

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

THE FARMWORKER ASSOCIATION OF  
FLORIDA INC., *et al.*,  
Plaintiffs,

v.

RONALD D. DESANTIS, in his official capacity  
as Governor of the State of Florida, *et al.*,  
Defendants.

Case No. 23-CV-22655-RKA

**PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO STAY BRIEFING ON  
THE MOTION FOR PRELIMINARY INJUNCTION**

The Court should deny Defendants’ request to stay preliminary injunction proceedings. A stay would prolong the enormous harm that Section 10 is causing Plaintiffs and other Floridians. And there is no good reason to postpone the preliminary injunction briefing pending resolution of the motion to proceed anonymously. As Plaintiffs previously explained, they do not seek to shield their identities *from Defendants*, and Defendants point to no scenario in which the question of the *public’s* access to Plaintiffs’ identities hinders Defendants’ ability to oppose the preliminary injunction. Defendants are simply asking the Court to use procedural technicalities to further delay their obligation to respond on the merits—perhaps understandably, given that Eleventh Circuit precedent dooms this statute. Respectfully, the Court should decline. Defendants’ counsel has now been in possession of Plaintiffs’ preliminary injunction motion for 28 days and counting, and they admit that they “have already put significant work into preparing” their response. Stay Mot. ¶ 4, ECF No. 39. Therefore, Plaintiffs respectfully request that the Court maintain the current filing deadlines and schedule a prompt hearing.

Defendants seek to shield a statute that is indefensible under circuit precedent. Section 10 regulates the transport of immigrants, imposing criminal penalties on people who transport certain immigrants into Florida. But the Eleventh Circuit has squarely and repeatedly held that

Congress has barred states from enacting *any* laws regarding the “transport and movement of aliens.” *Ga. Latino All. for Hum. Rts. v. Gov. of Georgia*, 691 F.3d 1250, 1264 (11th Cir. 2012); *see United States v. Alabama*, 691 F.3d 1269, 1285–88 (11th Cir. 2012) (same); *see* Mot. for Prelim. Inj., ECF No. 30-1 at 5–6 (consensus across circuits). Section 10 is also unlawful for a host of other clear reasons. *Id.* at 7–16. Defendants should not be allowed to use empty procedural maneuvers to delay review of such a blatantly illegal statute.

Defendants have made no showing that a stay is necessary here. They assert without elaboration that “it is difficult” for them to prepare their standing and harm arguments without knowing whether the Plaintiffs will be allowed to proceed anonymously. Stay Mot. ¶ 4, ECF No. 39. But they do not explain how it would change their defense for the Plaintiffs’ names to become *public*. Plaintiffs have been clear that they do not intend to shield their names from *Defendants* and stand ready to immediately provide the names once the parties execute a protective order. Mot. to Proceed Anonymously, ECF No. 29 at 15–16. Yet Defendants have not asked for Plaintiffs’ names. Nor do they identify any specific argument bearing on the preliminary injunction that would change simply because a Plaintiff’s name is publicly disclosed.

Regarding Defendants’ passing reference to the possibility of discovery in advance of a hearing on the preliminary injunction, Stay Mot. ¶ 4, ECF No. 39, Defendants do not even try to explain what discovery might be warranted or how they could meet the high burden to obtain it at this stage. *See, e.g., FTC v. On Point Glob. LLC*, 2020 WL 32996, \*2 (S.D. Fla. Jan. 2, 2020) (explaining that expedited discovery requires “good cause,” such as “some impelling urgency” or “hazard of loss,” and denying defendants’ motion for preliminary injunction-stage discovery) (cleaned up). Nor do they explain what the public’s access to Plaintiffs’ identities has to do with Defendants’ decisions about discovery.

The vagueness of their assertions makes clear that Defendants have no substantive need to delay their deadline to oppose the preliminary injunction pending the resolution of the entirely separate question of whether Plaintiffs' identities will be publicly exposed.

Defendants suggest that even a partial denial of the motion to proceed anonymously would require the preliminary injunction proceedings to start from scratch. Stay Mot. ¶¶ 2–3, ECF No. 39. As an initial matter, Plaintiffs believe that the motion to proceed anonymously will be granted in full, because Plaintiffs satisfy all three of the factors for anonymity, and because Defendants have not even attempted to claim any prejudice. *See* Reply in support of Mot. to Proceed Anonymously, ECF No. 43 at 2–8. But even if that motion were denied, or denied in part, it should not impact the preliminary injunction proceedings. If the Court decides the preliminary injunction motion before anonymity, an amended complaint would not affect the injunction. *See, e.g., Hispanic Fed'n v. Byrd*, 4:23-cv-00218, Dkt. 68. (N.D. Fla. July 3, 2023) (granting preliminary injunction before deciding anonymity motion). Alternatively, courts frequently decide anonymity motions at the same time they decide other pending motions, without requiring that the other motions be refiled. *See, e.g., Day v. Sebelius*, 227 F.R.D. 668, 680 (D. Kan. 2005); *Nyarko v. M&A Projects Restoration Inc.*, 2021 WL 4472618, at \*1 (E.D.N.Y. Sept. 30, 2021); *Doe v. Brant*, 2019 WL 13194617, at \*1 (S.D. Ga. Aug. 5, 2019). And even if anonymity were denied while the preliminary injunction motion is pending, any resulting complaint amendments would not require refiling the motion, because the substance of Plaintiffs' claims would be unchanged. *See, e.g., CFTC v. Midland Rare Coin Exch., Inc.*, 71 F. Supp. 2d 1257, 1264 n.8 (S.D. Fla. 1999) (amended complaint did not moot pending motion for summary judgment, because amendment “d[id] not change” the relevant allegations); *Gittens v. Sch. Bd. of Lee Cnty., Fla.*, 2017 WL 3142038, \*1 n.2 (M.D. Fla. July 7, 2017) (same for class

certification motion); *Green-Ajufo v. Azar*, 2018 WL 7080616, \*1 (N.D. Ga. May 31, 2018) (same for motion to dismiss); *see also Reflectone, Inc. v. Farrand Optical Co., Inc.*, 862 F.2d 841, 842, 845–46 (11th Cir. 1989) (affirming practice of “carrying over” pending motions to amended complaint). Thus, in all events, the anonymity motion’s resolution should not further delay the relief to which Plaintiffs are entitled.

Defendants completely ignore the severe harm that Section 10 is inflicting on the Plaintiffs, their families, and the members of the organizational Plaintiff. Because of the statute, some Plaintiffs and their loved ones are separated from their families in other states. Mot. for Prelim. Inj., ECF 30-1 at 3–4, 16–17. Others cannot seek necessary medical care. *Id.* Others cannot earn a living for their families. *Id.* Yet others are being kept from their religious observance. *Id.* And the public is suffering the same harms, as countless other immigrants and their families are similarly unable to go about their daily lives because of this law. The Court should not allow Defendants to prolong these severe harms, inflicted by a statute that is indefensible on the merits.

Instead of addressing these harms, Defendants suggest that Plaintiffs have not been diligent, Stay Mot. ¶ 5, ECF No. 39, but Plaintiffs filed suit soon after Section 10 was enacted, moved for a preliminary injunction three weeks later, and served all twenty-three Defendants as promptly as possible—except for the one state attorney that the original process server and sheriff’s office were unable to serve and required Plaintiffs to hire a second process server. The service challenges in this case do not diminish the profound harm that Section 10 is causing. If anything, that unfortunate delay militates in favor of proceeding quickly now that those initial barriers have been cleared.

Plaintiffs also immediately emailed the motion for preliminary injunction to counsel for the Attorney General, State Prosecutor, and nineteen of the state attorneys upon filing both the initial and re-filed motions. Counsel for these Defendants has thus been in actual possession of the motion since August 8, 2023. The initial motion was mailed to the remaining Defendants on August 8 as well. Contrary to Defendants' assertion, Stay Mot. ¶ 1 n.2, Plaintiffs completed service under Local Rule 5.1(e) by emailing the motion directly to Defendants. *See* L.R. 5.1(e) (counsel's registration as an electronic filer in the Southern District of Florida "constitutes consent to receive service electronically"). Additionally, in an abundance of caution, Plaintiffs sent the preliminary injunction motion to Defendants via certified mail on August 30, and the mailings were received on September 1, so technical service has unquestionably been perfected. In any event, any problem with technical service of the motion was entirely nonprejudicial, given Defendants' actual receipt of the motion, and has no bearing on whether to stay the preliminary injunction motion.

Absent a stay, Defendants must respond to the motion for preliminary injunction by September 15. *See* ECF No. 41 (acknowledging this deadline). By that date, Defendants will have had the motion for 38 days—almost triple the 14 days that the local rules normally allow. *See* L.R. 7.1(c)(1). And as they admit, they "have already put significant work into preparing" their response. Stay Mot. ¶ 4, ECF No. 39. Given the harm Section 10 is causing Plaintiffs, its conflict with binding precedent, and Defendants' inability to articulate why they need further delay, the Court should deny the stay.

Dated: September 6, 2023

Respectfully submitted,

/s/ Paul R. Chavez

*On behalf of Attorneys for Plaintiffs*

Evelyn Wiese (CA Bar No. 338419)\*  
AMERICANS FOR IMMIGRANT JUSTICE  
6355 NW 36 Street, Suite 2201  
Miami, FL 33166  
(305) 573-1106  
ewiese@aijustice.org

Katherine Melloy Goettel (IA Bar No. 23821)\*  
Emma Winger (MA Bar No. 677608)\*  
AMERICAN IMMIGRATION COUNCIL  
1331 G St. N.W., Suite 200  
Washington, DC 20005  
(202) 507-7552  
kgoettel@immcouncil.org  
ewinger@immcouncil.org

Katherine H. Blankenship (FL Bar No. 1031234)  
Daniel B. Tilley (FL Bar No. 102882)  
ACLU Foundation of Florida, Inc.  
4343 West Flagler Street, Suite 400  
Miami, FL 33134  
(786) 363-2700  
kblankenship@aclufl.org  
dtalley@aclufl.org

Amien Kacou (FL Bar No. 44302)  
Maite Garcia (FL Bar No. 99770)  
ACLU Foundation of Florida, Inc.  
4023 N. Armenia Avenue, Suite 450  
Tampa, FL 33607  
(813) 288-8390  
akacou@aclufl.org  
mgarcia@aclufl.org

Paul R. Chavez (FL Bar No. 1021395)  
Anne Janet Hernandez Anderson (FL Bar No.  
0018092)  
Christina Isabel LaRocca (FL Bar No. 1025528)  
Felix A. Montanez (FL Bar No. 0102763)  
Cassandra Charles (NY Bar No. 5540133)\*  
SOUTHERN POVERTY LAW CENTER  
2 South Biscayne Blvd., Suite 3750  
Miami, FL 33131-1804  
(786) 347-2056  
paul.chavez@splcenter.org  
aj.hernandez@splcenter.org  
christina.larocca@splcenter.org  
felix.montanez@splcenter.org  
cassandra.charles@splcenter.org

Cody Wofsy (CA Bar No. 294179)\*  
Spencer Amdur (CA Bar No. 320069)\*  
ACLU Immigrants' Rights Project  
39 Drumm Street  
San Francisco, CA 94111  
(415) 343-0770  
cwofsy@aclu.org  
samdur@aclu.org

Omar Jadwat (NY Bar No. 4118170)\*  
Edith Sanguenza (NY Bar No. 5694534)\*  
ACLU Immigrants' Rights Project  
125 Broad Street, 18th Floor  
New York, NY 10004  
(212) 549-2660  
ojadwat@aclu.org  
irp\_es@aclu.org

*Attorneys for Plaintiffs*  
*\*Admitted Pro hac vice*

**CERTIFICATE OF SERVICE**

I hereby certify on September 6, 2023, I electronically filed the foregoing with the Clerk of Court via the CM/ECF system. I further certify that a true and correct copy of the foregoing was served via mail to Defendants at the addresses contained in the service list, below.

/s/ Paul R. Chavez

*On behalf of Attorneys for Plaintiffs*

James H. Percival  
Henry C. Whitaker  
Natalie P. Christmas  
Joseph E. Hart  
james.percival@myfloridalegal.com  
Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, FL 32399-1050  
(850) 414-3300  
(850) 410-2672 (fax)  
*Counsel for Attorney General Ashley Moody  
and Statewide Prosecutor Nicholas Cox*

Ryan D. Newman  
Nicholas J.P. Meros  
Samuel F. Elliott  
ryan.newman@eog.myflorida.com  
nicholas.meros@eog.myflorida.com  
samuel.elliott@eog.myflorida.com  
Executive Office of the Governor  
The Capitol, PL-5  
400 S. Monroe Street  
Tallahassee, FL 32399  
(850) 717-9310  
(850) 488-9810 (fax)  
*Counsel for Governor Ron DeSantis*

Arthur I. Jacobs  
buddy@jswofflorida.com  
Jacobs, Scholz & Wyler, LLC.  
961687 Gateway Blvd., Suite 201-I  
Fernandina Beach, FL 32034  
(904) 261-3693  
*Counsel for Defendant State Attorneys for  
the 1<sup>st</sup>-3<sup>rd</sup> and 5<sup>th</sup>-20<sup>th</sup> Judicial Circuits*

Melissa Nelson, State Attorney  
mwnelson@coj.net  
Fourth Judicial Circuit  
Ed Austin Building  
311 West Monroe Building  
Jacksonville, FL 32202