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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. 23-CV-22655-RKA

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Pursuant to Federal Rule of Civil Procedure 65(a), Plaintiffs hereby move for a preliminary injunction enjoining Defendants from enforcing Ch. 2023-40, § 10, at 11, Laws of Fla. (amending § 787.07, Fla. Stat. (2022)) (“Section 10”), submit a memorandum of law in support of this motion, request a hearing, and state the following:

1. On May 10, 2023, the Governor of Florida, Ronald DeSantis, signed SB 1718 into law and created a new crime: transportation of an ill-defined category of immigrants across state lines into Florida. See ECF No. 1-1.

2. Section 10 contravenes two Eleventh Circuit decisions in which similar statutes in Alabama and Georgia were deemed preempted by the federal migrant smuggling statute, 8 USC § 1324. See *United States v. Alabama*, 691 F.3d 1269, 1288 (11th Cir. 2012); *Georgia Latino All. for Hum. Rights v. Governor of Georgia*, 691 F.3d 1250, 1265–66 (11th Cir. 2012).

3. In addition to being preempted by federal law, Section 10 is unconstitutionally

void for vagueness. See *United States v. Williams*, 553 U.S. 285, 306 (2008); *United States v. Batchelder*, 442 U.S. 114, 123 (1979).

4. Plaintiffs respectfully request this Court enjoin Section 10 because this section is preempted by federal law in violation of the Supremacy Clause of Article VI, Section 2, of the U.S. Constitution; and because Section 10 is unconstitutionally vague.

5. A preliminary injunction is warranted if the moving party establishes the following: “(1) substantial likelihood of success on the merits; (2) irreparable injury w i §

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I hereby certify on August 8, 2023, I electronically filed the

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INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 65(a), Plaintiffs hereby move for a preliminary injunction enjoining Defendants from enforcing Section 10 of Senate Bill 1718 (“SB 1718”), Ch. 2023-40, Laws of Fla. (amending § 787.07, Fla. Stat. (2022)) (“Section 10”).

Section 10 is illegal under binding precedent and imposes a staggering hardship on Plaintiffs, other Floridians, and travelers to Florida, who now face criminal penalties for visiting their families, doing their jobs, seeking medical care, and engaging in other everyday activities.

Section 10 regulates the transport of immigrants: It prohibits transporting someone into Florida if the person entered the United States unlawfully and was not subsequently “inspected.” But the Eleventh Circuit has squarely held that Congress has preempted th

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driving his mother. Ex. 8, ¶ 9.

may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.” *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998).

ARGUMENT

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

a. Section 10 Is Preempted.

Section 10 is preempted for multiple reasons. First, the Eleventh Circuit has squarely held, as a matter of both field and conflict preemption, that states cannot regulate the transport of immigrants, because federal law fully occupies that field and displaces even complementary state regulation. That clear holding is fatal to Section 10 and sufficient to resolve this case. Second, the law is preempted because states cannot take measures to exclude undocumented immigrants from their territory. Third, Section 10 is preempted because it creates an immigration classification - people who have been “inspected” “since” entry - that does not appear in federal law. And fourth, Section 10 is preempted because it prevents immigrants from attending their immigration court hearings and Immigration and Customs Enforcement (ICE) or United States Citizenship and Immigration Service (IS) appointments in Florida.

i. Section 10 Is Preempted by the Federal Transport and Harboring Regime.

Field preemption. Section 10 defies binding precedent from the Eleventh Circuit. It imposes criminal penalties on a person who “transports” certain undocumented immigrants into Florida. Ch. 2023-40, § 10, at 11, Laws of Fla. (amending § 787.07(1), Fla. Stat. (2022)). But as the Eleventh Circuit has held, “Congress has provided a full set of standards to govern the unlawful transport and movement of aliens[.] . . . [A] state’s attempt to intrude into this area is prohibited because Congress has adopted a calibrated framework within the INA to address this issue.” *Georgia Latino All. for Hum. Rts. v. Governor of Georgia*, 691 F.3d 1250, 1264 (11th Cir. 2012) (quotation marks omitted) (invalidating immigrant transport state law); *see also United States v. Alabama*, 691 F.3d 1269, 1285-88 (11th Cir. 2012) (invalidating a similar state immigrant transport law). These same reasons have led other circuits and state courts to unanimously invalidate the other immigrant transport laws that states have enacted. *See Valle del Sol v. Whiting*, 732 F.3d 1006, 1023-29 (9th Cir. 2013); *United States v. South Carolina*, 720 F.3d 518, 530-32 (4th Cir. 2013); *Fuentes-Espinosa v. People*, 408 P.3d 445 (Co. 2017).

The federal transport and harboring regime is contained in 8 U.S.C. § Td

unlawfully present aliens.”

and *Alabama*, which held that state transport laws conflict with the federal scheme when they

The Eleventh Circuit has rejected this in clear terms. Florida has no power to “decide[] that unlawfully present aliens cannot be tolerated within its territory.” *Id.* at 1295. Doing so “conflicts with Congress’s comprehensive statutory framework governing alien removal.” *Id.* at 1294. It also conflicts with the federal government’s “power to exclude” noncitizens r o o ompre

of Fla. (amending § 787.07(1), Fla. Stat. (2022)), and imposes criminal penalties for transporting them. Like other impermissible state classifications, Florida's statute creates this category out of whole cloth. Whether a person has been "inspected" "since" entry is simply not a concept that exists in the INA, and it has no bearing on a person's immigration status, as explained below.

The INA sets out a complex and fluid scheme governing immigrati

adjudicated? Or a person without any pending application or removal proceedings, whom federal officials encountered but declined to arrest? Or a naturalized U.S. citizen who adjusted their status based on their U visa or other form of relief that does not require admission or parole? Federal law does not say whether any of these involve “inspection” after an unlawful entry because it does not matter in the federal scheme.⁸

Because the INA does not answer whether a person has been “inspected” “since” entry, Section 10 puts state and local officials in the untenable position of determining this classification themselves. To enforce Section 10, Florida police, prosecutors, judges, and juries would have to examine a passenger’s entire immigration history, and then determine whether that history includes “inspection” “since” entry, without any federal definition to consult. There is no federally issued document that confirms whether a person has been “inspected” since entry. There is no federal official to call, because federal officials cannot determine whether a person meets a classification that does not exist in federal law. *See Farmers Branch*, 726 F.3d at 533 (federal official’s testimony that DHS could not answer inquiries about “lawful presence or not” since that is not a meaningful category in federal law); *Keller v. City of Fremont*, 719 F.3d 931, 945 (8th Cir. 2013) (ordinance required local officials to assess immigration status exclusively by asking federal officials to make the determination); *Whiting*, 563 U.S. at 591-92 (same); 8 U.S.C. §§ 1373(c), 1642(a) (federal responses to inquiries about people’s citizenship, immigration status, and benefits eligibility).

Without federal guidance, Florida officials enforcing Section 10 will have to independently review people’s arrest and custody records, entry and exit paperwork,

on their own, because they generally receive no federal “training in the enforcement of immigration law.” *Arizona*, 567 U.S. at 408-09; *Padilla*, 559 U.S. at 379-80 (Alito, J., concurring) (describing complexities). Even if state authorities had such federal training, they could not apply it to enforce an immigration classification made up by the Florida legislature. Thus, Florida is preempted from creating and enforcing its own immigration classification in Section 10.

iv. Section 10 Disrupts the Adjudication of Immigration Applications and Removal Proceedings

Section 10 is also preempted because it “obstructs” and “frustrates” federal objectives, by disrupting the operations of federal agencies that rely on immigrants’ ability to cross state lines. *See Crosby v. National Foreign Trade Council*, 530 U.S. 363, 366 (2000); *Club Madonna Inc. v. City of Miami Beach*, 42 F.4th 1231, 1256 (11th Cir. 2022); *United States v. One Single Family Residence*, 894 F.2d 1511, 1517 (11th Cir. 1990).

To adjudicate removability and benefits applications, the INA requires immigrants to participate in court hearings, attend appointments with federal agencies, and supply an address where they will receive mail. *See, e.g.*, 8 U.S.C. §§ 1229(a)(1)(F)(i), 1229(a)(2)(A) (requiring immigrants to travel to the address where removal proceedings are venued); 8 U.S.C. § 1158(d)

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Transport is essential for the federal system to function. Many noncitizens do not have their own vehicle or lack the immigration documents needed to obtain a driver's license in Florida, forcing them to rely on friends and relatives for transportation. Section 10 threatens to criminalize these arrangements and chill noncitizens' participation and compliance with the federal immigration system. It thus frustrates the federal scheme and is preempted.

b. Section 10 Violates the Due Process Clause Because It Is Unconstitutionally Vague.

The Due Process Clause prohibits a law that is “so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591, 595 (2015); see *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). “[N]o one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes.” *High Ol’ Times, Inc. v. Busbee*

Decl., Ex. F, House Floor (Amendment 132085), May 1, 2023 at 1:42:54.¹¹ Another rejected House amendment would have provided a list of lawful immigration statuses (including U.S. citizens, LPRs, and various visa holders) and pending applications that would make Section 10 not apply to passengers. *Id.*

In sum, citizens of ordinary intelligence and law enforcement officers charged with enforcing this law are left with no hope of understanding what Section 10 prohibits and to whom it applies. This, alone, is unconstitutional. But the extremely high stakes of Section 10 - which impose mandatory pre-trial criminal detention and felony culpability - make the law's vagueness even more constitutionally intolerable. *See Johnson*, 576 U.S. at 602; *see also Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498-499 (1982); *McDonnell v. United States*, 579 U.S. 550, 576 (2016) (“[W]e cannot construe a criminal statute on the assumption that the Government will ‘use it responsibly.’”) (quoting *United States v. Stevens*, 559 U.S. 460, 480 (2010)).

II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IF SECTION 10 IS NOT PRELIMINARILY ENJOINED

Absent an injunction, Plaintiffs will suffer irreparable harm by being placed at immediate risk of arrest, detention, and prosecution for carrying on essential life activities and other travel across state lines. Individual Plaintiffs and FWAF members “are under the threat of state prosecution for crimes that conflict with federal law.” *Georgia Latino All.*, 691 F.3d 1250, 1268-69 (11th Cir. 2012) (irreparable harm on this basis); *ABC Charters, Inc. v. Bronson*, 591 F. Supp. 2d 1272, 1309 (S.D. Fla. 2008) (“The threat of criminal prosecution [] constitutes irreparable harm.”). Individual Plaintiffs and FWAF members transport into Florida family members, co-workers, and others who entered unlawfully and who likely have not been “inspected” for purposes

family in Texas and is keeping C.A. and her grandson from seeing family in Georgia, by restricting travel back home to Florida. E

1251, 1268 (N.D. Ga. 2018); *see Dream Defs. v. DeSantis*, 559 F. Supp. 3d 1238, 1284-85 (N.D. Fla. 2021) (finding irreparable harm where plaintiff organization was, inter alia, forced “to divert their scarce resources from organizing around other issues to educating their members and the public” about the challenged law);

Moreover, the requested injunction is intended to prevent the f

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