

**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 GOVERNOR DESANTIS' MOTION TO DISMISS

I. INTRODUCTION

Plaintiffs, the Farmworker Association of Florida, Inc. and nine individuals, filed this lawsuit on July 17, 2023, against Governor Ron DeSantis ("Governor DeSantis") and 22 other Florida law enforcement officials, alleging that Section 10 of Senate Bill 1718 ("SB 1718"), Ch. 2023-40, Laws of Fla. ("Section 10") is preempted and unconstitutionally vague. Governor DeSantis alone has moved for dismissal from this lawsuit under Federal Rule of Civil Procedure 12(b)(1). But as the ultimate author and enforcer of Section 10, Governor DeSantis cannot distance himself from this blatantly unconstitutional law. Governor DeSantis was a chief architect of SB 1718 and entangled himself and his office into every aspect of its passage and enforcement, satisfying the standing requirements of traceability and redressability, and meeting the *Ex parte Young* exception to state sovereign immunity.

Governor DeSantis's role in enforcing Section 10 makes him a proper defendant under Eleventh Circuit precedent. He has direct authority to supervise and suspend the officers that are tasked with enforcing Section 10 on the ground, and he has unequivocally indicated that he will prioritize Section 10's enforcement. He has already suspended multiple officers who failed to

follow his enforcement directives. That is more than enough to establish Article III standing and meet the *Ex parte Young* exception to state sovereign immunity.

II. ARGUMENT

The two issues Governor DeSantis raises in his motion to dismiss—standing and *Ex parte Young*—essentially boil down to a single question: whether Governor DeSantis has a sufficiently close connection to the enforcement of Section 10. He does.

A. Governor DeSantis is sufficiently responsible for enforcing Section 10 under Eleventh Circuit precedent.

Just this year, the Eleventh Circuit reiterated the longstanding principle that a governor is a proper defendant where plaintiffs can show he has “sufficient contact with the state officers that implemented the law and would presumably mandate its enforcement.” *City of S. Miami v. Governor*, 65 F.4th 631, 644 (11th Cir. 2023).¹ Addressing the issue of standing to sue governors, the Eleventh Circuit turned to *Georgia Latino Alliance for Human Rights v. Governor of Georgia* as the controlling precedent, and found that traceability and redressability were met where, as in the present matter, the governor had “sufficient, albeit indirect, contact with the program’s enforcement.” 691 F.3d 1250, 1260 & n.5 (11th Cir. 2012). The circumstances here make clear that Governor DeSantis meets the “sufficient contact” test.

First, the Eleventh Circuit has found that a governor’s general responsibility to enforce a state law regulating immigration is sufficient contact to establish the elements of standing. *See id.* at 1260 & n.5. The Governor’s role in enforcing the immigrant transport law in *Georgia* was equivalent under the circumstances to Governor DeSantis’ role in enforcing Section 10. *Id.* at 1256. In *Georgia*, the Eleventh Circuit found that its earlier “binding precedent from *Luckey v. Harris*” foreclosed the Governor’s argument that he was not a proper defendant. 691 F.3d at 1260 & n.5. In *Luckey*, the Eleventh Circuit explained that “[a]ll that is required [for injunctive relief against a state official] is that the official [sued] be responsible for the challenged action.” 860 F.2d 1012, 1015 (11th Cir. 1988). Thus, the state officer “must, by virtue of his office, have

¹ This case is distinguishable from *City of South Miami* because Section 10 is a criminal statute like the one at issue in *Georgia* that is preempted regardless of whether the Governor or someone else is enforcing the law. Here, the state attorneys are on the front line of enforcing Section 10 with the Governor actively suspending some state attorneys for allegedly failing to enforce certain laws whereas SB 168—the law at issue in *City of South Miami*—called for law enforcement to take specific actions.

some connection with the unconstitutional act or conduct complained of.” *Id.* at 1015–16. This connection was met via the Governor’s general responsibility to enforce the laws of the state, as well as “the residual power to commence criminal prosecutions,” and the authority to “direct the Attorney General to ‘institute and prosecute’ on behalf of the state.” *Id.* at 1016 (*citing* GA. CONST. art. V, § 2, ¶ 2; GA. CODE ANN. §§ 17–1–2; 45–15–35 (1982)). The court concluded that prospective relief could be ordered against the state officers, including the governor of Georgia, who is *generally responsible* for enforcing the state’s laws. *Id.* at 1015–16; *see also Coal. for Good Governance v. Kemp*, 558 F. Supp. 3d 1370, 1382 (N.D. Ga. 2021) (finding traceability and redressability requirement satisfied and finding the Governor an appropriate defendant); *see also Sixth Dist. of African Methodist Episcopal Church v. Kemp*, 574 F. Supp. 3d 1260, 1271–72 (N.D. Ga. 2021) (same).

As in *Georgia*, the Florida Governor is generally responsible for enforcing Florida’s laws, including Section 10. Both the Florida Constitution and the Georgia Constitution contain the same mandate: “The governor shall take care that the laws are faithfully executed....” *Compare* FLA. CONST. art. IV, § 1(a), *with* GA. CONST. art. V, § 2, ¶ 2. The Florida governor may also “initiate judicial proceedings” against state, county, or municipal officers “to enforce compliance with any duty or restrain any unauthorized act.” FLA. CONST. art. IV, § 1(b). The Florida constitution also gives the governor authority to suspend any state or county officers for, *inter alia*, “neglect of duty” or “incompetence.” without little judicial oversight. *Id.* § 7(a); *see Warren v. DeSantis*, 365 So. 3d 1137, 1139 (Fla. 2023).

Governor DeSantis can also initiate criminal prosecution by petitioning the Florida Supreme Court to order a statewide jury to be impaneled for crimes involving more than one judicial circuit. *See* Fla. Stat. § 905.33–39. A statewide jury can exercise jurisdiction over certain crimes, including Florida Statute § 787.07, the statute into which Section 10 has been incorporated. *See* Fla. Stat. § 905.34(13) (granting jurisdiction over “any violation of chapter 787”). Once impaneled, a statewide grand jury may issue an indictment or presentment. Fla. Stat. § 905.34. Through the statewide grand jury process, the Governor has direct enforcement authority and does not need to rely on local prosecutors to charge individuals suspected of violating Section 10.

Ignoring *Luckey v. Harris* altogether, Governor DeSantis relies on *Women’s Emergency Network v. Bush*, 323 F.3d 937 (11th Cir. 2003), to support dismissal. Defs’ Mot. 4. There, the

Governor was dismissed because he had assumed little authority over the agency's action at issue in the case, while he shared the authority with six other cabinet members. The Court concluded that the Governor's "shared authority over the Department is simply too attenuated to establish that he is 'responsible for' the distribution of funds to adoption agencies." *Id.* at 949. Section 10, however, is a criminal statute, making Governor DeSantis' involvement far more significant, as he is constitutionally tasked with the "faithful execut[ion]" of state laws and has the power to direct enforcement of the law. *See* FLA. CONST. art. IV, § 1(a). And Governor DeSantis' looming authority to remove state officials who do not enforce Section 10 to his satisfaction proves substantially more contact than shared, attenuated oversight over the dispersion of funds from the sale of customized license plates.² *See infra* pages 6-7 (discussing Governor DeSantis' removal of two state attorneys).

Second, from inception through enforcement, Governor DeSantis has been a driving force behind Section 10. Section 10 enacts a legislative proposal he announced in February 2023 to enhance penalties for "human smuggling" "follow[ing] the recommendations" of a grand jury that had been impaneled at his request to "build upon [his] previous actions to keep Floridians safe in the face of an unprecedentedly unsecure federal border policy."³ Among those "actions" was Executive Order 21-223, which, as a precursor to Section 10, "authorized and encouraged" agents and officers of the Florida Department of Law Enforcement and the Florida Highway Patrol to "detain any aircraft, bus, or other vehicle within the State of Florida reasonably believed to be transporting illegal aliens to Florida." Fla. Exec. Order No. 21-223 at § 5, p.8 (Sep. 28, 2021).

These same state agencies share responsibilities with local police for the enforcement of Section 10 and other related provisions of SB 1718. *See, e.g.*, Section 3 of SB 1718 (directing

² Defendants similarly misplace their reliance on *Osterback v. Scott*, an unpublished opinion that involved a state prisoner who appealed a dismissal pro se. 782 Fed. App'x. 856 (11th Cir. 2019). The pro se litigant's challenge related to a statute which restricts prisoners' ability to challenge state agency action through an administrative process. *Id.* at 856. This is a far cry from the facts of *Georgia*, which is directly on point.

³ Press Release, Office of Governor Ron DeSantis, *Governor Ron DeSantis Announces Legislation to Counteract Biden's Border Crisis* (Feb. 23, 2023), <https://www.flgov.com/2023/02/23/governor-ron-desantis-announces-legislation-to-counteract-bidens-border-crisis/> <https://www.flgov.com/2023/02/23/governor-ron-desantis-announces-legislation-to-counteract-bidens-border-crisis/>.

Florida Highway Patrol officers to issue citations to drivers with “licenses that are issued exclusively to undocumented immigrants”); Section 13 of SB 1718 (directing the Florida Department of Law Enforcement to “coordinate and direct the law enforcement” responses to “immigration enforcement incidents within or affecting this state”). Indeed, when SB 1718 was proposed, Florida Department of Law Enforcement Commissioner Mark Glass made a public statement praising Governor DeSantis, stating, “In tandem with our continued vigilance and cooperation with our law enforcement partners across the state, the initiatives championed today by Governor DeSantis will help to keep Floridians safer than ever.”⁴ Similarly, when Governor DeSantis announced the initiatives that led to this proposal, the Director of the Florida Highway Patrol, Colonel Gene S. Spaulding, also made a public statement touting the “strong support” needed from the Governor to keep “illegal activity out of our state and off our roadways.”⁵

These statements strongly suggest that the Governor will continue to play a prominent role in the enforcement of Section 10, and further distinguish his proactive role as “head” of each department in this case from his attenuated role in *Bush*. See FLA. STAT. §§ 20.24(1), 20.201(1). His efforts to keep undocumented immigrants out of Florida are well documented⁶ and will continue directly or indirectly via enforcement of Section 10 absent an injunction. As the harms inflicted under Section 10 are directly attributable to Governor DeSantis’s initiative and continued leadership over its enforcement, the traceability and redressability prongs of standing are met.

Third, there are specific indications that Governor DeSantis will “presumably mandate [the law’s] enforcement” by directing prosecutions under threat of suspension. See *City of S. Miami*, 65 F.4th at 644.

⁴ Press Release, Office of Governor Ron DeSantis, *Governor Ron DeSantis Announces Legislation to Counteract Biden’s Border Crisis* (Feb. 23, 2023), <https://www.flgov.com/2023/02/23/governor-ron-desantis-announces-legislation-to-counteract-bidens-border-crisis/>.

⁵ Press Release, Office of Governor Ron DeSantis, *Governor Ron DeSantis Takes Additional Actions to Protect Floridians from Biden’s Border Crisis* (June 17, 2022), <https://www.flgov.com/2022/06/17/governor-ron-desantis-takes-additional-actions-to-protect-floridians-from-bidens-border-crisis/>.

⁶ See, e.g., Nicholas Nehamas, Sarah Blaskey, and Mary Ellen Klas, ‘You Have My Full Support’: Top DeSantis Aides Played Key Role in Migrant Flights, *MIAMI HERALD* (Oct. 17, 2022), <https://www.miamiherald.com/article267349297.html>.

Not only does Governor DeSantis have general authority to enforce Section 10 (Fla. Const. Art. IV, § 1(a)), he also has specific authority to “initiate judicial proceedings” against state, county, or municipal officers “to enforce compliance with any duty or restrain any unauthorized act.” FLA. CONST. art. IV, § 1(b). He also has the authority to suspend state or county officers for failure to enforce state law—including Section 10—under the guise of “neglect of duty” or “incompetence.” *Id.* § 7(a). And he has the authority to impanel a state-wide grand jury to investigate alleged violations of Section 10. *See* Fla. Stat. § 905.33–34; *see also Ga. Latino Alliance*, 691 F.3d at 1260 & n.5 (finding that the Governor was proper party because he had “sufficient, albeit indirect” enforcement authority).

This authority is not sitting dormant in the pages of the Florida Constitution: Governor DeSantis has recently removed multiple prosecutors who, in his view, were not taking sufficient action to enforce criminal laws that the Governor has prioritized. *See* FLA. CONST. art. IV, § 7(a). In August 2022, the Governor suspended State Attorney Andrew Warren of Florida’s 13th Judicial District because Warren indicated that he would not enforce restrictions on abortion and further spoke out against Florida’s potential ban on gender affirming therapy to transgender people⁷—a legislative priority of the Governor’s. Governor DeSantis stated, “State Attorneys have a duty to prosecute crimes as defined in Florida law” and that “[i]t is my duty to hold Florida’s elected officials” accountable.⁸ Exactly one year later, Governor DeSantis, in August 2023, suspended State Attorney Monique Worrell of Florida’s 9th Judicial Circuit under the guise of “neglect of duty and incompetence,” accusing her of being soft on crime and not prosecuting repeat offenders.⁹ In suspending State Attorney Worrell, DeSantis once again

⁷ Executive Order of Suspension No. 22-176 at 3 (Aug. 4, 2022); Steve Contorno, *DeSantis Suspends Tampa Prosecutor Who Took Stance Against Criminalizing Abortion Providers*, CNN (Aug. 4, 2022), <https://www.cnn.com/2022/08/04/politics/desantis-suspends-prosecutor/index.html>.

⁸ Press Release, Office of Governor Ron DeSantis, *Governor Ron DeSantis Suspends State Attorney Andrew Warren for Refusing to Enforce Florida Law* (Aug. 4, 2022), <https://www.flgov.com/2022/08/04/governor-ron-desantis-suspends-state-attorney-andrew-warren-for-refusing-to-enforce-florida-law/>.

⁹ Executive Order of Suspension No. 23-160 at 13 (Aug. 9, 2023); Matt Dixon, *Ron DeSantis suspends second elected prosecutor as his 2024 campaign struggles*, NBC (Aug. 9, 2023), <https://www.nbcnews.com/politics/2024-election/ron-desantis-suspends-second-elected-prosecutor-monique-worrell-rcna98968>.

invoked his “duty as Governor to ensure that the laws enacted by our duly elected Legislature are followed.”¹⁰

Because Governor DeSantis has been a driving force behind Section 10, and he has a proven track record of enforcing legislation through the removal of state attorneys, there is a “causal chain linking the Governor to Plaintiffs’ alleged injuries flowing from section 787.07.” Defs’ Mot. 6. An injunction against Governor DeSantis would redress Plaintiffs’ harm, and Plaintiffs have therefore established standing.

B. Under *Ex parte Young*, Governor DeSantis Is Not Immune from Suit

Governor DeSantis is a proper defendant under *Ex parte Young* for the same reasons Plaintiffs have standing to sue him. *Ex parte Young* provides an exception to the Eleventh Amendment bar on suits against states in federal court. Under the doctrine, “[a] state official is subject to suit in his official capacity when his office imbues him with the responsibility to enforce the law” at issue. *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011). While the *Ex parte Young* inquiry and the causation and redressability questions are separate inquiries, they “overlap significantly.” *Support Working Animals*, 457 F. Supp. 3d 1193, 1210 (N.D. Fla. 2020). The Governor acknowledges that *Ex parte Young* imposes a lower standard than the question of Article III standing (*see* Defs’ Mot. 7), requiring only “‘some connection’” between the state official and “the unconstitutional act or conduct complained of.” *Luckey*, 860 F.2d at 1015–16 (quoting *Young*, 209 U.S. at 157). That connection can “arise[] out of the general law, or is specially created by the act itself.” *Ex parte Young*, 209 U.S. 123, 157 (1908).

The Eleventh Circuit has held that the Governor of Georgia’s responsibility for law enforcement, his residual power to commence criminal prosecutions, and his authority to direct the Attorney General to commence criminal prosecutions made him a proper defendant under *Ex parte Young* in a suit challenging deficiencies in the provision of indigent legal services, *Luckey*, 860 F.2d at 1015–16, and in a suit challenging the criminal regulation of firearms, *GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1254 & n.18 (11th Cir. 2012).

Governor DeSantis seems to suggest that *Ex parte Young* requires explicit enforcement authority to be found within the challenged statute. *See* Defs’ Mot. 3-4. “But *Ex parte*

¹⁰ Press Release, Office of Governor Ron DeSantis, *Governor Ron DeSantis Suspends State Attorney Monique Worrell for Neglect of Duty and Incompetence* (Aug. 9, 2022), <https://www.flgov.com/2023/08/09/governor-ron-desantis-suspends-state-attorney-monique-worrell-for-neglect-of-duty-and-incompetence/>.

Young does not require a grant of explicit enforcement authority. Rather, it requires “some connection with the enforcement of the act.” *Support Working Animals*, 457 F. Supp. 3d at 1209 (citing *Ex parte Young*, 209 U.S. at 57); cf. *Papasan v. Allain*, 478 U.S. 265, 282 n.14 (1986) (finding “general supervision” suffices for exception); *Ga. Latino All.*, 691 F.3d at 1260 & n.5 (rejecting state officials’ argument that *Ex parte Young* doctrine did not apply because they lacked *specific enforcement authority* over challenged state law criminalizing certain conduct in aid of undocumented immigrants). As discussed *supra*, Governor DeSantis’ authority easily passes this test.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Governor DeSantis’ motion to dismiss.

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Respectfully submitted,

/s/ Amien Kacou

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CERTIFICATE OF SERVICE

I hereby certify on September 29, 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 on all parties of record via CM/ECF, e-mail, or U.S. Mail as described in the Service List below on September 29, 2023.

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