No. 26-7231

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v.

STATE OF CALIFORNIA; SHIRLEY N. WEBER, *in her official capacity as California Secretary of State*; **DEAN C. LOGAN**, *in his official capacity as the County of Los Angeles – Registrar-Recorder/County Clerk*,
Defendants-Appellees,

and

Services, Immigrant Rights and Education Network, Mi Familia en Accion, League of United Latin American Citizens, NAACP, and NAACP California/Hawaii State Conference, NAACP Los Angeles Branch,
Intervenor-Defendants-Appellees,

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Appeal from the United States District Court
for the Central District of California
No. 2:26-cv-12025-DOC-ADS

EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR INJUNCTION PENDING APPEAL (RELIEF REQUESTED BY OCTOBER 30, 2026)

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2. Facts showing the existence and nature of the emergency:

The United States files this emergency motion under Circuit Rule 27-3 for an injunction pending appeal to segregate ballots cast by ineligible noncitizen voters that are currently being tabulated in the ongoing federal election, contrary to federal criminal law. 18 U.S.C. § 611.

The Federal Government has identified over twenty thousand individuals who are "(1) registered to vote in California, (2) were sent a vote-by-mail ballot, and (3) are highly likely to be noncitizen aliens." CR 62-2 (Declaration of Nicolas Bartell ("Bartell Decl. #1")) at 6 (¶25); CR 62-3 (Declaration of Eric McLoughlin ("McLoughlin Decl. #1")) at 7 (¶25); CR 107-2 (Declaration of Nicolas Bartell ("Bartell Decl. #2")) at 7 (¶25). But California refuses to act and opposes even the simple step of segregating ballots by these individuals—some of whom have now been criminally charged with violating 18 U.S.C. § 611, which prohibits

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noncitizen voting in federal elections. *See* Press Release, Department of Justice *28 Foreign Nationals Arrested on Charges that they Illegally Registered and Voted* (Oct. 19, 2026), *available at* https://perma.cc/27AH-Y9TE.

As of October 20, 2026, Defendant Dean Logan admits that Los Angeles County alone had "processed more than 331,000 [vote-by-mail] ballots to date." CR 32-1 at 11. When Defendants process vote-by-mail ballots, they separate the ballot from the envelope, and there is then no way to identify the voter. *Id.* Once illegally cast ballots are counted and commingled with lawful votes, the resulting harm is impossible to remedy. And California is well-equipped to provide a remedy, because it has laws on its books that facilitate the very relief sought here. *See, e.g.*, Cal. Code Regs. tit. 2, § 20363 (detailing how to resolve challenged ballots via segregation).

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This motion could not have been filed earlier. The United States filed its complaint on October 15, 2026. CR 1. Around the same time, the Federal Government announced that it was charging numerous noncitizens in California with violating 18 U.S.C. § 611. *See* CR 62-1 at 32 n.4 (collecting press releases). The United States then applied *ex parte*

for a temporary restraining order and order to show cause why a preliminary injunction should not issue. CR 22. Because Defendants had already begun counting ballots of likely noncitizens, the United States requested expedited ruling on the temporary restraining order by noon October 22. CR 67 at 3. After the district court did not rule on the motion, the United States appealed, viewing the injunctive relief as constructively denied. CR 74. This Court dismissed the United States' appeal for lack of appellate jurisdiction and denied as moot the United States' emergency motion for an injunction pending appeal. *United States v. California*, No. 26-7070, __ F.4th __, 2026 WL 3212945 (9th Cir. Oct. 26, 2026).

The district court has now ruled on the United States' emergency motion. CR 149. The United States promptly appealed.

3. When and how counsel notified:

On October 29, 2026, at 7:52 a.m., the undersigned counsel for the United States sent an e-mail to all attorneys listed above explaining that the United States would be imminently filing this motion, explaining the basis for the motion, and seeking their position on the motion. Defendants and Defendant-Intervenors oppose the motion. The United

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States will serve a copy of this motion on counsel for Defendants by email immediately after this motion is filed.

4. Submissions to the district court:

In addition to the filings described above, the United States renewed its emergency application for injunction pending appeal on October 28, 2026, after the district court entered its order denying the requested injunctive relief. The court has not ruled on that motion at the time of this filing.

5. Decision requested by:

Appellant requests a decision by October 30, 2026. "Every voter in a federal primary election . . . has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes." *Anderson v. United States*, 417 U.S. 211, 227 (1974).

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Dated: October 29, 2026 Respectfully submitted,

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INTRODUCTION

Earlier this week, this Court denied the United States' emergency motion for an injunction pending appeal because it found no appellate jurisdiction. *United States v. California*, No. 26-7070, __ F.4th __, 2026 WL 3212945 (9th Cir. Oct. 26, 2026) ("CA Opinion"). All judges on the panel produced separate writings in that opinion.

Judge Bennett explained why, even if this Court had jurisdiction, he would deny the motion because, among other reasons, "Congress has not exercised the specific power granted to it under the Elections Clause to override the decisions of the California Legislature on how to remove ineligible voters from California's voter rolls." *Id*. at *11. Judge Sanchez described why "the *Purcell* principle bars [the Court] from granting the injunction the United States seeks." *Id*. at *16 (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)). Judge Bumatay dissented, detailing the reasons why the Federal Government is entitled to relief. *Id*. at *21–33.

After this Court denied the motion, the United States returned to the district court and submitted supplemental declarations and made those witnesses available for examination. Though the district court did not allow the witnesses to testify, it accepted their supplemental

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declarations, including the declaration of Shasta County Registrar Clinton Curtis who, as a state elections official, declared that "[e]lectronic information management systems that are used for voting in California can flag the ballots of likely noncitizens identified by the United States, and the sorting machines can segregate those electronically flagged ballots while determining citizenship under state and federal law." CR 107-4 (Curtis Decl.) at 3 (¶7). This declaration—along with an amici brief submitted by States (and other amici briefs), CR 114-1—show that the common election relief requested here, ballot segregation, is not only equitable but manageable. Indeed, three justices on the Supreme Court have found that ballot segregation is "modest relief"—a remedy that Pennsylvania had undertaken in response to election litigation. *Republican Party of Pennsylvania v. Boockvar*, 592 U.S. 1068, 1070–71 (2020) (Statement of Alito, J., joined by Thomas, J., and Gorsuch, J.).

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Defendants (collectively, California) also raised questions about the accuracy of the individuals on the list, stating that a sample of their records show that 38.9% of the individuals on their list self-reported that they "were born in the United States." CA Opinion at *13 n.4. The United States responded with a supplemental declaration stating that, after re-

reviewing the sampling set provided by California, the U.S. Citizenship and Immigration Services (USCIS) determined that "none of the individuals USCIS matched to [California's sample list] were born in the United States according to USCIS records." CR 107-1 (Bartell Sample Decl.) at 4 (¶12).

Beyond the new evidence, this Motion addresses the points made in this Court's prior order. At minimum, this Court must reverse the district court's conclusion that the United States lacks standing and must have a statutory cause of action to seek injunctive relief to protect American voters. That decision contravenes well-established precedent and risks kneecapping the United States from vindicating the supremacy of federal law and protecting every voter's "right under the Constitution to have his vote fairly counted." *Anderson v. United States,* 417 U.S. 211, 227 (1974). The United States respectfully requests that this Court resolve this Motion by October 30.

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STATEMENT

1. This Court is familiar with the background. *See* CA Opinion at *1–3. USCIS receives state voter rolls or information on state voter rolls to review for potential aliens who unlawfully registered to vote or who

voted in a federal election. CR 62-2 (Bartell Decl. #1) at 3 (¶13); CR 107-2 (Bartell Decl. #2) at 3 (¶12). USCIS enhances this data through LexisNexis's Accurint Service, a reliable third-party data analytics and investigative platform. CR 62-2 (Bartell Decl. #1) at 3–4 (¶16); CR 107-2 (Bartell Decl. #2) at 3–4 (¶15).[1] Using names and addresses, Accurint finds additional data on each voter, including social security numbers, birth dates, death dates (if applicable), and phone numbers. CR 107-2 (Bartell Decl. #2) at 3–4 (¶15). The raw voting record data are combined with the enhanced data and paired with an alien number. *Id.* at 4 (¶16).

USCIS screens all potential matches against Department of State and Social Security Administration data to remove individuals who can be identified as United States citizens (or as deceased), and then it excludes those matches from review. *Id.* at 4 (¶17). Afterwards, USCIS consolidates all match evidence and assigns a confidence level for each match. *Id.* at 4 (¶18). A high confidence match means the match between

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[1] At oral argument on emergency motion in the prior appeal, the panel asked which third-party systems the Federal Government uses. The answer is Accurint. And the supplemental declaration of Eric McLoughlin attaches the electronic transmission by which the United States received the voter roll from California. CR 107-3 (McLoughlin Decl. #2) at 2 (¶¶5–6).

the voting record and USCIS alien record is "strong and consistent with multifield evidence supporting a strong identity link." *Id.* at 4–5 (¶18).

The Fraud Detection and National Security Directorate (FDNS) investigators then manually review every match to confirm the identity match and determine which registered voters they believe are very likely to be aliens based on USCIS's citizenship data. *Id.* at 5 (¶19). This includes verifying whether the registered voter could have potentially derived citizenship based on history or through parentage. *Id.* Investigators also confirm the match with Department of State. *Id.* If the second-level review determines that the individual on the voter roll is not a match to USCIS data or may be a citizen, the record is not referred to Homeland Security Investigations (HSI) for assessment. *Id.* at 5 (¶20).

HSI then conducts a quality review that identifies duplicate entries, incomplete records, missing identifiers, and other data quality issues. CR 62-3 (McLoughlin Decl. #1) at 5 (¶16). HSI prioritizes the records for review and prepares the data for additional enrichment, focusing on improving the completeness and consistency of name and address information and, when lawfully permitted, identifying additional unique identifiers. *Id.* at 5 (¶17). The purpose is to reduce the risk that voters

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are mistakenly associated with the wrong immigration status. *Id.* at 5 (¶¶17–18). Finally, each individual data profile is referred to the applicable HSI field office to be investigated for potential criminal violations. *Id.* at 5 (¶19).

2. In response to a voter registration file request, HSI received from the California Secretary of State what appeared to be the California voter roster for the general election of 2026. CR 62-3 (McLoughlin Decl. #1) at 6 (¶20); CR 107-3 (McLoughlin Decl. #2) at 2 (¶¶5–6), 5. HSI ultimately forwarded it to FDNS, which produced a refined list of individuals who FDNS believes are highly likely to be noncitizen aliens registered to vote. CR 107-2 (Bartell Decl. #2) at 6 (¶22). FDNS sent that refined list to HSI, which further refined the data "result[ing] in over 20,000 individuals remaining on the list." CR 62-3 (McLoughlin Decl. #1) at 6 (¶23). HSI delivered that final list to the Department of Justice and the Los Angeles County Registrar-Recorder / County Clerk (LA County Registrar) on October 13, 2026. *Id.* at 6–7 (¶24). The Department of Justice made the same list available to the California Secretary of State on the same day. *Id.* at 7 (¶24); *see also* CR 1-3 (Compl., Ex. C), 1-4 (Compl., Ex. D).

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3. Earlier, in July 2026, Secretary Mullin wrote to California Secretary of State Weber alerting her that a "[p]reliminary review" of California records revealed that there may be as many as 190,832 noncitizens registered to vote in California. CR 1-1 (Compl., Ex. A). "As an example," he stated, DHS "found 81,336 California registrants for whom the name, date of birth, address and Social Security number match a non-citizen in [DHS] files." *Id*. Secretary Weber responded a week later without refuting that noncitizens are registered to vote. *See* CR 1-2 (Compl., Ex. B). Nor did she contest that they would receive vote-by-mail ballots if they registered to vote. *See id.* "Homeland Security officials asked to schedule a call with Secretary Weber's office, but she declined to address the issue in a meeting." CA Opinion at *22 (Bumatay, J., dissenting).

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On October 13, the United States hand-delivered to the LA County Registrar the list of 20,000 individuals it reasonably believes are noncitizens registered to participate in the federal election. *See* CR 62-3 (McLoughlin Decl. #1) at 6–7 (¶¶23–24), 10; CR 1 (Compl.) at 11 (¶47). California declined to cooperate with the United States. *See* CR 62-5 at 2–5 (Ex. A), 7–9 (Ex. B).

Every registrar of voters in California uses an electronic information management system that can flag the ballots of likely noncitizens identified by the United States and sorting machines that can segregate those electronically flagged ballots while determining citizenship under state and Federal law. CR 107-4 at 3 (¶7). The same results could be obtained by manually issuing a new ballot that is not sent to the voter and marking their old ballot as void. *Id.* at 2 (¶5).

4. After this Court determined that it lacked appellate jurisdiction, the United States returned to the district court for a hearing on its emergency motion. At the hearing, the United States offered to produce its declarants—Messrs. Bartell and McLoughlin—for examination, but the district court declined to hear from them. *See* CR 150 at 8, 11, 58, 65. The district court denied the motion in an order styled as "denying temporary restraining order." CR 149.

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STANDARD OF REVIEW

"A plaintiff seeking a preliminary injunction must establish that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Feldman v. Arizona Sec'y of State's Off.*, 843 F.3d 366, 367 (9th Cir. 2016) (similar standard).

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ARGUMENT

A. This Court has jurisdiction, and the United States may seek equitable relief to protect American voters.

1. The district court issued an order "denying temporary restraining order." CR 149. Although TRO denials are ordinarily not appealable, jurisdiction exists here under two established exceptions. First, a TRO denial is appealable when it is effectively a denial of a preliminary injunction. That applies here: Defendants submitted extensive oppositions and evidence; all parties were represented at a three-hour hearing; and the district court issued a detailed 26-page order rejecting the government's request. Under *Religious Tech. Ctr. v. Scott*, 869 F.2d 1306, 1308–09 (9th Cir. 1989), these circumstances render any

further hearing futile and make the order tantamount to denying a preliminary injunction.

Second, appellate jurisdiction exists where an interlocutory order has the practical effect of denying an injunction and causes serious, irreparable consequences that cannot be remedied later. *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84 (1981); *A.A.R.P. v. Trump*, 605 U.S. 91, 94-97 (2025). Because vote-by-mail ballot processing is irreversible and election day is next week, the denial here prevents segregation of ballots and makes later invalidation impossible, satisfying the *Carson* criteria.

2. The United States also has Article III jurisdiction for reasons previously explained and incorporated herein. *See* No. 26-7070, Dkt. 6 n.1; *id.* Dkt. 57.1 at 2–4; CA Opinion at *24–26 (Bumatay, J., dissenting).

3. Lastly, the United States may seek equitable relief for reasons previously explained and incorporated herein. *See* No. 26-7070, Dkt. 6.1 n.1; *id.* Dkt 57.1 at 4–6; CA Opinion at *26–27 (Bumatay, J., dissenting).

B. The United States is likely to prevail on the merits of its as-applied challenge.

1. The "Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land[.]" U.S. Const. art. VI, cl. 2. Contrary "state law must yield to the

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regulation of Congress within the sphere of its delegated power." *Savage v. Jones*, 225 U.S. 501, 533 (1912). And federal law can preempt state law "[e]ven without an express provision for preemption." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000). State action must "give way" when it conflicts with "a considered judgment" embodied in federal law. *Arizona v. United States*, 567 U.S. 387, 399, 405 (2012).

These preemption principles apply when state officials either act in a manner that conflicts with federal law or facilitate such conflicts. "It has long been a settled principle that federal courts may enjoin unconstitutional *action* by state officials." *Puerto Rico v. Branstad*, 483 U.S. 219, 228 (1987) (emphasis added) (citing *Ex parte Young*, 209 U.S. 123 (1908)); *accord Norwood v. Harrison*, 413 U.S. 455, 465 (1973) (It is "axiomatic that a state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish."). Accordingly, whether state officials "act[] through . . . procedures rather than a court order or a general law . . . is irrelevant to [the] analysis." *Golden State Transit Corp. v. Los Angeles*, 475 U.S. 608, 614 n.5 (1986). Preemption does not turn on the form of state action. It

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"turns on the actual content of [a state's] policy and its real effect on federal rights." *Livadas v. Bradshaw*, 512 U.S. 107, 119 (1994).

Courts have thus held that federal law preempts a wide range of conflicting state actions. Where state officials operating a state university had a "policy" of "preferential treatment" regarding "in-state status" that the Supreme Court deemed inconsistent with federal immigration law, that "policy" itself "violate[d] the Supremacy Clause." *Toll v. Moreno*, 458 U.S. 1, 17 (1982). Preemption likewise applied when state officials acted to "encourag[e] racial segregation" in violation of the Equal Protection Clause. *United States v. City of Jackson*, 318 F.2d 1, 3–4 (5th Cir. 1963). A "conflict in technique can be fully as disruptive to the system Congress enacted as [a] conflict in overt policy" written in a statute or regulation. *Arizona*, 567 U.S. at 406 (quoting *Motor Coach Emps. v. Lockridge*, 403 U.S. 274, 287 (1971)). After all, *Ex parte Young* did not focus on the validity of state law; it focused on whether "a state official who enforces that law 'comes into conflict with the superior authority of [the] Constitution.'" *Virginia Off. for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 254 (2011).

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a. Federal law makes it "unlawful for any alien to vote" in federal elections. 18 U.S.C. § 611(a). Accordingly, California cannot "induce, encourage or promote"—let alone knowingly facilitate—noncitizen voting in such elections when state officials have notice of specific individuals who are likely to be noncitizens. *Norwood*, 413 U.S. at 465; *cf. City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 492 (1989) (applying *Norwood*'s "induce, encourage or promote" principle to a scenario where a local government "had essentially become a '*passive participant*' in a system of racial exclusion" (emphasis added)); *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 475 (2013) (explaining that state actions "that require a private party to violate federal law are pre-empted").

Yet that is precisely what California is doing. The United States provided California such notice months ago. Despite knowing that California must send vote-by-mail ballots to every registered voter, Cal. Elec. Code § 3000.5, the State made no serious attempt to cooperate with the United States or to otherwise determine whether noncitizens are registered to vote. *See* CR 1-2 (Compl., Ex. B). Then on October 13, the United States gave California a list of over 20,000 individuals who USCIS and HSI believe are likely noncitizens. *See* CR 1-4 (Compl., Ex. D); CR

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62-3 (McLoughlin Decl. #1) at 6–7 (¶24), 10 (Ex. A); CR 62-2 (Bartell Decl. #1) at 6 (¶24). Yet despite knowing that California must count any vote-by-mail ballot it receives, the State refused to verify the citizenship of people included on the list—or take any action whatsoever before tabulating those persons' votes. *See* CR 62-5 (Exs. A & B). California is now poised to tabulate the votes of persons who they are aware have been identified as likely noncitizens. More than that, California apparently intends to tabulate vote-by-mail ballots received by noncitizens whom the United States has charged with having already violated federal election law.

California's actions here are preempted. *See* CA Opinion at *27–30 (Bumatay, J., dissenting). By facilitating violations of 18 U.S.C. § 611, California's actions conflict with the "considered judgment" the statute expresses. *Arizona*, 567 U.S. at 399, 405. Indeed, California is not merely seeking to "induce" violations. *Norwood*, 413 U.S. at 465. California is directly facilitating violations of that law by knowingly and irreversibly accepting the votes of likely noncitizens. It "is simply implausible that Congress would have" criminalized voting by noncitizens "if it had been

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willing to" let States "compromise [the] effectiveness" of that law by participating in its violation. *Crosby*, 530 U.S. at 376.

b. California's actions also frustrate the objectives and purposes of 18 U.S.C. § 611(a), namely, to ensure only citizens vote in federal elections and only citizen votes are counted. *See* CA Opinion at *29–30 (Bumatay, J., dissenting). California is knowingly facilitating voting by likely noncitizens, and it is set to tabulate their votes without even attempting to verify their citizenship status in the face of credible evidence. If merely "authoriz[ing]" conduct that federal law prohibits can undermine "the full purposes and objectives of Congress[,]" *Mich. Canners and Freezers Ass'n, Inc. v. Agric. Marketing and Bargaining Bd.*, 467 U.S. 461, 478 (1984), it follows that knowingly facilitating such conduct triggers obstacle preemption. California's actions also pose an obstacle to the United States' ability to enforce 18 U.S.C. § 611(a).

2. The United States respectfully disagrees that it has "not shown that the law clearly favors its position" on the grounds that "§ 611 does what each party has determined is unlawful" and "California can still . . . craft its own procedures governing Congressional elections" under the Elections Clause. CA Opinion at *9 (Bennett, J., concurring).

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As a threshold matter, no clear statement rule applies to congressional regulation of federal elections, as the Supreme Court made clear. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 14 (2013) ("The assumption that Congress is reluctant to pre-empt does not hold when Congress acts under" the Elections Clause). More fundamentally, this analysis must consider three distinct questions: (1) whether Congress prohibited the conduct, (2) whether conflicting state action is preempted, and (3) whether a court may order ballot segregation as an equitable remedy. The answer to all three questions is yes.[2]

Congress prohibited noncitizens from voting under § 611. That is a congressional enactment, not an executive policy. Further, the United States does not challenge California *state law*; it sued as-applied to challenge *state action*, namely, permitting those the State knows are highly likely to be noncitizens to vote. It is no answer that both federal

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[2] Section 611 also regulates the *manner* of elections under the Elections Clause. If a State is allowing a noncitizen to vote for "some other purpose" beyond the federal election, then the State must conduct that voting "independently of voting for a candidate for" federal office, and conduct the election "in such a *manner* that an alien has the opportunity to vote for such other purpose, but not an opportunity to vote for a candidate for any one or more of such Federal offices." 18 U.S.C. § 611(a) (emphasis added).

law and state law prohibit noncitizens from voting; under that overbroad interpretation, the United States would be powerless to act even if California proclaimed it would allow noncitizen voting in violation of federal law.

Through § 611, Congress is protecting an existing, independently valid state qualification in California, rather than replacing it. There is no conflict between federal and state qualifications, and no party challenges § 611's validity. Congress may impose "additional penalties for the violation of the state laws." *Smiley v. Holm*, 285 U.S. 355, 366–67 (1932). "[I]t seems almost absurd to say that an officer who receives or has custody of the ballots given for a representative owes no duty to the national government which Congress can enforce." *Ex parte Siebold*, 100 U.S. 371, 388 (1879). And "[t]he power of Congress to protect the election of President and Vice President from corruption [is] clear." *Burroughs v. United States*, 290 U.S. 534, 547 (1934).

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Questions about ballot segregation speak to the scope of remedy—not the violation of law. Indeed, it is a "mistake" to "suppose that, for the determination of equities and equitable rights, [courts] must look only to the statutes of Congress." *United States v. Detroit Timber & Lumber Co.*,

200 U.S. 321, 339 (1906). From before the Founding, "[e]quity offered a mechanism for the Crown to secure justice where it would not be secured by the ordinary and existing processes of law." *Trump v. CASA, Inc.*, 606 U.S. 831, 842 (2025). Here, California "and [its] officers are bound by obligations imposed by the Constitution and by federal statutes that comport with the constitutional design." *Alden v. Maine*, 527 U.S. 706, 755 (1999). "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971). "Federal courts possess whatever powers are necessary to remedy constitutional violations." *Roman v. Wolf*, 977 F.3d 935, 942 (9th Cir. 2020) (per curiam) (citation omitted). Thus, granting a narrow injunction requiring ballot segregation to preserve the status quo would allow the United States to vindicate its sovereign interest and otherwise cure its injuries.

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The requested relief is also consistent with precedent. In 2020, Justice Alito granted an interim order requiring "(1) that all ballots received by mail after 8:00 p.m. on November 3 be segregated and kept 'in a secure, safe and sealed container separate from other voted ballots,'

and (2) that all such ballots, if counted, be counted separately." *Republican Party of Pa. v. Boockvar*, __ S.Ct. __, 2020 WL 6536912, at *1 (Mem) (US Nov. 6, 2020) (quoting guidance); *accord Boockvar*, 592 U.S. at 1070–71 (same); *cf. Roe v. State of Ala. By & Through Evans*, 43 F.3d 574, 578 (11th Cir. 1995) (explaining harms of "failing to exclude the contested absentee ballots" where "[b]etween 1000 and 2000 absentee voters failed to properly complete their affidavits, either by failing to have their signatures notarized or by failing to have them witnessed by two people").

3. The district court's conclusion that the Federal Government's evidence is not credible is an abuse of discretion. At any rate, because the court declined to examine the witnesses present at the hearing this week, *see* CR 150 at 8, 11, 58, 65, its decision resolving factual disputes is entitled to little weight, as this Court will review the evidence in the same manner as the district court: on the papers.

The Federal Government submitted declarations explaining what data it used to match registered voters to noncitizen records. *See* CR 107-2 (Bartell Decl. #2) at 3–5 (¶¶15–20). The process has multiple layers. USCIS matched voter data to its records, kept only high-confidence

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matches, and linked them to verified alien numbers. It then screened for naturalization, derived citizenship, and death, and conducted a second-level review. *See* CR 1 (Compl.) at 9–10 (¶¶34–38). HSI then re-checked the confidence levels, corrected data mismatches, and investigated further. *Id.* at 10–11 (¶¶43–42). California offered no competing evidence. It identified no person on the list who is a citizen. Its expert speaks generally about database matching and does not analyze these data or this process. California's reliance on Nevada and other states fares no better. *See* CR 150 at 39–40, 84. It asked the court to accept as true disputed facts from other matters. But those facts are "subject to reasonable dispute," so they cannot be judicially noticed. Fed. R. Evid. 201(b).

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4. California's counterarguments fail.

a. The "extraordinary proof" standard laid out by California Elections Code § 15106 does not apply. That statute's applicability is limited by the class of persons authorized to bring challenges. *See* Cal. Elec. Code § 15104(b) (grand jury and party representatives). As the federal sovereign seeking prospective equitable relief, the United States does not fit within this defined class.

b. The anti-commandeering principle is inapplicable. *See* CA Opinion at *31–32 (Bumatay, J., dissenting). The Elections Clause, "unlike the commerce power in Article I, section 8, empowers Congress to impose on the states precisely the burden at issue," and so "Congress may conscript state agencies" when regulating federal elections. *Voting Rights Coal. v. Wilson*, 60 F.3d 1411, 1415 (9th Cir. 1995). The authority extends to "registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers." *Smiley*, 285 U.S. at 366. That is what Congress did in § 611.

c. Nor does the fact that § 611 is a criminal prohibition limit the ability of the United States to seek civil injunctive relief. Courts have affirmed the Federal Government's authority to obtain injunctions preventing widespread criminal interference with federal law. *See, e.g.*, *In re Debs*, 158 U.S. 564, 599 (1895) (criminal interference with private property); *United States v. Zenon*, 711 F.2d 476, 478–79 (1st Cir. 1983) (Breyer, J.) (criminal intrusions onto U.S. military installation). Indeed, federal regulation of private conduct is the foundation of preemption: "regardless of the language sometimes used by Congress and this Court,

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every form of preemption is based on a federal law that regulates the conduct of private actors, not the States." *Murphy v. NCAA*, 584 U.S. 453, 479 (2018).

d. The requested remedy here does not contravene federal voting laws. *See* CA Opinion at *33 (Bumatay, J., dissenting). California acknowledges that "this lawsuit is not about maintenance of voter rolls." No. 26-7070, Dkt. 32.1 at 12. Thus, this case cannot contravene federal prohibitions on systematic removals of registered voters in the 90 days leading up to an election. 52 U.S.C. § 20507(c)(2). Moreover, as recognized in *Mi Familia Vota v. Fontes*, that provision only bans "systematic cancellation programs"—but not "individualized removals." 129 F.4th 691, 717 (9th Cir. 2025); *see also Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1348 (11th Cir. 2014) ("[T]he 90 Day Provision would not bar a state from investigating potential noncitizens and removing them on the basis of individualized information . . . ."). In all events, the United States does not seek to "remove the names" of anyone "from the official lists of eligible voters"—only to segregate select ballots. 52 U.S.C. § 20507(c)(2).

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The relief also would not violate the Voting Rights Act's command that "[n]o person acting under color of law shall fail or refuse to permit any person to vote who is . . . qualified to vote." 52 U.S.C. § 10307(a). Quite the opposite, the Federal Government seeks to ensure California is not permitting *un*qualified votes.

e. Finally, the United States' requested remedy is consistent with *Purcell*, which recognizes that "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell*, 549 U.S. at 4–5. Subsequent cases have emphasized that voters need to know "the rules of the road." *Democratic Nat'l Comm. v. Wis. State Legislature*, 592 U.S. 1039, 1043 (2020) (Kavanaugh, J., concurring). Justice Kavanaugh has proposed that courts should look to four factors: whether "(i) the underlying merits are entirely clearcut in favor of the plaintiff; (ii) the plaintiff would suffer irreparable harm absent the injunction; (iii) the plaintiff has not unduly delayed bringing the complaint to court; and (iv) the changes in question are at least feasible before the election without significant cost, confusion, or hardship." *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring).

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Here, the United States' requested relief to segregate ballots would not "result in voter confusion" or "create an 'incentive to remain away from the polls.'" *Purcell*, 549 U.S. at 4–5. Whether state officials commingle ballots that have already been submitted cannot possibly cause voter confusion about how, when, or where to vote—the only ballots affected will already have been cast. A narrowly defined preservation order requiring the segregation of identified ballots would not affect voters or candidates at all. *Compare Purcell*, 549 U.S. at 2 (vacating court of appeals' emergency order enjoining state law designed "to combat voter fraud"), *with People Not Politicians v. Onder*, No. 26A388, 2026 WL 2883222 (U.S. Sept. 25, 2026) (changing electoral map); *and Scanlan v. Coalition for Open Democracy*, No. 26A512, slip op. (U.S. Oct. 22, 2026) (changing permissible identification documents voters may use).

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This answer does not change under *Merrill*. It is entirely clear that noncitizens may not vote in a federal election. 18 U.S.C. § 611. The United States proceeded expeditiously in bringing suit—consistent with prior actions against States concerning noncitizen voting *weeks* before an election. *See, e.g.*, *United States v. Virginia*, No. 1:24-cv-1807, Dkt. 1 (E.D. Va. Oct. 11, 2024) (suing Virginia about 1,600 potential noncitizen

voters), *consolidated with Va. Coal. for Immigrant Rights v. Beals*, No. 1:24-cv-1778 (E.D. Va.) (lead case), *and voluntarily dismissed*, Dkt. 139 (Jan. 28, 2025).

The proposed remedy is "at least feasible . . . without significant cost, confusion, or hardship." Indeed, the Supreme Court has found segregating ballots to be a "targeted remedy." *Republican Party of Pennsylvania v. Boockvar*, 592 U.S. 1068, 1070–71 (2020) (Alito, J., in chambers); *cf.* 52 U.S.C. § 21082 (elsewhere requiring ballot segregation). And California has the laws and systems in place to accommodate the requested relief. *See, e.g.*, Cal. Code Regs. tit. 2, § 20363 (detailing how to resolve challenged ballots via segregation). The fact that this law concerns a "formal recount" cannot change the analysis, as the point is that a system is in place to accommodate ballot segregation and equity, as explained, allows for the relief. *See* CA Opinion at *14 (Bennett, J., concurring). As Judge Bumatay explains, *Purcell* is no bar. *Id.* at *32–33 (Bumatay, J., dissenting).

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C. The other injunction factors strongly favor the Federal Government.

Absent relief, the United States will suffer irreparable harm and the public interest favors granting the motion. *See* CA Opinion at *31 (Bumatay, J., dissenting); *see also* No. 26-7070, Dkt. 57.1 at 15–19.

The harm is irreparable because "California admits that there is no way to trace a ballot after it is processed." CA Opinion at *31 (Bumatay, J., dissenting). So, absent an injunction, "there is no way for the district court to repair the government's injury—noncitizens voting in a federal election." *Id.*

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Equities favor the United States. Because the challenged actions are invalid under the Supremacy Clause, they are not in the public interest. *Am. Trucking Ass'ns, Inc. v. Los Angeles*, 559 F.3d 1046, 1060 (9th Cir. 2009). In fact, it is emphatically contrary to the public interest to allow ineligible voters to have their votes cast and tabulated in a federal election. This dilutes the votes of lawful voters. It directly affects which individuals will serve in federal offices.

This Court considered burdens on election administration when considering equity. *See, e.g.*, CA Opinion at *13 (Bennett, J., concurring). Record evidence now shows that "locating and segregating challenged

ballots is entirely possible and not catastrophic." CR 107-4 (Curtis Decl.) at 2 (¶3). "Every registrar of voters in the State of California uses an electronic information management system to maintain electronic pollbooks containing voter information." *Id.* (¶4). "This system allows for a flag to be set on voters based on any number of circumstances relating to eligibility . . . ." *Id.* "Poll workers will see a flag on a particular voter when pulling up that voter's information, and sorting machines will flag those ballots before processing and automatically separating them into containers designed to capture segregated ballots." *Id.* In short, "[e]lectronic information management systems that are used for voting in California can flag the ballots of likely noncitizens identified by the United States, and the sorting machines can segregate those electronically flagged ballots while determining citizenship under state and federal law." *Id.* at 3 (¶7). This record evidence is consistent with ballot-segregation remedies issued by courts, *see, e.g.*, *Boockvar*, 592 U.S. at 1070–71 (2020) (Alito, J., in chambers), and in other States that support the United States' requested relief, *see* CR 114-1 (explaining how States prevent noncitizen voting and why the relief sought here is common).

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Thus, while there may be a burden in the relief here—as is true for *every* injunction granted—such a burden is manageable and consistent with common election relief. Any comparable burden on California associated with segregating ballots is also de minimis in comparison with protecting American votes. The Federal Government is also available to assist with any burden California may experience during this process.

CONCLUSION

For the foregoing reasons, this Court should grant an immediate injunction pending appeal that requires California (1) to segregate vote-by-mail ballots from persons identified by the Federal Government likely to be noncitizens and (2) to independently—or in collaboration with the Federal Government—verify their citizenship status before tabulating their vote-by-mail ballot. The United States seeks this relief to prevent unlawful dilution of American citizens' votes and to protect the integrity of our elections. The Court should then order an expedited appeal.

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Dated: October 29, 2026 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) and Circuit Rules 27-1(d) and 32-3 because it contains 5,450 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Century Schoolbook font.

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