IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CAIR-FOUNDATION, INC. and
CAIR FLORIDA, INC.,

Plaintiffs,

v.

Case No. 4:26-cv-521-AW/MAF

RON DESANTIS, *et al.*,

Defendants.
_____/

PLAINTIFFS' EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL

Pursuant to Federal Rule of Appellate Procedure 8(a)(1) and Local Rule 7.1, Plaintiffs move the Court to issue an injunction pending appeal in this matter. Plaintiffs respectfully request a decision by November 10, 2026. As discussed below, Plaintiffs seek a ruling on an emergency basis because they are suffering and will suffer irreparable harm due to the state's "domestic terrorist organization" regime and their designations under it.[1]

[1] Plaintiffs seek to enjoin pending appeal their designations as "domestic terrorist organizations" or "DTOs," and the enforcement of Florida Statutes §§ 617.1420, 775.30, 775.33, 775.34, 874.03 (and the related "criminal gang" provisions in Sections 823.05 and 874.04–12), and 943.03102, and Florida Department of Law Enforcement Emergency Rule 11RER26-8, insofar as they concern "DTOs" ("DTO regime").

Plaintiffs request that the Court enter an injunction pending appeal directing Defendants Larry Keefe, Ron DeSantis, James Uthmeier, Blaise Ingoglia, and Wilton Simpson (together, the "State Executive Defendants") to remove the designation of Plaintiffs as "domestic terrorist organizations" or "DTOs"; directing Defendant Keefe to rescind the publication of such designation in the Florida Administrative Register; and directing Defendant Keefe not to publish such designation on the Florida Department of Law Enforcement ("FDLE") website.

In the alternative, Plaintiffs request that the Court enter an injunction pending appeal that is broader than the partial preliminary injunction it issued on November 4, 2026. Specifically, Plaintiffs request that the Court enjoin pending appeal Florida's twenty state attorneys (together, "State Attorney Defendants") and the Attorney General from enforcing the DTO regime's provisions against Plaintiffs pursuant to their designations as DTOs, and from enforcing the DTO regime's provisions against third parties in connection with the designation of Plaintiffs as DTOs.

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL

The Court is already familiar with the background and legal issues presented in this challenge to the DTO regime and the designation of Plaintiffs as "domestic terrorist organizations." On November 4, 2026, the Court denied in part Plaintiffs' motion for a preliminary injunction, holding that Plaintiffs had not demonstrated a

likelihood of success on most of their claims. *See* Order Den. Prelim. Inj., ECF No. 65 ("Order"). Plaintiffs are appealing that decision, and they intend to seek an injunction pending appeal from the Eleventh Circuit.

Under Federal Rule of Appellate Procedure 8(a)(1), a "party must ordinarily move first in the district court" before seeking "an order . . . granting an injunction while an appeal is pending" from the court of appeals. Plaintiffs recognize, however, that this Court is unlikely to grant such relief, given that the four-factor test governing Plaintiffs' entitlement to an injunction pending appeal is essentially the same test that this Court applied in denying Plaintiffs' motion for a preliminary injunction. Because this Court has already assessed those factors, Plaintiffs respectfully request that it decide this motion by November 10, so that Plaintiffs may expeditiously seek relief from the court of appeals.

To grant an injunction pending appeal, Plaintiffs must establish: (1) a substantial likelihood of success on the merits of the appeal; (2) a substantial risk of irreparable injury unless the injunction is granted; (3) no substantial harm to other interested persons; and (4) no harm to the public interest. *See Florida v. Dep't of Health & Hum. Servs.*, 19 F.4th 1271, 1279 (11th Cir. 2021); *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). Here, for reasons set out in Plaintiffs' preliminary injunction papers, Plaintiffs have not only made a strong showing of likelihood of success on the merits of their appeal, *see Nken v. Holder*, 556 U.S.

418, 434 (2009), but have also shown irreparable harm and that "the balance of equities [] weighs heavily in favor of granting" relief pending appeal, *see League of Women Voters of Fla., Inc. v. Fla. Sec'y of State*, 32 F.4th 1363, 1370 (11th Cir. 2022) (citation modified).

With regard to the merits, Plaintiffs respectfully disagree with this Court's conclusions in several respects, and they submit that they are likely to succeed on appeal.

First, Plaintiffs are likely to succeed on their criminal punishment claim because the DTO regime imposes criminal punishment without criminal process. Pls. Mot. Emergency Prelim. Inj. 20–26, ECF No. 6 ("Pls. Mot."); Pls. Reply 5–9, ECF No. 60 ("Pls. Reply"). That is particularly true as applied to Plaintiffs: Because the State has not shown that Plaintiffs pose *any* ongoing threat to the security of Florida or the United States, Section 943.03102's "public safety" rationale does not render the DTO regime non-punitive.

Respectfully, Plaintiffs submit that Section 874.03(1) defines DTOs as "criminal gangs," which is evidence that the DTO regime imposes criminal punishment. *But see* Order at 13–15. Regardless, even on Defendants' interpretation, designation transforms Plaintiffs into "criminal gangs." If Plaintiffs (i.e., entities with three or more employees operating under a common name) were to continue to operate in Florida, one of their "primary activities" would be the

"commission of criminal or delinquent acts" under Section 874.03. That is because, among other things, Plaintiffs would necessarily rely on prohibited "material support" to operate, including donations, facilities, financial services, communications equipment, and personnel, *see* Fla. Stat. § 775.33; and Plaintiffs' actions to obtain these prohibited kinds of "material support" would thus become forms of criminal solicitation and conspiracy, *see id.* § 777.04. Thus, if Plaintiffs operate in the state, they will necessarily satisfy the definition of a "criminal gang" under Section 874.03(1), and they cannot function in the state without enormous risk of liability under the Criminal Gang Prevention Act. *See also* Hearing Tr. at 63:10–13, ECF No. 64 (in Defendants' view, Plaintiffs are criminal gangs). This fact—alongside the factors in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963)—is further evidence that the DTO regime and Plaintiffs' designations are punitive.

Second, even if the DTO regime and Plaintiffs' designations are not criminal punishments, Plaintiffs are entitled to more process under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Pls. Mot. 26–36; Pls. Reply 9–13. The cases cited by the Court, *National Council of Resistance of Iran v. Department of State*, 251 F.3d 192 (D.C. Cir. 2001) ("*NCRI*"), and *Al Haramain Islamic Foundation v. Department of Treasury*, 686 F.3d 965 (9th Cir. 2012), should not govern the analysis here, because the government interests, risk of error, and private interests

are distinct. *But see* Order at 17. In those cases, the government interest was predicated on uniquely federal powers—powers that resulted in extremely deferential review of the executive branch's decision-making and less process to the designated entities. *See, e.g.*, *NCRI*, 251 F.3d at 209 (recognizing "the realities of the foreign policy and national security concerns asserted by the Secretary in support of those designations"); *see also, e.g.*, *Humanitarian L. Project v. Reno*, 205 F.3d 1130, 1137 (9th Cir. 2000) (court owed executive branch "more latitude than in the domestic context" because the regulation involved foreign affairs (citation omitted)). In contrast, Florida is entitled to no such deference or latitude. The private interests at stake also set this case apart, given the breadth and depth of Plaintiffs' domestic, First Amendment-protected activity. Neither Plaintiff is a foreign organization, like *NCRI*, 251 F.3d at 199–200, nor has either Plaintiff described itself as a branch of a Saudi Arabian organization to which it sends money, as in *Al Haramain*, 686 F.3d at 978.

Plaintiffs have also shown that the available judicial review is post-deprivation. *But see* Order at 21. Plaintiffs' declarations describe First Amendment harms that began this summer and continued through October—including the departure from CAIR-Florida of senior employees responsible for community engagement and advocacy, reputational damage hurting relationships with donors, suspension of community-engagement communications in Florida, curtailment of

legal services, and a student group's cancellation of an event with CAIR-Florida shortly after the vote on designation. ECF No. 6-1 ¶¶ 38–41; ECF No. 6-2 ¶¶ 55–67; ECF No. 60-2 ¶ 3. Even preliminary relief from the state court would have come *after* these deprivations of Plaintiffs' liberty interests.

Finally, *Jenkins v. McKeithen*, 395 U.S. 411 (1969), is directly relevant to the *Mathews* analysis. *Jenkins* is not a criminal punishment case, but the commission's functions and findings in that case are strikingly similar to the functions and findings of the Chief of Domestic Security, Governor, and Cabinet under the DTO regime. *See id.* at 427–28 (explaining that commission was allegedly "empowered," under state law, to "find named individuals guilty of violating the criminal laws of Louisiana and the United States and to brand them as criminals in public").

Third, Plaintiffs are likely to succeed on their freedom of association claim. Pls. Mot. 36–40; Pls. Reply 16–19. As noted above, even under Defendants' interpretation of the "criminal gang" definition, Plaintiffs cannot function in Florida without becoming "criminal gangs." Fla. Stat. § 874.03(1). If Plaintiffs were to continue operating in Florida, they—and virtually everyone they associate with—would face liability under Section 874.03(1) and the Criminal Gang Prevention Act. Thus, for example, if any person were to knowingly initiate activity in furtherance of Plaintiffs' interests, that person would face felony

liability and life imprisonment. *See* Fla. Stat. § 874.10. This provision—alongside the other elements of the DTO regime—violates Plaintiffs' right to engage in expressive association. *See also, e.g.*, *id.* §§ 775.34 (prohibition on membership), 823.05(2)(b)–(c) (use of location by criminal gang, gang members, or gang associates is a per se public nuisance), 874.05 (prohibition on recruitment of criminal gang members), 874.08 (property to facilitate criminal gang activity is subject to seizure and forfeiture).

Here, because Plaintiffs are not engaged in terrorist activity, it is plain that executive officials have targeted Plaintiffs for their First Amendment-protected activity. The Notice of Intent makes that apparent. Pls. Mot. 8; Pls. Reply 15–16. Regardless, under the Supreme Court's associational-rights cases, Plaintiffs do not need to establish that the state has deliberately targeted association; instead, the question is whether the state has substantially burdened association. *See, e.g.*, *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 659 (2000). Thus, even if the material support statute does not "target" associations, Order at 25, it is still subject to at least exacting scrutiny. Finally, although *Arcara v. Cloud Books, Inc.*, 478 U.S. 697 (1986), is not an associational case, *but see* Order at 26, it supports Plaintiffs' position, *see* Pls. Reply 14–16. Plaintiffs are not challenging the operation of ordinary criminal or civil laws with adequate process; instead, Plaintiffs are

challenging a scheme that vests state executive officers with extraordinary power and discretion to silence disfavored organizations without proof of wrongdoing.

Fourth, Plaintiffs are likely to succeed on their other First Amendment claims. Pls. Mot. 41–50; Pls. Reply 19–24. As to Plaintiffs' prior restraint argument, Plaintiffs are not arguing that ordinary criminal and civil penalties are prior restraints, because those ordinary penalties are imposed only after sufficient process, including process that meets First Amendment requirements. *See* Order at 27–28 (citing *Alexander v. United States*, 509 U.S. 544, 550 (1993)). Here, in contrast, the DTO regime presents all of the dangers of a censorship regime, as a handful of officials have the discretion to unilaterally convert protected speech and association into criminal speech and association. *See, e.g.*, *United States v. Afshari*, 446 F.3d 915, 915–22 (9th Cir. 2006) (Kozinski, J., dissenting from denial of rehearing en banc) (explaining that a "terrorist designation is thus a type of prior restraint on speech, because it criminalizes monetary contributions that would otherwise be protected by the First Amendment"; the "crux" of the issue is "the *process* by which the designation was made," and that process must comply with *Freedman v. Maryland*, 380 U.S. 51 (1965)). Contrary to the Court's conclusion, Order at 29, Plaintiffs submit that the DTO designations target both their protected association and their speech. Pls. Mot. 8; Pls. Reply 15–16. But regardless of intent, designation functions as a prior restraint. And even if the Court were not to

apply that label, the DTO regime vests excessive discretion in the executive branch and independently fails on that ground. Pls. Reply 20–21.

But even if the Court were again to disagree, Plaintiffs submit in the alternative that the DTO regime in its entirety should be subject to intermediate scrutiny—not least because of its coercive effects on Plaintiffs' employees, volunteers, donors, communications service providers, and other third parties to suppress Plaintiffs' advocacy and disassociate from Plaintiffs. *Cf.* Opp. 41, ECF No. 55; *see* Pls. Reply 13–16 (explaining that the DTO regime and designation is aimed at speech and association; that the regime and designation disproportionately burden speech and association; and that, under *Arcara*, 478 U.S. at 706, it was "conduct with a significant expressive element that drew the legal remedy in the first place"); Pls. Reply 18 (discussing coercion).

Indeed, Defendants have further confirmed that it was Plaintiffs' speech and "conduct with a significant expressive element" that drew the legal remedy here. *Arcara*, 478 U.S. at 706. In response to the Court's November 4 decision, Governor DeSantis publicly celebrated the win, retweeting a video of his remarks: "We have officially designated . . . CAIR as a foreign terrorist organization . . . But I think the issue we're now seeing in the Democratic Party the fusion of socialism with, with some Islamism. And it's this red/green alliance. How does Islamist ideology, political Islam factor into American institutions and societies?

Obviously, if we designated these groups as FTOs, they would not be eligible for benefits, whether it's scholarships or all these other things. So can you [Byron Donalds] speak to how you conceive of this, of this issue, and were we right in Florida to enact the anti-Sharia bill?"[2]

Finally, Plaintiffs respectfully request that the Court more broadly enjoin pending appeal Sections 775.33 and 874.10 as applied to speech, because these provisions are both content- and viewpoint-discriminatory. Pls. Mot. 49–50; Pls. Reply 21–22. Section 775.33 will prohibit the provision of services—in this case, communications with Plaintiffs by employees, board members, and volunteers—while the same speech provided to others is not prohibited. And for the reasons above, Plaintiffs submit that, if they were to continue operating, they and others would be at significant risk of prosecution for their speech under Section 874.10.

As to the equities, Plaintiffs have now been forced to shut their doors in Florida. Defendants have silenced their pro bono legal representation, their community organizing, their press releases, their advocacy with public officials, and more. *See KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1270–72 (11th Cir. 2006) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." (citation

[2] Ron DeSantins (@RonDeSantis), X.com (Nov. 5, 2026, at 1:20 PM ET), https://perma.cc/WL6V-QKQ5.

modified)). An injunction pending appeal would not harm other parties, and it would only serve the public interest, as the state has no interest in enforcing an unconstitutional law.

CONCLUSION

For the foregoing reasons, this Court should issue an injunction pending appeal.

Respectfully submitted November 7, 2026,

/s/ Ashley Gorski

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LOCAL RULE 7.1(F) CERTIFICATION

I certify that this memorandum contains 2509 words.

Dated: November 7, 2026

/s/ Ashley Gorski
Ashley Gorski
Counsel for Plaintiffs

LOCAL RULE 7.1(C) CERTIFICATE OF CONFERRAL

Counsel for Plaintiffs conferred with counsel for Defendants, who oppose the relief requested by this motion.

Dated: November 7, 2026

/s/ Ashley Gorski
Ashley Gorski
Counsel for Plaintiffs