No. 26-____

In the Supreme Court of the United States

NORTH AMERICAN DERIVATIVES EXCHANGE, INC. D/B/A CRYPTO.COM | DERIVATIVES NORTH AMERICA,
PETITIONER

v.

THE STATE OF NEVADA, ET AL.,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Commodity Exchange Act (CEA) gives the Commodity Futures Trading Commission (CFTC) "exclusive jurisdiction" to regulate the trading of "swaps" on federally regulated designated contract markets (DCMs). 7 U.S.C. § 2(a)(1)(A). A "swap" is any contract that provides payment "dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence." *Id.* § 1a(47)(A)(ii). Given that intentionally sweeping breadth, Congress has given the CFTC tools to clarify and refine the term's reach. First, Congress has enacted a "special rule" empowering the CFTC to bar trading of certain swaps, including those that "involve … gaming." *Id.* § 7a-2(c)(5)(C)(i)(V). Second, Congress has given the CFTC authority to "further define the term[] 'swap.'" 15 U.S.C. § 8302(d)(1).

The Third Circuit holds that the CEA's plain text gives the CFTC exclusive jurisdiction, preempting state regulation, over trading on DCMs of "sports-event contracts"—contracts that pay a fixed amount if a sports-related prediction is correct. That's because sports-event contracts are "swaps" no different from, say, weather swaps. *KalshiEX, LLC v. Flaherty*, 172 F.4th 220 (3d Cir. 2026). But the Ninth Circuit disagrees, holding that sports-event contracts aren't swaps, meaning states are free to regulate, ban, and even criminalize them. *See KalshiEX, LLC v. Assad*, No. 25-7516, 2026 WL 2543846 (9th Cir. Aug. 28, 2026) (published); App. 1a-5a.

The question presented is whether the CEA preempts state regulation of sports-event contracts traded on a DCM.

PARTIES TO THE PROCEEDING

Petitioner is the North American Derivatives Exchange, Inc. d/b/a Crypto.com | Derivatives North America. Petitioner was the Plaintiff-Appellant below.

Respondents State of Nevada, on Relation of the Nevada Gaming Control Board; Mike Dretizer, in his official capacity as Chairman of the Nevada Gaming Control Board; George Assad, in his official capacity as a member of the Nevada Gaming Control Board; Chandeni K. Sendall, Deputy City Attorney, in her official capacity as a member of the Nevada Gaming Control Board; and Aaron D. Ford, in his official capacity as Attorney General of Nevada, were Defendants-Appellees below. Respondent Nevada Resort Association was the Intervenor-Defendant-Appellee below.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner North American Derivatives Exchange, Inc. d/b/a OG.com Prediction Markets and Crypto.com | Derivatives North America represents as follows: OG Markets US, Inc., is its parent company. No publicly held corporation or other publicly held entity owns 10% or more of Petitioner's stock or of OG Markets US, Inc.

RELATED PROCEEDINGS

United States Court of Appeals (9th Cir):

North American Derivatives Exchange, Inc. v. State of Nevada, No. 25-7187 (9th Cir. Aug. 28, 2026)

United States District Court (D. Nev.):

North American Derivatives Exchange, Inc. v. State of Nevada, No. 2:25-cv-978 (D. Nev. Oct. 14, 2025)

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INTRODUCTION

The Commodity Exchange Act (CEA) gives the Commodity Futures Trading Commission (CFTC) "exclusive jurisdiction" over "swaps … traded … on" federally regulated derivatives markets called designated contract markets (DCMs). 7 U.S.C. § 2(a)(1)(A). Congress enacted a sweeping definition for "swaps": any contract that provides payment "dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence." *Id.* § 1a(47)(A)(ii). Confirming that broad sweep, it enacted a "special rule" empowering the CFTC to bar trading of certain swaps, including those that "involve … gaming." *Id.* § 7a-2(c)(5)(C)(i)(V). Congress also gave the CFTC authority to "further define the term[] 'swap.'" 15 U.S.C. § 8302(d)(1).

This case presents an acknowledged circuit split over an important and recurring question of federal law: whether sports-event contracts—contracts that pay a fixed amount if a sports-related prediction is correct—are swaps subject to the CFTC's exclusive jurisdiction, meaning state regulation is preempted. In the Third Circuit, the answer is "yes": Sports-event contracts traded on DCMs are "swaps" that can't be regulated by state authorities. *See KalshiEX, LLC v. Flaherty*, 172 F.4th 220 (3d Cir. 2026). That makes sense. Sports-event contracts are swaps covered by the definition's plain text, as the special rule confirms. But in the Ninth Circuit, the answer is "no," meaning state officials can regulate sports-event contracts, including by banning and criminalizing them. *See KalshiEX, LLC v. Assad*, No. 25-7516, 2026 WL 2543846 (9th Cir. Aug. 28, 2026) (published); App. 1a-

5a. The Ninth Circuit's rule threatens to undermine the system of uniform regulation Congress created for derivatives markets, and this case is an excellent vehicle to resolve the circuit split it created.

1. North American Derivatives Exchange, Inc., now doing business as OG.com (and formerly as CDNA), is a financial services company that, since 2004, has operated a CFTC-regulated DCM where users can trade a variety of derivatives products. In December 2024, it began allowing users to trade sports-event contracts on its DCM. Like many things in the law, the terminology in this area is formidable but the concepts are straightforward. A sports-event contract allows a user to obtain a preset payment from other users if a particular sports outcome does or does not occur. This kind of contract is attractive to parties who face sports-related business risks and need to hedge against potential downsides. For example, a concessions vendor in Los Angeles might stand to make significant additional revenue if the Rams advance to the NFL playoffs, but could realize none of that extra revenue if they wind up with a losing record. Before the season kicks off, that vendor might purchase the position that the Rams will not make the playoffs to hedge the risk. If the Rams make the playoffs, the vendor will lose and the payout will go to users who predicted that the Rams would succeed. But if they miss the playoffs, the vendor will receive the payout, thereby offsetting some of the lost revenue from the Rams' disappointing season.

In May 2025, Nevada regulators sent OG.com a cease-and-desist letter asserting that trading sports-event contracts on DCMs is sports gambling under Nevada law, and arguing that OG.com cannot offer such contracts to Nevada residents without a state gaming license. OG.com explained that Nevada lacks authority to regulate sports-event contracts traded on federally regulated DCMs given the CFTC's "exclusive jurisdiction" over "swaps" traded on DCMs. 7 U.S.C. § 2(a)(1)(A). As noted, the CEA defines "swaps" to include contracts providing payment "dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence." *Id.* § 1a(47)(A)(ii). Sports-event contracts are swaps because their payout depends on the occurrence of a sporting outcome (the "event or continency"—*e.g.*, did the Rams make the playoffs?) that is associated with potential economic consequences (*i.e.*, the billions of dollars of economic activity that surround sports entertainment). So OG.com sued in the District of Nevada, seeking declaratory and injunctive relief on the ground that the sports-event contracts traded on its DCM may be regulated only by the CFTC, and not Nevada officials.

The district court denied a preliminary injunction and the Ninth Circuit affirmed. App. 1a-5a. In a published opinion in a consolidated case, the court explained its reasoning. The court acknowledged that the CFTC's "exclusive jurisdiction" over on-DCM trading of "swaps" preempts state regulation. *See Assad*, 2026 WL 2543846, at *7. But the court held that sports-event contracts are not swaps. *Id.* at *8-16. Acknowledging the very broad definition of "swaps," *id.* at *14, *18, the court invoked the major-questions doctrine to read sports-event contracts out of the statute's coverage, *id.* at *14-15—despite the special rule's express reference to "gaming" contracts. According to the court, sports-event contracts are sports gambling, and Congress couldn't possibly have intended to give the CFTC exclusive jurisdiction to regulate sports gambling on DCMs. *Id.*

That decision creates a circuit split, is wrong on the merits, and threatens important federal policies promoting uniform regulation of derivative markets. And this case—where OG.com has squarely pressed the importance of the special rule to the statutory analysis, and where the CFTC has participated as amicus—is the ideal vehicle for resolving the issue.

2. The Ninth Circuit's decision split with the Third Circuit over whether sports-event contracts traded on DCMs constitute swaps subject to the CFTC's exclusive regulatory jurisdiction. The Third Circuit holds that sports-event contracts are swaps that can't be regulated by the states because the outcome of a sports game is an "event or contingency" that, through its downstream monetary effects, has "potential financial, economic, or commercial consequence." *Flaherty*, 172 F.4th at 227-29.

In contrast, while recognizing the "textual basis" for the Third Circuit's interpretation, the Ninth Circuit holds that sports-event contracts aren't swaps, meaning the CEA poses no barrier to state regulation *Assad*, 2026 WL 2543846, at *7-15; *see also* App. 1a-5a (applying *Assad*'s reasoning to OG.com's case). The split is stark and outcome-determinative. As things presently stand, OG.com can offer sports-event contracts to Atlantic City residents without state interference, but can't offer those same contracts to Las Vegas residents without obtaining a state gaming license. And the split is about to get deeper, with the Fourth and Sixth Circuits poised to decide the question presented in cases challenging regulatory actions by Maryland, Ohio, and Tennessee officials. *See*

KalshiEX LLC v. Martin, No. 25-1892 (4th Cir. argued May 7, 2026); *KalshiEX LLC v. Schuler*, No. 26-3196, & *KalshiEX LLC v. Orgel*, No. 26-5235 (6th Cir. argued July 30, 2026). Only this Court can resolve the growing conflict.

3. The Ninth Circuit's decision is wrong, as the CFTC confirmed in supporting OG.com's position below. A swap is a contract providing payment "dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence." 7 U.S.C. § 1a(47)(A)(ii). Sports-event contracts fit the bill. Under the terms' plain meaning, what happens in a sports game, season, or even individual play is "an event or contingency." And if a game is so prominent that predictions as to its outcome are being traded on a DCM, then the outcome is "associated with potential financial, economic, or commercial consequence" from, say, the likely rise in business in the winning team's hometown. Since sports-event contracts are swaps, they are subject to the CFTC's "exclusive jurisdiction" when traded on DCMs. *Id.* § 2(a)(1)(A). That means states cannot interfere—jurisdiction wouldn't be "exclusive" if states like Nevada could command DCM operators to stop offering swaps the CFTC permits.

The Ninth Circuit rested its contrary reasoning on the premise that Congress couldn't have possibly wanted to displace state authority to regulate sports gambling when it wrote the broad definition of "swap" into the CEA through a financial reform bill, the Dodd-Frank Wall Street Reform and Consumer Protection Act. But Congress must have contemplated that swaps cover the occurrence of sports outcomes because it enacted the definition of "swap" together with a special rule giving the CFTC authority to prohibit "agreements, contracts, or transactions [that] involve … gaming." *Id.* § 7a-2(c)(5)(C)(i)(V). That rule would make no sense if Congress didn't contemplate that sports-related "gaming" could fall within its definition of swaps. So the Ninth Circuit should have applied the statute's text, rather than searching for ways to override it.

In fact, Judge Lee's concurrence recognized the relevance of the special rule and concluded that "perhaps some unique sports events can be part of a swap trade if they meet the statutory requirements." *Assad*, 2026 WL 2543846, at *19 (Lee, J., concurring). But he noted that "Kalshi has not relied on this provision" (unlike OG.com here) and concurred because he (incorrectly) thought the CFTC itself had prohibited sports-event contracts *under* the special rule. *Id.* That conclusion, which the CFTC has explained is wrong and which the agency is likely to clarify imminently through rulemaking, only confirms that the CEA gives the CFTC exclusive jurisdiction over sports-event contracts, leaving no room for state regulation.

4. The question presented is critically important. Numerous recent and pending lawsuits turn on the same issue of whether sports-event contracts are swaps, causing a split not only between the Third and Ninth Circuits, but also between district courts across the country. *See infra* pp. 33-34. This litigation leaves DCMs in an uncertain and fluctuating legal landscape, requiring them to determine for each state whether state law applies and, if so, how to comply with it. This regulatory patchwork is precisely what Congress sought to avoid. As Congress understood when establishing the CFTC and granting the agency exclusive jurisdiction, "a contract market could not operate efficiently, and perhaps not at all, if varying and potentially contradictory legal standards governed its duties to investors." *American Agriculture Movement, Inc. v. Board of Trade of Chicago*, 977 F.2d 1147, 1156 (7th Cir. 1992).

This case is the perfect vehicle for resolving the question presented. The split is clear and outcome-determinative. The question was squarely litigated and decided below—and OG.com, unlike other litigants, has squarely pressed the point that the special rule confirms the CFTC's jurisdiction over sports-event contracts as "gaming" contracts. There aren't any factual disputes or alternative holdings that could complicate the Court's review. The Court should grant review to ensure uniformity of federal law on this important question about the CFTC's authority, and reverse the judgment of the Ninth Circuit.

OPINIONS BELOW

The court of appeals' opinion (App. 1a-5a) is unreported but available at 2026 WL 2546926. The district court's opinion (App. 6a-39a) is reported at 815 F. Supp. 3d 1169.

JURISDICTION

1. This Court's decision in *Ex Parte Young*, 209 U.S. 123 (1908), creates an equitable cause of action allowing courts to issue an injunction preventing state officials from enforcing preempted state laws against regulated parties. *See Armstrong v. Exceptional Child Center Inc.*, 575 U.S. 320, 326 (2015); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381 (1992). The district court had jurisdiction under 28 U.S.C. § 1331 over OG.com's claims that the CEA preempts

Nevada's gaming regulations because the claims arise under the laws of the United States.

2. The Ninth Circuit had jurisdiction to review the district court's decision "refusing" to grant OG.com a preliminary injunction under 28 U.S.C. § 1292(a)(1).

3. The Ninth Circuit entered its judgment on August 28, 2026. App. 1a-5a. This petition is timely filed on September 11, 2026. The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the CEA, as amended by the Dodd-Frank Act, are reproduced in the appendix. *See* App. 40a-44a.

STATEMENT

A. Legal background

The Commodity Exchange Act, 7 U.S.C. § 1 *et seq.*, establishes "a comprehensive regulatory structure" to oversee the "futures trading complex." *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 356 (1982). Since its enactment in 1936, the statute has been amended several times to expand federal oversight of DCMs in place of state regulation and to broaden the kinds of derivatives and transactions the statute regulates. Today, the CEA gives the CFTC "exclusive jurisdiction" over transactions on DCMs. 7 U.S.C. § 2(a)(1)(A).

That exclusive jurisdiction covers trading of "swaps," a term Congress introduced in the Dodd-Frank Act. Swaps include contracts providing for payment "dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence." *Id.* § 1a(47)(A)(ii).

1. Commodity-futures trading began as a way to hedge risk associated with price fluctuations in agriculture. Before then, "agricultural products generally were sold at central markets." *Curran*, 456 U.S. at 357. But that led to "severe hardship" when, because of unforeseen circumstances like weather, "an entire crop was harvested and marketed within a short timespan," producing "dramatic price fluctuations." *Id.* Parties could mitigate the risk of these fluctuations by "forward contracting"—*i.e.*, entering into "contracts fixing the terms of sale in advance of the time of delivery." *Id.* Speculators also recognized an "opportunity to make a profit" based on those price fluctuations, so they began "buying and selling 'futures contracts.'" *Id.*

States soon claimed that trading in futures contracts was "gambling in grain," *Cothran v. Ellis*, 16 N.E. 646, 647 (Ill. 1888), and sought to outlaw the activity as illegal gambling, John V. Rainbolt II, *Regulating the Grain Gambler and His Successors*, 6 Hofstra L. Rev. 1, 6 (1977). Eventually, Congress "recognized the potential hazards" and "benefits of futures trading." *Curran*, 456 U.S. at 360. With the Grain Futures Act, Congress regulated grain-futures contracts and centralized trading on federally approved "contract markets." Pub. L. 67-331, 42 Stat. 998, 998, 1000-02 (1922). But because the Act didn't preempt state law, states continued prohibiting "gambling in grain futures." *Dickson v. Uhlmann Grain Co.*, 288 U.S. 188, 198 (1933).

In 1936, Congress passed the CEA, Pub. L. 74-675, 49 Stat. 1491, to strengthen federal oversight of futures-contract trading. The goal was to facilitate "interstate commerce in grains and other commodities by regulating transactions therein on commodity futures exchanges, to limit or abolish short selling, [and] to curb manipulation.'" *Effex Capital, LLC v. National Futures Ass'n*, 933 F.3d 882, 886 n.6 (7th Cir. 2019).

Even so, the CEA "covered only a fraction of commodity futures," and oversight responsibility rested "in a commission composed of the Attorney General and the Secretaries of Commerce and Agriculture." *Hunter v. FERC*, 711 F.3d 155, 157 (D.C. Cir. 2013). The CEA also preserved "any State law applicable to any transaction" that the CEA regulated. 7 U.S.C. § 6c(C) (1940); 49 Stat. at 1494.

2. By 1974, "[g]rain shortages had caused food prices to soar," with many "accus[ing] commodity traders of manipulating prices." Kevin T. Van Wart, *Preemption and the Commodity Exchange Act*, 58 Chicago-Kent L. Rev. 657, 672-73 (1982). Futures-contract trading was subject to a regulatory "hodgepodge" "cover[ing] only a fraction of commodity futures," and there was no central federal regulatory body. *Hunter*, 711 F.3d at 157.

Recognizing the need for "a comprehensive regulatory structure to oversee the volatile and esoteric futures trading complex," Congress overhauled the CEA in the Commodity Futures Trading Commission Act of 1974, Pub. L. 93-463, 88 Stat. 1389, "to bring the markets under a uniform set of regulations," *American Agriculture*, 977 F.2d at 1156. The Act implemented "expansive federal regulation" of DCMs through several key features. *CFTC v. Co Petro Marketing Group, Inc.*, 680 F.2d 573, 579 (9th Cir. 1982).

One was the establishment of the CFTC. *See* 88 Stat. at 1389-92. Congress gave the agency broad authority "to assure that the market is free of manipulation and other practices" that distort an accurate reflection of supply and demand. S. Rep. No. 93-1131, at 21 (1974). It did so by striking the 1936 Act's preservation of state law and vesting the CFTC with "exclusive jurisdiction" to regulate trading on DCMs. 7 U.S.C. § 2 (1976); *see* H.R. Rep. No. 93-1383, at 35 (1974). Immediately following that language, Congress added that, "except as hereinabove provided, nothing contained in this section shall … supersede or limit the jurisdiction" of state "regulatory authorities." 7 U.S.C. § 2 (1976).

3. In the wake of the 2008 financial crisis, Congress enacted the Dodd-Frank Act, bringing swaps within the CFTC's exclusive jurisdiction and establishing a "special rule" for CFTC review to determine whether certain swaps and event contracts are contrary to the public interest. Pub. L. 111-203, 124 Stat. 1376, 1666, 1672, 1736-37 (2010).

Section 2(a)(1)(A) thus now states the CFTC "shall have exclusive jurisdiction … with respect to … transactions involving swaps or contracts of sale for a commodity for future delivery … traded or executed on a contract market designated" by the CFTC. Congress defined "swap" to include contracts providing for payment "dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence." 7 U.S.C. § 1a(47)(A)(ii). And Congress tasked the CFTC with "further defin[ing] the term[] 'swap.'" 15 U.S.C. § 8302(d)(1).

Congress also established a special rule allowing the CFTC to review and prohibit certain event contracts and swaps that the CFTC deems "contrary to the public interest." 124 Stat. 1736-37. The special rule provides that the CFTC "may determine that" certain swaps "are contrary to the public interest" if they "involve" one of six categories. 7 U.S.C. § 7a-2(c)(5)(C)(i). Should the CFTC decide that an event contract is "contrary to the public interest," the contract cannot be listed on a DCM. *Id.* § 7a-2(c)(5)(C)(ii). Relevant here, one such bannable category is "gaming." *Id.* § 7a-2(c)(5)(C)(i)(V). Under this authority, the CFTC has promulgated a regulation stating that a DCM "shall not list for trading … [a]n agreement, contract, transaction, or swap based upon an excluded commodity … that involves, relates to, or references … gaming." 17 C.F.R. § 40.11(a). As the CFTC has explained, that regulation doesn't categorically bar gaming contracts, but rather allows the agency to "determine, based upon a review of the terms or conditions" of a swap that a DCM has self-certified, *id.* § 40.11(c), that the swap is "contrary to the public interest," 7 U.S.C. § 7a-2(c)(5)(C)(i); *see infra* p. 16.

B. Factual and procedural background

1. OG.com is a financial services company that, since 2004, has operated a CFTC-regulated DCM where users can trade a variety of derivatives products. CA9 ER-159-60, 172-73. In December 2024, OG.com became the first DCM to certify a new category of event contracts related to sports events. OG.com later certified a second sports-event contract: "Industry Event - Live Presentations" contracts." ER-126. The contracts allow users to trade on the outcome of lawful live events in performing arts, spectator sports, and other industries, so long as the users aren't event participants. ER-173.

a. Included in OG.com's certification are sports-event contracts, which are tied to the outcomes of live sports events. ER-173. Trading on sports-event contracts allows stakeholders to hedge against the financial risk associated with a particular outcome of a sports event. ER-127, 133-36, 168.

For example, vendors and merchandisers often must decide how to distribute products and services for a sports event that many Americans might watch or attend. ER-134. Those decisions involve financial risk, because supply and demand could turn on whether the game occurs and on how it unfolds. *Id.* In addition, a municipality might enjoy increased tourism revenue if it hosts the championship game. But hosting an event also exposes the municipality to risks from fan unrest, and addressing safety concerns can be expensive. *Id.*

b. Sports-event contracts differ fundamentally from the traditional sports wagering that has long occurred in casinos. For example, DCMs like OG.com provide a transparent and neutral marketplace to match counterparties to sports-event contracts. ER-127, 167-68. Unlike casinos, DCMs don't make a profit depending on the outcome of an event, and they don't set the odds. *See id.* And licensed sportsbooks can use sports-event contracts to hedge against the risks the sportsbooks face from sports wagers, including a large volume of wagers going one way. In short, sports-event contracts traded on DCMs lack the hallmarks of traditional sports betting, like a "house" that sets the odds and effectively wagers against consumers.

2. In May 2025, the Nevada Gaming Control Board ordered OG.com "to immediately cease and desist from offering in Nevada any event-based wagering contracts concerning sporting events." ER-121-22. The Board alleged that OG.com's sports-event contracts are sporting event wagers under Nevada law, and that OG.com was operating an unlicensed sports pool—a business "accepting wagers on sporting events or other events by any system or method of wagering." *Id.* The Board claimed that OG.com's offering "event-based wagering contracts is unlawful in Nevada, unless and until approved as licensed gaming by the Nevada Gaming Commission." ER-121.

OG.com sued the Chairman of the Nevada Gaming Control Board and members of the Board and the Attorney General of Nevada (collectively, Nevada). OG.com sought a declaration that the CEA preempts Nevada law as applied to the trading of sports-event contracts on federally regulated DCMs, plus a permanent injunction prohibiting Nevada from enforcing its laws against sports-event contracts on OG.com's DCM. ER-162-63, 186.

3. OG.com moved for a preliminary injunction, ER-186; Dist. Ct. Doc. 15, and for judgment on the pleadings, Dist. Ct. Doc. 42. The district court denied both, holding that OG.com's live-event contracts "are not 'swaps' falling within the CFTC's exclusive jurisdiction." App. 8a. To do so, the court focused on the definition of "swap" in § 1a(47)(A)(ii) and its reference to "the occurrence, nonoccurrence, or the extent of the occurrence of an event." App. 31a. In the court's view, "the ordinary meaning of event in terms of sports would be the sporting event itself, not who wins it." App. 23a. The court also concluded that sports-event contracts couldn't be swaps because that would mean that the CFTC's exclusive jurisdiction would extend to "nearly all sports wagering … even though the states historically have regulated gambling through their police power." App. 26a.

4. The Ninth Circuit affirmed. Before oral argument, the court consolidated the case with two appeals raising the same question, one involving KalshiEX, LLC, which operates a DCM offering sports-event contracts, and the other involving Robinhood Derivatives, LLC, a futures commission merchant, which is an intermediary allowing customers to access DCMs. The court issued a published opinion in KalshiEX's case, *Assad*, 2026 WL 2543846, and memorandum dispositions incorporating that opinion's reasoning in OG.com's and Robinhood's cases,App. 2a n.1; *Robinhood Derivatives, LLC v. Dreitzer*, No. 25-7831, 2026 WL 2546925, at *1 (9th Cir. Aug. 28, 2026). Expressly rejecting the Third Circuit's reasoning and ruling, the Ninth Circuit held that sports-event contracts don't qualify as swaps, meaning they fall outside the CFTC's exclusive jurisdiction and states have authority to regulate them. App. 2a-3a; *Assad*, 2026 WL 2543846, at *8-15.

The Ninth Circuit first explained that swap-trading on DCMs falls within the CFTC's "exclusive jurisdiction," 7 U.S.C. § 2(a)(1)(A), which preempts state law. *Assad*, 2026 WL 2543846, at *7. The court then acknowledged that sports-event contracts fit the plain language of "swaps" in § 1a(47)(A)(ii). But the court nonetheless carved sports-event contracts out of that definition. *See id.* *8-15. In its view, sports-event contracts are no different from traditional sports gambling, and it was unlikely that Congress would have preempted state regulation of sports betting, given states' historical roles in that area and prior federal legislation that regulates sports betting expressly. *Id.* at *9-11, *14-15.

The Ninth Circuit declined to treat the special rule's reference to "swaps" that "involve … gaming" as evidence that Congress contemplated swaps being used for gaming. *Id.* at *12. The court reasoned that the CFTC had used the special rule to issue 17 C.F.R. § 40.11, which the court viewed as a categorical "prohibition on listing gaming-related transactions" on DCMs. *Id.* at *12-13. The court acknowledged the agency's pending notice of proposed rulemaking, which explains that "[t]he [CFTC] has consistently applied § 40.11 to operate a discretionary framework rather than a self-executing *per se* prohibition," *Prediction Markets; Public Interest Determinations*, 91 Fed. Reg. 35,806, 35,815 (June 12, 2026), but rejected that view, *Assad*, 2026 WL 2543846, at *13. According to the court, "[u]ntil § 40.11(a) is amended in the manner described," it is a self-executing bar to sports-event contracts. *Id.* The court did not explain how the CFTC could both lack exclusive jurisdiction over sports-event contracts as swaps and yet have jurisdiction to bar sports-event contracts as swaps.

Judge Lee concurred. He "agree[d] with the majority opinion that the more natural reading of 'event' under the statutory definition of a 'swap' would not include the outcome of a sporting event—even if a broad and literal definition of 'event' could encompass it." *Id.* at *18 (Lee, J., concurring). But the special rule gave him "pause," because "the statute does not seem to categorically bar all gaming contracts," instead leaving it in the CFTC's discretion. *Id.* at *19. But because KalshiEx had not "focused much on [the special rule]" and "because 17 C.F.R. § 40.11 bars gaming contracts" anyway, Judge Lee reserved this "thorny statutory interpretation question" for another day. *Id.* Judge Lee likewise did not explain how the CFTC could both lack exclusive jurisdiction over sports-event contracts as swaps and yet have jurisdiction to bar sports-event contracts as swaps.

REASONS FOR GRANTING THE PETITION

The Third and Ninth Circuits have split over whether sports-event contracts traded on DCMs are swaps subject to the CFTC's exclusive regulatory authority. Following the CEA's plain text, the Third Circuit holds that "sports-event contracts fit comfortably within the statutory definition" of swaps because "[t]he outcome of a sports event certainly can be associated with a potential financial, economic, or commercial consequence." *Flaherty*, 172 F.4th at 227. By contrast, the Ninth Circuit holds that sports-event contracts never qualify as swaps. *See Assad*, 2026 WL 2543846, at *8-15. This split is acknowledged and outcome-determinative. The Third Circuit reached its holding over a dissent making many of the same points that the Ninth Circuit later leveraged. *See Flaherty*, 172 F.4th at 232-42 (Roth, J., dissenting). And the Ninth Circuit expressly and repeatedly rejected the Third Circuit's reasoning. *E.g.*, *Assad*, 2026 WL 2543846, at *8, *13, *17. In the Third Circuit, states cannot interfere with OG.com's federally-regulated DCMs. But in the Ninth Circuit, it's open season. And there is no reason to delay review. Courts across the country will only continue to divide, and the CFTC's rulemaking—besides being irrelevant to the statutory preemption analysis—will almost certainly be complete before any merits briefing.

The Ninth Circuit's decision is wrong. As dictionaries and common sense make clear, the outcome of a sports game is an "event or contingency" that, when played at the level of prominence to be traded in a sports-event contract, has "potential financial, economic, or commercial consequence." Resisting this plain-text reading, the Ninth Circuit narrowed the scope of § 1a(47)(A)(ii) using the major-questions doctrine under the belief that, if Congress wanted to delegate authority over portions of perceived sports gambling to the CFTC, it would have expressly said so. *Assad*, 2026 WL 2543846, at *14-15. But Congress did just that: the special rule grants the CFTC power to prohibit contracts that "involve … gaming" if they are "contrary to the public interest." 7 U.S.C. § 7a-2(c)(5)(C)(i). The Ninth Circuit's core premise—that Congress didn't contemplate gaming swaps, and so couldn't have intended to give the CFTC exclusive jurisdiction over those swaps—is wrong. And its view that § 40.11 categorically bars sports-event contracts only proves that sports-event contracts *are* swaps.

The question presented is important, and this case is the ideal vehicle for resolving it. Courts nationwide have disagreed about whether sports-event contracts count as swaps, creating widespread confusion over whether and where those contracts may be lawfully traded. That litigation has pitted the CFTC against states, as the CFTC's amicus brief in this very case shows. *See* CFTC CA9 Amicus Br. (No. 25-7187). The unpredictability created by dueling regulators and courts decisions revives the fractured legal landscape that plagued derivatives markets before the CFTC's inception. What's more, unlike other entities offering DCMs in parallel litigation, OG.com has adequately briefed below the relevance of the special rule to Congress's contemplation of gaming swaps—the leading source of confusion driving the Ninth Circuit's atextual reading.

This Court should grant review.

I. The Ninth Circuit's decision creates a recognized split with the Third Circuit over whether sports-event contracts are swaps.

The Ninth Circuit created an acknowledged split with the Third Circuit over whether sports-event contracts traded on DCMs qualify as "swaps" subject to the CFTC's exclusive regulatory jurisdiction. Only this Court can resolve the split.

A. The Third Circuit holds that sports-event contracts are swaps, triggering the CFTC's exclusive jurisdiction.

1. In *Flaherty*, 172 F.4th at 227, the Third Circuit held that sports-event contracts are swaps subject to the CFTC's exclusive regulatory oversight. There, New Jersey regulators sent a cease-and-desist letter to KalshiEX, a DCM operator, demanding that it stop offering sports-event contracts to New Jersey traders on its DCM. *Id.* at 225. KalshiEX, in turn, brought suit in the District of New Jersey arguing that New Jersey's laws regulating sports gaming were preempted by the CEA. *Id.* The district court agreed, and granted a preliminary injunction prohibiting New Jersey from attempting to regulate sports-event contracts on the DCM. *Id.*

The Third Circuit affirmed. Focusing on plain statutory text, the court first held that sports-event contracts are swaps. The court reasoned that sports-event contracts concern "the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency"—"the outcome of a sports event"—that "certainly can be associated with a potential financial, economic, or commercial consequence." *Id.* at 227 (quoting 7 U.S.C. § 1a(47)(A)(ii)). Thus, the court concluded, sports-event contracts plainly meet the CEA's definition of swaps. *Id.* at 226.

2. Because sports-event contracts traded on DCMs are swaps, the court held that state officials cannot regulate them for two reasons.

First, the CEA "grants the CFTC exclusive jurisdiction over 'swaps traded or executed on a DCM.'" *Id.* at 229 (alterations adopted). The CEA thus leaves "no room for supplementary state legislation" regarding swaps on DCMs. *Id.* at 228.

Second, the court held that allowing states to regulate sports-event contracts traded on DCMs would conflict with congressional policy by enabling "exactly the patchwork" of conflicting state regulation of derivatives markets "that Congress replaced wholecloth by creating the CFTC." *Id.* at 230. Congress, the court observed, "created the CFTC and amended the Act to do away with the patchwork of state regulations and bring futures trading on DCMs under the exclusive jurisdiction of the CFTC." *Id.*

B. The Ninth Circuit disagrees, holding that sports-event contracts traded on DCMs aren't swaps and can be freely regulated by the states.

The Ninth Circuit has expressly rejected the Third Circuit's view, holding that states can freely regulate sports-event contracts traded on DCMs.

1. In *Assad*, as here, Nevada gaming officials sent a cease-and-desist letter ordering a DCM operator (there, KalshiEX) to stop offering sports-event contracts on its DCM to Nevada consumers. 2026 WL 2543846, at *2. KalshiEX sued to enjoin Nevada's interference. The district court initially granted a preliminary injunction, but later reversed course and dissolved its injunction, concluding that sports-event contracts are not swaps subject to the CFTC's exclusive jurisdiction. *Id.* at *5.

2. The Ninth Circuit affirmed. As explained (at 15), the court first conceded that sports-event contracts traded on DCMs can "fit within the meaning of swap in § 1a(47)(A)(ii)," because the word "event" ordinarily just means "a thing that happens or takes place," and the result of a sports-event contract depends on whether and to what extent a particular sports outcome occurs. *Id.* at *8. But the court found the CEA's swap definition ambiguous due to the perceived need to give different meaning to "event" and "occurrence." *Id.* at *9. The court then turned to "statutory context." *Id.* According to the court, sports-event contracts are no different from sports gambling, even though "unlike a traditional casino or house," a "DCM is not a counterparty to any trade, does not set betting odds, does not profit when its customers lose, and has no incentives to favor itself at customers' expense." *Id.* at *11. In the court's view, given other federal legislation regulating sports gambling and states' traditional role in regulating that activity, Congress wouldn't have "intended to upend its decades of careful regulation of gambling based on broad definitions of the words used in a Wall Street Reform Bill." *Id.* at *10.

The Ninth Circuit acknowledged that the Third Circuit had relied on the CEA's plain text to hold that sports-event contracts traded on DCMs are swaps subject to the CFTC's exclusive review. But the court rejected the Third Circuit's plain-text reading of the statute as "cursory." *Id.* at *8. The court also acknowledged that the statute's special rule provision—7 U.S.C. § 7a-2(c)—expressly contemplates that sports-event contracts can be swaps by giving the CFTC discretionary authority to bar "gaming." *Id.* at *12-13. But the court concluded that KalshiEX's sports-event contracts were barred under 17 C.F.R. § 40.11, a regulation issued under the special rule authority, without confronting the special rule's implications for the Ninth Circuit's interpretation of swaps. *Id.*; *see supra* p. 16.

3. Because it concluded that sports-event contracts aren't swaps, the Ninth Circuit held that the CEA does not expressly preempt states from regulating them. *Assad*, 2026 WL 2543846, at *7-15. And it concluded that allowing state regulation of sports-event contracts on DCMs wouldn't conflict with the CEA's design because it is possible to comply with both Nevada and federal law simultaneously, and "Congress has explicitly not occupied the field of gambling." *Id.* at *16-17.

In sum, the Ninth Circuit has expressly split from the Third Circuit over whether sports-event contracts are swaps subject to the CFTC's exclusive jurisdiction. In the Third Circuit, state regulators cannot interfere with sports-event contracts traded on federally regulated DCMs. In the Ninth Circuit, by contrast, the CEA poses no barrier to state regulation of sports-event contracts on DCMs.

C. Only this Court can resolve the conflict.

Only this Court can resolve the split and ensure sports-event contracts are subject to uniform federal regulation, as Congress envisioned. The Third Circuit reached its holding over a dissent making many of the same arguments that later appeared in the Ninth Circuit's decision. *See Flaherty*, 172 F.4th at 232-42 (Roth, J., dissenting). The Ninth Circuit, for its part, repeatedly observed that it was departing from the Third Circuit and criticized it for endorsing a "cursory plain-language" interpretation and "disregard[ing] § 40.11's prohibition on listing gaming-related transactions." *Assad*, 2026 WL 2543846, at *8, *13; *see also id.* at *18 (Lee, J., concurring) ("The majority opinion rightfully avoids the Third Circuit's more literalist approach to textualism."). And the split will only deepen. The Fourth and Sixth Circuits recently heard argument in cases involving efforts by Maryland, Ohio, and Tennessee regulators to interfere with DCM-traded sports-event contracts. *See KalshiEX LLC v. Martin*, No. 25-1892 (4th Cir. argued May 7, 2026); *KalshiEX LLC v. Schuler*, No. 26-3196 (6th Cir. argued July 30, 2026); *KalshiEX LLC v. Orgel*, No. 26-5235 (6th Cir. argued July 30, 2026). There is no reason for this Court to delay resolving the issue.

II. The Ninth Circuit's ruling that sports-event contracts are not swaps subject to the CFTC's exclusive jurisdiction is wrong.

The Ninth Circuit's decision is wrong. Sports-event contracts traded on DCMs are swaps under § 1a(47)(A)(ii) because the outcome of a sports game is an "event or contingency" that, given its downstream effects, is "associated with a potential financial, economic, or commercial consequence." They are thus subject to the CFTC's "exclusive jurisdiction" over "swaps … traded or executed on" DCMs under 7 U.S.C. § 2(a)(1)(A). The Ninth Circuit's contrary decision ignores the statute's text, including the special rule recognizing that gaming contracts can be swaps under CFTC control plus the CFTC's authority to further define "swaps," and it enables the very patchwork of conflicting state regulations Congress rejected.

A. Under § 1a(47)(A)(ii)'s plain text, sports-event contracts traded on DCMs are swaps, as the special rule and the CFTC's swap-definition authority confirm.

Sports-event contracts traded on DCMs are swaps under § 1a(47)(A)(ii) because their payment turns on an "event or contingency"—the outcome of a sports game—that's "associated with a potential financial, economic, or commercial consequence"—the downstream monetary effects of said sports game. The statutory context only confirms what the plain text commands. Indeed, the special rule proves Congress expressly had "gaming" contracts in mind when delegating authority over swaps to the CFTC.

1. OG.com's sports-event contracts are swaps because they are "contracts" traded on a DCM that "provide[] for … payment … that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence." 7 U.S.C. § 1a(47)(A)(ii).

First, an "event" encompasses the outcome of a competition or game. The plain meaning of "event" includes "the outcome, issue, or result of anything." *Event, Random House Webster's Unabridged Dictionary* (2d ed. 2001). "Event" also means "[s]omething that happens." *Event, Random House Webster's Pocket American Dictionary* (5th ed. 2008). In 2008, the CFTC likewise considered events to include outcomes, explaining that "event contracts typically pay out a fixed amount when an outcome either occurs or does not occur." *Concept Release on the Appropriate Regulatory Treatment of Event Contracts*, 73 Fed. Reg. 25,669, 25,670-71 (May 7, 2008). Congress added the definition of "swap" in 2010 "against the backdrop" of that interpretation, which "should be understood to work in harmony" with the later inclusion of "event" in § 1a(47)(A)(ii). *Monsalvo v. Bondi*, 604 U.S. 712, 725 (2025).

Second, the ordinary meaning of "contingency" includes an outcome—"something liable to happen as an adjunct to or result of something else." *Contingency*, *Merriam-Webster's Collegiate Dictionary* (11th ed. 2003).

Finally, an event or contingency is "associated with a potential financial, economic, or commercial consequence" when it is "[c]onnected" or "related" to that consequence. *Associated, Oxford English Dictionary* (2d ed. 1989).

Here, payment under OG.com's sports-event contracts "is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency"—like who wins the World Cup or whether a particular player will break a record during a game. The occurrence (or nonoccurrence) of those events also is "associated with a potential financial, economic, or commercial consequence," because it is connected to the possibility that stakeholders will benefit financially, commercially, or economically. For example, local retailers might expect to sell more of the winning team's merchandise in the team's hometown, but stand to lose if the team doesn't win. Hotels and restaurants in the city hosting the World Series or NBA Finals might expect more business, but their property might be damaged if there's fan unrest. Licensed sportsbooks might also expect to lose revenue if a large volume of one particular bet cashes out for the bettors.

2. Congress's inclusion of "gaming" in the special rule and its delegation to the CFTC of authority to further define "swap" confirms it meant the broad definition of "swap" that it wrote.

At the same time Congress defined "swap," it expressly empowered the CFTC to review and prohibit certain categories of swaps if it found them "contrary to the public interest." 7 U.S.C. § 7a-2(c)(5)(C)(i). One category covers "agreements, contracts, or transactions" that "involve … gaming." 7 U.S.C. § 7a-2(c)(5)(C)(i)(V). Congress thus expressly contemplated that "gaming" falls within the broad definition of "swap," meaning gaming contracts can be listed on DCMs unless and until the CFTC prohibits them. No matter how the CFTC chooses to regulate gaming contracts, they fall within its "exclusive jurisdiction" such that other entities, including states, cannot regulate them. 7 U.S.C. § 2(a)(1)(A). And because sports-event contracts resemble gaming—as the Ninth Circuit concluded—the special rule clarifies that they are swaps within the CFTC's jurisdiction.

In that same legislation, Congress added another important provision that confirms the breadth of the term "swap." Congress tasked the CFTC with "further defin[ing] the term[] 'swap,'" 15 U.S.C. § 8302(d)(1), giving the CFTC authority to narrow the term's reach. The CFTC has used that authority to clarify that "customary consumer" transactions aren't swaps, *Further Definition of "Swap,"* 77 Fed. Reg. 48,208, 48,217, 48,246-48 (Aug. 13, 2012)—a definition that excludes traditional sports gambling and further eliminates any concerns about infringing states' traditional roles.

3. Congress's delegation of authority over gaming contracts to the CFTC makes sense given the long history of treating derivatives trading like gambling. As explained (at 9), agricultural futures trading was originally viewed as "gambling in grain," *Cothran*, 16 N.E. at 647, and some states banned it as such, Rainbolt II, *supra*, at 6. But Congress, though "recogniz[ing] the potential hazards" of futures trading, also recognized its numerous "benefits." *Curran*, 456 U.S. at 360. So Congress began regulating futures trading, expanding the scope of federal authority over time before outright supplanting all state regulation in 1974 through, among other things, the creation of the CFTC. 88 Stat. at 1389-92.

The special rule's express contemplation of gaming swaps is thus no coincidence. States have long viewed derivatives, from futures to swaps, as gambling. But that doesn't mean Congress intended states to retain authority over such trading. Just the opposite: Congress has repeatedly expanded federal authority over derivates, to the exclusion of states, in no small part *becaus*e of their gambling aspect. *See Curran*, 456 U.S. at 360. The special rule provides just another example of this longstanding practice.

4. "[T]he language of the statute itself," *Puerto Rico v. Franklin California Tax-Free Trust*, 579 U.S. 115, 125 (2016), makes clear that the CEA expressly preempts state laws purporting to apply to on-DCM trading of sports-event contracts. As even the Ninth Circuit recognized, the CEA's "plain wording … preempts state regulation of swaps that are 'traded or executed' on a DCM." *Assad*, 2026 WL 2543846, at *7.

Because OG.com is a DCM, and because sports-event contracts are swaps traded on that DCM, state regulation is expressly preempted.

B. The Ninth Circuit's contrary reasoning lacks merit.

Despite acknowledging the "colorable textual basis" for reading "swap" to encompass sports-event contracts traded on DCMs, the Ninth Circuit held that sports-event contracts are never swaps because they are no different than sports gambling, and Congress couldn't have intended to give the CFTC the exclusive power to regulate sports gambling on DCMs. *Assad*, 2026 WL 2543846, at *14. That was error. The statute's text and context both support treating sports-event contracts as swaps, and the special rule confirms Congress intended to bring "gaming" contracts within the CFTC's authority.

1. The court first erred in deviating from the statute's plain text. Take its approach to defining "event" and "contingency." While conceding that many different dictionaries give "broad meaning" to the terms such that "sports events contracts fit within the meaning of swap," the Ninth Circuit decided not to apply the terms' plain meaning. *Id.* at *8-9. According to the court, "event" and "contingency" in the setting of sports refer only to the occurrence of the game itself, and not also the outcome. *Id.* at *9. That atextual reading is incorrect.

Section 1a(47)(A)(ii) doesn't require payment to depend on whether a larger, preidentified event simply happens. Rather, as its plain text makes clear (*see supra* pp. 24-26), the statute refers to *both* the happening of that event and its outcome. Payment could turn on whether game seven of the World Series occurs, but it also could turn on the Brewers' winning game seven. Indeed, betting on whether game seven occurs is just another way of betting on which team wins game six. The question is whether the ordinary meaning of "event" or "contingency" covers the outcome of a game (it does), not whether "event" or "contingency" applies to a game rather than its outcome, if it must apply to only one. The words aren't so limited, as the CFTC itself recognized nearly two decades ago in explaining that event contracts can turn on outcomes. *See Concept Release*, 73 Fed. Reg. at 25,669-71.

Just consider weather swaps, which Congress recognized as a category of swap in § 1a(47)(A)(iii)(XVII). A weather swap doesn't settle based on whether "weather" occurs, but instead on a specified outcome, like whether temperatures fall below a specified level. Sports-event contracts work the same way: the contract identifies a defined, objectively verifiable contingency, and payment depends on whether that contingency occurs.

Treating a sports game itself as the only cognizable "event" artificially fixes the level of generality and imposes an event-versus-outcome distinction that Congress didn't enact. And it produces difficult line-drawing problems, because many events can be recharacterized as outcomes. For example, game seven of the World Series is an event, but whether it happens depends on the outcome of the earlier games in the series. The Ninth Circuit's distinction doesn't work.

The same goes for the Ninth Circuit's reading of "associated with" in § 1a(47)(A)(ii). According to the court, the phrase requires an event or contingency to "be *inherently* associated with a potential financial [or economic] consequence, not just that the event or contingency have some potential downstream financial consequence." *Id.* at *12.

But the first clue that the court's reading is wrong is that § 1a(47)(A)(ii) "says no such thing." *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 642 (2022). What it *does* say is that the "financial, economic, or commercial consequence" need only be "potential." Had Congress wanted the statute to cover only "inherently" financial contracts, it would have used that word. But it didn't, and for good reason: Many swaps are tied to events that are not "inherently" financial. Weather swaps, for instance, impose only downstream financial consequences, such as by affecting tourism or energy prices in a particular area.

The Ninth Circuit's only response was, without elaboration, that weather swaps "are unlike the winner of a sports game or the number of points scored during a game, or similar sports events contracts." *Assad*, 2026 WL 2543846, at *12. Why that matters is anyone's guess. A hurricane is obviously different in many ways from the Hurricanes' winning the Stanley Cup, but they are no different where it counts: neither is "inherently" financial, but both impose downstream financial consequences. Congress didn't intend for the definition of "swap" to turn on whether a ball is involved in the event.

2. The Ninth Circuit invoked the major-questions doctrine to justify its atextual reading of "swap," arguing that Congress wouldn't have wanted to delegate to the CFTC authority over gambling contracts. *See id.* at *9-11, *14-15. Pointing to the size and extensive regulation of sports gambling, the court reasoned that "'Congress can regulate sports gambling directly' should it choose to do so. But Congress has not done so directly, or indirectly through the CFTC." *Id.* at *14.

a. The special rule refutes that conclusion. Again, the CEA states that the CFTC may bar certain swaps—*including those that "involve … gaming"*—if they are "contrary to the public interest." 7 U.S.C. § 7a-2(c)(5)(C)(i) (emphasis added). That explicit reference to "gaming" confirms that Congress contemplated the very interaction between swaps and gambling that the Ninth Circuit claims it couldn't have imagined. And Congress empowered the CFTC to "determine" what's in the public interest. *Id.* It's hard to imagine how the CEA could have any more "directly," *Assad*, 2026 WL 2543846, at *14, given the CFTC authority over gaming swaps on DCMs. There is no need—or warrant—for resorting to the major-questions doctrine when the statute directly speaks to the question at hand.

That's why, in his concurring opinion in *Assad*, Judge Lee wrote that the special rule gave him "pause." *Id.* at *19. In his words, "the statute does not seem to categorically bar all gaming contracts, … [s]o perhaps some unique sports events can be part of a swap trade if they meet the statutory requirements." *Id.* That instinct is correct. Because the special rule assigns the public-interest determination for all gaming contracts to the CFTC rather than state regulators, the definition in § 7a-2(c)(5)(C)(i) must cover gaming swaps.

b. To resist this necessary inference, the Ninth Circuit simply changed the subject. The court reasoned that sports-event contracts are prohibited under a CFTC regulation stating that "[a] registered entity shall not list for trading" swaps "based upon an excluded commodity … that involves, relates to, or references … gaming." *Id.* at *12 (quoting 17 C.F.R. § 40.11(a)). But that reasoning only *confirms* that the Ninth Circuit misinterpreted the statute. The CFTC's promulgating of a regulation about gaming contracts—which the Ninth Circuit accepts is what happened—only reaffirms the agency's jurisdiction over gaming contracts. And whether a DCM complied with CFTC rules when certifying an event contract doesn't change the fact that the contract is a swap under § 1a(47)(A)(ii) in the first instance. The reason "Nevada has been largely quiet" on the matter, *id.* at *19 (Lee, J., concurring), is that it knows that even under the Ninth Circuit's reading of § 40.11(a), sports-event contracts would be prohibited under *federal* law, but that doesn't mean *states* can infringe on the CFTC's "exclusive jurisdiction."

c. Equally unavailing is the Ninth Circuit's major-questions concern that, if sports-event contracts are swaps, then all sports gambling is swap-trading and "every person placing a sports bet" at, say, a casino "is violating the CEA." *Id.* at *11 (majority). The premise is incorrect. It ignores the substantial authority—and obligation—Congress gave the CFTC to "further define the term[] 'swap.'" 15 U.S.C. § 8302(d)(1); *see Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 394-95 (2024) (discussing delegated "authority to give meaning to a particular statutory term"). Under that authority, the CFTC has clarified that "customary consumer" transactions aren't swaps because, among other things, they "are not traded on an organized market"—trading that involves clearinghouses—or "over the counter" with "financial entities." *Further Definition of "Swap,"* 77 Fed. Reg. 48,208, 48,217, 48,246-48 (Aug. 13, 2012). That same reasoning applies to traditional sports gambling wagers, which thus don't constitute swaps. And the agency is currently in the process of a rule-making that will undoubtedly make clear that sports gambling wagers are not swaps. *See Prediction Markets; Public Interest Determinations*, 91 Fed. Reg. 35,806, *supra*.

III. The question presented is important, and this case is the ideal vehicle for resolving it.

A. It is vitally important for the Court to intervene and resolve the split as soon as possible, and this case is the right vehicle for doing so. The widening confusion about which set of regulators—federal or state—may oversee sports-event contracts traded on DCMs is causing chaos and upsetting the uniform national rules for derivatives markets that Congress sought to promote.

1. In just the past two years, many district courts have reached opposite conclusions about whether state regulators may interfere with sports-event contracts traded on DCMs. Some, like the Third Circuit, have held that sports-event contracts are swaps and that the CEA preempts state regulation. *E.g.*, *United States v. Minnesota*, No. 26-CV-2661, 2026 WL 2150211, at *9-16 (D. Minn. July 27, 2026); *KalshiEX LLC v. Johnson*, 832 F. Supp. 3d 954, 961-66 (D. Ariz. 2026); *KalshiEX LLC v. Orgel*, No. 26-CV-34, 2026 WL 474869, at *7-10 (M.D. Tenn. Feb. 19, 2026). Others, like the Ninth Circuit, have interpreted § 1a(47)(A)(ii) narrowly and allowed state regulators free rein over sports-event contracts. *E.g.*, *Coinbase Financial Markets, Inc. v. Tong*, No. 25-CV-2121, 2026 WL 2294602, at *3 (D. Conn. Aug. 10, 2026), *QCX LLC v. Nessel*, No. 26-CV-710, 2026 WL 1895958, at *2-13 (W.D. Mich. June 17, 2026); *Coinbase Financial Markets, Inc. v. Nessel*, No. 25-14092, 2026 WL 2295184, at *7-15 (E.D. Mich. Aug. 7, 2026).

For any given state, then, DCMs must determine whether that state's laws apply and, if so, how to comply with it (assuming compliance is possible). Such unpredictable governance winds the clock back to before 1974, when regulation of futures-contract trading was a "hodgepodge," *Hunter*, 711 F.3d at 157, and exchanges were calling for a "uniform" "federal policy" nationwide so that they would no longer be subjected "to the vagaries of" laws in "different jurisdictions," *Hearings Before the House Committee on Agriculture*, 93d Cong. 121 (1973). Congress responded by enacting the CEA, "a comprehensive regulatory structure," *Curran*, 456 U.S. at 355-56, that "brought *all* commodities under federal regulation." *FTC v. Ken Roberts Co.*, 276 F.3d 583, 588 (D.C. Cir. 2001). The intense fracturing between courts today is the opposite of what Congress intended.

2. Worse still, the law is now split where it matters most. The Third and Ninth Circuit decisions saw the attempted enforcement of state law from the states with the two largest gambling markets in the country: Las Vegas, Nevada, and Atlantic City, New Jersey. *See, e.g.*, Wayne Parry, *US Casinos Had Best Month Ever in March, Winning $3.5B*, Associated Press (May 11, 2022), https://tinyurl.com/mtrap7mk. That means many of the country's largest sportsbooks can no longer hedge using sports-event contracts, while some of their largest competitors can. And sportsbooks operating in both jurisdictions must now determine when they can trade sports-event contracts, if at all.

B. This case is the ideal vehicle to resolve the question presented. The question was squarely litigated and decided below. And there are no factual disputes or alternative holdings that would complicate the Court's review. Although this case arises in a preliminary-injunction posture, the questions at the heart of the Ninth Circuit's analysis were solely legal matters of statutory interpretation and preemption. This petition thus presents an excellent opportunity to resolve the split between the Third and Ninth Circuits, as well as several district courts, over whether sports-event contracts are swaps subject to the CFTC's exclusive regulatory authority. And, as noted (at 7, 17), OG.com has consistently pressed the special rule and § 8302(d)(1) swap-defining-authority arguments, unlike other parties, and the CFTC participated as an amicus below. The Court should grant this petition without delay.

CONCLUSION

The Court should grant the petition.

Respectfully submitted.

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