

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

SOUTHEASTERN SYNOD OF THE
EVANGELICAL LUTHERAN CHURCH
IN AMERICA; GARRETT CAUSEY,
*individually and on behalf of a class of
similarly situated persons*; and JOHN DOE,
*individually and on behalf of a class of
similarly situated persons*,

Plaintiffs,

v.

STEVEN R. FINNEY; BARRY P.
STAUBUS; DAN E. ARMSTRONG;
JIMMY DUNN; RYAN DESMOND;
CHARME P. ALLEN; DAVE CLARK;
JARED EFFLER; RUSSELL JOHNSON;
STEPHEN HATCHETT; COTY WAMP;
COURTNEY LYNCH; BRYANT C.
DUNAWAY; CRAIG NORTHCOTT;
JASON LAWSON; JENNINGS H. JONES;
ROBERT J. CARTER; RAY WHITLEY;
ROBERT J. NASH; GLENN FUNK;
STACEY EDMONSON; BRENT
COOPER; RAY CROUCH; NEIL
THOMPSON; MARK DAVIDSON; JODY
PICKENS; COLIN JOHNSON;
FREDERICK AGEE; DANNY
GOODMAN JR.; STEVE MULROY;
CHRIS STANFORD; and HANS
SCHWENDIMANN, *in their official
capacities as the district attorneys general
of Tennessee*,

Defendants.

Case No.: _____

**CLASS ACTION COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. On May 27, 2025, Tennessee Governor Bill Lee signed Senate Bill 392 into law. *See* 2025 Tenn. Pub. Acts, ch. 424. Section 5 of that legislation creates a new state immigration crime for “human smuggling,” which will be codified at Tennessee Code § 39-17-118 (hereinafter, “Section 5”). Set to go into effect on July 1, 2025, Section 5 is unconstitutional in multiple respects. It violates the Supremacy Clause because it is preempted by federal law, and it violates the Fourteenth Amendment because it is impermissibly vague. The law also infringes churches’ First Amendment rights to free exercise of religion and religious association.

2. Section 5 threatens to put thousands of Tennesseans at risk of felony prosecution simply because they provide shelter to a vaguely defined category of immigrants. The law makes it a felony for any “person,” acting “for the purpose of commercial advantage or private financial gain,” to “[i]ntentionally conceal[], harbor[], or shield[] from detection” “an individual that the person knows has illegally entered or remained in the United States, as determined by the bureau of immigration and customs enforcement.”¹

3. Significantly, Section 5 defines the term “harbor” to include merely “provid[ing] shelter to” an individual. “Shelter” is undefined. As a result, the law criminalizes the provision of shelter even without any intent to hide or conceal an individual from law enforcement or immigration authorities. Section 5 thus purports to criminalize a broad range of innocuous everyday activities that involve providing shelter to immigrants. The law appears to make it a

¹ Although there is no longer any such bureau, *see* 72 Fed. Reg. 20,131 (Apr. 20, 2007), the law’s drafters presumably meant to refer to U.S. Immigration and Customs Enforcement (“ICE”).

crime for a landlord to rent an apartment to immigrants who entered or remained in the United States unlawfully, according to ICE; for parents to provide housing to an undocumented child who helps pay the bills; for a charity to provide shelter to undocumented immigrants, if the charity receives donations or grants to support that work; and for a church to host such immigrants within its building for worship, a potluck, an English-as-a-second language class, or a know-your-rights training, if the church receives donations to support that work.

4. Other aspects of Section 5’s unclear phrasing expand its scope even further. The law is written in a way that could sweep in all manner of immigrants—even those who currently have lawful status in the United States. It applies to people who “illegally entered or remained in the United States,” as determined by ICE. The use of past tense seems to extend the law to cover immigrants who previously entered or at some point remained in the country illegally, but who now have lawful status. And it is unclear what it means for ICE to “determine[.]” that an individual entered or remained in the country illegally. As a general matter, ICE is a law enforcement agency that is not responsible for conclusively determining whether most immigrants unlawfully entered or are unlawfully present.

5. Section 5 is preempted by federal law. The federal government has exclusive authority to regulate immigration. *Arizona v. United States*, 567 U.S. 387, 394-95 (2012). Through the Immigration and Nationality Act (“INA”), Congress has exercised that power to enact an exhaustive framework governing every aspect of the immigration system. 8 U.S.C. § 1101 *et seq.* That framework includes provisions regulating the concealing, harboring, and transporting of noncitizens. 8 U.S.C. § 1324(a)(1)(A)(i)-(v). The federal framework is comprehensive and

carefully balanced. It does not permit supplementation through state immigration laws, including those governing the transport and harboring of noncitizens.

6. Section 5 is also unconstitutionally vague. Tennesseans will be unable to know which immigrants fall within the law's terms. A landlord, homeless shelter, or church has no way to figure out whether ICE has determined that an individual, at any time in the past, entered or remained in the country unlawfully. Nor is it clear what conduct constitutes providing shelter. That concept could cover everything from overnight accommodations, to a day shelter providing a warm, dry place during a bad storm, to an educational program that lasts a few hours and occurs inside.

7. As applied to Plaintiff Southeastern Synod of the Evangelical Lutheran Church in America, Section 5 also violates the First Amendment. The Synod and its churches, pastors, staff, and congregations provide a number of ministries, including shelter, to people regardless of their immigration status, and they do so as an expression of their faith. By burdening these religious practices without substantial justification, and by excepting certain secular activities but not comparable religious activities, Section 5 impermissibly infringes on the Synod's First Amendment rights to religious exercise and association.

8. The Synod, as well as a landlord and a father proceeding individually and on behalf of a class of all those similarly situated, bring this lawsuit to challenge the constitutionality of Section 5 and to stop the law from inflicting imminent irreparable harm on them and on communities throughout Tennessee. Plaintiffs seek declaratory and injunctive relief to bar enforcement of this unconstitutional law.

JURISDICTION AND VENUE

9. The Court has jurisdiction under the United States Constitution and 28 U.S.C. §§ 1331 and 1343.

10. Venue is proper in this District under 28 U.S.C. § 1391(b). Several Defendants reside in this District, and all Defendants reside in Tennessee. In addition, a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District.

PARTIES

11. Plaintiff **Southeastern Synod of the Evangelical Lutheran Church in America** is a Christian body composed of 160 congregations across Alabama, Georgia, Mississippi, and Tennessee. Its vision, based on Ephesians 4:12, is "to equip, empower, and engage God's people to love and serve the world." For decades, the Evangelical Lutheran Church in America ("ELCA") has advocated for the rights of immigrants. The denomination's social message on immigration is grounded in the call to welcome the stranger in Matthew 25:35. The social message recognizes and rejoices in the contributions of newcomers in the church and the country and calls for the denomination to advocate for immigration, refugee, and asylum laws that are fair and generous.

12. In 2015, the ELCA adopted the AMMPARO Strategy to Accompany Migrant Minors with Protection, Advocacy, Representation and Opportunities. AMMPARO is a holistic, whole church commitment by the ELCA, as a church in the world, to accompany migrant families today and in the future. As part of that strategy, the ELCA has committed to uphold and guarantee basic human rights and safety of migrant children and their families; address the root causes of migration around the world and the treatment of migrants in transit; work toward just and humane policies affecting migrants in and outside the United States; and engage as a church body with all

of its companions, affiliates, and partners to respond to the migration situation and its causes and to advocate for migrant children and their families. As siblings in Christ, the ELCA is called to bear witness to the conditions affecting so many communities and to work to find solutions that will acknowledge the humanity in all of God's children.

13. The ELCA is also a sanctuary denomination. This means that the ELCA has declared that walking alongside immigrants and refugees is a matter of faith. In baptism, Lutherans are brought into a covenantal relationship with Jesus Christ that commits them to strive for justice and peace in all the earth. Following the example of Martin Luther, the ELCA believes that advocacy is a crucial expression of baptismal identity. As a church, the ELCA has advocated for stopping the detention of children and families, spoken out against family separation, sought a pathway to citizenship for community members who have lived in the United States for many years, and taken steps to address the root causes of migration in a way that honors the humanity in people who must flee their home countries.

14. On January 28, 2025, ELCA Presiding Bishop Rev. Elizabeth A. Eaton issued a statement addressing recent actions by the federal government relating to immigration. Bishop Eaton explained that she had heard about families frightened of being torn apart and from congregations fearful that their churches can no longer offer safety or support to their immigrant neighbors. The statement recognized that nations have the responsibility to protect their borders and safeguard their communities. At the same time, Bishop Eaton reaffirmed the ELCA's commitment that just policies must include recognition of the humanity of immigrants without status, respect for the dignity of those at the border, and refuge for displaced people. to the ELCA,

the Scriptures are clear: Christians are called to see anew the image of God in their immigrant neighbors.

15. The Southeastern Synod lives out these commitments not only in word, but also in deed. Its churches within Tennessee provide numerous ministries that serve the immigrant community, including undocumented immigrants. The Synod has churches that provide housing within their buildings to asylum seekers, churches that host day shelters that provide food and services to people regardless of immigration status, churches that resettle refugees and asylum seekers, churches that provide English-as-a-second-language classes, churches that run soup kitchens and food pantries, churches that provide rental assistance and help connect immigrants in need to low-cost housing, and churches that host events like weddings and funerals for immigrant communities regardless of immigration status.

16. Recently, the Synod has also taken an active role in helping its congregations, including pastors, staff, and church members, understand how to prepare for the possibility of immigration raids, including by hosting know-your-rights trainings. The Synod has provided training materials for use by congregations in Tennessee. Those materials encourage congregations that may be impacted by raids to prepare for a potential encounter with immigration enforcement in several ways, including by asserting Fourth Amendment rights to protect private spaces within church buildings from unwarranted intrusion. Congregations are directed to develop a written response policy and preparedness plan in advance, to designate an authorized person to review warrants, to understand the difference between public and private areas and to have appropriate signage, to train staff and volunteers on how to respond to ICE requests, to document all interactions with immigration enforcement, and to connect with immigration response networks

in their areas. These trainings do not constitute formal legal advice, and they do not encourage anyone to break the law. But they do provide church leaders with information on how to assert their rights and protect congregants in the event of a raid.

17. Several Tennessee churches within the Synod provide ministries to immigrants that could be covered by the new “human smuggling” law, potentially subjecting pastors, staff, and congregants to criminal prosecution.

18. For instance, one church in Middle Tennessee has been engaged in immigrant-focused ministries for more than a decade. The pastor of this church says that providing shelter to those in need is central to their call to God and what it means to live out their faith. They would be hard pressed to stop these ministries, even if it meant going to jail.

19. Specifically, the church provides sanctuary to immigrants in need, regardless of their immigration status. For more than a year, two Venezuelan asylum seekers lived in the church building. The church was not hiding these immigrants, but it was providing them shelter. The church received donations earmarked to support this ministry. Similarly, the church owns a small house next door to the church building, and the church has used this house intermittently to provide shelter to refugees, mostly recently to an Afghan family. In making these spaces available, the church does not check anyone’s papers. And the church intends to continue providing shelter to immigrants in this way going forward. This church also helps with housing in other ways. It has held donation drives to help furnish apartments for immigrants and has also provided rental assistance.

20. This church also hosts private events for members of the community, including weddings and birthday parties. Given the demographics of the area, many of the people who use

the church's space are immigrants. The immigrants who host these sorts of events at the church generally provide a donation in return for use of the space.

21. Another organization within the Synod, which is based in Tennessee, predominantly serves immigrants from Africa. This organization has offered a variety of refugee resettlement services, including providing basic household items to families resettling in the community, hosting English-as-a-second-language classes, helping parents register their children for school, and connecting immigrants with healthcare and other public benefits. In the course of providing this assistance, the pastor who runs the organization has learned that some of those served do not have legal status. But the organization continues to host those individuals for Bible studies, meals, and other community events.

22. This organization has also provided know-your-rights trainings, in connection with a local nonprofit, to teach members of its community how to prepare for and respond to potential immigration raids. During these trainings, members discuss their plans for what to do in case of an immigration raid either at members' homes or at the organization.

23. Another congregation in Middle Tennessee engages in community outreach as part of its mission to love God, love others, and serve both. The congregation supports a food pantry next door to the church building that serves the community regardless of immigration status. The church receives donations of both food and money to support this ministry. In addition, the same church serves as a designated safe place for school children in the case of an emergency. In a tornado or other natural disaster, the church would provide shelter to those school children regardless of their immigration status—even if the pastor knew that a child was undocumented.

24. Finally, another church in Middle Tennessee has a Monday open-door policy, which entails welcoming everyone in the community into the church building on Monday mornings and providing them basic services. During this time, the church serves breakfast and coffee. In partnership with a local nonprofit, the church helps connect those who drop in to basic resources, including housing. The church receives donations, including in the form of gift cards, to support this ministry.

25. Plaintiff **Garrett Causey** is a resident of Murfreesboro, Tennessee. Through an LLC, he owns a home in the Antioch neighborhood of Nashville, Tennessee, that he uses as a rental property. His current tenant is an immigrant from Guatemala who has been renting the home for the past four years, with two years remaining on the lease. When he moved in, the tenant disclosed that he did not have a Social Security number, which Causey interpreted to mean that the tenant did not have lawful status in the United States. Since then, Causey understands that the tenant has obtained some form of lawful status.

26. Although the tenant is the only person on the lease, Causey knows based on his annual inspections of the property that other individuals also live in the house and help pay the rent. Those other individuals are Spanish speakers, and, based on the demographics of the neighborhood, it is possible that some of them may be undocumented.

27. Causey intends to continue using the house in Nashville as a rental property in the future. It is important to him to rent out the property to tenants regardless of immigration status. But he fears prosecution under the new “human smuggling” law for providing shelter, in exchange for rent money, to a tenant he knows was previously undocumented, as well as other occupants whom he suspects may be undocumented.

28. Plaintiff **John Doe** is a resident of Tennessee and an immigrant from Mexico. He has been living in the United States for many years, having come to this country for the first time almost 40 years ago. After many years of struggle and difficulty seeking lawful status in the United States, he finally became a lawful permanent resident a few months ago. Together with his wife, he owns a home in Tennessee.

29. Doe's oldest daughter and her husband live with Doe in his home. Doe's son-in-law is an asylum seeker who unlawfully entered the United States. Because Doe's daughter is an adult, she and her husband insist on paying rent. Doe believes that families belong together and that is what matters most.

30. Doe fears that he could be prosecuted under the "human smuggling" law for providing shelter to his daughter and son-in-law because they are paying rent and because Doe knows his son-in-law's immigration status. He worries about the safety and security of his family.

31. Defendants are Tennessee's elected district attorneys general. Specifically, they are Steven R. Finney (first judicial district), Barry P. Staubus (second judicial district), Dan E. Armstrong (third judicial district), Jimmy Dunn (fourth judicial district), Ryan Desmond (fifth judicial district), Charme P. Allen (sixth judicial district), Dave Clark (seventh judicial district); Jared Effler (eighth judicial district), Russell Johnson (ninth judicial district), Stephen Hatchett (10th judicial district), Coty Wamp (11th judicial district), Courtney Lynch (12th judicial district), Bryant C. Dunaway (13th judicial district), Craig Northcott (14th judicial district), Jason Lawson (15th judicial district), Jennings H. Jones (16th judicial district), Robert J. Carter (17th judicial district), Ray Whitley (18th judicial district), Robert J. Nash (19th judicial district), Glenn Funk (20th judicial district), Stacey Edmonson (21st judicial district), Brent Cooper (22nd judicial

district), Ray Crouch (23rd judicial district), Neil Thompson (24th judicial district), Mark Davidson (25th judicial district), Jody Pickens (26th judicial district), Colin Johnson (27th judicial district), Frederick Agee (28th judicial district), Danny Goodman Jr. (29th judicial district), Steve Mulroy (30th judicial district), Chris Stanford (31st judicial district), and Hans Schwendimann (32nd judicial district).

FACTS

Federal Immigration Law

32. The federal government has exclusive power over immigration. *See, e.g., Arizona*, 567 U.S. at 394-95.

33. Congress has created a comprehensive system of federal laws regulating and enforcing immigration in the INA. *See* 8 U.S.C. § 1101 *et seq.*

34. Federal immigration statutes and the associated implementing regulations and precedential administrative law decisions form an exceptionally detailed, complex, and finely reticulated regulatory regime. The INA was originally enacted in 1952, and Congress has frequently amended the relevant provisions, including by passing particularly significant legislation in 1965, 1980, 1986, 1990, 1996, 2000, 2001, 2005, and 2008, along with dozens of other acts modifying the immigration regime in countless ways.

35. The federal scheme specifically addresses which conduct is punishable as unlawful transport and harboring of noncitizens. As to immigrants who unlawfully enter or remain in the United States, the statute penalizes only transport or harboring that facilitates those immigrants' unlawful conduct. *See* 8 U.S.C. § 1324(a)(1)(A)(ii) (prohibiting “transport[]” only if it is “in furtherance of such violation of law”); *id.* § 1324(a)(1)(A)(iii) (requiring that the person

“conceal[], harbor[], or shield[] from detection”). The Sixth Circuit has interpreted “harbor” in the federal statute to mean “conduct that tends to substantially facilitate noncitizens remaining in the country illegally and prevent authorities from detecting the noncitizens’ presence.” *United States v. Zheng*, 87 F.4th 336, 343 (6th Cir. 2023); *see also Reyes v. Waples Mobile Home Park Ltd. P’ship*, 91 F.4th 270, 277 (4th Cir. 2024) (“[T]he statute only applies to those who intend in some way to aid an undocumented immigrant in hiding from the authorities” and thus does not cover “merely entering a lease agreement with an undocumented immigrant.”)

36. The federal statute contains detailed evidentiary rules for proving transport and harboring crimes in federal court. *See* 8 U.S.C. § 1324(b)(3). It also explicitly limits the states’ role in the enforcement of federal transport and harboring laws to a specified circumstance: making arrests for violations of its criminal provisions. *See* 8 U.S.C. § 1324(c).

37. In light of this comprehensive scheme, federal courts of appeals have consistently held that Congress has occupied the field of immigration regulation, leaving no room for the states to regulate. *See Arizona*, 567 U.S. 387; *Ga. Latino All. for Hum. Rts. v. Governor of Georgia* (“GLAHR”), 691 F.3d 1250, 1263-65 (11th Cir. 2012); *United States v. Alabama*, 691 F.3d 1269, 1285-87 (11th Cir. 2012); *United States v. South Carolina*, 720 F.3d 518, 530-32 (4th Cir. 2013); *Lozano v. City of Hazleton*, 724 F.3d 297, 314-17 (3d Cir. 2013); *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1023-26 (9th Cir. 2013).

Section 5

38. Section 5 is Tennessee’s own version of the transport-and-harboring federal crime. Because it intrudes on an area of exclusive federal authority, it is field preempted. *Arizona*, 567 U.S. at 399. In addition, Section 5 is conflict preempted because it stands as an obstacle to the

accomplishment of the purposes and objectives of the federal regime. *See GLAHR*, 691 F.3d at 1265-67. Section 5 is also unconstitutionally vague because “it fails to give ordinary people fair notice of the conduct it punishes” and is “so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591, 595 (2015). As to the Southeastern Synod, Section 5 infringes on its First Amendment rights of freedom of religious exercise and of association.

39. On January 22, 2025, Tennessee Governor Bill Lee presented his administration’s “agenda on illegal immigration” for a special session of the Tennessee General Assembly.² The governor indicated that Tennessee was “heeding the call” from President Trump to “play a major role in ... enforc[ing] the immigration laws.”³ Accordingly, the governor proposed a “comprehensive framework to strengthen immigration enforcement across Tennessee.”⁴

40. Section 5 was a key component of this proposed state crackdown on immigration. The sponsor of the bill in the Tennessee House, Rep. Chris Todd (R-Madison County), stated his view that “President Joe Biden failed the American people for four years when he opened our border and allowed millions of illegal immigrants to move throughout our nation.”⁵ Given that alleged failure by the prior administration, Rep. Todd believed the state needed to step in. “Not only has his dereliction of duty placed an immense financial and public safety burden on states,

² See Press Release, Office of the Governor, Gov. Lee, Legislative Leadership Present Agenda on Illegal Immigration Ahead of Special Session (Jan. 22, 2025), <https://www.tn.gov/governor/news/2025/1/22/gov--lee--legislative-leadership-present-agenda-on-illegal-immigration-ahead-of-special-session.html>.

³ *Id.*

⁴ *Id.*

⁵ See Press Release, Rep. Chris Todd’s Office, Proposed TN Bill Seeks to Criminalize Harboring Illegal Immigrants, Human Smuggling (Mar. 21, 2025), <https://www.wbbjtv.com/2025/03/21/proposed-tn-bill-seeks-to-criminalize-harboring-illegal-immigrants-human-smuggling>.

but it also helped fuel a heartbreaking human smuggling and trafficking crisis affecting men, women and children. This legislation will improve public safety in Tennessee by protecting victims, prosecuting the evil people driving the multi-billion-dollar industry and holding people accountable for harboring illegal immigrants.” *Id.*

41. Section 5 creates a new state felony of “human smuggling” that regulates the same field as the federal statute—transport and harboring of immigrants. In certain respects, the language of Section 5 mirrors that of its federal counterpart. Section 5 applies to any person who, “for the purpose of commercial advantage or private financial gain” either (1) “[k]nowingly transports an individual with intent to conceal the individual from a law enforcement officer or a federal immigration officer, while knowing the individual has illegally entered or remained in the United States, as determined by” ICE, or (2) “[i]ntentionally conceals, harbors, or shields from detection, or intentionally encourages or induces another to conceal, harbor, or shield from detection, an individual that the person knows has illegally entered or remained in the United States, as determined by” ICE. 2025 Tenn. Pub. Acts, ch. 424, p. 2, § 5(a)(1)-(2).

42. Unlike the federal statute, which includes no definition of the word “harbor,” Section 5 defines “harbor” to include either “*provid[ing] shelter to or conceal[ing] the whereabouts of an individual.*” *Id.* § 5(d) (emphasis added) That definition means that merely providing shelter, even without concealing the whereabouts of an individual, is sufficient to violate the statute. That makes the state statute substantially broader than federal law: Unlike the federal scheme, *see Zheng*, 87 F.4th at 343, Section 5 does not require that harboring prevent authorities from detecting an immigration violation to be a crime.

43. Other unique features of Section 5 both conflict with the federal scheme and render it vague. Section 5 purports to apply to a category of immigrants not recognized in federal statutes: those who “illegally entered or remained in the United States, as determined by” ICE. That provision departs from federal immigration law in several ways. The federal statute has been interpreted to require ongoing violations of immigration law. *See United States v. Franco-Lopez*, 687 F.3d 1222, 1227-28 (10th Cir. 2012); *United States v. Aguilar*, 883 F.2d 662, 676-77 (9th Cir. 1989). Section 5, by contrast refers to anyone who “has illegally entered or remained” in the United States in the past, even if they now have legal status. Accordingly, the state law may apply to someone providing shelter to an individual who previously entered the country illegally but now has lawful status, a common occurrence under the many provisions allowing for immigration benefits and relief from removal in federal immigration law.

44. In addition, it is unclear what it means for a criminal defendant to know an individual’s immigration status “as determined by” ICE. Does the defendant need to know specifically that ICE made a determination about the person’s immigration status, or is it sufficient for the defendant to know the person’s immigration status and for that status to have been determined by ICE? What if United States Customs and Border Protection determines that someone entered illegally? Or if ICE determines that someone remained illegally but a court later disagrees in the context of a removal proceeding? Section 5 provides no answers.

45. Section 5’s exceptions confirm its broad scope. The law contains only two narrow exceptions: for a licensed attorney who “provide[s] bona fide legal advice to an individual” and for a person who “provide[s]” certain “healthcare services or assistance to an individual.” The

existence of those exceptions suggests that the statute’s definition of “harbor” would otherwise be broad enough to cover such activities.

46. Although the state law provides those two exceptions for secular activities, it provides no exception for comparable religious activities.

47. Section 5 includes an aggravated version of “human smuggling” that is also different from federal law. The aggravated version is a Class A felony and applies if the “victim of the offense was less than thirteen (13) years of age at any time during the person’s course of conduct.”

48. During legislative debates, opponents of the bill identified these problems. One state Senator raised the concern that the law could apply to “a church that is housing an asylum seeker.” *Sen. Floor Debate on S.B. 392*, 2025 Leg., 114th Sess. (Tenn. 2025) [hereinafter *Senate Floor Debate*], at 2:35:02-36:11 (statement of Sen. Raumesh Akbari). Likewise, a state Representative argued the bill would apply to a church if it “takes in anyone, gives them assistance, gives them food, gives them shelter.” *House Floor Debate on H.B. 322*, 2025 Leg., 114th Sess. (Tenn. 2025) [hereinafter *House Floor Debate*], at 48:44-52:40 (statement of Rep. John Ray Clemmons).

49. In response, the sponsors of the bill offered no clear guidance. For instance, Senate sponsor Brent Taylor stated that the legislation was targeted at people who were “looking to shield [noncitizens] from immigration authorities or law enforcement authorities” and agreed that the focus was on “those people who do it for profit,” not “the church charities, charities, healthcare clinics that take care of people.” *Hearing on S.B. 392 Before the Sen. Judiciary Comm.*, 2025 Leg., 114th Sess. (Tenn. 2025), at 3:40:56-41:07 (statement of Sen. Todd Gardenhire); *id.* at 3:41:08-

42:04 (statement of Sen. Brent Taylor). But he later stated that the bill *would* apply to charitable organizations if they were “harboring or hiding or shielding” noncitizens. *Id.* at 3:44:00-34.

50. Likewise, House sponsor Chris Todd explained that a person who was “harboring, *meaning housing*, or hiding or assisting another in harboring or hiding those individuals that are here illegally” would be committing a crime and that churches were protected from enforcement only so long as they were “providing services that [were] outside the definitions in this bill.” *Hearing on H.B. 322 Before the H. Judiciary Comm.*, 2025 Leg., 114th Sess. (Tenn. 2025), at 1:03:31-58 (statement of Rep. Chris Todd); *House Floor Debate* at 34:41-58 (statement of Rep. Chris Todd).

51. Tennessee’s state immigration crime of “human smuggling” thus intrudes into an area of exclusive federal control, differs markedly from the carefully calibrated federal law governing immigrant transport and harboring, is so vague that it fails to provide adequate notice of what it criminalizes, and, as applied to religious organizations, infringes the rights to free exercise and association.

CLASS ACTION ALLEGATIONS

52. Individual Plaintiffs Garrett Causey and John Doe bring their claims in this action under Federal Rule of Civil Procedure 23(a) and 23(b)(2) on behalf of themselves and a class of all other persons similarly situated.

53. Individual Plaintiffs seek to represent the following class: all persons in Tennessee who (1) provide shelter to immigrants who entered or remained in the United States unlawfully “as determined by” ICE and (2) receive some form of financial benefit in connection with providing that shelter.

54. The proposed class satisfies the numerosity requirements of Rule 23(a)(1) because the class is so numerous that joinder of all members is impracticable. Hundreds if not thousands of Tennesseans will be subject to arrest and prosecution under Section 5 for providing shelter to noncitizens.

55. The proposed class satisfies the commonality requirements of Rule 23(a)(2). There are questions of law common to the class, including whether Section 5 is preempted by federal immigration law and whether Section 5 is unconstitutionally vague.

56. The proposed class satisfies the typicality requirements of Rule 23(a)(3) because the claims of the representative Individual Plaintiffs are typical of the claims of the class. All members of the class, including the representative Plaintiffs, face the same injuries of arrest and prosecution for human smuggling, and all members of the class raise the same argument that Section 5 is both preempted by federal law and unconstitutionally vague.

57. The proposed class satisfies the adequacy requirements of Rule 23(a)(4). The representative Plaintiffs seek the same relief as the other members of the class: an order declaring Section 5 unconstitutional and an injunction preventing Defendants from enforcing Section 5. In defending their rights, the representative Plaintiffs will defend the rights of all proposed class members fairly and adequately.

58. The proposed class is represented by experienced attorneys from the Institute for Constitutional Advocacy and Protection at Georgetown Law, the American Immigration Council, and the Tennessee Immigrant & Refugee Rights Coalition. Proposed Class Counsel have extensive experience litigating class action lawsuits and other complex systemic cases in federal court on behalf of noncitizens, including cases asserting very similar claims to the claims asserted here.

59. The proposed class also satisfies Rule 23(b)(2). Defendants will act on grounds generally applicable to the class by subjecting them to arrest and prosecution under Section 5. Injunctive and declaratory relief is therefore appropriate with respect to the class as a whole.

CAUSES OF ACTION

Count I Equitable Claim for Violation of Supremacy Clause All Plaintiffs

60. Plaintiffs restate and re-allege all preceding paragraphs as if fully set forth herein.

61. The Supremacy Clause, Article VI, Section 2, of the U.S. Constitution provides that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

62. The Supremacy Clause mandates that federal law preempts state law in any area over which Congress expressly or impliedly has reserved exclusive authority or which is constitutionally reserved to the federal government, or where state law conflicts or interferes with federal law.

63. The federal government has exclusive power over immigration law and policy. *Arizona*, 567 U.S. at 394-95. Congress has created a comprehensive system of federal laws regulating the transport and harboring of immigrants in the United States. *See* 8 U.S.C. § 1324(a)(1)(A)(i)-(v).

64. Section 5 violates the Supremacy Clause because it attempts to regulate matters that are exclusively reserved to the federal government and because it operates in a field over which Congress has exercised exclusive authority.

65. Section 5 further violates the Supremacy Clause because it conflicts with federal laws, imposes burdens and penalties not authorized by and contrary to federal law, creates its own immigration classifications, and directs state officers to take unilateral immigration enforcement actions.

66. Plaintiffs have no adequate remedy at law. They may sue in equity to obtain injunctive relief against Section 5.

Count II
42 U.S.C. § 1983 – Due Process Clause of the Fourteenth Amendment
All Plaintiffs

67. Plaintiffs restate and re-allege all preceding paragraphs as if fully set forth herein.

68. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides, in pertinent part, “nor shall any State deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1.

69. Section 5 deprives people of due process of law, in violation of the Due Process Clause of the Fourteenth Amendment.

70. Section 5 is impermissibly vague.

71. “The void-for-vagueness doctrine requires that [a] statute 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.” *United States*

v. Kerns, 9 F.4th 342, 351 (6th Cir. 2021) (quoting *United States v. Farah*, 766 F.3d 599, 614 (6th Cir. 2014)) (alteration in original).

72. Section 5 is unconstitutionally vague because it fails to provide a person of ordinary intelligence fair notice of what is prohibited and because it authorizes and encourages arbitrary and discriminatory enforcement.

73. Section 5 exposes a person to felony charges if she “provide[s] shelter to” an individual she “knows has illegally entered or remained in the United States, as determined by” ICE. The Due Process Clause does not permit subjecting a person to criminal penalties based on those vague terms because they are indeterminate, incoherent, and amorphous.

74. Absent an injunction, Section 5’s vague terms expose Plaintiffs and thousands of other Tennesseans to a credible threat of prosecution without providing them fair notice of what conduct the statute proscribes.

75. Plaintiffs seek relief on this claim directly under the Constitution and under 42 U.S.C. § 1983.

Count III
42 U.S.C. § 1983 – First Amendment Free Exercise of Religion
Plaintiff Southeastern Synod of the Evangelical Lutheran Church in America

76. Plaintiffs restate and re-allege all preceding paragraphs as if fully set forth herein.

77. The First Amendment, as incorporated against the states, provides that the State “shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. amend. I.

78. Section 5 unlawfully burdens the free exercise of religion by the Synod, its churches, and their pastors, staff, and congregants, in violation of the First Amendment.

79. The First Amendment’s Free Exercise Clause provides that the government may not “burden[] [a] sincere religious practice pursuant to a policy that is not ‘neutral’ or ‘generally applicable’” unless the government can show that the policy satisfies strict scrutiny. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022) (quoting *Emp. Div., Dep’t of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 879-81 (1990)).

80. Section 5 burdens the sincere religious practices of the Synod, its churches, and their constituencies. “The Clause protects not only the right to harbor religious beliefs inwardly and secretly. It does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through ‘the performance of (or abstention from) physical acts.’” *Id.* at 524. As the Supreme Court recently reaffirmed, performing services for others can be as core to religious exercise as “worship, proselytization, or religious education.” *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm’n*, No. 24-154, 605 U.S. ---, 2025 WL 1583299, at *8 (U.S. June 5, 2025).

81. As an expression of their faith and practice of their religion, the Synod, its churches, and their constituencies provide a number of services to people regardless of their immigration status, including undocumented immigrants. These services include providing housing, day shelters, resettlement programs, rental assistance, and other forms of aid. Section 5 makes many of these services unlawful, significantly burdening the sincere free exercise of religion of the Synod and its constituencies.

82. Section 5 is not a neutral and generally applicable law, and thus it triggers strict scrutiny, because it exempts secular activities—legal representation and healthcare services—but not religious ones from its prohibitions. “[G]overnment regulations are not neutral and generally

applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise.” *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam) (emphasis in original); *Kennedy*, 597 U.S. at 526 (“A government policy will fail the general applicability requirement if it ‘prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way[.]’”) (quoting *Fulton v. City of Philadelphia*, 593 U.S. 522, 534 (2021)). “In other words, a regulation that burdens religiously motivated conduct will ‘trigger strict scrutiny’ even if [it] contains just *one* comparable secular exception to its restrictions.” *Pleasant View Baptist Church v. Beshear*, 78 F.4th 286, 303 (6th Cir. 2023) (Murphy, J., concurring) (quoting *Tandon*, 593 U.S. at 62) (emphasis in original).

83. Section 5 does not survive strict scrutiny. The burden is on the defendants to establish that the law is narrowly tailored to further a compelling government interest, which it cannot do.

84. Plaintiffs seek relief on this claim directly under the Constitution and under 42 U.S.C. § 1983.

Count IV

42 U.S.C. § 1983 – First Amendment Freedom of Association Plaintiff Southeastern Synod of the Evangelical Lutheran Church in America Only

85. Plaintiffs restate and re-allege all preceding paragraphs as if fully set forth herein.

86. The Supreme Court has “long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others.” *Ams. for Prosperity Found. v. Bonta (APF)*, 594 U.S. 595, 606 (2021) (quoting *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984)).

87. Section 5 unlawfully interferes with Plaintiff Southeastern Synod of the Evangelical Lutheran Church in America's freedom to associate for religious purposes.

88. "[T]he Supreme Court 'has recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition for the redress of grievances, and the exercise of religion.'" *Anderson v. City of LaVergne*, 371 F.3d 879, 881 (6th Cir. 2004) (quoting *Roberts*, 468 U.S. at 618). Indeed, the First Amendment provides "special solicitude" to freedom of association for religious purposes. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 189 (2012). "As [courts] give deference to an association's assertions regarding the nature of its expression, [courts] must also give deference to an association's view of what would impair its expression." *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 653 (2000).

89. Section 5 impairs the Synod's freedom of association by restricting its ability to provide services, including shelter, to people based on their immigration status.

90. Once a plaintiff shows any interference with their First Amendment right to associate, the burden shifts to the government to demonstrate that its restrictions are narrowly tailored to an important or compelling governmental interest. *APF*, 594 U.S. at 611, 617.

91. Section 5 is not narrowly tailored to an important or compelling government interest.

92. Plaintiff seeks relief on this claim directly under the Constitution and under 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court certify a class, enter judgment in their favor, and grant the following relief:

- a. A declaration that Section 5 of Tennessee Senate Bill 392 is unconstitutional and invalid on its face;
- b. A declaration that Section 5 is unconstitutional and invalid as applied to Plaintiffs;
- c. A preliminary and permanent injunction enjoining Defendants from enforcing Section 5 in its entirety;
- d. An award to Plaintiffs of reasonable costs and attorneys' fees; and
- e. Such other and further relief that this Court may deem just and proper.

June 20, 2025

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**Motions for admission pro hac vice
forthcoming.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

SOUTHEASTERN SYNOD OF THE
EVANGELICAL LUTHERAN CHURCH
IN AMERICA *et al.*,

Plaintiffs,

v.

STEVEN R. FINNEY *et al.*,

Defendants.

Case No.: 3:25-cv-684

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR
MOTION FOR A PRELIMINARY INJUNCTION**

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INTRODUCTION

It is “well settled” that the federal government has exclusive authority to “determine immigration policy” for the “entire Nation.” *Arizona v. United States*, 567 U.S. 387, 395 (2012). Through the Immigration and Nationality Act (“INA”), Congress exercised that power to enact a comprehensive framework governing every aspect of immigration in the United States. 8 U.S.C. § 1101 *et seq.* Accordingly, federal courts have consistently held that there is no room for states to legislate in this area. *See, e.g., Arizona*, 567 U.S. at 410; *Ga. Latino All. for Hum. Rts. v. Governor of Georgia (GLAHR)*, 691 F.3d 1250, 1263 (11th Cir. 2012); *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1023-24 (9th Cir. 2013).

Undeterred, Tennessee enacted a new felony for transporting or harboring certain noncitizens. *See* 2025 Tenn. Pub. Acts, ch. 424, pp. 2-4, § 5 (“Section 5”). Like many other state immigration crimes that have been struck down in recent years, Section 5 is blatantly unconstitutional. It is field preempted because it intrudes on an area of exclusive federal authority, and it is conflict preempted because it stands as an obstacle to federal law regulating the transport and harboring of immigrants, *see* 8 U.S.C. § 1324. It is also unconstitutionally vague because its opaque terms fail to give fair notice of which noncitizens it covers, what a defendant must know about a noncitizen’s status, and what forms of assistance qualify as harboring.

If not enjoined, the law will inflict immediate irreparable harm on thousands of well-meaning Tennesseans. The law defines “harbor” to include merely providing shelter, without intent to conceal. That means Section 5 could subject churches, landlords, and family members to felony prosecution for putting a roof over an immigrant’s head. Plaintiffs seek a preliminary injunction to prevent that imminent harm.

BACKGROUND

I. Enactment of Section 5.

On January 22, 2025, Tennessee Governor Bill Lee presented his administration's "agenda on illegal immigration" for a special session of the Tennessee General Assembly.¹ The governor indicated that he was "heeding the call" from President Trump for states to "play a major role in ... enforc[ing] the immigration laws" by proposing a "comprehensive framework to strengthen immigration enforcement across Tennessee."² One component of this scheme was a bill purporting to "crack[] down on human smuggling and illegal immigration."³ The bill's House sponsor, Representative Chris Todd, contended that there had been a recent influx of undocumented immigrants, including unaccompanied minors, into the state, adding, "We as legislators didn't make that decision. We did not determine this could happen. This was done by the previous administration federally with no notice to us, no permission granted, and ... no accountability."⁴ Claiming that "President Joe Biden failed the American people for four years when he opened our border and allowed millions of illegal immigrants to move throughout our nation," Todd stated that the bill would "improve public safety in Tennessee by ... holding people accountable for harboring illegal immigrants."⁵

¹ Press Release, Office of the Governor, Gov. Lee, Legislative Leadership Present Agenda on Illegal Immigration Ahead of Special Session (Jan. 22, 2025), <https://www.tn.gov/governor/news/2025/1/22/gov--lee--legislative-leadership-present-agenda-on-illegal-immigration-ahead-of-special-session.html>.

² *Id.*

³ Press Release, Rep. Chris Todd's Office, Proposed TN Bill Seeks to Criminalize Harboring Illegal Immigrants, Human Smuggling (Mar. 21, 2025), <https://www.wbbjtv.com/2025/03/21/proposed-tn-bill-seeks-to-criminalize-harboring-illegal-immigrants-human-smuggling> [hereinafter Todd Press Release].

⁴ *H. Floor Debate on H.B. 322*, 2025 Leg., 114th Sess. (Tenn. 2025) [hereinafter *H. Floor Debate*], at 28:42-56 (statement of Rep. Chris Todd).

⁵ Todd Press Release; *see also* Anita Wadhvani, *Tennessee Bill to Criminalize "Harboring or Hiding" Immigrants Without Legal Status Advances*, Tenn. Lookout (Mar. 20, 2025),

The debates over the “human smuggling” bill highlighted its breadth and its ambiguity. Lawmakers and opponents of the bill raised concerns that it could criminalize family living arrangements in mixed-immigration-status households,⁶ as well as nonprofits and faith-based organizations providing services without regard to immigration status.⁷ In response, proponents of the bill gave conflicting or nonresponsive answers about whether particular conduct would be covered. For instance, Senate sponsor Brent Taylor said the legislation was targeted at people who were “looking to shield [noncitizens] from ... immigration authorities or law enforcement” and agreed the focus was on “those people who do it for profit,” not “church charities, united fund charities, healthcare clinics that take care of people.”⁸ But he later stated that the bill *would* apply to charitable organizations if they were “harboring or hiding or shielding” noncitizens.⁹ House sponsor Chris Todd frequently directed questioners to the bill’s text rather than delineating its scope. But he did explain that a person who was “harboring, *meaning housing*, or hiding or assisting another in harboring or hiding those individuals that are here illegally” would be committing a crime and that churches were protected from enforcement only so long as they were

<https://tennesseelookout.com/2025/03/20/tennessee-bill-to-criminalize-harboring-or-hiding-immigrants-without-legal-status-advances> (quoting Todd as saying the bill was needed because of “malfeasant ... border policies and rampant illegal immigration” “over the past four years”).

⁶ See, e.g., *H. Floor Debate* 31:04-34:29 (statement of Rep. Antonio Parkinson) (asking whether bill would cover mixed-status couple living in home owned by U.S. citizen spouse).

⁷ See, e.g., *Sen. Floor Debate on S.B. 392*, 2025 Leg., 114th Sess. (Tenn. 2025) [hereinafter *Sen. Floor Debate*], at 2:35:02-36:11 (statement of Sen. Raumes Akbari) (expressing concern that bill could target “a church that is housing an asylum seeker”); *H. Floor Debate* 39:39-43:56 (statement of Rep. Bo Mitchell) (asking whether Catholic priest bringing noncitizen into church “to provide a safe place for them” would be charged with harboring); *id.* at 48:44-52:40 (statement of Rep. John Ray Clemmons) (stating that the bill would apply to a church if it “takes in anyone, gives them assistance, gives them food, gives them shelter”).

⁸ *Hearing on S.B. 392 Before the Sen. Judiciary Comm.*, 2025 Leg., 114th Sess. (Tenn. 2025), at 3:42:55-43:37 (Tenn. 2025) (statement of Sen. Brent Taylor); *id.* at 3:40:56-41:07 (statement of Sen. Todd Gardenhire); *id.* at 3:41:08-42:04 (statement of Sen. Brent Taylor).

⁹ *Id.* at 3:44:00-34 (statement of Sen. Brent Taylor).

“providing services that [were] outside the definitions in this bill.”¹⁰ Several lawmakers separately questioned the bill’s mechanism for ascertaining whether the noncitizen being transported or harbored lacked lawful immigration status and specifically that such determinations were to be made by U.S. Immigration and Customs Enforcement (“ICE”).¹¹

Despite these concerns, the general assembly passed Section 5 in April 2025, and the governor signed it into law on May 9, 2025, with an effective date of July 1, 2025. As enacted, Section 5 provides that a person commits the crime of “human smuggling” when that person “[k]nowingly transports an individual with intent to conceal the individual from a law enforcement officer or a federal immigration officer” or “[i]ntentionally conceals, harbors, or shields from detection, or intentionally encourages or induces another to conceal, harbor, or shield from detection,” an individual that the person knows “has illegally entered or remained in the United States, as determined by the bureau of immigration and customs enforcement of the United States department of homeland security.”¹² 2025 Tenn. Pub. Acts, ch. 424, pp. 2-3, § 5(a)(1)-(2).¹³ Section 5 defines “harbor” to mean “to provide shelter to or conceal the whereabouts of an individual whom the person knows has illegally entered or remained in the United States, as determined by” ICE. *Id.* § 5(d). The crime of human smuggling does not extend to a Tennessee-

¹⁰ *Hearing on H.B. 322 Before the H. Judiciary Comm.*, 2025 Leg., 114th Sess. (Tenn. 2025), at 1:03:31-58 (statement of Rep. Chris Todd); *H. Floor Debate* 34:41-58 (statement of Rep. Chris Todd).

¹¹ *Sen. Floor Debate* 2:35:29-36:12 (statement of Sen. Raumesh Akbari); *id.* at 2:39:01-44:43 (statement of Sen. Jeff Yarbro).

¹² This appears to be a reference to ICE, which superseded the Bureau of Immigration and Customs Enforcement in 2007. *See* 72 Fed. Reg. 20,131 (Apr. 23, 2007).

¹³ Under Tennessee law, a person acts intentionally “with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result.” Tenn. Code. Ann. § 39-11-302(a) (2024). A person acts knowingly “with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist.” *Id.* at § 39-11-302(b).

barred attorney “provid[ing] bona fide legal advice to an individual” or to a person providing “healthcare services or assistance to a person presenting at” a licensed healthcare facility or practice site. *Id.* § 5(e)(1)-(2). Section 5 creates an aggravated version of the crime if the “victim” was less than 13 years old “at any time during the person’s course of conduct.” *Id.* § 5(c).

II. Plaintiffs.

Plaintiffs brought this case to challenge the constitutionality of Section 5. Associational Plaintiff Southeastern Synod of the Evangelical Lutheran Church in America (“ELCA”) brings this action on behalf of its churches, pastors, staff, and congregants. Individual Plaintiffs Garrett Causey and John Doe sue on behalf of themselves and a class of all others similarly situated.

The Southeastern Synod comprises 160 congregations across Alabama, Georgia, Mississippi, and Tennessee. Strickland Decl. ¶ 4. Its vision is “to equip, empower, and engage God’s people to love and serve the world.” *Id.* The ELCA has long advocated for the rights of immigrants. Its social message on immigration advocates for “immigration, refugee, and asylum laws that are fair and generous.” *Id.* ¶ 5. In 2015, the ELCA adopted the AMMPARO Strategy to Accompany Migrant Minors with Protection, Advocacy, Representation and Opportunities, which calls on the church to advocate for migrant children and their families. *Id.* ¶ 6. And the ELCA considers itself a sanctuary denomination, which means that the ELCA “is publicly declaring that walking alongside immigrants and refugees is a matter of faith.” *Id.* § 7.

The Synod “lives out these commitments not only in word, but also in deed.” *Id.* ¶ 9. The Synod’s churches within Tennessee provide numerous ministries that serve the immigrant community, including undocumented immigrants. *Id.* For instance, one church in Middle Tennessee provides sanctuary to immigrants in need, including by housing immigrants in the church building, and has received donations to support this ministry. *Id.* ¶ 13. The pastor says they

“would be hard pressed to stop these ministries, even if it meant going to jail.” *Id.* ¶ 12. The Synod fears that its members who minister to immigrants could be prosecuted under Section 5.

Plaintiff Garrett Causey is a resident of Murfreesboro, Tennessee, who owns and rents out a house in the Antioch neighborhood of Nashville. Causey Decl. ¶¶ 1-2. His current tenant has been leasing the house for four years and has two years left on the lease. *Id.* ¶ 4. The tenant is an immigrant from Guatemala whom Causey knew did not have legal status in the United States at the time he moved into the house. *Id.* Causey believes that the tenant has since acquired legal status. *Id.* ¶ 5. There are other people who also live in the house and contribute to the rent who may not have legal status. *Id.* ¶¶ 6-7. It is important to Causey to rent the house to tenants regardless of immigration status. *Id.* ¶ 8. He fears prosecution under Section 5. *Id.* ¶ 9.

Plaintiff John Doe is a Tennessee resident and an immigrant from Mexico. Doe Decl. ¶¶ 1-2. He recently became a lawful permanent resident. *Id.* ¶ 2. His oldest daughter and her husband live with Doe. *Id.* ¶ 3. Doe’s son-in-law entered the country unlawfully and is seeking asylum. *Id.* Because Doe’s daughter is an adult, she and her husband insist on paying rent. *Id.* ¶ 4. Doe believes that families belong together. *Id.* ¶ 5. He fears prosecution under Section 5. *Id.* ¶ 6.

LEGAL STANDARD

To obtain a preliminary injunction, a plaintiff “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Bays v. City of Fairborn*, 668 F.3d 814, 818-19 (6th Cir. 2012). “When a party seeks a preliminary injunction on the basis of a potential constitutional violation, the likelihood of success on the merits often will be the determinative factor.” *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012).

ARGUMENT

I. Plaintiffs Are Likely to Succeed on the Merits.

A. Plaintiffs Have Standing to Challenge Section 5.

All three plaintiffs have standing to press their claims. To have Article III standing, a plaintiff must “have suffered an injury in fact, that was caused by the conduct complained of, and which a favorable decision is likely to redress.” *Kareem v. Cuyahoga Cnty. Bd. of Elections*, 95 F.4th 1019, 1022 (6th Cir. 2024) (internal quotation marks omitted). “To establish injury in fact, a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (internal quotation marks omitted). “[O]nly one plaintiff needs to have standing in order for the suit to move forward.” *Parsons v. U.S. Dep’t of Just.*, 801 F.3d 701, 710 (6th Cir. 2015); accord *Town of Chester v. Laroe Ests., Inc.*, 581 U.S. 433, 439 (2017).

In a pre-enforcement challenge like this one, “a plaintiff satisfies the injury-in-fact requirement where he alleges an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (internal quotation marks omitted); see also *Christian Healthcare Ctrs., Inc. v. Nessel*, 117 F.4th 826, 843 (6th Cir. 2024). When dealing with a recently enacted law, the Sixth Circuit has found that “the statutory language” itself can “evince[] a credible threat of prosecution.” *Planned Parenthood Ass’n of Cincinnati v. City of Cincinnati*, 822 F.2d 1390, 1396 (6th Cir. 1987). A plaintiff therefore has standing to challenge a “newly enacted law” where the state “has not suggested” it “will not be enforced,” and there is “no reason to assume otherwise.” *Virginia v. Am. Booksellers Ass’n*, 484 U.S. 383, 393 (1988).

Once a plaintiff demonstrates an injury in fact based on a credible threat of prosecution, the causation and redressability requirements are easily met. As the Sixth Circuit has explained regarding a “potential” prosecution, a Tennessee district attorney general “would cause that injury by filing the charges, and the district court could redress it by enjoining [him] from doing so.” *Universal Life Church Monastery Storehouse v. Nabors*, 35 F.4th 1021, 1034 (6th Cir. 2022).

Plaintiffs here are engaged in conduct that arguably violates Section 5, and they face a credible threat of prosecution under the law. Plaintiff Garrett Causey rents a house to an immigrant he knows was previously undocumented. In other words, Causey provides shelter for purposes of private financial gain to an individual he knows unlawfully remained in the United States for some period. That subjects him to a credible threat of prosecution under the statute. He is also aware that some of his other tenants may be undocumented. Likewise, Plaintiff John Doe provides housing to his son-in-law and receives rent in exchange, and he knows that his son-in-law entered the country unlawfully. That too arguably meets the elements of the statute.

Plaintiff Southeastern Synod asserts associational standing on behalf of its members. To demonstrate associational standing, a plaintiff must show that (1) one of its members would have standing to sue in her own right, (2) the litigation is germane to the organization’s purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023). That standard is easily met here. The Synod’s pastors who provide sanctuary to undocumented immigrants and receive donations to support that work are at least arguably covered by the statute. This litigation is germane to the Synod’s purpose, given its longstanding focus on ministering to immigrants. And this purely legal challenge to Section 5, which seeks only injunctive relief, does not require participation of individual members. Plaintiffs have standing.

B. Section 5 Is Preempted by Federal Law.

The Supremacy Clause provides that federal law “shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. In light of this rule, it is a “fundamental principle of the Constitution ... that Congress has the power to preempt state law.” *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372 (2000).

There are “three classes of preemption,” *United States v. Alabama*, 691 F.3d 1269, 1281 (11th Cir. 2012), each of which entails a different analysis. First, Congress “may withdraw specified powers from the States by enacting a statute containing an express preemption provision.” *Arizona*, 567 U.S. at 399. Second, “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.” *Id.* Third, “state laws are preempted when they conflict with federal law.” *Id.* Ultimately, for any form of preemption analysis, “the purpose of Congress is the ultimate touchstone.” *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)).

Section 5 is both field and conflict preempted. The federal government derives its authority to regulate the status of immigrants within its borders from numerous sources. *See Toll v. Moreno*, 458 U.S. 1, 10 (1982). These include its powers “[t]o establish [a] uniform Rule of Naturalization” and “[t]o regulate Commerce with foreign Nations,” U.S. Const. art. I, § 8, cls. 3-4, as well as “its broad authority over foreign affairs,” *Toll*, 458 U.S. at 10; *see also Arizona*, 567 U.S. at 395 (describing the federal government’s “inherent power as sovereign to control and conduct relations with foreign nations”). These immigration powers are “inherent in [the] sovereignty” of the federal government. *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892).

“[T]he interest of the people of the whole nation[] imperatively requires that federal power in the field affecting foreign relations be left entirely free from local interference.” *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 418 (2003) (internal quotation marks omitted). Ample precedent confirms “the preeminent role of the Federal Government with respect to the regulation of aliens within our borders.” *Toll*, 458 U.S. at 10 (collecting cases). Regulation of immigration—“which 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”—is therefore reserved for the federal government and impermissible for the states. *De Canas v. Bica*, 424 U.S. 351, 355 (1976).

Field preemption. In assessing field preemption, “[t]he intent to displace state law altogether can be inferred from a framework of regulation ‘so pervasive ... that Congress left no room for the States to supplement it’ or where there is a ‘federal interest ... so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.’” *Arizona*, 567 U.S. at 399 (alteration in original) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). This requires determining whether congressional regulation in an area is so comprehensive that Congress has “left no room for States to regulate,” *id.* at 400, or whether there is a “supremacy of the national power” in the relevant field, *Hines v. Davidowitz*, 312 U.S. 52, 62 (1941). Congressional intent to displace state law from a field can be determined from “the text of the relevant federal statutes” and the overall statutory scheme. *GLAHR*, 691 F.3d at 1263; *see also Medtronic*, 518 U.S. at 486 (discerning congressional intent from the text, “statutory framework,” “structure and purpose of the statute as a whole,” and “surrounding regulatory regime” (internal quotation marks omitted)). States are categorically barred from regulating conduct in a field Congress has decided must be “‘regulated by its exclusive governance.’” *Torres v. Precision Indus., Inc.*, 995 F.3d 485, 491 (6th Cir. 2021) (quoting *Arizona*, 567 U.S. at 399).

Congress has exercised its broad authority, in a manner that is both “pervasive” and “dominant,” *Arizona*, 567 U.S. at 399, to regulate the transport and harboring of noncitizens without lawful status. The INA makes it a federal crime for any person to knowingly transport or move an unlawfully present noncitizen within the United States in furtherance of the noncitizen’s violation of federal immigration laws; to conceal, harbor, or shield from detection or attempt to conceal, harbor, or shield from detection such a noncitizen; or to encourage or induce a noncitizen to illegally “come to, enter, or reside in the United States.” 8 U.S.C. § 1324(a)(1)(A)(ii)-(iv). It is also a federal crime to conspire to commit or to aid or abet the commission of any of the preceding acts. *Id.* § 1324(a)(1)(A)(v). The statute sets forth detailed evidentiary rules for proving transport and harboring crimes in federal court. *See id.* § 1324(b)(3). State and local law enforcement officers are authorized to arrest individuals for violations of these federal laws, but only federal prosecutors may prosecute alleged violations of these provisions, and all such prosecutions must be brought in federal court. *Id.* §§ 1324(c), 1329. That is, in addition to establishing a comprehensive federal scheme governing the transport and harboring of noncitizens, § 1324 provides a specific, narrow role for states in the enforcement of that scheme: making arrests, but not making charging decisions or prosecuting. This federal scheme has evolved over more than 100 years, with Congress “steadily broaden[ing] the scope ... with respect to proscribed conduct” to “address[] ... apparent gap[s] in federal immigration law.” *United States v. Sanchez-Vargas*, 878 F.2d 1163, 1168 (9th Cir. 1989); *see id.* at 1169 (describing “[t]he evolution of § 1324(a)(1)” to provide “a single comprehensive ‘definition’ of the federal crime of alien smuggling”).

Section 5, which generally parallels the federal provision, *but see infra*, at 14-19, is an impermissible attempt by Tennessee to regulate in a field over which the federal government has established “exclusive governance.” *Arizona*, 567 U.S. at 399. As multiple courts of appeals have

concluded, “[t]he federal government has clearly occupied the field of regulating the concealing, harboring, and transporting of unlawfully present aliens.” *United States v. South Carolina*, 720 F.3d 518, 531 (4th Cir. 2013); *see also, e.g., GLAHR*, 691 F.3d at 1263 (describing the “comprehensive [federal] framework to penalize the transportation, concealment, and inducement of unlawfully present aliens”); *Alabama*, 691 F.3d at 1285-86; *Lozano v. City of Hazleton*, 724 F.3d 297, 316 (3d Cir. 2013); *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1024-25 (9th Cir. 2013). Just like the other states that have sought to enact transport and harboring crimes despite this federal backdrop, Tennessee is “prohibited from enacting concurrent state legislation in this field of federal concern.” *Alabama*, 691 F.3d at 1287.

The federal dominance in the field of “entry, movement, and residence” of noncitizens within the United States is confirmed by the “larger context of federal statutes criminalizing acts undertaken by aliens and those who assist them in coming to, or remaining within, the United States.” *GLAHR*, 691 F.3d at 1264. For instance, 8 U.S.C. § 1325 creates civil and criminal penalties for noncitizens who enter or attempt to enter the United States unlawfully, and § 1326 creates criminal penalties for any noncitizen who unlawfully reenters the United States after having been “denied admission, excluded, deported, or removed.” Meanwhile, § 1323 makes it unlawful for any person to bring into the United States any noncitizen who does not have a valid passport and any necessary visa; § 1327 criminalizes knowingly aiding or assisting any noncitizen in unlawfully entering the United States; and § 1328 prohibits importing noncitizens for any “immoral purpose.” “[T]he breadth of these laws illustrates an overwhelmingly dominant federal interest in the field.” *GLAHR*, 691 F.3d at 1264; *see also South Carolina*, 720 F.3d at 531 (finding analogous state anti-harboring scheme “field preempted because the vast array of federal laws and regulations on this subject ... is ‘so pervasive ... that Congress left no room for the States to

supplement it” (quoting *Arizona*, 567 U.S. at 399) (second alteration in original)).

To the extent Section 5 tracks the federal prohibition, that does not save it from being field preempted. Rather, “[w]here Congress occupies an entire field ..., even complementary state regulation is impermissible,” because “[f]ield 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. The Supreme Court’s decision in *Arizona* is instructive. In that case, Arizona “add[ed] a state-law penalty for conduct proscribed by federal law”—there, the failure to complete and carry registration documents. *Id.* at 400. After canvassing the “comprehensive” federal regime and determining that it had been “designed as a ‘harmonious whole,’” the Supreme Court explained that this system left no room for states to regulate. *Id.* at 401 (quoting *Hines*, 312 U.S. at 72). Although the state system was identical in many respects to the federal analogue, the Court rejected Arizona’s argument that its law could survive because the state had “the same aim as federal law and adopt[ed] its substantive standards.” *Id.* at 402. The Supreme Court emphasized that “States may not enter, in any respect, an area the Federal Government has reserved for itself.” *Id.*

The same analysis applies to Section 5. Here too, Congress has established a “full set of standards” to govern the transport and harboring of noncitizens, “including the punishment for noncompliance.” *Id.* at 401. In light of this “complete scheme of [federal] regulation,” Tennessee may not “conflict or interfere with, curtail or complement, the federal law” in any way “or enforce additional or auxiliary regulations.” *Hines*, 312 U.S. at 66-67; *see also Pennsylvania v. Nelson*, 350 U.S. 497 504 (1956) (where Congress “has intended to occupy the field,” an analogous state “statute is superseded regardless of whether it purports to supplement the federal law”); *Charleston & W.C. Ry. Co. v. Varnville Furniture Co.*, 237 U.S. 597, 604 (1915) (“When Congress has taken the particular subject-matter in hand, coincidence is as ineffective as opposition”).

Conflict preemption. Section 5 also stands as an obstacle to the accomplishment of the purposes and objectives of the federal regime and is conflict preempted. *See GLAHR*, 691 F.3d at 1265-67; *Alabama*, 691 F.3d at 1287-88; *South Carolina*, 720 F.3d at 531-32; *Villas at Parkside Partners v. City of Farmers Branch*, 726 F.3d 524, 528-36 (5th Cir. 2013). A state law conflicts with federal law when either ““compliance with both federal and state regulations is a physical impossibility”” or “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 (first quoting *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143 (1963); then quoting *Hines*, 312 U.S. at 67). The conflict-preemption analysis is “informed by examining the federal statute as a whole and identifying its purpose and intended effects.” *Crosby*, 530 U.S. at 373.

Section 5 is broader than § 1324 in the conduct that it prohibits, undermining the congressional choice not to criminalize certain acts. In enacting § 1324, Congress “struck a careful balance,” *Arizona*, 567 U.S. at 400. It extended the criminal prohibition only to a person who, while “knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection” that individual. 8 U.S.C. § 1324(a)(1)(A)(iii). As the Sixth Circuit has held, under the federal scheme, harboring entails “conduct that tends to substantially facilitate noncitizens remaining in the country illegally and prevent authorities from detecting the noncitizens’ presence,” but it does not include merely providing housing or other shelter to noncitizens without lawful immigration status. *United States v. Zheng*, 87 F.4th 336, 343 (6th Cir. 2023), *cert. denied*, 144 S. Ct. 2604 (2024). The language of Section 5 appears to track the federal provision in that it also applies to any person who “conceals, harbors, or shields from detection” a noncitizen without lawful status. 2025 Tenn. Pub. Acts, ch. 424, p. 2, § 5(a)(2). But Section 5 contains a separate definition provision that

explicitly defines harboring as “*provid[ing] shelter to or conceal[ing]* the whereabouts of an individual whom the person knows has illegally entered or remained in the United States.” *Id.* at § 5(d) (emphasis added). The criminalization of providing shelter to an undocumented immigrant, without any requirement that the harboring facilitate unlawful presence by preventing detection by authorities, sweeps more broadly than the federal provision, overriding the congressional decision not to prohibit such conduct.

Relatedly, Section 5 may be broader than § 1324 because it might criminalize transporting or harboring noncitizens who would not be covered by the federal analogue. To establish a violation of § 1324, a federal prosecutor must prove that the noncitizen being transported or harbored “was present in the United States in violation of law.” *United States v. Franco-Lopez*, 687 F.3d 1222, 1228 (10th Cir. 2012); *see also United States v. Aguilar*, 883 F.2d 662, 677 (9th Cir. 1989) (construing § 1324 to preclude liability for harboring a noncitizen who “had been previously processed and released by” federal authorities (internal quotation marks omitted)). By contrast, Section 5 by its plain text appears to apply to transporting or harboring people who unlawfully entered or remained in the United States but who subsequently obtained legal status. In the INA, Congress provided a host of ways for noncitizens who entered without authorization—or at some point were unlawfully present in—the United States to obtain status. Section 5 appears to criminalize providing shelter to these same people, disrupting the federal regime that enables such individuals to remain lawfully in the country.

Section 5 also conflicts with Congress’s careful calibration of transport and harboring crimes by impermissibly expanding the role of state officials in enforcing them. In the INA, Congress permitted state and local law enforcement officers to make arrests for violations of § 1324 but vested the prosecutorial power exclusively in federal authorities. *See* 8 U.S.C.

§§ 1324(c), 1329. This signals that Congress “specifically considered the appropriate level of involvement for the states,” *Valle del Sol*, 732 F.3d at 1025, and the “inference from these enactments is that the role of the states is limited to arrest for violations of federal law,” *GLAHR*, 691 F.3d at 1264. In Section 5, Tennessee disregarded this congressional determination and assumed a prosecutorial power over transport and harboring crimes that Congress rejected. By purporting to “give itself” such prosecutorial authority, Tennessee impedes federal “control over enforcement” and thus disrupts “a comprehensive and unified system” created by Congress. *Arizona*, 567 U.S. at 401-02 (quoting *Wis. Dep’t of Indus. v. Gould Inc.*, 475 U.S. 282, 288-89 (1986)).

Section 5 further conflicts with the federal system because it creates a new immigration classification Congress never contemplated. Section 5 applies to the transport and harboring of noncitizens who “illegally entered or remained in the United States, as determined by” ICE. As discussed further *infra*, at 19-22, this is not a federal immigration status. Federal immigration status is determined by federal law, not by ICE alone, and is assigned based on a number of factors, including but not limited to when and where a person entered (generally monitored by U.S. Customs and Border Protection (“CBP”)); whether they entered with a visa (issued by the U.S. Department of State) or other entry document; eligibility for immigration benefits and humanitarian protection (adjudicated by U.S. Citizenship and Immigration Services); and the decisions of federal immigration judges (employed by the U.S. Department of Justice) and federal courts. If Section 5 were enforced, state police, prosecutors, judges, and juries would have to figure out what it means for a person to have “illegally entered or remained in the United States, as determined by” ICE, without reference to governing sources of law or input from Congress or relevant administrative agencies about how to assess the person’s status. But “[t]he federal

government alone ... has the power to classify non-citizens,” *Farmers Branch*, 726 F.3d at 536, because immigration classifications are bound up in foreign relations and border control—matters over which the federal government has sole authority, *see Plyler v. Doe*, 457 U.S. 209, 219 n.19 (1982); *Arizona*, 567 U.S. at 401-02. Tennessee’s attempt to attach criminal consequences based on an immigration “classification that does not exist in federal law,” *Farmers Branch*, 726 F.3d at 534, undermines the carefully calibrated, comprehensive federal immigration scheme.

Exacerbating this issue, Section 5 provides none of the requisite evidentiary guidance for assessing a person’s immigration status that is present in the federal system. In § 1324(d), Congress imposed “statutorily limited categories of *prima facie* evidence” that are to be used to resolve the “significant complexities” involved in determining a person’s immigration status. *Id.* at 531 (internal quotation marks omitted). Section 5, by contrast, lacks those essential procedural safeguards, creating another obstacle to accomplishment of Congress’s objectives in enacting § 1324 as part of the INA’s overall scheme for regulating immigration.

Moreover, Section 5 conflicts with federal law because it imposes burdens and penalties not authorized by and contrary to federal law. Under the federal system, the § 1324 offenses of transporting and harboring carry a statutory maximum sentence of 5 years’ imprisonment, unless the offense was done for commercial advantage or private financial gain, in which case the statutory maximum is increased to 10 years’ imprisonment. None of the applicable § 1324 offenses includes a mandatory minimum sentence. By contrast, the aggravated version of Tennessee’s “human smuggling” offense, which applies when the noncitizen being transported or harbored was less than 13 years old at the time of the offense, is a Class A felony that carries a mandatory minimum sentence of 15 years’ imprisonment and a statutory maximum sentence of 60 years’ imprisonment. Even the non-aggravated versions of the Section 5 offenses, which are Class E

felonies, carry a mandatory minimum sentence of one year. This “further intrusion upon the federal scheme” via an “inconsistency ... with respect to penalties” creates an additional “conflict with the plan Congress put in place.” *Arizona*, 567 U.S. at 402-03.

Finally, even the aspects of Section 5 that directly parallel the federal analogue are conflict preempted. As the Supreme Court explained, “[p]ermitting the State to impose its own penalties for the federal offenses here would conflict with the careful framework Congress adopted.” *Arizona*, 567 U.S. at 402. That is because, if Section 5 “were valid, every State could give itself independent authority to prosecute” § 1324 violations, “diminishing the Federal Government’s control over enforcement and detracting from the integrated scheme of regulation created by Congress.” *Id.* (internal quotation marks and alterations omitted); *see also GLAHR*, 691 F.3d at 1266 (“Each time a state enacts its own parallel to the INA, the federal government loses control over enforcement of the INA, thereby further detracting from the integrated scheme of regulation created by Congress.” (internal quotation marks and alterations omitted)). Section 5 would allow Tennessee to prosecute individuals for transporting and harboring noncitizens “even in circumstances where federal officials in charge of the comprehensive scheme determine that prosecution would frustrate federal policies.” *Arizona*, 567 U.S. at 402. *Arizona* made plain that states are not permitted to act unilaterally to regulate immigration to “achieve [their] own immigration policy.” *Id.* at 408. Section 5 “create[s] an obstacle to the smooth functioning of federal immigration law, improperly place[s] in the hands of state officials the nation’s immigration policy, and strip[s] federal officials of the authority and discretion necessary in managing foreign affairs.” *South Carolina*, 720 F.3d at 531-32. This conflict with federal enforcement priorities plagues Section 5 in its entirety and renders the law preempted.

C. Section 5 Is Unconstitutionally Vague.

Section 5 is unconstitutionally vague because it is almost impossible for ordinary people to conform their behavior to its requirements or know if their behavior is unlawful. A law is unconstitutionally vague if “it fails to give ordinary people fair notice of the conduct it punishes, or [is] so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591, 595 (2015); accord *Belle Maer Harbor v. Charter Twp. of Harrison*, 170 F.3d 553, 557 (6th Cir. 1999). Vagueness is especially problematic with respect to criminal laws because “the consequences of imprecision” are “severe.” *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-99 (1982); see *Springfield Armory, Inc. v. City of Columbus*, 29 F.3d 250, 252 (6th Cir. 1994) (“When criminal penalties are at stake ... a relatively strict [vagueness] test is warranted.”). As a result, “facial analysis” is appropriate in vagueness challenges to laws “impos[ing] criminal sanctions.” *Belle Maer Harbor*, 170 F.3d at 557.

Section 5 is impermissibly vague in multiple respects. First, the law predicates liability on “knowing” that the individual being transported or harbored “has illegally entered or remained in the United States, as determined by” ICE. See 2025 Tenn. Pub. Acts, ch. 424, p. 3, § 5(a)(1), (a)(2), (d). This requirement is inscrutable and irrational. Noncitizens who have unlawfully entered or remained in the United States do not necessarily encounter ICE, and those who provide them shelter would have little way of knowing about such encounters, much less the result of those encounters. Federal law defines improper entry, see 8 U.S.C. § 1325, and unlawful presence, see *id.* § 1182(a)(9)(B)(ii). The former is a crime, while the latter is a civil infraction that can lead to removal. Immigration-related crimes like unlawful entry are prosecuted by the Department of Justice, and most such cases are referred not by ICE but by CBP. See *Immigration Prosecutions Jump in March 2025*, Transactional Records Access Clearinghouse (June 3, 2025), <https://tracreports.org/reports/761>. ICE likewise is not always involved in civil infractions that can

result in removal. Although ICE has authority to make arrests for those infractions and issue notices to appear for removal proceedings, it shares that authority with CBP and other agencies. *See* 8 U.S.C. § 1226 (authority to arrest and detain); 8 C.F.R. § 239.1(a) (authority to issue notices to appear). Section 5 thus presumes a role for ICE that often does not exist, making the law “fundamentally irrational.” *Springfield Armory*, 29 F.3d at 252.

Even in cases where ICE is involved, there is a further problem with Section 5’s “determination” requirement: ICE is a law enforcement agency that is not responsible for conclusively determining the legal status of most noncitizens.¹⁴ When ICE investigates improper entry and refers a case to the Department of Justice for prosecution, a court—not the executive branch—makes the final adjudication. *See* U.S. Const. amend. VI. In the context of unlawful presence, a notice to appear issued by ICE is simply a “case-initiating document” analogous to a criminal indictment or a civil complaint. *See Niz-Chavez v. Garland*, 593 U.S. 155, 163-64 (2021). A notice to appear is not a determination of violation but a statement of “alleged” infractions. 8 U.S.C. § 1229(a)(1)(C). It is the job of an immigration judge, not ICE, to ultimately “decid[e]” whether a person is unlawfully present and subject to removal. *Id.* § 1229a(a)(1).¹⁵

The upshot is that it is all but impossible to discern what Section 5 means when it references ICE “determinations” of unlawful entry or presence, leaving a key element of the law “not clearly defined,” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). And there is “no apparent saving

¹⁴ In the limited context of expedited removal, ICE can order a noncitizen removable without further review. *See* 8 U.S.C. § 1225(b)(2); 8 C.F.R. § 235.15.

¹⁵ These problems were raised in the Tennessee legislature, but Section 5’s supporters either misapprehended them or suggested that they were by design. *See Hearing on H.B. 322 Before the H. Fin., Ways, & Means Comm.*, 2025 Leg., 114th Sess. (Tenn. 2025), at 59:01 (statement of Rep. Chris Todd) (explaining that the bill relies on determinations by “U.S. officials,” “whatever their rules are”); *S. Floor Debate* 2:41:10-19 (statement of Sen. Brent Taylor) (explaining that the bill’s reliance on determinations by ICE, rather than immigration judges or courts, was “because many of these people that are here illegally have not been adjudicated through the judicial system”).

construction” of Section 5, *Bd. of Airport Comm’rs of City of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569, 575 (1987), because any conceivable interpretation of the “determination” requirement is plagued with vagueness issues. Perhaps the law mistakenly assumes that ICE makes final adjudications on these matters. That would leave the statute unintelligible, with “no core” and no “ascertainable standard” for what is forbidden. *See Smith v. Goguen*, 415 U.S. 566, 578 (1974); *see also Valle del Sol*, 732 F.3d at 1020-21 (striking down a transport and harboring law on vagueness grounds because of “nonsensical” statutory text). Alternatively, the law might mean that liability attaches on the basis of informal ICE “determinations” rather than formal adjudications. That interpretation would present problems of its own, as ordinary Tennesseans have no way of knowing what ICE has informally determined. *See Johnson*, 576 U.S. at 596.

To be sure, Section 5 contains a scienter requirement that links liability to “knowing” that the individual being transported or harbored “has illegally entered or remained ... as determined by” ICE. *See* 2025 Tenn. Pub. Acts, ch. 424, p. 3, § 5(a). Although knowledge requirements can mitigate vagueness concerns, that is not the case when “the contours of the ... scienter requirement are themselves unclear.” *Peoples Rts. Org., Inc. v. City of Columbus*, 152 F.3d 522, 535 (6th Cir. 1998). Here, the scienter requirement is itself as source of Section 5’s vagueness. To be liable for transporting or harboring another person, must the defendant know that ICE “determined” that the person unlawfully entered or remained in the United States? Or must the defendant simply know that the person entered or remained in the United States in a manner that ICE would consider unlawful—even if ICE made no actual “determination”? Either reading would “produce an absurd result,” *White Oak Prop. Dev., LLC v. Washington Twp.*, 606 F.3d 842, 849 (6th Cir. 2010), requiring ordinary Tennesseans to discern the inner workings of a federal agency. The scienter requirement thus does nothing “to cure the problems inherent in this provision.” *Peoples Rts. Org.*,

152 F.3d at 535.

Section 5 has another vagueness problem: Its broad applicability to any noncitizen who “has illegally entered or remained” in the United States, in the past tense, suggests that a person could be convicted under the law for providing shelter to an individual who previously entered or remained in the country unlawfully but now has lawful status. *See supra*, at 15. It is unclear whether Tennessee intended to criminalize the concealment or sheltering of a person with lawful status who has no reason to avoid detection. Indeed, courts have interpreted the federal harboring law to exclude such inexplicable applications. But Section 5’s plain text is unclear on this point.

Section 5 is unconstitutionally vague in a third way: It is impossible to know what conduct constitutes “harboring.” The statute defines “harbor[ing]” in part as “provid[ing] shelter.” *See* 2025 Tenn. Pub. Acts, ch. 424, p. 3, § 5(d). This does not describe the proscribed behavior with sufficient particularity. The term “provide shelter” is most naturally associated with providing housing to those unable to obtain or afford housing on their own. To the extent the phrase is “used in both legal and common parlance,” *Deja Vu of Cincinnati, L.L.C. v. Union Twp. Bd. of Trs.*, 411 F.3d 777, 798 (6th Cir. 2005), it is generally used in this way. *See, e.g.*, 42 U.S.C. § 11343(a) (stating that certain grants may be used to “provide shelter ... for homeless individuals”); *Andret v. Garland*, No. 23-3426, 2024 WL 167115, at *6 (6th Cir. Jan. 16, 2024) (noting that a “government provides shelter[]” to “survivors of gender-based violence”). But Section 5 confounds this common usage by requiring harboring to be done for commercial advantage or private financial gain, making uncertain what the statute means by “provide shelter.”

Questions about the meaning of “provide shelter” do not end there. Although “shelter” often refers to overnight accommodations, it can suggest more temporary forms of protection and hospitality. *See, e.g., Shelter*, Merriam-Webster Dictionary, <https://www.merriam->

webster.com/dictionary/shelter (“something that covers or affords protection”); *Tennessee Shelters*, Tennessee Emergency Management Agency, <https://www.tn.gov/tema/tennessee-shelters.html> (listing not only “overnight shelter[s]” but also “storm shelter[s], “warming center[s],” and “cooling center[s]”). The concept of shelter can thus encompass permanent and temporary housing, daytime storm shelters, educational programs, and soup kitchens. But as enacted, Section 5 provides no clarity as to which of those forms of shelter fall within its ambit.

The vagueness of Section 5 has sparked concern over whether it covers family living arrangements, *see* Doe Decl. ¶¶ 6-7, or religiously motivated charitable work, *see* Strickland Decl. ¶¶ 11-19. Both of those areas are protected by federal or state law. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 618-20 (1984) (Constitution protects “cohabitation with one’s relatives”); *Ward v. Metro. Gov’t of Nashville & Davidson Cnty.*, No. M-2018-00633-COA-R3-CV, 2019 WL 1753053, at *7 (Tenn. Ct. App. Apr. 17, 2019) (Tennessee law protects religiously motivated charitable work). Ordinarily, “courts presume that legislatures act” lawfully, *Illinois v. Krull*, 480 U.S. 340, 351 (1987), yet Section 5 seems to intrude upon these sensitive domains. Tennesseans are thus left guessing whether their otherwise protected activities are covered by the law. Section 5’s legislative history provides no clarity, as the law’s supporters simply reiterated that organizations “doing the right thing” would not be subject to liability.¹⁶ That subjective metric evokes just the sort of “arbitrary enforcement” against which the Constitution’s Due Process Clause protects. *Johnson*, 576 U.S. at 595. Section 5’s harboring provision is therefore impermissibly vague.

¹⁶ *See, e.g., Hearing on H.B. 322 Before the H. Crim. Just. Subcomm.*, 2025 Leg., 114th Sess. (Tenn. 2025), at 18:50-20:12 (statement of Rep. Chris Todd).

II. The Remaining Preliminary Injunction Factors Strongly Favor Plaintiffs.

The equities favor Plaintiffs. Absent an injunction, Plaintiffs will suffer irreparable harm. “When constitutional rights are threatened or impaired, irreparable injury is presumed.” *Obama for Am.*, 697 F.3d at 436. And in a preemption challenge, Plaintiffs suffer irreparable harm from “the threat of state prosecution for crimes that conflict with federal law.” *GLAHR*, 691 F.3d at 1269. “[E]nforcement of a state law at odds with the federal immigration scheme is neither benign nor equitable.” *Id.*; *see also Valle del Sol*, 732 F.3d at 1029. If Section 5 goes into effect, Plaintiffs and those similarly situated risk felony prosecution and mandatory minimum prison sentences merely for providing shelter to undocumented people while receiving some financial benefit.

The balance of equities and public interest, which merge in a suit against the government, *see Daunt v. Benson*, 956 F.3d 396, 422 (6th Cir. 2020), weigh heavily in favor of a preliminary injunction. As a general matter, “the public is certainly interested in the prevention of enforcement of ordinances which may be unconstitutional.” *Planned Parenthood Ass’n of Cincinnati, Inc. v. City of Cincinnati*, 822 F.2d 1390, 1400 (6th Cir. 1987). In the preemption context, a state’s “[f]rustration of federal statutes and prerogatives” is “not in the public interest.” *Alabama*, 691 F.3d at 1301; *see also GLAHR*, 691 F.3d at 1269; *Chamber of Commerce v. Edmonson*, 594 F.3d 742, 771 (10th Cir. 2010); *Valle del Sol*, 732 F.3d at 1029. Here, the enactment of Section 5 is already causing landlords who fear prosecution to engage in illegal evictions of immigrant tenants. Boatner Decl. ¶ 12. Once it goes into effect, the law “will undoubtedly lead to many [immigrants] losing their homes, because landlords won’t be willing to rent to them,” which will have “catastrophic consequences” in the community. *Id.* ¶ 16.

A preliminary injunction in this case will not harm Defendants. No substantial harm arises from an injunction prohibiting enforcement of an unconstitutional law. *See Deja Vu of Nashville*,

Inc. v. Metro. Gov't of Nashville & Davidson Cnty., 274 F.3d 377, 400 (6th Cir. 2001). In particular, a state has no legitimate interest in regulating conduct arising in an exclusively federal arena. *See, e.g., Alabama*, 691 F.3d at 1301; *Trans World Airlines, Inc. v. Mattox*, 897 F.2d 773, 784 (5th Cir. 1990). Transport and harboring crimes that occur in Tennessee will continue to be prosecuted by the federal government—the proper authority to enforce immigration law in any event. Finally, an injunction delaying enforcement of the new law, which will not go into effect until July 1, would simply maintain the status quo while Plaintiffs' significant constitutional challenges to Section 5 are resolved. *See Michigan State A. Philip Randolph Inst. v. Johnson*, 833 F.3d 656, 669 (6th Cir. 2016).

III. The Court Should Award Relief to Plaintiffs and the Putative Class

The Court should issue a preliminary injunction barring Defendants from enforcing Section 5 against all members of the Southeastern Synod and everyone within the putative class. First, relief granted to the Synod necessarily runs to all of its members because an injunction issued to an associational plaintiff “will inure to the benefit of those members of the association actually injured.” *Warth v. Seldin*, 422 U.S. 490, 511 (1975). Second, the Court can and should issue relief to the putative class without considering class certification. As the Supreme Court recently clarified, “courts may issue temporary relief to a putative class” and “need not decide whether a class should be certified” before granting class-wide injunctive relief to prevent irreparable harm during the pendency of litigation. *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1369 (2025).

CONCLUSION

The Court should grant the motion and issue a preliminary injunction.

Respectfully submitted this 23rd of June, 2025.

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**Motion for admission pro hac vice forthcoming.*