

In the Supreme Court of the United States

MARKWAYNE MULLIN, SECRETARY OF THE U.S.
DEPARTMENT OF HOMELAND SECURITY, IN HIS OFFICIAL
CAPACITY, *ET AL.*,

Petitioners,

v.

REFUGEE AND IMMIGRANT CENTER FOR EDUCATION
AND LEGAL SERVICES, *ET AL.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**BRIEF OF IOWA AND 21 OTHER STATES
AS AMICI CURIAE IN SUPPORT OF
GRANTING THE PETITION**

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QUESTIONS PRESENTED

1. Whether Presidential Proclamation No. 10,888, 90 Fed. Reg. 8333 (Jan. 29, 2025), and its implementing guidance—which suspended the entry of certain aliens and precluded their access to statutory provisions that would enable their continued presence in the country, including asylum—are lawful.

2. Whether 8 U.S.C. § 1252(f)(1) bars the classwide relief entered by the district court.

3. Whether the class definition comports with Article III and Rule 23 of the Federal Rules of Civil Procedure.

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INTEREST OF AMICI CURIAE¹

On his first day in office, President Trump issued a declaration intended to protect States from the ongoing invasion along our nation’s southern border. Amici curiae are the State of Iowa and 21 other States supporting that declaration. Amici have three primary interests in this case.

First, amici are the constitutional beneficiaries of the duty the Proclamation discharged. Article IV, § 4 of the Constitution explains that “[t]he United States . . . shall protect each of [the States] against Invasion.”

That promise runs to the States by name, and it was extended to them as a term of Union. *See* The Federalist No. 43, at 271–72 (James Madison) (Clinton Rossiter ed., 1961) (protection against invasion); The Federalist No. 41, at 252 (James Madison) (security against foreign danger is “an avowed and essential object of the American Union”).

Proclamation 10888 is titled *Guaranteeing the States Protection Against Invasion*, and it invokes that obligation in terms. 90 Fed. Reg. 8333, 8334–35 (Jan. 20, 2025). The decision below holds that the principal statutory instrument the President used to keep that promise may not lawfully be used that way. Amici are not bystanders to that holding. They are its subjects.

Second, amici absorb the costs of unlawful entry, and they absorb them without recourse. States and their subdivisions fund emergency medical care, K–12 education, corrections and jail beds only

¹ Pursuant to Rule 37.2, amici provided timely notice of their intent to file this brief to all parties.

fractionally offset by federal reimbursement, indigent defense, and child-welfare placements. They also bear the human cost of the narcotics that move through an unsecured border. In Iowa, illegally manufactured fentanyl was involved in 49% of all overdose deaths.² None of that is recoverable from the United States. No cause of action lies, and no sovereign immunity has been waived. Amici’s only remedy is a federal Executive able to act.

Third, and most urgently, amici have mostly been told that they may not act for themselves. In *Iowa Migrant Movement for J. v. Bird*, 157 F.4th 904 (8th Cir. 2025), *reh’g and reh’g en banc denied* (8th Cir. Feb. 4, 2026), the Eighth Circuit held that Iowa’s illegal-reentry statute, a law that tracks 8 U.S.C. § 1326(a) nearly word for word, is preempted in every one of its applications, and it affirmed a preliminary injunction against the whole statute. *Id.* at 919–27.

That decision is the governing law of the circuit in which Iowa sits, and comparable holdings bind some other amici. Alongside the decision here, it produces the condition Judge Stras identified in dissenting from the denial of rehearing en banc. Asked who is left to address “the admission and exclusion of foreign nationals,” he answered: “More and more, the answer seems to be nobody. Not the federal government, not the states, nor anyone else.” *Iowa Migrant Movement for J. v. Bird*, 166 F.4th 688, 694 (8th Cir. 2026) (en banc) (Stras, J., dissenting).

² Iowa Dep’t of Health & Human Servs., *Iowa Overdose Deaths: Data to Inform Prevention* (Aug. 2025) (reporting State Unintentional Drug Overdose Reporting System data for 2020–2023), <https://hhs.iowa.gov/media/16963/download>.

That is why the undersigned States of Iowa and 21 additional States file this amicus in support of Applicants seeking to stay the district court's decision. The question raised by this petition is one of vital importance.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case has been litigated as an exercise in statutory construction, and the petition ably explains why the panel's construction is wrong. Amici write to identify what the decision below does to the constitutional structure—and to the States that structure was designed to protect.

The Proclamation's suspension of entry is not challenged here. Pet. App. 22a ("The Proclamation invokes the President's authority under Section 1182(f), but that section authorizes a President to suspend only the 'entry' of foreign individuals into the United States."). Every party agrees that the President lawfully closed the door. The panel held only that he may not make that closure effective: an alien who defies and succeeds in crossing acquires, by the act of evasion, statutory entitlements that delay his departure by months or years. Those are entitlements that the alien who presents himself lawfully at a port of entry does not have. The panel thus converted a valid exclusion order into an invitation for circumvention.

That holding matters to amici for a reason that has nothing to do with the fine points of 8 U.S.C. § 1229a. Article IV, § 4 obliges the United States to protect the States against invasion. The President invoked that obligation by name and exercised

delegated statutory authority to discharge it. The panel held he may not. And under current circuit law, amici may not fill the gap themselves. The panel's decision thus leaves a constitutional guarantee with no one empowered to keep it.

Three points follow, and each independently warrants review.

First, the panel inverted the interpretive rules that govern delegations of authority over the entry and exclusion of aliens. This Court has held that § 1182(f) “exudes deference to the President in every clause.” *Trump v. Hawaii*, 585 U.S. 667, 684 (2018). The panel demanded that the President identify express authorization for every measure necessary to give an entry suspension practical effect, and resolved statutory silence against him. In a domain the Constitution commits to the political branches and in service of a duty the Constitution owes the States, that default is backwards.

Second, the decision cannot be reconciled with *Huisha-Huisha v. Mayorkas*, 27 F.4th 718 (D.C. Cir. 2022), which held that the discretionary character of asylum permits the Executive to foreclose the application process categorically and in advance. Three members of the D.C. Circuit have said as much. Pet. App. 136a–39a (Millelt, J.); *id.* at 185a (Katsas, J.); *id.* at 80a–83a (Walker, J., dissenting in part). Because challenges to national immigration policy are concentrated in the D.C. Circuit, the conflict will not percolate.

Third, the practical consequences are severe, immediate, and borne by amici. The record reflects a 93% decline in Border Patrol encounters over the 465

days following the Proclamation. That huge achievement for President Trump is expressed in being the lowest levels since the 1960s. Joint Appendix at 66-67, 81, *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, No. 25-5243 (D.C. Cir. filed Aug. 22, 2025) (“DCJA”). The decision below unwinds that momentous achievement. Whatever the correct answer to the statutory question, the cost of getting it wrong falls on the States.

The petition should be granted.

ARGUMENT

I. THE PANEL LEFT A CONSTITUTIONAL GUARANTEE OWED TO THE STATES WITH NO SOVEREIGN EMPOWERED TO KEEP IT.

A. *Article IV, § 4 protects against invasion to the United States and secures the States.*

The Constitution does not treat protecting against invasion as a discretionary federal service. “The United States shall guarantee to every State in this Union a Republican Form of Government, and *shall* protect each of them against Invasion.” U.S. Const. art. IV, § 4 (emphasis added). The verb is mandatory, and the beneficiary is identified.

That was the point of the clause. The Framers understood surrendering State authority over external defense must be conditional on a federal undertaking to supply it. Madison explained that protection against invasion “is due from every society to the parts composing it,” The Federalist No. 43, *supra*, at 272, and identified “[s]ecurity against foreign danger” as “an avowed and essential object of

the American Union,” The Federalist No. 41, *supra*, at 252; *see also* The Federalist No. 3, *supra*, at 42 (John Jay). The States gave up the means of self-protection because the Union promised to protect them. The guarantee was the consideration in that exchange.

Proclamation 10888 is an exercise of that in defense of that sovereign assignment. The Proclamation is captioned *Guaranteeing the States Protection Against Invasion*; it finds “that the current situation at the southern border qualifies as an invasion”; and it concludes that the entry of “aliens engaged in the invasion across the southern border is detrimental to the interests of the United States.” 90 Fed. Reg. at 8334–35. The President was discharging a duty the Constitution owes to amici.

The panel’s opinion nowhere engages with that. It construes 8 U.S.C. §§ 1182(f) and 1185(a) as though they were ordinary grants of administrative authority. Pet. App. 20a–30a. Or, as the panel said, it read those sections “to supplant other provisions in the INA that govern the removal of foreign individuals already present in the United States.” Pet. App. 20a. Nothing in the opinion acknowledges that the authority was invoked in service of a constitutional obligation running to the States, or that construing the delegation narrowly leaves that obligation unsupported. Oddly, the panel did not cite the constitutional basis of the Order at all.

A statute enacted against the backdrop of Article IV, § 4 and invoked to satisfy it should not be read to defeat it.

B. Under current circuit law, Amici States cannot protect themselves.

If the federal Executive cannot make an entry suspension effective, the natural question is, “Who can?” For many amici States, the answer is “Nobody.”

Iowa enacted Iowa Code §§ 718C.1–.10, which makes it a state crime for an alien who has been “excluded, deported, or removed from the United States” to be present in Iowa. *Id.* § 718C.2(1)(a). The statute is a near-mirror of the federal illegal-reentry offense, 8 U.S.C. § 1326(a), and prohibits the same conduct in nearly the same words. The United States, for its part, dismissed its own parallel challenge and represented that Iowa’s law “*further[s]* the purposes of federal immigration law.” Brief for the United States as Amicus Curiae in Support of Rehearing En Banc, *Iowa Migrant Movement for Justice v. Bird*, No. 24-2263 (8th Cir. Nov. 26, 2025)

The Eighth Circuit nonetheless affirmed a preliminary injunction barring the statute, holding that plaintiffs were likely to show that “every application” of Iowa’s law conflicts with federal law. *Iowa Migrant Movement for Justice*, 157 F.4th at 919–27. The panel had ruled out Iowa’s “parallel scheme of enforcement” wholesale, *id.* at 922, on reasoning that “purports to apply conflict preemption, but in truth . . . more closely resembles field preemption.” *Iowa Migrant Movement for J. v. Bird*, 166 F.4th 688, 692 (8th Cir. 2026) (Stras, J., dissenting from denial of rehearing en banc); see *Kansas v. Garcia*, 589 U.S. 191, 208 (2020).

The practical effect is what matters here. Under precedent in the Eighth Circuit, and perhaps other

circuits soon, too, amici States may not create parallel criminal liability for unlawful presence. They may not order returns. They may not condition entry. Under currently binding precedent, the federal government has occupied parts of the immigration field. Amici are thus reliant on the Constitution's corresponding promise that the United States will discharge the function itself.

C. The result is a vacuum that only this Court can close.

Put the two holdings side by side. Under the decision below, the President may suspend entry but may not deny the entitlements that make evasion of the suspension worthwhile. Pet. App. 27a-28a. That means that the suspension operates, in practice, only against those who comply with it. Under *Iowa Migrant Movement for Justice*, amici States may not supply what the federal Executive has been forbidden to supply. See 166 F.4th at 692 (Stras, J., dissenting from denial of rehearing en banc). Neither sovereign may act. That is an abdication by operation of law.

Judge Stras put the point in terms that require no elaboration. Asking who is left to exercise “the admission and exclusion of foreign nationals, a fundamental sovereign attribute” that is “exercised by the Government's political departments largely immune from judicial control,” *Id.* at 694 (cleaned up) (quoting *Trump v. Hawaii*, 585 U.S. at 702 (citation omitted)), he answered: “More and more, the answer seems to be *nobody*. Not the federal government, not the states, nor anyone else.” *Id.*

The courts of appeals cannot resolve that by themselves. The two halves of the problem sit in

different circuits, and each half is defensible in isolation. Only this Court sees both. And the vacuum is not an abstraction: it is filled by cartels and trafficking organizations that operate in the space where no sovereign is authorized to act. DCJA at 72-73, 81-84.

II. THE PANEL INVERTED THE INTERPRETIVE RULES GOVERNING DELEGATIONS OF AUTHORITY OVER ENTRY AND EXCLUSION.

The panel’s holding rests on a default rule found nowhere in the INA: unless the INA expressly authorizes a measure, the Executive may not take it. That default has no place in this domain.

Section 1182(f) is not a narrow grant. It authorizes the President, “[w]hensoever” he “finds” that the entry of aliens “would be detrimental to the interests of the United States,” to “suspend the entry of all aliens or any class of aliens” and to “impose on the entry of aliens any restrictions he may deem to be appropriate,” “for such period as he shall deem necessary.” 8 U.S.C. § 1182(f). This Court has said that the law “exudes deference to the President in every clause.” *Trump v. Hawaii*, 585 U.S. at 684. Section 1185(a)(1) supplies parallel authority over departure and entry “[u]nless otherwise ordered by the President.”

Those delegations sit atop a constitutional foundation. “The exclusion of aliens is a fundamental act of sovereignty,” one that “is inherent in the executive power to control the foreign affairs of the nation.” *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950); see *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952) (“any policy

toward aliens is . . . exclusively entrusted to the political branches of government”); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977). This Court has accordingly declined to read immigration statutes as silently constraining Executive action abroad or at the border. *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 173–79 (1993).

The panel reversed that presumption. It reasoned from the INA’s structure to conclude that Congress must have withheld from the President any authority to give an entry suspension operative effect. Pet. App. 20a. But the logic relied on finding § 1229a(a)(3) prohibited the President’s action. That section applies “[u]nless otherwise specified in this chapter”—and §§ 1182(f) and 1185(a) are in the same chapter.

Thus, nothing in the INA says that the President’s suspension authority yields to the removal sections. The panel errantly inferred that from silence. Where Congress delegated such broad power, where the subject matter is committed to the political branches, and where the constitutional duty being discharged this explicit, silence should not be read as prohibition.

The panel’s entry–removal line also collides with this Court’s treatment of aliens apprehended shortly after surreptitious crossing. In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), the Court held that such an alien “is treated as an ‘applicant for admission’” and stands “on the threshold.” *Id.* at 139–40.

The panel’s rule takes the opposite view, and the incentive it creates is perverse. The alien who

honors the suspension is turned away, while the alien who evades it acquires rights that keep him here. That asymmetry is not a marginal doctrinal wrinkle. Evasion is what generates the enforcement, correctional, medical, and educational obligations that States pay for.

III. THE CONFLICT WITH *HUISHA-HUISHA* IS SQUARELY PRESENTED AND WILL NOT RESOLVE ITSELF.

The petition shows the conflict with *Huisha-Huisha*, and amici will not belabor it. Two features of that conflict bear on whether this Court should take the case now.

First, *Huisha-Huisha* held that asylum “is a matter of executive ‘discretion’” and that the Executive may “exercise that ‘discretion’ by foreclosing asylum for the specific subset of border crossers covered by” an entry order, because “if the asylum decision has already been made . . . those procedures would be futile.” 27 F.4th at 730–31.

That reasoning rested on the discretionary character of asylum under 8 U.S.C. § 1158(b)(1)(A) rather than on any feature of 42 U.S.C. § 265. *See INS v. Aguirre-Aguirre*, 526 U.S. 415, 420 (1999); *Moncrieffe v. Holder*, 569 U.S. 184, 187 (2013). The panel confined *Huisha-Huisha* to the public-health context anyway. Pet. App. 27a-29a. Three judges of the same court have said that this cannot be done. Pet. App. 166a (Millet, J.) (*Huisha-Huisha* held “that such categorical and upfront rejections of asylum are permissible in emergency situations for limited periods of time”); *id.* at 285a (Katsas, J., concurring in part and dissenting in part) (“the same reasoning

extends to aliens covered by a section 212(f) proclamation suspending entry”); *id.* at 80a-81a (Walker, J., dissenting in part). A stay panel and a merits panel of the D.C. Circuit reached opposite conclusions on the same record and the same precedent.

The second is that the conflict will not cure itself. Challenges to national immigration policy are filed in or funneled to the D.C. Circuit, and the relief entered here is classwide and effectively national in reach.

That is reason enough to grant review. It is a stronger reason when the intracircuit conflict concerns the scope of the President’s authority to discharge a constitutional obligation to the States, and when the practical consequence of leaving it in place is measured in the terms set out below.

IV. THE COSTS OF THE DECISION BELOW FALL ON AMICI, AND THEY ARE NEITHER SPECULATIVE NOR RECOVERABLE.

The record here documents what the Proclamation accomplished. In the 465 days from January 21, 2025 through April 30, 2026, Border Patrol encounters at the southern border fell 82% against the equivalent preceding period—the lowest levels since the 1960s. DCJA 19.

Enforcement actions resulting in release into the interior dropped from roughly 1,780 per day to fewer than one. *Id.* at 167. Resources freed from processing were redirected to interdiction, yielding seizures of weapons, explosives, and narcotics and disrupting trafficking networks, *id.* at 206-07, and

cutting cartel revenue to the point that organizations were “selling property and firing personnel to account for loss in fentanyl income,” *id.* at 31.

Amici are the jurisdictions on the receiving end of the alternative. In the four years preceding the Proclamation, federal agents explained that the “problem has worsened dramatically.” *Id.* at 7. Those who were released did not remain at the border. They dispersed into amici’s counties, school districts, hospitals, and jails.

The costs are concrete and documented. In Iowa, illegally manufactured fentanyl was involved in 49% of overdose deaths, and opioids and stimulants together accounted for the overwhelming share.³ Between January 2025 and May 2026, the Department of Justice has federally charged more than 260 members and associates of Tren de Aragua—an organization that established itself in interior communities during the period of open crossings.⁴

Finally, Amici States have no way to recover any of the costs associated with an open border. There is no damages remedy against the United States for the fiscal consequences of an unenforced border, no waiver of sovereign immunity, and no prospective relief

³ Iowa Dep’t of Health & Human Servs., *supra* note 1 (illegally manufactured fentanyl involved in 49% of Iowa overdose deaths; opioids 58%; stimulants 57%; methamphetamine 49%).

⁴ See, e.g., Press Release, U.S. Dep’t of Justice, *More than 25 Defendants Charged in Nationwide Tren de Aragua Crackdown Resulting in the Seizure of Over 80 Firearms and Narcotics in Homeland Security Task Force Investigations* (May 11, 2026), <https://perma.cc/8LUG-WBNS>.

available to a State that has been told its own enforcement measures are preempted. Amici's sole protection is the one the Constitution promised them and the one the decision below removes.

CONCLUSION

This Court should grant the United States's petition for certiorari.

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APPENDIX

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