No. 25-_____

In the Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE,

Petitioner,

v.

MI FAMILIA VOTA, ET AL.

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Like every other State, Arizona permits only United States citizens to vote in federal elections. To enforce that qualification, Arizona requires every applicant who registers to vote to produce "satisfactory evidence of citizenship." Ariz. Rev. Stat. §16-121.01(C). If election officials obtain "information" from periodic inspections of Arizona's voter rolls that "confirms" a "person registered is not a United States citizen," they "cancel the registration." *Id.* §16-165(A)(10).

The Ninth Circuit held that the National Voter Registration Act—52 U.S.C. §§20506(a)(6)(A)(ii), 20508(b)(1), 20507(c)(2)(a)—preempts those provisions of Arizona law. It also held that Arizona cannot require voter-registration applicants to produce proof of citizenship because in 2018, a previous Arizona Secretary of State entered a consent decree with private litigants. This Court has granted an emergency stay on each issue: One in this case and one in a Fourth Circuit case. The RNC raises both questions here on the merits. The questions presented are:

(1) Does the National Voter Registration Act or a federal consent decree prohibit Arizona from requiring voter-registration applicants to produce "satisfactory evidence" of U.S. citizenship when registering with a state registration form?

(2) Does the National Voter Registration Act prohibit Arizona from implementing a program within 90 days of a federal election to cancel the registrations of voters who are not U.S. citizens?

PARTIES TO THE PROCEEDING

The Petitioner is the Republican National Committee. The RNC was intervenor-defendant in the consolidated district court proceedings and appellant in the court of appeals proceedings.

The Respondents are Mi Familia Vota, Voto Latino, Living United for Change in Arizona, League of United Latin American Citizens, Arizona Students' Association, ADRC Action, Inter Tribal Council of Arizona, Inc., San Carlos Apache Tribe, Arizona Coalition for Change, Poder Latinx, Chicanos Por La Causa, Chicanos Por La Causa Action Fund, Democratic National Committee, Arizona Democratic Party, Arizona Asian American Native Hawaiian and Pacific Islander For Equity Coalition, Promise Arizona, Southwest Voter Registration Education Project, Tohono O'odham Nation, Gila River Indian Community, Keanu Stevens, Alanna Siquieros, and LaDonna Jacket. The Respondents were plaintiffs in the consolidated district court proceedings and appellees in the court of appeals proceedings.

The State of Arizona, the Arizona Secretary of State, the Attorney General of Arizona, Arizona Department of Transportation Director Jennifer Toth, the Apache County Recorder, the Cochise County Recorder, the Coconino County Recorder, the Gila County Recorder, the Graham County Recorder, the Greenlee County Recorder, the La Paz County Recorder, the Maricopa County Recorder, the Mohave

County Recorder, the Navajo County Recorder, the Pima County Recorder, the Pinal County Recorder, the Santa Cruz County Recorder, the Yavapai County Recorder, and the Yuma County Recorder were defendants in the consolidated district court proceedings. The State and Attorney General did not appeal the district court rulings that are the subject of this Petition.

Warren Petersen, in his official capacity as the President of the Arizona Senate, and Steve Montenegro, in his official capacity as Speaker of the Arizona House of Representatives, were intervenor-defendants in the consolidated district court proceedings and appellants in the court of appeals proceedings.

RELATED PROCEEDINGS

District of Arizona:

Mi Familia Vota v. Fontes, No. 2:22-cv-0509 (lead): Judgment entered May 2, 2024

Living United for Change in Arizona v. Hobbs, No. 2:22-cv-519 (consol.): Judgment entered May 2, 2024

Poder Latinx v. Hobbs, No. 2:22-cv-1003 (consol.): Judgment entered May 2, 2024

United States v. Arizona, No. 2:22-cv-1124 (consol.): Judgment entered May 2, 2024

Democratic National Committee v. Hobbs, No. 2:22-cv-1369 (consol.): Judgment entered May 2, 2024

Arizona Asian American Native Hawaiian and Pacific Islander for Equity Coal. v. Hobbs, No. 2:22-cv-1381 (consol.): Judgment entered May 2, 2024

Promise Arizona v. Fontes, No. 2:22-cv-1602 (consol.): Judgment entered May 2, 2024

Tohono O'odham Nation v. Brnovich, No. 2:22-cv-1901 (consol.): Judgment entered May 2, 2024

Ninth Circuit:

Mi Familia Vota v. Petersen, No. 24-3188 (lead): Judgment entered Feb. 25, 2025

Mi Familia Vota v. Mayes, No. 24-3559 (consol.): Judgment entered Feb. 25, 2025

Promise Arizona v. Petersen, No. 24-4029 (consol.): Judgment entered Feb. 25, 2025

In re: Ben Toma v. USDC-AZP, No. 23-70179 (mandamus petition regarding legislative privilege): Judgment entered Nov. 24, 2023

Supreme Court:

Republican National Committee v. Mi Familia Vota, No. 24A164 (emergency stay of final judgment before 2024 election): Stay granted in part Aug. 22, 2024

Toma v. USDC-AZP, No. 23A452 (emergency stay of discovery regarding legislative privilege): Stay denied Nov. 27, 2023

CORPORATE DISCLOSURE STATEMENT

In accordance with Supreme Court Rule 29.6, the Republican National Committee states that it has no parent corporation and that no publicly held corporation owns 10% of more of its stock.

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INTRODUCTION

Arizona, like every State, permits only U.S. citizens to vote in its elections. That decision is rooted in the States' exclusive authority to set voter qualifications for state and federal elections. U.S. Const. art. I, §2, cl. 1. It reflects "the choice" and "right" of Arizonans "to be governed by their citizen peers." *Foley v. Connelie*, 435 U.S. 291, 296-97 (1978). But "the power to establish voting requirements is of little value without the power to enforce those requirements." *Arizona v. Inter Tribal Council of Ariz.*, 570 U.S. 1, 17 (2013).

For years, Arizona has taken common-sense steps to enforce its citizenship qualification and secure its elections. Each time, it has had to defend those steps from federal lawsuits. *See, e.g.*, *Purcell v. Gonzalez*, 549 U.S. 1 (2006); *Inter Tribal Council*, 570 U.S. at 6. "This case," like those before it, "concerns Arizona's efforts to enforce that qualification." *Inter Tribal Council*, 570 U.S. at 6. Specifically, it concerns two policies adopted by Arizona's legislature following the 2020 election: a requirement for applicants using a state voter-registration form to provide proof of citizenship and a requirement for state election officials to review voter rolls and remove noncitizens. Ariz. Rev. Stat. §§16-121.01(C), -165(A)(10), (G), (H), (J), (K).

A divided Ninth Circuit panel thwarted both mechanisms for enforcing Arizona's citizenship qualification. The panel barred any enforcement of Arizona's proof-of-citizenship requirement because of a consent decree entered by Arizona's Secretary of State and a single county recorder. And it found that National Voter Registration Act banned the proof-of-citizenship

requirement because it was not "necessary" for state officials to assess an applicant's eligibility and rendered the state application not "equivalent" to the federal form. 52 U.S.C. §§20508(b)(1), 20506(a)(6)(A)(ii). Turning to Arizona's removal of noncitizens from the voter rolls, the panel concluded that it too violated the NVRA, reasoning that it was a "program … to systematically remove the names of ineligible voters" that did not conclude "90 days prior" to any federal election. *Id.* §20507(c)(2).

As explained by Judge Bumatay's panel dissent (at 77a) and several judges dissenting from the denial of rehearing en banc, "[t]he majority opinion is profoundly wrong." App.186a (Nelson, J., dissenting). Starting with the proof-of-residence requirement: A consent decree entered by a single state executive official cannot bar the legislature from enacting a new policy. App.104a-105a (Bumatay, J., dissenting). Consent decrees often must yield to statutory changes. And while courts must enforce federal law, the panel relied on a decree entered on "consent alone," without any finding of a federal violation. App.106a-107a. Despite that shortcoming, the panel even expanded the consent decree, holding that it bars all "Arizona election officials" from enforcing the proof-of-citizenship requirement.

The panel's finding that the NVRA preempts the proof-of-citizenship requirement fares no better. This Court has recognized that "state-developed forms may require information the Federal Form does not." *Inter Tribal Council*, 570 U.S. at 12. But the panel relegated Arizona's form to the same kind of information required by the federal form: an attestation. Arizona's

proof-of-citizenship requirement "would ensure the citizenship of the voter—a necessary qualification." App.112a. And the requirement of an "equivalent" form doesn't force States to photocopy the federal form. A form is equivalent when it has "the same 'effect' for purposes of registration." App.115a.

Turning to the second question, the NVRA does not insulate noncitizens against removal from voter rolls. It provides for the registration of "eligible applicant[s]." 52 U.S.C. §20507(a)(1), (5). And it limits the ability of States to remove these "registrants" from the list of "eligible voters." *Id.* §20507(a)(3)-(4). It does not extend its protections to noncitizens who were never qualified to vote, and thus who cannot be "eligible applicants" or "registrants." The panel's contrary conclusion would have far-reaching and absurd consequences since improper registration of a noncitizen is not one of the NVRA's permitted reasons to remove a "registrant." *Id.*

Last election cycle, this Court granted emergency relief on both questions. *Republican Nat'l Comm. v. Mi Familia Vota*, 145 S. Ct. 108 (2024); *Beals v. Va. Coal. for Immigrant Rts.*, __ S.Ct. __, 2024 WL 4608863 (Oct. 30, 2024). The Court should not wait for these issues to return on its emergency docket, when "democratic consequences can be even more dire." *Bost v. Ill. State Bd. of Elections*, __ U.S. __, No. 24-568, 2026 WL 96707, at *4 (U.S. Jan. 14, 2026). It should grant this petition.

OPINIONS BELOW

The Ninth Circuit's opinion and accompanying dissent are reported at 129 F.4th 691 and reproduced at App.1a-154a. The order denying rehearing en banc and accompanying opinions are reported at 152 F.4th 1153 and reproduced at App.155a-187a. The District of Arizona's amended bench trial opinion is reported at 719 F. Supp. 3d 929 and reproduced at App.188a-335a. The District of Arizona's summary judgment opinion is reported at 691 F. Supp. 3d 1077 and reproduced at App.336a-384.

JURISDICTION

The court of appeals entered its judgment and published its opinion on February 25, 2025. The court of appeals denied rehearing en banc on September 22, 2025. On December 9, 2025, Justice Kagan granted the RNC's application to extend the time to file a petition for a writ of certiorari to February 19, 2026. *See* No. 25A673. The Court has jurisdiction under 28 U.S.C. §1254(1).

PERTINENT PROVISIONS OF FEDERAL LAW

The pertinent constitutional, statutory, and regulatory provisions are reproduced in the appendix to this petition at App.434a-473a.

STATEMENT

A. Legal Background

1. States have exclusive authority to set voter qualifications. The Voter Qualifications Clause provides that "Electors" voting in House elections are governed

by the same "Qualifications" that apply to elections for the "most numerous Branch of the State Legislature." U.S. Const. art. I, §2, cl. 1. The Seventeenth Amendment extends that rule to Senate elections. *Id.*, amend. XVII.

States also have primary—though not exclusive—authority over the "Times, Places and Manner of holding Elections for Senators and Representatives." *Id.*, art. I, §4. Congress can "at any time by Law make or alter such Regulations." *Id.* The Elections Clause thus "invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to preempt state legislative choices." *Foster v. Love*, 522 U.S. 67, 69 (1997) (citation omitted). The presidential Electors Clause is the "counterpart for the Executive Branch," *id.*, although it gives Congress power only over the "Time of chusing the Electors" for the offices of President and Vice President, U.S. Const. art. II, §1.

When Congress exercises its Elections Clause power, it "supersede[s]" election regulations "made by the State." *Ex parte Siebold*, 100 U.S. 371, 386 (1879). But that preemption power operates only "so far as the two are inconsistent, and no farther." *Id.* Whether a state law is inconsistent with federal law is a "straightforward textual question." *Inter Tribal Council*, 570 U.S. at 9.

2. Congress enacted the NVRA to promote election integrity and the participation of eligible voters. The NVRA sets standards for registering voters and maintaining voter rolls. It requires States to "ensure that any eligible applicant is registered to vote." 52 U.S.C.

§20507(a). An eligible applicant who submits a "valid voter registration form" must be registered. *Id*. Once an "eligible applicant" has been "registered," the NVRA sets limits on her removal. These "registrants" can be "removed from the official list of eligible voters" only for statutorily defined reasons—registrant request, criminal conviction or mental incapacity, death, and a change in residence. *Id*. §20507(a)(3)-(4). At the same time, States must "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters" due to "death" or "a change in the residence of the registrant." *Id*. §20507(a)(4). And each State must "complete … any program … to systematically remove the names of ineligible voters from the official lists of eligible voters" at least "90 days" before any "primary or general election for Federal office." *Id*. §20507(c)(2)(A).

The NVRA contemplates two kinds of forms for registering to vote in federal elections. First, voters can register with the federal "mail voter registration" form issued by the Election Assistance Commission. 52 U.S.C. §20505(a). The NVRA requires "[e]ach State" to "accept and use" the federal voter-registration form "for the registration of voters in elections for Federal office." *Id*. Second, a State can develop its own "mail voter registration" form. *Id*. State forms must meet the same "criteria" as the federal form. *Id*. §§20505(a), 20508(b). Both forms "may require only such identifying information … as is necessary to enable the appropriate State election official to assess the eligibility of the applicant" and administer voter registration and the election. *Id*. §20508(b)(1). States

must designate certain agencies, including those that "provide public assistance," as voter-registration agencies. *Id.* §20506(a)(2)(A). A voter-registration agency that "provides service or assistance" must provide benefit applicants with either the federal form or the state form "if it is equivalent to" the federal form. *Id.* §20506(a)(6)(A)(ii). As in *Inter Tribal Council*, one issue here is whether Arizona's "state-imposed requirement of evidence of citizenship not required by the Federal Form is 'inconsistent with' the NVRA's mandate[s]." 570 U.S. at 15.

B. Arizona's Voter-Verification Laws

Since it joined the Union in 1912, Arizona has required U.S. citizenship as a qualification to vote. Ariz. Const. art. VII, §2. Arizona isn't alone. Every State requires that a voter be a U.S. citizen to vote. *Voter Registration Rules*, Vote.Org (2026), perma.cc/VSC3-E5BU. So does federal law. *See* 18 U.S.C. §§611, 1015. "Since the power to establish voting requirements is of little value without the power to enforce those requirements," Arizona has acted to ensure that election officials collect "the information necessary to enforce" its citizenship qualification. *Inter Tribal Council*, 570 U.S. at 17. It enforces those qualifications by requiring proof of citizenship to vote in state and local elections. Ariz. Rev. Stat. §§16-121.01(C), -166(F).

Eligible Arizonans can register to vote using either of the two mail-registration methods recognized by the NVRA. They can register using the state form created by Arizona election officials. Or they can register using the federal form created by the U.S. Election Assistance Commission. App.17a. State-form registrants

must check a box confirming their citizenship and provide proof of citizenship such as a birth certificate, driver's license, or U.S. passport. App.18a, 22a. If their registration is sufficient, they are registered and can vote in federal, state, and local elections. App.22a. Federal-form registrants, by contrast, must only attest to their U.S. citizenship with a signature. They need not provide documentary proof of citizenship.[1] App.18a. Federal-form registrants whose citizenship cannot be verified are thus designated "federal only" voters, which permits them to vote in federal elections, but not state or local ones. App.19a. Arizona requires documentary proof-of-citizenship only from voters who register with the state form. App.18a.

Arizona's proof-of-citizenship requirement traces back to a ballot initiative. In 2004, Arizonans adopted Proposition 200 "to combat voter fraud by requiring voters to present proof-of-citizenship when they register to vote." *Purcell v. Gonzalez*, 549 U.S. 1, 2 (2006). Proposition 200 requires voter-registration applicants to produce "satisfactory evidence of United States citizenship" to register to vote. *Inter Tribal Council*, 570 U.S. at 6. Several documents are "satisfactory evidence of citizenship," including a driver's license indi-

[1] Last year, the President directed the Election Assistance Commission to develop rules that would require proof of citizenship with the federal registration form. Exec. Order No. 14,248, §2(a), 2025 WL 929182. That executive order remains the subject of ongoing litigation. *See League of United Latin Am. Citizens v. Exec. Off. of President*, __ F. Supp. 3d __, 2025 WL 3042704 (D.D.C. Oct. 31, 2025), *appealed*, No. 25-5476 (D.C. Cir. 2025).

cating U.S. citizenship, a birth certificate, a U.S. passport, naturalization documents, and various tribal identification documents. Ariz. Rev. Stat. §16-166(F).

Over the past two decades, Arizona's proof-of-citizenship requirement has been the subject of numerous lawsuits—some of which were resolved by this Court. When Proposition 200 was first challenged, the Court granted certiorari and vacated the Ninth Circuit's order enjoining its enforcement. *Purcell*, 549 U.S. at 6. But the Court's decision did not reach the merits. *Id.* at 5. The lawsuits continued. Seven years later, Arizona's proof-of-citizenship requirement returned to this Court. In *Inter Tribal Council*, the Court held that the NVRA preempted Arizona's law requiring proof of citizenship to accompany the federal voter-registration form. 570 U.S. at 20. But it acknowledged that "state-developed forms may require information the Federal Form does not," including "proof-of-citizenship." *Id.* at 12. That's at least in part because "it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications," such as "citizenship." *Id.* at 16-17.

Following *Inter Tribal Council*, Arizona did "exactly what the Court recognized as possible." App.416a (Bumatay, J., dissenting from grant of motion for reconsideration). Arizona's legislature "added a requirement to its own [voter-registration] form to ensure its ability to verify citizenship." App.416a. It mandated that county recorders reject any state forms for voter registration that are "not accompanied by satisfactory evidence of citizenship." Ariz. Rev. Stat. §16-121.01(C). The requirement applies only to state-

form registrants. *Id.* Federal-form registrants whose citizenship can't be verified are still given a "federal only" designation that permits them to vote in federal elections, but not state or local elections. App.19a. As of July 2023, just over 19,000 Arizonans were registered as active federal-only voters. App.19a.

In 2018, another lawsuit challenged Arizona's proof-of-citizenship requirement for state-form applicants. *See LULAC v. Reagan*, Doc. 37, No. 2:17-cv-4102 (D. Ariz. 2018) (reproduced at App.474a). The then-Secretary of State and Maricopa County Recorder entered into a consent decree. The *LULAC* consent decree directed the Secretary of State to provide guidance for county recorders. App.484a-486a. The Secretary's guidance was to direct that when a state-form submission is not accompanied by proof of citizenship, the county recorder must search Arizona Department of Transportation records. App.484a-485a. If the recorder can confirm the applicant's citizenship, the applicant is registered as a full-ballot voter; if citizenship cannot be confirmed, the applicant is registered as a "Federal Only" voter. App.486a. The district court retained jurisdiction over the case until December 31, 2020. App.494a.

After the 2020 election, Arizona—like the federal government[2] and many other[3] States—amended various election and registration procedures. The Arizona

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[2] *See* Electoral Count Reform and Presidential Transition Improvement Act of 2022, Pub. L. No. 117-328, 136 Stat. 4459.

[3] *E.g.*, Election Integrity Act of 2021, 2021 Ga. Laws 9 (Georgia S.B. 202); Election Integrity Protection Act of 2021, 2021 Tex.

Legislature passed H.B. 2492 and H.B. 2243, and the Governor signed the bills into law in 2022. Among other things, the new law provided that applicants must provide proof of citizenship to vote for president and by mail. Ariz. Rev. Stat. §§16-121.01(A), (C), (E), 16-127(A). Election officials must reject state registration forms that lack proof of citizenship. *Id.* §16-121.01(C). State-form applicants must provide proof of residency, disclose their birthplace, and check a box confirming their citizenship. *Id.* §§16-121.01(A), 16-123. County recorders responsible for maintaining voter registrations must check the federal Systematic Alien Verification for Entitlements program if a voter is registered as federal-only or if they have "reason to believe" a voter is not a citizen. *Id.* §16-165(I). County recorders must periodically check various databases to research the citizenship status of federal-only voters and, if appropriate, cancel their registrations. *Id.* §16-165(A)(10), (G), (H), (J), (K).

The opinion below enjoins State officials from enforcing virtually all those measures. This petition concerns two: Arizona's requirement of proof of citizenship with the state registration form, and Arizona's removal of noncitizens from the voter rolls.

C. Procedural History

1. This case began as eight consolidated pre-enforcement challenges to Arizona's 2022 election-integrity laws. The line-up of Plaintiffs includes the

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Gen. Laws 3873 (Texas S.B. 1); An Act Relating to Elections, 2021 Fla. Laws ch. 11 (Florida S.B. 90); Act of June 2, 2021, 2021 Nev. Stat., ch. 248 (Nevada A.B. 321); John R. Lewis Voting Rights Act of 2022, 2022 N.Y. Laws ch. 226.

Democratic National Committee, the Arizona Democratic Party, the United States,[4] and a bevy of nonprofits representing various interest groups. *See* App.14a-15a & n.1. They alleged that several provisions violated or were preempted by the NVRA, the LULAC consent decree, the Civil Rights Act, and the Equal Protection Clause. App.13a. The Republican National Committee intervened at the pleading stage to defend its concrete interests in the rules governing Arizona's elections. Doc.10, No. 2:22-cv-1369 (D. Ariz.) (motion to intervene); Doc.18 (order granting intervention). The district court resolved several claims on summary judgment, App.336a, and the rest after a ten-day bench trial, App.188a.

The court gave the Plaintiffs "virtually everything they wanted." App.78a (Bumatay, J., dissenting). Relevant here, the court enjoined Defendants from requiring proof of citizenship with the state voter-registration form. App.364a-366a (Maj. Op.). It based that ruling on the 2018 *LULAC* consent decree. App.365a-366a. Through that decree, the Court explained, "Arizona agreed to refrain from precisely the conduct" required by the proof-of-citizenship requirement. App.366a.

The district court also ruled that the NVRA prohibits Arizona from "systematic cancellation of registrations" within 90 days before a federal election, even if those registrations belong to noncitizens who were never eligible to register in the first place. App.357a-

[4] The United States has since changed its position and joined the RNC in asking the Ninth Circuit to rehear the case. *See* ROA.283 (9th Cir. No. 24-3188).

360a. The court noted that the 90-day provision applied to "any program" for the systematic removal of registrants. App.358a. And it thought a broad prohibition on removals was consistent with Congress's dual purposes of ensuring accurate voter rolls and enhancing participation by eligible citizens. App.358a-359a.

On May 2, 2024, the district court issued a final judgment enjoining enforcement of the provisions it found unlawful or preempted. App.427a. The RNC, Arizona Senate President Warren Petersen, and Speaker of the Arizona House Ben Toma appealed to the Ninth Circuit. App.14a.

2. The Republican Appellants moved for a partial stay of the district court's injunction before the November 2024 election. They sought a stay on three issues: requiring proof of citizenship (1) on the state voter-registration form, (2) for voting in presidential elections, and (3) for voting by mail. A unanimous motions panel granted the motion in part, staying the judgment to the extent it barred Arizona from requiring proof of citizenship on the state voter-registration form. App.387a. Then, "[i]n an extraordinary move, a divided merits panel reconsidered the motions panel order and vacated the partial stay a mere *two weeks later*." App.78a-79a (Bumatay, J., dissenting). Judge Bumatay dissented, criticizing the panel for "abandon[ing] regularity." App.405a. Due to "the luck of an internal Ninth Circuit draw," two judges "facing identical legal and factual circumstances on an even more expedited basis" overruled four votes for the stay. App.406a.

The Republican Appellants applied to this Court for an emergency stay. They sought review of the same three issues: proof of citizenship for the state form, presidential elections, and mail-in voting. The Court partially granted the application, staying the district court's order "to the extent it enjoins enforcement of" the proof-of-citizenship requirement for the state registration form. *RNC*, 145 S. Ct. 108 (reproduced at App.426a). The stay will terminate after a judgment from this Court or a denial of certiorari. *Id.*

3. Back at the Ninth Circuit, a divided panel upheld the district court's entire injunction of Arizona's election laws—even the portion that this Court stayed. "[I]gnoring the Supreme Court's direction," the panel concluded that Arizona's proof-of-citizenship laws violate the 2018 *LULAC* consent decree. App.79a (Bumatay, J., dissenting). Indeed, the panel thought "that the district court *didn't go far enough* in overturning Arizona's voter-verification laws." App.79a. It also held that requiring proof-of-citizenship for state registration forms violates the NVRA. App.110a. And it reversed "the district court's factual findings and all but declare[d] H.B. 2243 the product of discrimination." App.79a.

Relevant to this petition, the panel reasoned that the 2018 *LULAC* Consent Decree was a "binding final judgment" that "remain[s] in force" and "permanently" prohibits Arizona from enforcing its proof-of-citizenship requirement for state-form voter-registration applicants. App.47a-48a. The panel then went further, holding that the NVRA preempts the proof-of-citizenship requirement for state-form applicants. It reasoned that the proof requirement isn't strictly

"necessary to enable" officials "to assess the eligibility of the applicant" because the state form's checkbox provides "proof of citizenship by an attestation." App.50a. And it found that the proof requirement rendered the state form not "equivalent" to the federal form because they are no longer "virtually identical." App.51a-52a.

Finally, the panel held that the NVRA prohibited county recorders from removing noncitizens from the voter rolls within 90 days before a federal election. App.41a. The panel reasoned "any program" for the removal of "ineligible voters" must be given "an expansive meaning." App.42a.

Judge Bumatay dissented in a 77-page opinion. The panel's opinion was "[u]nprecedented yet again." App.79a. Judge Bumatay would have upheld Arizona's proof-of-citizenship requirement for the state voter-registration form. App.103a. On the NVRA, he relied on this Court's statement that "'state-developed forms may require information the Federal Form does not.'" App.111a (quoting *Inter Tribal Council*, 570 U.S. at 12). Requiring proof of citizenship doesn't violate the NVRA's requirements that information be "necessary" because this information "would ensure … a necessary qualification." App.112a. And the state form need not be "identical" to be "'equivalent'" to the federal form as long as it has "the same 'effect' for purposes of registration." App.115a. The *LULAC* consent decree also couldn't bar Arizona's law, and the panel's contrary ruling "that a settlement by a single state executive-branch official may forever curtail the state legislature's lawmaking power presents disturbing separation-of-powers concerns." App.103a-109a. Such

a settlement must yield to intervening statutory change, at least when it "is *not* a judicial remedy necessary to enforce federal law" but rests on "consent alone." App.106a.

Turning to the NVRA's 90-day provision, Judge Bumatay pointed out that the panel opinion "contradict[s]" Supreme Court precedent in "*Inter Tribal Council*" and splits with "the Sixth Circuit." App.119a-127a. The opinion's "acontextual interpretation" of the NVRA means that "foreign citizens are immune from removal" from the voter rolls, creating "an absurdity that Congress never established." App.126a-127a. The better reading, Judge Bumatay explained, is that the 90-day provision protects "ineligible voters" who once were eligible—not noncitizens who were never eligible voters. App.125a. In other words, the statutory term "ineligible voters" refers only to "registrants" who at some point were "eligible applicants" able to meet the requirements. App.124a-125a. Noncitizens fall outside those bounds.

4. The Ninth Circuit denied Republican Appellants' petition for rehearing en banc. App.163a.

Eleven judges dissented from the denial of review. App.163a, 187a. Judge Nelson, joined by six others, wrote that "[m]ost egregiously, the panel majority ignored both Supreme Court and Ninth Circuit precedent when it upheld the district court's injunction enjoining Arizona's documentary proof of citizenship … requirement for voters registering through Arizona's state form." App.164a. Judge Bress (and two others) wrote separately that "[a]t a minimum, [the court]

should have reevaluated the panel majority's incorrect and consequential decision upholding the injunction of Arizona's documentary proof of citizenship requirement for state-form applicants—the portion of the injunction that the Supreme Court already stayed." App.187a (citation omitted). On the 90-day provision, Judge Nelson (and five others) observed that the panel's opinion "created a circuit split with the Sixth Circuit" by "upholding the district court's injunction" of Arizona's law that "task[s] county recorders with periodically conducting citizenship checks and removing ineligible applicants from the rolls." App.184a.

The dissenters warned that the panel's ruling deprives Arizona of the legal means of "deterring voter fraud" committed by noncitizens, undermining "the fundamental right of citizen voters" to vote in fair elections. App.165a. The panel "skirted Supreme Court direction in this case and again in a case with nearly identical issues." App.186a. The decision "is profoundly wrong" and "does a grave injustice to republican government." App.186a.

REASONS FOR GRANTING THE PETITION

Last election cycle, the Court granted emergency stays on both questions presented in this petition. One was in this case. The other was in a Fourth Circuit case that the Ninth Circuit chose to follow here. In both cases, the Court's intervention was justified. The orders it stayed deepened circuit splits, raised significant issues of national importance, and flouted this Court's precedent. When the Ninth Circuit had the

chance to correct those problems, it doubled down. The Court should grant the petition.

I. The Court has recently granted emergency relief on both questions presented.

In the run up to the 2024 elections, this Court granted emergency stays on both questions presented in this petition. *See Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (explaining that a stay will be granted if, among other requirements, there is "a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari"). The first question arose in this case, when the Court partially stayed the district court's judgment. The second question arose just two months later, when this Court stayed the Eastern District of Virginia's preliminary injunction in *Beals v. Virginia Coalition for Immigrant Rights*.

Start with the first question—whether States can require proof of citizenship with state registration forms. After the district court entered its final judgment, the Republican Appellants moved for a partial stay. Though they raised three issues, the Ninth Circuit granted the stay on just one, allowing Arizona to require proof of citizenship with the state form. App.387a. After the merits panel "abandon[ed] regularity" by overruling the motions panel, the Republican Appellants sought a stay from this Court. App.405a. The Court granted the application in part, again staying the district court's decision enjoining the proof-of-citizenship requirement for state-form applicants. App.426a.

Two months later, the Court granted a stay on the second question in this petition—whether the NVRA prohibits States from cancelling the registrations of noncitizens within 90 days of a federal election. In August 2024, then-Virginia Governor Glenn Youngkin issued an executive order directing the Virginia Department of Motor Vehicles and Board of Elections to share citizenship data of registered voters more often, and to certify compliance with existing law. Exec. Order No. 35, Off. of the Gov. (Va. Aug. 7, 2024). In late October, a district court preliminarily enjoined state officials "from continuing any systematic program intended to remove the names of ineligible voters from registration lists less than 90 days before the November 5, 2024, federal General Election." *Va. Coal. for Immigrant Rts. v. Beals*, 2024 WL 4577983, at *1 (E.D. Va. Oct. 25, 2024). The Fourth Circuit largely affirmed. 2024 WL 4601052, at *1 (4th Cir. Oct. 27, 2024). Three days later, this Court stayed the injunction. No. 24A407, 2024 WL 4608863.

This petition would allow the Court to address both of these important questions with the benefit of full briefing, and outside the emergency context in the run up to an election.

II. The Ninth Circuit's opinion creates one circuit split and deepens another.

The Ninth Circuit created or deepened a circuit split on both questions presented. By holding that a state executive official can use a consent decree to bind the state's legislature from exercising its constitutional authority to regulate elections, the Ninth Circuit created a split with the Eighth Circuit. And in

holding that the NVRA prohibits Arizona from removing noncitizens from the voter rolls within 90 days before an election, the Ninth Circuit deepened a split among the Eleventh, Fourth, and Sixth Circuits.

A. Start with the consent-decree split. In *Carson v. Simon*, the Eighth Circuit held that a state executive official entering a consent decree "has no power to override" the state legislature's regulation of elections. 978 F.3d 1051, 1060 (8th Cir. 2020). There, Minnesota's Secretary of State entered into a consent decree with private litigants purporting to change the statutorily mandated absentee ballot receipt deadline from election day to eight days after election day for Minnesota's 2020 presidential election. *Id.* at 1054. A state court approved the decree. *Id.* at 1056.

The Eighth Circuit preliminarily enjoined enforcement of the consent decree. *Id.* at 1060. Because state legislatures regulate federal elections under a "'direct grant of authority'" in the U.S. Constitution, "only the Minnesota Legislature, and not the Secretary, has plenary authority to establish the manner" of conducting the election. *Id.* (quoting *Bush v. Palm Beach Cnty. Canvassing Bd.*, 531 U.S. 70, 76 (2000)). "[T]he Secretary has no power to override the Minnesota Legislature," including through entry of a consent decree that ignores the legislature's instructions. *Id.* (quoting *McPherson v. Blacker*, 146 U.S. 1, 35 (1892)). Thus, "the Secretary's attempt to re-write the laws governing the deadlines" for Minnesota's election "is invalid." *Id.*

The Ninth Circuit split with *Carson*. The panel held that the 2018 *LULAC* consent decree "permanently" overrode the legislature's election rules. App.47a. Because the *LULAC* decree was "an enforceable, binding final judgment," the court of appeals held that it "bars Arizona election officials from enforcing" Arizona's proof-of-citizenship requirement for state-form applications. App.48a-49a.

These decisions cannot be reconciled by the Ninth Circuit's focus on enforcement of the proof-of-citizenship requirement. In *Carson*, Minnesota's Secretary of State also "agreed to *not* enforce" the challenged state law, and instead to "issue guidance" to local election officials that contradicted state law. 978 F.3d at 1056. But the Eighth Circuit found that "the Secretary's actions are likely to be declared invalid." *Id*. at 1060. The state legislature's "plenary authority" meant that their rules "must be followed notwithstanding the Secretary's instructions." *Id*. Putting aside that the Ninth Circuit barred enforcement by officials who were not parties to the *LULAC* decree, the Ninth Circuit's dismissal of the legislature's authority because an order "limits the ability of executive officers … to enforce legislation" cannot be reconciled with *Carson*. App.48a-49a.

B. Turning to the second question presented, the Ninth Circuit deepened a split among the Eleventh, Fourth, and Sixth Circuits on whether the NVRA prohibits States from removing never-eligible voters, like noncitizens, from their voter rolls within 90 days of an election. The Sixth Circuit held in *Bell v. Marinko* that the NVRA doesn't "bar the removal of names from the

official [state voter rolls] of persons who were ineligible and improperly registered to vote in the first place." 367 F.3d 588, 591-92 (6th Cir. 2004). The NVRA does not prohibit States from removing individuals when they "were improperly registered in the first place, and as a result, the voting rolls were inaccurate." *Id.* at 592 (voters improperly registered because they never resided in the State). Instead, a State "necessarily remove[s]" the names of persons who were never eligible to vote to begin with. *Id.* In doing so, the State advances the NVRA's legislative purposes of "protect[ing] the integrity of the electoral process," and "ensur[ing] that accurate and current voter registration rolls are maintained." *Id.* (cleaned up). The Sixth Circuit's conclusion about never-resident voters applies directly to noncitizens: Because they "were improperly registered in the first place," the NVRA does not "bar the removal" of their names. *Id.* at 591-92.

The Ninth Circuit disagreed, putting it "on the wrong side" of the "split." App.165a (Nelson, J., dissenting). The panel held that even if Arizona election officials confirm that a noncitizen is registered to vote, the NVRA prohibits them from removing that noncitizen from the rolls within 90 days of a federal election. App.41a-47a. The Ninth Circuit joined the Eleventh Circuit, which has held that the NVRA's "90 Day Provision" bars programs "to remove non-citizens." *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1344 (11th Cir. 2014). The Fourth Circuit joined those courts in its stayed order, finding that "efforts to remove noncitizens" are covered by the NVRA's 90-day "Quiet Period

Provision." *Beals*, 2024 WL 4601052, at *1-2, *stayed*, 2024 WL 4608863.

III. The Ninth Circuit's ruling presents an excellent vehicle to resolve issues of exceptional importance.

The Ninth Circuit's decision threatens States' ability to protect the integrity of their elections. Arizona passed laws "protecting the right of all citizens to vote, and … ensuring non-citizens do not vote." App.163a (Nelson, J., dissenting). The Ninth Circuit's decision striking those measures down "undermines republican government, shreds federalism and the separation of powers, and imperils free and fair elections." App.163a-164a. The Court should grant certiorari to correct those errors.

A. Start with the panel's "mangl[ing]" of the NVRA to strike down Arizona's proof-of-citizenship requirement for state-form applicants. App.178a (Nelson, J., dissenting). The Ninth Circuit turned the NVRA into a federal ban on proof of citizenship. In *Inter Tribal Council*, this Court recognized that "state-developed forms may require information the Federal Form does not," including "proof-of-citizenship." 570 U.S. at 12. The States retain authority to "prescrib[e] voter qualifications." *Id.* at 17. Conferring that power on Congress, Madison warned, could have allowed them to "'by degrees subvert the Constitution.'" *Id.* (quoting 2 Records of the Federal Convention of 1787, p.250 (M. Farrand rev. 1966)). But the State's power to set "voting requirements is of little value without the power to enforce those requirements." *Id. Inter Tribal Coun-*

cil thus recognized that "it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications." *Id.* But that's exactly what the Ninth Circuit held here.

The panel's holding that the *LULAC* consent decree bars Arizona's proof-of-citizenship requirement likewise "raises alarming separation-of-powers concerns." App.104a (Bumatay, J., dissenting). The panel held that the *LULAC* consent decree precludes Arizona from rejecting state-form registrations lacking proof of citizenship. "Under that view, state executive-branch officials can permanently circumvent legislative authority by entering whatever arrangements they want with private parties." App.104a. This Court has cautioned that consent decrees can "improperly deprive future officials of their designated legislative and executive powers." *Horne v. Flores*, 557 U.S. 433, 449-50 (2009) (cleaned up). Those concerns are "particularly acute in the election-law context, where state legislatures enjoy express constitutional authority to act." App.104a (Bumatay, J., dissenting) (citing *Moore v. Harper*, 600 U.S. 1, 10 (2023); *Carson*, 978 F.3d at 1060). Left alone, the Ninth Circuit's decision will have a "profound effect … on the structure of Arizona's government." App.109a.

Two features of the Ninth Circuit's decision make these structural concerns particularly acute. *First*, the *LULAC* court "[a]t no point" found "that the requirement of proof-of-citizenship violates federal law." App.106a (Bumatay, J., dissenting). The Secretary at the time "denie[d]" that Arizona's proof-of-citizenship law was "illegal under state or federal law." App.476a.

Instead, the parties entered the decree simply because they "desire[d] to make it as easy possible for Arizona's citizens to register to vote," App.476a. The decree is based on "consent alone," which is "no basis to upset the balance of power among the branches of state government or the balance of power between the state and federal governments." App.106a-107a (Bumatay, J., dissenting).

Second, the Ninth Circuit applied the consent decree's limitations beyond the parties to the decree. The panel opinion noted that "the Secretary of State of Arizona and the Maricopa County Recorder" were the "parties to the decree." App.48a, 474a. But it nonetheless announced that the decree "limits the ability of executive officers in Arizona to enforce legislation contrary to the final judgment." App.48a-49a; *see also* App.49a ("We hold that the LULAC Consent Decree bars Arizona election officials from enforcing H.B. 2492's mandate to reject state-form applications without DPOC."). This broad application of a consent decree "beyond the case in which [it was] entered violates the strictures of Article III and raises grave separation of powers concerns." App.171a-172a (Nelson, J., dissenting).

B. On the second question, the Ninth Circuit further hamstrung the States' ability to prevent noncitizens from voting in their elections. The panel opinion prohibits "cancellation of an improperly registered *foreign citizen's* registration" because it ostensibly "violates the NVRA's '90-Day Provision.'" App.119a (Bumatay, J., dissenting). That misconstruction poses serious practical problems: It effectively "forc[es] a State to allow a foreign citizen to vote in its elections."

App.126a. It also raises "serious constitutional doubts." *Inter Tribal Council*, 570 U.S. at 17. Prescribing voting qualifications "forms no part of the power to be conferred upon the national government." *Id.* The state "power to establish voting requirements is of little value without the power to enforce those requirements." *Id.* But the panel opinion prohibits Arizona from enforcing the most basic qualification of citizenship. And it would have the effect of banning removal of noncitizens even outside the 90-day window: Improper registration of a non-citizen is not one of the NVRA's permitted reasons to remove a "registrant," so treating noncitizens as "registrants" would bar their removal. *See* 52 U.S.C. §20507(a)(3)-(4).

Arizona is not the only state whose efforts to clean its voter rolls are threatened by the Ninth Circuit's reading. Already mentioned is the Virginia injunction that this Court stayed. *See Beals*, 2024 WL 4577983, at *1. That case had a companion suit brought by the Department of Justice, which was voluntarily dismissed last year. *See United States v. Virginia*, Doc. 139, No. 1:24-cv-1807 (E.D. Va. Jan. 28, 2025). The DOJ also sued Alabama for attempting to remove noncitizens from its rolls before the 2024 election. *See United States v. Alabama*, No. 2:24-cv-1329 (N.D. Ala. Sept. 27, 2024). That case was also voluntarily dismissed, *id.*, Doc. 68, but not before a federal court preliminarily enjoined Alabama "from continuing the program intended to systematically remove" noncitizens from its voter rolls, *Ala. Coal. for Immigrant J. v. Allen,* Doc. 90, No. 2:24-cv-1254 (N.D. Ala. Oct. 16, 2024). Ohio, Georgia, and Texas took similar steps to

curb noncitizen registrations.[5] The ACLU even threatened to sue Tennessee for reminding suspected noncitizens that they "may violate" state law if they vote.[6]

C. The panel's "opinion makes our elections less safe." App.186a (Nelson, J., dissenting). "A State indisputably has a compelling interest in preserving the integrity of its election process." *Purcell*, 549 U.S. at 4 (cleaned up). And maintaining "[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." *Id.* The Ninth Circuit's opinion "prevent[s] states from deterring voter fraud." App.165a (Nelson, J., dissenting). It gets "fundamental legal principles wrong." App.164a. And "it undermines the fundamental right of citizen voters" to participate in fair elections. App.165a. In doing so, the Ninth Circuit "does a grave injustice to republican government." App.186a.

This petition is an excellent vehicle to resolve these problems. Whether brought by private interest groups, political parties, the Department of Justice, or (as here) all three, each time a State takes measures to stop noncitizens from voting, lawsuits stand at the ready. Often those lawsuits are accompanied by preliminary injunction motions. Before the election, the litigation raises *Purcell* problems. After the election, the "litigation is truncated by firm timelines." *Republican Party of Pa. v. Degraffenreid*, 141 S. Ct. 732, 735

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[5] Wendy Underhill, *States Consider Options to Ensure That Noncitizens Aren't Voting*, Nat'l Conf. of State Legislatures (Jan. 30, 2025), perma.cc/ZG5P-MRPG.

[6] Letter from ACLU to Mark Goins & Tre Hargett (June 27, 2024), perma.cc/S9Z8-3YS9.

(2021) (Thomas, J., dissenting from the denial of certiorari). This petition presents none of those common vehicle problems in election cases. The Court can resolve two issues that appeared on its emergency docket last election cycle. Rather than deal with those same questions in an emergency posture, the Court "ought to use available cases outside that truncated context to address these admittedly important questions." *Id.* at 737. And this time, the Court has the benefit of full briefing on a well-developed record.

IV. The Ninth Circuit's opinion is "profoundly wrong."

The Ninth Circuit's opinion contradicts this Court's precedents. It twists the NVRA and a consent decree to prohibit exactly what the Court permitted in *Inter Tribal Council*, 570 U.S. at 12. And it twists the NVRA further by effectively "forcing States to accept foreign citizens in their voting booths." App.126a (Bumatay, J., dissenting).

A. Start with the first question presented. In *Inter Tribal Council*, the Court recognized that "state-developed forms may require information the Federal Form does not," including "proof-of-citizenship." 570 U.S. at 12. At all times, "States retain the flexibility to design and use their own registration forms." *Id.* The Ninth Circuit flouted the Court's clear instruction.

The panel gave three reasons it deviated from *Inter Tribal Council*. *First*, it claimed that proof of citizenship is not "'necessary'" to assess an applicant's eligibility because "the state form's checkbox requirement supplies proof of citizenship by an attestation."

App.50a (quoting 52 U.S.C. §20508(b)(1)). But as Judge Bumatay explained, "there's no reason to read 'necessary' information as meaning only the bare minimum amount of information." App.111a. This Court "'long ago rejected the view'" that "necessary" means "'absolutely necessary.'" *Cellular Telecomm. & Internet Ass'n v. FCC*, 330 F.3d 502, 509-10 (D.C. Cir. 2003) (quoting *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 414-15 (1819)). Rather, in the "legal" context, "necessary" means "'appropriate and well adapted to fulfilling an objective.'" *Id.* at 509 (quoting *Necessary*, Black's Law Dictionary (7th ed. 1999)). And proof of citizenship "obviously would ensure the citizenship of the voter—a necessary qualification." App.112a (Bumatay, J., dissenting).

Statutory context undermines the panel's cramped reading of "necessary." The NVRA distinguishes between "information" that is "necessary" in the eyes of state officials (§20508) and "information" that is the "minimum amount … necessary" for "motor voter" applications (§20504). *See Fish v. Kobach*, 840 F.3d 710, 734 (10th Cir. 2016) (holding that §20504(c)(2)(B) imposes a "stricter principle" than §20508(b)(1)). Under the panel's reasoning, "states could never collect any information" from a voter, since the voter's "attestation … theoretically covers all eligibility information," rendering any other information "inessential." App.178a (Nelson, J., dissenting). That illogical holding "mangle[s] §20508" and conflicts with this Court's precedents. App.178a.

Second, the panel claimed that requiring proof of citizenship violated the requirement that state forms supplied to public assistance agencies be "equivalent"

to the federal form. App.51a (quoting 52 U.S.C. §20506(a)(6)(A)(ii)). It insisted that "equivalent" means the state form must be "virtually identical." App.51a-52a. Again, the panel's cramped reading "misconstrued" the NVRA. App.179a (Nelson, J., dissenting). "First, 'equivalent' doesn't always mean 'identical.'" App.114a (Bumatay, J., dissenting). In context, a state form is "equivalent" to the federal form if it has "the same 'effect' for purposes of registration." App.115a. That's how this Court read the term in *Inter Tribal Council* when it reasoned that "state-developed forms may require information the Federal Form does not." 570 U.S. at 12. It makes no sense to permit States to develop their own forms but require "state public assistance agencies [to] use a form that is *identical* to the federal form." App.115a. If left intact, the panel's holding "would render §20505(a) void and contravene [*Inter Tribal Council*]." App.115a.

The conflicts don't end at *Inter Tribal Council*. The Ninth Circuit's holding that the NVRA preempts Arizona's proof-of-citizenship requirement also conflicts with "[t]he logic underlying *Crawford*." App.182a n.3 (Nelson, J., dissenting). There, prospective Indiana voters had to produce proof-of-citizenship documents to obtain a photo identification from the State. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198 n.17 (2008). The Court upheld Indiana's photo identification requirement in part based on the NVRA. *Id.* at 192. The NVRA "indicate[s] that Congress believes that photo identification is one effective method of establishing a voter's qualification to vote." *Id.* at 193. The Ninth Circuit disagreed, concluding that those

documents are not "'necessary' to assess an applicant's eligibility." App.37a. *Crawford* "demonstrates why the [panel's] analysis" of the NVRA "fails" since the Court made clear that requiring voter identification "do[es] not impede the NVRA's underlying purposes." App.182a n.3 (Nelson, J., dissenting).

Third, the panel hid behind the 2018 *LULAC* consent decree. But that decree—which never found a violation of federal law and applied to only two state officers—cannot permanently displace the Arizona Legislature's authority to make election rules. Consent decrees often must yield to intervening changes in the law. *See, e.g.*, *Miller v. French*, 530 U.S. 327, 347 (2000). Federal courts should not disregard "changed circumstances" that transform an injunction into an "instrument of wrong." *Ry. Emps. v. Wright*, 364 U.S. 642, 648, 651-53 (1961). These changed circumstances include "subsequent changes in either statutory or decisional law." *Agostini v. Felton*, 521 U.S. 203, 215 (1997). Otherwise, federal judgments could be used to "bind state and local officials to the policy preferences of their predecessors" and "'improperly deprive future officials of their designated legislative and executive powers.'" *Horne*, 557 U.S. at 449.

These principles apply with special force when state legislatures set election rules. The Constitution directs state legislatures to "prescribe[]" rules for federal elections. U.S. Const. art. I, §4, cl.1; *see also id.*, art. II, §1, cl.2. Under those Clauses, "state legislatures" have the "duty to prescribe rules governing federal elections." *Moore*, 600 U.S. at 10 (cleaned up). A "Secretary" thus "has no power to override the [state]

Legislature" by stipulating to a consent decree. *Carson*, 978 F.3d at 1060.

These principles direct that the *LULAC* decree must yield to the legislature's intervening law. The consent decree directed the Secretary of State to provide written guidance to county recorders. App.483a-485a. The guidance was to instruct that the recorder must register an applicant as either a full-ballot voter (if citizenship is verified) or a federal-only voter (if citizenship cannot be verified). App.487a-489a. The ordinary course to enforce any consent decree is to reopen *that case*. But the Court "retain[ed] jurisdiction" to enforce the decree only "until December 31, 2020." App.494a. Even if the Court had purported to retain ongoing jurisdiction, Arizona's legislature has displaced the Secretary's agreement by directing county recorders to "reject any [state-form] application for registration that is not accompanied by satisfactory evidence of citizenship." Ariz. Rev. Stat. §16-121.01(C). That choice falls well within the legislature's constitutional purview.

No doubt federal courts must enforce federal rights, which may sometimes require them to displace state law. *See, e.g.*, *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436 (holding that a state law that conflicts with "the operations of the constitutional laws enacted by congress … is unconstitutional and void"). But that principle provides no basis for the Ninth Circuit's decision: The *LULAC* decree rested on "consent alone." App.106a (Bumatay, J., dissenting). The *LULAC* court never found any violation of federal law. App.106a-107a; *see also* App.476a (*LULAC* decree). The panel's conclusion that "that a settlement by a

single state executive-branch official may forever curtail the state legislature's lawmaking power" finds no support in federal law. App.104a (Bumatay, J., dissenting). Instead, "when a change in statutory law conflicts with a consent decree, it's the statute that governs." App.105a-106a (collecting cases).

Far from adhering to these limits, the panel expanded the reach of the *LULAC* decree. The panel ignored the consequences of its observation that the decree applied only to "the Secretary of State of Arizona and the Maricopa County Recorder." App.48a. For one, that means the parties here (and nearly all the county recorders) are "not bound by [that] judgment." *See Taylor v. Sturgell*, 553 U.S. 880, 898 (2008); *see also Trump v. CASA, Inc.*, 606 U.S. 831, 842 (2025) ("'As a general rule, an injunction' could not bind one who was not a 'party to the cause.'"). But the panel concluded that the decree "bars Arizona election officials from enforcing" the State's proof-of-citizenship requirement. App.49a. That decision did not give effect to a "final judgment." *Contra* App.47a-49a. It stretched the judgment beyond both its terms and the historical limits on federal courts. *See* U.S. Const. art. III, §2; Judiciary Act of 1789, §11, 1 Stat. 78; *CASA, Inc.*, 606 U.S. at 847.

Nor does it make any sense to suggest that the Petitioners must move to modify the consent decree under Rule 60(b). *See* App.108a-109a (Bumatay, J., dissenting). It is black letter law that "'only a party to the action' can move under Rule 60." App.108a (quoting Wright & Miller 21A Fed. Proc., L. Ed. §51:170 (2024)). "And no one here was a party to the LULAC Consent Decree." *Id*. This posture results not from the

Petitioner's decisions, but from the unusual litigation brought by Respondents: They brought a collateral action seeking facial relief against a newly enacted state law based on a consent decree.

None of the panel's reasons justifies putting a "straitjacket on the States," forbidding them from developing their own standards for their own voter-registration forms. App.111a (Bumatay, J., dissenting). The Ninth Circuit's ruling conflicts with *Inter Tribal Council*, conflicts with *Crawford*, renders much of the NVRA dead-letter, and creates serious separation-of-powers problems. The Court should review and correct those errors.

B. On the second question presented, the "Sixth Circuit got it right, and the panel majority did not." App.185a (Nelson, J., dissenting). The panel held that the NVRA prohibits Arizona from "periodic cancellation of registrations" within 90 days before a federal election, even if those registrations belong to noncitizens who were never eligible to register in the first place. App.41a-47a. The NVRA mandates that, with some exceptions, "[a] State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters." 52 U.S.C. §20507(c)(2)(A). "But because the phrase 'ineligible voters' in the 90-Day Provision doesn't include foreign citizens, the provision doesn't apply to Arizona's cancellation program." App.119a (Bumatay, J., dissenting).

The panel failed to read the 90-day provision in context, glossing over the NVRA's distinct terms. Provisions governing the pre-registration phase refer to "applicant[s]" and "eligible applicant[s]." 52 U.S.C. §20507(a)(1), (5). Those terms imply a third category: "ineligible applicants," such as noncitizens who apply anyway. States must register only "eligible applicant[s]" who submit a "valid voter registration form." *Id.* §20507(a)(1). At the post-registration phase, these "eligible applicant[s]" become "registrant[s]." *Id.* §20507(a)(3). And at the removal phase, these "registrant[s]" become either "eligible voter[s]" or "ineligible voter[s]." *Id.* §20507(c)(2)(A). "Once placed within the overall statutory scheme, foreign citizens aren't included in the protection of 'ineligible voters' in the 90-Day Provision," because they were never "eligible applicants" in the first place. App.124a-125a (Bumatay, J., dissenting). So they can't be "registrants," "eligible voters," or even "ineligible voters." The NVRA doesn't bar their removal.

The panel's reading would lead to "absurd results." App.125a-126a. The NVRA lists only four reasons a State can remove a "registrant" from the rolls: at the registrant's request; due to criminal conviction or mental incapacity; the registrant's death; or a change of residence. 52 U.S.C. §20507(a)(3)-(4). None of those reasons indicate that a person who was never eligible—like a noncitizen—has been properly registered. But if noncitizens (and other never-eligible applicants) are "registrants," then the NVRA would prevent a State from removing them at all. The more sensible reading is that never-eligible applicants are not "registrants" protected by the NVRA.

The panel's contrary holding "effectively grant[s], and then protect[s], the franchise of persons not eligible to vote." *Bell*, 367 F.3d at 592. It conflicts with the Sixth Circuit. It ignores this Court's stay of an identical ruling in Virginia. *See Va. Coal. for Immigrant Rts.*, 2024 WL 4577983, *stayed*, 2024 WL 4608863. And it warrants the Court's review.

* * *

When given the opportunity to correct these errors, the Ninth Circuit doubled down. In doing so, it "shirk[ed]" this Court's emergency stay ruling. App.186a (Nelson, J., dissenting). And it failed to heed the Court's stay of the same flawed interpretation of the NVRA's 90-day provision. The Court should grant certiorari and finally resolve those issues.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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