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

RESPONDENTS' RESPONSE TO APPLICANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

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Applicants have submitted an amicus brief filed below by the United States, which for the first time takes the position that laws like S.B. 4-C are not preempted by federal law. Nothing in that brief changes the analysis here. The stay application should be denied.

First, it remains the case that there is no relevant split of authority, much less a circuit split. *See* Opp. 19–20. The United States' change of heart—presaged by the Justice Department's decision to drop its own related cases challenging other laws like Florida S.B. 4-C earlier this year—does not create a circuit split or certworthy issue. *Compare* Supp. Br. of Appellants at 5–8, 10–12, *United States v. Texas*, No. 24-50149 (5th Cir. 2025), ECF No. 250 (relying on "[t]he federal government's decision to abandon its challenge to S.B.4" and the current Administration's alignment with Texas on immigration policy to argue against preemption) *with United States v. Texas*, __ F.4th ___, 2025 WL 1836640, at *37 (5th Cir. July 3, 2025) (holding Texas law nevertheless preempted). And there is nothing substantively new in the United States' Eleventh Circuit brief.

Unable to point to any new reason a stay should issue, the State argues that the mere fact that the United States has now reversed its position is somehow dispositive on the preemption question. But this is flatly wrong under this Court's precedents. It has long been a "cornerstone[]" of this Court's "pre-emption jurisprudence" that "'the purpose of *Congress* is the ultimate touchstone in every pre-emption case.'" *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (quoting *Medtronic, Inc. v. Lohr,* 518 U.S. 470, 485 (1996)) (emphasis added). This Court has accordingly held

state laws preempted even when the current executive administration believes they are not. *See, e.g.*, *Zschernig v. Miller*, 389 U.S. 429, 434 (1968) (invalidating state law despite federal government's view that it did not "unduly interfere with the United States' conduct of foreign relations"); *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 551, 546-47 (2001) (rejecting government's preemption arguments); *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 325 (2016) (same). The "fundamental" issue of "the basic allocation of power between the States and the Nation . . cannot vary from day to day with the shifting winds" of Executive Branch policy. *Zschernig*, 389 U.S. at 443 (Stewart, J., concurring); *cf. Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 497 (2010) ("the separation of powers does not depend on the views of individual Presidents") (cleaned up).

As this Court recently underscored, the "views" of "an Executive Branch agency" do not control the meaning of Congress's statutes. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). That is particularly so where, as here, the Department of Justice's new interpretation is an abrupt reversal of its prior position. *See id.* at 386 (discussing "respect" for Executive views that have "remained consistent over time"). Indeed, the federal government made the opposite arguments to this Court just last year, *see* Appl. to Vacate, *United States v. Texas*, No. 23A814—a fact that the United States' brief neither acknowledges nor explains. Nor does it grapple with the reasoning set forth in the uniform lower court decisions holding these laws preempted, apart from noting it "disagrees" with the Fifth Circuit. Br. of the United States at 20 n.5, *Fla. Immigrant Coal. v. Uthmeier*, No. 25-11469 (11th

Cir.), ECF No. 36.

Respectfully Submitted,

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