

No. 25-7516

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KALSHIEX, LLC,
Plaintiff-Appellant,

v.

KIRK D. HENDRICK; GEORGE ASSAD; CHANDENI K. SENDALL,
Deputy City Attorney; NEVADA GAMING CONTROL BOARD;
JENNIFER TOGLIATTI; ROSA SOLIS-RAINEY; BRIAN KROLICKI;
GEORGE MARKANTONIS; ABBI SILVER; AARON D. FORD;
NEVADA GAMING COMMISSION,
Defendants-Appellees,

NEVADA RESORT ASSOCIATION,
Intervenor-Defendant-Appellee.

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

**STATE DEFENDANTS' OPPOSITION TO
KALSHI'S MOTION FOR AN ADMINISTRATIVE STAY**

Nicole A. Saharsky
Minh Nguyen-Dang
Matthew Bisanz
MAYER BROWN LLP
1999 K Street NW
Washington, DC 20006
(202) 263-3220

Rory K. Schneider
Alexander S. Mendelson
MAYER BROWN LLP
1221 Avenue of the Americas
New York, NY 10020
(212) 506-2500

Aaron D. Ford
Attorney General of Nevada
Heidi Parry Stern
Solicitor General
Jessica E. Whelan
Chief Deputy Solicitor General—
Litigation
Sabrena K. Clinton
Abigail L. Pace
State of Nevada,
Office of the Attorney General
1 State of Nevada Way, Suite 100
Las Vegas, NV 89119
(702) 486-3420

(additional counsel on inside cover)

(continued from front cover)

Preston R. Michelson
MAYER BROWN LLP
71 S. Wacker Drive
Chicago, IL 60606
(312) 782-0600

TABLE OF CONTENTS

	Page
INTRODUCTION.....	1
BACKGROUND	3
LEGAL STANDARD	12
ARGUMENT.....	13
A. Granting Administrative Relief Would Upend the Status Quo.....	13
B. Kalshi's Aggressive and Reckless Expansion Undermines Any Claim to Equitable Relief	17
C. The Balance of Harms Favors State Defendants	21
CONCLUSION	26

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Ah Sin v. Wittman</i> , 198 U.S. 500 (1905).....	14
<i>Al Otro Lado v. Wolf</i> , 952 F.3d 999 (9th Cir. 2020).....	21
<i>Am. Fed'n of Gov't Emps., AFL-CIO v. U.S. Off. of Pers. Mgmt.</i> , 2025 WL 835337 (9th Cir. Mar. 17, 2025).....	14
<i>Arc of Cal. v. Douglas</i> , 757 F.3d 975 (9th Cir. 2014).....	25
<i>Doe #1 v. Trump</i> , 944 F.3d 1222 (9th Cir. 2019).....	12, 13
<i>Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.</i> , 82 F.4th 664 (9th Cir. 2023)	15, 16
<i>Flathead-Lolo-Bitterroot Citizen Task Force v. Montana</i> , 98 F.4th 1180 (9th Cir. 2024)	12, 14
<i>Flynt v. Bonta</i> , 131 F.4th 918 (9th Cir. 2025)	14
<i>GoTo.com, Inc. v. Walt Disney Co.</i> , 202 F.3d 1199 (9th Cir. 2000).....	15
<i>Hubbard v. City of San Diego</i> , 139 F.4th 843 (9th Cir. 2025)	15, 16
<i>John Doe Co. v. CFPB</i> , 235 F. Supp. 3d 194 (D.D.C. 2017)	22
<i>Murphy v. NCAA</i> , 584 U.S. 453 (2018).....	14

TABLE OF AUTHORITIES
(continued)

Cases (continued)	Page(s)
<i>N. Am. Derivatives Exch., Inc. v. Nevada Gaming Control Bd.</i> , 2025 WL 2916151 (D. Nev. Oct. 14, 2025)	19
<i>Nat'l Urban League v. Ross</i> , 977 F.3d 698 (9th Cir. 2020).....	12
<i>Nken v. Holder</i> , 556 U.S. 418 (2009).....	13
<i>Robinhood Derivatives LLC v. Dreitzer</i> , 2025 WL 3283308 (D. Nev. Nov. 25, 2025).....	19
<i>United States v. Texas</i> , 144 S. Ct. 797 (2024).....	12, 21
Statutes and Regulations	
17 C.F.R. § 40.11(a)	16, 21, 25
NRS § 463.0129(1)(a).....	3
NRS § 463.0129(1)(b).....	3
NRS § 463.0129(1)(c)	3, 4, 20
NRS § 463.140	20
NRS § 463.160(1)	3
NRS § 463.170	3
NRS § 463.0193	4
NRS § 463.343(1)	4, 20
NRS § 463.350(1)(a).....	4, 25
NRS § 463.1405(1)	3

TABLE OF AUTHORITIES
(continued)

Statutes and Regulations (continued)	Page(s)
NRS § 463.01962	4
Nev. Gaming Reg. 22.1205.....	4
Nev. Gaming Reg. 22.1205(2).....	4
Nev. Gaming Reg. 5.170.....	4
Nev. Gaming Reg. 5.225(18)(a)	25
Nev. Gaming Reg. 5.225(18)(b)	25
Other Authorities	
@vegasstarfish, <i>Kalshi Taking Over Las Vegas</i> , YouTube (Feb. 5, 2026).....	9
Anna Betts, <i>Prediction Market Kalshi Reached \$1bn in Trading Volume During Super Bowl</i> , <i>Guardian</i> (Feb. 10, 2026)	10
Ira Boudway & Denitsa Tsekova, <i>Kalshi Downloads Zoom Past Gambling Apps Ahead of Super Bowl</i> , <i>Bloomberg Law</i> (Feb. 5, 2026).....	9
CNBC, <i>Kalshi CEO Tarek Mansour on Super Bowl Trades</i> (Feb. 10, 2026).....	25
Collins J. Okoth, <i>Prediction Markets Smash Daily Records as Kalshi Claims 66.4% Share of \$700M Volume</i> , <i>Cryptopolitan</i> (Jan. 14, 2026).....	20
Dustin Gouker, <i>The Handle: Inside Kalshi's First \$10 Billion Month</i> , The Closing Line (Feb. 10, 2026).....	10
Dustin Gouker, <i>Kalshi Now Lets You Bet on Dozens of International Soccer and Basketball Leagues</i> , <i>Event Horizon</i> (Jan. 26, 2026).....	8
Kalshi, <i>Member Agreement</i> (Oct. 12, 2025).....	23

TABLE OF AUTHORITIES
(continued)

Other Authorities (continued)	Page(s)
Sam Learner, <i>Prediction Markets Barely Make Money; Sportsbooks Make Money</i> , Fin. Times (Dec. 19, 2025).....	4
Sam McQuillan, <i>Super Bowl Betting Results Mask Game's Real Financial Story</i> , Legal Sports Report (Feb. 10, 2026)	10
Michael J. de la Merced, <i>Kalshi, a Prediction Market, Raises \$1 Billion in a New Round</i> , N.Y. Times (Dec. 2, 2025).....	10
Nev. Resort Ass'n, <i>2025 Nevada Gaming Fact Book</i> (2025).....	3
Marc Novicoff, <i>The Company Making a Mockery of State Gambling Bans</i> , Atlantic (Oct. 26, 2025).....	5
Nicola M. White, <i>Sports App Sleeper to Partner With Kalshi on Prediction Markets</i> , Bloomberg Law (Feb. 6, 2026)	8

INTRODUCTION

Kalshi has filed a motion for what it calls an “administrative stay.” But what Kalshi really seeks is an injunction barring State Defendants from enforcing state law, so that it may continue expanding its unlicensed gambling business. This Court should deny that relief.

After the district court denied Kalshi’s motion for an injunction pending appeal, Kalshi filed that motion in this Court. State Defendants temporarily agreed to forgo enforcement, to allow this Court time to rule. But in the meantime, Kalshi has massively and aggressively expanded its business. Then Kalshi told the district court that it will not stop operating in Nevada—no matter how this Court rules in this appeal—until State Defendants bring a state enforcement proceeding.

To State Defendants’ knowledge, none of Kalshi’s unlicensed competitors or partners currently are operating in Nevada, as State Defendants have secured either voluntary agreements to restrict operations or restraining orders against all of them. The result is that Kalshi is, to State Defendants’ knowledge, the only prediction market that continues to operate in Nevada without restriction. State Defendants can no longer stand by while Kalshi causes continued irreparable harm to the State, its gaming industry, and the public. State Defendants accordingly notified the Court of their intention to move forward with enforcement.

Kalshi's new motion seeks relief that—while termed an administrative stay—is in fact an injunction pending appeal. As State Defendants explained in their opposition to Kalshi's initial motion, Kalshi has not come close to justifying an injunction pending appeal. And Kalshi has not justified an administrative stay, either. An administrative stay is intended to preserve the status quo. But as this Court has repeatedly held, the status quo is the last uncontested status before the litigation—meaning State Defendants' regular enforcement of state law, before Kalshi refused to comply with that law. Kalshi's motion is really a request to allow it to continue expanding its business, with an unfair advantage over licensed competitors and competitors that have agreed to stand down pending appeal.

Kalshi barely engages with the legal standard for administrative relief. It instead complains that State Defendants have reneged on an agreement not to enforce. Not only is that irrelevant to the standard for administrative relief, but it also is wrong: State Defendants stated they would not immediately bring an enforcement action out of deference to this Court, not because they entered into some kind of contract with Kalshi. And rather than take any immediate action, State Defendants gave seven days' notice of their intent to enforce, to afford additional time to the Court. State Defendants have acted reasonably here; Kalshi has not.

Kalshi's remaining arguments are make-weight. It repeats its arguments about its supposed irreparable harm, all of which the district court

thoroughly considered and rejected. It cannot claim that merely being subject to a state proceeding is an irreparable harm, when it can raise any defense—and when it already has been enjoined by a state court in Massachusetts. And Kalshi has no answer to the fact (now found by three courts) that every day it continues operating irreparably harms the State, the gaming industry, and the public. The Court should deny the motion.

BACKGROUND

1. Nevada comprehensively regulates gaming. “The gaming industry is vitally important to the economy of the State and the general welfare of the inhabitants.” NRS § 463.0129(1)(a). The gaming industry contributes over \$2 billion in taxes—over one-third of Nevada’s general fund—which pays for essential services across the State, including schools, roads, and public utilities. Nev. Resort Ass’n, *2025 Nevada Gaming Fact Book 2* (2025), perma.cc/NRH9-5NGV.

The “continued growth and success” of the gaming industry “is dependent upon public confidence and trust,” which “can only be maintained by strict regulation” of all gaming activities in Nevada. NRS § 463.0129(1)(b)-(c). Nevada law imposes stringent licensing requirements on all gaming operators. *Id.* § 463.160(1). The Nevada Gaming Control Board (Board) thoroughly investigates each applicant’s background to ensure that it is competent to conduct gaming, is financially sound, and is not connected to criminal activity. *Id.* §§ 463.170, 463.1405(1).

Many provisions of Nevada gaming law protect the public. Only people who are at least 21 years old may gamble. NRS § 463.350(1)(a). Licensees must allow patrons to set betting limits, conspicuously display information about responsible-gaming resources, train employees to identify signs of problem gaming, and refrain from marketing to customers who have excluded themselves. Nev. Gaming Reg. 5.170.

Nevada specifically regulates sports and event betting. State law permits wagering on organized sports events (*i.e.*, operating “sports pools”), NRS §§ 463.0193, 463.01962, but not on elections or events that lack effective supervision, Nev. Gaming Reg. 22.1205. Among other things, Nevada requires licensees to verify that insiders (such as players or coaches) do not wager on their own events. *Id.* at 22.1205(2).

State Defendants are charged with enforcing Nevada gaming law against “all persons” involved in gaming. NRS § 463.0129(1)(c). To stop unlawful gaming in Nevada, the Board is authorized to bring a civil action in state court. *Id.* § 463.343(1). Such an action must be brought in the district court for Carson City, Nevada, or the place where the company does business. *Id.*

2. Kalshi offers “event contracts” on sports and other events. 2-ER-110 (¶¶ 42-44). Ninety-five percent of its revenues are from sports contracts. Sam Learner, *Prediction Markets Barely Make Money; Sportsbooks Make Money*, Fin. Times (Dec. 19, 2025), perma.cc/CB9N-SN6P.

As the district court found, these products “are sports wagers and everyone who sees them knows it.” Dkt. 17.2, at 17. Kalshi offers the full range of sports bets, including bets on the winners and losers of games, “prop” bets on outcomes within a game (such as the winning margin or total number of points scored), and “parlays” (chained bets on two or more outcomes). Marc Novicoff, *The Company Making a Mockery of State Gambling Bans*, Atlantic (Oct. 26, 2025), perma.cc/8TAG-NJSJ. Kalshi’s offerings thus are indistinguishable from those of traditional sportsbooks.

Kalshi does not deny that it offers sports betting. Indeed, it advertises that it offers “legal sports betting in all 50 states.” 1-StateSER-10. Kalshi asserts that because it offers its sports betting on a market registered with the Commodity Futures Trading Commission (CFTC), it can only be regulated by the CFTC, and not by any State. 2-ER-114 (¶ 67). Kalshi sued State Defendants to enjoin them from enforcing Nevada gaming law against it. 2-ER-115-16.

3. After initially granting a preliminary injunction on an expedited basis, the district court dissolved that injunction, finding that Kalshi has no likelihood of success on the merits and that the equities do not tip in Kalshi’s favor. Dkt. 17.2, at 2, 25. The court held that Kalshi’s preemption argument fails at the outset because its contracts are not commodity derivatives (swaps, options, or futures) within the “exclusive jurisdiction” of the CFTC.

Id. at 12. The court explained that Kalshi’s argument “has no limiting principle” and would lead to the “absurd” result that “all sports betting across the country [would] come within the jurisdiction of the CFTC rather than the states and Indian tribes.” *Id.* at 2, 20.

The district court determined that “the balance of hardships tips in favor of the Board, and the public interest favors dissolving the injunction.” Dkt. 17.2, at 6. Kalshi’s claimed harms “are largely monetary” (“essentially that it will not be able to profit from [its] trades”), and Kalshi “created or amplified” those harms by “greatly expand[ing]” its business instead of “proceed[ing] cautiously until this and other lawsuits played out.” *Id.* at 26-27.

State Defendants, in contrast, face “substantial” and “irreparable” harms that “weigh heavily” against Kalshi’s asserted harms. Dkt. 17.2, at 27-29. Kalshi’s continued operation deprives Nevada of needed revenue, gives Kalshi an unfair advantage over its licensed competitors, and harms the public. *Id.*

Kalshi appealed. Dkt. 1.

4. Kalshi asked the district court for an injunction pending appeal. D. Ct. Dkt. 238. After full briefing, the district court denied Kalshi’s motion “for the reasons articulated in [its] order dissolving the preliminary injunction.” D. Ct. Dkt. 258, at 1. Thus, no court order prevents State Defendants from commencing a state enforcement action against Kalshi.

5. Kalshi is not the only company in litigation with State Defendants about sports contracts. But it is the only one that has refused to take any steps to comply with Nevada gaming law pending appeal. Crypto.com and Robinhood both agreed to limit their operations in Nevada to avoid state enforcement actions pending appeal: Crypto.com has ceased offering sports contracts to Nevada residents, and Robinhood agreed to stop offering sports contracts in Nevada pending a decision on its motion for an injunction pending appeal. *See* Dkt. 23.1, at 27. State Defendants offered to work out a similar deal with Kalshi, but Kalshi summarily rejected any attempt at compromise. *See id.* at 33.

Instead, Kalshi filed a motion in this Court, seeking an injunction to prevent State Defendants from enforcing state law so that it can continue to profit from unlicensed sports betting. Dkt. 17.1. In order to give this Court time to rule on Kalshi's motion (without having to issue an administrative stay), State Defendants agreed not to bring a state enforcement proceeding against Kalshi while the motion was pending. *Id.* at 17. The parties briefed the motion on an expedited basis, and it was fully briefed by January 5, 2026. *See* Dkt. 28.1. On January 27, 2026, the Court referred the motion to the merits panel. Dkt. 42.

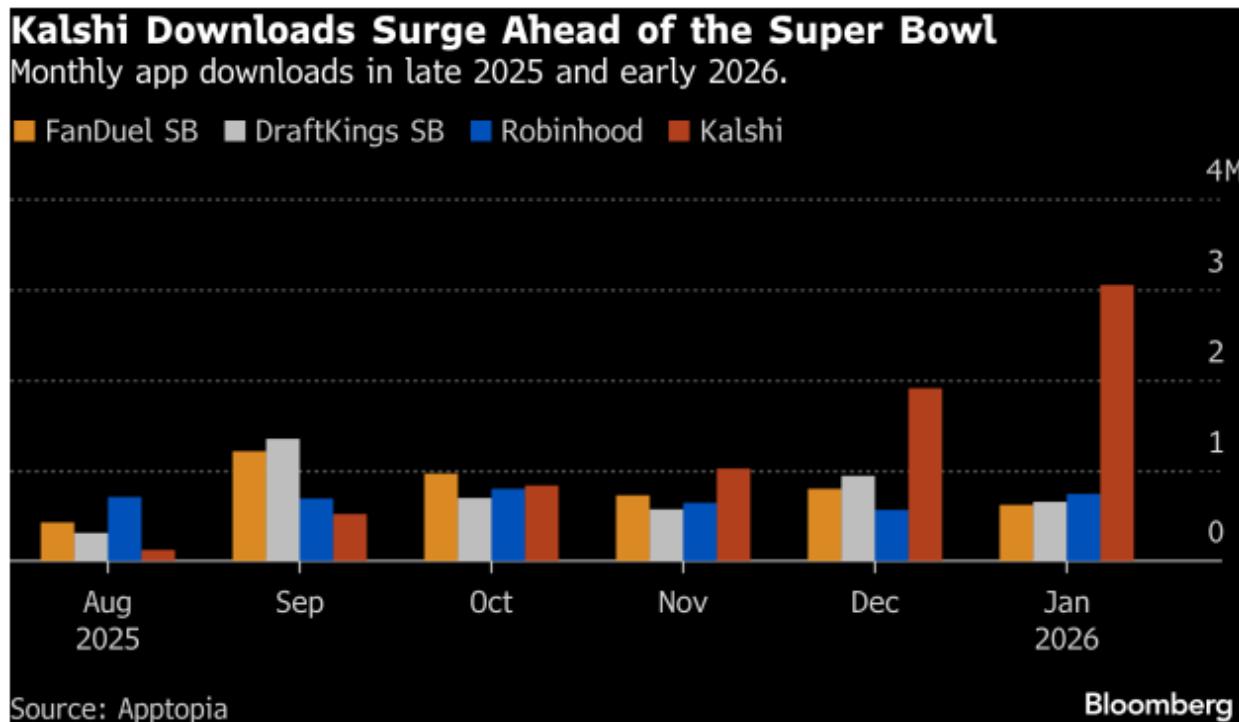
6. Rather than proceed with any sort of caution, Kalshi took full advantage of State Defendants' reasonableness to dramatically expand its

business. It started offering bets on even more sports events, including amateur soccer in Spain and the Japanese basketball B League. *See* Dustin Gouker, *Kalshi Now Lets You Bet on Dozens of International Soccer and Basketball Leagues*, Event Horizon (Jan. 26, 2026), perma.cc/448F-B2QL. It partnered with a fantasy sports app, Sleeper, to offer sports contracts on Sleeper's platform. *See* Nicola M. White, *Sports App Sleeper to Partner With Kalshi on Prediction Markets*, Bloomberg Law (Feb. 6, 2026), perma.cc/W9YY-UP4T. And it expanded its marketing push, including by taking out an enormous billboard on the Las Vegas Strip to encourage betting on its platform for the Super Bowl:



@vegasstarfish, *Kalshi Taking Over Las Vegas*, YouTube (Feb. 5, 2026), bit.ly/4ku6iGb (@vegasstarfish, *Taking Over*).

Kalshi's efforts led to a surge in users and trading volumes. In January, Kalshi's app was downloaded over 3 million times—more than for both DraftKings and FanDuel combined. *See* Ira Boudway & Denitsa Tsekova, *Kalshi Downloads Zoom Past Gambling Apps Ahead of Super Bowl*, Bloomberg Law (Feb. 5, 2026), perma.cc/U2AF-ND5U. “[N]o other sportsbook app” has ever reached “[t]hree million downloads in a single month.” *Id.* (internal quotation marks omitted). The following chart shows how downloads of Kalshi's app have eclipsed competitors:



Id.

Kalshi's 30-day volume has hit over \$10 billion in wagers. Dustin Gouker, *The Handle: Inside Kalshi's First \$10 Billion Month*, The Closing Line (Feb. 10, 2026), perma.cc/E4G5-6XLZ. That is nearly *double* its volume in November 2025, when the district court dissolved the preliminary injunction. Michael J. de la Merced, *Kalshi, a Prediction Market, Raises \$1 Billion in a New Round*, N.Y. Times (Dec. 2, 2025), perma.cc/4SC5-B5NZ.

Kalshi reported over \$1 billion in wagers on Super Bowl Sunday alone—over 27 times more than it reported for the Super Bowl in 2025. Anna Betts, *Prediction Market Kalshi Reached \$1bn in Trading Volume During Super Bowl*, Guardian (Feb. 10, 2026), perma.cc/KDU4-ER7R. Over \$100 million was wagered on one question—what song would be performed first at the halftime show. *Id.* In contrast, betting volumes on the Super Bowl at Nevada's regulated sportsbooks declined nearly 15% from 2025, hitting a ten-year low. Sam McQuillan, *Super Bowl Betting Results Mask Game's Real Financial Story*, Legal Sports Report (Feb. 10, 2026), perma.cc/83KN-RQHC. So Kalshi has expanded its unlicensed gambling business, to the detriment of competitors that follow the rules.

In further proceedings in district court, Kalshi told the court that it will not stop operating in Nevada—no matter what this Court says in this appeal—until State Defendants bring a state-court enforcement action. 1-StateSER-5-6.

7. In the meantime, State Defendants continued to enforce Nevada gaming law against other companies offering unlicensed sports betting in the State.

On January 16, 2026, the Board filed a civil enforcement action against Polymarket to stop its unlicensed operations in Nevada. After receiving Polymarket’s preliminary response, the court granted a temporary restraining order (TRO), finding that Polymarket likely is offering illegal sports betting in Nevada, that it is unlikely to prevail on its federal preemption defense, and that the equities favor a TRO. *See Order at 1, Nevada v. Blockratize, Inc.*, No. 26-OC-00012-1B (Nev. 1st Jud. Dist. Jan. 29, 2026) (Polymarket TRO). The court explained that “[e]very day” matters “in a literal sense”: “[A] day means more consumers. More consumers mean more transactions. More transactions mean more potential harm.” *Id.* at 7.

The Board also filed a civil enforcement proceeding and secured a TRO against Coinbase to stop its unlicensed operations in the State. *See Order at 1, Nevada v. Coinbase Fin. Mkts., Inc.*, No. 26-OC-00030-1B (Nev. 1st Jud. Dist. Feb. 5, 2026) (Coinbase TRO). The state court similarly concluded that the Board is likely to succeed in showing that Coinbase violates Nevada gaming law, and that the immediate, serious, and irreparable harm from unlicensed gaming warrants an immediate restraining order. *Id.* at 3-7.

As a result of these developments, Kalshi is (to State Defendants' knowledge) the only prediction market operating without restriction in Nevada.

8. On February 10, 2026, State Defendants filed a notice of their intent to bring a civil enforcement proceeding against Kalshi, explaining that they can no longer voluntarily forgo enforcement in light of the increasing harms Kalshi is causing and their statutory obligation to evenhandedly enforce the gaming laws. Dkt. 60.1.

LEGAL STANDARD

Administrative stays are meant to “freeze legal proceedings” before “a ruling on the motion for a stay pending appeal.” *United States v. Texas*, 144 S. Ct. 797, 799 (2024) (Barrett, J., concurring) (internal quotation marks omitted). They should be granted “only” if necessary “to preserve the status quo.” *Doe #1 v. Trump*, 944 F.3d 1222, 1223 (9th Cir. 2019); *see Nat'l Urban League v. Ross*, 977 F.3d 698, 701 (9th Cir. 2020). Importantly, the status quo is not the current situation (Kalshi’s unlicensed operations) but “the last uncontested status which preceded the pending controversy”—meaning State Defendants’ regular enforcement of state law, before Kalshi claimed it does not have to comply with that law. *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1191 (9th Cir. 2024) (internal quotation marks omitted).

ARGUMENT

Kalshi is not seeking an administrative “stay.” A stay suspends “the source of authority to act—the order or judgment in question.” *Nken v. Holder*, 556 U.S. 418, 428-29 (2009). Here, there is no order or judgment to “stay”—the district court has dissolved the preliminary injunction, so no order prevents State Defendants from enforcing state law. Dkt. 17.2, at 30.

What Kalshi actually seeks is an “injunction”—relief that would “grant[] judicial intervention that has been withheld by lower courts.” *Nken*, 556 U.S. at 429 (internal quotation marks omitted). And Kalshi conspicuously does not put any time limit on that “administrative” injunction—instead, it seeks the injunction for the duration of the appeal. State Defendants are not aware of any instance in which a court granted “administrative” relief enjoining a State from enforcing a presumptively valid law for the duration of the appeal, so that a private business could continue profiting from violating that law. The Court should not be the first.

A. Granting Administrative Relief Would Upend the Status Quo

Granting Kalshi administrative relief would not “preserve the status quo.” *Doe #1*, 944 F.3d at 1223. It would do precisely the opposite.

Kalshi offers sports wagers, and “everyone who seems them knows it”—including Kalshi, which has advertised itself as offering “legal sports betting in all 50 states.” Dkt. 17.2, at 17 (internal quotation marks omitted).

But Kalshi’s operations are not legal in Nevada because it has not complied with Nevada law.

Since the Founding, the regulation of gambling has been the prerogative of the States. *Flynt v. Bonta*, 131 F.4th 918, 932 (9th Cir. 2025); *see Ah Sin v. Wittman*, 198 U.S. 500, 505-06 (1905). That includes sports betting, which Nevada has regulated for decades. *See Murphy v. NCAA*, 584 U.S. 453, 461-62 (2018); Dkt. 17.2, at 29.

Thus, the status quo is State Defendants enforcing Nevada’s gaming laws against anyone who offers unlicensed gambling—including sports betting—within its borders. Granting “administrative” relief to prevent State Defendants from filing an enforcement action against a self-admitted unlicensed sports-betting company “would disrupt the status quo and turn it on its head.” *Am. Fed’n of Gov’t Emps., AFL-CIO v. U.S. Off. of Pers. Mgmt.*, 2025 WL 835337, at *1 (9th Cir. Mar. 17, 2025).

Kalshi argues (Mot. 17-18) that the status quo is not the decades in which State Defendants enforced state gaming laws, but instead the time period during this litigation, when it has massively expanded its business. This Court has long rejected that framing: The relevant status quo is “the last uncontested status which preceded the pending controversy,” not the situation immediately before the stay motion is filed. *Flathead*, 98 F.4th at 1191 (internal quotation marks omitted). A party cannot disrupt a settled legal regime and then point to its own disruption as the “status quo” that

should be maintained while litigation proceeds. *See Hubbard v. City of San Diego*, 139 F.4th 843, 853 n.10 (9th Cir. 2025).

This Court has repeatedly made this point, in many different contexts. In *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199 (9th Cir. 2000), for example, the plaintiff sued the defendant for trademark infringement, arguing that the defendant's logo was confusingly similar to its own, and obtained a preliminary injunction enjoining the defendant from using the logo during the lawsuit. *Id.* at 1203-04. On appeal, the defendant argued that the preliminary injunction upset the status quo because it had been using the logo before suit was filed. *Id.* at 1210. The Court rejected that argument, explaining that the status quo was the period "before [the defendant] began using its allegedly infringing logo." *Id.* The defendant's argument about when the status quo was—basically the same argument Kalshi makes here—"mischaracterizes [the] concept" of the status quo and "would lead to absurd situations" if accepted. *Id.*

The Court made essentially the same point in *Fellowship of Christian Athletes v. San Jose Unified School District Board of Education*, 82 F.4th 664 (9th Cir. 2023) (en banc). The defendant school district had stripped a student club of its official recognition and then argued that the club's newly diminished status was the "status quo," because that was the state of affairs when the lawsuit was filed. *Id.* at 684. This Court disagreed: The status

quo was the nearly twenty years the club had been recognized without incident, and it was the district (not the club), that “affirmatively changed” that status quo. *Id.* at 685. Similarly, in *Hubbard*, the city of San Diego adopted an ordinance making it unlawful to teach yoga to four or more people on a city beach. 139 F.4th at 848. When the yoga teachers sued, the city insisted the status quo was the ordinance already being in effect. *Id.* at 853 n.10. This Court disagreed: The relevant status quo was the legal landscape *before* the city changed the law to ban the yoga teaching. *Id.*

These decisions foreclose administrative relief here. For decades, the norm has been for State Defendants to enforce Nevada’s gaming laws against those that offer unlicensed gaming within the State’s borders. In January 2025, Kalshi sought to disrupt that status quo by offering sports wagering without a license, on the novel and untested theory that the Commodity Exchange Act preempts state gaming regulation of sports wagers. *See* 2-ER-114-15 (¶¶ 64-70). This was a new position *even for Kalshi*—it operated its market for over five years without offering sports wagers, 2-ER-110 (¶ 42), and as recently as November 2024, it told the D.C. Circuit that it could *not* offer sports wagers as a matter of federal law, *see* Kalshi Br. at 45, *KalshiEX LLC v. CFTC*, No. 24-5205 (D.C. Cir. Nov. 15, 2024); *see also* 17 C.F.R. § 40.11(a) (CFTC regulation that categorically prohibits listing “gaming” contracts).

The “last uncontested status” thus was the period *before* January 2025, when everyone agreed that State Defendants could enforce Nevada gaming law against those who offer sports wagers in Nevada, and before Kalshi began its unlawful operations. That is the status quo, and granting Kalshi the relief it seeks would upend that status quo.

B. Kalshi’s Aggressive and Reckless Expansion Undermines Any Claim to Equitable Relief

Instead of meaningfully grappling with the standard for administrative relief, Kalshi argues (Mot. 11-13) that relief is warranted because State Defendants are supposedly violating a “non-enforcement agreement.” Kalshi is wrong.

State Defendants stated that they would not bring an enforcement action while Kalshi’s initial motion was pending, in order to give this Court the opportunity to consider that motion, without the Court needing to enter a short administrative stay. Dkt. 17.1, at 17. State Defendants took that step for the convenience of the Court, not because of any contractual agreement or exchange of valuable consideration with Kalshi. For Kalshi to not only claim that State Defendants “reneged on their written commitment,” but also to impugn the integrity of State Defendants, Mot. 1, 17-18, is beyond the pale.

Indeed, if State Defendants had not taken action, Kalshi would argue that they are not serious about stopping the harms Kalshi is causing to the

State, the gaming industry, and the public. Any time that State Defendants have not proceeded as aggressively as possible (for example, by not seeking immediate appeal of the initial preliminary injunction), Kalshi has argued that this shows State Defendants are not harmed by Kalshi's violations of state law. *E.g.*, Mot. 13. Yet at the same time, Kalshi has urged State Defendants to forgo immediate enforcement, including by holding off while the district court considered Kalshi's motion for an injunction pending appeal (which State Defendants did), and while this Court considers a similar motion.

State Defendants have behaved reasonably, while Kalshi has not. Indeed, Kalshi recently told the district court that it would not stop operating in Nevada, no matter how this Court rules in this appeal, until State Defendants bring a civil enforcement action in state court. *See* 1-StateSER-5. Kalshi's own actions have given State Defendants no choice but to move forward with enforcement.

Even with all that, State Defendants did not immediately move forward with enforcement. Instead, they reasonably notified the Court of their intention to bring a state proceeding in seven days, effectively giving an ad-

ministrative stay to allow the Court additional time to rule on Kalshi's pending motion, if the Court so chooses. Dkt. 60.1.¹ State Defendants have given, and continue to give, the Court time to consider Kalshi's motion, even though each passing day Kalshi offers illegal sports betting inflicts serious and irreparable harm to the State. *See* Dkt. 17.2, at 27-29.

Kalshi has not been harmed in the slightest by State Defendants' approach. Instead, because State Defendants stated they would not immediately enforce, Kalshi did not have to file an earlier motion for administrative relief. And State Defendants' notice gave Kalshi the opportunity to make an additional filing in this Court, even though its motion for an injunction pending appeal already is fully briefed.

State Defendants have brought enforcement actions against or entered into agreements with all other unlicensed prediction markets in the State. As a result of State Defendants' efforts, the district court denied Kalshi, Crypto.com, and Robinhood preliminary injunctions.² Crypto.com voluntarily agreed to stop offering contracts to Nevada users while its appeal is pending; Robinhood agreed to stop offering contracts in Nevada while

¹ That distinguishes Kalshi's cited cases (Mot. 11-12), where the government entity did not give the court advance notice of its intention to enforce.

² Dkt. 17.2, at 30; *Robinhood Derivatives LLC v. Dreitzer*, 2025 WL 3283308, at *2 (D. Nev. Nov. 25, 2025); *N. Am. Derivatives Exch., Inc. v. Nevada Gaming Control Bd.*, 2025 WL 2916151, at *14 (D. Nev. Oct. 14, 2025).

its motion for an injunction pending appeal is pending. *See* Dkt. 23.1, at 27.³ As for Polymarket and Coinbase, the Board brought civil enforcement actions against them in state court, and the courts entered TROs stopping both companies' unlicensed operations. *See* Dkt. 57.1.

That leaves Kalshi as the only prediction market operating without restriction in Nevada. That asymmetry is neither equitable nor sustainable. Kalshi's ongoing operations harm the State and the public each day and pose an existential threat to Nevada's gaming industry. State Defendants have a statutory responsibility to evenhandedly enforce Nevada gaming law, *see* NRS §§ 463.140, 463.0129(1)(c), by bringing a civil enforcement action in state court to enjoin Kalshi's operations in Nevada, *see id.* § 463.343(1).⁴

³ Kalshi suggests (Br. 18) that Robinhood is only limiting its operations to Nevada residents. That is incorrect; Robinhood is not offering "new sports-related event contracts *in Nevada*." No. 25-7831 Dkt. 10.2, at 203 (emphasis added). As for Crypto.com, State Defendants deemed the prohibition on contracts to Nevada residents to be sufficient for purposes of the appeal given its limited market share. *See* Collins J. Okoth, *Prediction Markets Smash Daily Records as Kalshi Claims 66.4% Share of \$700M Volume*, Cryptopolitan (Jan. 14, 2026), perma.cc/QPF6-4AUR.

⁴ Kalshi suggests (Mot. 18-20) that there is something nefarious about State Defendants' notice because the CFTC has requested to file a late *amicus* brief in Crypto.com's appeal. The Court has not yet ruled on the CFTC's motion. But if the Court grants the motion, it will have ample time to consider the CFTC's views on the merits. In the meantime, State Defendants have an obligation to enforce Nevada gaming law against those offering illegal sports betting in Nevada.

C. The Balance of Harms Favors State Defendants

Kalshi argues (Mot. 20-23) that the harm it faces from a state enforcement proceeding outweighs any harm to State Defendants. It largely repeats the arguments the district court already rejected, without showing any clear error in the district court's analysis. *See* Dkt. 17.2, at 26-29. A "first-blush" assessment of "the relative consequences" of granting or denying administrative relief thus confirms that relief is not warranted here. *Texas*, 144 S. Ct. at 798 (Barrett, J., concurring).

As the district court explained, Kalshi does not face irreparable harm. All other sportsbooks comply with state law, either by becoming licensed or by geofencing their operations to avoid Nevada, and Kalshi can do that too. Dkt. 17.2, at 26. Kalshi just wants to make more money; all of its harms are self-inflicted and therefore are not irreparable. *Id.* at 27; *see Al Otro Lado v. Wolf*, 952 F.3d 999, 1008 (9th Cir. 2020). Kalshi started offering sports contracts despite the CFTC's express prohibition on those contracts. *See* 17 C.F.R. § 40.11(a). Then it chose to forge ahead with an untested preemption theory, even though the district court warned Kalshi that it was "proceeding at its own risk and creating its own harms." 2-ER-80.

In order to obtain a preliminary injunction, Kalshi told the district court that its sports bets were extremely limited, to only win/loss contracts. D. Ct. Dkt. 46, at 6. Then as soon as the court granted the preliminary injunction, Kalshi expanded its business so that it now provides all of the

offerings of traditional sports books, including prop bets (*e.g.*, bets on the point spread or the number of touchdowns scored) and parlays (*e.g.*, a bet on whether both the Packers and the Seahawks will win on a given weekend). Kalshi repeated that pattern with respect to the motion here. Despite the dissolution of the preliminary injunction, it launched new series of sports wagers, entered into additional partnerships, and aggressively marketed its platform, leading to record downloads and betting volumes. *See* pp. 7-10, *supra*. Kalshi has no claim to the equities.

Kalshi also cannot claim that a civil enforcement proceeding would cause it irreparable harm, because it can raise any potential defense. *John Doe Co. v. CFPB*, 235 F. Supp. 3d 194, 203 (D.D.C. 2017). Kalshi says (Mot. 22) that an enforcement action would be the “first time [that] Kalshi would be compelled to violate its federal obligations by limiting access to its exchange.” In fact, a state court in Massachusetts entered a preliminary injunction against Kalshi that requires it to cease offering new sports wagers in that State within 30 days. Order at 2, *Massachusetts v. KalshiEX, LLC*, No. 258CV02525 (Sup. Ct. Mass. Feb. 6, 2026). The court declined to stay that injunction pending appeal. *Id.* Kalshi is seeking appellate review of that decision, but in the meantime, it must obey the injunction.

The only new argument that Kalshi makes (Mot. 20-21) is that the state court might also enjoin it from offering wagers on events other than sports and elections, because that is what the state courts supposedly did

for Polymarket and Coinbase. But State Defendants sought to enjoin only Polymarket’s and Coinbase’s operations that are illegal under Nevada law—such as wagering on sports and elections. *See Compl. ¶ 20, Nevada v. Blockratize, Inc., supra* (Jan. 16, 2026). State Defendants have never taken the position that offering contracts on genuine commodity derivatives constitutes unlawful sports betting. Indeed, State Defendants told the district court that Nevada gaming law would *not* apply in those circumstances. 1-StateSER-26. Besides, sports wagers are 95% of Kalshi’s business; Kalshi cannot reasonably assert that it is worried about soybean futures.

Beyond that, Kalshi simply rehashes (Mot. 21-22) its arguments about geolocation and the CFTC’s impartial-access requirement. It argues that it lacks the technical ability to geolocate its users and that doing so would violate the CFTC’s requirement that markets provide “impartial access.” *Id.* But Kalshi already restricts access to its platform to users from certain countries. Kalshi, *Member Agreement* § VI (Oct. 12, 2025), perma.cc/PAF8-8WLD. And, as the district court explained, Kalshi’s competitors with CFTC-registered markets (Crypto.com and now Polymarket) have been able to restrict their operations in Nevada without running afoul of any CFTC requirement. Dkt. 17.2, at 26-27; *see* Dkt. 57.1.

In contrast to Kalshi’s negligible claim of harm, the harms to the State from Kalshi’s continued operation are substantial and irreparable. As the district court found, every day Kalshi operates in violation of Nevada law

imposes “substantial irreparable harms to the Board, the State of Nevada, the gaming industry in this state, and the public interest.” Dkt. 17.2, at 27. The state courts made the same point: Unlicensed and unregulated gambling means underage people can gamble, allows unsuitable persons to run gaming operations, and distorts the gaming industry. Polymarket TRO 6. These harms “cannot be mitigated” once incurred. *Id.*; *see* Coinbase TRO 6.

Kalshi’s unlicensed gaming threatens the public fisc. Kalshi evades taxes and diverts business from licensed sportsbooks that pay taxes. Dkt. 17.2, at 28-29. Kalshi’s profit from unlicensed gaming also incentivizes others to enter into prediction markets instead of becoming (or remaining) licensed—indeed, two competitors already have done so. *Id.*

Kalshi’s operations threaten the integrity of gaming. Nevada law permits wagers only with sufficient safeguards to prevent insider betting. *E.g.*, Nev. Gaming Reg. 22.1205. The recent scandals in professional baseball and basketball show the importance of those safeguards. Dkt. 17.2, at 21 n.7. Kalshi offers sports betting without them; its own chief executive officer recently said that insider trading on its platform is “fair game” and simply “part of the risk in the market.” CNBC, *Kalshi CEO Tarek Mansour on Super Bowl Trades*, at 10:13-16 (Feb. 10, 2026), bit.ly/4aISwfh.

Kalshi’s operations harm the public. Nevada law prohibits people under 21 from gaming, NRS § 463.350(1)(a); Kalshi allows anyone over 18 to bet, Dkt. 17.2, at 27-28. Nevada law requires licensees to offer deposit-limit

tools and to prominently display responsible-gaming resources, Nev. Gaming Reg. 5.225(18)(a)-(b); Kalshi does not follow those requirements. Kalshi touts (Mot. 22) the CFTC’s regulation, but (as the district court found) the CFTC is not “equipped to address those issues the same way state gaming regulators and licensed entities are.” Dkt. 17.2, at 28. And in fact, the CFTC prohibits listing contracts involving “gaming,” 17 C.F.R. § 40.11(a)—yet Kalshi has continued to offer those contracts anyway.

Finally, Kalshi asserts (Mot. 13) that State Defendants do not face real harm because they did not immediately appeal the district court’s original preliminary-injunction decision back in April 2025. But that was at a time when Kalshi had limited offerings and trading volumes. Kalshi’s business has exploded since that time. A delay in seeking “judicial protection,” rarely if ever negates a showing of irreparable injury, especially “in the context of ongoing, worsening injuries.” *Arc of Cal. v. Douglas*, 757 F.3d 975, 990-91 (9th Cir. 2014). Besides, Kalshi cannot have it both ways—attacking the State for not being aggressive enough in April 2025, while complaining that the State is too aggressive now.

CONCLUSION

The Court should deny Kalshi's motion.

Dated: February 12, 2026

Respectfully submitted,

/s/ Nicole A. Saharsky

Nicole A. Saharsky
Minh Nguyen-Dang
Matthew Bisanz
MAYER BROWN LLP
1999 K Street NW
Washington, DC 20006
(202) 263-3220

Rory K. Schneider
Alexander S. Mendelson
MAYER BROWN LLP
1221 Avenue of the Americas
New York, NY 10020
(212) 506-2500

Preston R. Michelson
MAYER BROWN LLP
71 S. Wacker Drive
Chicago, IL 60606
(312) 782-0600

Aaron D. Ford
Attorney General of Nevada
Heidi Parry Stern
Solicitor General
Jessica E. Whelan
Chief Deputy Solicitor General—
Litigation
Sabrena K. Clinton
Abigail L. Pace
State of Nevada,
Office of the Attorney General
1 State of Nevada Way, Suite 100
Las Vegas, NV 89119
(702) 486-3420

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify that this response:

- (i) complies with the type-volume limitation of Rule 27(d)(2) because it contains 5,580 words, including 61 manually counted in visual images, and excluding the items exempted by Rule 32(f); and
- (ii) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Word for Microsoft 365 and is set in Century Schoolbook font in a size equivalent to 14 points or larger.

Dated: February 12, 2026

/s/ Nicole A. Saharsky

Nicole A. Saharsky

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 12, 2026. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: February 12, 2026

/s/ *Nicole A. Saharsky*

Nicole A. Saharsky