IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

THE FARMWORKER ASSOCIATION OF FLORIDA INC., *et al.*, *Plaintiffs*, v. RONALD D. DESANTIS, in his official capacity as Governor of the State of Florida, *et al.*, *Defendants*.	Case No.: 1:23-cv-22655-RKA

BRIEF OF *AMICUS CURIAE* THE IMMIGRATION REFORM LAW INSTITUTE IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' SECOND MOTION FOR A PRELIMINARY INJUNCTION

IDENTITY AND INTEREST OF *AMICUS CURIAE*

IRLI is a non-profit 501(c)(3) public interest law firm dedicated to litigating immigration-related cases in the interests of United States citizens, and also to assisting courts in understanding and accurately applying federal immigration law. IRLI has litigated or filed *amicus curiae* briefs in a wide variety of cases, including: *Wash. All. Tech Workers v. U.S. Dep't Homeland Security*, 50 F.4th 164 (D.C. Cir. 2022), *petition for cert. filed,* No. 22-1071 (S. Ct. May 1, 2023); *Trump v. Hawaii,* 138 S. Ct. 2392 (2018); and *Matter of Silva-Trevino*, 26 I&N Dec. 826 (BIA 2016).

BACKGROUND

In May 2023, Governor DeSantis signed SB 1718, Ch. 2023-40, Laws of Fla. Plaintiffs brought suit in July 2023 to challenge Section 10 of SB 1718 (the "Florida Law"), which provides that

> a person who knowingly and willfully transports into this state an individual whom the person knows, or reasonably should know, has entered the United States in violation of law and has not been inspected by the Federal Government since his or her unlawful entry from another country commits a felony of the third degree.

Ch. 2023-40, § 10, at 11, Laws of Fla. (amending § 787.07(1), Fla. Stat. (2022)).

ARGUMENT

A plaintiff seeking a preliminary injunction bears the burden of establishing that

> (1) [he] has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.

Wreal, Ltd. Liab. Co. v. Amazon.com, 840 F.3d 1244, 1247 (11th Cir. 2016) (citing *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc)). Because "[a] preliminary injunction is an 'extraordinary and drastic remedy,' . . . [the movant] bears the 'burden of persuasion' to clearly

establish all four of these prerequisites." *Id*. Accordingly, "failure to meet even one dooms" Plaintiffs' motion. *Id*. at 1248. Plaintiffs cannot establish multiple factors, and thus this Court should deny their motion for preliminary injunction.

I. PLAINTIFFS DO NOT HAVE A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS.

This Court should deny Plaintiffs' motion for preliminary injunction because they cannot establish a substantial likelihood of success on the merits. Both of Plaintiffs' claims—preemption and unconstitutional vagueness—fail and thus cannot support an injunction against the Florida Law.

A. The Florida Law is not preempted.

The Supremacy Clause of the U.S. Constitution ensures that where a conflict arises, federal law triumphs. U.S. Const. art. IV, cl. 2 ("the Laws of the United States . . . shall be the supreme Law of the Land . . . Laws of any State to the Contrary notwithstanding."). As the Supreme Court has explained, "[t]he Supremacy Clause provides a clear rule . . . Congress has the power to preempt state law." *Arizona v. United States*, 567 U.S. 387, 399 (2012). Thus, federal law will preempt state law where "the clear and manifest purpose of Congress" is that federal law be supreme. *Rice v. Santa Fe Elevator Corp*., 331 U.S. 218, 230 (1947).

Preemption can be explicitly stated or implied in a statute. *See Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992) ("Pre-emption may be either express or implied, and is compelled whether Congress's command is explicitly stated in the statute's language or implicitly contained in its structure and purpose."); *Ga. Latino All. for Human Rights v. Governor of Ga.*, 691 F.3d 1250, 1262 (11th Cir. 2012) ("Our Constitution provides Congress with the power to preempt state law, *see* U.S. Const. art. VI, cl. 2, and that preemption may be express or implied."). Implied preemption occurs where the state action conflicts with federal law and when state action

occurs in a field occupied by Congress. *See Lawson-Ross v. Great Lakes Higher Educ. Corp.*, 955 F.3d 908, 916 (11th Cir. 2020) ("These forms of implied preemption are known as conflict preemption and field preemption, respectively.").

Courts are "guided by two cornerstones," *Wyeth v. Levine*, 555 U.S. 555, 565 (2009), when "determining the extent to which federal statutes preempt state law[.]" *Ga. Latino All. for Human Rights*, 691 F.3d at 1263. The first explains that congressional intent "is the ultimate touchstone in every pre-emption case." *Wyeth*, 555 U.S. at 565 (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). The second is that courts are to "presume 'that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *Ga. Latino All. For Human Rights*, 691 F.3d at 1263 (quoting *Wyeth*, 555 U.S. at 565). Application of these cornerstones to the Florida Law requires that this Court deny Plaintiffs' motion for preliminary injunction.

1. The Florida Law is not field preempted.

It is well-established that "the States are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance." *Arizona*, 567 U.S. at 399. As the Eleventh Circuit has explained, "[f]ield preemption occurs when Congress regulates a field so pervasively or passes a law that touches on a field implicating a dominant federal interest that an intent to preempt state law can be inferred." *American Mfg. Mut. Ins. Co. v. Tison Hog Mkt., Inc.*, 182 F.3d 1284, 1287-88 (11th Cir. 1999). It should be noted, however, that it is "[i]n rare cases [that] the Court has found that Congress 'legislated so comprehensively' in a particular field that it 'left no room for supplementary state legislation[.]" *Kansas v. Garcia*, 140 S. Ct. 791, 804 (2020) (quoting *R. J. Reynolds Tobacco Co. v. Durham County*, 479 U. S. 130, 140 (1986)).

The first step in "determin[ing] whether Congress has implicitly ousted the States from regulating in a particular field" is to "identify the field in which this is said to have occurred." *Id*. Plaintiffs allege the Florida Law is preempted by Congress's occupation of the field of alien transport and harboring, reflected in 8 U.S.C. § 1324. However, Plaintiffs stretch the interpretation of the Florida Law to allege that this is an alien transport and harboring law, when in fact it is an anti-human trafficking and anti-human smuggling law that is within the police powers of Florida to enact and enforce.

First, the Florida Law is part of the Florida criminal code and can be found under the chapter outlining crimes for kidnapping, custody offenses, human trafficking, and other related offenses. §§ 787.01 – 787.29, Fl. Stat. (2023). These crimes are often grouped together in state penal codes because of the connection between human trafficking and human smuggling. Often, what may start out as a person being willingly smuggled turns into a person being unwillingly trafficked. U.S. Dep't of State, *Human Trafficking and Migrant Smuggling: Understanding the Difference*, https://www.state.gov/wp-content/uploads/2019/02/272325.pdf (explaining that "[h]uman trafficking and migrant smuggling often overlap in reality").

It makes sense, then, that Florida is not the only state with criminal laws targeting traffickers and smugglers who illegally move people through the country. For example, under Arizona state law, it is a class 2 felony to participate in a human smuggling organization or operation. A.R.S. § 13-2323. As another example, Utah has criminal penalties for human smuggling, benefitting from human smuggling, and aggravated human smuggling. Utah Code Ann. §§ 76-5-308.3, 76-5-309, 76-5-310.1.

In fact, "[f]ederal law specifically allows for state laws that target traffickers of noncitizens." *State v. Flores*, Nos. 04-22-00513-CR, 04-22-00514-CR, 04-22-00515-CR, 04-22-

00516-CR, 04-22-00517-CR, 04-22-00518-CR, 04-22-00519-CR, 2023 Tex. App. LEXIS 6775, at *1 (Tex. App. Aug. 30, 2023). Part of the Trafficking Victims Protection Act specifically contemplates that there will be "trafficking cases investigated or prosecuted at the State or local level." 22 U.S.C. § 7105(c)(3)(C).

Moreover, the Florida Law, by its express terms, does not criminalize the transport of illegal aliens. Instead, it aims to reduce the effects of human smuggling and trafficking by criminalizing the transport of *any* "individual" who has entered the country without inspection. For example, as anyone who has travelled out of the country knows, even citizens are required to be "inspected" by U.S. Customs and Border Patrol when they re-enter the United States. 19 U.S.C. § 1459. This statute, which is not part of the Immigration and Nationality Act, provides that "individuals arriving in the United States other than by vessel, vehicle, or aircraft shall enter the United States only at a border crossing point . . . and immediately report the arrival, and present themselves . . . for inspection." 19 U.S.C. § 1459 (a). It further addresses "individuals" who do arrive by vessel, vehicle, or aircraft and requires those persons also to present themselves for inspection. Accordingly, a U.S. citizen could be smuggled into the country in violation of federal law and another U.S. citizen could be convicted under the Florida Law for transporting said person into the state. Thus, because the Florida Law is applicable outside of the immigration transportation context it is not field preempted by 8 U.S.C. § 1324.

This interpretation of the Florida Law as applying to all individuals excludes application of the allegedly binding precedent cited by Plaintiffs. Doc. 30-1 at 9. Plaintiffs claim that the Florida Law is identical to the law invalidated by the Eleventh Circuit in *Ga. Latino All. for Human Rights v. Governor of Ga.*, 691 F.3d 1250 (11th Cir. 2012). The law invalidated in the Georgia case is distinguishable, however. The law at issue in Georgia "codifie[d] three separate crimes for

interactions with an 'illegal alien,' defined as 'a person who is verified by the federal government to be present in the United States in violation of federal immigration law.'" *Ga. Latino All. for Human Rights,* 691 F.3d at 1256 (quoting O.C.G.A. §§ 16-11-200(a)(1), 201(a)(2), 202(a)). The Eleventh Circuit found that the law was preempted based on the "comprehensive framework to penalize the transportation, concealment, and inducement of unlawfully present aliens," *id*. at 1263, found in 8 U.S.C. § 1324.

In contrast, the Florida Law makes no mention of immigration status at all. *See* §787.07(1) Fl. Stat. 2022 ("*a person* who knowingly and willfully transports into this state *an individual*") (emphasis added). It also does not require that any transportation be done "in furtherance of" an alien's unlawful status as the Immigration and Nationality Act does. 8 U.S.C. § 1324(a). Finally, it does not, as Plaintiffs suggest, "prevent immigrants from entering Florida." Doc. 1 at ¶ 8. As explained by Defendants in their opposition to Plaintiffs' motion for preliminary injunction, immigrants such as "[v]isa holders, DACA recipients, and aliens with pending applications for asylum or removal proceedings have all been inspected because they have notified the federal government of their presence," Doc. 50 at 4, and thus are free to enter the state as they wish.

The Florida Law is distinguishable from other state laws that have also been invalidated because it is not an alien transport law but a law that protects all vulnerable persons. For example, the Fourth Circuit found a South Carolina law was field preempted where it criminalized transport and harboring based on a person's unlawful immigration status. *United States v. South Carolina*, 720 F.3d 518 (4th Cir. 2013). Additionally, in *Lozano v. City of Hazleton*, the Third Circuit found "that state or local laws proscribing the harboring of *aliens lacking lawful status* are also field pre-empted because they intrude on the field of alien harboring." 724 F.3d 297, 316 (3d Cir. 2013) (emphasis added). Similarly, the Ninth Circuit found field preemption of a state law criminalizing

the transport of "an alien . . . in furtherance of the illegal presence of the alien[.]" *Valle Del Sol Inc. v. Whiting*, 732 F.3d 1006, 1013 (9th Cir. 2013).

Finally, the fact that an alien may be impacted by violation of this law does not preclude Florida from exercising its traditional police powers to protect Floridians from the dangers of human smuggling. Indeed, "the [Supreme] Court has never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus *per se* pre-empted by this constitutional power, whether latent or exercised." *De Canas v. Bica*, 424 U.S. 351, 355 (1976) (superseded by statute on other grounds). Generally, "a state law will only constitute an impermissible regulation of immigration where it is 'essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain.'" *Uriostegui v. Ala. Crime Victims Comp. Comm'n*, No. 2:10-cv-1265-PWG, 2010 U.S. Dist. LEXIS 152985, at *22 (N.D. Ala. Nov. 16, 2010) (quoting *De Canas*, 424 U.S. at 355). The Florida Law satisfies this standard. By its plain terms, it regulates the conduct of individuals who transport other individuals into the state. It does not make admissibility or removability determinations. Nor does it set conditions for which legal entrants can remain in the country. Indeed, the law targets the person doing the transporting and does not contain any consequences for the passenger, regardless of their immigration status. For these reasons, the Florida Law is not field preempted.

2. The Florida Law is not conflict preempted.

Conflict preemption occurs where "compliance with both federal and state regulations is a physical impossibility" or "where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Arizona*, 567 U.S. at 399. In other words, "[i]f the purpose of the act cannot be otherwise accomplished—if its

operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power." *Savage v. Jones*, 225 U.S. 501, 533 (1912).

Defendants' enforcement of the Florida Law does not present such an obstacle to federal immigration officials. As explained above, the Florida Law does not directly regulate alien transportation and thus does not conflict with the federal transportation and harboring statute found at 8 U.S.C. § 1324. Plaintiffs' allegation that the Florida Law interferes with enforcement of immigration law falls flat for the same reason. The conduct criminalized by the Florida Law requires transporting a person whom the government has not inspected, and thus has not (and could not have) exercised any enforcement discretion over.

While true that the incidental impact of the law may achieve results that the federal government can also achieve, that does not mean the Florida Law is preempted. As the Supreme Court explained in *Kansas v. Garcia*, "[t]he mere fact that state laws . . . overlap to some degree with federal criminal provisions does not even begin to make a case for conflict preemption. From the beginning of our country, criminal law enforcement has been primarily a responsibility of the States, and that remains true today." 140 S. Ct. 791, 806 (2020). Indeed, as explained above, several states other than Florida criminalize actions related to human trafficking and human smuggling in an effort to protect persons residing within the state.

Furthermore, concurrent state and federal jurisdiction is a feature of our system of dual sovereignty. *See United States v. Wheeler*, 435 U.S. 313, 317 (1978) ("[A] federal prosecution does not bar a subsequent state prosecution of the same persons for the same acts, and a state prosecution does not bar a federal one."). Indeed, the Supreme Court has not found preemption in many contexts in which states and the federal government prohibit the same conduct. *Arizona*, 567 U.S.

at 430-31 (Scalia, J., concurring in part and dissenting in part) ("The sale of illegal drugs, for example, ordinarily violates state law as well as federal law, and no one thinks that the state penalties cannot exceed the federal."). The overlapping of state and federal jurisdiction and the potential enforcement by both entities is an unexceptional, well-established part of our federal system.

B. The Florida Law is not unconstitutionally vague.

It is well-established "that the Due Process Clause prohibits the Government from 'taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.'" *Beckles v. United States*, 580 U.S. 256, 262 (2017) (quoting *Johnson v. United States*, 576 U.S. 591, 595 (2015). This standard is applied to "invalidate[] . . . laws that *define* criminal offenses and laws that *fix permissible sentences* for criminal offenses." *Id*. (emphasis original). To avoid being unconstitutionally vague, "a penal statute [must] define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

As the Supreme Court has explained, "[v]ague laws may trap the innocent by not providing fair warning" of what actions constitute a crime. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). But fair warning under "'the Constitution does not require precision; all that is required is that the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding.'" *Leib v. Hillsborough Cty. Pub. Transp. Comm'n*, 558 F.35 1301, 1311 (11th Cir. 2009) (quoting *This That and Other Gift & Tobacco, Inc. v. Cobb County, Ga.*, 285 F.3d 1319, 1325 (11th Cir. 2002)).

The Florida Law satisfies this standard. "[P]otential defendants have notice of the consequences of violating the [Florida Law] because it clearly defines what conduct is prohibited and the potential range of [punishment] that accompanies noncompliance." *Harris v. Mexican Specialty Foods, Inc.*, 564 F.3d 1301, 1311-12 (11th Cir. 2009). Here, the conduct prohibited is clear: the knowing and willful transport into the state of anyone who has not been inspected by the federal government upon entry into the United States. For example, a U.S. citizen who resides in Florida and travels to Mexico must be inspected by U.S. Customs and Border Protection when returning to this country. Were that citizen to re-enter without inspection and be transported into the state of Florida, the person transporting the citizen would be guilty under the Florida Law if he or she had the requisite knowledge regarding the citizen's entry.

Furthermore, "to sustain such a challenge, the complainant must prove that the enactment is vague 'not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all.'" *Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 495 n.7 (1982) (quoting *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971)). There can be no question that there is a standard of conduct in the Florida Law—the knowing transportation of a person into the state who has entered the country without inspection.

Therefore, because Plaintiffs cannot establish that they are likely to succeed on the merits of either their preemption or vagueness claims, their motion is doomed and should be denied by this Court. *See Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016) (affirming the denial of a preliminary injunction because movant failed to meet one of the four factors); *Car Body Lab v. Lithia Motors*, No. 21-cv-21484-MORE, 2021 U.S. Dist. LEXIS 115493, at *24 (S.D.

Fla. June 21, 2021) ("Because a litigant must meet all four prerequisites to obtain a preliminary injunction, failure to satisfy just one dooms the request.").

CONCLUSION

For the foregoing reasons, Plaintiffs' motion for a preliminary injunction should be DENIED.

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