IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 24-cv-02499-RMR-SBP

UNITED SOVEREIGN AMERICANS, INC.,
RAMEY JOHNSON, and
MICHAEL CAHOON,

Petitioners,

v.

JENNA GRISWOLD, Colorado Secretary of State, in her official capacity,
PHIL WEISER, Attorney General of Colorado, in his official capacity,
COLORADO OFFICE OF ATTORNEY GENERAL,
MERRICK GARLAND, Attorney General of the United States, in his official capacity, and
THE UNITED STATES DEPARMENT OF JUSTICE,

Respondents.

FEDERAL RESPONDENT'S MOTION TO DISMISS

Based on their purported analysis of data from the 2022 federal election in Colorado, Petitioners filed this action asking the Court to intervene and issue a writ of mandamus ordering the Attorney General of the United States (the "Federal Respondent") and the State Respondents to investigate the 2022 election and to take action in the 2024 federal election in Colorado and in subsequent federal elections in the state.

Petitioners' claims against the Federal Respondent must be dismissed for two reasons. First, the Court lacks jurisdiction over those claims because they are not justiciable: Petitioners lack standing, any claim related to the 2024 election is plainly moot, and claims as to future elections are speculative and not ripe. Second,

Petitioners' claim against the Federal Respondent fails on the merits because they cannot establish that the Federal Respondent has a clear, nondiscretionary duty to take the discretionary actions they seek. At least one other court has already dismissed materially identical claims against the federal government brought by petitioner United Sovereign Americans in another state. *See* Order, *United Sovereign Americans, Inc. v. Byrd*, No. 4:24-cv-00327-MW/MAF (N.D. Fla. Dec. 20, 2024), ECF No. 33. This Court should similarly dismiss Petitioners' claims against the Federal Respondent.[1]

BACKGROUND

This case is one in a series of cases filed across the country by Petitioner United Sovereign Americans, Inc., against state election officials and the Federal Respondent seeking writs of mandamus to prevent allegedly unreliable election results.[2] United Sovereign Americans is a non-profit incorporated in Missouri. ECF No. 1 ¶ 60. The two other Petitioners are individuals who allegedly reside in Colorado—Ramey Johnson and Michael Calhoon. *See id.* ¶¶ 61–62.

[1] Undersigned counsel (along with counsel for the State Respondents) conferred with counsel for Petitioners about their complaint and about the Federal Respondent's motion to dismiss by email and telephone before filing this motion. Counsel for the Respondents suggested amending the complaint due to the mootness issue as to the 2024 election, but Petitioners declined to do so. Petitioners oppose the Federal Respondent's motion to dismiss.

[2] *See, e.g.*, *United Sovereign Americans, Inc. v. Benson*, No. 2:24-cv-12256 (E.D. Mich.); *Benefield v. Raffensberger*, No. 2:24-cv-00104 (S.D. Ga.); *United Sovereign Americans, Inc. v. Byrd*, No. 4:24-cv-00327 (N.D. Fla.); *United Sovereign Americans, Inc. v. N. Caro. State Bd. of Elections*, No. 5:24-cv-00500 (N.D.N.C.); *United Sovereign Americans, Inc. v. State of Ohio*, No. 5:24-cv-01359 (N.D. Ohio).

Petitioners assert that they obtained data about the 2022 federal election in Colorado from a statewide voter registration database. *Id.* ¶ 72. Upon analyzing this data, they claim they found "numerous registration and voting violations," including votes purportedly cast by voters with duplicate registrations, votes cast too early, votes by voters older than 115 years old, and votes cast by voters who registered to vote on a federal holiday, among other claimed irregularities. *See id.*; *see also id.* ¶ 157 (listing purported "voter registration violations").

Petitioners' theory is that their data crunching reveals that violations of the National Voter Registration Act (NVRA), 52 U.S.C. §§ 20501–11, and/or the Help America Vote Act (HAVA), 52 U.S.C. §§ 20901–21145, occurred in the 2022 federal election in Colorado. *See* ECF No. 1 ¶ 158 (asserting that the "data shows that in 2022 the voter rolls in Colorado were not accurate and current as required by NRVA [and] HAVA"); *id.* ¶ 163 (same). This contention seems to turn on allegations about how voting error rate standards issued by the Federal Election Commission apply to the data Petitioners compiled about the 2022 federal election in Colorado. In particular, Petitioners claim:

- That under HAVA, the "error rate of [a] voting system in counting ballots . . . shall comply with" the Federal Election Commission's error rate standards,[3] *id.* ¶ 26 (quoting 52 U.S.C. § 21083);

[3] *See also* ECF No. 1 ¶ 166 (asserting that "Colorado's voting systems are subject to the permissible error rate standards set forth by Congress in HAVA and further elucidated by the FEC Voting System Standards").

- That the error rate standards "allow[] for one error per 500,000 ballot positions," *id.* ¶ 31;
- That the term "'ballot position' refers to the number of individual choices a voter could make on a single ballot," *id.* ¶ 32 (quotation marks omitted);
- That "[e]xperts working for the F[ederal] E[lection] C[omission] estimated that 500,000 ballot positions equaled 125,000 individual ballots," *id.* ¶ 34 (emphasis omitted);
- That this estimate "is correct," *id.* ¶ 36;
- That "[a] voting system error occurs" when a "voting scanning machine should have discerned an error, not made by the voter, while counting one of th[e] ballot positions on a scanned ballot," *id.* ¶ 33 (emphasis omitted);
- That 2,564,519 ballots were cast in the 2022 election in Colorado, *id.* ¶ 37;
- That 2,564,519 divided by 125,000 is approximately 21, *id.* ¶ 38;
- That, therefore, "[o]nly upon a showing of 21 or fewer errors . . . would HAVA permit State election officials to certify the 2022 election as valid," *id.* ¶ 38; and, finally,
- That "Colorado exceeded this benchmark of twenty-one (21) voting system errors in the 2022 General Election," *id.* ¶ 40.

Notably, Petitioners do not state how many ballot positions were *in fact* contained on a 2022 ballot in Colorado. Nor do they cite any provision of HAVA that deals with

election *certification*. Nonetheless, they claim that the alleged existence of more than 21 voting system errors means that "the election results are unreliable." *See id.* ¶ 39. And they assert that "potential errors" in "Colorado's voter registration rolls" also "contibut[ed] to the unreliability of the State's 2022 election." *Id.* ¶ 41 (emphasis omitted).

As to relief, Petitioners for the most part pivot to the 2024 election, and to future elections beyond 2024. *See id.* ¶¶ 186–233. They assert that "Respondents have done nothing, or an inadequate job, to address . . . the inaccurate and likely fraudulent voter rolls and voter systems used in federal elections" in Colorado. *Id.* ¶ 188. They ask "the Court [to] order Respondents to take steps . . . to ensure [that] the apparent errors made during the 2022 elections do not recur, and to bring the State into compliance with HAVA's specific mandate of no greater than 1 voting error out of 125,000 votes in the 2024 and subsequent federal general elections in Colorado." *Id.* ¶ 190. They state that "injunctive and/or declaratory relief is inapplicable [sic] or appropriate in this matter because the harm from the 2024 election is not yet realized and [they] are seeking to have Colorado election officials and/or federal officials bring the State into compliance with federal and state law, specifically HAVA [and] NVRA." *Id.* ¶ 199.[4]

[4] As to the 2022 election, Petitioners also request that the Court "formally recognize [that] Colorado's voter registration rolls contained thousands of apparent errors in the 2022 General Election" and "enter and order in mandamus compelling Respondents to ministerially correct the apparent errors evident from the 2022 elections data." *See* ECF No. 1 at 46. Petitioners also ask the Court to order the Federal Respondent to "adequately investigate . . . the problems exposed in [the] 2022 election[]." *See id.* ¶ 233.

In Petitioners view, the Court should order Respondents to "prevent . . . similar ministerial errors from recurring during the Colorado 2024 General Election and all subsequent federal general elections." *Id.* at 46. The also ask the Court to "order that the State of Colorado may not certify the 2024 General Election unless and until the relevant Respondents have demonstrated to the Court that the 2024 General Election and subsequent elections were conducted in conformity with federal and state law and with fewer than the maximum errors permissible." *Id.* at 46–47. They also request that the Court "order . . . all public officials named as Respondents [to] perform their duties as the law intended whether it be conducting federal elections in conformity with the law or investigating, and where warranted in their discretion, prosecuting persons or entities for failing to perform their duties in conformity to the law." *Id.* at 47.

Finally, for the Federal Respondent in particular, Petitioners ask the Court to issue a writ of mandamus ordering the U.S. Attorney General "to follow the laws cited herein in conducting the 2024 and subsequent federal elections, and adequately investigate and remedy the problems exposed in [the] 2022 election[]." *Id.* ¶ 233.

ARGUMENT

I. The Court lacks subject matter jurisdiction over Petitioners' claims against the Federal Respondent (Rule 12(b)(1) challenge).

A. Petitioners lack standing to sue the Federal Respondent.

Article III of the Constitution confines federal judicial power to "cases" and "controversies," which "can exist only if a plaintiff has standing to sue." *United States v. Texas*, 599 U.S. 670, 675 (2023). This "bedrock constitutional requirement" must exist to support a federal court's subject matter jurisdiction over a claim. *Id.* The "irreducible

constitutional minimum of standing" has three elements: injury in fact, causation, and redressability. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). "The party invoking federal jurisdiction bears the burden of establishing these elements." *Id.* at 561. Further, "in a lawsuit brought to force compliance," the plaintiff must "establish standing by demonstrating that, if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue, and that the 'threatened injury [is] certainly impending.'" *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (alteration in original) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)). Here, Petitioners fail to meet their burden for each element.

Injury in fact: An injury in fact is "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560 (citations and quotations omitted). To be "concrete," the injury must be "real and not abstract," such that the plaintiff has "a personal stake in the outcome." *Spokeo Inc. v. Robins*, 578 U.S. 330, 353 (2016); *see also Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983). To be "particularized," the injury "must affect the plaintiff in a personal and individual way." *Spokeo*, 578 U.S. at 339. And where no actual injury is alleged, the injury must be "*certainly impending*" to meet imminence. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013) (emphasis original). Injury in fact is not met where a plaintiff merely asserts a "generalized grievance" and "the impact on [the] plaintiff is plainly undifferentiated and common to all members of the public." *Lujan*, 504 U.S. at 575 (cleaned up and quotation omitted).

Petitioners make no real attempt to show any concrete, personalized past or certainly impending future injury. Indeed, they appear to concede that their interest in the administration of Colorado's federal elections is no different than any other citizen's.[5] *See* ECF No. 1 ¶ 2 (asserting that "[i]f the 2022 election performance is repeated in 2024, Petitioners *and all Colorado voters will suffer damages*" (emphasis added)). Generalized grievances about government operations do not confer standing. *See Lujan*, 504 U.S. at 573-74 ("[A] plaintiff . . . claiming only harm to his and every citizen's interest in proper application of the Constitution and laws . . . does not state an Article III case or controversy."). Further, Petitioners have not amended their complaint to allege any particular harm from the 2024 election, which has concluded. And any injury from future elections is not "certainly impending": those elections are years away, and Plaintiffs have not alleged any irregularities as to the most recent election in 2024 to support the notion that some pattern of continuing irregularities exists. *See Clapper*, 568 U.S. at 410–14 (injury in fact requirement not satisfied by allegations of speculative future injury).

***Causation and redressability*:** Petitioners also cannot establish causation or redressability as to the Federal Respondent. For causation, the injury alleged "has to be fairly traceable to the challenged action of the defendant." *Lujan*, 504 U.S. at 560 (cleaned up and quotation omitted). For redressability, "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.*

[5] Petitioner United Sovereign Americans also does not allege that it has any members who are citizens of Colorado.

Here, Petitioners allege that the Federal Respondent has various enforcement, policing, and prosecution powers that it has not deployed to Petitioners' satisfaction. But Petitioners do not allege that their alleged injuries—i.e., their fears that the 2024 election results and the results of future elections will be unreliable—can be traced to Federal Respondent in any specific way. No Department of Justice enforcement guidelines, policies, or directives are mentioned in the complaint, nor do Petitioners point to any mandatory duties the U.S. Attorney General has failed to fulfill. Absent such allegations, Petitioners' alleged injury is not "fairly traceable" to the Federal Respondent.

Petitioners also cannot establish that their injuries are redressable by this Court. The relief they seek against the Federal Respondent is a mandamus order that the U.S. Attorney General "perform their duties as the law intended," to include "investigating, and where warranted in their discretion, prosecuting persons or entities." *See* ECF No. 1 at 47. As discussed in section II below, such an order would contravene fundamental separation of powers principles, meaning the Court lacks the power to issue it. Petitioners' claims against the Federal Respondent thus lack redressability.

At bottom, Petitioners cannot meet their burden of establishing standing to sue the Federal Respondent. The Court thus lack jurisdiction over their claims against the Federal Respondent.

B. Petitioners' claims as to the 2024 election are moot, and their claims as to future elections are unripe.

As with the doctrine of standing, the concepts of mootness and ripeness stem from Article III's limitation of the judicial power to live "cases" or "controversies." *See Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90 (2013). "A case becomes moot—and

therefore no longer a [c]ase or [c]ontroversy for purposes of Article III—when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Id.* at 91 (quotation omitted). On mootness, "[t]he crucial question is whether granting a present determination of the issues offered will have some effect in the real world." *Brown v. Buhman*, 822 F.3d 1151, 1165–66 (10th Cir. 2016) (quotation omitted). And "[w]here a plaintiff seeks an injunction, his susceptibility to *continuing* injury is of particular importance" because "'[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects.'" *Jordan v. Sosa*, 654 F.3d 1012, 1024 (10th Cir. 2011) (emphasis in original) (alteration and omission in original) (quoting O'Shea v. Littleton, 414 U.S. 488, 495–96 (1974)); *see also Citizen Ctr. v. Gessler*, 770 F.3d 900, 906 (10th Cir. 2014) ("[P]ast exposure to illegal conduct [does] not establish a live controversy in the absence of continuing ill effects.").

Ripeness, on the other hand, stops courts from weighing in when "the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." *New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495, 1499 (10th Cir. 1995) (quotation omitted). The ripeness requirement serves "to prevent the courts, through premature adjudication, from entangling themselves in abstract disagreements." *Thomas v. Union Carbide Agr. Prods. Co.*, 473 U.S. 568, 580 (1985).

Plaintiffs' claims as to the 2024 election are plainly moot: the 2024 election is over. *See Brockington v. Rhodes*, 396 U.S. 41, 43 (1969) (per curiam). In *Brockington*,

the situation was similar: before a federal congressional election took place, the petitioner sought an order in mandamus that his name be added to the ballot; but the district court denied his request, and the election took place without his name on the ballot. *Id.* After the election, the Supreme Court held that "the case [was] moot because the congressional election [was] over." *Id.* at 43. This Court should reach the same conclusion about Petitioners' 2024 election claims.

The Court should not be persuaded by any argument that Petitioners' claims as to 2024 are not moot because they are capable of repetition yet evading review. "The capable-of-repetition exception to the mootness doctrine . . . is a narrow one" and "is only to be used in exceptional situations." *Jordan*, 654 F.3d at 1034–35 (quotations omitted). The exception applies only if "the duration of the challenged action is too short to be fully litigated prior to its cessation or expiration" and if "there is a reasonable expectation that the same complaining party will be subjected to the same action again." *United States v. Seminole Nation of Okla.*, 321 F.3d 939, 943 (10th Cir. 2002) (cleaned up and quotation omitted). Here, Petitioners could readily have performed their data analysis and brought their claims well before the 2024 election, but chose not to do so.[6] And they have provided the Court with no basis to conclude that the purported issues they identified as to the 2022 election may have recurred in 2024. Their claims about the 2024 election thus do not qualify for the capable-of-repetition exception to mootness.

[6] Indeed, Petitioners did not even complete service of their petition on the U.S. Attorney General until after the 2024 election had taken place.

Petitioners' claims about future elections, meanwhile, are not ripe. A new president was elected in 2024, and, to the extent consistent with law, the new administration may take some or all of the actions Petitioners demand. Alternatively, Congress or the Federal Election Commission may change the voter system error standards upon which Petitioners' claims rest. It is thus "speculative whether" the issues Petitioners allege as to future elections "will ever need solving." *See Texas v. United States*, 523 U.S. 296, 302 (1998).

In short, Petitioners' claims about the 2024 election are moot,[7] and their claims about future elections are unripe.

II. Petitioners' mandamus claim fails because the U.S. Attorney General does not owe them a clearly defined duty to act (Rule 12(b)(6) challenge).

Mandamus is a "drastic" remedy "to be invoked only in extraordinary situations." *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 34 (1980). As such, it "is available only to compel a government officer to perform a duty that is ministerial, clearly defined, and peremptory." *Simmat v. U.S. Bureau of Prisons*, 413 F.3d 1225, 1235 (10th Cir. 2005) (quotation omitted), *abrogated on other grounds by Jones v. Bock*, 549 U.S. 199 (2007). Thus, "duties within [an] officer's discretion" cannot be compelled by a writ of mandamus. *Id.*

[7] In the context of election-related claims, the Tenth Circuit has treated mootness as a jurisdictional issue on a claim-by-claim basis. *See Gessler*, 770 F.3d at 906–09 (conducting jurisdictional analysis and finding that some, but not all, claims were moot). The Federal Respondent does not argue that Petitioners' claim as to an investigation into the 2022 election, *see* ECF No. 1 ¶ 233, is moot.

As to the Federal Respondent, Petitioners' complaint facially fails to justify mandamus relief. Petitioners ask the Court to order the U.S. Attorney General to investigate the 2022 election in Colorado, to initiate prosecutions, and to corral the State of Colorado's future behavior. *See* ECF No. 1 ¶ 57 (Court should order Respondents to "investigate the issues, prosecute anyone in violation of federal and/or state law, and actively work to bring the State back into compliance with federal and state election law mandates"); *id.* ¶ 208 (Court should "direct Respondents to investigate and remedy the issues exposed in the 2022 elections to avoid repeating the same mistakes in future combined federal and state general elections"); *id.* ¶ 233 (Court should order the Federal Respondent to "to follow the laws . . . in conducting the 2024 and subsequent federal elections, and adequately investigate and remedy the problems exposed in [the] 2022 election[]"); *id.* at 47 (relief should include order "requiring . . . Respondents [to] perform their duties as the law intended whether it be conducting federal elections in conformity with the law or investigating, and *where warranted in their discretion*, prosecuting persons or entities for failing to perform their duties in conformity to the law" (emphasis added)).

Such actions are quintessentially discretionary and within the prerogative of the Executive Branch. *See Texas*, 599 U.S. at 679 ("[T]he Executive Branch must prioritize its enforcement efforts."). This Court does not have the power to direct the Executive Branch's investigative, enforcement, and prosecutorial decisions. *See Texas*, *id.* ("[F]ederal courts are generally not the proper forum for resolving claims that the Executive Branch should make more arrests or bring more prosecutions."); *United*

States v. Nixon, 418 U.S. 683, 693 (1974) (the Executive Branch "has exclusive authority and absolute discretion to decide whether to prosecute a case"); *United States v. Cox*, 342 F.2d 167, 171 (5th Cir. 1965) (en banc) ("[A]s an incident of the constitutional separation of powers . . . the courts are not to interfere with the free exercise of the discretionary powers of the attorneys of the United States in their control over criminal prosecutions.").

Nor, as to Petitioners' allegations about a HAVA violation, is any supposed duty clearly defined. As described above, to argue that HAVA was violated, Petitioners rely on a purported error rate they have computed, claiming that this error rate exceeds an acceptable error rate established by HAVA. *See* ECF No. 1 ¶¶ 37–40. But even if their calculations were valid (a dubious proposition, given that they rely on an "estimate" for the number of ballot positions per ballot, rather than the true number, *see id.* ¶¶ 34, 36), *and* even if HAVA incorporates a substantive acceptable voting system error rate, Petitioners do not cite any provision of HAVA that requires action by the Federal Respondent when a state's voting system has a higher error rate than the error rate set forth in the Federal Election Commission standards.[8] On the contrary, HAVA's federal enforcement provision expressly grants discretion to the U.S. Attorney General as to enforcement authorized by the Act. *See* 52 U.S.C. § 21111 (establishing that "[t]he Attorney General *may* bring a civil action . . . as *may be necessary* to carry out [HAVA's]

[8] Petitioners do not connect NRVA or HAVA to their allegations about purported irregularities in Colorado's voter registration rolls. *See, e.g.*, ECF No. 1 ¶¶ 41–45, 94–124.

uniform and nondiscriminatory election technology and administration requirements" (emphasis added)). Mandamus thus is not available.[9]

CONCLUSION

For these reasons, the Court should grant Federal Respondent's motion and dismiss all claims against Federal Respondent.

Dated: February 3, 2025

J. BISHOP GREWELL
Acting United States Attorney

s/ Brad Leneis
Brad Leneis
Assistant United States Attorney
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Fax: (303) 454-0411
Email: brad.leneis2@usdoj.gov

Attorney for Defendant

[9] Petitioners also reference the All Writs Act, 28 U.S.C. § 1651, as a potential source of authority for an order compelling the Federal Respondent to act. *See* ECF No. 1 at 35. But the All Writs Act does not provide an independent source of jurisdiction, so Petitioners cannot separately seek mandamus relief under it. *See Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28, 33 (2002) (observing that "the All Writs Act does not confer jurisdiction on the federal courts" so jurisdiction does not lie unless "specifically provide[d]" by Congress).

CERTIFICATE OF SERVICE

I certify that on February 3, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will cause notice to be delivered electronically to the following individuals:

John S. Zakhem
Andrew C. Nickel
Campbell Killin Brittan & Ray, LLC
jzakhem@ckbrlaw.com
anickel@ckbrlaw.com

Attorneys for Petitioners

Dmitry B. Vilner
Talia Boxerman Kraemer
Colorado Attorney General's Office
Dmitry.Vilner@coag.gov
Talia.Kraemer@coag.gov

Attorneys for State Respondents

s/ Brad Leneis
Brad Leneis
U.S. Attorney's Office