely on an inapposite Eighth Circuit decision addressing a non-criminal municipal ordinance restricting home rentals. According to Defendants, that rental-ordinance case creates a split between the Eighth Circuit and the Fifth and Eleventh Circuits, and this purported split is "implicated[d]" in this case. Stay App. 28. But the Eighth

Circuit has already addressed a law on all fours with S.B. 4-C and found it preempted, in harmony with the Fifth Circuit in *Texas* and the Eleventh Circuit below. Simply put, there is no relevant split.

Moreover, Defendants are wrong on the preemption merits. *Arizona* underscored in no uncertain terms that unilateral immigration arrests, detentions, and prosecutions would impermissibly allow a "State to achieve its own immigration policy." 567 U.S. at 408. And while Defendants plainly disagree with *Arizona*—relying extensively on a dissenting opinion, Stay App. 1–3, 25—it is binding precedent. In any event, *Arizona* reiterated what has been bedrock constitutional law ever since Congress began systematically regulating immigration: The regulation of noncitizens' entry and presence is an exclusively *federal* power. *See, e.g.*, *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1875). Moreover, Congress has "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. And S.B. 4-C conflicts with the intricate federal scheme at every turn: Congress has provided a range of tools and broad discretion to federal officials in order to balance a range of national interests, yet S.B. 4-C seeks to wrest control of one of those tools—criminal regulation of entry—from federal control and discretion, to be applied however Florida (and, presumably, any other state) sees fit. The amicus brief filed in support of Florida suggests that at least 18 other states are eager to follow suit.

Defendants' alternative argument, that the injunction should be narrowed to

permit police to make arrests under S.B. 4-C while prosecutions remain enjoined, is neither logical nor certworthy. The district court certified classes of everyone subject to S.B. 4-C, and every prosecutor's office in the State is a named and enjoined defendant. So, the undisputed scope of the injunction bars anyone, anywhere, from prosecuting S.B. 4-C's entry and reentry crimes. Defendants contend that police agencies should nevertheless be allowed to *arrest* for crimes that cannot be *charged*—but that makes no sense and would violate the Fourth Amendment. Moreover, the issue is not certworthy because there is no circuit split: Every court to have addressed the scope of a district court's discretion to bind nonparties agrees that it is proper to enjoin law enforcement in this way. The district court fashioned a sensible order that applies the plain terms of Federal Rule of Civil Procedure 65(d)(2), appropriately preventing Defendants and police agencies from evading the injunction.

The Court should deny the stay application.

BACKGROUND

A. Congress's Pervasive Regulation of Entry and Reentry

"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. Congress exercised that power in the Immigration and Nationality Act ("INA"), a comprehensive system regulating entry into and continued presence in the United States. *See generally* 8 U.S.C. §§ 1151–1382. The "system is comprehensive, complex, and national in scope." *Texas*, 97 F.4th at 285; *Arizona*, 567 U.S. at 395 ("Federal governance of immigration and alien status is extensive and complex.").

That scheme balances policy goals, providing federal officers with a range of criminal and civil tools to regulate immigration. On the criminal side, unlawful entry and reentry after removal are federal offenses, alongside various other criminal regulations related to irregular entries. 8 U.S.C. §§ 1325, 1326; *see also, e.g.*, 8 U.S.C. §§ 1321, 1323, 1324 (criminalizing the "unauthorized landing of aliens" and "unlawful bringing of aliens" into the country). On the civil side, Congress has specified categories of noncitizens who may be denied admission to the United States, *see* 8 U.S.C. § 1182, including those who enter between ports of entry, *see* 8 U.S.C. § 1182(a)(6). To decide whether a person will be removed, Congress has established several alternative removal procedures, 8 U.S.C. §§ 1229a, 1225(b)(1), and provided various forms of relief from removal, 8 U.S.C. §§ 1158, 1231(b)(3), 1101(a)(15)(U), (T).

Federal prosecutors and civil enforcement officers make decisions about how to deploy these tools collaboratively, taking into consideration various factors including humanitarian concerns and the need to encourage cooperation of noncitizens who are victims and witnesses in criminal cases. *See Arizona*, 567 U.S. at 396, 400. For example, Customs and Border Protection ("CBP") often determines, in its discretion, whether to process noncitizens civilly through one of the removal systems or refer them to the Department of Justice ("DOJ") for possible criminal prosecution.[1] Then, DOJ—sometimes utilizing attorneys detailed from CBP or

[1] *See* U.S. Dep't of Just., Off. of the Inspector Gen., *Review of the Department of Justice's Planning and Implementation of Its Zero Tolerance Policy and Its Coordination with the Departments of Homeland Security and Health and Human Services: Evaluation & Inspections Div. Rep. 21-028* at 3 (Jan. 2021, rev. Apr. 2022), https://perma.cc/S96N-9B5U.

Immigration and Customs Enforcement ("ICE")—reviews cases and accepts or declines them for prosecution.[2]

Given the complexities of the immigration system, federal discretion and control are vital. "A principal feature of the removal system" that Congress designed "is the broad discretion" delegated to the federal Executive. *Arizona*, 567 U.S. at 396. Federal officials "decide whether it makes sense to pursue removal at all," *id.*, and choose among the several removal processes Congress established, *see Biden v. Texas*, 597 U.S. 785, 801–03 (2022); *United States v. Texas*, 599 U.S. 670, 679 (2023). And, critically, "federal officials in charge of the comprehensive scheme" decide whether "to bring criminal charges against individuals" under the associated federal criminal laws, or whether doing so "would frustrate federal policies." *Arizona*, 567 U.S. at 402. In short, as the Fifth Circuit observed, "[t]he INA provides the federal government discretion to decide whether to initiate criminal proceedings or civil immigration proceedings once a noncitizen is apprehended," and "[t]he broadest exercise of federal discretion is the Executive's decision not to pursue [unlawful entrants] either civilly or criminally." *Texas*, 97 F.4th at 281, 289.

B. Florida's State Immigration Law

S.B. 4-C criminalizes "illegal entry"—"knowingly enter[ing] or attempt[ing] to enter" Florida "after entering the United States by eluding or avoiding examination

[2] *See id.* at 4 & n.7; *see also id.* at 4 n.8 (discussing prior policy to decline prosecution where it would not serve a "substantial federal interest"); U.S. Dep't of Just., *Memorandum from the Acting Deputy Att'y Gen. to All Dep't Employees: Interim Policy Changes Regarding Charging, Sentencing, and Immigration Enforcement* (Jan. 21, 2025), https://perma.cc/6UBG-SWYY (current policy on declining prosecution).

or inspection by immigration officers"—and "illegal reentry"—"enter[ing], attempt[ing] to enter, or [being] 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." Fla. Stat. §§ 811.102(1), 811.103(1). Unlike the federal entry and reentry crimes, these state crimes carry significant mandatory minimum sentences and mandatory pre-trial detention. *See id.* § 811.102(1)–(3), (5), 811.103(2)–(4).

Florida's S.B. 4-C is one of at least seven state entry and reentry laws, all enacted in the last two years. Four of those other laws—Texas, Iowa, Oklahoma, and Idaho—are also enjoined. *See Texas*, 97 F.4th at 298; *Iowa*, 737 F. Supp. 3d at 749; *Padres Unidos de Tulsa*, 2025 WL 1573590, at *7; *IORC* 2025 WL 1237305, at *20. Appeals are pending in the Fifth, Eighth, and Tenth Circuits, along with the Eleventh Circuit proceedings below. Both courts of appeals that have addressed such laws have held them preempted. *See Texas*, 97 F.4th at 298; *see Iowa*, 126 F.4th at 1353, *vacated as moot*, 2025 WL 1140834 (8th Cir. Apr. 15, 2025). The two state illegal entry and reentry laws that have not been enjoined—those of Louisiana and Arizona—contain unmet trigger language; they have not gone into effect and no one has yet sued to challenge them. *See* La. S.B. 388 § 4; Az. H.C.R. 2060 § 13-4295.04.

C. Procedural History

Plaintiffs are two provisionally certified classes of noncitizens subject to arrest and prosecution under S.B. 4-C. The named plaintiffs are two individuals proceeding under pseudonyms, V.V. and Y.M., as well as two Florida membership organizations,

the Florida Immigrant Coalition and the Farmworker Association of Florida. The defendants are James Uthmeier—who is the Attorney General of Florida and also currently serving as Statewide Prosecutor, *see* Stay App. i & n.1—as well as the state attorneys for each of Florida's 20 judicial circuits. Every Florida state law enforcement agency that has the power to prosecute violations of S.B. 4-C is thus a named defendant in this case and subject to the district court's injunction.

The district court entered a temporary restraining order ("TRO") on April 4, which barred enforcement of S.B. 4-C by Defendants, their agents and servants, or any other person "in active concert or participation with them." App. 270a. When it came to light that police had made arrests after this TRO was issued, including of a U.S. citizen, the district court expressly clarified that its order bound all state law enforcement officers. App. 233a. It required Defendants to provide notice of the order to law enforcement officers. *Id.* at 234a. Attorney General Uthmeier initially did so in an April 18 letter, which expressed his disagreement with the court's decision but asked officers "to comply with Judge Williams' directives." *Id.* at 132a–33a. He then issued a second letter on April 23, stating that "there remains no judicial order that properly restrains you from" enforcing S.B. 4-C, and that "it is my view that no lawful, legitimate order currently impedes your agencies from continuing to enforce" the statute. App. 135a. The district court recently held Attorney General Uthmeier in civil contempt for this second letter, finding that it vitiated the notice he had been ordered to provide, and required as a sanction biweekly reporting of any enforcement of the statute. Order, *Florida Immigrant Coalition v. Uthmeier.*, No. 25-cv-21524

(S.D. Fla. June 17, 2025) ECF No. 96.

On April 29, the district court provisionally certified two classes and issued a preliminary injunction, finding that S.B. 4-C was likely field- and conflict-preempted and also likely violated the Commerce Clause. App. 77a–90a. The court noted that it was joining "courts across the country [that] have unanimously held that nearly identical state illegal entry and reentry laws recently enacted are likely preempted by federal immigration law governing noncitizen entry." *Id.* at 85a (collecting cases).

Defendants appealed and sought a stay. On June 6, a unanimous panel of the court of appeals denied the stay, concluding that Defendants failed to make a "strong showing" of likelihood of success on the merits on the preemption issue. *Id.* at 8a. The Eleventh Circuit found it "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 [the field preemption analysis] is satisfied with respect to the field of alien entry into and presence in the United States." *Id.* at 9a.

The court of appeals also declined to stay the district court's preliminary injunction as to non-party law-enforcement officials, observing that either the district court's order was a "sensible" effort "to enjoin from implementing S.B. 4-C the various officials who might be a part of the enforcement effort," or, if the police really can make arrests entirely independently of any prosecution, that the Attorney General lacks standing to advance that independent interest. *Id.* at 10a–13a.

Finally, the court rejected Defendants' equities arguments, emphasizing that

"[f]ederal officials of course already enforce immigration law" with Defendants' active cooperation, and that the Attorney General's apparent "veiled threat not to obey" the district court undercut his claim for a stay. *Id.* at 14a. The court of appeals also granted the Attorney General's motion to expedite the appeal, setting argument for "the next available sitting," namely the week of October 6. *Id.* at 15a.

Defendants subsequently sought a stay from this Court.

ARGUMENT

"In deciding whether to issue a stay," this Court applies "the same 'sound . . . principles' as other federal courts." *Ohio v. EPA*, 603 U.S. 279, 291 (2024) (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)). The Court examines: "(1) whether the applicant is likely to succeed on the merits, (2) whether it will suffer irreparable injury without a stay, (3) whether the stay will substantially injure the other parties interested in the proceedings, and (4) where the public interest lies." *Id.*; *see also Labrador v. Poe*, 144 S. Ct. 921, 922 (2024) (Gorsuch, J. concurring) (same); *id.* at 929 n.2 (Kavanaugh, J., concurring) (similar).[3] A majority of the Court has also emphasized that, as part of likelihood of success, "the Court can and should take care to focus on certworthiness when considering emergency applications." *Id.* at 931 (Kavanaugh, J., concurring); *see also id.* at 935–36 (Jackson, J., dissenting) (same);

[3] Defendants cite a somewhat different formulation of the standard from *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (*per curiam*). *See* Stay App. 3–4, 8 (suggesting a "fair prospect" of success standard). Members of this Court have expressed "doubt" that there is "any meaningful difference among the common formulations of the emergency-relief factors." *Poe*, 144 S. Ct. at 929 n.2 (Kavanaugh, J., concurring). In any event, *Ohio* represents the Court's most recent articulation of the standard.

Does 1-3, 142 S. Ct. at 18 (Barrett, J., concurring) (similar). And the movant has an "especially heavy" burden where, as here, both courts below have already "denied a motion for a stay." *Edwards v. Hope Med. Grp. for Women*, 512 U.S. 1301, 1302 (1994) (Scalia, J., in chambers) (quoting *Packwood v. Senate Select Comm. on Ethics*, 510 U.S. 1319, 1320 (1994) (Rehnquist, J., in chambers)).

Defendants' application fails across the board. Defendants have failed to demonstrate any irreparable injury sufficient to justify this Court's emergency intervention, and the other equities militate against extraordinary relief; neither issue the State advances is certworthy; and Defendants have not established any likelihood of success on the merits in light of this Court's clear direction in over a century of cases culminating in *Arizona.*

I. THE STATE HAS FAILED TO SHOW IRREPARABLE HARM WARRANTING AN EMERGENCY STAY.

The State's application fails at the threshold because it has not demonstrated any equitable justification for this Court to intervene in this emergency posture. "A stay is an 'extraordinary remedy that may only be awarded'" if the applicant can "make a 'clear showing' of irreparable harm." *Murthy v. Missouri*, 144 S. Ct. 7, 8 (2023) (Alito, J., dissenting) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)); *see also Williams v. Zbaraz*, 442 U.S. 1309, 1311 (1979) (Stevens, J., in chambers); *Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1316 (1983) (Blackmun, J., in chambers).

Here, Defendants seek to upend a 150-year status quo, under which this Court has repeatedly underscored 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 & n.64 (collecting cases) (emphasis in original). Yet they offer no reason why Florida must be permitted to apply its new statute now, "on a short fuse without benefit of full briefing and oral argument." *Does 1-3*, 142 S. Ct. at 18 (Barrett, J., concurring). To the contrary, they offer just two arguments: A generalized interest in enforcing state law, which every state could assert in every challenge to their statutes; and the purported "effects of illegal immigration," which they entirely fail to substantiate or connect to any need to apply S.B. 4-C *right now*. Stay App. 31.

Defendants first contend that it is sufficient for this emergency application to assert "a form of irreparable injury" in not being allowed to enforce a state statute. *Id.* (quoting *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)). But, as the court of appeals rightly noted, this argument falls flat because the State can have no legitimate interest in applying a preempted statute. App. 13a–14a; *see also infra* (addressing the merits); *Pub. Util. Comm'n of Ohio v. United Fuel Gas Co.*, 317 U.S. 456, 469 (1943) (finding that preempted state action injures "the public interest"). Moreover, Defendants' argument implies that states would *always* be entitled to "force the Court to give a merits preview," *Does 1-3*, 142 S. Ct. at 18 (Barrett, J., concurring), in all kinds of cases, further crowding this Court's emergency docket with cases that present no practical emergency. A stay is not warranted in this circumstance. *Cf. King*, 567 U.S. at 1303 (emphasizing the "ongoing and concrete harm" caused by enjoining DNA collection). In any event, the court of appeals already appropriately accommodated the State's interest in enforcing

its statute by granting its motion to expedite the appeal, setting argument for "the next available sitting." App. 15a.

Beyond this generic and theoretical interest, Defendants lean on the purported deleterious effects of immigration. But they fail to connect any dots suggesting an urgent need for this state law to take immediate effect.

First, Defendants open and close their application with a discussion of a single violent crime. Stay App. 1–2, 33. But Florida of course has a wide range of *non*-immigration criminal laws to address violent crime and drug trafficking, as well as myriad other crimes, and nothing in the injunction remotely limits the enforcement of those laws.[4] Indeed, enforcing Florida's preempted state immigration regime will harm public safety by eroding community trust in law enforcement. *See Texas*, 719 F. Supp. 3d at 698 ("Because [Texas] 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.").

[4] While Defendants cite fentanyl concerns, Stay App. 31–32, it is well established, including by the U.S. government, that fentanyl overwhelmingly is smuggled at ports of entry by U.S. citizens, not between ports by migrants—so S.B. 4-C is irrelevant to these problems. *See* U.S. Customs & Border Protection, *Frontline Against Fentanyl* (last modified May 22, 2025), https://perma.cc/4NAU-9GSY ("More than 90% of interdicted fentanyl is stopped at Ports of Entry (POEs), where cartels attempt to smuggle it primarily in vehicles driven by U.S. citizens."). More generally, immigrant communities have consistently lower violent and drug crime rates than others. *See, e.g.*, Nat'l Inst. of Just., *Undocumented Immigrant Offending Rate Lower Than U.S.-Born Citizen Rate* (Sept. 12, 2024), https://perma.cc/GRD7-K7WE; Jasmine Garsd, *Immigrants Are Less Likely To Commit Crimes Than U.S.-Born Americans, Studies Find*, NPR (Mar. 8, 2024), https://perma.cc/5XPJ-FUV7.

Second, Defendants assert that undocumented noncitizens impose significant costs on Florida, citing an infographic from an anti-immigration advocacy organization. Stay App. 25 & n.14. But those supposed "harms" consist largely of the costs of education and congressionally approved health and nutrition benefits for U.S.-citizen children.[5] Providing public education and federally mandated services to U.S. citizens does not qualify as a harm at all, and certainly cannot justify emergency intervention by this Court. Moreover, this Court has held that states' efforts to tie immigration enforcement to the cost of providing "healthcare and education [even] to *noncitizens*" was too "attenuated" to support standing—so it follows such outlays for citizens could not satisfy the higher standard to justify emergency intervention. *Texas*, 599 U.S. at 674, 680 n.3 (emphasis added).

Third, and ultimately, Defendants' claim appears to be that they urgently need to "address" an asserted immigration "crisis." Stay App. 32; *see id.* at 24–25, 31–32. But Defendants' preference for more or different immigration enforcement cannot overcome the preemption problem with S.B. 4-C. And, as the court of appeals observed, Defendants have other, lawful ways of participating in immigration enforcement: "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

[5] *See* Fed'n for Am. Immigr. Reform, *The Fiscal Burden of Illegal Immigration on United States Taxpayers 2023* 5 (2023), https://perma.cc/4PX8-J9N4 ("FAIR includes costs incurred by the minor, U.S.-born children of illegal aliens").

immigration law." App. 14a; *see also Arizona*, 567 U.S. at 408 (explaining that "the system Congress created" permits state officers to engage in immigration enforcement only in "limited circumstances," including such agreements). Indeed, Florida's jurisdictions have signed by far the most cooperation agreements with ICE of any state.[6] Additionally, federal authorities recently touted a "first-of-its-kind statewide operation" undertaken in collaboration with Florida state and local law enforcement.[7]

Defendants do not explain why they need an independent state system of criminal enforcement, much less why they need it immediately. Instead, they suggest that the court of appeals should not have even asked that question. Stay App. 32. But the court of appeals was addressing the *equities* and correctly explained that Defendants had failed to establish any urgency warranting a stay. App. 14a.

Moreover, Defendants' claims of a crisis rely entirely on outdated data on border crossings from 2024. Stay App. 24–25. Setting aside that Defendants fail to show harm *to Florida* arising from unauthorized border crossings elsewhere, the

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[6] *See* U.S. Immigr. & Customs Enf't, *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act* (May 13, 2025), https://perma.cc/PHS2-D85Z (elect "View 287(g) Participating Agencies"); Cheryl McCloud, *Florida Leads US in Local Law Enforcement Agencies Partnering With ICE. Check Your County*, Tallahassee Democrat (June 17, 2025), https://perma.cc/TW3C-H5QT.

[7] *See* U.S. Immigr. & Customs Enf't, *Largest Joint Immigration Operation in Florida History Leads to 1,120 Criminal Alien Arrests During Weeklong Operation* (May 1, 2025), https://perma.cc/9GSJ-PC4C (including quote from Governor DeSantis that "Florida is proud to work closely with the Trump administration" on immigration enforcement).

current data show that Defendants' assertions of a crisis are entirely unfounded. Since 2024, there has been a precipitous decline in border crossings: In February of this year, the federal government reported a 94% decrease compared to the prior year.[8] Stale border crossing numbers cannot justify an emergency stay *today*.

On the other side of the ledger, staying the district court's injunction would do serious harm to the plaintiff classes and the public. Plaintiffs face the prospect of being stopped, arrested, prosecuted, and imprisoned as they go about their daily lives, under a state criminal statute that is unconstitutional. App. 91a. And this danger is far from hypothetical. Indeed, *after* the district court enjoined every single prosecutors' office in the State from enforcing S.B. 4-C, state police arrested dozens of people under the statute. *See* App. 90a–91a.[9] Nor is there risk only to members of the class. For example, on April 16, 2025, Juan Carlos Lopez-Gomez, a U.S. citizen, was arrested by the Florida Highway Patrol under S.B. 4-C's illegal entry provision, despite presenting valid identification. App. 91a; Pls.' Resp. to Defs.' Suppl. Br., Exhibit F, *Florida Immigrant Coalition v. Uthmeier*, No. 25-cv-21524 (S.D. Fla. Apr. 26, 2025) ECF No. 57-6.

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[8] Camilo Montoya-Galvez, *Illegal Crossings at U.S.-Mexico Border Down 94% From Last Year, Border Patrol Chief Says*, CBS News (Feb. 20, 2025), https://perma.cc/4PVP-G39V. That trend has continued during the course of this year, in what observers have called "a seismic change at the U.S.-Mexico border." Camilo Montoya-Galvez, *Migrant Crossings at U.S.-Mexico Border Stay at Historically Low Levels 3 Months Into Trump Crackdown*, CBS News (May 1, 2025), https://perma.cc/GT6A-A3US.

[9] *See also* Hannah Critchfield & Ashley Borja, *A Judge Blocked Florida's Immigration Law. Police Arrested 25 Anyway*, Tampa Bay Times (May 28, 2025), https://perma.cc/6YWT-LPZN.

Defendants respond by claiming that plaintiffs have "unclean hands" and that they seek to "protect illegal conduct." Stay App. 32–33. But even if the record supported Defendants' allegations of illegal conduct (and it does not), nothing they assert remotely qualifies as an "unconscionable act," much less one with "immediate and necessary relation to" this preemption challenge, or that "affect[s] the equitable relations between the parties." *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 245 (1933); *see Shondel v. McDermott*, 775 F.2d 859, 869 (7th Cir. 1985) (cited by Defendants) (finding insufficient nexus "between the bad conduct and the activities sought to be enjoined"). Rather, if anyone's conduct has been inequitable in this litigation, it is the State Attorney General's. As the court of appeals observed, the equities "cut against" him given "his seemingly defiant posture vis-à-vis the district court." App. 14a. Far from "acting in full accordance with court orders," Stay App. 30, the Attorney General, when faced with an unambiguous court order enjoining all arrests and a clear directive to provide notice to law enforcement officers, instead invited police agencies to disobey the court's directive. *See id.*; 112a–113a (order to show cause); 135a (letter). As the court of appeals explained, such a "veiled threat not to obey" is unacceptable. App. 14a; *see also Walker v. City of Birmingham*, 388 U.S. 307, 314 (1967) (court orders "must be obeyed" until stayed or reversed).[10]

[10] The district court has since, after briefing and argument, found the Attorney General in civil contempt and imposed a remedy of bi-weekly reporting of any enforcement actions. Order, *Florida Immigrant Coalition v. Uthmeier*, No. 25-cv-21524 (S.D. Fla. June 17, 2025) ECF No. 96. The first such status report disclosed two additional arrests following the Attorney General's letter encouraging law enforcement to disregard the district court's injunction. Def. Att'y Gen.'s Biweekly

Finally, enforcing this state statute that is preempted by federal law "would work injury . . . to the public interest." *Pub. Util. Comm'n of Ohio*, 317 U.S. at 469. That is particularly so because "[t]he authority to control immigration—to admit or exclude [noncitizens]—is vested solely in the Federal Government." *Truax v. Raich*, 239 U.S. 33, 42 (1915); *see also Arizona*, 367 U.S. at 394; *United States v. Pink*, 315 U.S. 203, 233 (1942) ("No State can rewrite our foreign policy to conform to its own domestic policies."). Moreover, denying a stay would "avoid the disruptive effect" of permitting these state immigration arrests for the first time. *Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025). As the unanimous court of appeals explained: "Certainty and predictability will be promoted by limiting enforcement of S.B. 4-C at least until this litigation has reached a more decisive point." App. 14a.

II. DEFENDANTS FAIL TO SHOW A LIKELIHOOD OF CERTIORARI OR SUCCESS ON THE MERITS BECAUSE THE LOWER COURTS ARE ALL IN ACCORD IN APPLYING THIS COURT'S SETTLED PRECEDENTS CULMINATING IN *ARIZONA*.

Courts across the country have unanimously held that state illegal entry and reentry laws are preempted. This Court is not likely to grant certiorari given the current landscape, as there is no circuit split on this issue—and there may never be one. In any event, the district court and the Eleventh Circuit correctly concluded that S.B. 4-C is preempted by Congress's extensive regulation in the quintessentially federal field of entry into the United States. No stay is warranted.

Status Rep., *Florida Immigrant Coalition v. Uthmeier*, No. 25-cv-21524 (S.D. Fla. July 1, 2025) ECF No. 97.

A. There Is No Circuit Split, and Certiorari Is Not Warranted in This Case.

Defendants contend that this Court is likely to grant certiorari on the merits. Stay App. 24–31. But there is no circuit split. Contrary to Defendants' claim that courts are "struggling to apprehend" this issue, Stay App. 4, the district court and Eleventh Circuit decisions joined every court to have considered a similar law in finding that S.B. 4-C is likely preempted. *See* App. 85a (collecting cases). Accordingly, certiorari—and therefore a stay—is unwarranted at this time.

Each of the five state entry and reentry laws that were set to take effect, including Florida's, have been enjoined on preemption grounds. *See Texas*, 719 F. Supp. 3d at 674, 678–79; *Iowa*, 737 F. Supp. 3d at 749; *Padres Unidos de Tulsa*, 2025 WL 1573590, at *7; *IORC*, 2025 WL 1237305, at *13. The courts have had no problem applying this Court's precedents, including *Arizona*, to find that these laws intrude into an area of unique federal authority and strip federal officers of the discretion that Congress vested in them.

The only two circuits to have considered the issue likewise agree with the court of appeals below that these statutes are preempted. After this Court declined to vacate an administrative stay of the injunction against Texas's illegal entry law, *see Texas*, 144 S. Ct. at 800 (Barrett, J., concurring) (anticipating that the Fifth Circuit could "presumably" apply the stay factors "promptly"), the Fifth Circuit vacated the administrative stay and denied Texas's stay motion in an extensive reasoned opinion finding field and conflict preemption, *Texas*, 97 F.4th at 295. The Eighth Circuit likewise affirmed the United States' *Iowa* injunction on conflict preemption grounds,

Iowa, 126 F.4th at 1353. That opinion was vacated pursuant to *United States v. Munsingwear*, 340 U.S. 36 (1950) after the United States dismissed its suit, *United States v. Iowa*, No. 24-2265, 2025 WL 1140834, at *1 (8th Cir. Apr. 15, 2025), but the law remains enjoined pending further briefing in private plaintiffs' litigation. In short, there is currently no circuit split, and there may never be a circuit split—so there is no basis to conclude that the Court will grant certiorari "in this particular case." *See Griffin v. HM Fla.-ORL, LLC*, 144 S. Ct. 1, 2 (2023) (Kavanaugh, J., concurring).

Resisting this conclusion, Defendants assert that this case "implicates" a split among the circuits. Stay App. 28. Not so. *Keller v. City of Fremont*, 719 F.3d 931 (8th Cir. 2013), on which they rely, addresses a different issue—whether a municipal ordinance restricting rental of homes to undocumented noncitizens and imposing civil fines was preempted. In *Keller*, the Eighth Circuit was clear in distinguishing that kind of statute from state "immigration laws establishing who may enter or remain in the country." *Id.* at 941. No wonder, then, that when the Eighth Circuit itself considered Iowa's reentry statute, it found the law preempted without so much as mentioning its decision in *Keller*, even though the State cited it several times, *see* Br. for Defs.-Appellants, *Iowa Migrant Movement for Just. v. Bird*, Nos. 24-2263, 24-2265, 2024 WL 3641727, at *19, 32, 66 (8th Cir. July 25, 2024).[11]

[11] Nor, of course, is a *dissent* to the Fifth Circuit's decision, *see* Stay App. 29, evidence of a circuit split. Finally, Defendants' quotation from a Congressional Research Service report addresses an inapposite issue—preemption based on a particular administration's "policies or priorities," *id.* at 29–30—which has never been Plaintiffs' argument in this case.

B. As Every Federal Court To Address the Issue Has Held, Defendants Fail To Show Likelihood of Success on the Merits.

In any event, even were the Court to grant certiorari, it is not likely to uphold S.B. 4-C. As every court to have considered one of these laws has held, state illegal entry and reentry laws are preempted by Congress's immigration scheme.

1. S.B. 4-C Is Field Preempted.

As the district court explained, "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." App. 85a (collecting cases). In denying a stay, the court of appeals agreed that "the field of alien entry into and presence in the United States" likely precludes state laws like S.B. 4-C. App. 9a. That was correct, and courts are not remotely confused: This is a case of "quintessential field preemption." *Texas*, 97 F.4th at 282.[12]

As a threshold matter, Defendants seek to change the subject, suggesting that S.B. 4-C regulates only in the field of "alien movement once within the country." Stay App. 13. This is simply not credible. By its plain language, S.B. 4-C focuses on entry *into the United States*. The entry crime applies only to one who has "enter[ed] the United States" unlawfully, and provides an affirmative defense if the individual's "entry into the United States did not constitute a violation of 8 U.S.C. [§] 1325(a)." Fla. Stat. § 811.102(1), 4(c). And the reentry crime partially duplicates the language

[12] Defendants invoke a presumption against preemption, *see* Stay App. 3, 10, but no such presumption applies where, as here, "the State regulates in an area where there has been a history of significant federal presence." *United States v. Locke*, 529 U.S. 89, 108 (2000); *see Lozano v. City of Hazleton*, 724 F.3d 297, 314 n.23 (3d Cir. 2013) (rejecting presumption).

of 8 U.S.C. § 1326, criminalizing those entering or "found in" Florida after deportation while excepting those who obtained federal permission to return while still "outside the United States." Fla. Stat. § 811.103(1). Even if S.B. 4-C does not "dictate" who may enter, Stay App. 14, it does punish manner of entry, just like the federal illegal entry and reentry crimes. Indeed, it takes the federal statutes as a base and riffs on them, adding an element of entering Florida and harsher penalties. *Id.* at 2. Moreover, the manifest point of the law is to penalize immigration: Defendants argue, for example, that "enforcement of [S.B. 4-C] will decrease illegal border crossings." *Id.* at 32.

That is more than enough to render S.B. 4-C preempted. "For nearly 150 years, [this] 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 & n.64 (collecting cases) (emphasis in original); App. 80a. Thus, "'[p]olicies pertaining to the entry of aliens' are 'entrusted exclusively to Congress,' and Congress has legislated quite extensively in that respect, establishing '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.'" *United States v. Oklahoma*, 739 F. Supp. 3d 985, 997 (W.D. Okla. 2024) (quoting *Galvan v. Press*, 347 U.S. 522, 531 (1954), and *Texas*, 97 F.4th at 283 (collecting citations)) (emphases in original); *see Arizona*, 567 U.S. at 395, 397 (addressing the "pervasiveness" of the "extensive and complex" immigration regulation system).

S.B. 4-C intrudes into this field, claiming for state officers the authority to

decide who will be prosecuted for unlawful entry across national borders. But *federal* discretion is central to Congress's design. *See Iowa*, 126 F.4th at 1347 (collecting cases). "A principal feature of the removal system is the broad discretion exercised by immigration officials" over whether it makes sense to detain, remove, or prosecute in the first place. *Arizona*, 567 U.S. at 396; *see* 8 U.S.C. § 1103(a)(1), (a)(5). Federal prosecutors and immigration officials are empowered to deploy or forgo criminal charges or civil proceedings to ameliorate the potential harshness of the immigration laws. *See Arizona*, 567 U.S. at 396, 402, 409; *Texas*, 599 U.S. at 679. And, as this Court recently emphasized, that discretion "implicates not only 'normal domestic law enforcement priorities' but also 'foreign-policy objectives.'" *Texas*, 599 U.S. at 679 (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 490–91 (1999)).

It does not matter whether S.B. 4-C "scrupulously tracks" federal provisions (though it does not). Stay App. 9. 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; *see Texas*, 97 F.4th at 286 (rejecting state's mirroring argument). Moreover, S.B. 4-C creates a "further intrusion upon the federal scheme," *Arizona*, 567 U.S. at 402–03, as its penalties 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 "inconsistenc[ies] . . . with respect to penalties" further "underscore the reason for field preemption."

Arizona, 567 U.S. at 403.

Nor does S.B. 4-C's addition of entry into Florida as an element—which is itself unconstitutional under the Commerce Clause, *see infra*—alter this conclusion. Stay App. 14. Marginally tweaking a law—adding a state jurisdictional "element" describing the otherwise innocuous conduct of entering or being present in a state—cannot save it from field preemption. *Cf. Torres v. Lynch*, 578 U.S. 452, 458, 473 (2016) (holding that the "slight discrepancy" of a federal "jurisdictional hook" was "properly ignored" in comparing federal and state crimes). Otherwise, the registration statute held to be field preempted in *Arizona* would have passed constitutional muster if the State had just added some magic words reflecting an irrelevant (or already implicit) state-nexus requirement. In any event, S.B. 4-C is at a minimum a "complementary state regulation," which is likewise "impermissible." *Arizona*, 567 U.S. at 401; *see Farmworker Ass'n of Fla., Inc. v. Moody*, 734 F. Supp. 3d 1311, 1334 (S.D. Fla. 2024) (rejecting similar effort to escape preemption because state law "regulates *a bit more* than" federal law).

Defendants offer various responses, none of which has merit.

First, they attempt to distinguish this Court's holding in *Arizona* that a noncitizen registration statute was field-preempted, suggesting that regulation of entry is "far less detailed" than that of registration and implicates no "unique federal interests." Stay App. 12–13. But everything *Arizona* said about noncitizen registration applies with even greater force to noncitizens entering the country. *See, e.g.*, *Texas*, 97 F.4th at 283. The federal entry scheme is at least as pervasive and

detailed as the alien registration laws—if not significantly more so. *Id.* And the federal government's powers "to forbid the entrance of foreigners" are *more* uniquely federal, as they are "inherent in [the] sovereignty" of the United States as a nation. *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892); *see also Fong Yue Ting v. United States*, 149 U.S. 698, 711 (1893); *Arizona*, 567 U.S. at 394–95; *Fuld v. PLO*, No. 24-151, 2025 WL 1716140, at *9 (U.S. June 20, 2025) (emphasizing "the Federal Government's broader sovereign authority," which is "categorically different" from the states').

Moreover, as with registration, if S.B. 4-C "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). Indeed, eighteen states—some of which have already enacted their own version of entry laws like S.B. 4-C—have submitted an amicus brief in this case, underscoring that a stay would lead to an unmanageable patchwork of varying state criminal regulations of immigration. *See* Amicus Br. of Iowa et al.[13]

[13] Defendants argue that *Arizona*'s registration holding is distinct because it implicated law-abiding noncitizens as well as undocumented people. Stay App. 13. But as the district court pointed out, the statute at issue in *Arizona* applied *only* to people who were not lawfully present in the country. App. 84a. This supposed distinction is thus no distinction at all. In any event, S.B. 4-C has already swept up law-abiding individuals—including, notably, a U.S. citizen. *See supra.*

Second, Defendants rely on *Kansas v. Garcia*, 589 U.S. 191 (2020) to suggest that "mere 'overlap'" between S.B. 4-C and federal crimes does not establish field preemption. Stay App. 12 (quoting *Garcia*, 589 U.S. at 211). But *Garcia* has no bearing here. There, the state prosecuted noncitizens under a generally applicable state identity theft statute for using fraudulent social security numbers on tax withholding forms. *Id.* at 195, 198–99. The noncitizens sought to rely on the fact that, "upon beginning a new job," tax withholding is typically conducted alongside employment verification—the latter of which is related to the overall immigration system. *Id.* at 197, 208–09. The Court considered various formulations of the proposed field, ultimately rejecting all of them on essentially the same grounds: "The submission of tax[-]withholding forms is *fundamentally unrelated* to the federal employment verification system." *Id.* at 804–05. Here, Florida's statute addresses *entry into the United States*, which (unlike regulation of employment) is an arena from which states are excluded, *see De Canas v. Bica*, 424 U.S. 351, 354–55 (1976)—and the statute does this by directly referring to entry in the definition of its crimes, unlike the glancing relevance of tax withholding to immigration matters in *Garcia*. *See* App. 88a n.15 (rejecting reliance on *Garcia*); *Iowa*, 126 F.4th at 1348 (same); *Padres Unidos de Tulsa*, 2025 WL 1573590, at *6 (same).

Third, Defendants invoke certain state laws that predate modern federal immigration regulation to suggest that S.B. 4-C is constitutionally permissible. Stay App. 25–27. That reliance is mistaken. *See Iowa*, 126 F.4th at 1345 (rejecting this argument). This Court has indicated that states are constitutionally barred from

regulating certain immigration matters. *See, e.g.*, *De Canas*, 424 U.S. at 355 ("Congress itself would be powerless to authorize or approve" "a constitutionally proscribed [state] regulation of immigration."); *Chy Lung,* 92 U.S. at 280 (similar). But whether the state statutes Defendants cite would be subject to *dormant* constitutional preemption in the era prior to Congress's comprehensive scheme is now largely academic. Congress has engaged in systematic regulation of immigration over the past 150 years, culminating in the "pervasive[]," "extensive[,] and complex" system currently found in the INA. *Arizona*, 567 U.S. at 395, 397. Over the same period of time, this Court has repeatedly held that entry is the exclusive prerogative of the federal government. *Texas*, 97 F.4th at 278–79 & n.64 (collecting cases). Whatever may have been the case before the modern immigration regime, state regulation of entry is now field preempted.

2. S.B. 4-C Is Conflict Preempted.

As the district court held, App. 89a, S.B. 4-C is also conflict-preempted—a conclusion which Defendants barely address. This is true for several reasons.

First, S.B. 4-C frustrates Congress's statutory scheme by interfering with the "broad discretion" Congress gave to federal officials. *Arizona*, 567 U.S. at 396; *see Texas*, 97 F.4th at 289. 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 Arizona*, 567 U.S. at 395–96, 409; *see also supra.* S.B. 4-C takes away this critical federal discretion, giving Florida "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. " *Arizona*, 567 U.S. at 402. This would give the State the power to 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 issues as reasons why unilateral state action is preempted). "That is in conflict with federal law." *Texas*, 97 F.4th at 289.

Again citing *Garcia*, Defendants contend that a conflict preemption holding here "would extend to any state law that overlapped with federal law." Stay App. 15. That simply does not follow. *See Iowa*, 126 F.4th at 1348–49. As already explained, Congress's entry crimes are part of a web of regulations, including both enforcement tools and discretionary forms of relief, which Congress entrusted to federal authorities to effectuate various policy goals. S.B. 4-C thus does far more than "overlap to some degree" with the complex federal system. *Garcia*, 589 U.S. at 211. It displaces and interferes with a comprehensive federal system in which Congress "made a considered decision" to balance various interests by placing discretion in the hands of federal officials. *Id.* "Nothing similar" was present in *Garcia*. *Id.*[14]

Defendants further argue that S.B. 4-C does not implicate the concerns in

[14] Defendants suggest that the federal government's decision to dismiss its suits "indicat[es] a belief" that these statutes are not preempted. Stay App. 28 n.20. The Department of Justice has not taken that position in these cases. In any event, preemption arises from "the Laws of the United States," not the "enforcement priorities" or "preferences" of federal officials. *Garcia*, 589 U.S. at 212; *see Padres Unidos de Tulsa*, 2025 WL 1573590, at *5 (rejecting argument).

Arizona because "it is unrelated to whether [a noncitizen] should be removed from the country." Stay App. 16. That fundamentally misunderstands *Arizona*. The through line of the entire decision is that federal law does not allow "unilateral state action" in immigration enforcement. *Arizona*, 567 U.S. at 410. Thus Section 3 of Arizona S.B. 1070—the criminal registration provision, which also did not address removal—was preempted because it allowed "independent authority to prosecute," which would upend the "careful framework Congress adopted," "diminish[] the Federal Government's control over enforcement," and "frustrate federal policies." *Id.* at 401–02. Likewise, Section 6—authorizing state immigration arrests—was preempted because it allowed "unilateral state action" that usurped the federal government's ability to exercise discretion. *Id.* at 407–10. Notably, as with S.B. 4-C, *removability* would be determined and effectuated by federal agents, *id.* at 457 (Alito, J., dissenting in part), but the Court *still* rejected this asserted state authority "to achieve its own immigration policy," *id*. at 408.[15]

By providing Florida officials with sole discretion to arrest, detain, and prosecute noncitizens for illegal entry and reentry, S.B. 4-C violates *Arizona*'s core holding that states cannot act unilaterally to regulate immigration. Indeed, if unilateral arrests alone were enough for preemption in *Arizona*, then unilateral

[15] In the same vein, the Court explained in discussing Section 2(B)—which provided for immigration status checks during police stops—that "it would disrupt the federal framework to put state officers in the position of holding aliens in custody for possible unlawful presence without federal direction and supervision," but it ultimately upheld Section 2(C) because it "could be read to avoid these concerns." *Id*. at 413. S.B. 4-C plainly cannot.

arrests, prosecutions, and imprisonment under S.B. 4-C must be preempted as well.

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Grasping at straws, Defendants assert that perhaps some applications of S.B. 4-C could escape preemption. Stay App. 9, 14–15. But S.B. 4-C has no valid applications; like the state law in *Arizona*, each time it is enforced, it would contravene Congress's decision "to foreclose *any* state regulation in the area" of entry. *Murphy v. NCAA*, 584 U.S. 453, 479 (2018) (emphasis added) (quoting *Arizona*, 567 U.S. at 401). Moreover, every time the State enforces S.B. 4-C, it conflicts with federal law by claiming for state officers the authority and discretion Congress granted to federal agents as a cornerstone of the federal system. *Arizona*, 567 U.S. at 407–09 (finding Section 6 facially preempted for the same reasons, and explaining that "the system Congress created" permits state involvement in only "limited circumstances") (citing, *e.g.*, 8 U.S.C. § 1357(g)(1)).

3. S.B. 4-C Violates the Dormant Commerce Clause.

As the district court held, App. 90a, S.B. 4-C also violates the Dormant Commerce Clause, which 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). "The clearest example of [discriminatory] 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"). This 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).

This Court's precedents also "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). This Court thus held in *Edwards v. California* that the Commerce Clause was violated when California attempted to "fenc[e] out indigent immigrants," who were seeking to move there from out of state. *Philadelphia*, 437 U.S. at 627 (citing *Edwards*, 314 U.S. at 173–74 (1941)). California had "assert[ed] that the huge influx of migrants into California in recent years ha[d] resulted in problems of health, morals, and especially finance," *Edwards*, 314 U.S. at 173, and thus contended "that a State may close its borders to the interstate movement of paupers," Br. for Resp't at 2, *Edwards v. California*, No. 588, 1941 WL 52964 (U.S. Apr. 23, 1941); *cf.* Stay App. 16 (Florida "seeks to deter the influx of illegal aliens . . . and prevent the many problems (social, moral, and criminal) that follow."). But this 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.[16]

Thus, while the Court need not reach this additional ground to deny a stay, S.B. 4-C also violates the Dormant Commerce Clause.

III. DEFENDANTS' SCOPE ARGUMENT DOES NOT WARRANT A STAY.

A. There Is No Circuit Split Regarding Fed. R. Civ. P. 65(d)(2), and Defendants' Argument Is Illogical and Not Certworthy.

In the alternative, Defendants seek a stay of the injunction as to police officers, emphasizing that they are not parties to the suit. Stay App. 17–24. That argument is meritless, as explained below, but more importantly for present purposes, it is uncertworthy. The Court should therefore deny a stay on that basis. *Does 1-3*, 142 S. Ct. at 18 (Barrett, J., concurring).

First, there is no circuit split regarding the proper interpretation of Fed. R. Civ. P. 65(d)(2) as applied to government officers, including police officers. That provision allows injunctions to reach beyond the parties to also bind employees, agents, and others "who are in active concert or participation with" them. And every case of which Plaintiffs are aware has endorsed the commonsense understanding that Rule 65 allows district courts to enjoin non-party state officers who are working with Defendants to enforce state criminal law. *See, e.g.*, *ACLU v. Johnson*, 194 F.3d 1149, 1163 (10th Cir. 1999); *Rhode v. Bonta*, 713 F. Supp. 3d 865, 888 (S.D. Cal. 2024); *Doe #1 v. Lee*, No. 16-cv-2862, 2021 WL 1264433, at *2 n.1 (M.D. Tenn. Apr. 5, 2021); *Ind. C.L. Union Found., Inc. v. Superintendent, Ind. State Police*, 470 F. Supp. 3d 888, 909

[16] Defendants try to avoid *Edwards*, Stay App. 17, but nothing in the Court's analysis turned on that statute's limitation to non-residents. 314 U.S. at 174.

n.9 (S.D. Ind. 2020); *Doe v. Harris*, No. C12-5713, 2012 WL 6101870, at *2 (N.D. Cal. Nov. 7, 2012); *Am. Booksellers Ass'n, Inc. v. Webb*, 590 F. Supp. 677, 693 (N.D. Ga. 1984). Defendants have never identified any case holding that Rule 65(d)(2) cannot be applied in this way—much less a court of appeals decision establishing a circuit split.

Indeed, Defendants effectively concede as much, as they do not even claim a split regarding the interpretation of Rule 65(d)(2).[17] Rightly so. Each of the cases on which they rely is about enjoining private parties—who have their own due process rights to a "day in court" to contest an injunction. Stay App. 30; *see id.* at 22 n.10. But this is a suit about enjoining various state officers in their official capacities. This Court has made clear that a suit for injunctive relief "is not a suit against the official but rather . . . against the State itself." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989). Because the State is already before the court, its law enforcement officers' interests are fully represented. The police officers have no independent personal interest in making arrests—only the shared state interest in enforcing S.B. 4-C. *See Michigan v. DeFilippo*, 443 U.S. 31, 38 (1979) ("Police are charged to enforce

[17] Instead, Defendants suggest in a footnote that the court of appeals' *standing* analysis in denying a stay "conflicts" with other courts'. Stay App. 30 n.22. That is far afield of any showing that the district court was wrong to enjoin the police. In any case, Defendants' unelaborated citations do not establish a split on that issue either. Most are about appellate jurisdiction, not standing. And in *GuideOne Specialty Mutual Insurance Company v. Missionary Church of Disciples of Jesus Christ*, 687 F.3d 676 (5th Cir. 2012), despite some confusing party alignments characteristic of insurance declaratory judgment actions, the appellant was aggrieved by the entirety of the lower court judgment which barred him from filing suit in state court.

laws until and unless they are declared unconstitutional.").

For example, in *Johnson*, a suit against a governor and state attorney general, non-party district attorneys challenged their inclusion in an injunction, urging that they "received no notice of, nor have they participated in, this action." 194 F.3d at 1163. The Tenth Circuit rejected that argument, 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*. So too, here. Moreover, there is *no* contrary authority, so at bare minimum, certiorari would be premature—and therefore a stay is unwarranted. *See Does 1-3*, 142 S. Ct. at 18 (Barrett, J., concurring).

Defendants' argument is also far from exceptionally important. They dress up this question as "raising fundamental federalism and separation of powers concerns." Stay App. 8. Not so. The district court certified statewide classes of everyone subject to prosecution—a decision Defendants do not challenge. And Plaintiffs sued every prosecutor in the state, so even on Defendants' restrictive view of Rule 65(d)(2), *no one in Florida* can be prosecuted for the crimes created by S.B. 4-C.[18] Yet, on their

[18] Accordingly, this case presents nothing like the questions about "universal" injunctions which Defendants invoke. Stay App. 4; *see* App. 11a (court of appeals rejecting same suggestion). Indeed, this Court's recent decision in *Trump v. CASA, Inc.*, confirms that courts can award preliminary classwide relief where it is necessary to provide complete relief to each plaintiff—which is exactly what the district court did here. App. 100a–01a (provisionally certifying the class), *id.* at 11a (Defendants do not "meaningfully contest the propriety of the class certification."); *see Trump v. CASA, Inc.*, No. 24A884, 2025 WL 1773631, at *19 (U.S. June 27, 2025) (Kavanaugh, J., concurring). Moreover, unlike with nationwide injunctions, "Congress has granted federal courts" the power to enjoin those in active concert or participation with Defendants. *CASA*, 2025 WL1773631, at *6; *see id.* at

view, the federal rules, federalism, and separation of powers demand that police officers be allowed to make arrests for a non-prosecutable crime.

That is nonsense. The State is properly subject to the Supremacy Clause and the rest of the Constitution, as well as to the powers of federal courts. Nothing in the Court's order raises any structural concerns. And Defendants' proposed alternative—that plaintiffs in this *and every other* challenge to Florida criminal laws must sue not only every prosecutorial office in the State but also each of Florida's 373 law enforcement agencies individually[19]—would impose extraordinary burdens on litigants and the courts for no practical reason.[20] Particularly absent a circuit split, there is no reason for this Court to take up Defendants' formalistic and illogical theory.

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*15 (Thomas, J., concurring) ("If district courts have any authority to issue universal injunctions, it must come from some specific statutory or constitutional grant.") (citation omitted).

[19] *See* U.S. Dep't of Just., Bureau of Just. Stat., *Census of State and Local Law Enforcement Agencies, 2018 – Statistical Tables* 5 (Oct. 2022), https://perma.cc/4CT2-DXZF.

[20] As an example of the kind of burdens Defendants propose to place on parties and courts, consider recent developments in *Perkins Coie LLP v. U.S. Department of Justice*, No. 25-cv-716, 2025 WL 1207079 (D.D.C. Apr. 25, 2025). There, a law firm sued seven federal departments and agencies over an executive order targeting the firm. *Id.* at *1 & n.1. After consultation, the parties identified numerous additional agencies involved in implementing the order. *Id.* at *1–2. Because the defendants had argued that those agencies would not be bound by an injunction, the plaintiff sought and the court granted leave to amend to add all of those agencies. *Id.* at *2. Plaintiffs added over 300 defendant federal agencies, which took hours of work and crashed the court's electronic filing system. *See* Consent Mot. for Extension of Time, *Perkins Coie LLP v. U.S. Dep't of Just.*, No. 25-cv-716 (D.D.C. Apr. 29, 2025) ECF No. 177. The new caption is 40 pages long. *See* Am. Compl., *Perkins Coie LLP v. U.S. Dep't of Just.*, No. 25-cv-716 (D.D.C. Apr. 29, 2025) ECF No. 176.

B. The District Court's Order Adhered to the Text of Rule 65(d)(2) and Was Not an Abuse of Discretion.

In any event, were the Court to take up the district court's injunctive scope, there is little reason to think it would find an abuse of discretion.

First, the district court adhered to the plain text of Rule 65(d)(2)(C), which provides that injunctions bind not only parties and their "officers, agents, servants, employees, and attorneys," but also "other persons who are in active concert or participation with" them. App. 112a; *see Van Buren v. United States*, 593 U.S. 374, 381 (2021) (Court begins "with the text"). Under an ordinary and commonsense understanding of the term "active concert or participation," police officers making an arrest for a crime act in concert and participation with prosecutors who will charge that crime. *See, e.g.*, *Jeffers v. United States*, 432 U.S. 137, 149 (1977) ("concert" means "agreement in a design or plan"); *Participation*, Black's Law Dictionary (12th ed. 2024) ("The act of taking part in something"). At a minimum, the district court's conclusion in this regard was no abuse of discretion.

Defendants do not engage with this text, but instead offer a narrow, atextual gloss on the Rule drawn from certain lower court decisions. Stay App. 18–23. They argue, for example, that "active concert or participation" means only "privity" or "aiding and abetting," and then offer narrow glosses on those terms to exclude police officers from the Rule's scope. *Id.* But courts may no more rewrite the Rules than federal statutes. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("[c]ourts are not free to amend a rule outside the process Congress ordered"). Where, as here, the Rule's text already provides a standard, "active concert or participation," courts

"lack authority to substitute for [that test] a standard never adopted." *Id.* at 622. Moreover, Defendants' atextual position would defeat the purpose of the relevant language. Rule 65 codified longstanding equitable principles designed to ensure effective relief. *See Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945). In particular, Rule 65's inclusion of persons acting in "active concert or participation" prevents parties from nullifying injunctions by working through others. *Id.* Without the district court's Rule 65(d)(2) order, law enforcement officers could simply continue arresting under S.B. 4-C while insisting that prosecutors were keeping their hands clean. As the court of appeals observed, it was "sensible for the district court to enjoin from implementing SB 4-C the various officials who might be a part of the enforcement effort," lest "the efficacy of the district court's order would be thwarted." App. 11a. That is not a departure from equity, but an appropriate application of longstanding and flexible principles. *See Golden State Bottling Co., Inc. v. NLRB*, 414 U.S. 168, 179–181 (1973) (looking to "the public policies of the [relevant] Act" and practical fairness, not formalities).

Second, as already explained, Defendants' focus on the supposed due process interests of police agencies is a red herring. State officials restrained in their official capacities from conducting arrests for an unconstitutional criminal statute that cannot be prosecuted have no independent legitimate interest in nevertheless remaining free to make such arrests. To be sure, individual officers would have an interest where their personal liability is at stake—as in the individual-capacity damages actions on which Defendants rely. Stay App. 22 n.10. And likewise, an

individual officer might have her own interest in contesting the scope of an unclear injunction *ex post*—as she might face personal contempt sanctions for conduct she did not know to be enjoined. But here, the district court went out of its way to accommodate this concern. It did not initiate any contempt proceedings when officers made arrests after the initial TRO (which had included general language drawn from Rule 65(d)(2)). Instead, it expressly clarified that the injunction would run against all Florida law enforcement officers and directed Defendants to provide notice to them. App. 215a:17–216a:14. Simply put, there is no due process or equitable problem with requiring police officers to abide by this order.

Indeed, if it were otherwise—if the police in their official capacities had totally independent interests in enforcing S.B. 4-C without regard to whether prosecutions could proceed—then the prosecutor Defendants here would lack appellate standing to contest the application of the injunction to those purportedly independent persons. As the court of appeals explained, "on [the Attorney General's] own theory, he is not aggrieved by the portion of the district court's order enjoining non-party law-enforcement officials," and seeking to "vindicate *their* rights and mitigate *their* injuries . . . is not consistent with Article III's limits." App. 12a.

Defendants contest that holding, suggesting that it is enough that they have appellate standing generally. Stay App. 23. But "standing is not dispensed in gross." *Murthy v. Missouri*, 603 U.S. 43, 61 (2024). This Court has specifically held that "named parties . . . lack standing to challenge a portion of the order applying to persons who are not parties," namely to "those acting 'in concert' with the named

parties." *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 775 (1994). As the court of appeals observed, Defendants cannot have it both ways, asserting the police act totally independently, yet seeking to represent and vindicate their purportedly independent interests.

Third, even under Defendants' cramped, atextual tests of privity and aiding and abetting, the injunction still stands. Stay App. 20–23. In the context of this kind of official-capacity suit, law enforcement is in privity with prosecutors because their "rights and interests" are already being "represented and adjudicated" in these proceedings. *ADT LLC v. NorthStar Alarm Servs., LLC*, 853 F.3d 1348, 1352 (11th Cir. 2017); *see Golden State Bottling Co.*, 414 U.S. at 179–80 ("Courts of equity may, and frequently do, go much farther . . . in furtherance of the public interest than they are accustomed to go when only private interests are involved.") The same is true of aiding and abetting. *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos* confirms that, in the civil context, it is enough that a person "conscious[ly] . . . and culpabl[y] participat[ed] in another's wrongdoing." 145 S. Ct. 1556, 1565 (2025) (quoting *Twitter*, *Inc. v. Taamneh*, 598 U.S. 471, 493 (2023)). Florida law enforcement officers' arrests under S.B. 4-C can only be in furtherance of prosecutions which would be wrongful under the injunction. *See Twitter*, 598 U.S. at 506 (liability attaches where assistance furthers a wrongful act).[21]

Fourth, and finally, Florida's proposed alternative is not only illogical but

[21] Likewise, as the district court found, under the circumstances of this case, law enforcement officers also qualify as agents or servants of Defendants. App. 102a–105a.

would also expose law enforcement officers to potential legal liability. An arrest or stop must be assessed by reference to "the seizure's 'mission.'" *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). The justification of an arrest for a violation of S.B. 4-C can only be as a prelude to a prosecution for that crime. But such prosecutions are prohibited under the district court's injunction—anywhere in the State, by anyone. Thus, arrests under S.B. 4-C would violate the Fourth Amendment. Florida's proposal would permit and even encourage such constitutional violations.

The injunction protects against them—offering clarity, protecting constitutional rights, and preserving the rule of law—precisely what Rule 65 was designed to do.

CONCLUSION

The stay application should be denied.

Respectfully Submitted,

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