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 EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR AN ADMINISTRATIVE STAY [RELIEF NEEDED BY FEBRUARY 16, 2026]

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February 11, 2026

CIRCUIT RULE 27-3 CERTIFICATE

I certify the following:

The relief requested in the emergency motion that accompanies this certificate is an administrative stay of the district court's November 24, 2025 order dissolving the April 9, 2025 preliminary injunction ("PI") entered in favor of Appellant KalshiEX LLC ("Kalshi"). **This relief is needed by February 16, 2026.**

On March 4, 2025, Defendants sent a cease-and-desist letter threatening Kalshi with enforcement unless Kalshi "immediately" ceased offering certain event contracts for trading in Nevada. 2-ER-98. After initially granting Kalshi a PI, the district court reversed itself and dissolved the injunction, thus exposing Kalshi to the threat of enforcement under preempted state law.

Kalshi appealed the dissolution order on November 25, 2025. That same day, Kalshi filed in the district court a motion to stay the dissolution order pending appeal or, in the alternative, for an administrative stay to permit Kalshi to seek a stay pending appeal from this Court. The district court denied Kalshi's request in its entirety on December 16. The following day, Kalshi moved this Court for a stay pending appeal. Before filing the stay motion, Kalshi conferred with Defendants, and Defendants ***agreed in writing*** "not to initiate enforcement proceedings against Kalshi while this Court

considers th[e] stay motion, obviating the need for an emergency administrative stay." Ex. A at 1. The stay motion has since been fully briefed, and the motions panel referred it to the merits panel on January 27. Dkt. 42. On February 10, 2026, Defendants filed a status report (dated February 6, 2026) with this Court declaring their intention to initiate an enforcement action against Kalshi on February 17, 2026, notwithstanding their previous agreement not to do so while the stay motion remained pending. Dkt. 60.

Kalshi faces imminent harm absent an emergency stay. Exercising its federal right not to follow preempted state law would subject Kalshi to an enforcement action pending appeal, a clear irreparable harm. But attempting to comply with preempted state law pending appeal would also subject Kalshi to numerous irreparable harms. It would require Kalshi to cut off users from its platform in Nevada, which would expose Kalshi to significant unrecoverable costs, harm Kalshi's users both in and out of Nevada, and subject Kalshi to severe reputational harms. It would risk contravening the impartial-access rules mandated by the Commodity Futures Trading Commission ("CFTC") with which Kalshi is required to comply under federal law. And it would require Kalshi to adopt and implement technology that Kalshi does not now employ, that would impose millions of dollars in unrecoverable costs, and that could not be adopted "immediately" as Defendants demand.

Kalshi has filed this motion at the earliest possible opportunity. Kalshi first became aware of Defendants' intention to renege on their agreement and initiate an enforcement action at approximately 5PM Pacific Time on February 10, 2026, when Defendants filed a status report with the Court declaring that intention with no prior notice to Kalshi. Dkt. 60. Because Kalshi faces the prospect of an imminent enforcement action absent a stay, Kalshi files this motion now, and will immediately inform the Court if any of the relief sought herein becomes unnecessary.

All Defendants have informed Kalshi that they do not consent to the relief requested in this motion. Below I have reproduced the names, telephone numbers, e-mail addresses, and office addresses of the attorneys for all parties:

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INTRODUCTION

Kalshi brings this emergency motion for an administrative stay in response to Defendants' decision to renege on their written commitment to Kalshi that they would not initiate an enforcement proceeding while Kalshi's stay motion is pending in this Court.

Defendants' about-face is astounding. Kalshi is aware of just two cases where a government actor has broken its promise not to enforce a law while a challenge to its validity was pending. In both, the court overseeing the challenge—including in one instance the Supreme Court—issued orders blocking the government from immediate enforcement. The Court should do the same here through issuance of an administrative stay.

The parties reached the non-enforcement agreement to avoid burdening the Court with an emergency motion for an administrative stay for the period in which Kalshi's stay motion is pending. Kalshi relied on that agreement in not seeking an administrative stay, and Defendants benefited from the agreement by not having to oppose Kalshi's motion on an emergency basis. Kalshi informed the Court of the agreement's existence using language approved by Defendants in its stay motion. Dkt. 17 at 9. The stay motion is now fully briefed, and the motions panel referred it to the merits panel on January 27. Dkt. 42.

On February 6, Defendants, under the guise of a "status update," urged the Court to "immediately deny" the motion. Dkt. 57. Just two business days later, apparently frustrated by the Court's lack of immediate action, Defendants filed yet another "status update" informing the Court of their intention to initiate an enforcement proceeding against Kalshi on February 17, 2026. Dkt. 60.[1] The latter status update contained numerous misrepresentations about the operations of Kalshi and other prediction markets operating in Nevada, and relied heavily on a Nevada state court's decision to grant two *ex parte* applications for temporary restraining orders ("TROs")—decided without full briefing or any argument—as a basis for Defendants' purported need to abandon their pledge of non-enforcement. But as Kalshi explained in its response to the former status update, the existence of those TROs, which blocked the targets from offering *all* event contracts—not just the sports and elections contracts at issue in this case—underscore the irreparable harm that would befall Kalshi if it were subject to state enforcement and underscore the need for a stay, as Defendants will surely seek similar relief against Kalshi. Dkt 59.

[1] This status update was filed February 10 but is dated February 6, the same day as the first status update seeking "immediate" denial of Kalshi's motion.

The parties briefed the stay motion on the understanding that Defendants would not bring an enforcement action while the motion is pending. The motions panel referred it to the merits panel on that same understanding. Now, Nevada has upset that understanding without any sound basis, forcing more briefing and more judicial resources to be expended needlessly.

As the district court below repeatedly recognized, this case presents "serious questions on the merits." 1-ER-6, 1-ER-25. In abandoning their prior commitment to Kalshi, and attempting to rush into state court, Defendants are throwing those considerations to the wind, and in the process sowing the "total chaos" that, as discussed below, Congress sought to avoid in amending the Commodity Exchange Act ("CEA") to grant the CFTC exclusive jurisdiction over entities like Kalshi and the products they offer. *See Am. Agric. Movement Inc. v. Bd. of Trade of Chi.*, 977 F.2d 1147, 1156 (7th Cir. 1992) (citation omitted). And, perhaps not coincidentally, Defendants have chosen to pursue enforcement against Kalshi just days after the CFTC requested to be heard in support of prediction markets like Kalshi, and plan to launch that enforcement action the same day the CFTC has asked to file its brief. Defendants' course of conduct will not only irreparably harm Kalshi, but will have knock-on effects for any future litigant that receives a similar assurance

of non-enforcement from a state actor when challenging the constitutionality of a law.

Granting an administrative stay under these circumstances is entirely appropriate. Kalshi has a strong likelihood of success in this appeal. The district court already recognized that the CEA "occup[ies] the field of regulating CFTC-designated exchanges and the transactions conducted on those exchanges." 2-ER-76. Its basis for dissolving the PI was its imposition of extratextual limitations on the CEA's definition of "swap," which the court recognized "isn't perfect" but adopted anyway based on unsupported assumptions about "congressional intent." 2-ER-45.

Kalshi has explained at length why the district court was wrong in both its merits briefing and its stay motion briefing. But the CFTC's recent indication that it will file an amicus brief in support of prediction markets in a related appeal that has been consolidated with this appeal for argument further underscores the merits of Kalshi's position. This Court—unlike the district court—will have the benefit of the CFTC's views when it addresses the "serious questions" bound up in this appeal. In the meantime, an administrative stay will give the merits panel time to fully consider these weighty issues, prevent the chaos of potential conflicting state and federal court orders, and hold Defendants to their prior commitment.

BACKGROUND

Kalshi's motion for stay pending appeal lays out the background of the case. Dkt. 17 at 3-9. Kalshi briefly summarizes the background here for the benefit of the motions panel.

I. LEGAL BACKGROUND

In 1974, Congress amended the CEA to create the CFTC and grant 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). Congress recognized that federal regulation would only be workable if it "prevent[ed] any possible conflicts over jurisdiction." *Hearings Before the H. Comm. on Agric.,* 93d Cong., 1st Sess. 121 at 128 (1974). "[D]ifferent State laws would just lead to total chaos" absent "preemption." *Hearings Before the S. Comm. on Agric. & Forestry,* 93d Cong., 2d Sess. 848 at 685 (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 CEA gives 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 ("Covered Derivatives"). 7 U.S.C. § 2(a)(1)(A). Futures, options, and swaps are each a kind of derivative. They derive their value from an underlying commodity. The commodity underlying a derivative can be a physical commodity, such as grain or crude oil, or it can be something intangible, such as an interest-rate benchmark or occurrence. *See* 7 U.S.C. § 1a(19) (defining certain intangibles as "excluded commodit[ies]"). This appeal concerns event contracts, which are a kind of derivative whose underlying commodity is an occurrence. The CEA 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). That regulatory scheme is administered by the CFTC.

II. FACTUAL AND PROCEDURAL BACKGROUND

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. As particularly relevant to this appeal, Kalshi offers event contracts based on the outcomes of elections and on the outcomes of sporting events. Kalshi first offered election contracts in June 2023 and sports contracts in January 2025.

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. 2-ER-98. The NGCB "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 PI. 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. 2-ER-76. Defendants elected not to appeal.

A flood of related litigation followed, including with another federal court granting Kalshi a PI on the ground that the CEA preempts state gambling regulators from regulating DCMs. *KalshiEX LLC v. Flaherty*, No. 25-cv-2152, 2025 WL 1218313, at *1 (D.N.J. Apr. 28, 2025), *appeal docketed*, No. 25-1922 (3d Cir. May 15, 2025). Courts around the country—including two federal courts of appeals in addition to this Court[2]—are *simultaneously* evaluating the central merits question: whether the CEA preempts state

[2] *KalshiEX LLC v. Flaherty*, No. 25-1922 (3d Cir.); *KalshiEX LLC v. Martin*, No. 25-1892 (4th Cir.).

gaming laws as applied to trading on a federally regulated exchange such as Kalshi.

Six months after issuing a PI in favor of Kalshi, the same district court in Nevada denied a PI 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 a 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 PI, 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.

After the district court denied Kalshi's request for a stay pending appeal, Kalshi conferred with Defendants concerning Kalshi's intention to move in this Court for a stay pending appeal. Defendants "agreed not to initiate enforcement proceedings against Kalshi while this Court considers" Kalshi's motion for a stay pending appeal, "obviating the need for an emergency

administrative stay." Ex. A at 1. Kalshi filed its stay motion with this Court on December 17, 2025, in which it described Defendants' non-enforcement agreement to the Court using wording Defendants approved. Dkt. 17 at 9. Briefing on the stay motion was completed on January 5, 2026. Dkt. 28. On January 27, 2026, the motions panel referred Kalshi's stay motion to the merits panel. Dkt. 42.

On February 5, 2026, the CFTC sought leave of this Court to file an amicus brief in support of Crypto.com in its appeal, which presents substantially similar issues and has been consolidated with this case for oral argument. CFTC's Mot. for Leave to File an Amicus Curiae Brief, *N. Am. Derivatives Exch. Inc. d/b/a Crypto.com | Derivatives North Am. v. Nevada*, No. 25-7187 (Feb. 5, 2026), Dkt. 30 ("CFTC Mot.").

Defendants filed a status report with the Court the next day, on February 6. Dkt. 57. In the February 6 status report, Defendants informed the Court that they had obtained TROs against two other companies prohibiting them from offering event contracts in Nevada. *Id.* at 1. They requested that the Court deny Kalshi's stay motion to permit them to seek similar relief against Kalshi. *Id.* at 2. Kalshi responded on February 9, explaining that the TROs illustrated the harm Kalshi would suffer absent a stay pending appeal, and thus underscored why a stay is appropriate. Dkt. 59. The very next day,

Defendants filed another status report announcing Defendants' intent to renege on their commitment and initiate an enforcement action against Kalshi on February 17, notwithstanding that Kalshi's stay motion remains pending. Dkt. 60.

This emergency motion for an administrative stay followed.

LEGAL STANDARD

"An administrative stay is intended 'to minimize harm while an appellate court deliberates.'" *Oregon v. Trump*, 154 F.4th 1161, 1164 (9th Cir. 2025) (quoting *United States v. Texas*, 144 S. Ct. 797, 798 (2024) (Barrett, J., concurring)). In considering a motion for an administrative stay, this Court's "touchstone is the need to preserve the status quo." *Id.* (quoting *Nat'l Urban League v. Ross*, 977 F.3d 698, 702 (9th Cir. 2020)). This analysis is "distinct" from the analysis for a motion for a stay pending appeal. *Ross*, 977 F.3d at 702. In conducting the administrative-stay analysis, the Court "defer[s] weighing the *Nken* factors until the motion for stay pending appeal is considered." *Oregon*, 154 F.4th at 1164 (quoting *Ross*, 977 F.3d at 702). The Court instead looks to "'the facts of th[e] case'" and "ask[s] what real-world effects would result 'if an administrative stay is put in place'" to determine the need to preserve the status quo and whether "granting an administrative stay will best preserve" it. *Id.* (quoting *Ross*, 977 F.3d at 701).

ARGUMENT

I. THE COURT SHOULD GRANT AN ADMINISTRATIVE STAY.

1. Extraordinary circumstances warrant an immediate administrative stay. On December 17, 2025, in exchange for Kalshi's agreement not to file an emergency motion for an administrative stay at that time, Defendants promised they would not initiate an enforcement action against Kalshi pending this Court's consideration of Kalshi's stay motion. Ex. A at 1. Defendants specifically authorized Kalshi to inform this Court of that agreement—they even approved the precise wording Kalshi included in its stay motion on that point. *Id.* But now Defendants intend brazenly to violate the non-enforcement agreement by initiating an enforcement action while the motion remains pending.

Kalshi has identified only two cases where a government has gone back on its word in this manner. In both, courts swiftly awarded relief against the government. In *Journal of Commerce & Commercial Bulletin v. Burleson*, 229 U.S. 600 (1913),[3] the government had agreed to non-enforcement of a statute pending the Supreme Court's resolution of a separate case challenging the statute's constitutionality. *Id.* at 600. When the government indicated it nevertheless intended to enforce the statute, the plaintiff moved for

[3] *Available at* https://perma.cc/4KDR-J4HA.

a restraining order from the Supreme Court, which was granted. *Id.* at 601. Likewise, in *Hignell v. City of New Orleans*, No. 2:19-cv-13773 (E.D. La. Aug. 31, 2023), Dkt. 202, the U.S. District Court for the Eastern District of Louisiana granted a TRO against the City of New Orleans after the City indicated its intent to renege on an agreement not to enforce certain ordinances pending the court's ruling on their constitutionality. *See* Mot. for Temporary Restraining Order, *Hignell v. City of New Orleans*, No. 2:19-cv-13773 (E.D. La. Aug. 21, 2023), Dkt. 188 (alleging that "[t]he City has failed to honor its agreement to await this Court's decision before enforcing its … ordinances"). This Court should grant an immediate administrative stay, which—like the relief granted in *Burleson* and *Hignell*—would have the effect of holding Defendants to their word. Failure to grant an administrative stay under these circumstances would have severe negative consequences, not only to Kalshi, which would face irreparable harm (*see infra* § II), but also to future litigants, who could no longer be certain they could rely on non-enforcement agreements with state actors, and who could be forced to engage in either unnecessary or emergency briefing that would burden the courts.

Defendants' arbitrary decision to disavow their prior written agreement is unacceptable. The integrity of the judicial process depends on government actors being held accountable for their representations and honoring their

express agreements. More is expected of Defendants than what they did here. *See, e.g.*, *Heckler v. Comm. Health Serv. of Crawford Cnty., Inc.*, 467 U.S. 51, 61 (1984) (citizens have an "interest … in some minimum standard of decency, honor, and reliability in their dealings with their Government"); *St. Regis Paper Co. v. United States*, 368 U.S. 208, 229 (1961) (Black, J., dissenting) ("It is no less good morals and good law that the Government should turn square corners in dealing with the people than that the people should turn square corners in dealing with their government."); *Brandt v. Hickel*, 427 F.2d 53, 57 (9th Cir. 1970) ("To say to these appellants, 'The joke is on you. You shouldn't have trusted us,' is hardly worthy of our great government.").

2. An immediate administrative stay is especially appropriate because Defendants' purported need to seek immediate state enforcement does not withstand scrutiny. The PI was granted in April of last year and Defendants *chose not to appeal*. Then, they waited *six months* before moving to dissolve the PI, which is obviously inconsistent with Defendants' position that "[e]very day" matters. Dkt. 60 at 2; *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)). Defendants point to two *ex parte* TROs that they themselves sought and obtained against Polymarket (a

Kalshi competitor) and Coinbase (a Kalshi partner that lets its customers trade Kalshi's contracts through its platform) to bar them from offering event contracts in Nevada, contending that this somehow obligates Defendants to do the same to Kalshi immediately. *Id.* But Defendants' own discretionary enforcement actions against other companies plainly cannot supply the urgency Defendants now claim, especially where the relevant issues are already being resolved in an expedited appeal.

Defendants also rely heavily on the reasoning of the state-court TROs. But these decisions are a thin reed on which to hang the weight of the actions Defendants wish to take. They were granted *ex parte* with minimal deliberation and the issuing courts limited each to 14 days. Take Polymarket. The court recognized that Polymarket had only been able to respond "to a limited extent" and that the court was ruling without giving Polymarket the chance to file a comprehensive opposition. *Nevada v. Blockratize, Inc.*, No. 26-OC-00012-1B, at 6-7 (Nev. 1st Jud. Dist. Jan. 29, 2026). Polymarket has already removed the case to federal court. *State of Nevada ex rel Nevada Gaming Control Bd. v. Blockratize*, No. 3:26-cv-89 (D. Nev.). The circumstances are similar for Coinbase, where the TRO, which mirrored that entered against Polymarket almost entirely—was issued just three days after Defendants' *ex parte* application, and with Coinbase only being afforded an opportunity to

file a preliminary—not full—opposition. *Nevada v. Coinbase Fin. Mkts., Inc.*, No. 26-OC-00030-1B (Nev. 1st Jud. Dist. Feb 5, 2026).

And there is little reason to think the issuance of a TRO represents a meaningful development in the law sufficient to tear up Defendants' agreement with Kalshi, or to hurry this Court's consideration of Kalshi's stay motion. The Supreme Court has instructed, though in reference to *ex parte* TROs "under federal law," that the purpose of a TRO is to "preserv[e] the status quo and prevent[ ] irreparable harm just so long as is necessary to hold a hearing, and no longer"—not to adjudicate the merits. *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974); *see also Reno Air Racing Ass'n, Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006).

This Court has similarly (and repeatedly) noted, albeit in reference to PIs,[4] that emergency injunctive relief "is not a preliminary adjudication on the merits, but a device for preserving the status quo and preventing the irreparable loss of rights before judgment." *Textile Unlimited, Inc. v. A..BMH & Co., Inc.*, 240 F.3d 781, 786 (9th Cir. 2001). "[A] preliminary injunction

[4] Courts have recognized that TROs and PIs are distinct: "[A] status quo created by a TRO is not the status quo which preliminary injunctions are designed to preserve. If it were, every TRO would automatically entitle every petitioner to a grant of a preliminary injunction identical to the TRO." *Litton Sys., Inc. v. Sundstrand Corp.*, 750 F.2d 952, 961 (Fed. Cir. 1984).

decision is just that: preliminary. … This rule acknowledges that decisions on preliminary injunctions must often be made hastily and on less than a full record." *Ctr. for Biological Diversity v. Salazar*, 706 F.3d 1085, 1090 (9th Cir. 2013) (cleaned up); *see also Cayuga Indian Nation of New York v. Seneca County*, 978 F.3d 829, 834 (2d Cir. 2020) ("[A] preliminary injunction order is, by its very nature, tentative" and, "at least in most cases," does not "foreclose[e] the subsequent, more thorough consideration of the merits that the preliminary injunction expressly envisions." (quotation marks omitted)).

Despite this, Defendants use the TROs in support of their contention that they have an "obligation to begin a state enforcement action." Dkt. 60 at 3. But the statutes they cite do not support that claim. Nev. Rev. Stat. § 463.140 merely sets forth the general powers and duties of the NGCB and Gaming Commission. And Nev. Rev. Stat. § 463.0129(c) just reflects Nevada's public policy view that its gaming industry should be regulated. There is no dispute that Defendants have indeed sought to regulate Kalshi—nearly a year ago they issued a cease-and-desist to Kalshi that precipitated this *ex parte Young* action—but their actions here are not designed to further regulation of the gaming industry, but rather to end-run this Court's

consideration of Kalshi's stay motion because of Defendants' frustration with the Court's consideration of that motion.

3. Defendants also claim that they are compelled to act now because Kalshi did not "maintain any kind of status quo." Dkt. 60 at 1. As an initial matter, the non-enforcement agreement did not require any such thing of Kalshi—Defendants have invented that requirement now as an excuse to violate the agreement. *See* Ex. A at 1-2. Nevertheless, Defendants point to only two items in support of their "status quo" contention: the fact that Kalshi's trading volume increased during the Super Bowl relative to last year, and certain Kalshi marketing statements. Dkt. 60 at 1. With respect to the former, it is not clear how Kalshi could limit trading volumes other than by barring users from trading—which would negate the purpose of the non-enforcement agreement and stay motion—and in any event it is no surprise that the Super Bowl drew users to Kalshi's platform, not only for its sports-related offerings, but also for its commercial and pop-culture contracts associated with the Super Bowl (which are not at issue in this case). With respect to Kalshi's marketing statements, Defendants cite to a Kalshi announcement from January ***2025*** as supposed evidence of what Kalshi has done "[s]ince filing its stay motion" in December 2025. *Id.* Marketing statements made a

year before the stay motion was filed do not show that Kalshi has departed from the status quo.

Defendants also inaccurately represent to the Court that Kalshi "is the only prediction market currently operating in Nevada." Dkt. 60 at 2. That is false. Crypto.com, a DCM, and Robinhood, a futures commission merchant partnered with Kalshi and other DCMs, both continue to operate in Nevada, albeit subject to agreements that apply ***only to sports-event contracts*** and restrict access to sports-event contracts ***only for non-residents***. *See* 2-ER-35-36; Dkt. 17 at 25; *Robinhood Derivatives, LLC v. Dreitzer*, 25-7831 (9th Cir. Dec. 24, 2025), Dkt. No. 10.1 at 22-23. That means, despite the TROs against Polymarket and Coinbase blocking ***all*** event contract offerings, Crypto.com and Robinhood can freely offer non-sports event contracts to anyone in Nevada, and can offer sports-event contracts in Nevada to the approximately *50 million* annual out-of-state visitors to Nevada, a number that vastly outstrips the state's 3 million residents.[5]

4. Finally, the timing of Defendants' sudden decision to repudiate their non-enforcement agreement is worthy of consideration in light of other

[5] *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.

recent developments. As noted above, *supra* at 9, on February 5, 2026, the CFTC sought leave of this Court to file an amicus brief in support of Crypto.com, in a related appeal that presents substantially similar issues, and which has been consolidated with this case for oral argument. The Court has not yet addressed the CFTC's request, but the CFTC proposed filing its amicus brief on February 17—the same day Defendants now say they will initiate an enforcement action against Kalshi, presumably with press releases to follow. CFTC Mot. at 3; Dkt. 60. If the CFTC is permitted to file an amicus brief, it will be the first time the CFTC has offered its views in any of the numerous actions involving sports-event contracts that are pending across the country. And the CFTC has indicated that it will offer its "substantial expertise" "in support of" the positions Kalshi and Crypto.com have put forward in their respective appeals. CFTC Mot. at 1.

As the federal regulatory agency specifically tasked by Congress with regulating nationwide derivatives exchanges, the CFTC has a substantial interest in the issues raised in these appeals. It also has expertise in administering the CEA and CFTC regulations. The CFTC's amicus brief will thus offer an important perspective for this Court to evaluate in resolving these appeals. Defendants' sudden rush to initiate an enforcement action against Kalshi on the same day that the CFTC will likely weigh in reveals their intent

to inflict maximum damage on Kalshi before this Court can meaningfully consider what the CFTC has to say. It is a transparent attempt to short-circuit the appellate process by harming Kalshi in ways that this Court cannot redress with a favorable ruling on appeal.

That is particularly the case given that the TROs Defendants sought against Polymarket and Coinbase, and would undoubtedly seek against Kalshi, bar the trading of ***all*** event contracts, not just the sports and election contracts at issue in this case. Kalshi has innumerable offerings that fall far outside those categories. For instance, it offers contracts on what federal funds rate the Federal Reserve will set in March.[6] Defendants nonetheless seek to bar transactions in such contracts in Nevada because, despite the clear text of the CEA, they believe they—not the CFTC—should regulate entities like Kalshi, resulting in the "total chaos" that concerned Congress in 1974.

II. AN ADMINISTRATIVE STAY IS NECESSARY TO MINIMIZE HARM WHILE THE COURT CONSIDERS KALSHI'S MOTION FOR A STAY PENDING APPEAL.

In light of the substantial irreparable harm Kalshi will suffer absent immediate relief, an administrative stay is warranted. The purpose of an administrative stay is "to minimize harm while an appellate court deliberates."

[6] *Fed decision in March?*, Kalshi, https://perma.cc/447Y-CCVC.

Texas, 144 S. Ct. at 798 (Barrett, J., concurring); *see Doe #1 v. Trump*, 944 F.3d 1222, 1223 (9th Cir. 2019) (administrative stay is "intended to preserve the status quo until the substantive motion for a stay pending appeal can be considered"). The harm that Kalshi would suffer absent a stay vastly outweighs the harms Defendants claim from Kalshi's continued operation.

If allowed, Defendants will rush to initiate an enforcement action against Kalshi in state court. They will also seek a TRO prohibiting Kalshi from offering at least some—if not all—of its event contracts in Nevada. In two recent cases, a Nevada state court has issued TROs *ex parte*—without affording any meaningful opportunity for the targets of these actions to be heard on the issue of whether the CEA preempts the application of state gaming laws to trading on CFTC-registered exchanges. Surely the same would happen to Kalshi absent an administrative stay, requiring Kalshi to immediately cut off users in Nevada from trading its contracts in order to comply with preempted state law. That would cause Kalshi to violate its federal obligation to provide "impartial access" to its exchange, 17 C.F.R. § 38.151(b), cost "tens of millions of dollars annually" that Kalshi would "not be able to recover" from Defendants, 2-ER-87, 1-ER-26, result in market disruptions that would affect users across the country, 2-ER-90-91, and severely damage Kalshi's relationships with business partners that help traders to access

Kalshi's exchange, 2-ER-63, as well as Kalshi's relationships with its customers, 2-ER-62. These severe harms to Kalshi and its users would be irreparable.

Kalshi is a nationwide derivatives exchange. It is required by CFTC regulations to offer "impartial access" to its exchange. 17 C.F.R. § 38.151(b). Kalshi accordingly offers all of its contracts in every state, consistent with that impartial-access obligation. Moreover, because Kalshi operates a nationwide exchange, it does not utilize "geolocation" technology to prevent certain users from trading based on their location—and it never has. 2-ER-87. Indeed, doing so would risk violating Kalshi's impartial-access obligation and potentially invite disciplinary action from the CFTC. Kalshi has accordingly strenuously resisted attempts by states to force it to prevent users from certain states from accessing its exchange. If Defendants are permitted to obtain a TRO against Kalshi, it would be the first time Kalshi would be compelled to violate its federal obligations by limiting access to its exchange.

Defendants' claimed harms from Kalshi's continued operation pale in comparison. *See* Dkt. 60. Defendants complain that Kalshi does not comply with their "rigorous regulations and oversight," *id.* at 1-2, but they ignore that Kalshi is subject to comprehensive regulation by the CFTC. They claim that "[e]very day" matters, *id.* at 2, but that representation simply is not credible

in light of the procedural history in this case. Again, Kalshi obtained a PI preventing Defendants from enforcing state law against Kalshi last April, and *Defendants did not appeal*. Indeed, Defendants waited *six months* after the injunction issued before moving to dissolve the injunction. Defendants offer no credible reason why they cannot wait for this Court to resolve Kalshi's motion for a stay pending appeal before initiating an enforcement action.

III. ALTERNATIVELY, THE COURT SHOULD GRANT KALSHI'S STAY MOTION OUTRIGHT.

An administrative stay is appropriate to "buy[ ] the court time to deliberate" on Kalshi's stay motion. *Texas*, 144 S. Ct. at 798 (Barrett, J., concurring). That is especially so given the motions panel's referral of the stay motion to the merits panel. Dkt. 42. But if the Court is inclined to rule on Kalshi's stay motion now, the motion should be granted for the reasons explained in full in Kalshi's motion and reply in further support thereof. Dkt. 17, 28. Each of the four factors relevant to issuance of a stay supports Kalshi. *See* Dkt. 17 at 9 (describing legal standard for granting a stay pending appeal); *id.* at 10-20 (discussing likelihood of success); *id.* at 21-23 (discussing irreparable harm); *id.* at 24-27 (discussing equities).

Kalshi is likely to succeed on appeal with respect to its claim that the CEA "preempts the application of state law" with respect to its contracts. *Leist*, 638 F.2d at 322. And it is "always in the public interest to prevent"

Supremacy Clause violations. *Churchill Downs Tech. Initiatives Co. v. Mich. Gaming Control Bd.*, 162 F.4th 631, 642 (6th Cir. 2025).

Kalshi is also likely to suffer irreparable harm if Defendants are permitted to initiate an enforcement action against Kalshi. If Defendants seek and obtain a TRO prohibiting Kalshi from offering event contracts in Nevada—as they have done with respect to two other companies who offer event contracts—Kalshi would suffer various forms of irreparable harm. Abruptly cutting off trading for Nevada users would severely harm Kalshi's reputation both with its users and with its partners who give their own users access to Kalshi's contracts, leading them to take their business elsewhere. *See* Dkt. 17 at 22-23. It would also require Kalshi to incur substantial unrecoverable costs. *See* 2-ER-87 (explaining that "a partnership with a geolocation service provider would cost Kalshi up to tens of millions of dollars annually"); 1-ER-26 (acknowledging Kalshi "may not be able to recover damages from the defendants" even if it ultimately prevails). Moreover, to immediately cease offering event contracts in Nevada would violate Kalshi's obligation under federal law to provide "impartial access" to its exchange. 17 C.F.R. § 38.151(b).

Kalshi respectfully refers the Court to its stay motion and reply in further support thereof for a more complete explanation of why a stay pending appeal is warranted. Dkt. 17, 28.

CONCLUSION

The Court should grant an immediate administrative stay pending resolution of Kalshi's stay motion. **This relief is needed by February 16, 2026.** Alternatively, the Court should grant Kalshi's stay motion outright.

Date: February 11, 2026

Respectfully submitted,

/s/ Neal Kumar Katyal

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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 5,354 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 27(a)(2)(B) and 32(f). This motion 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: February 11, 2026

/s/ Neal Kumar Katyal
Neal Kumar Katyal

CERTIFICATE OF SERVICE

I hereby certify that, on February 11, 2026, 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: February 11, 2026

/s/ Neal Kumar Katyal
Neal Kumar Katyal

INDEX OF EXHIBITS

Exhibit	Document Description
A	State Defendants' Dec. 17, 2025 Email Nonenforcement Agreement
B	Jan. 29, 2026 *Ex Parte* TRO Order in *Nevada v. Blockratize, Inc.*, No. 26-OC-00012-1B (Nev. 1st Jud. Dist.)
C	Feb. 5, 2026 *Ex Parte* TRO Order in *Nevada v. Coinbase Financial Markets, Inc.*, No. 26-OC-00030-1B (Nev. 1st Jud. Dist.).