

BAILEY ♦ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

DENNIS L. KENNEDY
NEVADA BAR NO. 1462
PAUL C. WILLIAMS
NEVADA BAR NO. 12524
BAILEY ♦ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
TELEPHONE: 702.562.8820
FACSIMILE: 702.562.8821
DKennedy@BaileyKennedy.com
PWilliams@BaileyKennedy.com

NEAL KUMAR KATYAL
(ADMITTED *PRO HAC VICE*)
JOSHUA B. STERLING
(ADMITTED *PRO HAC VICE*)
WILLIAM E. HAVEMANN
(ADMITTED *PRO HAC VICE*)

MILBANK LLP
1101 NEW YORK AVENUE NW
WASHINGTON, D.C. 20005
TELEPHONE: 202.835.7500
FACSIMILE: 202.263.7586

Attorneys for Plaintiff KalshiEX, LLC

GRANT R. MAINLAND
(ADMITTED *PRO HAC VICE*)
ANDREW L. PORTER
(ADMITTED *PRO HAC VICE*)
NICOLE D. VALENTE
(*PRO HAC VICE* PENDING)
KATIE CASSIDY-GINSBERG
(ADMITTED *PRO HAC VICE*)
VICTOR HOLLENBERG
(ADMITTED *PRO HAC VICE*)
MILBANK LLP
55 HUDSON YARDS
NEW YORK, NY 10001
TELEPHONE: 212.530.5000
FACSIMILE: 212.530.5219

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KALSHIEX, LLC,

Plaintiff,

vs.

KIRK D. HENDRICK, in his official capacity as
Chairman of the Nevada Gaming Control Board,
et al.,

Defendants,

vs.

NEVADA RESORT ASSOCIATION,

Intervenor-Defendant.

Case No. 2:25-cv-00575-APG-BNW

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO STATE
DEFENDANTS' EMERGENCY
MOTION TO DISSOLVE THE
PRELIMINARY INJUNCTION
ENTERED ON APRIL 9, 2025**

REDACTED

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INTRODUCTION

Defendants’ motion to dissolve the preliminary injunction (“PI”) is procedurally improper and lacks substantive merit. It should be denied for numerous independent reasons.¹

First, a motion to dissolve must turn on a “significant change in the facts or the law,” *Sharp v. Weston*, 233 F.3d 1166, 1170 (9th Cir. 2000)—*i.e.*, “grounds that could not have been raised before,” *Alto v. Black*, 738 F.3d 1111, 1120 (9th Cir. 2013). Defendants rely primarily on this Court’s recent decision in *North American Derivatives Exchange Inc. v. Nevada* (“*Crypto*”), 2025 WL 2916151, at *9 (Oct. 14, 2025), but that decision did not change the law. It is a non-final decision construing statutory language enacted 15 years before this lawsuit commenced. Defendants also highlight new contracts Kalshi has certified since the PI was granted, but Defendants do not explain how those new contracts bear on their categorical position that none of Kalshi’s contracts is subject to the CFTC’s jurisdiction. If Defendants believe they are entitled to judgment as a matter of law, the proper way to pursue that relief is not via a second bite at the PI apple, but rather a motion for summary judgment.

Second, if the Court reaches the question, Defendants have not met their burden to justify dissolving the PI. As this Court previously noted, the “plain and unambiguous” text of the CEA preempts state regulation of trading on DCMs. ECF No. 45 at 11. Relying on this Court’s *Crypto* decision, Defendants argue Kalshi’s contracts are not swaps, but we respectfully submit that further briefing will cast doubt on *Crypto*. This case—involving a collateral attack on a company offering contracts that the CFTC has permitted—is not a proper vehicle for addressing whether Kalshi’s contracts are swaps, which should instead be raised in an action against the CFTC under the Administrative Procedure Act (“APA”). In any event, Kalshi’s contracts are swaps because they are based on events associated with (at the very least) potential financial consequences. Dictionaries and common usage confirm that the terms “event” and “contingency” comfortably encompass outcomes. A contrary conclusion would make the definition of swap—and the CFTC’s jurisdiction—rise and fall from contract to contract based on semantics, as almost any event could be characterized as merely the outcome of some other event. Nor will Congress’s broad definition of swap make the CFTC the

¹ Intervenor-Defendant Nevada Resort Association (“NRA”) filed a “joinder” to this motion two days before Kalshi’s response was due. Kalshi will respond to that “joinder” separately.

1 nation's sole gambling regulator. The CEA preempts state regulation of *on-exchange* trading, but
2 leaves states free to regulate *off-exchange* transactions like run-of-the-mill sports bets.

3 *Third*, the balance of harms and public interest favor preserving the PI. Immediate compliance
4 with Nevada law is not technically feasible and would require Kalshi to violate the CFTC's Core
5 Principles, jeopardizing its DCM status. It would also disrupt traders with positions on Kalshi, in
6 Nevada and elsewhere. By contrast, especially as this case is ripe for summary judgment, Defendants
7 will suffer minimal harm from keeping the PI in place pending final resolution.

8 Kalshi respectfully requests that the Court preserve the status quo by denying Defendants'
9 motion. If, however, the Court grants the motion, we request that the Court stay dissolution pending
10 appeal to prevent irreparable harm to Kalshi pending appeal to the Ninth Circuit.

11 **BACKGROUND**

12 On April 9, 2025, this Court granted Kalshi a PI that enjoined Defendants from enforcing
13 Nevada's gambling laws against sports- and political-event contracts offered by Kalshi. The Court
14 explained that the CEA preempts the field of trading on DCMs. ECF No. 45 at 13. Defendants opted
15 not to appeal that decision. In the meantime, this Court denied Defendants' motion to dismiss Kalshi's
16 complaint, *see* ECF No. 72, and Kalshi filed a motion for summary judgment. Kalshi's position
17 throughout has been that the case presents a legal issue that should be resolved on summary judgment
18 without the need for discovery. The Court suggested this very approach early on. ECF No. 46 at 44:9-
19 16. Defendants, however, filed a motion to prevent this Court from considering Kalshi's pending
20 summary judgment motion until discovery is complete. *See* ECF Nos. 129, 138. This Court recently
21 denied Defendant's motion, and their opposition to Kalshi's motion for summary judgment is due on
22 November 21, 2025.

23 On October 14, 2025, this Court issued an order declining to grant a PI in favor of a different
24 DCM in a separate proceeding raising similar questions. *Crypto*, 2025 WL 2916151, at *4. The
25 Court's decision focused on the meaning of the word "swap," a term the CEA defines in subsections
26 (i) through (vi) of Section 1a(47)(A). The Court interpreted subsection (ii)'s definition—which
27 includes contracts based on "the occurrence, nonoccurrence, or the extent of the occurrence of an event
28 or contingency associated with a potential financial, economic, or commercial consequence," 7 U.S.C.

§ 1a(47)(ii)—to exclude sports-event contracts. *Crypto*, 2025 WL 2916151, at *6-9. The Court held that those contracts were based on outcomes of sporting events rather than on the occurrence of the sporting events, and thus were not swaps. *Id.* at *9. But the Court reaffirmed that the CEA preempts states from regulating swaps on DCMs. *Id.* at *5. Defendants then moved to dissolve Kalshi’s PI.

LEGAL STANDARD

Defendants “bear[] the burden of establishing that a significant change in facts or law warrants revision or dissolution of the injunction.” *Sharp*, 233 F.3d at 1170. Where a “party could have appealed” the PI “but chose not to do so,” a “subsequent challenge to the injunctive relief must rest on grounds *that could not have been raised before.*” *Alto*, 738 F.3d at 1120 (emphasis added). After establishing a “significant[]” change, the moving party must show “that in light of that change,” dissolution is warranted “under the same legal standard that governed the previously entered injunction.” *Apr. in Paris v. Bonta*, 659 F. Supp. 3d 1114, 1124 (E.D. Cal. 2023). Here, that standard requires considering whether: (1) the plaintiff has made “a sufficient showing of a likelihood of success on the merits;” (2) the plaintiff “will be irreparably harmed absent interim relief;” (3) a PI “will substantially injure other parties;” and (4) the “public interest” favors a PI. *Karnoski v. Trump*, 926 F.3d 1180, 1202 (9th Cir. 2019). Where “the balance of hardships tips sharply in the plaintiff’s favor,” the plaintiff can show a likelihood of success by raising “serious questions going to the merits.” *hiQ Labs, Inc. v. LinkedIn Corp.*, 31 F.4th 1180, 1188 (9th Cir. 2022) (quotation omitted).

ARGUMENT

I. Defendants Provide No Basis to Revisit the Preliminary Injunction.

Defendants style their motion as one for dissolution of the PI, but in substance it is an untimely motion for reconsideration of the Court’s PI ruling. A motion for dissolution may be brought at any time, but it must be based on “a significant change in facts or law.” *Sharp*, 233 F.3d at 1170. A motion for reconsideration, by contrast, must be brought within 28 days of the initial ruling. Fed. R. Civ. P. 59(e); *see Credit Suisse First Bos. Corp. v. Grunwald*, 400 F.3d 1119, 1124 (9th Cir. 2005) (Rule 59(e) applies to motions for reconsideration of PI orders). Because their motion is half a year too late to be timely under Rule 59(e), Defendants maintain that “changes” warrant revisiting the PI. But Defendants simply press arguments that they could have made—but chose not to—when the Court

first considered the PI, or else they rehash arguments this Court already considered and rejected.

A. Defendants Do Not Identify a Significant Change in the Law.

Defendants cite this Court’s decision in *Crypto* and a decision by the District of Maryland denying Kalshi a PI in another matter. But those decisions are non-final, non-binding, and do not change any law. Defendants cite no case dissolving a PI based on such non-binding precedent. Cases finding a “significant change” typically involve a new statute, *see The Ecology Ctr. v. Castaneda*, 426 F.3d 1144, 1147-48 (9th Cir. 2005), or new authoritative precedent, *Eliason v. Clark County*, 2021 WL 810410, at *3 (D. Nev. Mar. 3, 2021). Nor do Defendants make arguments “that could not have been raised before,” as needed to support dissolution. *Alto*, 738 F.3d at 1120.

First, Defendants rely on *Crypto*, where this Court declined to grant a different DCM a PI, holding that sports-event contracts “are not swaps” because they are based on “outcome[s]” of events. 2025 WL 2916151, at *9. Defendants claim (at 2) that Kalshi’s sports-event contracts are similarly not swaps, and (at 9) that they make may this argument now because this Court “presumed without addressing that Kalshi’s event contracts are swaps” in granting Kalshi a PI. Not so.

The oral argument transcript makes clear that the Court considered whether Kalshi’s contracts qualify as swaps before granting the PI. ECF No. 46 at 5-8, 16-17, 46. Regardless, Defendants could have made the argument at that time, so their motion does not rest “on grounds that could not have been raised before.” *Alto*, 738 F.3d at 1120. Defendants ignore this requirement and do not claim to have met it. Indeed, they note (at 2) that “Kalshi’s allegations make clear” that its contracts are based on “outcomes.” *See* ECF No. 1 (“Compl.”) ¶¶ 5, 42-44. Defendants in both Maryland and New Jersey disputed whether Kalshi’s contracts are swaps in opposing preliminary relief, underscoring that Defendants here could have made the argument as well. *See* ECF No. 28 at 13, *KalshiEX LLC v. Martin*, No. 25-cv-01283 (May 12, 2025) (arguing that “the outcome of a sporting event” cannot form the basis for a swap); ECF No. 15 at 15-16, *KalshiEX LLC v. Flaherty*, No. 25-cv-02152 (Apr. 18, 2025) (arguing that Kalshi’s event contracts are not swaps).

Other courts in the Ninth Circuit have declined to dissolve PIs in similar cases. In one case, movants “didn’t appeal the order granting the” PI and instead left it in effect for “months,” then hired “new counsel” and “filed a motion to dissolve” the PI by offering arguments “which weren’t advanced

by their previous counsel” but could have been. *FTC v. Noland*, 2020 WL 6292863, at *1-4 (D. Ariz. Oct. 27, 2020); *see also United States v. Bus. Recovery Servs., LLC*, 2011 WL 4915192, at *5 (D. Ariz. Oct. 17, 2011) (modification inappropriate because the legal rule at issue “existed when the Court held the hearing on the Motion for Preliminary Injunction”). The same reasoning applies here.

Second, the District of Maryland’s decision in *Martin* likewise provides no basis for dissolution. For one thing, it is almost three months old. If *Martin* significantly changed the law, Defendants should have moved to dissolve the PI promptly. Instead, Defendants use *Martin* to bolster arguments they previously made regarding the scope of preemption under the CEA—arguments the Court rejected in this case and again in *Crypto*. Indeed, they admit (at 16) they ask this Court to “revisit” an issue it previously addressed and rejected. Defendants may not use a motion to dissolve to “relitigate the issues” this Court previously decided. *Grunwald*, 400 F.3d at 1124.

B. Defendants Do Not Identify a Significant Change in the Facts.

No new facts warrant dissolution either. Defendants principally note (at 11) that Kalshi now offers new types of contracts. But these new contracts have no bearing on Defendants’ merits arguments. Relying on *Crypto*, Defendants argue (at 14) that Kalshi’s contracts are not swaps because they are based on outcomes. Yet *Crypto* appears to apply to sports-event contracts categorically, including contracts based on the *outcome* of sports events, which Kalshi has offered from the outset of this litigation. In fact, under *Crypto*, many of Kalshi’s newer contracts have a stronger claim to being swaps than Kalshi’s earlier contracts, because their underlying events cannot be characterized as outcomes. For example, as *Crypto* suggests, Kalshi’s contract on the number of World Series Games played² is a swap because it turns on the “extent of an occurrence.” *See* 2025 WL 2916151, at *8 (a contract on the number of rounds in a boxing match involves the “extent of an occurrence”). Contracts on whether the NBA will add a new team before 2030 or whether LeBron James will retire before next season are similar.³

² Kalshi, *Pro Baseball Championship: Series Total Games Played*, <https://kalshi.com/markets/kxmlbseriesgametotal/professional-baseball-series-total-games/kxmlbseriesgametotal-25torlad> (last accessed Oct. 31, 2025).

³ Kalshi, *Add new team before 2030?*, <https://kalshi.com/markets/kxnbateam/nba-team/kxnbateam-30> (last accessed Oct. 31, 2025); Kalshi, *LeBron James announces retirement before the 2026-27 season?*, <https://kalshi.com/markets/kxlbjretire/lbj-retire/kxlbjretire-26> (last accessed Oct. 31, 2025).

Nor does the unsubstantiated “alleg[ation]” (at 11) that “a Kalshi affiliate *is* the counterparty to many event contracts on its DCM” justify dissolution. An allegation made by a different party in a different case is not a change in the facts. And the allegation is false. Kalshi, like other DCMs, has an affiliated market maker as a separate corporate entity to promote liquidity on its exchange, but nothing about that commonplace arrangement allows Kalshi to set the price of its contracts or gives the exchange any means or incentive to set prices to benefit itself and harm traders.

C. Defendants’ Arguments Should be Raised in a Motion for Summary Judgment.

Defendants maintain (at 13) it is “clear” that “Kalshi’s contracts are not swaps.” They also maintain (at 16) that Kalshi is “wrong” as a matter of law that “the CEA preempts” state gaming laws as to trading on DCMs. The proper vehicle for these arguments is a motion for summary judgment.

Kalshi has consistently maintained that preemption presents a legal question that can be resolved without factual development at summary judgment. Kalshi accordingly moved for summary judgment three months ago. But, after initially agreeing that the questions in the case were largely legal questions of statutory interpretation, ECF No. 46 at 69:4-5, Defendants have recently resisted summary judgment on the ground that, “to decide whether Nevada’s gaming laws are preempted, the Court will need to know key facts about Kalshi’s products” that can only be adduced through discovery, ECF No. 89 at 2, and that “it would be impossible for the Court to determine whether Kalshi’s offerings fall within” the CFTC’s “exclusive jurisdiction” without discovery, ECF No. 90 at 8. Defendants’ motion contradicts those recent assertions. Defendants now agree that the Court can determine whether preemption applies as a matter of law. They may raise those arguments in a motion for summary judgment at any time, and Kalshi is prepared to brief summary judgment expeditiously.

II. Even if the Court Revisits the Injunction, It Should Deny the Motion to Dissolve.

Should the Court reach the PI factors, it should deny the motion. As this Court correctly held (here, and in *Crypto*), the plain terms of the CEA preempt state regulation of derivatives, including swaps, traded on DCMs. Defendants argue that Kalshi’s contracts are not swaps, but the CFTC has concluded otherwise, and this case is not a proper vehicle to challenge that determination. Regardless, Kalshi’s sports- and political-event contracts qualify as swaps under the plain terms of the CEA. Kalshi recognizes that the Court reached a contrary conclusion in *Crypto*, but respectfully disagrees

1 with that decision.

2 **A. Kalshi Remains Likely to Succeed on the Merits.**

3 Defendants seek dissolution on two grounds. First, they argue that Kalshi's contracts are not
4 swaps, relying heavily on *Crypto*. Second, they ask this Court to reverse its determination, reaffirmed
5 in *Crypto*, that the CEA preempts state regulation of trading on DCMs. Neither argument has merit.

6 **1. Defendants' Argument That Kalshi's Contracts are Not Swaps is Unavailing.**

7 *This case is not a proper vehicle to determine whether Kalshi's contracts are swaps.* In arguing
8 that Kalshi's contracts are not swaps, Defendants in substance challenge the CFTC's decision to permit
9 these contracts. The proper forum for that claim is through an APA lawsuit against the CFTC, not an
10 action against Kalshi in which the CFTC is not a party.

11 Congress has delegated to the CFTC the authority to oversee the listing of contracts for trading
12 on DCMs. A DCM may "elect to list for trading or accept for clearing any new contract" by providing
13 the CFTC with a "written certification that the new contract" complies with the CEA. 7 U.S.C. § 7a-
14 2(c)(1). The CFTC reviews proposed contracts and may initiate review of any contract within 10 days
15 of receiving notice. *Id.* § 7a-2(c)(2); 17 C.F.R. § 40.11(c). Congress in the Special Rule expressly
16 granted the CFTC the discretion to determine that certain types of event contracts are contrary to the
17 public interest, and, if so, to prohibit them. *See* 7 U.S.C. § 7a-2(c)(5)(C). That statutory discretion to
18 deem a contract contrary to the public interest depends upon the CFTC having jurisdiction over the
19 contract in the first place. The CFTC in turn has set out a process for CFTC review "on a case-by-
20 case basis" whether an event contract listed by a DCM is barred by the Special Rule. CFTC,
21 *Provisions Common to Registered Entities*, 76 Fed. Reg. 44,776, 44,785-86 (July 27, 2011) (adopting
22 17 C.F.R. § 40.11). When the review period in the self-certification process for a contract closes, the
23 CFTC decides either to object affirmatively to the listing of the new contract, *id.* § 7a-2(c)(3)(B)(ii),
24 or to permit the new contract to be listed by taking no action, *id.* §§ 7a-2(c)(2), (3)(B).

25 The CFTC has exercised jurisdiction over, and allowed, the contracts to which Defendants
26 object. As to Kalshi's political-event contracts, the CFTC initially issued an order prohibiting Kalshi
27 from offering them on the asserted ground that they involved "gaming" and "unlawful" activity under
28 certain states' laws, and were contrary to the public interest. The D.C. District Court disagreed,

1 holding that they did not involve gaming or unlawful activity under the Special Rule, so federal law
 2 *required* the CFTC to permit them to be traded. *See KalshiEX LLC v. CFTC*, 2024 WL 4164694, at
 3 *13 (D.D.C. Sept. 12, 2024). After the D.C. Circuit denied a stay, the CFTC dismissed its appeal,
 4 making the district court’s decision final. *See* No. 24-5205, 2025 WL 1349979 (D.C. Cir. May 7,
 5 2025). Kalshi has since been able to offer its political-event contracts.

6 Kalshi self-certified its first sports-event contracts and then listed them on January 24, 2025.
 7 Compl. ¶ 53. On January 31, 2025 the CFTC requested, [REDACTED]
 8 [REDACTED], and Kalshi responded
 9 with [REDACTED]

10 [REDACTED]. Ex. 1. Kalshi also provided the CFTC with [REDACTED]
 11 [REDACTED]
 12 [REDACTED]. Ex. 2. The CFTC took no further action with respect to Kalshi’s self-
 13 certifications of sports-event contracts. Had the CFTC deemed Kalshi’s contracts impermissible, it
 14 would have had the responsibility to “object[]” to the contracts. *Id.* § 7a-2(c)(3)(B)(ii). But it did not.

15 Under this statutory regime, when the CFTC does not block a contract for listing on a DCM,
 16 that is itself an agency action. *See* 5 U.S.C. § 551(13) (APA defines “agency action” to include “failure
 17 to act”). If Defendants object to the CFTC’s action with respect to Kalshi, the APA permits them to
 18 file suit against the agency on the ground that its action was contrary to law. *See* 5 U.S.C. §§ 702,
 19 706(2). But Defendants may not “use a collateral proceeding to end-run the procedural requirements
 20 governing appeals of administrative decisions.” *Big Lagoon Rancheria v. California*, 789 F.3d 947,
 21 953 (9th Cir. 2015) (en banc) (quoting *United States v. Backlund*, 689 F.3d 986, 1000 (9th Cir. 2012)).⁴
 22 Here, Defendants “necessarily argue[]” that the [CFTC] exceeded its authority when it” permitted
 23 Kalshi to list its event contracts for trading on its DCM. *Big Lagoon Rancheria*, 789 F.3d at 953.

24
 25
 26 ⁴ *See also Alabama v. PCI Gaming Auth.*, 801 F.3d 1278, 1291 (11th Cir. 2015) (“collateral challenge”
 27 to agency decision was inappropriate; the “proper vehicle ... is an APA claim”); *City of Duluth v.*
 28 *Fond du Lac Band of Lake Superior Chippewa*, 702 F.3d 1147, 1153 (8th Cir. 2013) (“challenge[]” to
 agency “determination” was “properly made under the Administrative Procedure Act,” and “the
 review process established by Congress in the APA” could not “be circumvented”).

1 Permitting the state to “attack collaterally” the CFTC’s decision “outside the APA would constitute
 2 just the sort of end-run that” Congress prohibited. *Id.* at 954.

3 The practical implications of allowing states to second-guess the CFTC’s exercise of discretion
 4 through this kind of collateral attack help explain why Congress prohibited it. State regulators have
 5 understandable incentives to expand their own regulatory authority by construing the CFTC’s
 6 jurisdiction narrowly. If states may second-guess the CFTC’s determination that a contract is a swap
 7 properly traded on a DCM, it would mean that states could exercise jurisdiction over the exact same
 8 contracts as the CFTC—in clear conflict with Congress’s decision to entrust the CFTC with “exclusive
 9 jurisdiction” in this field. 7 U.S.C. § 2(a)(1)(A). That difficulty would be compounded 51-fold if each
 10 state could press its own understanding of “swap.” And this difficulty would further be compounded
 11 exponentially if states could scrutinize every contract offered on a DCM, contract-by-contract, to
 12 determine whether any of tens of thousands of contracts may or may not be swaps—all with the
 13 looming threat of criminal prosecution if the state concludes that any such contract is not a swap after
 14 all. This is not the regime Congress intended, and it would plainly “frustrate Congress’ intent to bring
 15 the markets under a uniform set of regulations.” *Am. Agric. Movement, Inc. v. Bd. of Trade of City of*
 16 *Chicago*, 977 F.2d 1147, 1156 (7th Cir. 1992).

17 This Court in *Crypto* noted that “[n]othing in the CEA takes statutory interpretation away from
 18 courts.” 2025 WL 2916151, at *6. Kalshi agrees. Federal courts may determine the meaning of the
 19 terms of the CEA, including the term “swap.” The point is not that the CFTC alone is authorized to
 20 determine what qualifies as a swap, but rather that a challenge to the CFTC’s determination must be
 21 brought against the CFTC itself in a decision that will ensure the CFTC regulates uniformly
 22 nationwide—not through threats to criminally prosecute DCMs for offering event contracts that the
 23 CFTC, exercising exclusive jurisdiction, has permitted.

24 *Kalshi’s contracts are swaps or other CFTC-regulated derivatives.* Where a statute “does not
 25 define” a term, courts give the term its “ordinary meaning.” *EPA v. Calumet Shreveport Refining,*
 26 *LLC*, 145 S. Ct. 1735, 1747 (2025). The plain language of the CEA’s definition of “swap” sweeps
 27 broadly and covers Kalshi’s sports-event and political-event contracts, which “provide[]” for payment
 28 based on “the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency

1 associated with a potential financial, economic, or commercial consequence.” 7 U.S.C.
2 § 1a(47)(A)(ii). None of Defendants’ arguments for adopting a limited reading of “swap” has merit.

3 *First*, contrary to Defendants’ assertion (at 14), an “outcome” is a type of “event” or
4 “contingency” that can properly be the subject of a swap. Dictionaries define “event” to include “the
5 *outcome*, issue, or result of anything.” *Event*, Random House Webster’s Unabridged Dictionary (2d
6 ed. 2001) (emphasis added). Though this Court in *Crypto* cited two dictionaries referring to “outcome”
7 as an archaic definition of “event,” 2025 WL 2916151, at *7, many or most dictionaries do not treat
8 this definition as archaic.⁵ More generally, as this Court recognized, dictionaries define “event”
9 broadly to mean “[s]omething that happens.” *Event*, Random House Webster’s Pocket Am. Dictionary
10 (5th ed. 2008).⁶ An outcome is quite naturally understood to be “something that happens.” Super
11 Bowl LIX happened, but so did the Eagles’s win. Similarly, “contingency” includes “something liable
12 to happen as an adjunct to *or result* of something else.” *Contingency*, Merriam-Webster’s Collegiate
13 Dictionary (11th ed. 2003) (emphasis added).⁷ That definition comfortably encompasses outcomes.
14 While the Court did not resolve the meaning of “contingency” in *Crypto* because the parties did not
15 present the question, it provides an independent basis to hold that Kalshi’s contracts are swaps. The
16 Court in *Crypto* tentatively interpreted “contingency” to mean the same thing as “event,” 2025 WL
17 2916151, at *8 n.9, but that would read “contingency” out of the statute.

18 Courts agree that contracts turning on outcomes are subject to the CFTC’s jurisdiction. The
19 first sentence of the D.D.C.’s decision upholding Kalshi’s political-event contracts explains that “event
20 contracts” are “a type of derivative contract whose payoff is based on the *outcome* of a contingent
21 event.” *KalshiEX*, 2024 WL 4164694, at *1 (emphasis added); *see also CFTC v. Trade Exch. Network*

22 ⁵ *See Event*, Webster’s Encyclopedic Unabridged Dictionary of the English Language: Deluxe Edition
23 (1st ed. 2001) (“the outcome, issue, or result of anything”); *Event*, Webster’s II New College
24 Dictionary (3d ed. 2005) (“[t]he actual outcome or final result”); *Event*, Webster’s II Dictionary:
Office Ed. (3d ed. 2005) (“[a] final result : outcome”).

25 ⁶ *See Event*, Longman Advanced Am. Dictionary (2d ed. 2007); *see also Event*, Oxford Am. Dictionary
and Thesaurus (2d ed. 2009) (“a thing that happens or takes place”).

26 ⁷ *See Contingency*, Webster’s II New College Dictionary (3d ed. 2005) (“[s]omething incidental to
27 something else”); *Contingency*, Random House Webster’s Unabridged Dictionary (2d ed. 2001)
28 (“something incidental to a thing”); *Contingency*, Webster’s Encyclopedic Unabridged Dictionary of
the English Language: Deluxe Edition (1st ed. 2001) (same); *Contingency*, Longman Advanced Am.
Dictionary (2d ed. 2007) (“an event *or situation* that might happen in the future” (emphasis added)).

Ltd., 117 F. Supp. 3d 29, 32, 35 (D.D.C. 2015) (CEA applies to contracts tied to “the outcome of real-world events”). More generally, courts have broadly recognized that an “event” is “the outcome or consequence of anything.” *Pub. Serv. Co. of Colorado v. Cont’l Cas. Co.*, 26 F.3d 1508, 1514-15 (10th Cir. 1994) (quoting *Event*, Webster’s Third New Int’l Dictionary (1981)).⁸

The CFTC itself has concluded that swaps may be—and usually are—predicated on outcomes. In 2008, the CFTC explained that “event contracts may be based on eventualities” such as “the outcome of particular entertainment events.” *Concept Release*, 73 Fed. Reg. 25,669, 25,669 (May 7, 2008) (emphasis added)). In a proposed rule just last year, the CFTC added that “event contracts are generally understood to be a type of derivative contract ... based on the *outcome* of an underlying occurrence or event.” *Event Contracts*, 89 Fed. Reg. 48,968, 48,969 (June 10, 2024) (emphasis added). That proposed rule defined gaming-related swaps to include those on “the *outcome* of an awards contest” or “game in which one or more athletes compete.” *Id.* at 48,975 (emphasis added). While the proposed rule would have prohibited gaming contracts as being contrary to the public interest, the rule clearly contemplated that outcome-based event contracts were swaps within the CFTC’s jurisdiction. The CFTC’s position provides ample basis for this Court to revisit its conclusion in *Crypto*. See *Crypto*, 2025 WL 2916151, at *6 (“I have been presented with no agency fact finding or reasoned interpretation regarding whether these contracts are swaps.”).

A rule providing that event contracts may be based on events but not outcomes would yield intractable interpretive difficulties. Almost any event can be recharacterized as the outcome of a different event. Whether a World Series Game 7 takes place turns on the outcome of Game 6. Outside the sports context, the passage of a law could be framed as the outcome of a legislative vote. A rise in corn prices could be framed as the outcome of a drought. The default underlying a credit default swap could be framed as the outcome of an economic downturn. Construing the CFTC’s exclusive jurisdiction to turn on the distinction between events and outcomes would call into question the

⁸ See *Prysmian Cables & Sys. USA LLC v. ADT Com. LLC*, 665 F. Supp. 3d 236, 246 (D. Conn. 2023) (“‘Event’ ... ordinarily refers to an ‘outcome’” (quoting *Event*, Oxford English Dictionary (3d ed. 2018))); *St. Paul Fire & Marine Ins. Co. v. Keene Constr. Co. of Cent. Fla., Inc.*, 2006 WL 8439591, at *4 (M.D. Fla. Feb. 3, 2006) (“An ‘event’ is defined as ‘something that takes place,’ a ‘significant occurrence or happening,’ or ‘the actual outcome or final result’” (citing Am. Heritage Dictionary of the English Language (4th ed. 2000), and Webster’s II New Riverside Univ. Dictionary (1994))).

1 validity of almost every conceivable event contract, resulting in uncertainty, litigation, and paralysis.
 2 That uncertainty would be all the more problematic if, as discussed, states remain free to impose
 3 criminal penalties directly on DCMs for offering contracts that, though permitted by the CFTC, are
 4 deemed not to be swaps because a court later decides they turn on outcomes rather than events. It
 5 would also have far-reaching implications because of the sheer size of the swaps market: Interest rate
 6 derivatives traded notional “rose by 15.6% to \$366.6 trillion in 2024 from \$317.1 trillion in 2023.”⁹

7 This Court in *Crypto* stated that a contrary interpretation would mean either that “the statutory
 8 words either have no meaning or have such a broad meaning that they would render superfluous other
 9 portions of the CEA’s definition of a swap.” 2025 WL 2916151, at *9. To the contrary, Congress’s
 10 definition of “swap” is broad but not limitless—it requires an event associated with a potential
 11 “financial, economic, or commercial consequence.” 7 U.S.C. § 1a(47)(A)(ii). Congress included
 12 numerous exceptions to the definition of “swap,” a further indication that unwritten exceptions should
 13 not be implied. *TRW Inc. v. Andrews*, 534 U.S. 19, 28 (2001). And while it is true that many of the
 14 specific swaps listed in subsection (iii) would satisfy the definition in subsection (ii), overlap is not
 15 the same as superfluity, and overlap is equally inevitable under Defendants’ proposed reading, because
 16 many if not all of the swaps listed in subsection (iii) are “inherently financial.” Indeed, subsection (iv)
 17 eliminates all doubt that Congress intended the definitions of swap to overlap, because it defines
 18 “swap” to include any “agreement, contract, transaction, *that is*, or in the future becomes, commonly
 19 known to the trade as a swap”—a category that encompasses all of the swaps listed in subsection (iii).
 20 See 7 U.S.C. § 1a(47)(A)(iv) (emphasis added); *cf.* H.R. Rep. No. 93-975, at 76 (1974) (noting
 21 congressional purpose to ensure the CEA would cover “all futures trading that might now exist or
 22 might develop in the future”). The broad overlapping definitions of swap show that Congress intended
 23 to define swap broadly, and counsel strongly against any artificial narrowing.

24 *Second*, Defendants assert (at 14) that the event underlying a swap must be “inherently ...
 25 financial, economic, or commercial in nature.” Defendants made this argument in *Crypto* and the

26
 27 ⁹ “SwapsInfo Full Year 2024 and the Fourth Quarter of 2024,” International Swaps and Derivatives
 28 Association, at 3 (Feb. 2025), *available at* <https://www.isda.org/a/jYNgE/SwapsInfo-Full-Year-2024-and-the-Fourth-Quarter-of-2024.pdf>.

1 Court did not adopt it, no doubt because the statute imposes no such requirement. Defendants’
 2 interpretation would simply rewrite the definition of swap to include language that Congress did not
 3 use. It would also effectively rob subsection (ii) of any effect, as swaps based on *inherently* financial,
 4 economic, or commercial events (such as changes in prices or price indexes, or events of default) are
 5 already covered by subsection (iii). And Defendants’ proposed rewriting of the definition does not
 6 gel with other portions of the CEA. In particular, the Special Rule enumerates certain types of “swaps”
 7 that cannot reasonably be deemed *inherently* financial, economic, or commercial but that nonetheless
 8 fall within the CFTC’s jurisdiction. 7 U.S.C. § 7a-2(c)(5)(C)(i).

9 To the extent Defendants argue that Kalshi’s contracts are not swaps because their underlying
 10 events have insufficient potential financial, economic, or commercial consequences, they are
 11 mistaken. The outcomes of elections have obvious financial consequences. The outcomes of sporting
 12 events likewise are associated with financial consequences—often significant ones—for a broad
 13 ecosystem of stakeholders, including team sponsors, advertisers, television networks, franchises, local
 14 communities, and more. *See* ECF No. 143-13 at 2948-50. They thus easily qualify as swaps, which
 15 must be based on events associated with “potential” financial consequences. Contrary to Defendants’
 16 suggestion (at 14), sports events also have “direct economic consequences” for state-regulated
 17 sportsbooks themselves, which face substantial financial risks associated with sports events (if their
 18 customers win, they lose—providing a natural hedging need). Some sportsbooks have turned to
 19 Kalshi’s contracts to hedge their financial risks accordingly.¹⁰

20 *Third*, Defendants err in stating (at 15) that “the CFTC itself has rejected a broad reading of
 21 ‘swap’ that would encompass gaming.” Defendants cite the 2024 CFTC proposed rule on event
 22 contracts which, as explained above, acknowledges that event contracts subject to its jurisdiction may
 23 turn on outcomes. While the proposed rule would have determined that sports-event contracts are
 24 contrary to the public interest,¹¹ it would *not* have excluded these contracts from the CFTC’s definition
 25 of swap. Indeed, the very premise of the proposed rulemaking was that the Special Rule’s reference

26 ¹⁰ Brett Smiley, *Underdog Sports Preparing to Use Kalshi, Prediction Markets For Its Own Risk*
 27 *Management*, IN GAME, <https://perma.cc/BT4A-BK8T> (last accessed Oct. 30, 2025).

28 ¹¹ The CFTC never adopted that rulemaking, which predated the D.C. District Court’s ruling that the
 CFTC could not prohibit trading of Kalshi’s political event contracts. *See supra*, at 8.

to “swap[s]” involving “gaming” included event contracts based on outcomes of sports-related events, 89 Fed. Reg. at 48,975, which is why they were subject to the Special Rule in the first place.¹²

Citing *Crypto*, Defendants argue (at 6) that the CFTC has determined “on a blanket basis” that gaming contracts are contrary to the public interest, and thus accuse Kalshi of self-certifying its contracts in violation federal law. *See Crypto*, 2025 WL 2916151, at *10. This argument does not bear on the definition of swap, but Kalshi respectfully submits that it misreads Section 40.11. While Section 40.11(a) generally bars DCMs from offering contracts involving “gaming,” Section 40.11(c) preserves the CFTC’s discretion to permit such contracts case-by-case. The rule adopting Section 40.11 explains that DCMs “may always” self-certify contracts notwithstanding Section 40.11, and while it refers to Section 40.11 as a general “prohibition,” it also recognizes that the regulation allows review “on a case-by-case basis.” 76 Fed. Reg. at 44,785-86. The CFTC’s recent proposed rule on event contracts explained that if the CFTC “determines that the contract involves [an enumerated] activity, the Commission *must assess whether the contract is contrary to the public interest.*” 89 Fed. Reg. at 48,971 (emphasis added). That proposed rule—which would have categorically prohibited gaming contracts—would have been unnecessary if Section 40.11 already accomplished that result. And reading Section 40.11 as a blanket prohibition would run afoul of the CEA and APA, because Section 40.11 contains no rationale for finding every conceivable gaming-related contract to be contrary to the public interest. While the Court in *Crypto* noted that “*Crypto* did not explain in its self-certification” how its contracts comply with Section 40.11, 2025 WL 2916151, at *10 n.14, Kalshi’s response to the CFTC contained an [REDACTED]

[REDACTED], *see* Ex. 1 at 11-15.

Finally, even if the Court accepts Defendant’s reading of “swap,” the CFTC’s exclusive jurisdiction also extends to “future[s]” and “option[s]” on DCMs. 7 U.S.C. § 2(a)(1)(A). The events on which Kalshi’s contracts are based fall within the definition of “excluded commodity,” which

¹² Defendants likewise point to a CFTC regulation clarifying that certain kinds of “consumer and commercial arrangements that historically have not been considered swaps” are not covered by the CEA. CFTC, *Further Definition of “Swap,”* 77 Fed. Reg. 48,208, 48,246-48,248 (Aug. 13, 2012). But Defendants omit a key part of the regulation, which distinguishes non-swap “consumer and commercial arrangements” from swaps in part based on whether the instruments are “traded on an organized market.” *Id.* at 48,247. Kalshi’s contracts are, of course, traded on an organized market.

includes any “occurrence, extent of an occurrence, or contingency ... that is ... beyond the control of the parties to the relevant contract, agreement, or transaction; and ... associated with a financial, commercial, or economic consequence.” *Id.* § 1a(19)(iv). Unlike the definition of “swap,” this definition does not contain the term “event,” so *Crypto* provides no basis to exclude Kalshi’s contracts from CEA coverage. Indeed, multiple courts have concluded that event contracts like those Kalshi offers are covered by the CEA as transactions in excluded commodities. *KalshiEX*, 2024 WL 4164694, at *2 (“Event contracts are subject to regulation under the CEA as ‘excluded commodities.’”); *Trade Exch. Network Ltd.*, 117 F. Supp. 3d at 37-38 (rejecting argument that event contracts “did not involve a ‘commodity’ regulated under the CEA”).

Treating sports-event contracts as swaps would not make all sports wagering unlawful. Defendants accuse Kalshi (at 15) of taking the position that “nearly every sports bet is a swap,” which in turn would mean “that all sports wagering must be done on a DCM, and not at casinos.” But nothing about Kalshi’s position leads to that implausible result, for numerous reasons.

The CEA preempts state law as to on-DCM trading but leaves states free to regulate off-DCM transactions like sports bets offered by sportsbooks. As Defendants concede (at 18), the CEA contains a savings clause making clear that, except as provided by the grant of exclusive jurisdiction to the CFTC over *on-DCM* trading, “nothing” in the remainder of Section 2 shall “restrict” state authorities “from carrying out their duties and responsibilities in accordance with [state] laws.” 7 U.S.C. § 2(a); *see id.* § 16(e)(1)(B)(i) (“[n]othing” in the CEA “shall supersede or preempt” state law applied to off-exchange transactions). That leaves states free to apply state laws to traditional sportsbooks.

Defendants are also mistaken that if sports-event contracts are swaps, then so are run-of-the-mill sports bets. Acting pursuant to an express delegation from Congress, the CFTC has explained that swaps are instruments “*traded* on organized markets and over the counter.” 77 Fed. Reg. at 48,217 (emphasis added). But sports bets between a gambler and sportsbooks are not traded—once a gambler places a bet with a sportsbook in Nevada, neither the gambler nor the sportsbook can sell that bet to anyone else on any organized exchange. The CFTC has further noted that “consumers enter into various types of” transactions in their “personal lives that may have attributes that could be viewed as falling within the swap” definition, but it does “not believe that Congress intended to include” these

arrangements as swaps if “[t]hey are not traded on an organized market.” *Id.* at 48,246-47. That rationale applies to sports bets, but not sports-event contracts on DCMs.

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

2. Defendants Provide No Basis for the Court to Revisit Preemption.

This Court has rejected Defendants’ preemption arguments twice—first, in granting Kalshi a PI and then in denying a PI in *Crypto*. 2025 WL 2916151, at *5 (quoting ECF No. 45 at 11) (“Section 2’s plain and unambiguous language” grants the CFTC exclusive jurisdiction over trading covered instruments on DCMs, thereby “supersed[ing] ... state regulatory authorities’ jurisdiction.”). Defendants provide no basis to depart from those rulings.

First, Defendants argue (at 16) that the CEA does not expressly preempt state law. But Section 2’s grant of “exclusive jurisdiction” to the CFTC expressly preempts the field of regulating trading on DCMs. 7 U.S.C. § 2(a)(1)(A); see *Transcon. Gas Pipe Line Co., LLC v. Pa. Env’t Hearing Bd.*, 108 F.4th 144, 151-152 (3d Cir. 2024) (an “explicit statutory conferral of exclusive jurisdiction ... is a form of express preemption”); see *Crosby v. Nat’l Foreign Tr. Council*, 530 U.S. 363, 372 n.6 (2000) (“‘field’ preemption may fall into any of the categories of express, implied, or conflict preemption”). Regardless of the label, the CEA “reflects congressional intent to occupy the field of regulating CFTC-designated exchanges and the transactions on those exchanges.” ECF No. 45 at 12. The other “express preemption provisions” that Defendants identify (at 16) support preemption rather than cut against it. Section 16(h)(2) is not a preemption provision at all, but rather prohibits states from regulating any swap, whether on- or off-exchange, “as an insurance contract.” 7 U.S.C. § 16(h)(2). And Section 16(e)(2) preempts state gaming law as to certain types of off-DCM transactions—which are *not* subject to the CFTC’s exclusive jurisdiction. Specifying preemption of on-DCM transactions would have

1 been confusing and unnecessary; that is what Section 2 already accomplished. *Id.* Indeed, when
 2 Congress added Section 16(e)(2) to the CEA, it noted that “the current” CEA already “supersedes and
 3 preempts” state law “in the case of transactions conducted on a registered entity” like a DCM, and the
 4 new provision clarified that “the CEA supercedes and preempts State gaming and bucket shop laws”
 5 as to only certain limited categories of off-DCM transactions. H.R. Rep. No. 106-711, pt. 2, at 71
 6 (2000).

7 *Second*, Defendants cannot overcome the overwhelming evidence of field preemption. Section
 8 2’s language is “plain and unambiguous.” ECF No. 45 at 12. The CEA also sets out a comprehensive
 9 scheme governing DCMs, including which contracts a DCM may list for trading. *See* ECF No. 45 at
 10 7-8 (summarizing CEA provisions and CFTC regulations). In 1974, Congress explained that the
 11 statute was designed to “*preempt the field* insofar as futures regulation is concerned.” H.R. Rep. No.
 12 93-1383 at 35 (emphasis added). Of course, the CEA does not “occupy the field of gaming,” but it
 13 does occupy the field of regulating trading on DCMs. ECF No. 45 at 12 n.5.

14 Recognizing the CEA’s preemptive effect does not conflict with the Indian Gaming Regulatory
 15 Act (“IGRA”) or the Wire Act, as Defendants claim (at 19-20). Defendants ignore UIGEA, which
 16 shows that Congress does not consider DCM-traded instruments to be bets or wagers subject to state
 17 or federal laws governing gambling. *See* 31 U.S.C. § 5362(1)(E)(ii). UIGEA postdates both IGRA
 18 and the Wire Act, and its definition of “bet or wager” is “entitled to great weight” in resolving the
 19 meaning of prior statutes addressing the same subject matter. *Bob Jones Univ. v. United States*, 461
 20 U.S. 574, 587 n.10 (1983) (quotation omitted). Interpreting IGRA and the Wire Act to exclude trading
 21 on DCMs would harmonize them with the CEA and UIGEA, fulfilling the obligation to interpret
 22 “statutes dealing with similar subjects ... harmoniously.” *James v. City of Costa Mesa*, 700 F.3d 394,
 23 399 n.8 (9th Cir. 2012) (quotation omitted). Defendants’ approach, by contrast, would unnecessarily
 24 read the statutes to conflict.

25 *Third*, Nevada’s laws are conflict preempted. Defendants claim (at 20) that “Kalshi does not
 26 explain how conducting sports betting in accordance with Nevada law would require it to violate a
 27 core principle.” But Nevada allows sports bets only by persons physically located in Nevada or
 28 specified other states. Nev. Reg. 22.140(1). Other states impose similar requirements. It would be

1 flatly impossible for Kalshi to operate a nationwide exchange and comply with its impartial access
 2 obligations while adhering to individual state laws permitting trades only from within individual
 3 states—not to mention the myriad other requirements that differ from state to state. And, as the
 4 Seventh Circuit has held, “[w]hen application of state law would directly affect trading on or the
 5 operation of a [DCM], it would stand ‘as an obstacle to the accomplishment and execution of the full
 6 purposes and objectives of Congress,’ and hence is preempted.” *Am. Agric.*, 977 F.2d at 1156-57
 7 (citation omitted). There is no dispute that Defendants seek to directly affect trading on a DCM.

8 **B. Kalshi Will Face Irreparable Harm if the Injunction is Dissolved.**

9 As when the Court granted the PI, Kalshi remains at risk of imminent civil and criminal
 10 enforcement. ECF No. 45 at 14-15. Absent the PI, it confronts a “Hobson’s choice,” either facing
 11 liability in state court, or the prospect of “substantial economic and reputational harm as well as the
 12 potential existential threat of the CFTC taking action against it for violating the CFTC’s Core
 13 Principles if Kalshi disrupts contracts or geographically limits” access to “a national exchange.”¹³
 14 ECF No. 45 at 15. The “credible threat of prosecution” under a preempted state statute constitutes
 15 “irreparable harm.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013).

16 Defendants do not contest the Court’s finding that Kalshi presented “credible evidence that
 17 even if it could implement geofencing at great expense, it could not do so immediately as the
 18 defendants demanded,” ECF No. 45 at 15—which remains true today, *see* Ex. 3 (“Sottile Decl.”) ¶¶
 19 5-7. Nor do Defendants dispute that Kalshi could not recover damages should it ultimately prevail
 20 without a PI in place. *See* ECF No. 45 at 15. Instead, Defendants raise a new argument (at 21-22),
 21 claiming that Kalshi can exclude “Nevada residents” from its exchange. But this is a rhetorical sleight-
 22 of-hand. Defendants’ cease-and-desist letter demanded that Kalshi “immediately cease and desist
 23

24 ¹³ Case law cited by Defendants for the notion that “being required to follow the law is not a harm”
 25 (at 21) is inapposite, and none concerned preemption. *Goldman v. Newage Lake Las Vegas, LLC*
 26 concerned an attempt to evade arbitration where movant did not address harm or even show it would
 27 be required to arbitrate the claim at issue. 2019 WL 13254890, at *1 (D. Nev. Oct. 23, 2019). In *John*
 28 *Doe Co. v. CFPB*, movant did not contest the jurisdiction of the CFPB to bring the enforcement
 proceeding at issue (unlike Kalshi here) and presented only “incremental and conclusory” allegations
 of harm “that may never come.” 235 F. Supp. 3d 194, 202-205 (D.D.C. 2017). And in *O’Shea v.*
Littleton, movants did not allege an actual case or controversy, but rather speculated about hypothetical
 future prosecution. 414 U.S. 488, 493, 501-502 (1974).

from offering any event-based contracts” not for *Nevada residents*, but “*in Nevada*.” ECF No. 1-2 at 1, 3 (emphases added). When Defendants opposed Kalshi’s PI motion, they emphasized that it was “vital that all gaming activity which *takes place in Nevada*” be “strictly regulated and licensed.” ECF No. 34 at 22 (emphasis added). This Court’s PI decision addressed geofencing, which is the process necessary to prevent Kalshi from being available *in Nevada*.

Defendants’ assertion that Kalshi could block Nevada residents based on residency information obtained at customer registration is entirely different. It would allow out-of-state visitors to trade on Kalshi in Nevada, while barring Nevada residents from trading anywhere.¹⁴ See Sottile Decl. ¶ 10. There are a host of problems with this proposed solution. For one, it is inconsistent with the demand in Defendants’ cease-and-desist letter that gave rise to this suit. For another, it would conflict with the law. If a DCM were to voluntarily exclude residents of particular states from accessing the exchange, it would risk violating the CFTC’s Core Principles.¹⁵ And a state could not *compel* a DCM to do so without violating the Commerce Clause, which “precludes the application of a state statute to commerce that takes place wholly outside of the State’s borders, whether or not the commerce has effects within the State.” *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989) (citation omitted); *see id.* at 337 (“[N]o State may force an out-of-state merchant to seek regulatory approval in one State before undertaking a transaction in another”). A state cannot regulate the activity of its residents in a separate state. *Bigelow v. Virginia*, 421 U.S. 809, 823 (1975). That is why a resident of Utah—which bans all casino gambling—can legally play blackjack in Las Vegas, but a Nevada resident cannot legally do the same in Salt Lake City.

Defendants may cite their recent agreement with Crypto that “obviate[d] the need for interim relief regarding enforcement pending appeal.” ECF No. 110, *Crypto*, No. 2:25-cv-978 (Oct. 24, 2025). The conditions of that agreement were not disclosed, but the NGCB has stated that Crypto “will not be offering sport event contracts *to Nevada residents*,” without reference to activity *in Nevada*. Ex. 4

¹⁴ This includes a Nevada resident visiting New Jersey, where Kalshi has obtained a preliminary injunction against substantially similar state laws.

¹⁵ This appears to be what Robinhood did. Defendants claim (at 22) Robinhood “block[ed] access ... in Nevada” but the cited declaration refers only to exclusion of “Nevada residents,” not geofencing. ECF No. 8 ¶¶ 11-12, *Robinhood Derivatives LLC v. Dreitzer*, No. 25-cv-01541 (D. Nev. Aug. 19, 2025) (“Mackenzie Decl.”). And Robinhood is not a DCM subject to impartial access obligations.

at 1 (emphasis added). Crypto does not geofence.¹⁶ It therefore appears that Defendants have only agreed to a residency restriction with Crypto, meaning that Crypto *continues to operate in Nevada* and to offer event contracts to Nevada’s 52 million annual out-of-state visitors, a number that far outstrips Nevada’s approximately 3.1 million residents.¹⁷ Even so, it is far from clear whether this arrangement comports with Crypto’s impartial-access requirements.

Cutting off access to Nevada residents would be extremely harmful to Kalshi. Unlike Crypto, for at least several months Kalshi has been partnering with multiple CFTC-regulated futures commission merchants (“FCM”), which permit their customers to trade on Kalshi’s exchange; those FCM customers represent a substantial portion of Kalshi’s business. Sottile Decl. ¶¶ 8, 16. While Kalshi has residency information for its direct customers, it lacks it for customers that transact through an FCM, because FCMs only provide Kalshi with an anonymized user ID representing the FCM’s customers. *Id.* ¶ 12. Relief requiring Kalshi to cut off contracts offered through an FCM could impose substantial and myriad harms on Kalshi, and on its FCM partners. *Id.* ¶¶ 17-30. Kalshi also lacks a mechanism for disabling all sports or election contracts for users in a given state and would require substantial resources to create processes necessary to capture all future sports or political listings. *Id.* ¶ 15. Closing open positions poses even greater difficulty and harm. Kalshi has offered a contract on the 2026 Super Bowl champion since February 2025.¹⁸ Traders in that market have been able to enter and exit positions for months, so if Kalshi were required to close out Nevada residents from their original positions (and thereby impact counterparties in other states), it could face massive financial consequences, for that and other markets, as detailed in the accompanying declaration.¹⁹ Sottile Decl. ¶¶ 23-28. This would dramatically upset Kalshi’s relationships with its essential FCM partners and invite future litigation, to say nothing of harm to Kalshi’s customer relations. *Id.* ¶¶ 23-29.

¹⁶ ECF No. 15-2 ¶¶ 12, 17, *Crypto*, No. 2:25-cv-978 (June 5, 2025).

¹⁷ *Tourism in Nevada Means a Thriving Economy*, Travel Nevada Industry Partners (2025), <https://perma.cc/Q2F2-2YAM> (last accessed Oct. 31, 2025); *Population and Housing*, U.S. Census Bureau: NEVADA 2020 Census (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/nevada.html> (last visited Oct. 31, 2025).

¹⁸ *Pro Football Champion?*, Kalshi, <https://kalshi.com/markets/kxsb/super-bowl/kxsb-26> (last accessed Oct. 31, 2025).

¹⁹ Robinhood avoided this problem with its prior residency restriction since it occurred before it ever allowed Robinhood users to trade sports event contracts. Mackenzie Decl. ¶¶ 4, 11-12.

As such, even if Defendants demanded that Kalshi block trades for Nevada residents, Kalshi would still face a Hobson’s choice: either face state enforcement if it says no, or bar Nevada residents from trading, which would harm its users; imperil its reputation; and render impossible compliance with its “impartial access” obligations, 17 C.F.R. § 38.151(b), which this Court has recognized would be an “existential threat,” ECF No. 45 at 15, as well as Core Principles requiring open, competitive, and efficient execution of transactions, the prevention of price distortions, and the financial integrity of DCM transactions, 17 C.F.R. §§ 38.250, 38.500, 38.602.

C. The Balance of Harms and Public Interest Support Preserving the Injunction.

Defendants’ equities arguments (at 22) turn on their view that Kalshi no longer is likely to succeed on the merits. But as Kalshi’s likelihood of success has not changed, the balance of harms and public interest have not changed either. As the Ninth Circuit has explained, “preventing a violation of the Supremacy Clause serves the public interest.” *United States v. California*, 921 F.3d 865, 893-894 (9th Cir. 2019); *see also Am. Trucking Ass’n v. City of Los Angeles*, 559 F.3d 1046, 1060 (9th Cir. 2009). And Defendants’ claim of irreparable harm from temporarily being unable to enforce Nevada’s gambling laws is undermined by their decision not to appeal the PI order six months ago.

As this Court previously explained, the public interest favors “preserv[ing] the status quo, which is that these contracts are legal under federal law.” ECF No. 45 at 16. That is especially true because “third parties’ contracts and investment expectations would be disrupted if Kalshi were forced to terminate its existing contracts for Nevada-based users,” which could “impact counterparties to those contracts who are neither based in Nevada nor signed the event contracts while in Nevada.” *Id.* While Defendants tout the protections afforded by the state’s licensing regime, Kalshi is subject to a different set of regulations and imposes many of the same protections. Minors are not permitted to trade on Kalshi; Kalshi complies with know-your-customer requirements; and Kalshi has voluntary opt-outs. *See* Sottile Decl. ¶¶ 9, 11. Kalshi is also subject to a host of CFTC-imposed obligations to ensure to ensure market stability, protect against manipulation, and ensure that users are free from “abusive,” “fraudulent,” and “unfair” practices. *E.g.*, 17 C.F.R. §§ 38.651, 38.152. The question is not whether Kalshi should be regulated, but by whom. Congress’s clear answer is the CFTC.

The Court in *Crypto* concluded that the balance of the equities disfavored a PI. Kalshi

respectfully disagrees, but in any event, that conclusion should not control here because the *Crypto* plaintiff bore the burden of proving entitlement to a PI, whereas the burden here is on Defendants. In addition, this case is closer to final judgment than *Crypto*. Kalshi moved for summary judgment months ago, Defendants’ response is due on November 21, and Defendants may cross-move for summary judgment at any time. The equities strongly favor preserving “the relative positions of the parties” in the meantime. *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). If the PI were dissolved but Kalshi prevailed either on final judgment or appeal, Kalshi would suffer catastrophic harms to its business and reputation. By contrast, if the PI is preserved but Defendants later prevail, the PI causes them minimal harm because they can seek to “prosecute Kalshi later for its conduct.” ECF No. 45 at 15.

III. If the Court Dissolves the Preliminary Injunction, It Should Stay Its Decision or Grant an Injunction Pending Appeal.

If the Court grants dissolution, Kalshi intends to appeal. Until the Ninth Circuit resolves the “serious legal questions” raised by the appeal, Kalshi respectfully requests that the Court preserve the status quo by staying its dissolution order. *Golden Gate Rest. Ass’n v. City & County of San Francisco*, 512 F.3d 1112, 1116 (9th Cir. 2008) (citation omitted). In addition, if the Court declines to grant relief for the full duration of the appeal, Kalshi will seek immediate relief from the Ninth Circuit, and requests that the Court issue a shorter-term stay pending only the Ninth Circuit’s resolution of Kalshi’s request for immediate relief. *See United States v. Texas*, 144 S. Ct. 797, 798-799 (2024) (Barrett, J., concurring) (describing this type of “administrative” relief as a “flexible, short-term tool” designed “to minimize harm while an appellate court deliberates”); *John Doe Co.*, 235 F. Supp. at 206-207 (issuing administrative stay given “novel legal question”).

Federal courts have “inherent power ... to make whatever order is deemed necessary to preserve the status quo and to ensure the effectiveness of the eventual judgment.” *Tribal Vill. of Akutan v. Hodel*, 859 F.2d 662, 663 (9th Cir. 1988) (citation omitted). A court may “suspend[] judicial alteration of the status quo” by granting a stay of its own order. *Nken v. Holder*, 556 U.S. 418, 429 (2009). Courts may likewise grant “injunctions pending appeal” in “cases presenting novel, difficult, and important legal questions that warrant further consideration before the status quo is disrupted.”

Apache Stronghold v. United States, 782 F. Supp. 3d 756, 770 (D. Ariz. 2025) (citation omitted). In deciding whether to grant a stay, courts are guided by factors similar to the PI factors. *See Nken*, 556 U.S. at 434. The standard may be satisfied where “the moving party ... demonstrate[s] that serious legal questions are raised and that the balance of hardships tips sharply in its favor.” *Golden Gate*, 512 F.3d at 1116 (citation omitted).

First, Kalshi has established a sufficient likelihood of success to warrant relief pending appeal. A court need not “decide that it was wrong before” to grant a stay. *NetChoice v. Bonta*, 761 F. Supp. 3d 1232, 1235 (N.D. Cal. 2025). Rather, a court “may grant” relief “even though its own approach may be contrary to the requesting party’s view of the merits.” *US Bank, N.A. v. Renovista Ridge Master Prop. Owners Ass’n*, 2019 WL 8275339, at *3 (D. Nev. Mar. 27, 2019) (quotation omitted). This Court need only determine that Kalshi has “a probability of success” or raised “serious legal questions.” *Leiva-Perez v. Holder*, 640 F.3d 962, 966-967 (9th Cir. 2011). Kalshi clears that bar.

This case presents novel and important legal questions that have divided courts. This Court and the District of New Jersey granted PIs to Kalshi on the ground that the CEA preempts application of state gambling laws to Kalshi’s sports-event contracts. ECF No. 45 at 13; *KalshiEX LLC v. Flaherty*, No. 25-cv-02152, 2025 WL 1218313, at *6 (D.N.J. Apr. 28, 2025). The District of Maryland came to the opposite conclusion and denied a PI. *Martin*, 2025 WL 2194908, at *5. This Court then denied a PI in *Crypto* on the ground that sports-event contracts are not swaps—an argument no other court has accepted. 2025 WL 2916151, at *11. That split alone shows that these legal questions are sufficiently serious to warrant relief pending appeal. *See NetChoice*, 761 F. Supp. 3d at 1236 (granting injunction pending appeal in light of “novel, difficult, and important” issues raised). This Court’s *Crypto* decision “‘chart[ed] a new and unexplored ground,’” and “appellate review” is warranted before altering the status quo. *Id.* Courts throughout the Ninth Circuit have granted relief pending appeal on lesser showings of likelihood of success.²⁰

²⁰ *See, e.g., Sears Holdings Mgmt. Corp. v. M. Bros., Inc.*, 2017 WL 11427080, at *2 (C.D. Cal. May 1, 2017) (movant “raised colorable legal questions in its appeal, if barely”); *United States v. \$4,931.23 in Bank Acct. Fund From Golden State Bank*, 2017 WL 11927475, at *3 (C.D. Cal. Mar. 21, 2017) (movant’s “novel argument” was “not wholly outlandish”); *Davila v. County of San Joaquin*, 2008 WL 4426669, at *2 (E.D. Cal. Sept. 26, 2008) (“the evidence upon which” the court’s ruling “was based was sufficiently sparse so as to create a fair possibility of reversal by the Court of Appeals”).

Conversely, relief pending appeal would merely require Defendants to wait for the Ninth Circuit’s decision. *See Apache Stronghold*, 782 F. Supp. 3d at 768 (granting injunction pending appeal where “[t]he public interests Defendants tout will ... not be lost because of an injunction, but merely delayed”). Relief pending appeal is especially warranted given that similar questions are being addressed in multiple circuits, but enforcement of Nevada law could deprive Kalshi of the benefit of victories in other jurisdictions.

Kalshi respectfully requests that the Court deny Defendants' motion. If the Court grants dissolution, Kalshi requests that the Court stay dissolution or grant an injunction pending appeal.²²

22 If circumstances warrant, Kalshi may ultimately seek a stay of *ongoing proceedings* before this Court—as distinct from a stay of this Court’s *judgment*—pending proceedings in the Ninth Circuit either in this case or the *Crypto* case. Courts, including this Court, commonly grant such stays where “the Ninth Circuit may clarify” the applicable law. *In re Ocwen Loan Servicing, LLC*, 2018 WL 10529509, at *2 (D. Nev. Feb. 6, 2018); *see U.S. Bank Nat’l Ass’n v. Antelope Canyon Homeowners Ass’n*, 2016 WL 5395267, at *2-3 (D. Nev. Sept. 26, 2016) (“[t]he Ninth Circuit’s ultimate resolution of this issue [presented in summary judgment briefing] may have a dispositive effect upon this litigation,” and waiting for that decision would “streamline and simplify the proceedings and minimize the unnecessary expenditure of the parties’ and the Court’s time and resources”).

Dated this 31st day of October, 2025.

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams
DENNIS L. KENNEDY
Nevada Bar No. 1462
PAUL C. WILLIAMS
Nevada Bar No. 12524

NEAL KUMAR KATYAL
(ADMITTED *PRO HAC VICE*)
JOSHUA B. STERLING
(ADMITTED *PRO HAC VICE*)
WILLIAM E. HAVEMANN
(ADMITTED *PRO HAC VICE*)
MILBANK LLP
1101 New York Avenue NW
Washington, D.C. 20005
Telephone: 202.835.7500
Facsimile: 202.263.7586

GRANT R. MAINLAND
(ADMITTED *PRO HAC VICE*)
ANDREW L. PORTER
(ADMITTED *PRO HAC VICE*)
NICOLE D. VALENTE
(*PRO HAC VICE* PENDING)
KATIE CASSIDY-GINSBERG
(ADMITTED *PRO HAC VICE*)
VICTOR HOLLENBERG
(ADMITTED *PRO HAC VICE*)
MILBANK LLP
55 Hudson Yards
New York, N.Y. 10001
Telephone: 212.530.5000
Facsimile: 212.822.5251

Attorneys for Plaintiff KalshiEX, LLC

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ❖ KENNEDY and that on the 31st day of October, 2025, service of the foregoing was made by mandatory electronic service through the United States District Court's electronic filing system and/or by email or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

JESSICA E. WHELAN Email: jwhelan@ag.nv.gov
 SABRENA K. CLINTON sclinton@ag.nv.gov
 DEVIN A. OLIVER doliver@ag.nv.gov
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL *Attorneys for Defendants*
 1 State of Nevada Way, Suite 100
 Las Vegas, NV 89119

ADAM HOSMER-HENNER Email:
 A.G. BURNETT ahosmerhenner@mcdonaldcarrano.com
 JANE SUSSKIND agburnett@mcdonaldcarano.com
 KATRINA WEIL jsusskind@mcdonaldcarano.com
 THADDEUS C. HOUSTON kweil@mcdonaldcarano.com
McDONALD CARANO LLP thouston@mcdonaldcarano.com
 100 West Liberty Street, 10th Floor
 Reno, NV 89501
Attorneys for Intervenor
Nevada Resort Association

RORY K. SCHNEIDER Email: rschneider@mayerbrown.com
MAYER BROWN LLP
 1221 AVENUE OF THE AMERICAS
 NEW YORK, NY 10020
Attorneys for Defendants

NICOLE A. SAHARSKY Email:
 MINH NGUYEN-DANG nsaharsky@mayerbrown.com
MAYER BROWN LLP mnguyen-dang@mayerbrown.com
 1999 K STREET NW
 WASHINGTON, DC 20006
Attorneys for Defendants

/s/ Paul C. Williams
 Employee of BAILEY ❖ KENNEDY

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Ex.	Document Description
1	KalshiEX LLC Letter to U.S. Commodity Futures Trading Commission (Mar. 3, 2025) – FILED UNDER SEAL
2	Confidential Memorandum (Mar. 3, 2025) – FILED UNDER SEAL
3	Declaration of Xavier Sottile (Oct. 31, 2025)
4	Nevada Gaming Control Board Notice to Licensees Re: Crypto.com Litigation Update (Oct. 24, 2025)
5	Declaration of Nicole D. Valente (Oct. 31, 2025)

EXHIBIT 1

**KalshiEX LLC Letter to
U.S. Commodity Futures
Trading Commission**

FILED UNDER SEAL

**FILED UNDER
SEAL**

EXHIBIT 2

Confidential Memorandum

FILED UNDER SEAL

**FILED UNDER
SEAL**

EXHIBIT 3

Declaration of Xavier Sottile

DENNIS L. KENNEDY
NEVADA BAR NO. 1462
PAUL C. WILLIAMS
NEVADA BAR NO. 12524
BAILEY ♦ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
TELEPHONE: 702.562.8820
FACSIMILE: 702.562.8821
DKennedy@BaileyKennedy.com
PWilliams@BaileyKennedy.com

NEAL KUMAR KATYAL
(ADMITTED *PRO HAC VICE*)
JOSHUA B. STERLING
(ADMITTED *PRO HAC VICE*)
WILLIAM E. HAVEMANN
(ADMITTED *PRO HAC VICE*)

MILBANK LLP
1101 NEW YORK AVENUE NW
WASHINGTON, D.C. 20005
TELEPHONE: 202.835.7500
FACSIMILE: 202.263.7586

Attorneys for Plaintiff KalshiEX, LLC

GRANT R. MAINLAND
(ADMITTED *PRO HAC VICE*)
ANDREW L. PORTER
(ADMITTED *PRO HAC VICE*)
NICOLE D. VALENTE
(*PRO HAC VICE* PENDING)
KATIE CASSIDY-GINSBERG
(ADMITTED *PRO HAC VICE*)
VICTOR HOLLENBERG
(ADMITTED *PRO HAC VICE*)
MILBANK LLP
55 HUDSON YARDS
NEW YORK, NY 10001
TELEPHONE: 212.530.5000
FACSIMILE: 212.530.5219

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KALSHIEX, LLC,

Plaintiff,

vs.

KIRK D. HENDRICK, in his official capacity as
Chairman of the Nevada Gaming Control Board,
et al.,

Defendants,

vs.

NEVADA RESORT ASSOCIATION,

Intervenor-Defendant.

Case No. 2:25-cv-00575-APG-BNW

DECLARATION OF XAVIER SOTTILE

DECLARATION OF XAVIER SOTTILE

1
2 1. I am the Head of Markets at KalshiEX LLC. In that role, I am responsible for the
3 generation of new markets. I received an undergraduate degree in Economics from Yale University
4 in 2020. Before joining Kalshi, I worked at the U.S. House of Representatives, Bridgewater
5 Associates, and the Yale Program on Financial Stability.

6 2. My duties include devising proposed new contracts and shepherding those proposals
7 from inception to completion. I also facilitate the process by which our markets undergo the
8 regulatory review cycle under the purview of the Commodity Futures Trading Commission (CFTC).
9 This involves everything from personally notifying the CFTC of contracts that Kalshi has self-
10 certified under Section 5c(c) of the Commodity Exchange Act (CEA) and Section 40.2(a) of the
11 CFTC regulations, to maintaining records pursuant to their requirements, certifying that Kalshi's
12 contracts comply with the CEA, and communicating with Commission staff over the substance of
13 contract filings.

14 3. I offer this declaration to reaffirm the harms that Kalshi faces as a result of Defendants'
15 cease-and-desist letter, including the impracticability of requiring Kalshi to develop geofencing
16 technology, and to describe the obstacle and harms Kalshi would face if forced to exclude Nevada
17 residents from trading sports- and political-event contracts on its platform (an exercise distinct from
18 geofencing). Though it appears Crypto.com has recently agreed to exclude Nevada residents from
19 its platform to avoid an enforcement action from Defendants, there are meaningful differences
20 between Kalshi's exchange and Crypto.com that would make a similar arrangement untenable for
21 Kalshi. This declaration reflects my preliminary analysis of Kalshi's harms, and other unanticipated
22 harms are possible, or even likely, given the unprecedented nature of this litigation and the uncharted
23 territory it would lead to.

24 4. The facts set forth herein are within my personal knowledge, and if called as a witness,
25 I could and would competently testify to them.

26 5. On March 28, 2025, I submitted a declaration in support of Kalshi's Motion for a
27 Preliminary Injunction (the "March Declaration," ECF No. 18-1). In the March Declaration, I
28 detailed the harm that would result from both noncompliance with Nevada's cease-and-desist letter

(¶¶ 5-9), and attempted compliance with the same. These included: (a) harms imposed by technical barriers to compliance (¶¶ 12-28), (b) harms to Kalshi’s users from abruptly ceasing operations in Nevada (¶¶ 29-37), (c) risk that complying with Nevada law would jeopardize Kalshi’s CFTC designation (¶¶ 38-45), and (d) economic and reputational harm to Kalshi from ceasing event-based contracts in Nevada (¶¶ 46-49).

6. The harms detailed in the March Declaration would still apply to Kalshi today.

7. As was the case when I submitted the March Declaration, Kalshi currently lacks a mechanism to identify which of its users are located in any particular state at any particular time. And as further detailed in the March Declaration, it would be exceedingly difficult and expensive for Kalshi to immediately develop and implement geofencing technology to prevent Nevada residents from trading in sports- and political-event contracts on its exchange. Even if Kalshi could implement a technical solution to comply with a geofencing order from this Court, halting Nevada users’ access to Kalshi’s event contracts will cause severe harm to those users and the futures commissions merchants (FCMs) with whom Kalshi partners, as well as impact counterparties in other states. Kalshi also fears that compliance would risk its status as a designated contract market under the CFTC, as compliance would violate the CFTC’s impartial-access requirement, 17 C.F.R. § 38.151(b).

8. There are two ways that users enter into event contracts on Kalshi’s exchange. First, users may directly access Kalshi’s exchange through its website or app (“Direct Users”). Second, they may enter into certain Kalshi event contracts on external FCMs (“FCM Users”). FCMs facilitate trading for users by accepting orders to buy or sell futures contracts. They also must be registered with the National Futures Association and are subject CFTC regulations, such as minimum net capital requirements. 17 C.F.R. § 1.17. Kalshi partners with two FCMs, Robinhood Derivatives LLC and Webull Financial LLC.

9. Federal law requires that Kalshi keep Know Your Customer (KYC) data on the Direct Users that place positions on its platform. Kalshi maintains a database of its Direct Users’ KYC data, which is available for CFTC inspection upon request. In compliance with that requirement, Kalshi knows the permanent residence and IP address reported by its Direct Users, but does not

1 geolocate its Direct Users and therefore does not know where a Direct User's device is located at
2 any point in time.¹ And if a Direct User has changed his or her state of residence since originally
3 reporting it to Kalshi, Kalshi may not be aware of the change.

4 10. That means that while Kalshi can generally identify which Direct Users are Nevada
5 residents, it cannot determine whether a Direct User Nevada resident is located in or outside of
6 Nevada when they are accessing Kalshi. Likewise, Kalshi cannot determine if a Direct User who is
7 a resident of a different state is located in or outside of Nevada when they are accessing Kalshi.

8 11. Kalshi requires that users be 18 or older and features numerous consumer protection
9 features, such as the ability of users to voluntarily self-exclude from being able to trade on Kalshi,
10 to take trading breaks that temporarily restrict trading activities, and to set personalized monthly
11 funding caps that limit the maximum amount a user can deposit to Kalshi.

12 12. Kalshi has significantly less data about FCM Users than Direct Users. FCM Users are
13 direct customers of the FCM, and when they trade on Kalshi's exchange through the FCM, the FCM
14 does not provide Kalshi with KYC information for those customers. Instead, the FCMs Kalshi
15 partners with only provide Kalshi with a customer identification number, which is used to
16 anonymously associate transactions with a specific FCM User. That means Kalshi does not have
17 KYC information, or IP address information, for FCM Users.

18 13. I understand that a statement from the Nevada Gaming Control Board suggests that it
19 has entered into an agreement with Crypto.com through which Crypto.com will not offer sports
20 event contracts to Nevada residents.

21 14. Multiple factors make it extremely difficult for Kalshi to agree to a similar
22 arrangement.
23

24 _____
25 ¹ While IP addresses are associated with locations, identifying a user's location via IP address is less
26 consistent and reliable than using geolocation services, which allow real-time identification of the
27 physical location of a device using several sources of data, including IP addresses, Bluetooth data, cell
28 phone towers, WiFi access points, and GPS signals. IP addresses provide only city-level location data.
As such, IP address data will risk misidentifying users who are located near the border of another state.
IP data can also be manipulated by readily available methods that allow individuals to mark their IP-
based location as anywhere in the world through use of virtual private networks ("VPNs") and other
methods.

15. **First**, while Kalshi has a mechanism to exclude individual customers from trading, it does not currently have a mechanism to disable trading for all users who are residents of a single state. And while it would be possible to develop such a mechanism for current contracts offered on Kalshi, doing so would require customization to isolate just sports (or election) contracts. This would invite definitional questions as to what constitutes a sports (or election) contract.² And while such a mechanism could be created for *current* contracts, implementing it for future contracts would require the creation of new and ongoing procedures to both (i) identify which contracts could not be offered to Nevada residents and (ii) perform the technical work to exclude users from such contracts on a contract-by-contract basis. This would require a significant expenditure of resources to implement.

16. **Second**, Kalshi's arrangements with FCMs present a significant obstacle. To my knowledge, Crypto.com does not partner with any FCMs. This is a significant difference from Kalshi, since a substantial amount of the trading activity on Kalshi's platforms is generated through its FCM partnerships. Since Kalshi does not receive residency information for FCM Users, Kalshi would be unable to exclude Nevada residents who are FCM Users.

17. **Third**, excluding Nevada residents would jeopardize Kalshi's status as a CFTC-designated contract market. It is difficult to overstate how harmful this would be to Kalshi. As the Head of Markets at Kalshi, I oversee the entire regulatory review process for Kalshi's contract markets. In that role, I am responsible for ensuring that each of Kalshi's contracts complies with the nearly two dozen CFTC Core Principles that govern event contracts traded on CFTC-regulated exchanges. Excluding Nevada residents could be understood to put Kalshi out of compliance with these Core Principles, imperiling Kalshi's designation as a contract market under the CFTC's purview.

18. CFTC Core Principle 2 requires that designated contract markets provide their "members, persons with trading privileges, and independent software vendors with impartial access

² For instance, Kalshi would have to determine if a contract involving Travis Kelce and Taylor Swift would qualify as a sports-event contract, and answers may vary depending on how directly the contract related to the Kansas City Chiefs.

1 to its markets and services.” 17 C.F.R. § 38.151(b). Pursuant to this regulation, “access criteria”
2 must be “impartial, transparent, and applied in a non-discriminatory manner.” *Id.* Discrimination
3 based on geographic location would at least arguably conflict with this requirement, but that is
4 exactly what Kalshi would have to do to comply with Nevada’s cease and desist letter. Traders who
5 execute positions in Nevada will be barred from accessing Kalshi’s exchange and placing positions
6 on Kalshi’s contracts, whereas traders in any other state will have unlimited access to the platform.

7 19. Violation of these Core Principles could subject Kalshi to the panoply of enforcement
8 mechanisms that the CFTC has at its disposal. Those tools range from civil monetary penalties to
9 restitution to criminal liability.

10 20. Violating these principles could even jeopardize Kalshi’s federal-contract-market
11 status with the CFTC. The CFTC is authorized to suspend or revoke Kalshi’s designation if Kalshi
12 fails to comply with federal regulations. Kalshi has spent the better part of the last decade working
13 to gain federal registration as a contract market under the CFTC and has scrupulously endeavored
14 to comply with CFTC regulations to maintain that registration. Losing our federal license would be
15 catastrophic for the company, even if Kalshi were to ultimately succeed in this suit against the state
16 authorities in the long-term.

17 21. CFTC enforcement is not a theoretical risk. Several years ago, a CFTC-regulated
18 exchange was charged with offering contracts on a discriminatory basis because it only allowed
19 sportsbooks to trade on its platform. Discriminating on the basis of state residence could likewise
20 subject Kalshi to federal repercussions. It is inconceivable, for example, to imagine a CFTC-
21 designated contract market like the Chicago Mercantile Exchange abruptly closing its exchange to
22 residents of a particular state without serious federal repercussions. Yet that is what exclusion of
23 Nevada residents would require Kalshi to do.

24 22. Excluding Nevada residents would thus place Kalshi in a regulatory Catch-22: Either
25 it complies with Nevada law and risks CFTC sanctions, or it continues operations in Nevada and
26 subjects itself to state criminal and civil liability.

27 23. **Fourth**, there would be significant challenges if Kalshi were required to either freeze
28 or close out the open positions currently held by Nevada residents, and could run afoul of CFTC

1 Core Principle 4, which charges designated contract markets with the “responsibility to prevent
2 manipulation, price distortion, and disruptions of the delivery or cash settlement processes.” 17
3 C.F.R. § 38.250. Immediately liquidating or pausing traders’ positions could be understood to lead
4 to the very sort of price distortion and market manipulation that the CFTC regulations guard against.
5 Pausing trades could cause “disruption[] of the delivery or cash settlement process” and immediate
6 liquidation could cause “price distortion.”

7 24. In the case of freezing—locking traders into their current positions—Nevada residents
8 would no longer be able to exit open positions, either to realize a gain or minimize a loss. Kalshi
9 allows users to exit positions up until the resolution date of a contract, meaning users who entered
10 into a contract on Kalshi with the expectation they could exit it would be denied that opportunity,
11 and perhaps at significant financial cost. At best this would lead to a deterioration in Kalshi’s
12 customer relationships, and at worst it could lead to significant litigation claims against Kalshi, or
13 the penalties for non-compliance with CFTC regulations.

14 25. Closing out open positions would be even more problematic. Kalshi lacks a mechanism
15 to carry out a closing of open positions of this magnitude. As a designated contract market, Kalshi
16 has the authority to cancel trades when necessary to mitigate market-disrupting events caused by
17 malfunctions on its platform or errors in orders submitted by traders. However, due to the fully
18 collateralized and short-term nature of trading on Kalshi, the circumstances in which this authority
19 may be exercised are limited, and there is generally no cancellation or adjustment of an erroneous
20 trade except in extraordinary circumstances.

21 26. A closing of open positions at this magnitude could cause Kalshi to suffer staggering
22 financial harm, not to mention the financial harm to its users, because Kalshi may be unable to
23 recompense all of its Nevada traders for the cancelled trades. Pursuant to the CEA, Kalshi operates
24 through federally regulated clearinghouses that collateralize open positions. 7 U.S.C. § 7a-1. But
25 Kalshi is fully collateralized with the understanding that every event contract between two users will
26 pay out \$1 in total, and there are situations in which users’ buying and selling of contracts causes
27 the value of a given contract to exceed \$1.

27. The following example is illustrative. USER A buys a contract from USER B. USER A pays 90 cents, and USER B pays 10 cents. Then the contract changes in value. USER B sells his side to USER C, and USER C pays 90 cents for it. USER B cashes out his 80-cent profit. There is currently \$1 in collateral in the clearinghouse (which will satisfy the ultimate \$1 obligation to USER A or USER C at the conclusion of the contract period), but closing the open positions to their original value would mean that Kalshi owes USER A and USER C 90 cents each, or \$1.80 total.

28. If Kalshi were required to close all open positions held by Nevada residents on sports and political events, as an exchange, it would need to declare a market emergency and restore all the involved users to their original position. But there is a significant risk that Kalshi will be unable to restore all Nevada residents who have entered into sports- and political-event contracts to their original position. Because Kalshi is fully collateralized up to \$1 per contract, and any given contract may exceed \$1 in value as the market's prediction on an event fluctuates before the event occurs (as illustrated in the preceding paragraph), Kalshi would be financially liable for any excess value above \$1. However, Kalshi may lack sufficient funds to cover that difference in value, which could be substantial. As such, Kalshi would be forced to take on a significant (and unrecoverable) financial liability, and the forced exit of the positions (some of which would be more valuable at present than the opening price they would be cashed out at, causing a loss to traders) would severely damage Kalshi's reputation among users as a trustworthy and secure exchange, and could also lead to significant litigation claims.

29. *Fifth*, excluding Nevada residents could severely harm, or destroy, Kalshi's relationship with current FCM partners, and harm the prospects for future FCM relationships. This would be devastating for Kalshi, given the significance of FCM Users to its exchange. Mere months after launching its partnership with FCMs, those FCMs would lose the ability to offer certain Kalshi contracts to their Nevada resident customers, a deterioration in service. They also may need to inform their Nevada resident customers that all open positions they have on Kalshi must be immediately closed or frozen. This would cause the FCMs to suffer reputational harm among their users, undermining their users' trust in their platforms, and Kalshi, in turn, would suffer immense harm to its reputation in the industry as a reliable business partner that it cannot repair.

1 30. Finally, Kalshi fears that these existential threats to its business would only compound
2 if it excluded Nevada residents, either under threat of enforcement or because it was compelled by
3 an order from this Court. Kalshi is in similar litigation with five other states, and additional states
4 have threatened to bring enforcement actions against Kalshi. If Kalshi is compelled to bar Nevada
5 residents from accessing its services, other states may seek, and perhaps obtain, the same relief,
6 magnifying the harm to Kalshi.

7
8 Dated this 31st day of October, 2025.

/s/ Xavier Sottile

Xavier Sottile

EXHIBIT 4

Nevada Gaming Control Board Notice to Licensees Re: Crypto.com Litigation Update



JOE LOMBARDO
Governor

NEVADA GAMING CONTROL BOARD

1919 College Parkway, Suite 110, P.O. Box 8003, Carson City, Nevada 89702
7 State of Nevada Way, Las Vegas, Nevada 89119
3650 S. Pointe Circle, Suite 203, P.O. Box 31109, Laughlin, Nevada 89028
557 W. Silver Street, Suite 207, Elko, Nevada 89801
9670 Gateway Drive, Reno, Nevada 89521

MIKE DREITZER, *Chairman*
HON. GEORGE ASSAD (RET.), *Member*
CHANDENI K. SENDALL, *Member*

NOTICE TO LICENSEES

Notice #2025-85

Issuing Division: Administration

DATE: October 24, 2025
TO: All licensees
FROM: Mike Dreitzer, Chairman 
SUBJECT: Crypto.com Litigation Update

As licensees are probably aware, the Board has been working diligently to uphold its statutory charge to protect the safety, morals, good order and general welfare of the inhabitants of the State and to foster the stability and success of gaming and to preserve the competitive economy and policies of free competition of the State of Nevada. See NRS 463.0129(d). In furtherance of the Board's goal to preserve the competitive gaming economy in Nevada, the Board provides an update on the ongoing litigation involving North American Derivatives Exchange, Inc., dba Crypto.com (Crypto.com).

Earlier this year, Crypto.com sought a preliminary injunction to enjoin the Board from enforcing Nevada law against it. On October 14, 2025, U.S. District Judge Andrew P. Gordon denied that motion. Crypto.com has indicated that it intends to appeal that decision. In the meantime, the Board has confirmed that after November 3, 2025, and until the resolution of its appeal, Crypto.com will not be offering sports event contracts to Nevada residents. That means Crypto.com will no longer hold open positions in sports event contracts for Nevada residents and will not permit new contracts to be opened.

While the Board continues to seek legal avenues to protect gaming and foster a competitive economy, the Board takes this opportunity to re-affirm and re-issue the guidance it issued to licensees regarding event contracts offered in Nevada and other states:

The Board considers offering sports event contracts, or certain other events contracts, to constitute a wagering activity under NRS 463.0193 and 463.01962. Wagering occurs whether the contract is listed on an exchange regulated by the Commodity Futures Trading Commission (CFTC) or elsewhere. Examples of event contracts that the Board specifically considers to be wagering subject to its jurisdiction include event contracts based on the outcome or partial

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outcome of any sporting or athletic event, or other selected events such as the World Series of Poker, the Oscars, Esports, and political elections ("Sports and Other Event Contracts").

Offerings for Sports and Other Events Contracts may be conducted in Nevada only if the offering entity possesses a nonrestricted gaming license with sports pool approval in Nevada and meets the other requirements for sports wagering including, without limitation, wagering accounts and sports book systems.

If a Nevada licensee chooses to offer Sports and Other Event Contracts in Nevada or decides to partner with other entities offering Sports and Other Event Contracts in the state, the Board will consider these developments as it evaluates the suitability of the entity to maintain a Nevada gaming license under NRS 463.170. Moreover, if a licensee offers Sports and Other Event Contracts in another state without complying with the other state's restrictions, prohibitions, or licensing regime; partners with another entity that engages in such activities; or acts in violation of a compacted tribal right, the licensee may be subject to discipline under the Gaming Control Act. See NRS 463.720 and/or NGC Regulation 5.011.

Engaging in unlawful sports wagering in another state or entering into a business relationship with another entity offering unlawful sports wagering in another state may call into question the good character and integrity of the licensee. See NRS 463.170(2)(a).

The Board reminds licensees to be mindful of their obligations to maintain suitability and comply with all applicable laws in all jurisdictions where they operate. See NRS 463.720.

The Board remains committed to fostering stability and promoting a thriving legal gaming industry. We will keep licensees apprised of future developments in litigation as they arise.

BAILEY ♦ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

DENNIS L. KENNEDY
Nevada Bar No. 1462
PAUL C. WILLIAMS
Nevada Bar No. 12524
BAILEY ♦ KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Telephone: 702.562.8820
Facsimile: 702.562.8821
DKennedy@BaileyKennedy.com
PWilliams@BaileyKennedy.com

NEAL KUMAR KATYAL
(Admitted *pro hac vice*)
JOSHUA B. STERLING
(Admitted *pro hac vice*)
WILLIAM E. HAVEMANN
(Admitted *pro hac vice*)
MILBANK LLP
1101 New York Avenue NW
Washington, D.C. 20005
Telephone: 202.835.7500
Facsimile: 202.835.7586

GRANT R. MAINLAND
(Admitted *pro hac vice*)
ANDREW L. PORTER
(Admitted *pro hac vice*)
NICOLE D. VALENTE
(*Pro hac vice* pending)
KATIE CASSIDY-GINSBERG
(Admitted *pro hac vice*)
VICTOR HOLLENBERG
(Admitted *pro hac vice*)
MILBANK LLP
55 Hudson Yards
New York, NY 10001
Telephone: 212.530.5000
Facsimile: 212.530.5219

Attorneys for Plaintiff KalshiEX, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KALSHIEX, LLC,

Plaintiff,

vs.

KIRK D. HENDRICK, in his official capacity as
Chairman of the Nevada Gaming Control Board,
et al.,

Defendants,

vs.

NEVADA RESORT ASSOCIATION,

Intervenor-Defendant.

Case No. 2:25-cv-00575-APG-BNW

**DECLARATION OF NICOLE D.
VALENTE IN SUPPORT OF
PLAINTIFF'S RESPONSE IN
OPPOSITION TO STATE
DEFENDANTS' EMERGENCY
MOTION TO DISSOLVE THE
PRELIMINARY INJUNCTION
ENTERED ON APRIL 9, 2025**

DECLARATION OF NICOLE D. VALENTE

I, Nicole D. Valente, an attorney duly admitted to practice law in the courts of the State of New York, hereby affirm, pursuant to 28 U.S.C. § 1746, under penalty of perjury, as follows:

1. I am an attorney at the law firm Milbank LLP, counsel to Plaintiff KalshiEX LLC (“Kalshi” or “Plaintiff”) in the above-captioned action and am fully familiar with the factual background of this matter, its procedural history, and the facts and circumstances set forth below.

2. I make this declaration in support of Kalshi’s Response in Opposition to State Defendants’ Emergency Motion to Dissolve the Preliminary Injunction Entered on April 9, 2025.

3. On October 15, 2025, the State Defendants emailed counsel for Kalshi notifying them of their intent to move to dissolve the preliminary injunction (ECF No. 45) on an emergency basis.

4. Because the preliminary injunction prevented the State Defendants from enforcing Nevada gaming law against Kalshi in any proceeding, Kalshi has not engaged Nevada counsel with particularized subject matter expertise in Nevada gaming law that would be able to assist in a state enforcement proceeding. As a result of the October 15 email from the State Defendants, Kalshi determined that it would be prudent to engage additional counsel with subject matter expertise in Nevada gaming law and expertise navigating any potential enforcement actions brought by the State Defendants against Kalshi in the future.

5. On October 16, 2025, at 7:49 a.m.,¹ I contacted an attorney at Firm A, an international firm with an office in Nevada and a specialized gaming practice group, to inquire about an introductory call. The attorney, the vice-chair of the practice group, responded at 2:09 p.m. indicating that the firm was unable to “to assist on this matter given other client commitments.”

6. On October 16, 2025 at 7:50 a.m., I contacted an attorney at Firm B, a national firm with an office in Nevada and a specialized gaming practice group recently ranked in Chambers USA. The attorney responded at 8:01 a.m. stating that they could not participate in this matter.

7. On October 16, 2025 at 7:50 a.m., I contacted an attorney at Firm C, an international firm with two offices in Nevada and a specialized gaming practice group. The attorney, the chair of the

¹ For clarity, all times referenced herein are Pacific Daylight Time.

1 practice group, responded at 2:57 p.m. stating that they could not assist on this matter.

2 8. On October 16, 2025 at 11:13 a.m., I contacted an attorney at Firm D, a national firm with
3 three offices in Nevada and a specialized gaming practice group recently ranked in Chambers USA.
4 The attorney from Firm D called me later that day and indicated that Firm D did not have any direct
5 conflicts but that Firm D could not directly represent Kalshi in a state court proceeding. The attorney
6 and I agreed that we would speak with our respective teams and reconvene in a larger group. I
7 contacted the attorney later that evening to schedule a call for the following day, and my colleague
8 followed up the following morning, on October 17, 2025, to stress the urgency of securing additional
9 representation for Kalshi. The attorney responded at 2:58 p.m. via email stating that they would not
10 be able to assist.

11 9. I asked each of the attorneys discussed above for recommendations for alternative counsel.
12 None provided me with a referral.

13 10. Just after 4:30 p.m. on October 17, 2025—one day after Kalshi began seeking local Nevada
14 gaming counsel—Intervenor-Defendant Nevada Resort Association (“NRA”) filed its Certificate of
15 Interested Parties with the Court (ECF No. 141). The disclosure statement was belatedly filed
16 months after the NRA (i) first participated in this Action, via emergency motion to intervene on May
17 14, 2025 (ECF No. 57), (ii) was permitted to intervene on June 2, 2025 (ECF No. 70), and (iii) was
18 directed by Court staff to Local Rule 7.1-1 and instructed to file its certificate before June 28, 2025
19 (ECF 76), a deadline that later lapsed.

20 11. In the NRA’s Certificate of Interested Parties, it lists its 71 members as interested parties.
21 These members are most, if not all, of the biggest casinos and hotels associated with the gaming
22 industry in Nevada.

23 12. On October 18, 2025, I contacted an attorney with experience in gaming law. Though this
24 attorney confirmed they cleared conflicts and attended a call with me and my colleagues on
25 October 19, 2025, the attorney is barred in New Jersey, not Nevada, and did not have experience
26 litigating state court enforcement proceedings in Nevada.

27 13. Attached to the Response as **Exhibit 1** is a true and correct copy of a letter from Kalshi to the
28 U.S. Commodity Futures Trading Commission, dated March 3, 2025, and produced in this action at

1 KALSHI_NVAG_0041269-0041283.

2 14. Attached to the Response as **Exhibit 2** is a true and correct copy of a confidential
3 memorandum, dated March 3, 2025, and produced in this action at KALSHI_NVAG_0041284-
4 0041295.

5 15. Attached to the Response as **Exhibit 4** is a true and correct copy of a Notice to Licensees
6 from the Nevada Gaming Control Board with the subject “Crypto.com Litigation Update,” dated
7 October 24, 2025.

8
9 I declare under penalty of perjury that the foregoing is true and correct.

10
11 Executed this 31st day of October, 2025.

12 /s/ Nicole D. Valente

13 Nicole D. Valente
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