

No. 25A_____

IN THE
Supreme Court of the United States

IOWA MIGRANT MOVEMENT FOR JUSTICE, *ET AL.*,
Respondents,

v.

BRENNA BIRD, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF IOWA,
Applicant,

KIMBERLY GRAHAM AND ZACH HERRMANN,
Defendants.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

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April 7, 2026

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APPLICATION

To the Honorable Brett Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Eighth Circuit:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), applicant Brenna Bird, in her official capacity as Attorney General of Iowa, respectfully requests a 59-day extension of time, to and including July 3, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

1. The Eighth Circuit entered judgment on October 23, 2025. *See Iowa MMJ v. Bird*, 157 F.4th 904 (8th Cir. 2025) (attached at App. 1a–32a). The court denied Applicant’s petition for rehearing en banc on February 4, 2026. *See* App. 33a. Unless extended, the time to file a petition for a writ of certiorari will expire on May 5, 2026. *See* Sup. Ct. R. 13.1. This application is being filed more than ten days before that date. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. This case presents “question[s] of exceptional importance;” indeed, “[t]his one is about as important as it gets.” App. 42a (Stras, J.,

dissenting from denial of rehearing en banc). The petition will raise issues at the intersection of State sovereignty and federal immigration enforcement. And as Judge Stras’s dissent explained, the Panel’s decision conflicts with decisions of this Court. App. 34a–43a.

3. This case concerns a pre-enforcement, facial challenge to a new Iowa law. Iowa’s new law, Senate File 2340, made it a crime for aliens to set foot in Iowa if they had ever been “excluded, deported, or removed from the United States.” Iowa Code § 718C.2(1)(a). Iowa and the federal government thus now both have enacted the crime of illegal reentry. And every act punishable under Iowa’s new law is already a federal crime. And the punishments under Iowa’s law are no more severe than under federal law.

4. Plaintiffs here—two pseudonymous Iowa residents and a membership organization (“MMJ”)—sued seeking facial injunctive relief against Defendant’s enforcement of SF2340. No Plaintiff here is subject to enforcement of that law, because none pleaded their unlawful status.

5. The district court granted Plaintiffs a pre-enforcement facial preliminary injunction—enjoining Defendant from enforcing any part of the law against anyone.

6. The federal government dropped its own parallel challenge in a companion case. *See Order, United States v. Iowa*, No. 24-2265, 2025 WL 1140834 (8th Cir. Apr. 15, 2025). Then on rehearing of this case, the federal government informed the court that Iowa’s enforcement would “*further* the purposes of federal immigration law.” Brief for the United States as Amicus Curiae in Support of Reh’g en banc, *Iowa MMJ v. Bird*, 2025 WL 345577, *2 (8th Cir. Nov. 26, 2025). Indeed, during the pendency of the appeals, the State of Iowa signed a Section 287(g) agreement authorizing some members of the Iowa Department of Public Safety to enforce federal immigration law. *See* Immigration and Naturalization Act 287(g), codified at 8 U.S.C. § 1357(g).

7. Yet the Panel affirmed the district court’s facial injunction, reasoning that Iowa’s law creates an obstacle to federal law. Though the Panel did correct one of the district court’s errors, remanding the case for the district court to fix the universal scope of the injunction, App. 32a, it let stand the remaining errors. The Panel determined Plaintiffs had standing because they arguably fell within the scope of the law. App. 4a–11a. Then the Panel held SF2340 conflict preempted, reasoning that

every application of the law conflicts with immigration enforcement discretion that Congress granted to federal officials. App. 12a–App. 27a.

8. Judge Stras, joined in part by Judge Loken, dissented from the denial of rehearing en banc, App. 34a–43a, highlighting some of the “important question[s] of federal law” that this case presents. Sup. Ct. R. 10(c). As Judge Stras explained, the Panel’s decision touched on “questions of exceptional importance” and “conflicted with decisions of the United States Supreme Court.” App. 42a (cleaned up).

9. *First*, Plaintiffs lack standing. This appeal arises from a motion for preliminary injunction of Defendant’s enforcement of a state law, so Plaintiffs must “make a clear showing” that they are “likely to establish each element of standing.” *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (quotation marks omitted). And because Plaintiffs seek pre-enforcement review, they “must allege both conduct ‘proscribed by . . . statute’ and ‘a credible threat of enforcement.’” App. 36a (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014)).

10. But the Panel “all but ignored the second requirement.” App. 36a. The complaint fails to establish that these Plaintiffs are “actual[ly] or imminent[ly]” at risk of prosecution. *Susan B. Anthony List*, 573 U.S.

at 158. There are no allegations of “investigations, charges, or threats of prosecution against anyone, let alone [Plaintiffs].” App. 36a. Nor are there allegations of how “the Attorney General or county prosecutors interpret the law, much less who they plan to arrest and charge.” App. 36a. Given all that, Plaintiffs face no credible threat of prosecution. They thus lack standing.

11. Ordinarily, when the “relevant official has expressly disavowed enforcement,” there is no credible threat of enforcement against that plaintiff. *Wang v. Paxton*, 161 F.4th 357, 362–365 (5th Cir. 2025). And as clear in her many briefs in this appeal, the Attorney General has repeatedly disavowed Plaintiffs’ interpretation of the law, in favor of a more natural reading that would not cover Plaintiffs as pleaded. The Panel decision thus created a circuit split on that question. *Wang*, 161 F.4th at 362 (emphasizing plaintiff’s inability to “cite a single case where a court has found a credible threat of enforcement when the relevant official has expressly disavowed enforcement”).

12. *Second*, Plaintiffs are not likely to succeed on the merits of their facial conflict-preemption challenge. A facial challenge “requires proof of a negative: ‘no set of circumstances . . . under which [Iowa’s

statute] would be valid.” App. 38a (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). Judge Stras explained that “Iowa’s statute is nearly a mirror image of federal law, meaning that any conflict will quite literally be the exception, not the rule.” App. 41a. That means there are at least some constitutional applications—indeed, “the most obvious application is also the most obviously constitutional: the state prosecution of an individual who has committed the crime of illegal reentry under federal and state law.” App. 39a. So Plaintiffs’ facial challenge should fail.

13. The Panel turned the facial injunction analysis on its head, disregarding what *Salerno*, *NetChoice*, and this Court’s litany of facial-challenge cases require. *See Salerno*, 481 U.S. at 745; *Moody v. NetChoice, LLC*, 604 U.S. 707, 723 (2024). The Panel facially enjoined enforcement of the law because, the Panel concluded, the law “could,” sometimes, create an obstacle to federal non-enforcement priorities. App. 18a. The Panel reasoned that mere overlap between Iowa and federal law requires a facial injunction based on obstacle preemption because Defendant’s enforcement “could be exercised without any input” from federal officials and “could” result in “unnecessary harassment of some

aliens who federal officials determine should not be removed.” App. 19a (cleaned up). That reasoning failed to explain how SF2340 conflicts with federal law in *every* application.

14. *Third*, the Panel got the preemption analysis wrong, creating conflicts with this Court’s immigration preemption cases like *Arizona* and *Kansas*. See *Arizona v. United States*, 567 U.S. 387 (2012); *Kansas v. Garcia*, 589 U.S. 191 (2020). Federal law—not federal enforcement priorities—conflict-preempt state law only when the two conflict. *Kansas*, 589 U.S. at 208–212. Federal prosecutorial discretion *not* to enforce an otherwise mandatory immigration crime does not conflict with Iowa’s parallel law. As the federal government told the Eighth Circuit, Iowa’s law “*further[s]* the purposes of federal immigration law.” Brief for the United States, *Iowa MMJ v. Bird*, 2025 WL 345577, *2. After all, state laws do not “somehow conflict with [federal] by incorporating it.” *Zyla Life Scis., LLC. v. Wells Pharma of Houston, LLC*, 134 F.4th 326, 331 (5th Cir. 2025).

15. Although Plaintiffs did not bring a field preemption challenge, the Panel deployed a “Frankensteinian hybrid: something it calls ‘conflict preemption’ but that more closely resembles field preemption.” App 40a.

In effect, the Panel reasoned that mere overlap of state and federal immigration law requires a facial injunction on account of obstacle preemption, because enforcement of the state law could in some instances conflict with federal nonenforcement. But “[o]nly field preemption,” not conflict preemption, “can block ‘parallel’ and ‘complementary state regulation.’” App. 40a (quoting *Arizona*, 567 U.S. at 401). The panel’s “patchwork analysis” confused Plaintiffs too, who, in resisting Defendant’s request of en banc rehearing, defended the Panel’s decision on field-preemption grounds. App. 40a.

16. Field preemption is “hard to square with *Arizona*,” App. 40a, which invalidated some state immigration-related laws on obstacle-preemption grounds while allowing the state to enforce one immigration statute. *Arizona*, 567 U.S. at 416. *Arizona* and *Kansas* instruct that the proper course in a challenge like Plaintiffs’ here is an as-applied challenge. The Panel’s decision contradicts those cases.

17. Good cause exists for an extension. Over recent weeks and the next several weeks, Applicant’s counsel has had and will have oral arguments and briefing deadlines for a variety of matters, including: oral argument in *Gregory v. State*, No. 24-0885 (Iowa) on March 25; oral

argument in *State v. Global Fiberglass Solutions, Inc.*, No. 25-0443 (Iowa) on March 25; oral argument in *In re: Ezra L. Totton Scholarship*, No. 25-0462 (Iowa) on April 15; oral argument in *Bolin v. Iowa DHHS*, No. 25-1169 (Iowa Ct. App.) on April 15; oral argument in *Shamrock Hills v. Ommen*, No. 25-2991 (8th Cir.) on April 16; response brief in *State v. Belt*, No. 25-2197 (Iowa) filed on March 20; opening brief in *Corrente v. The Charles Schwab Corp.*, No. 25-40774 (5th Cir.) filed on March 23, and a reply brief expected to be due May 13; reply brief in *AFSCME Iowa Council 61 v. State*, No. 25-1079 (Iowa) due April 16; response brief in *Uwazurike, et al. v. Jobes, et al.*, No. 25-3303 (8th Cir.) due May 1; opening brief in *State v. Geronimo*, No. 25-2210 (Iowa) due May 7; and preliminary injunction briefing in *KalshiEX LLC v. Bird, et al.*, No.25-cv-109 (S.D. Iowa). Counsel also anticipates having to respond to emergency filings in federal district court over the coming months.

18. Applicant therefore respectfully seeks this extension of time to allow counsel to research the relevant legal issues and prepare a petition that comprehensively addresses the important questions raised by the Panel opinion.

19. Counsel for Plaintiffs has advised that they consent to this extension.

20. For these reasons, Applicant respectfully requests that an order be entered extending the time to file a petition for certiorari to and including July 3, 2026.

Respectfully submitted,

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