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.

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

AMICI CURIAE BRIEF FOR STATES OF OKLAHOMA, FLORIDA, ALABAMA, ALASKA, ARKANSAS, GEORGIA, IDAHO, INDIANA, KANSAS, LOUISIANA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, OHIO, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, VIRGINIA, WEST VIRGINIA, AND THE ARIZONA LEGISLATURE SUPPORTING DEFENDANT-APPELLANT BRENNA BIRD AND REVERSAL OF THE DISTRICT COURT

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Takahashi v. Fish & Game Comm'n,
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Terrace v. Thompson,
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Trojan Techs., Inc. v. Pennsylvania,
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Truax v. Raich,
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United States v. Pink,
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Wyeth v. Levine,
555 U.S. 555 (2009) 11
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Act of 1798, § 17, 1798 R.I. Laws 357 12
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Act of Nov. 4, 1788, 1788 S.C. Acts and Ordinances 5 12
Act of Oct. 9, 1788, 1788 Conn. Acts and Laws 367 12
Ala. Const. of 1875, art. I, § 36 14
An Act of Feb. 10, 1787, 1787 Ga. Acts and Resol. 40 12

Ark. Const. of 1868, art. I, § 20 14
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Cal. Const. of 1879, art. I, § 17 14
Colo. Const. of 1876, art. II, § 27 14
Conn. Rev. Stat. tit. 91, §§ 3, 15 13
Fla. Const. art VI, § 2 16
Fla. Const. of 1868, art. I, § 17 14
Ga. Const. art. V, § 3 16
Iowa Const. of 1857, art. I, § 22 14
Kan. Const. of 1859, Bill of Rights § 17 14
Mich.Const. of 1850, art. XVIII, § 13 14
Miss. Const. of 1890, art. IV, § 84 14
Mont.Const. of 1889, art. III, § 25 14
Neb. Const. of 1866–1867, art. I, § 14 14
Nev. Const. of 1864, art. I, § 16 14
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Wash.Const. of 1889, art. II, § 33 14
Wis. Const. of 1848, art. I, § 15 14
Wyo. Const. of 1889, art. I, § 29 14

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90 Fed. Reg. 8333 (Jan. 20, 2025) 5

90 Fed. Reg. 8443 (Jan. 20, 2025) 5

90 Fed. Reg. 8467 (Jan. 20, 2025) 5

Other Authorities

1 James M. Matthews, *Digest of the Laws of Virginia, of a Civil Nature and of a Permanent Character and General Operation* 76 (J.W. Randolph ed., 1856) 14

Article III Limits on Statutory Standing,
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Benjamin J. Klebaner, *State and LocalImmigration Regulation in the United States Before 1882*, 3 Int'l R. Soc. Hist. 269 (1958) 13

Charles H. Sullivan, *Alien Land Laws: A Re-Evaluation*,
36 Temp. L.Q. 15 (1962) 14

Exec. Order No. GA-41, Governor of State of Texas (July 7, 2022) 4

Letter from Members of Congress to Attorney General Merrick Garland (Feb. 2, 2024) 4

Letter to President Joseph R. Biden, Jr., Supporting Texas's Efforts to Secure the Border (Jan. 29, 2024) 3

Ownership Without Citizenship: The Creation of Noncitizen Property Rights,
19 Mich. J. Race & L. 1 (2013) 17

Polly J. Price, *Alien Land Restrictions in the American Common Law: Exploring the Relative Autonomy Paradigm*, 43 Am. J. Legal Hist. 152 (1999) 14

Property Outliers: Non-Citizens, Property Rights and State Power,
27 Geo. Immigr. L.J. 77 (2012) 14

Seymour D. Thompson & Thomas M. Steger, *A Compilation of the Statute Laws of the State of Tennessee* 932 (3d ed. 1873) 14

The General Statutes of the Commonwealth of Kentucky 191-92 (Edward I. Bullock& William Johnson eds., 1873) 14

The General Statutes of the State of Connecticut, with the Declaration of Independence, the Constitution of the United States, and the Constitution of Connecticut (1875) 14

Gerald L. Neuman, *The Lost Century of American Immigration Law (1776-1875)*,
93 Colum. L. Rev. 1833 (1993) 10

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STATEMENT OF INTERESTS

Amidst a profound crisis of illegal immigration, various States (such as Iowa here) enacted laws complementing federal law and regulating the entry into those States of aliens in the United States illegally. Notwithstanding the complementarity of such statutes with federal law, and the Supreme Court's having "made facial challenges hard to win," *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024), several courts have embraced an overbroad interpretation of *Arizona v. United States*, 567 U.S. 387 (2012), holding as a facial matter that these important laws are preempted.

This cannot be correct. *Amici* are sovereign States—Oklahoma, Florida, Alabama, Alaska, Arkansas, Georgia, Idaho, Indiana, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, South Carolina, South Dakota, Tennessee, Texas, West Virginia, Virginia, and the Arizona Legislature—who have a compelling interest in ensuring that they retain the ability in our federalist system to protect their sovereign territory, their citizens, and their lawfully present visitors from the harms of persons who wish to flout our nation's laws and borders. Under their robust police power, *Amici* can indisputably prosecute illegal aliens for murder, kidnapping, rape, theft, and other crimes. There is no logical reason that the same principles underlying these prosecutions cannot apply to State prosecutions complementing federal crimes for illegal entry into the country, as well.

Here, *Amici* States will explain how, per the historical record and practice, State police power laws on this topic are constitutional. The States will also explain how they have an obvious interest in ensuring that courts do not overstep their authority by finding Article III standing where it does not exist. Courts exist to decide cases and controversies, not to issue advisory opinions on whether States can protect themselves and those lawfully present from unlawful activity or not.

Put differently, this case and those like it concern whether sovereign States can promote safety, stability, and the rule of law under the U.S. Constitution. Illegal immigration has hammered local communities, increased burdens on local law enforcement, overextended social services, and more. Drug trafficking, human trafficking, and other organized criminal activities have flowed relentlessly through unsecured borders into local communities—border States or not. When the federal executive fails to enforce bedrock federal immigration laws, as occurred recently, the responsibility (indeed, the *duty*) of protection increasingly shifts to the States. *Amici* States have a vested interest in ensuring their communities are safe, and this includes the ability to enact legislation when federal enforcement is lacking or inconsistent.

Amici States also have a strong interest in protecting the fairness and integrity of legal immigration. Thousands follow the rules to enter and remain in the United States legally, and it insults their efforts when others are allowed to bypass the rules without consequence. Addressing illegal immigration responsibly protects the value of legal

pathways, strengthens community trust and acceptance, and upholds the rule of law. Courts should not obstruct a State acting in good faith to safeguard its people, when the means chosen complement federal law. Rather than surrendering to dysfunction, *Amici* are demanding order, fairness, and accountability in immigration enforcement.

BACKGROUND

A crisis of uncontrolled illegal immigration exists in our Nation. Last year, then-President Biden acknowledged that "we all know the border's been broken" for "too long," which has created a "border crisis." THE WHITE HOUSE, Statement from President Joe Biden on the Bipartisan Senate Border Security Negotiations (Jan. 26, 2024). Similar sentiments were proclaimed by more than half of our State Attorneys General, who observed that the "federal government has failed to stanch this flow" of "more than six million illegal immigrants," which has "effectively add[ed] the population of Iowa and Utah to our country in less than three years." Letter to President Joseph R. Biden, Jr., Supporting Texas's Efforts to Secure the Border (Jan. 29, 2024).

In response to this "unprecedented border crisis," *id.*, various States enacted laws protecting their citizenry (and lawful visitors) by echoing federal law and criminalizing those who re-enter illegally. Here, in April 2024, Iowa enacted Senate File 2340 ("SF2340"). SF2340 makes illegal reentry into the State a criminal offense, with penalties ranging from aggravated misdemeanors to felonies. The law also allows law enforcement to transfer immigrants subject to SF2340 to federal authorities.

Similarly, the Oklahoma Legislature enacted House Bill 4156 ("HB 4156"). Per HB 4156, if a person lacks authorization to enter or remain in the country—*i.e.*, if that person is here illegally under federal law—then that person may not enter or remain in Oklahoma. Essentially, HB 4156 authorizes an Oklahoma criminal analogue to federal criminal illegal entry. Oklahoma's Legislature made clear why HB 4156 was necessary. The "crisis of unauthorized entry and presence is endangering Oklahomans, devastating rural, urban, and suburban communities and is severely straining even the most diligent and well-resourced state and local government entities." *Id.*

Of course, various State officials appealed to the United States, seeking assistance in prosecuting the proliferating illegal marijuana operations and the foreign criminal syndicates whose profits depend on the exploitation of a trafficked labor force. *See, e.g.*, Letter from Members of Congress to Attorney General Merrick Garland (Feb. 2, 2024). But until the present administration took over, little help was offered in return. The drug cartels even had a word for the United States' prior refusal to enforce immigration law: "the cartels refer to these open-border policies as la invitación ('the invitation')." Exec. Order No. GA-41, Governor of State of Texas, at 1 (July 7, 2022).

Rather than support the States in these commonsense endeavors, the Biden Administration *sued* the States, as did various private individuals and organizations. Essentially, the United States claimed to possess the exclusive authority to regulate in areas historically committed to the traditional police powers of the several States under

the pretext of regulating aliens under Title 8 of the United States Code, and it cited the Supremacy Clause and dormant Commerce Clause as bases for preemption of the aforementioned State laws.

Upon taking office, the Trump Administration changed course, issuing several important executive orders ("EO"). On his first day, for example, President Trump declared "a national emergency exists at the southern border of the United States" because it is "overrun by cartels, criminal gangs, known terrorists, human traffickers, smugglers, unvetted military-age males from foreign adversaries, and illicit narcotics that harm Americans." 90 Fed. Reg. 8327, 8327 (Jan. 20, 2025). Another EO emphasized that the "United States has endured a large-scale invasion at an unprecedented level" because "[m]illions of illegal aliens … successfully entered the United States … including potential terrorists, foreign spies, members of cartels, gangs, and violent transnational criminal organizations." 90 Fed. Reg. 8467, 8467 (Jan. 20, 2025). The Trump administration pledged to respect State law, and to cooperate "fully with State and local law enforcement officials in enacting Federal-State partnerships to enforce Federal immigration priorities." *Id.* A third EO ordered the Secretary of Homeland Security to "ensure State and local law enforcement agencies across the United States can assist with the protection of the American people." 90 Fed. Reg. 8443, 8445 (Jan. 20, 2025). The President also ordered that "State and local governments" be "provided with the information necessary to fulfill law enforcement, citizenship, or

immigration status verification requirements authorized by law." *Id.* at 8446. A fourth EO declared that "the Federal Government has failed" in fulfilling its constitutional obligation "to 'protect each of [the States] against Invasion." 90 Fed. Reg. 8333, 8334 (Jan. 20, 2025) (quoting U.S. Const. art. IV). And so on.

Unsurprisingly, then, the United States has dismissed its lawsuits against Iowa, Oklahoma, and other States, leaving only the private organizational and individual plaintiffs. These plaintiffs lack standing, however, and their effort to undermine the States' sovereignty and safety fail, *inter alia*, on historical grounds.

ARGUMENTS

I. The Plaintiffs Lack Standing to Challenge Iowa's Law.

Whether a plaintiff has Article III standing is a critical threshold inquiry. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). First and foremost, a plaintiff must show injury, traceability, and redressability. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024); *see also Murthy v. Missouri*, 603 U.S. 43, 49-50 (2024). In a facial pre-enforcement challenge—as here—a plaintiff must also show: (1) "an intention to engage in a course of conduct arguably affected with a constitutional interest," (2) that the intended future conduct is "arguably … proscribed by [the challenged] statute," and (3) "the threat of future enforcement … is substantial." *SBA List v. Driehaus*, 573 U.S. 149, 160, 164 (2014) (quotations omitted).

Speculative, subjective fears of State prosecution are not enough to confer standing. *See, e.g.*, *Younger v. Harris*, 401 U.S. 37, 42 (1971) (no controversy when plaintiffs could allege only that they "fe[lt] inhibited" by the law). Plaintiffs "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013). Just last year, the Supreme Court repeatedly emphasized the high bar for standing—for both individuals and entities. In denying standing to two States and several medical professors in *Murthy*, for example, the Court held that "[a]t the preliminary injunction stage … the plaintiff must make a 'clear showing' that she is 'likely' to establish each element of standing." 603 U.S. at 58 (citations omitted). And while denying standing to an organization of physicians challenging a controversial FDA action, the Court explained that "the standing requirement implements 'the Framers' concept of the proper—and properly limited—role of the courts in a democratic society.'" *All. for Hippocratic Med.*, 602 U.S. at 380 (quoting John G. Roberts, Jr., Article III Limits on Statutory Standing, 42 DUKE L.J. 1219, 1220 (1993)). "In particular, the standing requirement" allows "issues to percolate and potentially be resolved by the political branches in the democratic process." *Id.* These principles also "screen[] out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action." *Id.* at 381.

Here, the Plaintiffs have not met their burden to show standing.

a. The individual Plaintiffs lack standing.

The individual plaintiffs claim that they face a credible threat of prosecution under SF2340 despite holding *legal* immigration status. But as Iowa has convincingly explained, SF2340 does not target individuals with current lawful status under federal immigration law. It just targets those who enter or attempt to enter Iowa when they are in the United States *illegally*. As the plaintiffs have not alleged that they have been investigated, threatened with enforcement, or subjected to any proceedings under the statute, their claimed injury is speculative at best—and legally erroneous at worst—and fails to support standing. *See Clapper*, 568 U.S. at 409-10 (alleged injury must be "certainly impending" and not based on a "highly attenuated chain of possibilities").

The district court concluded otherwise, holding that SF2340 intentionally goes beyond federal law and allows for the prosecution of individuals lawfully present in the United States. This conclusion was rife with error and particularly troubling to *amici* States due to its evading of the bedrock assumption that State legislatures color *within* their constitutional lines as opposed to outside of them. *See, e.g.*, *Branson v. O.F. Mossberg & Sons, Inc.*, 221 F.3d 1064, 1065 n.4 (8th Cir. 2000) ("state statutes are presumed constitutional"); *Gravert v. Nebergall*, 539 N.W.2d 184, 186 (Iowa 1995) ("Laws enacted by the exercise of a state's police power are presumed to be constitutional …."); *Reherman v. Oklahoma Water Res. Bd.*, 679 P.2d 1296, 1300 (Okla. 1984) (similar).

To the extent a plaintiff is here illegally under federal immigration law (and thus *is* exposed to prosecution by Iowa) he still lacks standing. This is because violations of federal law cannot serve as a basis to challenge the constitutionality of a State statute. Courts, that is, cannot recognize an injury arising from an individual's illegal behavior under federal law as grounds for standing, particularly where that injury stems not from the challenged State action but from unchallenged federal immigration law itself. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (plaintiff cannot show injury if he has no "legally protected interest" he wishes to vindicate); *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1093 (10th Cir. 2006) (en banc) ("[A] person complaining that government action will make his criminal activity more difficult lacks standing because his interest is not 'legally protected.'").

b. The organizational Plaintiff also lacks standing

For many of the same reasons, the organization here ("MMJ") lacks standing, as well. Although "organizations can assert the standing of their members," *Summers v. Earth Island Inst.*, 555 U.S. 488, 494 (2009), such standing must be rigorously scrutinized at the injunction phase. *See All. for Hippocratic Med.*, 602 U.S. at 393-94 ("organizations must satisfy the usual standards for injury in fact, causation, and redressability that apply to individuals"). A membership organization has standing only if "(a) its members would otherwise have standing to sue in their own right; [and] (b) the interests it seeks to protect are germane to the organization's purpose." *Hunt v. Wash. State Apple Advert.*

Comm'n, 432 U.S. 333, 343 (1977). For reasons explained above and by Iowa, MMJ has failed to identify any specific members who are likely to suffer a concrete injury here. Without showing that at least one member possesses standing, the organization cannot assert representational standing. *See Religious Sisters of Mercy v. Becerra*, 55 F.4th 583, 602 (8th Cir. 2022) ("[T]he Court 'require[s] plaintiffs claiming an organizational standing to identify members who have suffered the requisite harm.'" (citation omitted)).

MMJ also claims that SF2340 frustrates its mission of supporting immigrant communities and forces it to divert resources from its regular activities. But such assertions are based on hypothetical scenarios and generalized fears rather than demonstrable facts. And mere diversion of resources is insufficient to confer standing. *See All. for Hippocratic Med.*, 602 U.S. at 390-96. MMJ has not shown that it has altered or curtailed any particular activity due to SF2340, nor has it identified any concrete costs or disruptions attributable to the law. Absent such allegations, the alleged harm remains too speculative to support standing.

II. SF2340 comports with historical regulation of aliens by the States.

Iowa's law tracks the long line of historic state laws regulating aliens. Indeed, the regulation of immigrants inside the country is a traditional area of state regulation, contrary to the "myth of an era of unrestricted immigration" in the first 100 years of the nation. Gerald L. Neuman, *The Lost Century of American Immigration Law (1776-1875)*, 93 Colum. L. Rev. 1833, 1835 (1993). That history further bolsters the presumption

against preemption and confirms that the federal government does not have the sole interest in regulating aliens.

In tension with that history, this Court held—in a now-mooted opinion—that "immigration is not a traditional subject of state regulation." *United States v. Iowa*, 126 F.4th 1334, 1345 (8th Cir.), *vacated as moot,* 2025 WL 1113191 (8th Cir. Apr. 15, 2025). Like many courts around the nation, this Court assumed that immigration is and has always been an exclusively federal power. *See id.* It grounded that holding on its view of "the preeminent role of the Federal Government with respect to the regulation of aliens within our borders," stemming from the penumbras and emanations of the federal government's powers over naturalization, foreign commerce, and foreign relations. *See Iowa*, 126 F.4th at 1345. As a result, the Court believed that "the greatest presumption against preemption likely should not apply," contrary to *Arizona v. United States*, 567 U.S. 387 (2012). *Iowa*, 126 F.4th at 1345. That belief does not coalesce with our nation's history. It does not matter for purposes of the presumption that "the Federal Government has regulated [immigration] for more than a century," as such an argument "misunderstands the principle" of the presumption. *Wyeth v. Levine*, 555 U.S. 555, 565 n.3 (2009).

a. States have traditionally regulated aliens and their movement.

State regulation of aliens is a well-established tradition. Since the Founding, a variety of state laws directly regulated aliens, and common understanding around the Founding recognized state authority in that area.

1. *Alien-migration laws*. Most on point, States heavily regulated the movement of aliens both before and after the Founding. "States enacted numerous laws restricting the immigration of certain classes of aliens, including convicted criminals" and "persons with contagious diseases." *Arizona*, 567 U.S. at 419 (Scalia, J., concurring in part, dissenting in part). In 1787, for instance, Georgia decreed that "felons transported or banished from another state or a foreign country be arrested and removed beyond the limits of the state." Neuman, *supra*, at 1842. Other States followed suit. *Id.*[1] Several of those laws regulating transport expressly banned that activity even from sister states. *Id.* at 1842 & n.46; *see also infra* note 3. Respecting state power, Congress in 1866 passed a

[1] Even before the Founding, Connecticut, Delaware, Georgia, Massachusetts, Pennsylvania, South Carolina, and Virginia prohibited the importation of persons who had ever been convicted of crime. Act of Oct. 9, 1788, 1788 Conn. Acts and Laws 367; 1740 Laws of the State of Del. ch 66.a. § 2, at 166; An Act of Feb. 10, 1787, 1787 Ga. Acts and Resol. 40; Act of Feb. 14, 1789, ch. 61, § 7, 1789 Mass. Acts 98, 100-01; Act of Mar. 27, 1789, ch. 463, 1788–89 Pa. Acts 692; Act of Nov. 4, 1788, 1788 S.C. Acts and Ordinances 5; Act of Nov. 13, 1788, ch. 12, 1788 Va. Acts 9. Shortly after the Founding, Maine, Maryland, New Jersey, New York, and Rhode Island followed suit. *See, e.g.*, Act of Feb. 24, 1821, ch. 22, § 6, 1821 Me. Laws 90, 91-92; Act of Jan. 6, 1810, ch. 138, § 7(3), 1809–10 Md. Laws; Act of Jan. 28, 1797, ch. 611, § 1, 1797 N.J. Acts 131; Act of Apr. 25, 1833, ch. 230, 1833 N.Y. Laws 313; Act of 1798, § 17, 1798 R.I. Laws 357-58.

resolution against foreign pardons for those convicted of assisting in the emigration of convicts in violation of these laws. *See* S.J. Res. 24, 39th Cong., 1st Sess., 14 Stat. 353 (1866). In addition to the migration of criminal aliens, States also passed laws preventing the migration of indigent persons[2] and of those suspected of carrying infectious disease.[3] Neuman, *supra*, at 1846-65; Benjamin J. Klebaner, *State and Local Immigration Regulation in the United States Before 1882*, 3 Int'l R. Soc. Hist. 269, 290-95 (1958) (providing chart of alien migration laws). In each instance, those States acted within their sovereign prerogative to "protect [their] citizens." *Mayor of City of New York v. Miln*, 36 U.S. (11 Pet.) 102, 141 (1837).

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[2] *See, e.g.*, Act of Feb. 11, 1794, ch. 8, 1794 Mass. Acts & Laws 347; Act of May 24, 1851, ch. 342, § 3, 1851 Mass. Acts & Laws 847, 848; Act of Mar. 7, 1788, ch. 62, § 5, 1788 N.Y. Laws 733, 734; Act of June 27, 1820, ch. 26, 1820 Me. Laws 35; Act of May 14, 1718, ch. 37, N.H. Province Laws 312; Act of June 14, 1820, ch. 1, N.H. Laws 255; Act of June 1847, 1847 R.I. Acts 27; Act of Mar. 29, 1803, ch. 155, § 21, 1801–03 Pa. Laws 507, 525-26.

[3] Many of these laws regulated movement of aliens from sister States. *See, e.g.*, Conn. Rev. Stat. tit. 91, §§ 3, 15 (1821); Act of Jan. 1799, ch. 17, § 1, 1799 Del. Laws 47; Act of November 1793, ch. 34, § 2, 1793 Md. Laws; Act of Apr. 8, 1811, ch. 175, § 2, 1811 N.Y. Laws 247; Act of Apr. 10, 1850, ch. 275, tit. 2, art. 1, § 2, 1850 N.Y. Laws 599; Act of Apr. 17, 1795, ch. 327, § 4, 1795 Pa. Acts 734, 735. That is in addition to laws regulating movement from abroad. *See* Act of June 10, 1803, § 7, 1803 N.H. Laws 7, 11-12; Act of Mar. 10, 1821, ch. 127, §§ 1-2, 1821 Me. Laws 443; Act of June 20, 1799, ch. 9, § 8, 1799 Mass. Acts & Laws 308, 311; Act of Dec. 17, 1793, 1793 Ga. Acts and Resol. 25; Act of 1793, ch. 3, § 1, 1793 N.C. Acts 36; Act of Dec. 5, 1793, ch. 19, § 2, 1793 Va. Acts 26; Act of Feb. 3, 1812, § 1, 1812 N.J. Laws 19; Act of Apr. 14, 1820, ch. 229, §§ 4-5, 1820 N.Y. Laws 208, 210; Act of Apr. 1, 1803, ch. 178, § 6, 1803 Pa. Acts; Act of Apr. 2, 1821, ch. 126, § 1, 1821 Pa. Laws 210; Act of Apr. 18, 1825, ch. 212, 1825 N.Y. Laws 322.

2. *Alien land laws*. Beyond just regulating movement, States extensively regulated the ability of aliens to hold property. That doctrine stemmed from a nearly millennium-old common-law tradition in England. *See* Allison Brownell Tirres, *Property Outliers: Non-Citizens, Property Rights and State Power*, 27 Geo. Immigr. L.J. 77, 92 (2012); 1 William Blackstone, *Commentaries on the Laws of England* *367-72. Even at the time of the ratification of the Fourteenth Amendment, state restrictions on alien land ownership were ubiquitous. *See Terrace v. Thompson*, 263 U.S. 197, 217 (1923) (approving of state alien land laws).[4] Like migration laws, alien land laws regulated the conduct of aliens and were focused on local concerns that "affect the safety and power of the state itself."

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[4] *See, e.g.*, Wis. Const. of 1848, art. I, § 15; 1 James M. Matthews, *Digest of the Laws of Virginia, of a Civil Nature and of a Permanent Character and General Operation* 76 (J.W. Randolph ed., 1856); Mich. Const. of 1850, art. XVIII, § 13; Iowa Const. of 1857, art. I, § 22; Or. Const. of 1857, art. I, § 31; Kan. Const. of 1859, Bill of Rights § 17; Nev. Const. of 1864, art. I, § 16; A.F. Denny, *The General Statutes of the State of Missouri* 448 (1866); Neb. Const. of 1866–1867, art. I, § 14; 1 Seymour D. Thompson & Thomas M. Steger, *A Compilation of the Statute Laws of the State of Tennessee* 932 (3d ed. 1873); Fla. Const. of 1868, art. I, § 17; Ark. Const. of 1868, art. I, § 20; W. Va. Const. of 1872, art. II, § 5; *The General Statutes of the Commonwealth of Kentucky* 191-92 (Edward I. Bullock & William Johnson eds., 1873); Ala. Const. of 1875, art. I, § 36; *The General Statutes of the State of Connecticut, with the Declaration of Independence, the Constitution of the United States, and the Constitution of Connecticut* 4-5 (1875); Colo. Const. of 1876, art. II, § 27; Mont. Const. of 1889, art. III, § 25; Wyo. Const. of 1889, art. I, § 29; Wash. Const. of 1889, art. II, § 33; S.D. Const. of 1889, art. VI, § 14; Miss. Const. of 1890, art. IV, § 84; Cal. Const. of 1879, art. I, § 17 (as amended in 1894); *see also* Polly J. Price, *Alien Land Restrictions in the American Common Law: Exploring the Relative Autonomy Paradigm*, 43 Am. J. Legal Hist. 152, 168-74 (1999); Charles H. Sullivan, *Alien Land Laws: A Re-Evaluation*, 36 Temp. L.Q. 15, 18-31, 31 n.68 (1962). Those statutes were in addition to the cases interpreting state law to incorporate the common-law rule. *See e.g.*, *State v. Boston, Concord & Montreal R.R.*, 25 Vt. 433, 436 (1853); *Smith v. Zaner*, 4 Ala. 99, 106 (1842).

Id. at 221. The power to determine who could "own" the very soil of a state is a "matter[] of [the] highest importance" to state sovereignty, *id.*, just as "the power to exclude" is "the defining characteristic of sovereignty," *Arizona*, 567 U.S. at 417 (Scalia, J., concurring in part, dissenting in part).

3. *Public-domain laws.* Those alien land laws spawned from a larger vein of restrictions on aliens taking part "of the public domain, or of the common property or resources of the people of the State." *Truax v. Raich*, 239 U.S. 33, 39-40 (1915). The Supreme Court has repeatedly sanctioned state limitations on "the enjoyment" of those benefits "to its citizens as against both aliens and the citizens of other states." *Id.* For that reason, States restricted aliens from harvesting wildlife, *Patsone v. Pennsylvania*, 232 U.S. 138, 143 (1914); *McCready v. Virginia*, 94 U.S. (4 Otto) 391, 395 (1877); maintaining an inherently dangerous enterprise, *Ohio ex rel. Clarke v. Deckebach*, 274 U.S. 392, 397 (1927), or working on public construction projects, *Crane v. New York*, 239 U.S. 195, 198 (1915); *Heim v. McCall*, 239 U.S. 175, 188 (1915). All these state laws restricted even lawful aliens from acting in certain ways and represented the States' continued regulation of aliens.[5]

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[5] While the public-domain doctrine has been culled in certain respects under the Equal Protection Clause, *see Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 421 (1948), that is inapposite to the question of whether the States historically regulated aliens. And illegal aliens, after all, "cannot be treated as a suspect class" under the Equal Protection Clause. *Plyler v. Doe*, 457 U.S. 202, 223 (1982).

4. *Other limitations*. States limited other rights for aliens too, including the rights to "vote, hold public office, or serve on juries." *See* Akhil Reed Amar, *The Bill of Rights: Creation and Reconstruction* 48 (1998). Many States still exercise their authority to restrict those rights today. *See Cervantes v. Guerra*, 651 F.2d 974, 980-81 (5th Cir. Unit A July 1981) (citing *Perkins v. Smith*, 426 U.S. 913 (1976)) (noting that States still possess the power, and do, restrict participation from juries, voting, and holding public office); *see also, e.g.*, Okla. Stat. tit. 38, § 28 (juries); Ga. Const. art. V, § 3 (public office); Fla. Const. art VI, § 2 (voting).

5. *Articles of Confederation and recommendation to the States*: That history is buttressed by understandings of the States' role at the national level. In 1788, after the Constitutional Convention, the Congress of the Confederation recommended that the several states "pass proper laws for preventing the transportation of convicted malefactors from foreign countries into the United States." 34 J. Cont'l Cong. 528 (Sept. 16, 1788). Some of the "distinguished members of the convention which formed the constitution" moved for that recommendation just one year "after the adoption of the constitution by the convention," and one year before the Constitution's ratification by the States. *Miln*, 36 U.S. (11 Pet.) at 149 (Thompson, J., concurring). That recommendation is thus "a strong contemporaneous expression . . . [that the regulation of immigrants] was a power resting with the states." *Id.*

6. *Federal debates around state authority over aliens*. Even after the Founding, this understanding continued. Far from evincing an exclusive federal authority over aliens, commentary and early practice after the passage of the Constitution was to leave alien rights entirely to the States. *See* Allison Brownell Tirres, *Ownership Without Citizenship: The Creation of Noncitizen Property Rights*, 19 Mich. J. Race & L. 1, 20 (2013) (describing early practice; "the federal government's control over naturalization did not translate into control over most other alien rights, which remained the province of the states"). The debates over the first Naturalization Act reveal a sharp distinction between immigration and naturalization—Congress claimed exclusive authority to regulate naturalization, but it shared with the States the power to determine what rights flowed to immigrants before naturalization. *See id.* at 15-20; *see also* 1 Annals of Cong. 1162 (1790) (Representative Seney explaining that, "We can go no further than to prescribe the rule by which it can be determined who are, and who are not citizens; but we cannot say they shall be entitled to privileges in the different States"). As Senator Patterson observed of these debates, "We can make a Citizen; we cannot do less." *The Notes of William Patterson*, in 4 *The Diary of William Maclay and Other Notes on the Senate Debates* 494 (Kenneth R. Bowling & Helen E. Veit eds., 1988). The First Naturalization Act thus granted no rights to aliens. Tirres, *supra*, at 20; *see also* Naturalization Law of March 26, 1790, ch. 3, 1 Stat. 103 (1790).

From there, Congress continued to leave the States with primary authority to regulate aliens for the first 100 years of the nation. *Arizona*, 567 U.S. at 417-21 (Scalia, J., concurring in part, dissenting in part). Indeed, except for the Alien Act of 1798, Congress did not enact any immigration statutes until the late 1800s. *Id.* at 421. And the Alien Act itself drew sharp condemnation for encroaching on the States' authority over aliens. *See id.* at 419 (noting that the "controversy surrounding the Alien and Sedition Acts" circled whether "the States had *exclusive* authority to enact such immigration laws"). For instance, Thomas Jefferson wrote in condemnation of the Alien and Sedition Acts "that alien friends are under the jurisdiction and protection of the laws of the state wherein they are [and] that no power over them has been delegated to the United States, nor prohibited to the individual states, distinct from their power over citizens." Kentucky Resolutions of 1798, reprinted in J. Powell, *Languages of Power: A Sourcebook of Early American Constitutional History* 131 (1991).

b. The constitutional powers of Congress do not withdraw state authority to regulate aliens consistent with federal directives.

Nothing in the text of the Constitution expressly confers exclusive authority or a "preeminent role" to Congress in regulating aliens. Had the Framers thought so, "[t]he delegates . . . would have rushed to the exits." *Arizona*, 567 U.S. at 436 (Scalia, J., concurring in part, dissenting in part). To the contrary, the Constitution was written on that backdrop of extensive state regulation of aliens, which informs its meaning. *See N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 27 (2022). The Constitution thus does

not answer this question. That question must be answered exclusively by reference to Congress's express enactment in the INA. Like the Constitution, that federal law is "best understood in the context of antecedent [regulation of aliens] on the local level." Klebaner, *supra* at 269. That history means the presumption against preemption applies with full force.

Yet in the same breath that the panel credited that history of state regulation, it also seemed to ignore that history by analyzing federal law as if the presumption against preemption did not exist. *See Iowa*, 126 F.4th at 1346-49.[6] The panel believed that the powers of naturalization, foreign commerce, and foreign relations handed the subject of the regulation of immigrants in the country from the States to the federal government from the get-go. *Id.* at 1345. Not so.

1. Take naturalization first. As discussed before, naturalization refers to the process of determining who will become a citizen, not the rights given to aliens before

[6] This Court held that Iowa's law was facially preempted even if Iowa's law incorporated all federal-law defenses. *Iowa*, 126 F.4th at 1347. The Court assumed that state law was entirely consistent with federal law, but found preemption from the unique discretion of federal authorities in the removal context. *See id.* Unlike that unique discretion, nothing in the INA reveals that prosecutorial discretion for illegal entry and reentry crimes is special, distinct from any other federal crime. *See Kansas v. Garcia*, 589 U.S. 191, 212 (2020). And in all events, Iowa has represented that its law incorporates federal-law defenses for aliens who have received discretionary relief from removal. *See Iowa*, 126 F.4th at 1347; *see* Opening Brief at 27, *United States v. Iowa*, 126 F.4th 1334 (8th Cir. 2024), 2024 WL 3641727.

they become citizens. The Founders understood that divide—retaining the States' police powers to regulate aliens before they became citizens. *Supra* 19-21.

2. Foreign commerce is no different. The panel relied on cases explicating Congress's commerce authority to show an overshadowing federal interest in immigration regulation. *Iowa*, 126 F.4th at 1345 (citing *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1875)). But cases like *Chy Lung* and *Henderson v. Mayor of New York*, 92 U.S. 259, 273 (1875), at best establish that Congress may regulate the "admission of citizens and subjects of foreign nations *to our shores*." *Chy Lung*, 92 U.S. at 280 (emphasis added); *see also Henderson*, 92 U.S. at 273. This Court should read those cases in the context of history, however, which bears out States' broad powers of aliens unless Congress clearly disrupted that authority.

Properly reading those cases limits their holdings to entry and admission to our shores, not movement within the country. Those cases, by their own terms, expressly limited their analysis to the entry of ordinary aliens "to our shores," finding this area in special need of uniform federal control. *Chy Lung*, 92 U.S. at 280; *see also Henderson*, 92 U.S. at 273. The Court specifically declined to rule on whether "in the absence of [any congressional] action, the States can, or how far they can, by appropriate legislation, protect themselves against actual paupers, vagrants, criminals, and diseased persons, arriving in their territory from foreign countries." *Henderson*, 92 U.S. at 275. If those cases did not purport to speak to the States' ability to ban criminals from entering the

country, it follows that those cases did not speak about their regulation of the movement of criminal aliens once they are already in the country. *See Chy Lung*, 92 U.S. at 280. Instead, the "right of the state in this respect has its foundation," as Justice Field once opined, "in the sacred law of self-defense, which no power granted to congress can restrain or annul." *In re Ah Fong*, 1 F. Cas. 213, 216 (C.C.D. Cal. 1874) (Field, Circuit Justice).

So too with any "preeminent role" of the federal government in the entry of aliens. If the commerce power handed the federal government some predominant interest in entry to and removal from the country, that interest does not necessarily extend to the treatment of illegal aliens once they are here. What is more, a state fully respects congressional interests when it "follow[s] the federal direction" and only affects those who Congress has said may not enter the country. *Plyler*, 457 U.S. at 219 n.19. So when Congress has exercised its commerce power to criminalize activity (as here), the Dormant Commerce Clause does not apply at all. *Texas*, 97 F.4th at 332 (Oldham, J., dissenting). In short, the Dormant Commerce Clause only applies when Congress is silent; here, Congress has spoken, and it has outlawed the behavior in question. *See Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 154 (1982) (because the Dormant Commerce Clause doctrine "safeguards Congress' latent power from encroachment," courts only apply that doctrine "when Congress has not acted or purported to act").

This reading of *Chy Lung* and *Henderson* also aligns with modern Supreme Court cases. The Supreme Court has reaffirmed the State's "power to deter the influx of persons entering the United States against federal law," *Plyler*, 457 U.S. at 228 n.23, just as at the Founding, *Miln*, 36 U.S. (11 Pet.) at 132-33. In the immigration context, the Supreme Court in *Arizona*—a decision that the panel drew many of its preemption principles from—held unequivocally that "the historic police powers of the States are not superseded unless that was the clear and manifest purpose of Congress." *Arizona*, 567 U.S. at 400 (cleaned up). Even when a state law singles out aliens, such as the employment law restricting the hiring of illegal aliens in *DeCanas v. Bica*, the Court refused to find preemption absent a "clear and manifest" showing that Congress intended a "complete ouster of state power." 424 U.S. 351, 357 (1976).

3. Finally, federal authority over foreign relations does not inherently transfer all power over aliens to the federal government. If merely regulating aliens created unconstitutional foreign policy problems, it would upend the longstanding history of state regulations of aliens. It would also run roughshod over modern Supreme Court cases, from *DeCanas* to *Arizona*, which continue to apply the presumption against preemption to state laws regulating aliens. Given the history of state regulation, it is no surprise that the Supreme Court "has never held that every state enactment which in any way deals with aliens" is preempted. *DeCanas*, 424 U.S. at 355.

The panel's view is inconsistent, moreover, with foreign policy cases that afford wide deference to the States. In the absence of an express foreign policy, courts seldom invalidate state laws. The oft-questioned ruling in *Zschernig v. Miller* remains the only time the Supreme Court has deemed an incidental or indirect effect on foreign affairs, with no express federal policy, sufficient to preempt state law. 389 U.S. 429, 434-35 (1968); *see also Shames v. Nebraska*, 323 F. Supp. 1321, 1326-32 (D. Neb. 1971), *aff'd*, 408 U.S. 901 (1972) (*Zschernig* is properly limited to state laws that invite "judicial criticism of foreign governments"); *Trojan Techs., Inc. v. Pennsylvania*, 916 F.2d 903, 913 (3d Cir. 1990) (similar).

Laws regulating aliens for their conduct in America do not express judicial criticism of foreign governments. Rather, courts still "carefully construe[]" express federal policies, when they relate to traditional state functions, "so as not to derogate from the authority and jurisdiction of the States of this nation unless clearly necessary to effectuate the national policy." *United States v. Pink*, 315 U.S. 203, 230 (1942). Courts have focused on whether diplomatic relations would be harmed by "a lingering atmosphere of hostility . . . created by state action" that is "*contrary to national policy*." *Id.* at 233 (emphasis added). Yet again, Congress's express choice excludes these aliens from entering the country except in the most limited circumstances, so state laws furthering that policy cannot be contrary to it.

Despite that history and traditional deference to the States, the panel saw foreign policy problems with SF2340. It stated that Iowa's law raised "diplomatic relations" issues about "the protection of the just rights of a country's own nationals when those nationals are in another country," *Iowa*, 126 F.4th at 1345 (quoting *Arizona*, 567 U.S. at 395, and *Hines v. Davidowitz*, 312 U.S. 52, 64 (1941)), but that overstates the holdings in *Arizona* and *Hines* and takes that language out of context.

In those cases, the Court held that the INA's alien registration scheme field preempted similar state laws. But there are no similarly unique federal interests in alien movement about the States, nor do the ones identified in *Arizona* translate to this context. *Arizona*, 567 U.S. at 400-03. In *Hines*, registration of "perfectly law-abiding" aliens created expectations about the "protection of the just rights of a country's own nationals when those nationals are in another country." *Hines*, 312 U.S. at 64-66. Those expectations stemmed from "obligations" under treaties and the "customs defining with more or less certainty the duties owing by all nations to alien residents" who are in another country lawfully. *Id.* at 65. That rationale does not apply to entry and reentry crimes, which inherently affect only *non-law-abiding* aliens, and thus have a more muted impact on "amity and commerce" between nations. *Id.* at 64-65.

CONCLUSION

This Court should reverse the district court.

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s/ *Zach West*
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CERTIFICATE OF DIGITAL SUBMISSION

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s/ *Zach West*
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I certify that on July 9, 2025, I caused the foregoing to be filed with this Court and served on all parties via the Court's CM/ECF filing system. No paper copies are required pursuant to 8th Cir. R. 25A.

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