No. 25-7516

IN THE

United States Court of Appeals for the Ninth Circuit

KALSHIEX, LLC,

Plaintiff-Appellant;

v.

KIRK D. HENDRICK, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Nevada
No. 2:25-cv-575 (Gordon, C.J.)

KALSHIEX LLC'S MOTION FOR A STAY PENDING APPEAL OF THE DISTRICT COURT'S NOVEMBER 24, 2025 ORDER

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INTRODUCTION

Defendants have threatened to prosecute KalshiEX LLC ("Kalshi") under Nevada gambling laws for offering contracts subject to the "exclusive jurisdiction" of the Commodity Futures Trading Commission ("CFTC"). 7 U.S.C. § 2(a)(1)(A). Defendants seek to prohibit Kalshi from offering two types of event contracts—based on elections and sports—even though both are *lawful under federal law*. Defendants' efforts are plainly preempted, and if permitted would mark a return to an era when states regulated derivatives as a form of gambling—exactly what Congress in the Commodity Exchange Act ("CEA") sought to avoid. After initially enjoining Defendants' efforts, the district court reversed course, dissolving the injunction and freeing Defendants to prosecute Kalshi under laws that the court (along with a New Jersey federal court) had previously deemed preempted.

The district court's decision is manifestly erroneous on numerous independent grounds. The court agreed that the CEA preempts state regulation of derivatives trading on federal exchanges, but adopted a workaround to allow Defendants to ban Kalshi's contracts anyway. Per the court, Kalshi's contracts are sports bets, not derivatives. That conclusion, which the court adopted on the ground that "I know it when I see it," Ex. A at 16, is irreconcilable with the statutory text, contravenes the CFTC's clear exercise of

jurisdiction over Kalshi's contracts, contradicts another federal court decision granting Kalshi a preliminary injunction, and would have extremely damaging repercussions. Worse, the district court did not address Kalshi's election contracts at all—an independent, reversible error. The court's decision is a classic case of relying on "purported legislative intentions unmoored from any statutory text"—just as the Supreme Court has repeatedly warned against. *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 642 (2022).

Kalshi requires a stay to protect itself from multiple irreparable harms that will result from dissolution of the injunction. Defendants have threatened to criminally prosecute Kalshi if it does not immediately cease listing sports and election contracts for trading in Nevada. But compliance with that demand would be extraordinarily costly, would harm Kalshi users, and would require Kalshi to risk noncompliance with CFTC regulations. The district court previously recognized these as irreparable harms, but then it wrongly found them outweighed by quintessentially *reparable* harms alleged by Defendants. The court's ruling also denies Kalshi the benefit of a ruling Kalshi secured in litigation against the CFTC last year, which squarely held that Kalshi's election contracts are legal. Kalshi should not have to bear those harms before this Court considers what the district court repeatedly acknowledged are "serious questions on the merits." Ex. A at 24.

Kalshi respectfully requests a stay of the dissolution order pending appeal.

BACKGROUND

I. LEGAL BACKGROUND

1. Before Congress regulated derivatives, many states prohibited futures trading as "gambling." *E.g.*, *Cothran v. Ellis*, 16 N.E. 646, 648 (Ill. 1888). Congress began regulating derivatives trading with the Grain Futures Act of 1922. Then, in 1936, Congress passed the CEA, extending the regulatory framework for grain futures to other commodities. Because these early statutes did not preempt state law, states remained free to regulate futures transactions, including by prohibiting "gambling in grain futures." *See Dickson v. Uhlmann Grain Co.*, 288 U.S. 188, 198 (1933).

That changed in 1974, when Congress passed sweeping amendments to the CEA. Congress created the CFTC and granted it "exclusive jurisdiction" over trading on federally designated "contract market[s]" ("DCMs"), thus "supersed[ing]" state laws. 7 U.S.C. § 2(a)(1)(A). Congress's avowed purpose was to "preempt the field insofar as futures regulation is concerned." H.R. Rep. No. 93-1383, at 35 (1974). Courts immediately recognized the amendments' preemptive effect. *See, e.g.*, *Leist v. Simplot*, 638 F.2d 283, 322 (2d Cir. 1980) (Friendly, J.) ("the CEA preempts the application of state law").

The 1974 amendments swept broadly but did not preempt *all* state derivatives regulation. Section 2(a) made clear that, beyond the CFTC's "exclusive jurisdiction" over federal exchanges, the CEA did not "supersede or limit the jurisdiction" of "regulatory authorities under the laws … of any State" or prevent "such … authorities from carrying out their duties and responsibilities in accordance with such laws." 7 U.S.C. § 2(a)(1)(A).

2. Congress gave the CFTC exclusive jurisdiction over "contracts of sale of a commodity for future delivery" (generally known as *futures* contracts), "option[s]," and "transactions involving swaps … traded or executed on" DCMs. 7 U.S.C. § 2(a)(1)(A). "Future delivery" is defined to exclude only deferred commercial shipment, *id.* § 1a(27), and options are defined as agreements "of the character of" or "commonly known to the trade as" options. *Id.* § 1a(36). The value of both futures and options is based on an underlying commodity, including tangible commodities such as grain, but also intangibles such as interest rate benchmarks and "occurrence[s]." *See id.* § 1a(19).

The CEA broadly defines "swap" to include an "option," or a contract that pays out based on "the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence," or one of twenty-two enumerated types of agreements, or an agreement that "is" or "becomes commonly known to the trade as a swap," or any combination

thereof. *Id.* § 1a(47)(A). Like futures and options, swaps can be based on tangible or intangible commodities, including "event[s] or contingenc[ies]." *Id.*

This appeal concerns event contracts. An event contract is a derivative whose underlying commodity is an occurrence. The CEA contains a "Special Rule," authorizing the CFTC to review and prohibit event contracts within six categories—including contracts involving "gaming" or "activity that is unlawful under any Federal or State law"—if it concludes the contracts are "contrary to the public interest." *Id.* § 7a-2(c)(5)(C); 17 C.F.R. § 40.11. Absent an adverse public-interest determination, however, a DCM may list such contracts for trading.

3. The CEA today sets out a "comprehensive regulatory structure" for entities seeking to offer derivatives. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 356 (1982) (citation omitted). Derivatives exchanges must become DCMs and comply with 23 "Core Principles" identified in the CEA and CFTC regulations. *See* 7 U.S.C. § 7(d); 17 C.F.R. pt. 38. Among many requirements, DCMs must offer "impartial access" to their platforms, 17 C.F.R. § 38.151(b); monitor for "manipulation," *id.* § 38.251; and submit their contracts to a CFTC-regulated clearinghouse for clearing, 7 U.S.C. § 7a-1.

The CEA also prescribes a detailed system for the approval and listing of contracts on DCMs. DCMs may list new contracts by self-certifying compliance with applicable requirements. 7 U.S.C. § 7a-2(c)(1); 17 C.F.R. §§ 38.4(b), 40.2(a)(1). The CFTC may stay listing of a new contract in certain circumstances. 17 C.F.R. § 40.2(c). If the CFTC concludes that an event contract may fall within an enumerated category in the Special Rule, it may subject the contract to a 90-day public-interest review. *Id.* § 40.11(c). Following review, the CFTC "shall issue an order approving or disapproving" the contract. *Id.* § 40.11(c)(2). The CFTC also may require a DCM to submit a "written demonstration" that it is "in compliance" with one or more Core Principles at any time. *Id.* § 38.5(b).

II. FACTUAL AND PROCEDURAL BACKGROUND

1. In 2020, the CFTC certified Kalshi as a DCM. *See KalshiEX LLC v. CFTC*, No. 23-cv-3257, 2024 WL 4164694, at *4 (D.D.C. Sep. 12, 2024). Kalshi offers event contracts related to climate, technology, health, popular culture, economics, and more.

In June 2023, Kalshi began offering event contracts based on the outcomes of elections. The CFTC blocked the contracts under the Special Rule on the asserted ground that they involved "gaming" and "unlawful" activity under certain states' laws and were contrary to the public interest. *Id.* at *5-

6. The D.C. District Court disagreed, holding that the contracts did not involve gaming or unlawful activity, so federal law *required* the CFTC to permit them. *See id.* at *13. The D.C. Circuit denied a stay pending appeal, after which the CFTC dismissed its appeal, making the district court's decision final. *See* No. 24-5205, 2025 WL 1349979 (D.C. Cir. May 7, 2025).

In January 2025, Kalshi began offering contracts on sports events. When Kalshi self-certified its sports contracts, the CFTC requested, pursuant to 17 C.F.R. § 38.5(b), that Kalshi submit a written "[d]emonstration of compliance" with the CEA. Kalshi responded with detailed filings describing the contracts' compliance with applicable law and CFTC regulations. Exs. H, I. The CFTC took no further action with respect to Kalshi's sports contracts, thereby allowing Kalshi to list them. The CFTC has reserved the right to subject these contracts to public-interest review, *see* CFTCLTR No. 25-36, Comm. Fut. L. Rep. ¶ 35563 (Sep. 30, 2025), but as of today it has not initiated review.

2. In March 2025, the Nevada Gaming Control Board ("NGCB") sent Kalshi a cease-and-desist letter asserting that Kalshi's election and sports contracts are prohibited by Nevada gambling law and demanding that Kalshi cease offering them in Nevada. Ex. B at 3. The Board "expressly reserve[d]

all rights to pursue criminal and civil actions based on Kalshi's past and future conduct within the state." *Id.*

Kalshi sued Defendants in the District of Nevada and sought a preliminary injunction. On April 9, the court granted the injunction, explaining that the "plain and unambiguous language" of the CEA preempts the application of state law with respect to trading on DCMs. Ex. C at 12. Defendants elected not to appeal.

Six months later, the same district court denied a preliminary injunction to another DCM known as Crypto.com, which received a similar cease-and-desist letter from Nevada regulators. *See N. Am. Derivatives Exch., Inc. v. NGCB* ("*Crypto*"), No. 2:24-cv-978, 2025 WL 2916151, at *11 (D. Nev. Oct. 14, 2025). The court reaffirmed its conclusion that the CEA preempts state law as to derivatives traded on DCMs, but held that sports-event contracts are not "swaps," and therefore do not fall within the CFTC's exclusive jurisdiction. The court reasoned that "outcome[s]" do not qualify as "events" under the CEA's definition of "swap." *Id.* at *8.

Defendants then moved to dissolve Kalshi's preliminary injunction, relying heavily on *Crypto*. The district court granted Defendants' motion on November 24, 2025, and it denied Kalshi's request for a stay pending appeal on December 16, 2025, without additional explanation.

Defendants oppose Kalshi's request for a stay, but have agreed not to initiate enforcement proceedings against Kalshi while this Court considers this stay motion, obviating the need for an emergency administrative stay.

LEGAL STANDARD

The Court may "stay" an "order of a district court pending appeal" or "restor[e] … an injunction while an appeal is pending." Fed. R. App. P. 8(a)(1). In deciding whether to grant a stay, courts consider: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation omitted). The "first two factors" "are the most critical," and the last two "merge when the Government is the opposing party." *Id.* at 434-435. This Court applies a "sliding scale" approach permitting a stay where the applicant raises "a 'serious question' on the merits when the balance of hardships tips sharply in their favor." *Assurance Wireless USA, L.P. v. Reynolds*, 100 F.4th 1024, 1031 (9th Cir. 2024) (citation omitted).

ARGUMENT

I. KALSHI IS LIKELY TO PREVAIL ON APPEAL.

The district court correctly rejected Defendants' principal argument that the CEA does not preempt state gambling laws. That argument contravenes every marker of congressional intent. The CEA's text grants the CFTC "exclusive jurisdiction" and thereby "supersede[s]" state law. 7 U.S.C. § 2(a)(1)(A). Congress sought to "preempt the field." H.R. Rep. No. 93-1383, at 35 (1974). Courts have easily held for 50 years that "the CEA preempts the application of state law." *Leist*, 638 F.2d at 322. The CFTC itself recognizes that, "due to federal preemption, event contracts never violate state law when they are traded on a DCM." Appellant's Br. at 27, *KalshiEX v. CFTC*, No. 24-5205 (D.C. Cir. Oct. 16, 2024). And commentators have uniformly noted that "the CEA preempts state bucket-shop laws and other anti-gambling legislation." Kevin T. Van Wart, *Preemption and the Commodity Exchange Act*, 58 Chi.-Kent L. Rev. 657, 721 (1982).

To avoid what the district court viewed as undesirable policy implications of preemption, however, the court adopted a workaround. It accepted a gerrymandered definition of "swap"—which the court at argument recognized "isn't perfect," Ex. G at 5—to exclude event contracts involving elections and sports, then concluded that states were free to subject parties to

criminal penalties for offering such contracts even when traded on a DCM. That policy-driven holding cannot be sustained.

The court repeatedly acknowledged that the merits "raise[] serious questions." Ex. A at 24. Their seriousness is confirmed by the fact that they have divided the federal courts, with some ruling decisively in Kalshi's favor. *See KalshiEX LLC v. Flaherty*, No. 25-cv-2152, 2025 WL 1218313, at *6-8 (D.N.J. Apr. 28, 2025) (holding state law preempted and granting preliminary injunction in Kalshi's favor); *Blue Lake Rancheria v. Kalshi Inc.*, No. 25-cv-6162, 2025 WL 3141202, at *7 (N.D. Cal. Nov. 10, 2025) (rejecting argument that Kalshi's event contracts are unlawful gambling). A stay is warranted.

A. Kalshi's Contracts Are Subject To The CFTC's Exclusive Jurisdiction.

The CEA gives the CFTC "exclusive jurisdiction" over "contracts of sale of a commodity for future delivery," "option[s]," and "transactions involving swaps … traded or executed on" DCMs. 7 U.S.C. § 2(a)(1)(A). Accordingly, appellate courts have uniformly held that state law "is preempted" when it "would directly affect trading on or the operation of a futures market." *Am. Agric. Movement, Inc. v. Bd. of Trade of Chi.*, 977 F.2d 1147, 1156-57 (7th Cir. 1992). Kalshi's contracts are traded on a DCM subject to CFTC jurisdiction, and state efforts to ban them are preempted.

Kalshi's contracts are most naturally understood as "swaps." As relevant, a "swap" is a contract that "provides" for payment based on the "occurrence … of an event or contingency associated with a potential financial, economic, or commercial consequence." 7 U.S.C. § 1a(47)(A)(ii). "Associated" commonly means "[c]onnected." *See Associated*, Oxford English Dictionary (3d ed. 2011). A swap thus requires an event connected to a potential financial, economic, or commercial consequence. Election and sports contracts comfortably qualify. The outcomes of elections have obvious financial consequences. Sporting events likewise are associated with financial consequences—often significant ones—for stakeholders, including team sponsors, advertisers, television networks, franchises, local communities, and more. Sportsbooks have direct exposure to outcomes of sporting events, leading some to turn to Kalshi to "hedge against volatility."[1] These events certainly are associated with "potential" economic consequences, as needed to meet the swap definition.

Kalshi's contracts also are futures or options in "excluded commodit[ies]." Excluded commodities are a type of intangible commodity. *See* 7 U.S.C. § 1a(19). For example, interest-rate futures pay off based on the level

[1] Brett Smiley, *Underdog Sports Preparing to Use Kalshi, Prediction Markets For Its Own Risk Management*, In Game, https://perma.cc/BT4A-BK8T.

of an interest-rate benchmark on a future date. Congress also defined "excluded commodity" to include "occurrence[s]" that are "associated with a financial, commercial, or economic consequence." *Id.* § 1a(19)(iv). An occurrence-based futures contract or option results in payment based on a specified occurrence or extent of an occurrence—for example, the occurrence or severity of a hurricane.[2] Kalshi's event contracts likewise pay out based on financially significant occurrences and thus are "of the character of" futures and options. *See id.* § 1a(36) (defining "option").

The CFTC has repeatedly concluded that election and sports contracts like Kalshi's are subject to its jurisdiction. In 2008, it recognized that event contracts may be based on "varied" eventualities such as "the results of political elections, or the outcome of particular entertainment events," and could be structured as "futures" or "options." Concept Release, 73 Fed. Reg. 25,669, 25,669 (May 7, 2008). Last year, it proposed a rule (never adopted) premised on the understanding that contracts based on the "outcome of a political contest" or a "sporting event" are "agreements, contracts, transactions, or swaps in excluded commodities" subject to its jurisdiction. Event Contracts, 89 Fed. Reg. 48,968, 48,975-76 (June 10, 2024). It has allowed

[2] *See* CME Group, *CME to Launch Hurricane Futures and Options on Futures Contracts*, https://perma.cc/VSW3-8284.

thousands of election and sports contracts to be traded on DCMs. And while it has not subjected Kalshi's contracts to public-interest review, it has expressly reserved the right to do so, a clear indication of its jurisdiction. Where "the CFTC has jurisdiction, its power is exclusive." *Chi. Mercantile Exch. v. SEC*, 883 F.2d 537, 548 (7th Cir. 1989).

B. The District Court's Contrary Conclusions Are Wrong.

The district court's contrary decision prioritized extratextual policy considerations over the statutory text. There is a strong likelihood it will be reversed on appeal.

First, the court allowed Defendants to second-guess the CFTC's exercise of jurisdiction over Kalshi's contracts. But Defendants' argument that Kalshi's contracts are not true derivatives is merely a backdoor challenge to the CFTC's decision to permit them. That is a complaint with the CFTC, not Kalshi. While the Administrative Procedure Act may provide Defendants a remedy if they are aggrieved by the CFTC's regulation of Kalshi, Defendants cannot "use a collateral proceeding to end-run the procedural requirements governing appeals of administrative decisions." *Big Lagoon Rancheria v. California*, 789 F.3d 947, 953 (9th Cir. 2015) (en banc) (citation omitted). They certainly cannot circumvent the CFTC's exclusive jurisdiction by prosecuting Kalshi for offering contracts the CFTC has permitted.

That conclusion is confirmed by the limited role the CEA gives states in regulating derivatives. States may enforce the CEA against persons "*other than a contract market*." 7 U.S.C. § 13a-2(1) (emphasis added). States also may enforce their "general civil or criminal antifraud statute[s]." *Id.* § 13a-2(7). But "application of state law" may not "directly affect trading on or the operation of a" DCM. *Am. Agric.*, 977 F.2d at 1156. Otherwise, all 50 states could circumvent preemption by arguing that DCM-traded instruments they wish to regulate are not true derivatives, then prosecuting DCMs for offering them in violation of state law. The result would be competing claims by both states and the CFTC to jurisdiction over the exact same instruments, leading to the "total chaos" that Congress in the CEA sought to avoid. *Id.* (citation omitted).

Second, the court held that an "outcome" is not an "event" or "contingency" that can underlie a swap. Ex. A at 11. That is flatly wrong as a matter of plain meaning. Dictionaries in effect when Congress added "swap" in 2010 defined "event" as the "*outcome*, issue, or result of anything." *E.g.*, *Event*, Webster's Encyclopedic Unabridged Dictionary of the English Language (2d ed. 2001) (emphasis added). Alternatively, it is "something that happens." *Id.* And a contingency is "something liable to happen as an adjunct to *or result* of something else." *E.g.*, *Contingency*, Merriam-Webster's Collegiate

Dictionary (11th ed. 2003) (emphasis added). All those definitions comfortably include outcomes.

Courts agree that an "event" is "the outcome or consequence of anything." *Pub. Serv. Co. of Colo. v. Cont'l Cas. Co.*, 26 F.3d 1508, 1514 (10th Cir. 1994) (citation omitted). The CFTC, too, recognizes that event contracts "may" be based on "the results of political elections, or the outcome of particular entertainment events." 73 Fed. Reg. at 25,669. The district court's contrary rule would contravene the CFTC's view and would pose intractable interpretive difficulties. Almost any event can be reframed as an outcome, causing the CFTC's jurisdiction to rise and fall on semantics.

Third, the court concluded that events underlying swaps must be "inherently joined or connected" to financial consequences, and that Kalshi's sports contracts do not qualify. Ex. A at 12. "The fundamental problem" with this conclusion "is that the text of the [CEA] says no such thing." *Castro-Huerta*, 597 U.S. at 642. The CEA requires only that events underlying swaps be "associated with" "potential" financial consequences. 7 U.S.C. § 1a(47)(A)(ii). The court's "inherently financial" requirement is irreconcilable with the text, which requires mere "potential" financial consequences.

Besides being inconsistent with the statutory text, the district court's reading is unworkable. The court never explained what it means for an event

to be "inherently" connected to financial consequences. It stated that "a sports game might be inherently associated with a potential financial consequence" if "people pay to attend." Ex. A at 18. But even in the court's telling, the association there is not inherent, but rather contingent on the fact that people pay to attend the game. Likewise, events underlying weather derivatives have no inherent association with financial consequences. Nor would requiring an inherent association serve any purpose. Derivatives are meant to discover prices and hedge risk. It makes no difference to derivatives traders whether that risk can be characterized as "inherently" linked to an event or follows from the event as a downstream consequence. The court's distinction serves only to effectuate its extratextual carveout for Kalshi's contracts.

Fourth, setting aside whether the contracts are swaps, the district court held that Kalshi's contracts cannot be futures or options, because their underlying events are not commodities. Ex. A at 23-24. But "occurrence[s]" are "excluded commodit[ies]." 7 U.S.C. § 1a(19)(iv). "[E]xcluded commodities" "remain 'commodities' under the" CEA. *United States v. Wilkinson*, 986 F.3d 740, 745 (7th Cir. 2021). The court held that excluded commodities are not subject to the CFTC's exclusive jurisdiction because they cannot be delivered, but that is a clear error of law. The CEA speaks of "future delivery," 7 U.S.C. § 2(a)(1)(A), but "future delivery" is defined to exclude *only* deferred

commercial shipment, *id.* § 1a(27), and it has long been accepted that cash settlement qualifies as a form of future delivery. "Financial futures … are cash settled and do not entail 'delivery' to any participant." *CFTC v. Erskine*, 512 F.3d 309, 320 (6th Cir. 2008) (citation omitted). Myriad futures and options are based on undeliverable intangibles such as interest rate benchmarks, inflation, and stock indices. The court's conclusion that these contracts are not subject to CFTC jurisdiction contravenes decades of precedent and would throw derivatives markets into chaos if accepted.

Fifth, declaring "I know it when I see it," the district court justified its decision on ground that Kalshi's contracts are gambling rather than derivatives. Ex. A at 16 (quoting *Jacobellis v. State of Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring)). This conclusion contravenes the CEA's text and is ahistorical. Grain futures were once considered gambling, too. *See Dickson*, 288 U.S. at 198. In fact, virtually any derivative could be understood by a motivated state regulator as a wager on some event. Congress knew that, and it decided that derivatives traded on DCMs should be regulated by the CFTC alone, with the CFTC having the discretion to prohibit event contracts that involve "gaming" if it determines they are contrary to the public interest. *See* 7 U.S.C. § 7a-2(c)(5)(C). A blanket exclusion from the

CEA for purported gambling would eviscerate that carefully constructed regime.

Finally, the dissolution order allows Defendants to ban election contracts as well as sports contracts, but the district court entirely failed to address election contracts. The court's various conclusions directed at sports contracts do not apply to election contracts, which the D.C. District Court has already determined do not "involve" "gaming" under the Special Rule. *KalshiEX*, 2024 WL 4164694, at *8. The district court effectively nullified the D.C. District Court's ruling, allowing Defendants to regulate or prohibit the trading of contracts that are legal under federal law. This is an independent basis for a stay.

C. Treating Sports-Event Contracts As Derivatives Would Not Make All Sports Wagering Unlawful.

The district court worried that treating Kalshi's sports contracts as derivatives would require all sports wagering to take place on DCMs under Section 2(e) of the CEA. Ex. A at 17. But nothing about Kalshi's position leads to that implausible result.

The CEA preempts state law as to on-DCM trading but leaves states free to regulate off-DCM transactions like bets offered by sportsbooks. It contains a savings clause making clear that, except as provided by the grant of exclusive jurisdiction to the CFTC over *on-DCM* trading, "nothing" in the

remainder of Section 2 shall "restrict" state authorities "from carrying out their duties and responsibilities in accordance with [state] laws." 7 U.S.C. § 2(a)(1)(A); *see id.* § 16(e)(1)(B)(i) ("[n]othing" in the CEA "shall supersede or preempt" state law applied to off-exchange transactions). That leaves states free to regulate traditional sportsbooks.

Nor does it follow that if Kalshi's contracts are derivatives, run-of-the-mill sports bets are, too. The CFTC has explained that derivatives such as swaps, unlike sports bets, are "*traded* on organized markets and over the counter." Further Definition of "Swap," 77 Fed. Reg. 48,208, 48,217 (Aug. 13, 2012) (emphasis added). But "consumer and commercial transactions" that "are not traded on an organized market or over-the-counter"—such as sports bets—are not swaps. *Id.* at 48,247. Courts agree. *See Erskine*, 512 F.3d at 323-324 (distinguishing futures, which are "standardized," "fungible," and "traded on an exchange," from forwards, which are not (citation omitted)). Sports bets are also subject to state gambling regulation, unlike swaps, which are subject to federal regulation. The CFTC distinguishes insurance contracts from swaps on similar grounds—*i.e.*, they are "not traded" and are "regulated as insurance under applicable state law." 77 Fed. Reg. at 48,212-13. Sports bets thus are not subject to the CEA's exchange-trading requirement.

Congress, moreover, has recognized that derivatives traded on DCMs may have attributes that resemble gambling, and it intended the CFTC to regulate them while allowing the states to regulate off-DCM trading. In the Unlawful Internet Gambling Enforcement Act of 2006 ("UIGEA"), Congress generally adopted state-law definitions of "bet or wager" but expressly provided that "bet or wager" "*does not include*" "any transaction conducted on or subject to the rules of a" DCM. 31 U.S.C. § 5362(1)(E)(ii) (emphasis added). UIGEA confirms Congress's judgment that on-DCM transactions should be regulated by the CFTC, with off-DCM transactions regulated by states.

II. KALSHI WILL SUFFER IRREPARABLE HARM ABSENT A STAY.

Permitting Defendants to exclude Kalshi from operating in Nevada would subject Kalshi to catastrophic harms. It would impose huge irreparable costs on Kalshi, harm Kalshi's users, deprive Kalshi of the benefit of its preliminary injunction in New Jersey, and jeopardize its CFTC approval. In initially granting the preliminary injunction, the district court correctly found that Kalshi was likely to suffer irreparable harm absent relief. Ex. C at 14-15. It did not reverse that finding when it dissolved the injunction.

Absent a stay, Kalshi faces a "Hobson's choice" of "violat[ing]" state law and "expos[ing]" itself "to potentially huge liability," or "suffer[ing] the

injury of obeying the law during the pendency of the proceedings and any further review." *Morales v. Trans. World Airlines, Inc.*, 504 U.S. 374, 382 (1992). If Kalshi does not comply with Defendants' demand to cease offering event contracts in Nevada, the "credible threat of prosecution" under preempted state statutes constitutes "irreparable harm." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). And if Kalshi does seek to comply, it will be subjected to a host of other irreparable harms.

First, to cease offering event contracts in Nevada would require Kalshi to implement geofencing capabilities it lacks. Doing so would take months and cost Kalshi tens of millions of dollars in annual costs. Ex. C at 15; Ex. D ¶ 21. The district court acknowledged that Kalshi "may not be able to recover damages from the defendants" to recoup those costs even if it prevails. Ex. A at 25. Although "the loss of money is not typically considered irreparable harm, that changes if the funds 'cannot be recouped.'" *Nat'l Insts. of Health v. Am. Pub. Health Ass'n*, 145 S. Ct. 2658, 2659 (2025) (per curiam) (citation omitted).

Second, abruptly terminating trading for users in Nevada would subject Kalshi and its users—both traders in Nevada and their counterparties in other states—to additional irreparable harms. Closing out existing positions would impose potentially significant financial harm on Kalshi to make those

users whole, and would potentially subject Kalshi to liability for violating contractual obligations to users. Ex. F ¶ 28. And it would certainly harm Kalshi's reputation, not only with its users, but with its partners who give their own users access to trade Kalshi's contracts, leading both to take their business elsewhere. *Id.* ¶¶ 28-29; *see also Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 838 (9th Cir. 2001) ("harm to … business reputation and goodwill" is "irreparable"). Again, in granting the preliminary injunction, the court acknowledged the likelihood of these "substantial economic and reputational harm[s]," Ex. C at 15, and it made no contrary findings in dissolving the injunction. Because unwinding these trades would affect counterparties outside of Nevada, these same harms extend to users in other states, including New Jersey, where Kalshi has obtained a preliminary injunction.

Third, compliance with Nevada law would require Kalshi to contravene its federal obligations. Immediately cutting off Nevada traders would violate Kalshi's obligation to provide "impartial access" to its exchange, 17 C.F.R. § 38.151(b); facilitate "manipulation, price distortion, and disruptions," *id.* § 38.250; undermine "the price discovery process," *id.* § 38.500; and compromise the "financial integrity" of trading, *id.* § 38.602—all violations of CFTC Core Principles. Even if Kalshi sought to obtain a Nevada gaming

license, Nevada allows sports bets only by persons physically located in Nevada or specified other states. NCGB, *Regulation 22: Race Books and Sports Pools* 14-16 (Nov. 2024), https://perma.cc/TLH7-MBLV. Other states impose similar requirements. It would be flatly impossible for Kalshi to operate a nationwide exchange and comply with its impartial-access obligations while adhering to such state-by-state requirements.

While the court originally found that Kalshi faced "the potential existential threat of the CFTC taking action against it" if it "geographically limits who can enter contracts on what is supposed to be a national exchange," Ex. C at 15, it reversed course in dissolving the injunction, citing a non-enforcement agreement Crypto.com has reached with Defendants as evidence that the CFTC would not act against Kalshi for temporarily cutting off access in Nevada. Ex. A at 25. But Crypto.com's agreement went into effect during a government shutdown. *See* Notice, ECF No. 110, *Crypto*, No. 2:25-cv-978 (D. Nev. Oct. 24, 2025). The CFTC's forbearance (so far) is hardly probative of its position on Crypto.com's agreement, much less of what it would do if Kalshi were to cease offering contracts in Nevada.

III. THE EQUITIES STRONGLY FAVOR A STAY.

The irreparable harms Kalshi will suffer absent a stay far outweigh any harms Defendants or the public would suffer if a stay were granted. The

public interest supports a stay because "preventing a violation of the Supremacy Clause serves the public interest." *United States v. California*, 921 F.3d 865, 893-894 (9th Cir. 2019). The public interest also cuts against forcing Kalshi's users (both in and out of Nevada) out of their position midstream, particularly given that these users relied on the preliminary injunction, which has been in place since April.

On the other hand, Defendants' actions undermine any assertion that they face irreparable harm. They did not appeal the injunction when it was issued in April. *Cf. Garcia v. Google, Inc.*, 786 F.3d 733, 746 (9th Cir. 2015) ("long delay before seeking" relief "implies a lack of urgency and irreparable harm" (citation omitted)). Meanwhile, they have allowed Crypto.com to restrict only Nevada's 3 million residents from trading event contracts—while approximately *50 million* annual out-of-state visitors to Nevada[3] remain able to trade Crypto.com's event contracts. *See* Ex. E ¶¶ 10-14. If event contracts expose casinos—which are tourist attractions—to unfair competition, the Crypto.com agreement does very little to mitigate that.

[3] *Tourism in Nevada Means a Thriving Economy*, Travel Nevada Industry Partners (2025), https://perma.cc/Q2F2-2YAM; *Nevada Continued Double-Digit Population Growth*, U.S. Census Bureau: NEVADA 2020 Census (Aug. 25, 2021), https://perma.cc/KK26-DRSH.

The court noted "the State of Nevada's financial interests in tax revenues." Ex. A at 25. But Nevada sportsbook revenue has been "surg[ing]" even after Kalshi began offering sports contracts.[4] Regardless, if the Court grants a stay and Defendants ultimately prevail, Defendants have conceded they can bring an action to recover profits Kalshi generated from its business in Nevada. *See* Nev. Rev. Stat. § 463.360(3), as amended by S.B. 256, 83rd Sess. (Nev. 2025). Unlike Kalshi, Defendants face no threat of serious irreparable financial harm.

The court found that Defendants "have strong interests in regulating gaming in Nevada." Ex. A at 26. But preemption applies no matter how "clearly within a State's acknowledged power" the state's law resides. *Free v. Bland*, 369 U.S. 663, 666 (1962). If Kalshi is right, the state's asserted interest in regulating gaming cannot justify ignoring federal law. Nor did Defendants or the court identify any negative consequences that have resulted or will result from Kalshi's operation in Nevada subject to CFTC oversight. Kalshi is subject to "rigorous regulations and oversight"—just from the CFTC, not Defendants. Ex. A at 26-27. And Kalshi has imposed additional consumer protection measures, such as allowing users to self-exclude from

[4] *See* Chris Altruda, *Football Keys October Surge in Nevada Sportsbook Revenue*, In Game (Nov. 25, 2025), https://perma.cc/8JFH-FGB4.

trading, take trading breaks, and set personal funding caps that limit deposits to Kalshi. Ex. F ¶ 11. Though Kalshi has been offering election contracts since June 2023 and sports contracts since January, Ex. C at 8-9, Defendants proffered no evidence that any Kalshi users in Nevada have suffered any harm from trading on Kalshi.

CONCLUSION

The Court should stay the dissolution order pending appeal.

Date: December 17, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Ninth Circuit Rules 27-1 and 32-3 because it contains 5600 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 27(a)(2)(B) and 32(f). This brief also complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Georgia font 14-point type face.

Date: December 17, 2025

/s/ Neal Kumar Katyal
Neal Kumar Katyal

CERTIFICATE OF SERVICE

I hereby certify that, on December 17, 2025, I caused the foregoing to be electronically filed with the Clerk of the United States Court of Appeals for the Ninth Circuit by using the ACMS system.

Date: December 17, 2025

/s/ Neal Kumar Katyal
Neal Kumar Katyal

INDEX OF EXHIBITS

Exhibit	Document Description
A	Dkt. 237 – Order Granting Motion to Dissolve Preliminary Injunction
B	Dkt. 1-2 – NGCB Letter to Kalshi
C	Dkt. 45 – Order Denying TRO and Granting Preliminary Injunction
D	Dkt. 18-1 – March 28, 2025 Declaration of Xavier Sottile
E	Dkt. 239-1 – Declaration of Andrew Porter
F	Dkt. 183-4 – October 31, 2025 Declaration of Xavier Sottile
G	Excerpt of November 14, 2025 Hearing Transcript
H	Dkt. 183-2 – KalshiEX LLC March 3, 2025 Letter to U.S. Commodity Futures Trading Commission – FILED UNDER SEAL
I	Dkt. 183-3 – Confidential March 3, 2025 Memorandum – FILED UNDER SEAL