No. 24-2263

In the United States Court of Appeals for the Eighth Circuit

IOWA MIGRANT MOVEMENT FOR JUSTICE, *et al.*,
Plaintiffs - Appellees,

v.

BRENNA BIRD, in her official capacity as Attorney General of Iowa,
Defendant – Appellant,

KIMBERLY GRAHAM, in her official capacity as Polk County Attorney, and ZACH HERRMANN, in his official capacity as Clayton County Attorney,
Defendants.

On Appeal from the United States District Court for the Southern District of Iowa
Case No. 4:24-cv-00161-SHL-SBJ, Honorable Stephen H. Locher, District Judge

SUPPLEMENTAL BRIEF OF PLAINTIFFS - APPELLEES

Rita Bettis Austen
Shefali Aurora
Thomas Story
ACLU of Iowa Foundation Inc.
505 Fifth Avenue, Ste. 808
Des Moines, IA 50309-2317
Phone: (515) 243-3988
Fax: (515) 243-8506
rita.bettis@aclu-ia.org
shefali.aurora@aclu-ia.org
thomas.story@aclu-ia.org

Emma Winger
Suchita Mathur
Michelle Lapointe
American Immigration Council
2001 L Street NW, Suite 500
Washington, DC 20036
Phone: (202) 507-7512
ewinger@immcouncil.org
smathur@immcouncil.org
mlapointe@immcouncil.org

Counsel for Plaintiffs – Appellees
(Additional counsel listed on signature block)

SUMMARY OF THE CASE AND STATEMENT ON ORAL ARGUMENT

Iowa Senate File 2340 (SF2340) creates a system in which the *state*—rather than the federal government—arrests, detains, imprisons, and deports noncitizens in Iowa who reentered the United States after a previous removal or exclusion. The law makes no exception for people who reentered with federal consent, later gained lawful immigration status, or are in the process of obtaining immigration status. This Court has already found that it is likely preempted by federal law.

Plaintiffs Jane Doe and Elizabeth Roe and members of Plaintiff Iowa Migrant Movement for Justice (Iowa MMJ) are noncitizen Iowa residents who were previously deported and thus face arrest, prosecution, imprisonment, and removal under SF2340.

The district court preliminarily enjoined enforcement of SF2340. This Court subsequently affirmed that ruling in the related case brought by the United States, concluding that the Iowa law is likely preempted under *Arizona v. United States*, 567 U.S. 387 (2012). *United States v. Iowa*, 126 F.4th 1334 (8th Cir. 2025). After the United States voluntarily dismissed its action this Court vacated its decision under the Supreme Court's *Munsingwear* doctrine.

This case has already been fully briefed and argued. Defendants have requested 15 minutes for oral argument. If the Court determines that additional argument is necessary, Plaintiffs likewise request 15 minutes for argument.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eighth Circuit Rule 26.1A, Plaintiff-Appellee Iowa Migrant Movement for Justice states that it has no parent corporation and that no publicly held corporation owns more than ten percent of its stock.

August 6, 2025

/s/ Emma Winger
Emma Winger
American Immigration Council
2001 L Street NW, Suite 500
Washington, DC 20036
Phone: (202) 507-7512
ewinger@immcouncil.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

STATEMENT OF JURISDICTION

The district court had jurisdiction under 28 U.S.C. § 1331. On June 17, 2024, the district court granted Plaintiffs' motion for preliminary injunction. App.Vol.I.247; R.Doc.51, at 25. Defendant Brenna Bird timely appealed on June 19, 2024. R.Doc.52. This Court has jurisdiction to review the interlocutory order granting a preliminary injunction under 8 U.S.C. § 1292(a)(1).

STATEMENT OF ISSUES FOR REVIEW

1. Whether Plaintiffs are likely to succeed on their claim that SF2340 is preempted, where 150 years of Supreme Court precedent prohibits states from regulating entry and removal, and where SF2340 conflicts with multiple aspects of Congress' entry and removal scheme.

   Cases: *Arizona v. United States*, 567 U.S. 387 (2012)

   Chy Lung v. Freeman, 92 U.S. 275 (1875)

   Hines v. Davidowitz, 312 U.S. 52 (1941)

   United States v. Texas, --- F.4th ---, 2025 WL 1836640 (5th Cir. July 3, 2025)

2. Whether Plaintiffs have standing, where Plaintiffs' and Iowa MMJ's members' conduct is at least "arguably proscribed" by SF2340 under the plain text of the statute.

   Cases: *Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014)

   Alexis Bailly Vineyard, Inc. v. Harrington, 931 F.3d 774 (8th Cir. 2019)

   State v. Burns, 988 N.W.2d 352 (Iowa)

   Kuehl v. Sellner, 887 F.3d 845 (8th Cir. 2018)

3. Whether Plaintiffs have an equitable cause of action, where they seek declaratory and injunctive relief against state officials charged with enforcing a preempted statute.

   Cases: *Ex parte Young,* 209 U.S. 123 (1908)

   Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320 (2015)

   Pharm. Rsch. & Mfrs. of Am. v. Williams, 64 F.4th 932 (8th Cir. 2023)

4. Whether the district court acted within its discretion when it determined the remaining equitable factors favor an injunction.

   Cases: *Bank One, Utah v. Guttau,* 190 F.3d 844 (8th Cir. 1999)

   United States v. Alabama, 691 F.3d 1269 (11th Cir. 2012)

INTRODUCTION

Notably absent from Defendant Bird's supplemental brief is virtually any acknowledgment that this Court has already decided most of the central questions in this case. This Court has already determined that SF2340 is likely facially preempted, even under Iowa's atextual construction of the statute. *United States v. Iowa*, 126 F.4th 1334, 1344–53 (8th Cir. 2025). This Court has already determined that SF2340 contains no exception for noncitizens, like Plaintiffs Doe and Roe, who reenter with federal consent. *Id.* at 1346–47.

This Court is not alone. *Every* court to consider a similar statute has concluded that it is likely preempted on its face. *United States v. Texas*, ---F.4th---, No. 24-50149, 2025 WL 1836640, at 34 (5th Cir. July 3, 2025); *Fla. Immigrant Coal. v. Att'y Gen.*, No. 25-11469, 2025 WL 1625385, at *3 (11th Cir. June 6, 2025); *Padres Unidos de Tulsa v. Drummond*, ---F.Supp.3d---, No. CIV-24-511-J, 2025 WL 1444433, at *9 (W.D. Okla. May 20, 2025); *Idaho Org. of Res. Councils v. Labrador*, ---F.Supp.3d---, No. 1:25-CV-00178-AKB, 2025 WL 1237305, at *13 (D. Idaho Apr. 29, 2025). Most recently, the Supreme Court declined to stay a preliminary injunction blocking Florida's illegal entry and reentry statute—in a case where Iowa appeared as Amicus, raising many of the arguments it makes before this Court. *Uthmeier v. FL Immigrant Coal.*, No. 24A1269, 2025 WL 1890573, at *1 (U.S. July 9, 2025).

Faced with this overwhelming weight of authority, Defendant largely repeats arguments already rejected by this Court. At its core, Defendant's supplemental brief raises only two new points: that the Iowa Department of Public Safety has entered into an agreement under 8 U.S.C. § 1357(g) that permits the agency to enforce *federal* immigration law under the training and supervision of *federal* immigration authorities; and that the United States has dismissed its related action. Neither fact has any relevance to the issues before this Court. It is *Congress* that determines the scope of preemption, not the policy choices or litigation decisions of the Executive Branch. Iowa may not set up an independent state immigration system that conflicts with Congress' carefully calibrated and complex federal scheme. The Court should affirm the preliminary injunction and remand to the district court to address any outstanding questions regarding its scope following the Supreme Court's decision in *Trump v. CASA*.

STATEMENT OF THE CASE

For purposes of this supplemental brief, Plaintiffs will incorporate their statement of the case from their initial brief, which outlines the federal government's exclusive authority to regulate entry and removal, Appellee Br. 4-8, identifies the ways SF2340 regulates entry and removal, *id.* at 8-10, and introduces the parties and initial procedural history, *id.* at 10-12.

The Court heard oral argument on Iowa's appeal in this case and in the United States' related case on September 26, 2024. On January 24, 2025, the Court published a decision affirming the preliminary injuncted entered in the United States' related case. *Iowa*, 126 F.4th at 1353. On the same day, the Court entered an order dismissing Plaintiffs' appeal, vacating the district court's grant of a preliminary injunction, and remanding the case to the district court with instructions to dismiss the case as moot. On February 21, 2025, Plaintiffs filed a petition for rehearing of that order, arguing their case was not moot, and seeking a stay of the mandate in their case until the mandate issued in the United States' case.

On March 14, 2025, the United States filed a notice of voluntary dismissal in its related action. On March 24, 2025, Iowa filed a petition for rehearing asking the Court to vacate its decision and the preliminary injunction as moot under *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39–40 (1950). The Court granted that motion on April 15, 2025. *United States v. Iowa*, No. 24-2265, 2025 WL 1140834, at *1 (8th Cir. Apr. 15, 2025). That same day the Court granted panel rehearing in Plaintiffs' case. The Court subsequently ordered the parties to file supplemental briefs "addressing issues they deem relevant, including standing and the scope of any relief." April 15, 2025 Order.

SUMMARY OF THE ARGUMENT

I. Plaintiffs' claims are justiciable.

A. The plain text of SF2340 establishes that Plaintiffs Doe and Roe, and Iowa MMJ members Anna and David, are subject to prosecution, giving them standing and Iowa MMJ associational standing. As this Court has already found, Defendant's argument that SF2340 precludes prosecution of noncitizens who return with federal authorization is contrary to the text and the state legislature's deliberate omission of the federal exceptions for those who reenter with consent. Nonetheless, even under Defendant's reading, Iowa MMJ, on behalf of David and Anna, has standing.

B. Plaintiffs have an equitable cause of action under *Ex parte Young*. It is undisputed that Defendant Bird is responsible for enforcing SF2340 and Plaintiffs seek only prospective relief. Additionally, Iowa MMJ may bring an equitable claim on behalf of its members.

II. SF2340 is facially preempted.

A. SF2340 is field preempted as it encroaches on the federal government's dominant interest in, and complex regulation of, the entry and removal of noncitizens. *Arizona* reaffirms that states cannot enforce their own parallel immigration regimes. The presumption against preemption does not apply.

B. As this Court has already found, SF2340 is also conflict preempted because it disrupts Congress's statutory scheme by undermining federal authorities' discretion and control over the entry, processing, removal, and prosecution of noncitizens who reenter the country, and by interfering with executive authority over foreign relations. Defendant argues facial relief is not warranted, but, as this Court held, these conflicts—along with field preemption—doom every application of the statute.

III. The Court should preserve the district court's statewide injunction and remand to the district court to consider the impact of the Supreme Court's recent decision in *Trump v. CASA, Inc.,* 145 S. Ct. 2540 (2025).

IV. Finally, the district court did not abuse its discretion when it found that SF2340 will cause irreparable harm to Plaintiffs and the public, and the balance of equities and public interest weigh in favor of granting an injunction.

ARGUMENT

I. PLAINTIFFS' CLAIMS ARE JUSTICIABLE

A. Plaintiffs Have Standing

Defendant Bird repeats her argument that Plaintiffs Doe and Roe lack standing because they returned with federal authorization following deportation orders and currently have lawful status. *See* Supp. Br. 15-18. But, as this Court has already found, Iowa's narrow reading of SF2340 would require the Court to

"ignore the plain text of the statute." *Iowa*, 126 F.4th at 1347; *see also* Appellee Br. 14-21 (discussing at length Iowa's atextual construction of the statute and why Plaintiffs have standing). Section 2 of SF2340 "has no exceptions" for those who return with permission or later gain lawful status. *Iowa*, 126 F.4th at 1346. Nor does Iowa law support a contrary reading. *Id.* at 1346–47. The Iowa Supreme Court has made clear that the presumptions in Iowa Code § 4.4 cannot override the plain terms of the statute. *See State v. Gross*, 935 N.W.2d 695, 703 (Iowa 2019) ("If the language is unambiguous, our inquiry stops there." (quoting *State v. Richardson*, 890 N.W.2d 609, 616 (Iowa 2017))); *State v. Doe*, 903 N.W.2d 347, 351 (Iowa 2017), *as amended* (Nov. 15, 2017) (holding that a finding of ambiguity is necessary before resort to other tools of statutory construction, including Iowa Code § 4.4(3)); *In re Young*, 780 N.W.2d 726, 729 (Iowa 2010) (declining to apply the presumption of constitutionality when "the plain meaning [of the statute] does not allow for judicial rescue").

Plaintiffs Doe and Roe thus easily clear the low threshold to establish standing, because their "intended future conduct is '*arguably . . . proscribed* by [the] statute' they wish to challenge" such that "'there exists a credible threat of prosecution thereunder.'" *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159, 162 (2014) (emphasis added) (quoting *Babbit v. Farm Workers*, 442 U.S. 289, 298 (1979)). "[W]hen a course of action is within the plain text of a statute, a 'credible

threat of prosecution' exists." *Alexis Bailly Vineyard, Inc. v. Harrington*, 931 F.3d 774, 778 (8th Cir. 2019); *see also Turtle Island Foods, SPC v. Thompson*, 992 F.3d 694, 699 (8th Cir. 2021) (noting that the *Susan B. Anthony* test for standing is "a forgiving standard").

Even under Defendant's atextual interpretation, Iowa MMJ would still have standing because its members would be subject to prosecution. As the district court correctly found, Iowa MMJ member David, who graduated from high school in Iowa and unlawfully returned following a deportation order, currently resides in Iowa without lawful status and is indisputably subject to prosecution under SF2340. *See* App.Vol.I.239; R.Doc.51 at 17; *see also* App.Vol.I.8, 18-19; R.Doc.1 ¶¶ 14, 60; Appellee Br. 16-17. This was not "clear error." *See Sleep No. Corp. v. Young*, 33 F.4th 1012, 1016 (8th Cir. 2022) (noting that the court of appeals reviews a district court's preliminary injunction factual findings only for "'clear error'" (quoting *Brakebill v. Jaeger*, 932 F.3d 671, 676 (8th Cir. 2019))); *GLBT Youth in Iowa Sch. Task Force v. Reynolds*, 114 F.4th 660, 667 (8th Cir. 2024) ("When considering standing at the preliminary injunction stage, [the Court] . . . "view[s] [the allegations in the complaint] in the light most favorable to the plaintiffs."). Likewise, contrary to Defendant's misstatement, *see* Supp. Br. at 18, Anna also returned to the United States without consent before later being granted

asylum, *see* App.Vol.I.80; R.Doc.9-5 ¶ 20. So she too is subject to arrest even if one invents a statutory exception for consent.

Amici's argument that David can have no legally protected interest sufficient for standing because he has violated an independent federal law has no basis in case law. *See* Br. of Oklahoma et al. at 9. David is not asking this Court to shield him from a lawful federal prosecution or federal removal—he merely maintains that he cannot be subject to *state* prosecution and *state* removal. *See Padres Unidos de Tulsa*, 2025 WL 1573590, at *5 (rejecting similar argument in challenge to state illegal entry and reentry law because plaintiffs "do not ask this Court to bless prospective entry or reentry into the country"). He has a legally cognizable interest in not being detained, prosecuted, and removed under an unconstitutional state law. *See Fla. Immigrant Coal.,* 2025 WL 1625385, at *2 (finding plaintiffs who entered without inspection established standing); *Idaho Org. of Res. Councils,* 2025 WL 1237305, at *4 (finding plaintiffs "have adequately alleged a 'constitutional interest' in not being prosecuted under an allegedly federally preempted law"); *cf. id.* at *9 (rejecting "unclean hands doctrine" where plaintiffs present in violation of federal law challenged state illegal entry and reentry law as preempted).[1]

[1] Similarly, Defendant's new and frivolous accusation that Iowa MMJ, by virtue of simply having David as a member, may have violated the federal criminal harboring statute should be dismissed out of hand. Supp. Br. 19, 20. The Supreme Court in *United States v. Hansen* rejected a sweeping interpretation of 8 U.S.C. §

Finally, Defendant repeats her position that Iowa MMJ lacks organizational standing. *See* Supp. Br. 21-22. The Court need not reach this question, since the individual Plaintiffs have standing and Iowa MMJ has associational standing. *See Animal Legal Def. Fund v. Reynolds*, 89 F.4th 1071, 1078 (8th Cir. 2024) ("[O]nly one plaintiff needs to satisfy Article III's case-or-controversy requirement in its pleading."). Should the Court find it necessary to resolve this question, Plaintiffs continue to maintain that remand to the district court to review the factual record and make an initial determination is appropriate. *See* Appellee Br. 23.

However, recent case law affirms that Iowa MMJ has standing because SF2340 would "directly affect[] and interfere[] with" its "core business activities." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 395 (2024); *see also* Appellee Br. 23-24. But for SF2340, "the time and resources [Iowa MMJ] focused on those detained under the new state immigration laws would instead be expended representing immigrants who are contending only with the federal system." *Texas*, 2025 WL 1836640, at *4; *see also* App.Vol.I.82-86; R.Doc.9-5 ¶¶ 26-33. As a result, under SF2340, "the total number of immigrants [Iowa MMJ] can serve in obtaining asylum or other relief will be lower." *Texas*, 2025 WL

1324 that would cover "advising an undocumented immigrant about available social services" and "providing certain legal advice to undocumented immigrants." 599 U.S. 762, 768 (2023). There is simply no support for Defendant's insinuation of illegality.

1836640, at *4; *see also* App.Vol.I.81-86; R.Doc.9-5 ¶¶ 25, 29-35. These injuries are sufficient for standing. *See Texas*, 2025 WL 1836640, at *3–12 (finding legal services organization had standing under *Havens Realty Corp.* and *Alliance for Hippocratic Medicine* in challenge to state illegal entry and reentry law).

Plaintiffs have established standing. *See* Appellee Br. 14-25.

B. Plaintiffs Have a Cause of Action

Defendant raises no new arguments regarding Plaintiffs' cause of action. *See* Supp. Br. 22-26. Because Plaintiffs and Iowa MMJ members are subject to prosecution under SF2340, they plainly have an equitable cause of action under *Ex parte Young*, 209 U.S. 123 (1908). *See* Appellee Br. 25-26.

II. SF2340 IS FACIALLY PREEMPTED

A. SF2340 Is Facially Field Preempted

While recognizing that the federal government "'has broad, undoubted power over the subject of immigration,'" *Iowa*, 126 F.4th at 1345 (quoting *Arizona v. United States*, 567 U.S. 387, 394 (2012)), the Court did not address the district court's determination that SF2340 is likely field preempted, having found the law likely conflict preempted on its face, *id.* at 1346–52. Consistent with Plaintiffs' arguments on appeal, *see* Appellee Br. 27-37, since this Court's ruling every court to consider a similar statute has found that such statutes impermissibly intrude on the exclusively federal field of entry and removal. *See Texas*, 2025 WL 1836640,

at *23, 27 ("Congress's creation of a complex, national system for determining whether an alien may enter and remain in the United States is strong evidence Congress intended to occupy the field of alien entry and removal."); *Fla. Immigrant Coal.*, 2025 WL 1625385, at *3 ("It seems 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 [field preemption] is satisfied with respect to the field of alien entry into and presence in the United States."), *stay denied*, 2025 WL 1890573 (U.S. July 9, 2025); *Padres Unidos de Tulsa*, 2025 WL 1444433, at *9 (similar); *Idaho Org. of Res. Councils*, 2025 WL 1237305, at *12 (similar).

Defendant has little new to say on this subject. The Attorney General repeats her argument that *Arizona* should be interpreted narrowly to hold that *only* the field of alien registration is field preempted, *see* Supp. Br. 37, even though the *Arizona* Court was not presented with a state law that attempted to directly regulate entry or effectuate removal, *see* Appellee Br. 32-33 (noting that the Arizona provisions the Supreme Court found conflict, rather than field, preempted involved employment of immigrants and arrests to assist *federal* immigration authorities in placing noncitizens in *federal* removal proceedings). "Alien entry and removal is equally, if not more important, to the interest of the national sovereign" than alien registration. *Texas*, 2025 WL 1836640, at *27; *see also* Appellee Br. 31-32.

The cases Defendant now relies on—*Wyeth v. Levine* and *California v. ARC American Corp*—are entirely distinguishable. *See* Supp. Br. 38. In *Wyeth*, the Supreme Court found that the Federal Food, Drug, and Cosmetic Act (FDCA) did not preempt a state tort lawsuit, where Congress legislated with "certain awareness of the prevalence of state tort litigation" and declined to expressly preempt such actions. 555 U.S. 555, 575 (2009). In *ARC American Corp.*, all parties conceded that Congress had not occupied the antitrust field, "[g]iven the long history of state common-law and statutory remedies against monopolies and unfair business practices." 490 U.S. 93, 101 (1989). By contrast, here, "[t]here is nearly 150 years of Supreme Court precedent suggesting that the power to control the entry and removal of aliens is 'vested solely in the Federal Government, rather than the States.'" *Texas*, 2025 WL 1836640, at *28 (quoting *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976)); *see also Iowa*, 126 F.4th at 1345 ("[I]mmigration is not a traditional subject of state regulation."); Appellee Br. 4-8 (describing the complex federal statutory and regulatory scheme that occupies the field of entry and removal).

Nor is there reason for this Court to revisit its finding on the inapplicability of the presumption against preemption. *See Iowa*, 126 F.4th at 1345. Contrary to arguments raised by Amici States, state laws from "the early days of the nation," *Iowa*, 126 F.4th at 1345, say nothing about the constitutionality of SF2340 today.

But whether the state statutes Amici cite would be subject to *dormant* constitutional preemption in the era prior to Congress's comprehensive scheme is now largely academic. Unsurprisingly, all the statutes cited by Amici pre-date the unbroken line of Supreme Court decisions establishing that "the power to control immigration—the entry, admission, and removal of aliens—is *exclusively* a federal power." *Texas*, 2025 WL 1836640, at *22 & n.267; *see* Appellee Br. 27-28. And they all predate Congress's enactment of comprehensive and carefully balanced federal scheme to regulate entry and removal. *See Arizona*, 567 U.S. at 395 ("Federal governance of immigration and alien status is extensive and complex"); Appellee Br. 4-8 (summarizing the comprehensive federal regulation of immigration). In fact, until the recent spate of legislation led by Amici, no state had attempted to directly regulate entry and removal since the federal government fully occupied the field over a century ago. And each of those new state statutes has been enjoined as likely preempted. *See supra* at 13-14. Whatever states attempted to do before the federal government made its dominance clear, 150 years of exclusive federal immigration power is more than sufficient to make the presumption against preemption inapplicable. *See United States v. Locke*, 529 U.S. 89, 108 (2000) ("[A]n 'assumption' of nonpre-emption is not triggered when the State regulates in an area where there has been a history of significant federal

presence."); *Lozano v. City of Hazleton*, 724 F.3d 297, 314 n.23 (3d Cir. 2013) (rejecting presumption).

Rather than grapple with this longstanding precedent, Defendant returns to the claim that, because the current presidential administration has dropped its challenge to SF2340, the federal government cannot have occupied the field. Supp. Br. 38. "But Congress's intent—not the shifting enforcement priorities of presidential administrations—controls the preemption inquiry." *Padres Unidos de Tulsa*, 2025 WL 1444433, at *8 (emphasis removed); *see Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) ("[T]he purpose of *Congress* is the ultimate touchstone in every pre-emption case.") (cleaned up, emphasis added); *Eng. v. Gen. Elec. Co.*, 496 U.S. 72, 78–79 (1990) ("Pre-emption fundamentally is a question of congressional intent . . . "); *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995) ("[P]re-emption claims turn on Congress's intent . . . "). The Executive Branch's shifting litigation priorities thus have no bearing on this Court's analysis of whether Congress has preempted state regulation in the field of entry and removal.

Moreover, Defendant's arguments regarding the appropriateness of a facial challenge are plainly inapplicable in the context of field preemption. SF2340, because it operates in an exclusively federal field, is unconstitutional in every application. "Field preemption reflects a congressional decision to foreclose *any*

state regulation in the area, even if it is parallel to federal standards." *Arizona*, 567 U.S. at 401; *see* Appellee Br. 48-50.

B. SF2340 Is Facially Conflict Preempted

i. Conflict Preemption

As this Court has already found, SF2340 is likely conflict preempted. 126 F.4th at 1346–52. Plaintiffs have already detailed the many ways in which it conflicts with federal immigration law, both under Defendant's atextual construction and under the proper interpretation of the state statute. Appellee Br. 37-48. And since this Court identified the many conflicts between SF2340 and the federal scheme, other courts have found comparable state laws preempted after engaging in similar analyses. *See Texas*, 2025 WL 1836640 at *30–36 (holding conflict preempted Texas law with nearly identical provisions criminalizing illegal reentry, requiring removal, and prohibiting abatement); *Fla. Immigrant Coal. v. Uthmeier*, --- F. Supp. 3d ---, No. 25-cv-21524, 2025 WL 1423357, at *10–11 (S.D. Fla. Apr. 29, 2025) (same for similar Florida law); *see also Padres Unidos de Tulsa v. Drummond*, No. CIV-24-511-J, 2025 WL 1573590, at *6–7 (W.D. Okla. June 3, 2025) (same for similar Oklahoma law).

In response, Defendant repeats her argument that SF2340 merely complements federal law such that there can be no conflict. Supp. Br. 39-42. But this Court has already rejected the argument that SF2340 mirrors federal criminal law. This Court correctly held that Section 2 of SF2340 likely conflicts with the

federal illegal re-entry crime because it does not have an exception for noncitizens who reenter the United States with consent from federal officials. 126 F.4th at 1346; *see* Appellee Br. 17-21, 46-47. It additionally criminalizes noncitizens who reenter illegally but later obtain lawful status. *See* Appellee Br. 17-21, 47-48.

Moreover, this Court also identified numerous conflicts between Section 2 and the congressional scheme, even accepting Defendant's incorrect interpretation. *Iowa*, 126 F.4th at 1347–48; *see* Appellee Br. 38-45. None of these conflicts arise simply because of an "overlap" between SF2340 and federal illegal reentry. *See* Supp. Br. 40-42.

This Court found that Section 2 poses an obstacle to federal officials' exercise of discretion in "enforcing federal immigration law," discretion that is "vital for accomplishing the purposes of federal immigration law" writ large. *Iowa*, 126 F.4th at 1347. Section 2 "creates a parallel scheme" for enforcing immigration law by allowing Iowa to prosecute noncitizens even where "federal officials in charge of the comprehensive scheme determine that prosecution would frustrate federal policies" about entry and removal. *Id.* at 1348 (quoting *Arizona*, 567 U.S. at 402). As that section gives state officials authority to arrest noncitizens for a state immigration crime "without any input" from the federal government, it exceeds the state enforcement authority contemplated in 8 U.S.C. § 1357(g) and could result in "unnecessary harassment" of some noncitizens whom the federal

government has opted not to remove. *Id.* at 1348 (quoting *Arizona*, 567 U.S. at 408). Moreover, the creation of a separate state crime "eliminates the possibility of a presidential pardon." *Id.* at 1348. Thus, Section 2 enables Iowa to "contradict the policy decisions of Congress" and impermissibly "achieve its own immigration policy," and therefore implicates U.S. foreign policy. *Id.* at 1348–49 (quoting *Arizona*, 567 U.S. at 408).

Defendant repeats her argument that *Kansas v. Garcia* governs here without acknowledging that this Court has already considered and rejected this same argument. *Id.* at 1348–49; *see* Appellee Br. 41-42. Unlike the fraud statute at issue in *Garcia*, Section 2 "is not a generally applicable [criminal] law." *Iowa*, 126 F.4th at 1349. Enforcing the law does more than merely upset criminal law enforcement priorities; "the Executive's enforcement discretion in immigration law 'implicates not only normal domestic law enforcement priorities but also foreign policy objectives.'" *Id.* (quoting *United States v. Texas*, 599 U.S. 670, 679 (2023)) (cleaned up).[2]

[2] For similar reasons, Defendant is wrong to rely on the Fifth Circuit's entirely inapposite decision in *Zyla Life Scis., L.L.C. v. Wells Pharma of Houston, L.L.C.*, 134 F.4th 326, 331 (5th Cir. 2025), which predates the Fifth Circuit's entirely on-point decision in *United States v. Texas*, 2025 WL 1836640. *See* Supp. Br. 39-42. Finding *Wyeth* to be controlling, *see supra* at 14, *Zyla* held that state laws criminalizing the sale of new drugs not approved by the Food and Drug Administration did not impermissibly conflict with the FDCA because that statute

Defendant makes no real effort to defend Section 4 (order to return) or Section 6 (prohibition against abatement) in her supplemental brief, other than to repeat the assertion—rejected by this Court and contrary to the plain text and effect of the statute, *Iowa*, 126 F.4th at 1350–51, Appellee Br. 34-35—that Section 4 only requires transportation to a port of entry.[3] Regardless, the Court has held that these two provisions conflict with federal law for a host of reasons. *Iowa*, 126 F.4th at 1349–51 (holding, *inter alia*, that Section 4 "violates the principle that the removal process is entrusted to the discretion of the Federal Government" and that even under the state's construction Iowa officials would impermissibly force the hand of federal officials by delivering noncitizens subject to SF2340 to a port of entry); *id.* at 1351–52 ("By prohibiting abatement of the state prosecution, Section 6 undermines federal officials' discretion to decide if, when, and how to address the case of an individual" noncitizen). Nothing in Defendant's supplemental brief offers any grounds to reconsider those findings.

"itself permits States to regulate . . . concurrently with the Federal Government." 134 F.4th at 336 (citing *Wyeth,* 555 U.S. 555).

[3] Notably, Iowa does not repeat the argument—also rejected by this Court, *Iowa*, 126 F.4th at 1351–52, Appellee Br. 20—that the prohibition on abatement based on a pending federal determination of status somehow *mandates* abatement based on a final determination of status. *Compare* Appellant Br. 33, *with* Supp. Br. 6-7 (asserting that Section 6 "allows" abatement on a final determination).

Defendant Bird's only new conflict preemption argument is to rely on the Iowa Department of Public Safety's (DPS) new 287(g) agreement. *See* Supp. Br. 43-46. But DPS's § 287(g) agreement with ICE does not remotely authorize the enactment or enforcement of SF2340. The agreement simply authorizes certain employees of a single state agency to help enforce *federal* immigration law, by performing specified immigration "functions" subject to DHS's "direction and supervision." 8 U.S.C. § 1357(g)(5), (g)(3); *see id.* § 1357(g)(2) (authorization only extends to individual "employee[s]" who undergo the requisite training and certification); *see also Iowa,* 126 F.4th at 1348. Nothing in the agreement permits Iowa to enact and enforce its own immigration laws.[4] *See* Ex. A, Memorandum of Agreement, § XI (even DPS personnel "are not authorized to perform immigration officer functions except when working under the supervision or direction of ICE"). To the contrary, such agreements affirm federal supremacy by outlining the limited situations in which states can help enforce federal immigration law at authorized by federal authorities. *See Arizona*, 567 U.S. at 408-09 (relying on 8 U.S.C. §

[4] Defendant overstates the scope of DPS's §287(g) agreement. Nowhere does the agreement (or 8 U.S.C. §1357(g)) authorize even DPS officials to "enforce federal and *state* immigration laws," Supp. Br. 33 (emphasis added). Nor does it extend "discretion whether to prosecute" federal immigration crimes to Iowa state officers. *Id.* at 45; *cf.* Ex. A, Memorandum of Agreement, § V (enumerating specific functions). Instead, the federal statute and DPS's agreement merely authorize trained and certified DPS officers to "enforce federal law 'in relation to the investigation, apprehension, or detention'" of noncitizens. *Iowa*, 126 F.4th at 1348 (quoting 8 U.S.C. § 1357(g)(1)).

1357(g)(1) to conclude that Congress did not allow a "State to achieve its own immigration policy"). In other words, by explicitly permitting limited forms of assistance in enforcing federal law, Congress precluded states from enacting their own independent immigration schemes like SF2340, which allows Iowa to arrest, prosecute, sentence and remove noncitizens for violating *state* immigration law *without* federal direction and supervision. *See Texas*, 2025 WL 1836640 at *34 (finding comparable Texas law in conflict with § 1357(g) and thus preempted).

ii. Facial Relief is Warranted

As this Court previously found, facial relief is appropriate in this case. "[A]ll applications of [SF2340] are preempted by federal law," *Iowa*, 126 F.4th at 1344, because as discussed *supra*, SF2340 both intrudes on a federal field and is in conflict with Congress' immigration scheme. Therefore "no application of [SF2340] is constitutional." *Id.*; *see also* Appellee Br. 48-50. The Fifth Circuit recently agreed, finding as to Texas' attempt to enact a comparable state immigration scheme that "there are no non-preempted applications" of the new state laws. *Texas*, 2025 WL 1836640 at *19.

In arguing that her narrow interpretation of SF2340 saves the statute from facial invalidity, Defendant Bird again confuses the relevant question confronting the Court when deciding whether to grant facial relief. There is no "plausible" constitutional reading of the operative sections of the statue. *Cf.* Supp. Br. 28. As

such, there is no way for this court to "partial[ly] invalidat[e]" SF2340, *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 506 (1985): this Court has found Sections 2, 4, and 6 to be conflict preempted, even under Defendant's interpretation, and Plaintiffs have established they are field preempted as well. *See Iowa*, 126 F.4th at 1347–49, 1351, 1352; Appellee Br. 27-37; *see also Texas*, 2025 WL 1836640 at *22-29 (finding comparable state law field preempted). SF2340 is entirely preempted; nothing remains once the unconstitutional provisions are invalidated. *Compare with Brockett*, 472 U.S. at 506 (excising portion of definition of single term in moral nuisance statute would have allowed "remainder of the statute [to] retain[] its effectiveness as a regulation of obscenity"). Even if some provisions were not preempted, severance is not appropriate here. *See* Appellee Br. 50-51.

Nor does DPS's § 287(g) agreement create any constitutional applications of SF2340. *See* Supp. Br. 30-31. It does not—and could not—harmonize SF2340 with federal immigration law and thus cannot save SF2340 from conflicting with federal criminal law and the federal removal scheme every time that it is applied. *See supra* at 20-22.

III. THE COURT SHOULD PRESERVE THE STATEWIDE INJUNCTION

The core of Defendant's argument regarding the scope of the injunction is to attack this Court's finding that SF2340 is facially invalid. *See* Supp. Br. 26-34. Beyond that, in a single paragraph, and in vague terms, Defendant repeats what is

already established under the federal rules, *see* Supp. Br. 34—that any injunction binds only "the parties," "the parties' officers, agents, servants, employees, and attorneys," and "other persons who are in active concert or participation" with the parties. Fed. R. Civ. P. 65(d)(2).

Since Defendant filed her supplemental brief, the Supreme Court issued its decision in *Trump v. CASA*, 606 U.S. ---, 145 S. Ct. 2540 (2025) limiting the availability of universal injunctions. Just as the Supreme Court did in *CASA*, and the Fifth Circuit did in *Texas*, this Court should maintain the current statewide injunction and remand to the district court to consider, in the first instance, the impact, if any, of *CASA* on Plaintiffs' injunction.[5] *CASA*, 145 S. Ct. at 2558; *Texas*, 2025 WL 1836640, at *38. This is particularly necessary because the district court had previously had no cause to consider what relief might adequately protect Plaintiffs' interests while the United States remained a party to the litigation.

Preserving the status quo in the form of statewide relief while the district court considers the matter is warranted to protect Iowa MMJ and its members and is consistent with the role of the district court as fact finder. In determining how to provide complete relief to Plaintiffs, the court will have to consider a multitude of

[5] At least one court has concluded that *CASA* does not impact *statewide* injunctions under *Ex parte Young*. *See Welty v. Dunaway*, No. 3:24-CV-768, 2025 WL 2015454, at *15–16 (M.D. Tenn. July 18, 2025).

factors. For example, MMJ is a statewide membership organization that provides legal services throughout Iowa. App.Vol.I. 75, 77, 79-80; R.Doc. 9-5 ¶¶ 3, 7, 18-19. Its approximately 2,000 members and clients live across the state. *See id.* Those members must be protected from not only prosecution but also arrest and detention under SF2340. *See* Fed. R. Civ. P. 65(d)(2)(C) (injunction binds those "in active concert or participation" with parties). Given the realities of on-the-ground law enforcement, there is no workable way to protect MMJ's thousands of members if the injunction is narrowed. *See State of New Jersey v. Trump*, No. 25-10139-LTS, slip op. at 16-21 (D. Mass. July 25, 2025) (declining to narrow injunction given the lack of a "workable" alternative that would not unduly burden plaintiffs). Moreover, limiting any injunction to MMJ's members would place a significant burden on MMJ itself to provide proof of membership and respond to requests for verification from across the state, often in the fast-moving context of traffic stops and after-hours detention. Any inability to keep up with these demands would result in MMJ members going unprotected. And a narrower injunction would not ameliorate Iowa MMJ's harms as an organization, because, *inter alia*, it would still be required to divert additional resources to screening prospective (nonmember) clients for possible prosecution under SF2340. *See* App.Vol.I.82-82; R.Doc.9-5 ¶¶ 27-29. Further, statewide relief is important in preemption cases more broadly, because the premise of preemption is to eliminate state regulations that interfere

with Congress's regulatory schemes. *See Arizona*, 567 U.S. at 399 (preemption removes "obstacle[s] to the accomplishment and execution of the full purposes and objectives of Congress") (cleaned up). A narrowed injunction would no longer serve that purpose.

Rather than rule on these important considerations, and others, in the first instance, remand to the district court to evaluate the factual and legal questions is appropriate, particularly because a full airing of these issues may require additional factual submissions. *See United States v. Nunez-Hernandez*, 43 F.4th 857, 859 (8th Cir. 2022) (holding this is "a court of review, not first view") (cleaned up).

IV. THE RISK OF IRREPARABLE HARM AND THE EQUITIES WEIGH IN FAVOR OF AN INJUNCTION

Defendant makes no new attack on irreparable harm. Rather, the Attorney General simply asserts that Plaintiffs will not suffer harm because they cannot be prosecuted under the statute—in other words, she repeats her standing argument. Supp. Br. 49-50. Her standing argument is incorrect. *See* Appellee Br. at 14-23; *supra* at 7-11; *see also Iowa*, 126 F.4th at 1346–47 (holding Section 2 has no exception for people who return with federal consent). Plaintiffs Doe, Roe, and Iowa MMJ members are at risk of the irreparable harm of arrest, detention, prosecution, and removal under a preempted state law. *See Ga. Latino All. for Hum. Rts. v. Governor of Ga.*, 691 F.3d 1250, 1269 (11th Cir. 2012) (finding risk of prosecution under preempted statute constitutes irreparable harm); *Idaho Org. of*

Res. Councils, 2025 WL 1237305, at *14 (same); *Padres Unidos de Tulsa*, 2025 WL 1444433, at *11 (same); *Fla. Immigrant Coal.*, 2025 WL 1423357, at *12 (same); *see also Doe v. Miller,* 216 F.R.D. 462, 471 (S.D. Iowa 2003) (finding irreparable harm based on "an immediate or imminent threat of criminal prosecution").

While this Court has previously said that the threat of prosecution alone may not amount to irreparable harm, it has done so in cases that involved challenges to existing criminal investigations and the "manner of enforcing" an otherwise lawful criminal statute. *See Munson v. Gilliam*, 543 F.2d 48, 50, 53 (8th Cir. 1976) (challenging a prosecutor's "manner of enforcing" a criminal statute); *In re Search of 4801 Fyler Ave.*, 879 F.2d 385, 386, 389 (8th Cir. 1989) (challenging the seizure of evidence pursuant to a warrant); *Lindell v. United States*, 82 F.4th 614, 617, 620 (8th Cir. 2023) (same). Thus, the Court was concerned with the limits on federal equitable jurisdiction that would circumvent a criminal process that provided adequate means to redress purported illegalities in the investigation or prosecution. *See Munson*, 543 F.2d at 52 (citing *Younger v. Harris*, 401 U.S. 37 (1971)); *id.* at 55 ("The various considerations influencing decisions to prosecute or not to prosecute are impossible to anticipate and are not readily amenable to judicial supervision."); *4801 Fyler Ave.*, 879 F.2d at 389 (rejecting effort to "bypass[] the normal procedures for challenging the constitutionality of searches by resorting to

equitable remedies"); *Lindell*, 82 F.4th at 618 (finding "fatal" that the "litigation is a tactic to, at a minimum, interfere with and, at most, enjoin a criminal investigation and ultimately hamper any potential federal prosecution"). In contrast, here, Plaintiffs are not asking the Court to intervene in an ongoing criminal case and do not challenge the exercise of prosecutorial discretion. *See VanDerStok v. Garland*, 633 F. Supp. 3d 847, 856–58 (N.D. Tex. 2022) (distinguishing *Younger* when finding irreparable harm arising from threat of criminal and civil liability under unlawfully promulgated agency rule). "Plaintiffs are under the threat of state prosecution for crimes that conflict with federal law, and . . . enforcement of a state law at odds with the federal immigration scheme is neither benign nor equitable." *Ga. Latino All. for Hum. Rts.*, 691 F.3d at 1269.

Moreover, Plaintiffs Doe and Roe and MMJ members Anna and David face a host of other harms, including pretrial detention, the trauma of separation from family, removal to countries where they face hardship (including 19-year-old Anna's removal to a country where she has no family), threats to Ms. Doe's fragile health, and Anna's inability to pursue her chosen career. Appellee Br. at 51-53. Each threatened injury, standing alone, would warrant a finding of irreparable harm. *See Heartland Acad. Cmty. Church v. Waddle*, 335 F.3d 684, 690 (8th Cir. 2003) (upholding finding of irreparable harm based on the risk of "trauma to already troubled children"); *United States v. Bogle*, 855 F.2d 707, 710-11 (11th Cir.

1988) ("[U]nnecessary deprivation of liberty clearly constitutes irreparable harm."); *Farella v. Anglin*, 734 F. Supp. 3d 863, 885 (W.D. Ark. 2024) (holding "a loss of liberty . . . is perhaps the best example of irreparable harm") (citation omitted); *Heather K. v. City of Mallard*, 887 F. Supp. 1249, 1260 (N.D. Iowa 1995) (threat to health is irreparable harm). Together they indisputably support an injunction.

Iowa MMJ too faces irreparable harm, as does the public. *See* Appellee Br. 53-54.

Iowa will not be similarly harmed. *See United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012) ("[W]e discern no harm from the state's nonenforcement of invalid legislation."); Appellee Br. 55. As Iowa proclaims throughout its briefing, certain "Iowa law enforcement is now authorized to enforce federal immigration law," albeit under federal supervision, pursuant to "a statutorily authorized agreement to partner on immigration enforcement under the Immigration and Nationality Act." Supp. Br. 3, 31. Enjoining SF2340 will have no impact on any DPS officer's new role under its § 287(g) agreement. Thus Iowa may now, within the bounds of the Constitution and federal law, address its concerns regarding the enforcement of federal immigration law that animated the enactment of SF2340. *See* Appellant Br. 5-7, 69-70.

CONCLUSION

The Court should affirm the district court's preliminary injunction order.

DATED: August 6, 2025

Respectfully submitted,

/s/ Emma Winger
Emma Winger
Michelle Lapointe
Suchita Mathur
AMERICAN IMMIGRATION COUNCIL
2001 L Street N.W., Suite 500
Washington, DC 20036
Phone: (202) 507-7512
ewinger@immcouncil.org;
mlapointe@immcouncil.org
smathur@immcouncil.org

Rita Bettis Austen, AT0011558
Shefali Aurora, AT0012874
Thomas Story, AT0013130
ACLU of Iowa Foundation Inc.
505 Fifth Avenue, Ste. 808
Des Moines, IA 50309-2317
Phone: (515) 243-3988
Fax: (515) 243-8506
rita.bettis@aclu-ia.org
shefali.aurora@aclu-ia.org
thomas.story@aclu-ia.org

Spencer Amdur
Cody Wofsy
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
39 Drumm Street
San Francisco, CA 94111
T: (415) 343-0770
F: (415) 395-0950
samdur@aclu.org

cwofsy@aclu.org

Anand Balakrishnan
Grace Choi
Noor Zafar
Omar Jadwat
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad St., 18th Floor
New York, NY 10004
T: (212) 549-2660
F: (212) 549-2654
abalakrishnan@aclu.org
gchoi@aclu.org
nzafar@aclu.org
ojadwat@aclu.org

For Plaintiffs Iowa Migrant Movement for Justice, Jane Doe, Elizabeth Roe

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g) and Local R. 25A, I certify the following:

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,746 words, excluding those parts exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6) because the brief has been prepared in Times New Roman 14-point font using Microsoft Word for Microsoft Office 365.

3. This brief complies with the electronic filing requirements of Local R. 25A because the text of the electronic brief is identical to the text of the paper copies and because the electronic version of this brief has been scanned for viruses and no viruses were detected.

August 6, 2025

/s/ Emma Winger
Emma Winger
American Immigration Council
2001 L Street NW, Suite 500
Washington, DC 20036
Phone: (202) 507-7512
ewinger@immcouncil.org

CERTIFICATE OF SERVICE

I certify that the foregoing was filed with the Clerk using the appellate CM/ECF system on August 6, 2025. All counsel of record are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

August 6, 2025

/s/ Emma Winger
Emma Winger
American Immigration Council
2001 L Street NW, Suite 500
Washington, DC 20036
Phone: (202) 507-7512
ewinger@immcouncil.org