

No. 26-49

In the
Supreme Court of the United States

BRENNA BIRD, IN HER OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF IOWA,
Petitioner,

v.

IOWA MIGRANT MOVEMENT FOR JUSTICE, ET AL.
Respondents.

**On Petition for a Writ of Certiorari
to The United States Court of Appeals
for the Eighth Circuit**

**BRIEF OF U.S. SENATORS TED CRUZ AND
CHUCK GRASSLEY AS *AMICI CURIAE* IN
SUPPORT OF PETITIONER**

James Rogers
AMERICA FIRST LEGAL
FOUNDATION
611 Pennsylvania Ave.
SE, Suite 231
Washington, D.C. 20003
james.rogers@aflegal.org

Abhishek Kambli
Counsel of Record
HOLTZMAN VOGEL
BARAN TORCHINSKY
& JOSEFIK PLLC
1325 Avenue of the
Americas, Suite 2843
New York, NY 10019
(202) 737-8808
akambli@holtzmanvogel.com

TABLE OF CONTENTS

Table of Authorities	ii
Interests of Amicus Curiae	1
Summary of the Argument	1
Argument.....	4
I. <i>Arizona</i> 's facial challenge mistakes wrecked conflict preemption and must be revisited.	4
A) <i>Arizona</i> failed to apply the facial challenge standard correctly.	6
B) <i>Arizona</i> 's mishandling of facial challenges turned conflict preemption into an unrecognizable one-way ratchet.	8
i) <i>Arizona</i> 's facial challenge errors corrupted conflict preemption.....	8
ii) <i>Arizona</i> led to the erroneous result in the Eighth Circuit below.....	10
iii) Conflict preemption is now a one-way ratchet with absurd results.	12
C) If brought into compliance with <i>NetChoice</i> , conflict preemption would not facially invalidate Iowa's complementary law.	15
Conclusion	17

TABLE OF AUTHORITIES

Cases

<i>Arizona v. United States</i> , 567 U.S. 387 (2012)	2–10, 12, 15–17
<i>Broadrick v. Oklahoma</i> , 413 U.S. 601 (1973)	2
<i>Bucklew v. Precythe</i> , 587 U.S. 119 (2019)	5
<i>Chamber of Commerce v. Whiting</i> , 563 U.S. 582 (2011)	3, 9
<i>Fla. Lime & Avocado Growers, Inc. v. Paul</i> , 373 U.S. 132 (1963)	8
<i>Florida Immigrant Coal. v. Uthmeier</i> , 778 F. Supp. 3d 1315 (S.D. Fla. 2025)	13
<i>Geier v. Am. Honda Motor Co.</i> , 529 U.S. 861 (2000)	9
<i>Hines v. Davidowitz</i> , 312 U.S. 52 (1941)	8
<i>Iowa Migrant Movement for Justice v. Bird</i> , 157 F.4th 904 (8th Cir. 2025) (“ <i>Iowa Migrant Movement I</i> ”)	2, 4, 10, 11, 14

<i>Iowa Migrant Movement for Justice v. Bird</i> , 166 F.4th 688 (8th Cir. 2026) (“ <i>Iowa Migrant Movement II</i> ”)	4, 10, 11, 16, 17
<i>Kansas v. Garcia</i> , 589 U.S. 191 (2020)	11
<i>Lozano v. City of Hazleton</i> 724 F.3d 297 (3d Cir. 2013)	7, 12
<i>McHenry v. Raoul</i> , 44 F.4th 581 (7th Cir. 2022)	14
<i>Moody v. NetChoice</i> , 603 U.S. 707 (2024)	2, 5, 6, 7, 15, 16
<i>Mut. Pharm. Co. v. Bartlett</i> , 570 U.S. 472 (2013)	5
<i>Rice v. Norman Williams Co.</i> , 458 U.S. 654 (1982)	8
<i>United States v. California</i> , 921 F.3d 865 (9th Cir. 2019)	13
<i>United States v. Illinois</i> , 796 F. Supp. 3d 494 (N.D. Ill. 2025)	14
<i>United States v. New York</i> , 810 F. Supp. 3d 329 (N.D.N.Y. 2025)	14
<i>United States v. Oklahoma</i> , 739 F. Supp. 3d 985 (W.D. Okla. 2024)	12–13

<i>United States v. Rahimi</i> , 602 U.S. 680 (2024)	7, 9, 11, 15, 16
---	------------------

<i>United States v. Salerno</i> , 481 U.S. 739 (1987)	6, 7, 10, 12, 15, 17
--	----------------------

<i>United States v. South Carolina</i> , 720 F.3d 518 (4th Cir. 2013)	12
--	----

<i>United States v. Texas</i> , 97 F.4th 268 (5th Cir. 2024)	6, 13
---	-------

Statutes

Iowa Code § 718C.2(1)	10
-----------------------------	----

Iowa Code § 718C.4(4)	10
-----------------------------	----

Other Authorities

<i>Hearing on AB 450 Before the Assemb. Comm. on Judiciary</i> , 2017-18 Sess. 1 (Cal. 2017)	13–14
--	-------

INTERESTS OF AMICI CURIAE¹

Amici are United States Senators Ted Cruz and Chuck Grassley. Senator Cruz is the Chairman of the Subcommittee on Federal Courts, Oversight, Agency Action and Federal Rights. Senator Grassley is the Chair of the Senate Committee on the Judiciary.

As Senators, Amici have an interest in ensuring that states are not unnecessarily blocked from advancing the objectives of federal law. Similarly, as Senators chairing the Judiciary Committee and the Subcommittee on Federal Courts respectively, amici have an interest in ensuring that the power of preemption remains with Congress, not the Courts.

SUMMARY OF THE ARGUMENT

The flood of mass illegal immigration into our country created a national emergency and states like Iowa bore the brunt of the problems. Iowa tried to protect its residents and help the federal government enforce our immigration laws by enacting a complementary statute. This response is both lawful and commendable. Yet the lower court held that Iowa's complementary statute was *facially* conflict preempted, meaning preempted in *every* application. This was not because there was an actual conflict between the state statute and federal law but because it might at some point conflict with the enforcement discretion of a Presidential administration. *Iowa Migrant Movement for Justice v. Bird*, 157 F.4th 904, 921–23, 925–27 (8th

¹ No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than amici or their counsel, financially contribute to preparing or submitting this brief. All parties have received timely notice of the filing of this brief.

Cir. 2025) (“*Iowa Migrant Movement I*”). This is wrong and this Court should grant cert.

The Eighth Circuit erred for the reasons stated in Iowa’s petition for certiorari as the Plaintiffs did not have standing and the underlying statute was not preempted. But the Eighth Circuit’s incorrect decision was not entirely its own doing. The Eighth Circuit erred primarily because this Court’s decision in *Arizona v. United States*, 567 U.S. 387 (2012) left lower courts without a standard on how to judge conflict preemption in the immigration space. Indeed, lower courts have been doing what this Court had feared by turning conflict preemption into a freewheeling judicial inquiry. And the result is a one-way ratchet where state laws that seek to support federal law are enjoined, while those that actively thwart federal law are allowed to stand. This defies common sense, and the root of it is *Arizona*.

This Court recently affirmed that the “decision to litigate . . . cases as facial challenges comes at a cost.” *Moody v. NetChoice*, 603 U.S. 707, 708 (2024). This Court has always understood that facial challenges are “strong medicine” that should be used sparingly. *See Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973). But *Arizona* completely disregarded these restraints, failing to even mention the required test for facial challenges. Rather, *Arizona* relied on a few hypothetical situations where the law would be conflict preempted while ignoring many valid applications of the law. That is not what this Court requires.

Arizona’s mishandling of facial challenges upended preemption doctrine. To ensure the existence of an actual conflict, there is normally a high threshold required to show that a state statute is an obstacle to

the execution of federal law. But *Arizona*'s facial challenge standard (or lack thereof) allows a court to go in search of a hypothetical conflict rather than considering its actual applications.

The Eighth Circuit below relied on *Arizona* to invalidate Iowa's complementary law. Failing to abide by the required facial challenge standard, that court focused only on possible conflicts and disregarded all the likely valid applications of the law. It engaged in the freewheeling judicial inquiries that this Court has cautioned against. See *Chamber of Commerce v. Whiting*, 563 U.S. 582, 607 (2011). In doing so, it rendered conflict preemption unrecognizable.

Courts across the country have been compounding *Arizona*'s mistakes, leading to a one-way ratchet of absurd results. State laws that complement and advance federal law are routinely preempted. In these cases, courts seem to adopt such an expansive definition of "conflict" that it even envelopes its own antonym. But when states pass laws that are intended to obstruct federal enforcement, courts have changed their tune. They adopt a narrower definition of conflict that would never invalidate the complementary. These inconsistent and absurd results trace back to *Arizona*'s mistakes and turn the meaning of conflict on its head.

The solution is to return to what this Court has already required from facial challenges: upholding a state law if at least some of its applications are constitutional. When a state statute complements federal law, it will undoubtedly have at least some applications that advance rather than hinder federal law. Thus, facial challenges of conflict preemption should not invalidate a truly complementary state statute. Iowa's law is complementary to federal law, and

hypothetical conflicts are exceptions, not the rule. The facial challenge must fail.

The decision below is wrong, not just for case-specific errors, but for a categorically incorrect legal understanding of facial challenges and conflict preemption—both inherited from *Arizona*. The question is recurring, outcome-determinative, and presently disables a state enactment addressing an important issue. This Court should grant certiorari and revisit *Arizona*.

ARGUMENT

I. *Arizona*’s facial challenge mistakes wrecked conflict preemption and must be revisited.

“[A]s the federal government tries to enforce the nation’s immigration laws, Iowa wants to help.” *Iowa Migrant Movement for Justice v. Bird*, 166 F.4th 688, 688 (8th Cir. 2026) (“*Iowa Migrant Movement II*”) (Stras, J., dissenting from denial of rehearing en banc). To do so, Iowa passed a law that “furthers” federal objectives on immigration. *Id.* at 692.

Yet the Eighth Circuit held that there is no set of circumstances under which Iowa’s law does not conflict with federal law. *Iowa Migrant Movement I*, 157 F.4th at 927. The panel affirmed a preliminary injunction on the ground that respondents were likely to prove every application of Iowa Code chapter 718C conflict preempted, while remanding for the district court to tailor the injunction to the plaintiffs. *Id.* at 918–31.

This Court has reiterated the importance of keeping facial challenges within proper boundaries so that

they remain “hard to win.” *NetChoice*, 603 U.S. at 723. “A facial challenge is really just a claim that the law . . . at issue is unconstitutional in all of its applications.” *Bucklew v. Precythe*, 587 U.S. 119, 138 (2019). If not handled with care, facial challenges can “short circuit the democratic process” based on nothing more than “speculation.” *NetChoice*, 603 U.S. at 723. This rings especially true when the state is attempting to respond to an emergency, such as the illegal immigration crisis facing Iowa and many other states. See *Iowa Migrant Movement II*, 166 F.4th at 694 (Stras, J., dissenting from denial of rehearing en banc) (describing the immigration issue to be “as important as it gets.”).

Unfortunately, the case relied upon by the Eighth Circuit below, *Arizona v. United States*, was anything but careful. Instead, *Arizona* blew past the checks on facial challenges and corroded the doctrine of conflict preemption beyond recognition. Because of *Arizona*, inhibitory state laws are given the green light, and complementary state laws are declared obstacles.

Amici do not contend that a mere stated cooperative purpose automatically immunizes a state statute from preemption. For example, a “‘direct conflict’ between federal- and state-law duties” is the paradigm of conflict preemption. See *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 488 (2013). So even a benevolent state law may not override a federal exception, protection from removal, final status determination, or destination decision. That is not in dispute. The narrower point is that overlap is not itself conflict, and the possibility of conflict in some applications does not establish that every application of every provision is an obstacle. The analysis must identify the enacted federal

rule allegedly displaced and compare it with the operation of the particular state provision and application at issue. *Arizona* failed to perform this analysis and treated overlap as conflict. It must be revisited.

A) *Arizona* failed to apply the facial challenge standard correctly.

The facial challenge standard is clear. To facially invalidate a law, a court must find that “no set of circumstances exists under which the law would be valid.” *United States v. Salerno*, 481 U.S. 739, 745 (1987); see *NetChoice*, 603 U.S. at 723. This test is not without teeth. This Court recently reiterated that *Salerno*’s “very high bar” requires robust analysis, not just empty recitation. See *NetChoice*, 603 U.S. at 723. It is not enough to stick to the perceived “heartland application[]” of the law without addressing “the full range” of applications. *Id.* In short, if a court is going issue broad facial invalidations instead of tailored as-applied relief, it has to do its homework first. See *id.* at 719 (“there is much work to do . . . given the facial nature of NetChoice’s challenges.”); see also *United States v. Texas*, 97 F.4th 268, 300 (5th Cir. 2024) (Oldham, J., dissenting) (favoring “the scalpel of as-applied relief . . . as opposed to the machete of global invalidation.”).

But when it came to conflict preemption, *Arizona* failed to engage in a meaningful *Salerno* analysis. For example, *Arizona* facially invalidated a state law that empowered state authorities to make warrantless arrests if they had probable cause to believe the person committed a removable offense. *Arizona*, 567 U.S. at 407. Conversely, federal law enforcement’s own power to make such arrests was cabined by federal exceptions and its own prosecutorial discretion. See *id.* at

407–08. The Court worried that, because the state law “*could* be exercised without” federal input, “[t]he result *could* be unnecessary harassment of some aliens” whom federal officials may not have arrested. *Id.* at 408 (emphasis added). It was on this basis that the Court held the relevant section invalid in all of its applications. *Id.*

Arizona committed the same error that *NetChoice* strove to correct. In its concern that state officials may arrest someone that federal officials would not have, *Arizona* neglected to consider the more likely scenario that state officials arrest someone federal officials would have arrested as well. *See id.* at 407–11. Similarly, in its concern that the state would act unilaterally and shun federal input, *Arizona* failed to heed the more likely possibility that state law enforcement would act in cooperation with federal law enforcement. *See id.* This tunnel vision confined *Arizona*’s analysis to the narrow set of hypothetical circumstances where it found conflict. It did not consider the many obvious applications where the state law would further federal interests rather than obstruct them. In short, *Arizona* applied an inverted facial challenge test: rather than upholding a statute if “some of its applications” are valid, *United States v. Rahimi*, 602 U.S. 680, 693 (2024), the Court invalidated a statute for finding that just some of its applications were invalid. That is not the *Salerno* test, and it is certainly not the rigorous “full range” analysis required by this Court. *See NetChoice*, 603 U.S. at 723.

Making matters worse, *Arizona* did not even mention the facial challenge test. *See Lozano*, 724 F.3d at 313 n.22 (admitting that *Arizona* does not reference *Salerno* “at all” and does not seem to apply it). Only

Justices Scalia and Alito broached the subject, each arguing in separate dissents that the United States had not carried the “heavy burden” necessary to prove the state law was preempted on its face. *See Arizona*, 567 U.S. at 457–58 (Alito, J., concurring in part and dissenting in part) (contending that § 6 was not preempted on its face); *id.* at 425 (Scalia, J., concurring in part and dissenting in part) (arguing that § 2(B) was facially valid). Contrary to the majority, there were in fact “plenty of permissible applications of § 6.” *Id.* at 458 (Alito, J., concurring in part and dissenting in part).

B) *Arizona’s mishandling of facial challenges turned conflict preemption into an unrecognizable one-way ratchet.*

- i) *Arizona’s facial challenge errors corrupted conflict preemption.*

The Supremacy Clause gives Congress “the power to pre-empt state law” either explicitly or implicitly. *Id.* at 399 (majority opinion). Courts have implied conflict preemption when “compliance with both federal and state regulations is a physical impossibility,” *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–43 (1963), or when the state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,” *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Regardless of the path taken, conflict preemption requires an actual conflict, not a hypothetical one. *See Rice v. Norman Williams Co.*, 458 U.S. 654, 659 (1982) (“The existence of a hypothetical or potential conflict is insufficient to warrant the pre-emption of a state statute.”).

Unless carefully policed, implied preemption can “undercut the principle that it is Congress rather than the courts that preempts state law.” *Whiting*, 563 U.S. at 607. This Court’s precedents accordingly “establish[ed] that a high threshold must be met if a state law is to be pre-empted for conflicting” with federal law. *Id.*; see also *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 885 (2000) (“[A] court should not find preemption too readily in the absence of clear evidence of a conflict.”).

When the strictures of facial challenges are ignored, conflict preemption devolves into the “free-wheeling judicial inquiry” this Court has tried to prevent. *Whiting*, 563 U.S. at 607. Courts are then free to search among the universe of a law’s possible applications, seize on a hypothetical conflict that may or may not ever come to pass, and so declare the law an obstacle to federal purposes in *all* of its applications. See *Rahimi*, 602 U.S. at 701 (faulting the lower court for trying to “slay[] a straw man” when it only “focused on hypothetical scenarios where [the law] might raise constitutional concerns.”). This result is many things, but a “high threshold” is not one of them.

The erosion of conflict preemption can already be seen in *Arizona* itself, where its facial challenge mistakes led to “an unnecessarily stunted view of cooperation.” *Arizona*, 567 U.S. at 456 (Alito, J., concurring in part and dissenting in part). The facial challenge error first boxed in the analysis to a limited set of circumstances, namely one where state officials “could” act without federal input and harass people unnecessarily. See *id.* at 408 (majority opinion). With the arena of possibilities so limited, it was easy enough for the Court to say that the state’s attempt at

cooperation was obstruction. *See id.* at 408–10. Yet “[n]o one would say that a state or local officer has failed to cooperate by making an on-the-spot arrest to enforce federal law. Unsolicited aid is not necessarily uncooperative.” *Id.* at 456 (Alito, J., concurring in part and dissenting in part). But when unfettered facial challenges are not required to consider the full range of actual applications, nothing prevents the court from closing its analysis around a hypothetical “straw man” of its choosing. *Rahimi*, 602 U.S. at 701.

ii) *Arizona led to the erroneous result in the Eighth Circuit below.*

Arizona’s mistakes infected the doctrine of conflict preemption in the immigration context and led to the erroneous result below. While the Eighth Circuit’s opinion recites the test for facial challenges, *see Iowa Migrant Movement I*, 157 F.4th at 919, its virtues end there. From that point onward, the Eighth Circuit followed in *Arizona*’s footsteps, failing to give any teeth to the *Salerno* analysis and watering down conflict preemption in the process.

While the Eighth Circuit’s errors are pervasive throughout, they are most clearly shown when it relied on *Arizona* to invalidate Section 4 of Iowa’s law. Section 4 provided that, if a person enters Iowa despite having been previously deported or denied entry into the United States, the judge shall order their removal. Iowa Code §§ 718C.2(1), 718C.4(4). The court held that this is always an obstacle to federal law because federal law has exceptions the state law lacks. *Iowa Migrant Movement I*, 157 F.4th at 921. Following in *Arizona*’s footsteps, the Eighth Circuit ignores the obvious set of circumstances in which Iowa removes a person not covered by a federal exception. *See*

Iowa Migrant Movement II, 166 F.4th at 692 (Stras, J., dissenting from denial of rehearing en banc) (“If no federal exception applies, then it is possible to comply with each” and the state law is not an obstacle). That is enough to defeat that facial argument. *See Rahimi*, 602 U.S. at 693 (holding that a facial challenge fails as long as “some of [the law’s] applications” are valid).

But the Eighth Circuit kept its blinders on for the rest of the analysis, ignoring a multitude of valid applications and focusing only on hypothetical conflicts where state and federal officials might disagree about who to remove and to where. *See Iowa Migrant Movement I*, 157 F.4th at 925. In effect, it treated the existence of federal discretion as an obstacle in every conceivable case, all without explaining how or why an application that aligned with federal requests or decisions would necessarily frustrate federal law. The court relied on similar reasoning to invalidate Sections 2 and 6 of the law as well. *See id.* at 920–24; 926–27.

Topping it all off, the Eighth Circuit held that—even if Iowa never removes an alien but merely delivers them to federal officials to handle according to their own discretion—this would still obstruct federal law. *Id.* at 926. Because the court conjured up a hypothetical situation where federal officials might want to avoid making a decision at all, that somehow made “every application of the Act” unconstitutional. *Id.* at 927. Even within this mistakenly narrow scope, this Court has already said that the Supremacy Clause “gives priority” to federal law, “not the criminal law enforcement priorities or preferences of federal officers.” *Kansas v. Garcia*, 589 U.S. 191, 212 (2020).

- iii) *Conflict preemption is now a one-way ratchet with absurd results.*

In the wake of *Arizona*'s disruption and its failure to articulate a coherent standard by which to analyze state statutes, conflict preemption became a Wild West. States are now prohibited from passing laws to further the interests of federal law while others are allowed to set up roadblocks to federal enforcement left and right.

The Eighth Circuit was not the only court to continue *Arizona*'s mistakes. Many subsequent cases facially preempting complementary state laws show how deep these problems go. In *Lozano v. City of Hazelton*, the Third Circuit relied on *Arizona* to justify its complete disregard of the *Salerno* test. 724 F.3d at 313 n.22. Because the statute allowed state authorities to remove an individual that the federal officials also have discretion to remove, the court ruled the law was in conflict "with the federal government's discretion" and facially invalidated the law. *Id.* at 317, 321.

Similarly, the Fourth Circuit held a state statute was facially conflict preempted because the possibility of state prosecution in an area where federal officials also have discretion presents "an obstacle to the execution of the federal removal system." *United States v. South Carolina*, 720 F.3d 518, 530 (4th Cir. 2013). The Fourth Circuit affirmed the district court, which had gone so far as to say that "the facial nature of plaintiff's challenge is not important." *United States v. South Carolina*, 840 F. Supp. 2d 898, 914 n.4 (D.S.C. 2011). *But see NetChoice*, 603 U.S. at 747 ("These are facial challenges, and that matters."). Courts continue to make these same errors routinely. *See, e.g., United States v. Oklahoma*, 739 F. Supp. 3d 985, 990 (W.D.

Okla. 2024); *Texas*, 97 F.4th at 294; *Florida Immigrant Coal. v. Uthmeier*, 778 F. Supp. 3d 1315, 1324 (S.D. Fla. 2025).

If courts hold that even complementary state statutes are obstacles to federal law, it follows that state statutes designed as obstacles would be preempted as well. Yet courts seem to shrink the strike box of conflict and hold just the opposite.

For example, California passed laws with “the express goal of protecting immigrants from an expected increase in federal immigration enforcement actions.” *United States v. California*, 921 F.3d 865, 875 (9th Cir. 2019) (quoting *Hearing on AB 450 Before the Assemb. Comm. on Judiciary*, 2017-18 Sess. 1 (Cal. 2017) (synopsis)). Among other things, these laws severely limited state law enforcement’s ability to collaborate with federal immigration authorities, generally prohibited the transfer of illegal aliens over to federal authorities, mandated state inspection of detention centers, and prevented employers from voluntarily consenting to cooperate with federal investigations. *Id.* at 875–76.

The Ninth Circuit acknowledged that these laws make “the jobs of federal immigration authorities more difficult.” *Id.* at 886. While that sounds like a dead ringer for conflict preemption, the Ninth Circuit said not so fast. These laws may place a “burden” on federal action, but the court reasoned that they were not enough of a burden since they don’t disrupt any final detention decisions. *Id.* at 885. The court also admitted that these laws may actively impede “federal officers from obtaining custody through a safe and peaceful transfer,” but that it is no matter because federal law “does not actually mandate any state

action.” *Id.* at 886–87. Many other courts have also applied a narrow view of conflict so that anti-commandeering principles can step in to sustain the law. *See, e.g., McHenry v. Raoul*, 44 F.4th 581, 585 (7th Cir. 2022) (holding that a state law “prohibiting State agencies . . . from contracting with the federal government to house immigration detainees” was not preempted); *United States v. Illinois*, 796 F. Supp. 3d 494, 513–14 (N.D. Ill. 2025) (sustaining sanctuary city policies prohibiting state cooperation with federal immigration authorities); *United States v. New York*, 810 F. Supp. 3d 329, 348 (N.D.N.Y. 2025) (upholding state laws that limited where federal immigration authorities could make arrests and restricted state agencies from sharing information with federal authorities).

The problem is not the anti-commandeering principle. The problem is that when burdensome state laws are given a pass because of an inconsistently narrow understanding of conflict, *see New York*, 810 F. Supp. 3d at 340 (holding that the bar for conflict is absolute irreconcilability, not inconvenience), it makes a mockery of how easily complementary state laws are preempted, *see Iowa Migrant Movement I*, 157 F.4th at 926 (holding that the inconvenience of delivering illegal aliens to federal officials is enough for obstacle preemption). The standard applied to these conflicting laws would not be sufficient to preempt complementary laws. Thus, cooperation becomes hindrance, and hindrance becomes innocent passivity.

Arizona’s laissez-faire approach to facial challenges opened the door to freewheeling judicial inquiries taking over conflict preemption. Now, it turns out that courts can indeed have conflict

preemption without a conflict—so long as they can theorize one. Freed from the safeguards on facial challenges, obstacle preemption is now unmoored from any notion of “conflict” itself. So culminates the triumph of *Arizona*’s “assault on logic.” *Arizona*, 567 U.S. at 427 (Scalia, J., concurring in part and dissenting in part).

C) If brought into compliance with *NetChoice*, conflict preemption would not facially invalidate Iowa’s complementary law.

The root of the problem—*Arizona*’s mishandling of facial challenges—is also the window into its correction. If facial conflict preemption challenges abided by the *Salerno* test and undertook the rigorous analysis required by *NetChoice*, the doctrine of conflict preemption would be set right. And with a restored understanding of conflict, complementary state laws would not conflict with federal law in all their applications.

Rightly understood, the *Salerno* test requires courts to thoroughly analyze whether there are no set of circumstances where the law has a constitutional application. *See Salerno*, 481 U.S. at 745; *see NetChoice*, 603 U.S. at 723–26. This means that a court can no longer search through the universe of possibilities to find a theoretical conflict and then cabin the discussion around that. Rather, the court must consider “the full range” of applications, *NetChoice*, 603 U.S. at 723, and sustain the law as long as “some of its applications” are valid, *Rahimi*, 602 U.S. at 693. That analysis must be “performed,” not just recited. *NetChoice*, 603 U.S. at 726.

While *NetChoice* and *Rahimi* did not arise in the preemption context, both restate a general remedial principle: a court granting facial relief must account for the breadth of the law’s actual applications and may not disregard real lawful applications. *See id.* at 723–25; *Rahimi*, 602 U.S. at 701 (“a court’s task is to seek harmony, not to manufacture conflict.”) (cleaned up). Of course, a state provision may be facially preempted when its operation necessarily conflicts with federal law. The point here is that the panel should have been required to identify why every actual application of each challenged provision creates such a conflict, rather than infer categorical invalidity from discretion that federal officials may exercise differently in other cases.

If *Arizona*’s mistakes were reined in by compliance with *NetChoice*, facial conflict preemption challenges against complementary state laws would mostly fail. It comes down to a simple syllogism. Facial conflict preemption challenges fail when the statute has at least some valid applications. *See Rahimi*, 602 U.S. at 693. Complementary state laws almost always have some valid applications. Thus, facial conflict preemption challenges should ordinarily fail when the statute is complementary. Most possible conflicts must be left to as-applied challenges.

As a complementary state law, Iowa’s Act would survive a facial conflict preemption challenge if the governing standard were correctly applied. “Iowa’s statute is nearly a mirror image of federal law, meaning that any conflict will quite literally be the exception, not the rule.” *Iowa Migrant Movement II*, 166 F.4th at 693 (Stras, J., dissenting from denial of

rehearing en banc). Thus, “the most obvious application is also the most obviously constitutional.” *Id.* at 692.

Review is warranted for more than correction of a case specific error. The panel below relied on *Arizona* to adopt a categorical legal premise: because federal immigration officials possess congressionally granted discretion, any state enforcement of an overlapping illegal-reentry prohibition necessarily obstructs federal law. That premise reaches beyond Iowa and beyond immigration; federal and state criminal laws frequently overlap while both sovereigns retain charging discretion. The question is recurring, outcome-determinative, and presently disables a state enactment. It also conflicts with this Court’s insistence that obstacle preemption be anchored in enacted law and that facial relief account for the full operation of a statute.

CONCLUSION

Arizona created the precise problems that Justice Scalia warned about in his dissent and was an “assault on logic.” *Arizona*, 567 U.S. at 427 (Scalia, J., concurring in part and dissenting in part). But it is not too late to correct these errors. This case provides the perfect vehicle for the Court to re-examine conflict preemption in the immigration context and correct the mistakes of *Arizona* through rigorous application of the facial challenge test in *Salerno*. If the Court does not address this issue, lower courts will continue to abuse conflict preemption by turning it into a free-wheeling judicial inquiry that is untethered to the law. This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

Abhishek Kambli

Counsel of Record

HOLTZMAN VOGEL

BARAN TORCHINSKY

& JOSEFIAK PLLC

1325 Avenue of the Americas,

Suite 2843

New York, NY 10019

(202) 737-8808

akambli@holtzmanvogel.com

Counsel for Amici Curiae