

TABLE OF CONTENTS

STATEMENT OF INTEREST..... 5

INTRODUCTION 6

ARGUMENT..... 7

 I. Indiana Law Imposes Meaningful and Important Limits on the Attorney
 General’s CID Authority..... 7

 II. Courts Nationwide Echo Indiana’s Concerns and Perform A Similar
 Gatekeeping Function. 10

 III. These Limits are Vital to Protect Manufacturers from Operational
 Disruption and Needless Burden. 14

CONCLUSION..... 17

CERTIFICATE OF WORD COUNT 19

CERTIFICATE OF SERVICE 20

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Blue Cross, Blue Shield v. Klein</i> , No. 96-3805, 1997 WL 400095 (6th Cir. July 11, 1997).....	12
<i>Chattanooga Pharmaceutical Ass’n v. United States Department of Justice</i> , 358 F.2d 864 (6th Cir. 1966)	13
<i>Commonwealth ex rel. Coleman v. Doe I</i> , 696 S.W.3d 840 (Ky. Ct. App. 2024)	11
<i>D.R. Horton, Inc. v. Leibowitz</i> , No. 4:10-CV-00547, 2010 WL 4630210 (N.D. Tex. Nov. 3, 2010)	12, 15
<i>Imparato v. Spicola</i> , 238 So. 2d 503 (Fla. Dist. Ct. App. 1970)	12
<i>Jones v. Securities and Exchange Commission</i> , 298 U.S. 1 (1936).....	10
<i>Legal Voice v. Stormans Inc.</i> , 738 F.3d 1178 (9th Cir. 2013)	14
<i>Major League Baseball v. Crist</i> , 331 F.3d 1177 (11th Cir. 2003)	12, 13
<i>Media Matters for America v. Federal Trade Commission</i> , 805 F. Supp. 3d 105 (D.D.C. 2025).....	13, 15, 16
<i>Nu-Sash of Indianapolis, Inc. v. Carter</i> , 887 N.E.2d 92 (Ind. 2008)	7, 8, 9
<i>Oman v. State</i> , 737 N.E.2d 1131 (Ind. 2000)	11
<i>Roberts v. Whitaker</i> , 178 N.W.2d 869 (Minn. 1970).....	11
Statutes	
IND. CODE § 4-6-3-6.....	7, 8, 9
2024 Ind. Legis. Serv. Pub. L. No. 95-2024	9

Other Authorities

Amid health and safety concerns, Attorney General Todd Rokita investigates potential labor trafficking networks in local communities, Ind. Att’y Gen. (Nov. 8, 2024), https://events.in.gov/event/amid-health-and-safety-concerns-attorney-general-todd-rokita-investigates-potential-labor-trafficking-networks-inlocal-communities?utm_campaign=widget&utm_medium=widget&utm_source=State+of+Indiana16, 17

Attorney General Todd Rokita investigates potential labor trafficking and interference with Federal Immigration Enforcement in Monroe County, Ind. Att’y Gen. (Sep. 8, 2025), <https://events.in.gov/event/attorney-general-todd-rokita-investigates-potential-labor-trafficking-and-interference-with-federal-immigration-enforcement-in-monroe-county>17

Daniel Carson, *Rokita’s unusual tactic confounds targets of immigration inquiry*, *The Indiana Lawyer* (Mar. 12, 2025), <https://www.theindianalawyer.com/articles/rokitas-civil-subpoenas-are-confounding-indiana-entities-swept-up-in-immigration-investigation> ...15

Exodus Refugee Immigration, Inc. v. Rokita, Complaint, ECF No.1, Case No. 1:25-cv-1885 (S.D. Ind. Sep. 19, 2025)15, 16, 17

Rules

Indiana Appellate Rule 44(E)19

STATEMENT OF INTEREST

The National Association of Manufacturers (“**NAM**”) is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes \$2.9 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. Indiana alone has more than 8,000 manufacturers—which employ nearly 520,000 individuals—and Indiana manufacturing is responsible for \$133.8 billion in value for the U.S. economy. The NAM is the voice of the manufacturing community and leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The NAM seeks to appear as *amicus curiae* because this case is of great concern to Indiana manufacturers, which are meaningfully and directly burdened by the unlawful civil investigative demands (“**CIDs**”) underlying this appeal, and to businesses nationwide whose operations are impacted by similar improper CIDs. Indeed, the NAM’s own experience exemplifies the burdens attendant in the case at bar. Over the years, the NAM has received wide-ranging, third-party subpoena requests—from private litigants as well as government agencies—hoping to uncover information to further a variety of alleged causes or legal claims. In response, the NAM has been forced to expend substantial resources, time, and manpower akin to Appellees here and all others in their shoes.

The Indiana Manufacturers Association (“**IMA**”) was founded in 1901 and is the second oldest manufacturers association in the United States. Manufacturing is central to Indiana’s economy. Indiana ranks first in the nation in manufacturing GDP on a per capita basis, and the IMA represents small, medium, and large manufacturers across a wide range of industry sectors,

including automobile, steel, pharmaceuticals, health and life sciences, recreational vehicles, plastics and polymers, and others. The IMA has a substantial interest in this appeal because of its significant precedential implications for the scope and enforcement of CIDs that can meaningfully disrupt lawful business operations across the state.

INTRODUCTION

American manufacturing is the backbone of the national economy. It employs millions of workers, sustains countless downstream industries, and underpins the supply chains that keep goods moving across the country. That productive capacity depends, in no small part, on a stable, reliable workforce. The CIDs underlying this appeal target and threaten that stability.

Issued to third-party companies—not investigative targets—that Appellant Indiana Attorney General Todd Rokita presumes could have relevant information to an abstract concern about migrant workers, the CIDs demand sweeping information about an entire population of employees. The burden they impose is neither incidental nor small. Compliance would require diverting significant legal, administrative, financial, and human resources away from production. And the message that the CIDs send to workers—that their employer may be compelled to produce personal information about them to state authorities on demand—is corrosive to the trust and continuity that productive workplaces require.

To be sure, CIDs are an important and well-established tool of government investigation, and the Attorney General necessarily has broad authority and discretion to enforce them. But Indiana’s codified policy does not trust the government with limitless powers—CID or otherwise. Rather, Indiana law prescribes a vital function for this Court to perform in ensuring that CIDs are lawful, proportionate, and tethered to a legitimate purpose. A CID that exists only to burden employers, reveal personal information of workers, and threaten the day-to-day business operations is none of those things. And its costs to industry, to the workforce, and to the broader

economy are significant. This brief addresses those costs from the perspective of the national manufacturing sector and urges the Court to apply meaningful scrutiny to the CIDs at issue pursuant to Indiana law to prevent regulatory expansion through enforcement.

ARGUMENT

I. INDIANA LAW IMPOSES MEANINGFUL AND IMPORTANT LIMITS ON THE ATTORNEY GENERAL'S CID AUTHORITY.

In 2008, in a case of first impression, the Indiana Supreme Court considered the Attorney General's burden when seeking a court order to enforce an investigative CID. *See Nu-Sash of Indianapolis, Inc. v. Carter*, 887 N.E.2d 92, 94 (Ind. 2008). The Court determined that, under Indiana Code § 4-6-3-6, the Attorney General must establish (1) “that an investigation is being conducted concerning potential violation of a statute enforced by the Attorney General,” and (2) “that there are reasonable grounds to believe that the person to whom the CID is directed has information relevant to the investigation”—each “by evidence or other procedure authorized by the Indiana Trial Rules.” *Id.* at 94, 96 (“filing an unsworn allegation” will not suffice).¹ Because *Nu-Sash* informed the trial court order below, pervades the parties' briefing, and governs this Court's review of the underlying CID, a probing discussion of the *Nu-Sash* decision and why it requires affirmance may be instructive.

In April 2006, the Attorney General issued a CID to Nu-Sash of Indianapolis, Inc., an Indiana corporation “in the business of selling windows, siding and constructing sunrooms.” *Id.* at 94. The CID explained that Nu-Sash—unlike Appellees here—was under investigation for potentially violating a consumer protection law “by failing to provide consumers with written home improvement contracts” containing required terms. *Id.* As such, the CID recited “reasonable

¹ Unless otherwise noted, all emphasis in this brief has been added, and all internal quotations, citations, and alterations have been omitted.

cause to believe that Nu-Sash may be in possession, custody, or control of documentary material, or may have knowledge of a fact that is relevant to [the] investigation.” *Id.* Nu-Sash did not respond to the CID. *Id.* In May 2006, the Attorney General filed a petition to enforce the CID in superior court. Citing an unsworn affidavit by the Attorney General’s office, the petition explained that the Attorney General was investigating Nu-Sash for potential violations of Indiana law, based on “information provided [to the Attorney General] in consumer complaints.” *Id.* Both the trial court and this Court ruled to enforce the CID. *Id.*

In a unanimous decision, the Indiana Supreme Court reversed. Rejecting the proposition that “rulings on CIDs are discovery rulings,” the Court explained that the Attorney General’s CID powers are “governed by statute”—*i.e.*, Section 4-6-3-6—meaning the “Attorney General has only the authority granted by [Section 4-6-3-6] to issue a CID.” *Id.* at 95. Under that provision, a petition to enforce a CID requires a hearing “at which the Attorney General ‘must demonstrate to the court that the demand is proper.’” *Id.*; *see* IND. CODE § 4-6-3-6(a). “If the court finds that the demand is proper, it must order compliance with the CID, with any modifications ‘which justice requires.’” *Nu-Sash*, 887 N.E.2d at 95. Further, if the reviewing court finds that the Attorney General issued the CID in bad faith, it may order reimbursement of the CID recipient’s reasonable expenses. *Id.* at 96.

According to the Supreme Court, Indiana’s public policy as evidenced by the statutory framework thus “contemplates a role for the trial court in ordering the enforcement of the CID, making necessary modifications to the CID”—even if it is proper—“and determining whether the CID has been issued or resisted in bad faith.” *Id.* at 96. These judicial safeguards are paramount:

[H]istory teaches that power can be and has been abused. Requiring the Attorney General to provide at least a verified petition to enforce affords all citizens some protection against “fishing expeditions” or retaliatory or abusive CIDs that are

unrelated to legitimate investigations, and imposes a mild deterrent to arbitrary use of government authority.

Id.; see also Section II *infra* (discussing similar cautions nationwide).

The balance of the decision turned on how the Attorney General must demonstrate that a CID is proper. Nu-Sash argued that the statute imposes on the Attorney General an affirmative burden of proof, such that an “unsworn allegation” that the statutory requirements are met is not enough. *Id.* at 96. The Supreme Court agreed. *Id.* To meet its burden, the Attorney General must “demonstrate” that “there is an investigation” and “the respondent is reasonably believed to have relevant information” to that investigation, with a proffer that comports with the “Trial Rules and the Rules of Evidence.” *Id.*

That burden is “small” but meaningful. *See id.* The Supreme Court opined that “it will ordinarily be no problem to” satisfy—*e.g.*, “the fact that Nu-Sash is or was in the home improvement business would do the trick,” given (i) the Attorney General’s investigation of Nu-Sash, (ii) a home improvement business, for violations of a law governing home improvement businesses, (iii) based on specific “consumer complaints.” *Id.* at 94–96. Nonetheless, to fulfill its statutory role to “protect citizens and businesses from unnecessary intrusion,” the Supreme Court reversed the orders enforcing the CID, because the Attorney General provided insufficient evidence to legitimize the CID. *Id.* at 96.

Since the Indiana Supreme Court’s 2008 *Nu-Sash* decision, the Indiana General Assembly has had the opportunity to alter Indiana’s policy. Most recently, in 2024, the Legislature added certain confidentiality provisions for health care records to Indiana Code § 4-6-3-6, only to leave the gatekeeping function of the Courts firmly intact. *See* 2024 Ind. Legis. Serv. Pub. L. No. 95-2024 (S.E.A. 9) § 1 (adding IND. CODE § 4-6-3-6(d)). This legislative silence speaks volumes.

In this appeal, the Attorney General relies extensively on *Nu-Sash*'s supposition that the Attorney General's burden to enforce a CID will ordinarily be easily met. But focus on that language in isolation omits critical context (*e.g.*, that compliance should be simple "where there is a legitimate purpose for a CID"), and contradicts the balance of the decision and the Supreme Court's overarching concerns. Properly read, *Nu-Sash* confirms Indiana's public, statutory policy that the Attorney General's CID powers are not unbounded, that the Indiana Code recognizes CIDs may need to be limited or altogether rejected, and that the Legislature places the duty upon Indiana courts to perform that essential gatekeeping function, just as the trial court did here.

II. COURTS NATIONWIDE ECHO INDIANA'S CONCERNS AND PERFORM A SIMILAR GATEKEEPING FUNCTION.

Indiana does not stand alone in recognizing the substantial risk of government overreach posed by unbounded civil investigative demands. Courts around the country have long shared these concerns and, accordingly, have struck down or limited unjustified "fishing expedition" CIDs.

This principle is firmly rooted in longstanding precedent of the Supreme Court of the United States. Nearly a century ago, the U.S. Supreme Court rejected the notion that constitutional and legal restraints may be "brushed aside" in the context of a civil investigation "upon the plea that good, perchance, may follow." *Jones v. Sec. & Exch. Comm'n*, 298 U.S. 1, 27 (1936) (holding that civil investigations lacking specified factual grounds are unlawful at inception and cannot be justified by hoped-for or actual results). A civil investigation "not based upon specified grounds," the Court explained, is "quite as objectionable as a search warrant not based upon specific statements of fact," because such an investigation "is unlawful in its inception and cannot be made lawful by what it may bring, or by what it actually succeeds in bringing, to light." *Id.* That foundational rule maps directly onto the Court's gatekeeping role at issue here: civil investigative

demands must be justified at the outset by a concrete and lawful basis, rather than validated retroactively by the hope—or claim—that something useful might turn up.

Consistent with *Jones*, courts across the country, state and federal alike, have repeatedly emphasized that CIDs are not licenses for speculative fishing expeditions.² As early as 1970, the Minnesota Supreme Court made clear that “a government agency is not licensed to engage in a general fishing expedition into the affairs of private parties on the mere hope that some useful information will be disclosed.” *Roberts v. Whitaker*, 178 N.W.2d 869, 877 (Minn. 1970). In *Roberts*, the court affirmed an order quashing a subpoena duces tecum where the government failed to demonstrate that the documents sought were material or relevant to any lawful investigation, or that their production was necessary to substantiate the agency’s underlying suspicions. *Id.* (“[T]here is no showing that it is necessary to subpoena these specific documents in order to substantiate the public examiner’s suspicions, nor that all of these documents would be necessa[r]y to such an investigation.”).

More recently, in *Commonwealth ex rel. Coleman v. Doe I*, the Kentucky Court of Appeals affirmed the quashing of subpoenas where the government could not articulate a reasonable nexus between the records sought and any suspected criminal activity, concluding bluntly that the Attorney General was “fishing in the wrong pond.” 696 S.W.3d 840, 850, 852 (Ky. Ct. App. 2024) (“Simply because an employer receives some small percentage of funding from the

² Although some of the cases discussed in this Section arise in criminal or grand-jury contexts, Indiana law expressly adopts the same limitations for civil investigative demands. That is, a CID “may not . . . contain a requirement that would be unreasonable if contained in a subpoena or subpoena duces tecum issued by a court in a grand jury investigation.” *Oman v. State*, 737 N.E.2d 1131, 1141 n.17 (Ind. 2000) (quoting IND. Code § 4-6-3-5(1)). The distinction between civil and criminal process, therefore, does not dilute the governing standard here; to the contrary, Indiana law confirms that civil CIDs are subject to the same foundational limits on scope, relevance, and justification that courts enforce in criminal investigations.

Commonwealth does not mean the OAG can investigate payments by that employer which have only some theoretical and indirect connection to state funding.”); *see also* *Imparato v. Spicola*, 238 So. 2d 503, 511 (Fla. Dist. Ct. App. 1970) (holding that subpoenas duces tecum may not be used as a “fishing expedition” to search for evidence, and quashing omnibus and sweeping subpoenas as unreasonable, oppressive, and violative of constitutional guarantees). These state-court decisions underscore that judicial gatekeeping against speculative and overbroad investigative demands is not jurisdiction-specific, but reflects a broader, shared understanding that investigative authority must be constrained at the outset by law.

Federal courts have reached the same conclusion when enforcing constitutional and statutory limits on investigative authority. The Sixth Circuit made clear in *Blue Cross, Blue Shield v. Klein* that, even where substantial deference is afforded to investigative demands, the government may not engage in “arbitrary fishing expeditions,” and courts must ensure that the scope of a CID is reasonably related to a legitimate inquiry. No. 96-3805, 1997 WL 400095, at *3 (6th Cir. July 11, 1997) (remanding for review of whether CID scope was unreasonable where the government could not justify its breadth, but explaining the court “remain[s] concerned that the government may be fishing in this case”); *see also* *D.R. Horton, Inc. v. Leibowitz*, No. 4:10-CV-00547, 2010 WL 4630210, at *3 (N.D. Tex. Nov. 3, 2010) (observing that a CID so sweeping and untethered to any specific theory of wrongdoing reflected “no meaningful discretion”).

Underscoring the point, the Eleventh Circuit has likewise recognized a “right to be free from baseless investigations,” grounding that protection in the Fourth Amendment’s limits on administrative subpoenas. *Major League Baseball v. Crist*, 331 F.3d 1177, 1187–88 (11th Cir. 2003). While legislatures may grant agencies broad investigative authority, the Eleventh Circuit emphasized that investigations “premised solely upon legal activity” are precisely the kind of

fishing expeditions the Constitution forbids. *Id.* at 1187. Similarly, in *Media Matters for America v. Federal Trade Commission*, the United States District Court for the District of Columbia found that a CID with a “sweeping scope” out of step with the issuing agency’s “proffered reason”—that included “demands that go well beyond the investigation’s purported scope,” and that had already “had plenty of knock-on effects,” “driv[en] additional costs,” and “caused retention challenges” for its recipient—must be denied. 805 F. Supp. 3d 105, 133, 137 (D.D.C. 2025). Likewise, the Sixth Circuit’s decision in *Chattanooga Pharmaceutical Ass’n v. United States Department of Justice* made clear that CIDs used to intimidate, harass, and coerce parties, rather than to pursue a legitimate investigation, are impermissible, underscoring that a legitimate investigative demand must be supported by adequate proof. 358 F.2d 864, 866–67 (6th Cir. 1966) (“We are not persuaded that a simple denial and, if necessary, proof contradictory of, the misuse of process charged to the Department would create a precedent which might seriously prejudice future administration of the Civil Investigative Demand statute.”).

Across these cases, the throughline is unmistakable. Courts nationwide have recognized that civil investigative demands, while important tools, carry an inherent risk of abuse. To mitigate that risk, courts insist on meaningful limits: a demonstrated investigative purpose, a reasonable belief that the recipient possesses relevant information, and proportionality between the demand and the investigation’s legitimate needs—and adequate substantiation of the same by the issuing authority. In performing this role, courts around the country do precisely what the Indiana Supreme Court envisioned in *Nu-Sash*, serving as a critical check against arbitrary, retaliatory, or unjustified governmental demands. That gatekeeping function is essential and, here, mandated by judicial precedent and Indiana law.

III. THESE LIMITS ARE VITAL TO PROTECT MANUFACTURERS FROM OPERATIONAL DISRUPTION AND NEEDLESS BURDEN.

CIDs create real and significant costs for businesses and their affected workforces. Even lawful CIDs can be difficult to comply with, both in financial costs and time investment. They disrupt regular business operations, strain day-to-day management, and work reputational and political damage on their recipients—who often, as in this case, are not even targets of an investigation by the Attorney General’s own admission. And broad, exploratory demands impose such financial, operational, and reputational burdens without justification.

First, CIDs require an immense amount of money and time to respond to. Third-party investigative requests can expansively include dozens of document requests and deposition topics covering years of information. Between technology costs associated with preservation, collection, review, and production of requested materials—including years-old materials preserved in archived, dated, or even dysfunctional systems—and the time investment of knowledgeable personnel and counsel to identify relevant materials and confer (and potentially litigate) regarding any investigative questions, CIDs can incur “significant” costs. *See, e.g., Legal Voice v. Stormans Inc.*, 738 F.3d 1178, 1185 (9th Cir. 2013) (ordering cost-shifting for incurrence of \$20,000 in responding to third-party subpoena under FED. R. CIV. P. 45).

Here, the CIDs at issue reportedly seek “years of data and other material related to any steps [Appellees] had taken to allow migrants to enter Indiana or any portion of the United States,” including without limitation, identifying and describing “any and all employers, non-profit organizations, or other entities with which [Appellee] works, partners, cooperates, or interacts concerning migrants and/or migrant services” and “any and all documents concerning programs, initiatives, partnerships, policies or agreements [Appellee] has implemented, maintained, utilized or entered into in the past three years related to the entry and/or settlement of migrants in the U.S.

and/or the State of Indiana.” See, e.g. Daniel Carson, *Rokita’s unusual tactic confounds targets of immigration inquiry*, The Indiana Lawyer (Mar. 12, 2025), <https://www.theindianalawyer.com/articles/rokitas-civil-subpoenas-are-confounding-indiana-entities-swept-up-in-immigration-investigation> (listing subset of requests to Appellee Haitian Center); see also Appellee Berry Global Br. at 7–8. A similar CID issued by the Attorney General as part of the same alleged investigation in September 2025 demanded “39 separate interrogatories and 28 separate requests for production of documents,” including information on participating refugees’ and immigrants’ housing, careers, legal representation, and mental health status. *Exodus Refugee Immigration, Inc. v. Rokita*, Case No. 1:25-cv-1885 (S.D. Ind. Sep. 19, 2025) (“*Exodus Compl.*”), ECF No. 1 ¶¶ 50, 52–53.

That is, in furtherance of an investigation based on abstract concerns about migrant workers, the underlying requests seek to capture effectively every document regarding immigration, for years, in Appellees’ possession. These are precisely the kinds of demands for information that courts have criticized for “the potential to cause plaintiff to suffer intolerable financial and manpower burdens.” *Leibowitz*, 2010 WL 4630210, at *3; *Media Matters*, 805 F. Supp. 3d at 133 (flagging the “knock-on effects” of a CID, including “driving additional costs”).

Second, CIDs can threaten “an inexcusable disruption of [] normal business activities.” *Leibowitz*, 2010 WL 4630210, at *3. In even the best of circumstances, responding to an investigative demand requires businesses to divert manhours and business resources away from production and daily work. Key decision-makers, document custodians, and in-house counsel are required to weigh in on document collection, review issues, and investigative demands—often on abbreviated timeframes—to avoid providing incomplete (or incorrect) information or waiver of critical privilege or proprietary rights. This is to say nothing of the ongoing burden of responding

to investigative questions and revised demands that surface as materials are identified and produced to the requesting party.

That administrative and corporate burden is even more pronounced for broad informational demands. Responding to investigative demands that broadly cover all information on a sensitive topic within a business—particularly when they are heavily publicized and made the subject of ongoing media attention—can cause “retention challenges,” loss of revenue, and industry disruptions. *See, e.g., Media Matters*, 805 F. Supp. 3d at 133, 138. Indeed, the extensive demands of responding to a CID similar to the ones at issue here have caused the God is Good Foundation³ in Evansville to cease all resettlement operations. *See Exodus Compl.* ¶ 41.

Finally, because the State policy reasonably creates an expectation that a governmental official meets meaningful standards before issuing CIDs, public knowledge of CIDs being issued can create reputational and political damage for the recipients caught in the crosshairs. Indeed, in the court of public opinion, CID recipients often are required to disprove an implication of wrongdoing, even where no complaint has been made nor formal investigation initiated, and even as a third party. Such is the case here.

As Appellees discuss in their brief, the subject of these CIDs have not been confidential but instead heavily publicized in the media. *See Appellee Berry Global Br.* at 6–7. From the outset, Appellees and other recipients of the Attorney General’s CIDs have been required to answer for the “influx of [] illegal aliens” and alleged resulting “strain[]” and “stress” on community

³ Appellant issued a press release in November 2024 identifying God is Good, alongside Appellee Berry Global, as a CID recipient. *See Amid health and safety concerns, Attorney General Todd Rokita investigates potential labor trafficking networks in local communities*, Ind. Att’y Gen. (Nov. 8, 2024), https://events.in.gov/event/amid-health-and-safety-concerns-attorney-general-todd-rokita-investigates-potential-labor-trafficking-networks-inlocal-communities?utm_campaign=widget&utm_medium=widget&utm_source=State+of+Indiana (“**Nov. 8 Press Release**”).

resources. Nov. 8 Press Release. Indeed, other CID recipients have been publicly targeted for “provid[ing] services to illegal aliens” and “possible interference with federal immigration enforcement activities,” by virtue of having been served with the CID. *Attorney General Todd Rokita investigates potential labor trafficking and interference with Federal Immigration Enforcement in Monroe County*, Ind. Att’y Gen. (Sep. 8, 2025), <https://events.in.gov/event/attorney-general-todd-rokita-investigates-potential-labor-trafficking-and-interference-with-federal-immigration-enforcement-in-monroe-county>; see *Exodus* Compl. ¶ 61. As the lower court found, “no complaints” have been filed against Appellees, “no indication that labor trafficking” is “occurring,” Order ¶ 6 (Oct. 8, 2025), and Appellees are not even under investigation, as the Attorney General concedes, Appellant Br. at 19 (“The Attorney General has not alleged that Berry Global and Haitian Center are trafficking newly arrived Haitians . . .”).

CONCLUSION

Indiana, like most other states in our Union, grants this Court the authority and responsibility to ensure that executive power is exercised lawfully and for legitimate ends. Consistent with that purpose, the NAM respectfully requests that the Court affirm the trial court’s denial of the Attorney General’s petition to enforce the underlying CIDs.

Respectfully submitted,

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I verify that this brief contains no more than the 7,000 words permitted under Indiana Appellate Rule 44(E).

/s/ Jonathan L. Mayes _____

CERTIFICATE OF SERVICE

Pursuant to Ind. Appellate Rule 24(D), I hereby certify that on the 13th day of April, 2026, I electronically filed the foregoing document using the Indiana E-filing System (“IEFS”). I also certify that on April 13, 2026, the foregoing document was served upon the following counsel through the IEFS:

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