No. 26-7303

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Service Employees International Union, AFL-CIO, et al.,
Plaintiffs-Appellees,
v.

United States Department of Justice et al.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
No. 3:26-cv-12800-TLT
The Honorable Judge Trina L. Thompson

PLAINTIFFS-APPELLEES' RESPONSE TO EMERGENCY MOTION TO STAY

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INTRODUCTION

Leading up to the 2026 midterm election, high-ranking officials of the U.S. Department of Justice ("DOJ") and Department of Homeland Security ("DHS") engaged in an unprecedented and sustained campaign to intimidate, threaten, and coerce election officials, election workers, and voters. That campaign has been ongoing for months, but escalated dramatically in recent weeks and days, after States began counting votes and as Election Day approaches. This case challenges Defendants' barrage of threats of investigation and prosecution directed at election officials and workers who are in the midst of administering the 2026 midterm election. Defendants have repeatedly threatened to bring criminal charges against election workers who—in accordance with their duties and federal and state law—are not complying with Defendants' demands to disregard state election procedures and halt the processing of any ballots cast by names on 11th-hour lists of "likely" non-citizens created by the administration, even though every analysis of those lists has established that they are deeply flawed and inaccurate by Defendants' own admission, including because they rely on faulty third-party data and commercial AI analytics.

The District Court held that Defendants' threats, intimidation, and coercion likely exceed the Executive Branch's authority under the Elections Clause and violate Section 11(b) of the Voting Rights Act. Dkt. 26 ("Order") at 4-5

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(Addendum). To protect Plaintiffs and their members—election workers and voters nationwide—the court entered a temporary restraining order ("TRO") after notice to Defendants. *Id.* at 6-8. The court emphasized the need for immediate action given the proximity to the election and the seriousness of Defendants' ongoing and escalating acts targeted election workers across the country: "Election Day is around the corner. Ballots have already been issued. Americans have already begun voting. Workers have already begun processing ballots. Given the consequences of inaction, the Court sees no reason to delay its ruling." *Id.* at 1. That order protects the hard-working nonpartisan civil servants who seek to faithfully execute their duties in accordance with federal and state law. Their ability to perform those duties free from intimidation, threats, and coercion is paramount to ensuring a free and fair election.

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Although they were on notice of Plaintiffs' intent to seek a TRO as of early morning on October 30, Defendants did not ask for the opportunity to oppose the TRO until late at night the day after its entry, at which point they filed a notice informing the District Court that they might request to dissolve, modify, or stay the TRO. Dkt. 30. Defendants waited another day, and then moved to stay the TRO pending appeal or in the alternative to "dissolve" the injunction, Dkt. 33, and the District Court promptly set a hearing on that request for tomorrow morning at 11 a.m. and stated its intent to issue questions for the hearing, Dkt. 35.

Defendants now bypass the District Court's consideration of their motion and seek an administrative and emergency stay from this Court, relying on misrepresentations regarding both the nature of their threats to state and local elections officials and workers and regarding the scope of the District Court's TRO as well as merits arguments that are contrary to applicable precedent. Their request for a stay should be denied.

BACKGROUND

1. Defendants' Development and Use of Lists of Purported Non-Citizens

Defendants' current campaign of intimidation and coercion of state and local election workers has its origins in two Executive Orders. *See* Exec. Order No. 14,248, *Preserving and Protecting the Integrity of American Elections*, 90 Fed. Reg. 14005, § 5(a) (Mar. 25, 2025); Executive Order 14,399, *Ensuring Citizenship Verification and Integrity in Federal Elections*. 91 Fed. Reg. 17125 (Mar. 31, 2026). Pursuant to those Orders, DOJ and DHS have engaged in a series of efforts to compile lists of purported non-citizens on state voter rolls and compel states—through meritless litigation and unlawful threats of prosecution—to remove those individuals from the rolls.

For example, DOJ demanded unredacted voter files from nearly every state in an attempt to identify non-citizens on state voter rolls, and sought "information-

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sharing agreement[s]" with election officials in at least 12 states. Dkt. 19-4 ¶ 8 [App. 099]; Dkt. 19-7 Ex. 3 [App. 583]. DOJ sued the 30 states that declined to comply with those demands and has lost every single case in which a decision has been rendered, in more than two dozen federal courts across the country. *See Common Cause v. DOJ*, __ F.Supp.3d __, No. 26-1352, 2026 WL 3033772, at *5 n.3 (D.D.C. Oct. 9, 2026) (collecting cases); *see also, e.g.*, *United States v. Weber*, 816 F.Supp.3d 1168, 1195–96 (C.D. Cal. 2026); Dkt. 19-8 Ex. 40 [App. 782]. DOJ's efforts have been held unlawful and enjoined. *Common Cause*, 2026 WL 3033772.

Meanwhile, DHS engaged in its own deeply flawed attempts to identify non-citizens registered to vote—first through modifying the Systematic Alien Verification for Entitlements ("SAVE") system, in an effort that has also been held unlawful, *see League of Women Voters v. DHS*, 835 F.Supp.3d 79, 138 (D.D.C. 2026), *stayed pending appeal*, 2026 WL 2879700 (U.S. Sept. 25, 2026), and then through opaque methods that DHS has declined to clearly describe but have included misrepresentations to states to obtain voter information. Dkt. 19-7 Ex. 18 at 3 [App. 642]. DHS has also surged armed agents to interrogate voters at their homes in nine States—operations that a district court enjoined in an order that this Court declined to stay. *Cal. Nurses Ass'n v. Mullin* ("*CNA I*"), 2026 WL 3166149,

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at *10-11 (N.D. Cal. Oct. 21, 2026), *stay denied*, No. 26-7139 (9th Cir. Oct. 30, 2026).

Analyses of the federal government's lists of purported non-citizens on voter rolls have repeatedly and consistently shown that they are deeply flawed and unreliable, and include many citizens who are eligible to vote. *See, e.g.*, Dkt. 19-6 [App. 529-544] (Oskooii Expert Report and Decl.); Dkt. 24 [App. 811-815] (Oskooii Supp. Expert Report and Decl.); *CNA I*, 4:26-cv-10680 (N.D. Cal. Sept. 21, 2026), Dkt. 10-6 (expert report); *id.* Dkt. 78-4 (supplemental expert report); *Coalition for Humane Immigrant Rights v. U.S. Dep't of Homeland Sec'y*, 1:26-cv-3072 (D.D.C. Oct. 31, 2026), Dkt. 43; *id.* Dkt. 43-1; *see also Cal. Nurses Ass'n v. Mullin* (*"CNA II"*), 26-7139, 2026 WL 3268397 (9th Cir. Oct. 30, 2026), Dkt. 16.1 (amicus brief describing methodological flaws in detail). Multiple courts have reached the same conclusion. *See, e.g.*, *CNA I*, 2026 WL 3166pull down 149, at *8 (explaining that DHS derives their lists from "faulty data sources that sweep in U.S. citizens"); *United States v. California* ("*California III*"), No. 26-7231, 2026 WL 3268272, at *6 (9th Cir. Oct. 30, 2026) (per curiam) ("The district court also found that the United States's process in creating the October List was not credible, and thus the United States's assertion that individuals on the October List are 'highly likely to be noncitizens' is also not credible."); *CNA II*, __ F.4th __, 2026 WL 3268397, at *1-2 (9th Cir. Oct. 30, 2026) (describing the flawed process for

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list creation and noting that, "[a]s the district court found, '[e]ven under the best conditions, there is a high likelihood of error in review because there is no federal database containing citizenship status of U.S. residents,' and '[t]he time limitations implemented during the Surge further exacerbate the risk of error'"). Defendants themselves have acknowledged elsewhere that their lists are unreliable. *See United States v. Amore*, No. 25-639 (D.R.I. March 26, 2026), Dkt. 47 (Hr'g Tr. at 51-53); *Common Cause*, 2026 WL 3033772, at *8.

The lists sent to California counties have fared no better than other similar federal government lists of purported non-citizens when scrutinized. Los Angeles County officials conducted a preliminary analysis of 200 of the approximately 7,000 records flagged by DOJ finding that 7.5% of the flagged records were cancelled or inactive and 38.9% of the individuals who had provided birthplace information indicated that they were born in the United States. *California I*, Dkt. 32-4 ¶¶ 24-25; *see also* Dkt. 19-6 [App. 530-544] (expert declaration analyzing the full list). An analysis of the list of 47 names sent to Butte County revealed similar results. Dkt. 19-8 Ex. 32 [App. 730]. The Central District found the DHS and DOJ list-generation process not credible and inaccurate, *United States v. California* ("*California II*"), Case No. 2:26-cv-12025, 2026 WL 3252428, at *12-13 (C.D. Cal. Oct. 28, 2026), and this Court relied on that finding in denying emergency injunctive relief, *California III*, 2026 WL 3268272, at *6.

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Nonetheless, Defendants have escalated their demands that state and local elections officials segregate and set aside ballots cast by lawfully registered voters who appear on these fundamentally flawed lists through intimidation and threats of criminal prosecution.

2. Defendants' Threats Against Election Officials and Workers

Despite the unreliability of their methodology and resulting lists, Defendants have repeatedly threatened election officials and workers with prosecutions if they refuse to interrupt the ongoing election procedures, and use those lists rather than the registration lists compiled under existing federal and state laws, to remove individuals from voter rolls and/or set aside their votes.

In July 2026, Assistant Attorney General Harmeet K. Dhillon sent letters to all states threatening criminal prosecution of election officials if ballots cast by noncitizens were counted in upcoming elections and made other threating statements aimed at election workers. Dkt. 19-7 Ex. 4 [App. 585-588]; Dkt. 19-4 ¶¶ 10-11 & Ex. C [App. 100-101, 122-128]; *see also* Dkt. 19-7 Exs. 6, 7 [App. 598-600] (Dhillon posts on X).

On July 16, DHS Secretary Mullin sent letters to four states (California, New Jersey, Nevada, and Pennsylvania) claiming—without evidence or an explanation of DHS's methodology or sources—that a preliminary review of DHS records indicated hundreds of thousands of noncitizens were registered to vote in

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those states. Dkt. 19-7 Exs. 8 [App. 602], 13 [App. 617-625], 43 [App. 798-799]. The following day, Mullin held a press conference threatening state and local election officials with "*prison time*" and committing DHS to "pursue maximum pressure on this." *Id.* Exs. 9 [App. 604] (emphasis added), 10 [App. 606-608], 13 [App. 617-625]. The states that received the letter requested more information about DHS's methodology, which was not forthcoming. *Id.* Exs. 11 [App. 610-611]; Dkt. 19-8 Ex. 22 [App. 693-695]. Notably, in response to Nevada's request for more information, DHS reduced the number of alleged non-citizens on Nevada's rolls from approximately 16,000 to 185. Dkt. 19-7 Exs. 13 [App. 617-625], 19 [App. 681-684]. Upon investigation, all 185 individuals proved to be citizens. *Id.* Ex. 19 [App. 681-684].

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Undeterred, Defendants continued to launch threats at state and local election officials, claiming that the lists put them on "notice" of violations of federal law, and therefore exposed them to liability under an aiding and abetting theory of criminal liability. On September 1, Assistant Attorney General Dhillon again posted on Truth Social, "Calling all state officials! If you knowingly allow non-citizens to vote in elections, you are committing a federal crime, & the Civil Rights Division @theJusticeDept will prosecute." Dkt. 19-7 Ex. 14 [App. 627].

In mid-October—when voting had already started and well into the National Voter Registration Act's 90-day quiet period, during which states are prohibited

from conducting large-scale voter purges—Defendants' threats escalated. On October 13, DOJ sent a letter to California and Los Angeles County demanding that they review and segregate, within 48 hours, the ballots of roughly 20,000 registered voters DHS has non-credibly deemed "likely noncitizens," and not to tabulate any already returned. Dkt. 19-8 Ex. 21 [App. 690-691]. Reporting described the contents of that list as an "unsubstantiated jumble." Dkt. 19-7 Ex. 20 [App. 686-687]; Dkt. 19-8 Ex. 27 [App. 708-713].

On October 16, 2026, DOJ sent another threatening letter to LA County, expressly warning the county's workers of potential criminal prosecution for *anyone* who continued to process the ballots of individuals on the list. *Id.* Ex. 23 [App. 697-698]. That letter claimed that election workers were on notice of illegal voting because of the federal government's lists. That same day, the person ostensibly in charge of the U.S. Attorney's Office in Los Angeles, First Assistant U.S. Attorney for the Central District of California Bill Essayli, wrote on X: "officials who knowingly tabulate unlawful ballots risk aiding and abetting a federal offense." *Id.* Ex. 24 [App. 700]. He continued: "@TheJusticeDept urges the County and the Secretary of State to temporarily segregate the flagged ballots pending citizenship verification *or face legal consequences*." *Id.* (emphasis added). The President posted the letter on Truth Social with the threat: "They will all go to jail for a long period of time!!!" Dkt. 19-8 Ex. 26 [App. 704]. The second-highest

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ranking DOJ official, Acting Deputy Attorney General Trent McCotter, amplified Essayli's threats to elections workers on X. Dkt. 19-8 Ex. 25 [App. 702]. On October 21, Mr. Essayli stated during a Fox News interview, "When California has actual knowledge of non-citizens in their voter rolls, if they help them vote, they are now aiding and abetting a criminal offense." Fox News, *DOJ says more than 20k NONCITIZENS are likely on California's voter roles*, at 1:40 (YouTube, Oct. 17, 2026), https://www.youtube.com/watch?v=R3k1doZrzyk. These threats were also reiterated by the President. Dkt. 19-8. Ex. 26 [App. 704].

When California and Los Angeles County did not accede to DOJ's unsubstantiated demands to alter their elections procedures on the basis of these faulty lists, the administration sued. *See generally California II*, 2026 WL 3252428. The federal government moved for an injunction, attempting to use the courts to force Los Angeles County to remove ballots from processing based solely on federal officials' say-so. On October 28, 2026, the court rejected that motion, writing that "[i]ndividuals who have met the requirements of California's voter registration laws must not be deprived of a core right merely because of unfounded allegations stemming from a procedure rife with uncertainty and errors." *Id*. at *15. This Court denied a stay pending appeal. *California III*, 2026 WL 3268272, at *8.

While the Central District of California case was pending, DOJ escalated its threats to election workers to a new level. On October 23, DOJ sent letters to

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county officials across the state—hand-delivered by uniformed DHS agents—each with a subset of the list, a 48-hour deadline, and a warning meant "to make unmistakably clear the legal implications" of counting those ballots. Dkt. 1 ¶¶93, 95; Dkt. 19-8 Ex. 32 [App. 730]; Dkt. 29-1 ¶¶7-8 & Ex. A [App. 820, 825-827] (Santa Clara County); Dkt. 29-2 ¶3 [App. 834] (Contra Costa County); Dkt. 29-5 ¶5 [App. 843] (San Benito County). Butte County's registrar, for example, was told that DOJ could charge him with federal crimes unless he segregated 47 ballots. Dkt. 19-8 Ex. 32 [App. 730]. The same day, the First Assistant U.S. Attorney warned that elections workers who process such ballots are "opening themselves to legal jeopardy" and posted: "We will hold election officials accountable." *Id*. Exs. 29-30 [App. 718-722, 724].

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The October 23 letters took the position that all election workers were now on "notice" that taking any action to process or count ballots that Defendants had questioned would be facilitating a federal crime: "If persons knowingly tabulate ballots cast by individuals identified by federal agencies as noncitizens, they risk becoming aiders and abettors to a federal crime." Dkt. 29-1 Ex. A [App. 825-827]. In other words, the letters threatened that doing the work of administering the election in compliance with federal and state laws pertaining to elections would now be prosecuted as a federal crime, unless election workers ceded to the federal

governments demands to change their procedures and stop processing the ballots on Defendants' error-ridden lists.

Defendants' threats and acts of intimidation have intensified even further in recent days. DOJ opened a criminal investigation into Los Angeles County elections officials and issued federal grand jury subpoenas pursuant to that investigation. Dkt. 19-8 Ex. 41 [App. 785-792. Federal marshals served at least one local official at home even though that employee had been previously served at their place of work. *Id.* Ex. 38 [App. 769-772]; *see also* Dkt. 29-1 ¶15 [App. 822].

On October 26, Defendants expanded the threats of unlawful prosecution to the State of Washington. Dkt. 19-4 ¶¶16-17 & Ex. E [App. 103-104, 134-136]; Dkt. 19-8 Exs. 31 [App. 726-728], 34. Much like the letter to the California Secretary of State, the DOJ's letter to the Washington Secretary of State included a list of voters that Defendants deemed likely to be non-citizens and demanded that the state review the list and identify any ballots from such individuals within 24 hours. Dkt. 19-4 ¶¶16-17 & Ex. E [App. 103-104, 134-136]. Again, the list sent to Washington proved highly unreliable. *Id.* ¶¶24-27 [App. 106-107].

In a hearing before Judge Carter on October 27, the government continued to repeat its threats in open court. *California II*, 2026 WL 3252428, at *4. Judge Carter admonished the government in court and reiterated in his order that "these threats must stop." *Id*.

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The threats have not stopped. Instead, they have been amplified. On October 28, Defendants' officials again posted on X that they "will hold accountable anyone who unlawfully participates in our elections and *those who aid them*." Dkt. 19-8 Ex. 36 [App. 764]. The very next day, October 29, it was reported that DOJ has directed federal prosecutors to pursue criminal subpoenas of state and local election officials in California, supposedly for facilitating unlawful votes. *Id*. Ex. 37 [App. 766-767]; Dkt. 29-1 ¶15 [App. 822]. And on October 30, it was reported that Defendants further expanded the scope of their threats, sending election officials in all fifty states threatening letters warning them of potential prosecution. Dkt. 19-8 Ex. 42 [App. 794-796]; Dkt. 19-4 ¶30 [App. 108].

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Defendants' threats of prosecution are frivolous. It would violate federal and state law for election officials to remove the identified individuals from voter rolls or refuse to process their ballots, particularly given the demonstrated unreliability of the government's methodology and resulting lists. *California II*, 2026 WL 3252428, at *10-*11; *California III*, 2026 WL 3268272, at *6 (explaining that DOJ's demands would violate the NVRA); Dkt. 19-4 ¶27 & Ex. F [App. 107, 138-141]; Dkt. 29-1 ¶9 & Ex. B [App. 820, 829-832]. Defendants' conduct also inverts DOJ's own longstanding election non-interference policy, which recognizes that "the States—not the federal government—are responsible for administering elections," and directs that "overt criminal investigative measures should not

ordinarily be taken" in matters involving how votes were cast or counted until the election is certified and all contests concluded, to avoid "chilling legitimate voting." Dkt. 19-5 ¶¶17, 22-23 & Ex. A at 8 [App. 147-148, 152-153, 175] (quoting Justice Manual §9-85.300 and DOJ, *Federal Prosecution of Election Offenses* (8th ed.)).

The meritless nature of the threats, however, does not render them any less intimidating, particularly when they come during the heat of election season. Election workers—including thousands represented by Plaintiffs SEIU and AFSCME in California, Washington, and across the country—face a daily choice between Defendants' demands and their legal duties. Dkt. 23 ¶¶11-13, 18, 22-24, 29, 34, 37-41 [App. 803-810]; Dkt. 19-1 ¶¶6-7, 13-14 [App. 81-83]; Dkt. 19-4 ¶¶6, 10-12, 21, 28-32 & Exs. C-E [App. 98-109, 122-136]; Dkt. 19-7 Ex. 12 [App. 613-615]; Dkt. 19-8 Ex. 33 [App. 732-740]; Dkt. 29-2 ¶¶5-8 [App. 834-835]. County officials describe a "severe chilling effect" and resources strained "beyond their breaking point," and election workers have faced death threats, doxxing, and an anthrax threat, prompting resignations and a recruiting crisis. Dkt. 29-1 ¶¶16-17 [App. 822-823]; Dkt. 19-4 ¶¶32-39 [App. 109-111]; Dkt. 19-1 ¶15 [App. 83]; Dkt. 23 ¶23 [App. 805-806]; Dkt. 29-2 ¶¶5-8 [App. 834-835]; Dkt. 29-4 ¶9 [App. 841]; Dkt. 29-5 ¶¶6-12 [App. 843-844]. "The federal government's conduct has had and continues to have a severe chilling effect" on county elections officials and

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workers. Dkt. 29-1 ¶16 [App. 822]; Dkt. 19-4 ¶¶6, 28-40 [App. 98, 107-111]. Workers are concerned about criminal prosecution and harassment "for simply carrying out [their] jobs." Dkt. 29-1 ¶16 [App. 822]. As the District Court found, "Defendants' intimidation, threats, and attempts at coercion force election workers daily to choose between acceding to Defendants' unlawful demands or adhering to their duties and thereby subjecting themselves to a serious risk of criminal investigation and prosecution." Dkt. 26 at 5 [Add. 5] (citing Dkt. 19-1 ¶¶13-14 [App. 83]; Dkt. 19-4 ¶¶6, 10-12, 21, 28-32 [App. 98-102, 105, 107-109]; Dkt. 19-7 Ex. 17 [App. 638]; Dkt. 19-8 Exs. 23-25 [App. 696-702]). Members of Plaintiffs LULAC and NAACP fear their names are, or will be, on Defendants' lists, and that the disruption will keep their votes from being counted. Dkt. 19-2 ¶¶17-18, 22, 24-25 [App. 88-90]; Dkt. 19-3 ¶¶7, 17 [App. 92, 94].

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3. Procedural History

Following the breaking news of escalating threats, Plaintiffs filed suit on October 29, asserting claims under Section 11(b), the Elections Clause and Tenth Amendment, the Fifth Amendment, the Administrative Procedure Act, and the doctrine against ultra vires action. Dkt. 1 ¶¶114-72. Early on October 30, Plaintiffs notified Defendants that they intended to move for a same-day TRO "halting the actions threatening state and local election workers with criminal prosecution being taken by the United States Department of Justice, United States Department

of Homeland Security, and their agents." Dkt. 17-2 ¶3 [App. 56]. Defendants' counsel appeared in the case. That afternoon, Plaintiffs moved for a TRO. Dkt. 17 [App. 003-005]. Defendants did not request an opportunity to respond to Plaintiffs' request for same-day injunctive relief.

The District Court granted a TRO later that evening, finding Rule 65(b)'s requirements satisfied given the imminence of the election. Dkt. 26 at 1, 4 [Add. 1, 4]. It held Plaintiffs likely to succeed on their Section 11(b) claim because "the record shows that Defendants intimidated, threatened, or coerced election workers," and that Defendants' conduct likely violates the Elections Clause. *Id.* at 4-5. Citing the urgency, the court did not separately analyze the Fifth Amendment and APA claims. *Id.* at 5. The court found ongoing irreparable harm because Defendants' threats force election workers "daily to choose" between Defendants' demands and their legal duties, and because the harm may reach "tens of thousands of lawfully registered voters." *Id.* at 5. And the merged equities and public interest "weigh heavily" in Plaintiffs' favor. *Id.*

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The District Court explained that election workers who administer the election "in the manner required by their state and federal laws" do "not violate federal criminal law even if a particular ballot belongs to a registered voter alleged by Defendants to be ineligible to vote." *Id.* at 6. The TRO thus bars Defendants from demanding—or threatening, intimidating, or coercing officials into—

removing registered voters from the rolls, withholding their ballots, or segregating or not counting their ballots "solely on the basis" that Defendants allege the voter is ineligible, and from threatening prosecution for declining those demands or for counting ballots in compliance with election law. *Id.* at 6-7. Defendants must notify the recipients of their letters that the demands and threats are enjoined, and DOJ must inform the court of pending warrant applications, grand-jury subpoenas, or other demands for election materials tied to Defendants' lists. *Id.* at 7.

The District Court set a briefing schedule for a preliminary injunction and provided that the TRO expires at 5:00 p.m. on November 16. *Id.*

Late at night the day after entry of the TRO, Defendants filed a notice informing the District Court that they might request to dissolve, modify, or stay the TRO the next day, October 31. Dkt. 30. Defendants did not do so, and instead filed a notice of appeal. The following day, November 1, Defendants moved the District Court for a stay pending appeal, or in the alternative to "dissolve" the order, Dkt. 33, and the District Court promptly set a hearing on that request for Monday, November 2 at 11 a.m. and stated its intent to issue questions for the hearing. Dkt. 35. Notwithstanding that schedule in the District Court, Defendants then sought an emergency stay and administrative stay from this Court.

4. Defendants' Stay Motion

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Defendants' emergency stay motion grossly mischaracterizes both the facts and the terms of the TRO.

Initially, Defendants' motion is based on significant mischaracterizations of the record. First, Defendants insist that DOJ and DHS officials have not aimed their threats at election workers—that is, beyond government election officials; second, Defendants aver that their statements to election officials and workers have simply reiterated the requirements of federal law regarding noncitizen voting. *See, e.g.*, Mot. at 22 (contending that letters to election officials state only that "knowingly tabulat[ing] ballots cast" by noncitizens is a violation of federal crime). Both assertions are flatly incorrect.

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Defendants have repeatedly issued broad threats that reach election workers, including the Union Plaintiffs' members. For example, on October 16, 2026, Defendants sent a letter to Los Angeles County threatening criminal prosecution if county employees processed ballots the federal government identified for removal.[1] That letter states that, "[i]f persons knowingly tabulate ballots cast by individuals identified by federal agencies as noncitizens, they risk becoming aiders and abettors to a federal crime." Dkt. 19-8, Ex. 23 [App. 697]. That pronouncement plainly addresses the election workers—not just election

[1] Union Plaintiff SEIU represents election workers in Los Angeles County. *See, e.g.*, Dkt. 23, (Medina) ¶¶12-13 [App 803].

officials—who are involved in the work of "tabulat[ing]" ballots. *Id.*; *see also* Dkt. 29-1 [App. 826-27]. Consider, too, the President's Truth Social post that Los Angeles County's actions open *any* person to prosecution who permits an alleged non-citizen to vote: "They will *all* go to jail for a long period of time!!!" Dkt. 19-8, Ex. 26 [App. 704] (emphasis added). That threat, by its sweeping language, also reaches election workers. Indeed, in their briefs before this Court, Defendants acknowledge that their conduct reaches election workers.[2] *See, e.g.*, Mot. at 2 ("DOJ has also initiated investigations of potential illegal voting by ineligible noncitizens, including whether election workers knowingly facilitated such illegal voting."); *id.* at 21 ("Defendants have accordingly asked that state and local election officials and workers temporarily 'pause or segregate ballots' from individuals the federal government has credibly flagged in order to confirm that such individuals are eligible to vote in accordance with federal law."). These concessions belie Defendants' assertions that their statements have only targeted election officials.

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Nor are Defendants simply "reminding" election workers of the requirements of federal law. Defendants' conduct goes much further. DOJ and DHS have created flagrantly erroneous lists of alleged "likely" non-citizens and,

[2] So too before the district court. In their motion for a stay, filed earlier today, Defendants acknowledged that their statements to States and localities extend to both "election officials and workers." Dkt. 33 at 10.

moreover, threatened criminal prosecution of election officials or workers who process ballots submitted by the individuals collected on those lists. Those lists, and the data they rely on, are wholly unreliable indicators of actual citizenship. *See supra* Background Section 1; Dkt. 17-1 at 14-17 [App. 22-25]. So it is wrong to contend, as Defendants do, that their actions have only "combat[ed] undisputedly illegal voting." Mot. at 23. The record clearly establishes that election workers have understood Defendants' statements as threats. *See, e.g.*, Dkt. 29-1, ¶13 [App. 821-822] (San Benito's Clerk-Recorder "understood [federal agents'] visit as an effort to intimidate me").

Besides mischaracterizing the record, Defendants misconstrue the scope and effect of the TRO, which is "tailored to remedy the specific harm alleged." *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir. 1991). The TRO does not broadly prohibit all conceivable acts to "threaten, intimidate or coerce" election officials and workers; rather, the order specifically enjoins Defendants from "threaten[ing], intimidat[ing], or coerc[ing] state or local election officials or workers *to demand that they halt processing the ballots of any registered voters solely on the basis that the ballot belongs to an individual alleged by Defendants to be ineligible to vote*." Dkt. 26 at 6, ¶1 [Add. 6] (emphasis added), and from "threaten[ing] state or local election officials and workers with criminal prosecution for failure to comply with" expressly enumerated demands, *id.* at 6,

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¶¶2-3. The specific "demands" that the order enjoins precisely track the specific demands that Defendants have been widely and aggressively directing at election officials and workers across all 50 states. *Supra* Background Section 2.

The specific type of enjoined conduct that Defendants have been engaged in, and that the order now temporarily enjoins as an attempt to "threat[en], intimidate, or coerce" election officials and workers, is likewise clearly identified in Plaintiffs' motion and amply substantiated by the evidentiary record. Defendants cannot pretend not to understand what type of conduct the order enjoins. *See United States v. Christie Indus., Inc.*, 465 F.2d 1000, 1007 (3d Cir. 1972) ("Rule 65(d)'s fair notice requirement must be applied "in the light of the circumstances surrounding (the injunction's) entry: the relief sought by the moving party, the evidence produced … on the injunction, and the mischief that the injunction seeks to prevent"). The TRO does not, contrary to Defendants' representations, authorize "affirmatively and knowingly *encouraging* noncitizens to vote in the midterm elections," Mot. at 27 (emphasis added), which no Plaintiff or its members ever would.

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The District Court's order also does not run afoul of Federal Rule of Criminal Procedure 6. *Cf.* Mot. at 14-15. Paragraph 6 orders "Defendant U.S. Department of Justice to inform the Court of any such pending search warrant applications, grand jury subpoenas, or other demands to access election materials

or ballots pertaining to any list of individuals alleged by Defendants to be ineligible to vote, or compel testimony related thereto." Dkt. 26 at 7, ¶6 [Add. 7]. The District Court's order does not specify how Defendants must notify the court—Defendants may file any such notification *in camera*. *See United States v. R. Enterprises, Inc.*, 498 U.S. 292, 297 (1991) (observing that courts are permitted to require that "the Government reveal the subject of [a criminal] investigation to the trial court *in camera*, so that the court may determine whether the motion to quash has a reasonable prospect for success before it discloses the subject matter to the challenging party.").[3]

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ARGUMENT

A stay pending appeal is an "extraordinary request." *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 661 (9th Cir. 2021). It "is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (citation omitted). In reviewing a stay request, the Court considers: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *CNA II*, 2026 WL

[3] In any event, if this Court deems modification or clarification of that particular provision of the TRO, it would in no way undermine the provisions that prohibit Defendants from continuing to threaten election workers and officials.

3268397, at *5 (citations omitted). "The burden of demonstrating that these factors weigh[] in favor of a stay [lies] with the proponent[,]" and irreparable injury and likelihood of success "'are the most critical' factors." *Mi Familia Vota v. Fontes,* 111 F.4th 976, 981 (9th Cir. 2024) (quoting *Nken*, 556 U.S. at 433-34). All four factors weigh heavily against a stay.[4]

I. Defendants Have Not Established Irreparable Injury

"An applicant for a stay pending appeal must show that a stay is necessary to avoid *likely* irreparable injury to the applicant while the appeal is pending." *Al Otro Lado v. Wolf*, 952 F.3d 999, 1007 (9th Cir. 2020) (emphasis added) (citing *Nken*, 556 U.S. at 434 (noting "possibility of irreparable injury" is insufficient)). Where this threshold showing is not made, "a stay may not issue," regardless of the other stay factors. *Doe #1 v. Trump*, 957 F.3d 1050, 1058 (9th Cir. 2020); *accord CNA II*, 2026 WL 3268397, at *6. "The government cannot meet this burden by submitting conclusory factual assertions and speculative arguments that are unsupported in the record." *Doe #1*, 957 F.3d at 1059-60.

Defendants have not shown how they will be harmed, let alone irreparably harmed, by a temporary two-week pause on their threats to criminally prosecute

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[4] Because an administrative stay "is only intended to preserve the status quo until the substantive motion for a stay pending appeal can be considered on the merits," *Doe #1 v. Trump*, 944 F.3d 1222, 1223 (9th Cir. 2019), Defendants' motion for an administrative stay should be denied as moot. *CNA II*, 2026 WL 3268397, at *1.

election officials and workers who process and tabulate the ballots of lawfully registered voters who appear on Defendants' lists of purported noncitizens. While Defendants claim harm to an interest in preventing noncitizens from voting, the Ninth Circuit recently rejected these same arguments in *California III*, 2026 WL 3268272 (9th Cir. Oct. 30, 2026) (per curiam), based on the district court's findings in that case that "the United States's process in creating the October List was not credible, and thus the United States's assertion that individuals on the October List are 'highly likely to be noncitizens' is also not credible." *Id.* at *6. The record in this case involves the same lists and the same processes by which the lists were created, and likewise demonstrates that Defendants' lists of alleged noncitizens were compiled from questionable sources using unreliable methodologies and are riddled with errors. *See* Dkt. 19-6 [App. 529-559]; Dkt. 24 [App. 811-816]. Indeed, Defendants themselves have acknowledged elsewhere that their lists of purported noncitizens in fact include U.S. citizens. *See United States v. Amore,* No. 25-CV-639 (D.R.I. Mar. 26, 2026), Dkt. 47 (Hr'g Tr. at 51-53); *Common Cause v. U.S. Dep't of Just*., No. CV 26-1352 (SLS), 2026 WL 3033772, at *8 (D.D.C. Oct. 9, 2026). As the Ninth Circuit explained in *California III*, the district court's finding that the federal government's lists are not credible, "along with California's established procedures for ensuring voter eligibility, substantially weaken the

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United States's claim that it is likely to suffer irreparable harm from ballots being cast by noncitizens." 2026 WL 3268272, at *6.

Defendants also argue that the TRO unduly encroaches on the Executive's prosecutorial authority, in violation of the separation of powers, and will compromise their ability to investigate and prosecute election crimes. Mot. at 26-27. As an initial matter, this Court recently rejected this very argument, reaffirming that "an institutional injury by erosion of the separation of powers" is "not irreparable." *CNA II*, 2026 WL 3268397, at *6 (quoting *Washington v. Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017) (per curiam) (internal quotation marks omitted). Moreover, Defendants' arguments rest entirely on a gross mischaracterization of the District Court's actual injunction. *Supra* Background Section 4. The order does *not* preclude the federal government from conducting bona fide, lawful investigations or prosecutions of voter fraud consistent with applicable law. Rather, the order only temporarily enjoins Defendants—for a short two-week period during the administration of an ongoing election—from continuing to threaten, intimidate, and coerce state and local election workers, including by threatening them with criminal prosecution if they process and tabulate ballots cast by lawfully registered voters in accordance with the election procedures established by Congress and state law. Dkt. 26 at 5-6 [Add. 5-6]. On its face, the TRO in no way constrains the federal government's lawful exercise of its prosecutorial authority to

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investigate incidents of ineligible voting, and the government has not met its burden to show otherwise. *See CNA II*, 2026 WL 3268397, at *6 (denying stay where "Federal Defendants do not point to evidence explaining that field operations and interviews would be impracticable or impossible to conduct under the preliminary injunction's constraints").[5] Moreover, for the reasons explained *infra*, such an injunction does not interfere with legitimate law enforcement activities because it is not and cannot be a crime under 18 U.S.C. §2 for election officials and workers to process and tabulate ballots cast by lawfully registered voters in accordance with election procedures mandated by federal and state law.

Further undermining Defendants' claim of harm is the fact that Defendants' insistence on threatening election officials and workers with criminal investigation and prosecution during an ongoing election "runs counter to the [federal government's] long-term policy of *avoiding* visible election-related enforcement activities while voting is ongoing." *CNA II*, 2026 WL 3268397, at *6 (emphasis added) (fact that DHS surge "weeks, now days, away from Election Day" ran counter to this policy undermined government's claim of harm); *see* Dkt. 19-5, Ex. A [App. 155-451]. For many years, DOJ policy has directed that "overt criminal

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[5] In *CNA II*, the Court found that the Federal Defendants' submitted declarations containing statements that HSI agents "'may be deterred from performing their law enforcement functions'" were too speculative to demonstrate irreparable harm. 2026 WL 3268397, at *6. Here, Defendants do not even attempt to meet their burden to demonstrate irreparable harm, submitting no evidence whatsoever.

investigative measures should not ordinarily be taken in matters involving alleged fraud in the manner in which votes were cast or counted until the election in question has been concluded, its results certified, and all recounts and election contests concluded." Dkt. 19-5 ¶17 [App. 147]. The DOJ's noninterference policy also flatly prohibits prosecutors from timing "any action, including investigative steps, criminal charges, or statements, for the purpose of affecting any election." *Id.* ¶19 [App. 150] (quoting Justice Manual §9-85.500).

This policy of non-interference is rooted in DOJ's understanding of the fundamental principle that "the States – not the federal government – are responsible for administering elections, determining the validity of votes, and tabulating the results." Dkt. 19-5 ¶22 [App. 152] (quoting Justice Manual §9-85.300); *see California III*, 2026 3268272, at *6. More specifically, this non-interference policy acknowledges that "[i]t is the states that have primary authority to ensure that only qualified individuals register and vote," Dkt. 19-5, Ex. A at 8 [App. 175], while DOJ's role "is limited to investigating and prosecuting violations of federal election laws and deterring criminal conduct," Dkt. 19-5 ¶22 [App. 152] (quoting Justice Manual § 9-85.000). This policy—which has been reaffirmed by the Attorney General in every presidential election year since 2008—is meant to prevent the "risk of chilling legitimate voting" and of "interjecting the investigation itself" into the election. *Id.* ¶¶17, 18, 23 [App. 147-49, 152].

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Defendants' threats of criminal prosecution and DOJ's issuance of criminal subpoenas to state and local election officials in the middle on ongoing election are an unprecedented and unexplained inversion of DOJ's own longstanding policy. *See Washington v. Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017) (denying stay where district court's order "merely returned the nation temporarily to the position it has occupied for many previous years"); *see also Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006).

Moreover, while the order does not enjoin the federal government's law enforcement activities, it bears emphasis that "[w]hile the executive has discretion over prosecutorial decisions, it has no discretion to violate the constitutional rights of individuals," including the right to vote. *Smith v. Meese*, 821 F.2d 1484, 1491-92 (11th Cir. 1987) (holding separation of powers doctrine did not bar federal court review of investigatory and prosecutorial decisions of United States Attorney General and United States attorneys that allegedly deprived black voters of constitutional right to vote and associate freely); *see Olagues v. Russoniello*, 797 F.2d 1511, 1519 (9th Cir. 1986) (en banc), *vacated as moot*, 484 U.S. 806 (1987) (explaining that section 11(b) of the VRA "unquestionably" applied to "unwarranted interference by prosecutorial officials"); *see infra* at Section II.C. The Constitution "imposes on all three branches a duty to uphold and support the Constitution, and when the other branches of government fail in that duty, the

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judicial branch has the power and the obligation to redress the violation." *Smith*, 821 F.2d at 1493 (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 165-66). Thus, "[i]n various contexts, the federal courts have been willing to intervene where prosecutorial decisions by the executive branch encroach on constitutional rights of individuals." *Id.* at 1492 (citing cases). For the reasons explained above, even if the District Court's order were construed to implicate in some way the Federal Executive's prosecutorial discretion, the extraordinary facts of this case involving the Federal Executive's unprecedented campaign to interfere with the States' administration of the 2026 election would justify "federal court intervention in the prosecutorial and investigative process." *Id.* at 1493.

Because Defendants fail to establish irreparable harm, the stay must be denied. *See CNA II*, 2026 WL 3268397, at *6. "When a party fails to demonstrate irreparable harm, the *Nken* analysis can 'conclude.'" *CNA II*, 2026 WL 3268397, at *6.

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II. Defendants Are Unlikely to Succeed on the Merits of Their Appeal

Defendants are also unlikely to succeed on the merits of their appeal.

A. This Court Lacks Jurisdiction Over the Non-Appealable TRO

"[A] TRO is not an appealable order" unless it "has the same effect as a preliminary injunction." *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 762 (9th Cir. 2018) (citations omitted). Contrary to Defendants' assertion, which relies

on a single Tenth Circuit precedent, Mot. at 11-12, a TRO lasting two or three days longer than 14 days is not automatically treated as a preliminary injunction. Rather, whether a TRO is appealable "primarily [depends] on two factors: (1) whether there was a 'full adversary hearing' in the district court; and (2) whether 'in the absence of review, the appellants would be effectively foreclosed from pursuing further interlocutory relief.'" *California III*, 2026 WL 3268272, at *2 (quoting *Religious Tech. Ctr., Church of Scientology Int'l, Inc. v. Scott*, 869 F.2d 1306, 1308 (9th Cir. 1989)). It is also relevant "whether 'the denial of the TRO effectively decided the merits of the case' and rendered plaintiff['s] claims moot." *Id.* (alteration in original) (quoting *Babaria v. Blinken*, 87 F.4th 963, 976 (9th Cir. 2023)). All three factors weigh against finding jurisdiction.

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First, the TRO was not contested in the District Court, despite notice to Defendants. Dkt. 26 at 1 [Add. 1]. This "leav[es] [this Court] with an incomplete record." *Babaria*, 87 F. 4th at 976. Although Defendants acknowledged that they could move to dissolve the TRO, *see* Dkt. 30, they instead chose to appeal without putting their arguments or evidence before the District Court. "[W]ithout full briefing or a hearing," appellate review is not appropriate at this stage. *We the Patriots USA, Inc. v. Ventura Unified Sch. Dist.*, No. 25-5239, 2026 WL 1182210, at *1 (9th Cir. Apr. 30, 2026). They *then* filed a motion in the District Court, which is set for adversary hearing tomorrow morning.

Second, the TRO does not foreclose interlocutory review, nor is it "'tantamount to a denial of a preliminary injunction.'" *California III*, 2026 WL 3268272, at *2 (quoting *Scott*, 869 F.2d at 1308). The District Court has scheduled a hearing on Defendants' motion to stay for Monday, November 2 at 11:00 a.m., Dkt. 35; a preliminary injunction hearing is scheduled just twelve days from now on November 13 (in advance of the expiration of the Order); and the TRO will expire by its terms on November 16. Dkt. 26 at 7-8 [Add. 7-8]. If Plaintiffs prevail at the preliminary injunction hearing, Defendants may seek interlocutory review at that time. This case is, therefore, unlike those cases where the district court entered injunctions lasting a month or longer. *Cf. E. Bay Sanctuary Covenant*, 932 F.3d at 763 (TRO to remain in effect for 30 days).

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Further, the TRO is narrowly tailored to halt Defendants' threats, which the District Court found "likely to have the effect of interfering with election administration and disenfranchising lawful voters." Dkt. 26 at 2 [Add. 2]. It enjoins Defendants from coercing Plaintiffs to rely on lists that this Court has acknowledged are unreliable. *California III*, 2026 WL 3268272, at *6. As such, compliance with the TRO will not inflict "serious, perhaps irreparable consequence[s]" on defendants that can be "effectually challenged only by immediate appeal." *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84 (1981) (quotations omitted). Nor does the TRO require Defendants to "disclose" grand jury material

within the meaning of Federal Rule of Criminal Procedure 6(e). *Cf.* Mot. at 14. The TRO requires Defendants to inform the District Court, not Plaintiffs, of pending search warrants, subpoenas, and demands, Dkt. 26 at 7 [Add. 7], Defendants may provide such information to the District Court in camera. In camera review of grand jury materials is a routine function of district courts and does not constitute a disclosure; if it did, district courts could not rule on Rule 6(e) disputes without creating another disclosure. *See U.S. Indus., Inc. v. U.S. Dist. Ct. for S. Dist. of Cal., Cent. Div.*, 345 F.2d 18, 23 (9th Cir. 1965) (Ninth Circuit conducted in camera review to determine whether disclosure in civil case was appropriate); *In re Grand Jury Proc.*, 867 F.2d 539, 540 (9th Cir. 1989) (joining other circuits in condoning practice of in camera review in lieu of disclosure). *Kalbers v. U.S. Department of Justice* is, therefore, inapposite. 166 F.4th 783 (9th Cir. 2026).

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Third and finally, the TRO does not "moot in substantial part" the merits of the case. *California III*, 2026 WL 3268272, at *2. Plaintiffs seek not just a two-week reprieve from Defendants' threatening actions, but declaratory and permanent injunctive relief, including a declaration that Defendants acted unlawfully "by adopting and implementing a policy of threatening election workers with criminal prosecution for processing and counting ballots in accordance with federal and state law," and a declaration that "state and local government employees performing work of distributing, processing, or tabulating ballots or otherwise

administering the 2026 midterm election in the manner required by their state law do not violate federal criminal law by performing such work." Dkt. 1 ¶¶173-174 [Add. 886]. The TRO provides urgent, necessary relief to prevent irreparable harm to plaintiffs, but falls far short of ending the case.

Defendants also fail to establish that the District Court's TRO was clearly erroneous, as discussed *infra*. Other factors for mandamus review "are irrelevant if the district court's conclusions were legally correct." *Cordoza v. Pac. States Steel Corp.*, 320 F.3d 989, 998 (9th Cir. 2003). Therefore, there is no basis for mandamus review.

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B. The District Court Correctly Determined that Defendants' Conduct Likely Exceeds Their Authority Under the Elections Clause and Violates the Tenth Amendment

As the District Court correctly concluded, Defendants' threats to state and local election workers of criminal prosecution unless they cease processing and counting ballots in compliance with state and federal elections law during an ongoing election, , violate the Tenth Amendment and fundamental federalism principles, and exceed the Executive Branch's constitutional authority under the Elections Clause. *California III*, 2026 WL 3268272, at *3-5; *United States v. California*, __ F.4th __, No. 26-12025, 2026 WL 3212945 (9th Cir. Oct. 28, 2026), at *9-11 (Bennett, J., concurring) (hereinafter "*California I*"); *California II*, 2026 WL 3252428, at *8. Under the Tenth Amendment, States retain all "powers not

delegated to the United States by the Constitution, nor prohibited by it to the States." U.S. Const. 10th amend. Those powers that the Tenth Amendment reserves to the States include plenary authority over the structure of their governments and control of their officers (except as modified by Congress as to federal elections pursuant to the Elections Clause). *See Gregory v. Ashcroft*, 501 U.S. 452, 460, 462 (1991); *Shelby County v. Holder*, 570 U.S. 529, 543 (2013).[6]

The Elections Clause of the U.S. Constitution "expressly dictates which sovereign has the authority to prescribe the manner by which Congressional elections are conducted." *California III*, slip op. at 9; *California I*, 2026 WL 3212945 at *9 (Bennett, J., concurring). It "gives States the primary role in administering federal elections," *California II*, 2026 WL 3252428, at *8, providing that:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations….

U.S. Const. art. I, §4, cl. 1. The Clause covers regulations "relat[ing] to ... registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns." *Moore v. Harper*, 600 U.S. 1, 29

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[6] The Constitution grants "the States to keep for themselves … the power to regulate [state] elections." *Sugarman v. Dougall*, 413 U.S. 634, 647 (1973).

(2023) (Roberts, C.J.) (quoting *Smiley v. Holm*, 285 U.S. 355, 361 (1932) (Hughes, C.J.)).

The Clause thus "invests the States with responsibility for the mechanics of congressional elections," unless Congress has acted to preempt state legislative choices. *Foster v. Love*, 522 U.S. 67, 69 (1997); *see also Storer v. Brown*, 415 U.S. 724, 730 (1974). And as Judge Bennett recently explained, a Congressional enactment "only displaces state election law in 'so far as it is exercised, and no farther.'" *California I*, 2026 WL 3212945, at *9 (quoting *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 9 (2013)); *accord California III*, 2026 WL 3268272, at *4.

Accordingly, unless Congress has exercised its Elections Clause authority to displace state election law, States have the "authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns." *Roudebush v. Hartke*, 405 U.S. 15, 24 (1972); *see also Inter Tribal Council*, 570 U.S. at 9 (States retain "responsibility for the mechanics of congressional elections") (quotations omitted).

In contrast to the States and to Congress, Executive Branch has "no direct role" under the Constitution. *League of United Latin Am. Citizens v. Executive*

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Office of the President, 818 F.Supp.3d 34, 59 (D.D.C. 2026) ("*LULAC*"). And as relevant here, Congress has not exercised its authority under the Elections Clause in a manner that displaces state elections law.[7] Nonetheless, Defendants have sought to displace state elections law by dictating "the mechanics of congressional elections," *Foster v. Love*, 522 U.S. 67, 69 (1997), and by threatening criminal prosecution to state and local officials who are implementing that law. That runs directly contrary to the Elections Clause's allocation of authority: "[T]o prevent the centralization of election management in the Executive, the Elections Clause

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[7] Congress *has* exercised its Elections Clause authority in a manner that reinforces the States' authority in this realm, in the National Voter Registration Act ("NVRA"), and the Help America Vote Act ("HAVA"). These statutes require accurate voter rolls but leave the mechanics of list maintenance to the States. 52 U.S.C. §§21083(a)(1)(A), (a)(2), 21085 (HAVA); *id*. §§20507(a)(4), (c)-(d), 20509 (NVRA). Though Congress gave the Executive some role in enforcing those statutes by allowing the Executive to challenge whether a State's general list maintenance program satisfies their requirements, *id*. § 20507(a)(4), 20510(a) (NVRA); *id*. §§21083(a)(2)(A)(i), 21111 (HAVA), "Congress did not confer a general auditing power to ... [US]DOJ over state election officials." *United States v. Matthews*, No. 25-cv-3398, 2026 WL 2212877, at *5 (C.D. Ill. July 31, 2026) (citing *West Virginia v. EPA*, 597 U.S. 697, 721-23 (2022)). DOJ has authority to enforce these statutory obligations only through specified procedural mechanisms. *See Common Cause v. U.S. Dep't of Just*., No. 1:26-cv-1352, 2026 WL 3033772, at *25 (D.D.C. Oct. 9, 2026); 52 U.S.C. §§20510(a), 21111.

The Take Care Clause also does not help Defendants. *See* Mot. at 29. The President's duty to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3, is about executing the laws, not about writing them. *Youngstown*, 343 U.S. at 587 ("[T]he President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker"). The Take Care Clause cannot supply election-regulating power the Framers never thought to give the Executive. *LULAC*, 780 F.Supp.3d at 159.

'empowers' only Congress and the 'state governments to enact laws governing the mechanics of federal elections.'" *California I*, 2026 WL 3212945, at *9 (quoting *Gonzalez v. Arizona*, 677 F.3d 383, 391 (9th Cir. 2012) (en banc), *aff'd sub nom. Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013)); *see also United States v. Weber*, 816 F.Supp.3d 1168, 1175 (C.D. Cal. 2026) (noting that Elections Clause "has constitutionally prevented the centralization of election management in the Executive").[8]

Threatening criminal prosecution of local election officials and workers for performing their work in compliance with federal and state law directly interferes with the ability of States to conduct their elections within their constitutional

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[8] Rather than challenging states' list maintenance programs as provided for by Congress, Defendants coercing state and local elections officials and workers to replace their own elections processes with the process demanded by the Executive Branch. As Judge Bennett explained, 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," and so "the legislature's statutory scheme remains as the only method to do so." *California I*, 2026 WL 3212945, at *11 (Bennett, J., concurring). California, for example, has exercised that authority through a detailed scheme of verifying and challenging citizenship eligibility. Registrants must attest to citizenship under penalty of perjury, and officials "shall cancel the registration" on "proof" of ineligibility. Cal. Elec. Code §§2111, 2201(a)(8). Anyone may submit a "list" of suspected noncitizens, but it must be supported by "probable cause." *Id*. §14240(a)(3), (c). Anyone challenging a mail ballot bears the burden of "extraordinary proof, *id*. §§15104-15106, and "any doubt" is resolved "in favor of the challenged voter," Cal. Code Regs. tit. 2, §20879(b). But Defendants are demanding that California officials bypass these procedures mandated by state law and stop counting every ballot Defendants include on a list, under penalty of criminal prosecution.

authority. When Congress has not displaced state elections law, Defendants' attempt to do so "represent[s] an overreach and misuse of those limited constitutional exceptions designed to ensure decentralized election regulation" and "disturb[s] the framework of federalism envisioned and enshrined in our Constitution." *United States v. Oregon*, 828 F.Supp.3d 1092, 1108 (D. Or. 2026); *see also*, *e.g.*, *United States v. Bellows*, 834 F.Supp.3d 113, 126 (D. Me. 2026).

"Just as it is appropriate for an individual, in a proper case, to invoke separation-of-powers or checks-and-balances constraints, so too may a litigant, in a proper case, challenge a law as enacted in contravention of constitutional principles of federalism." *Bond v. United States*, 564 U.S. 211, 223-24 (2011). Defendants' actions, including the policy of intimidation, and actual threats to state and county election workers across the country, violate the principles of federalism protected by the Election Clause and the Tenth Amendment and should be enjoined.

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Peculiarly, Defendants contend that because the Elections Clause does not mention the Executive Branch, it "has no bearing here." Mot. at 24. That helps, not hurts, Plaintiffs' argument: the Clause grants authority to the States except as limited by Congress, and Congress has not imposed relevant limitations. As such, by threatening state and local elections officials and workers that they will be subject to criminal prosecution unless they disregard established processes for

processing ballots and determining voter eligibility, Defendants have intruded on the constitutional authority of States, in violation of the Tenth Amendment and as exceeding Defendants' authority under the Elections Clause. Their actions are therefore ultra vires and exceed any legitimate authority.

In light of this clear violation, Defendants resort to attacking a strawman. No one argues that the Executive Branch lacks authority to enforce federal criminal statutes. Mot. at 25. But the Executive Branch may not threaten state and local officials that they will be prosecuted if they do not disregard procedures established under federal and state law in order to comply with Defendants' demands to exclude ballots of individuals Defendants have non-credibly deemed potentially non-citizens. Dkt. 19-4 Ex. E [App. 135]; Dkt. 19-7 Exs. 20, 21 [App. 685-691]. A criminal statute that prohibits noncitizens from voting (which states also prohibit) is not "a grant of authority for the Executive to restructure state election administration." *California III*, 2026 WL 3268272, at *4 "Nothing in §611, a statute that criminalizes voting by a noncitizen, preempts [states] comprehensive statutory scheme that has been duly enacted under the Elections Clause." *Id.*

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C. The District Court Correctly Determined that Defendants' Conduct Likely Violates Section 11(b) of the Voting Rights Act

The District Court correctly determined that Plaintiffs are likely to succeed on the merits of their claim under Section 11(b) of the Voting Rights Act (VRA),

which broadly prohibits all persons, "whether acting under color of law or otherwise," from acts or attempts to "intimidate, threaten, or coerce any persons for urging or aiding any person to vote or attempt to vote, which includes election workers. 52 U.S.C. §10307(b); *Mich. Welfare Rts. Org. v. Trump*, 600 F.Supp.3d 85, 106 (D.D.C. 2022). That is precisely the type of behavior that Defendants have engaged in here and that the District Court temporarily enjoined. Defendants' arguments seeking to avoid application of that law do not withstand scrutiny.

1. Section 11(b) Provides a Private Right of Action

Defendants' argument that Section 11(b) contains no private right of action runs contrary to the statute's text and purpose as well as the overwhelming weight of authority. Every Circuit Court that has considered a private claim under Section 11(b) claim has accepted that a cause of action is available, and Plaintiffs are aware of no court of appeals decision holding otherwise. *See, e.g., Colo. Mont. Wyo. State Area Conf. of the NAACP v. Smith*, 180 F.4th 1266 (10th Cir. 2026) (reversing judgment for defendants in Section 11(b) suit brought by private plaintiffs); *Democratic Nat'l Comm. v. Republican Nat'l Comm.*, 673 F.3d 192, 204 (3d Cir. 2012) (declining to vacate consent decree based on private enforcement of Section 11(b)); *Bershatsky v. Levin*, 99 F.3d 555 (2d Cir. 1996) (per curiam) (dismissing private voter-intimidation claim for failure to state a claim, not for want of a private right); *Whatley v. City of Vidalia*, 399 F.2d 521 (5th Cir. 1968) (private

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citizens' voter-intimidation claim properly in federal court). The majority of district court decisions that have addressed the question—including those within this Circuit—have likewise held that Section 11(b) creates a private right of action. *See, e.g.*, *Cal. Nurses Ass'n v. Mullin*, No. 26-cv-10680-AMO, 2026 WL 3166149, at *7 (N.D. Cal. Oct. 21, 2026) *stay pending app. denied*, 2026 WL 3268397 (9th Cir. Oct. 30, 2026); *Kennedy v. Meta Platforms, Inc.*, No. 3:24-cv-02869-WHO, 2024 WL 4031486, at *6 (N.D. Cal. Sept. 3, 2024); *Krabach v. King County*, No. 2:22-cv-1252-BJR, 2023 WL 7018431, at *3 (W.D. Wash. Oct. 25, 2023); *AARA v. Clean Elections USA*, 638 F.Supp.3d 1033, 1041 (D. Ariz. 2022) (collecting cases)[9]; *Ariz. Democratic Party v. Ariz. Republican Party*, No. CV-16-03752-PHX-JJT, 2016 WL 8669978, at *4 (D. Ariz. Nov. 4, 2016).[10]

Defendants offer no persuasive reason to depart from this vast body of authority. Nor could they. To determine whether Congress intended to create a private right of action, courts must (1) make the "critical" determination of whether

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[9] The *AARA* court first denied preliminary relief, but later found liability after a hearing and entered a consent injunction to prevent armed voter-intimidation in the vicinity of dropboxes. 2022 WL 17088041, at *1 (D. Ariz. Nov. 1, 2022). After the election, the Ninth Circuit vacated for mootness. See 2023 WL 1097766 (9th Cir. 2023).

[10] *See also, e.g.*, *Nat'l Coal. on Black Civic Participation v. Wohl*, 661 F.Supp.3d 78, 112 (S.D.N.Y. 2023); *Allen v. City of Graham*, No. 1:20-cv-997, 2021 WL 2223772, at *7 (M.D.N.C. June 2, 2021).

the statute in question contains "rights-creating language," and, if so, (2) evaluate whether Congress has "manifest[ed] an intent to create a private remedy." *Alexander v. Sandoval*, 532 U.S. 275, 286, 288-89 (2001). Section 11(b) meets both criteria. By its plain terms, Section 11(b) contains precisely the kind of "rights-creating" language that evidences an implied right of action: no person "shall intimidate, threaten, or coerce ... *any person* for voting or attempting to vote, or ... for urging or aiding *any person* to vote." 52 U.S.C. § 10307(b) (emphasis added); *see Gonzaga University v. Doe*, 536 U.S. 273, 284–85 (2002). That language focuses on the persons protected—voters *and* those who aid them—not merely on "the person regulated."

The VRA also clearly manifests an intent to supply a remedy for private actors. Congress included language throughout the Act to indicate that its provisions are privately enforceable. *See* 52 U.S.C. §10302(a), (c) (providing for certain remedies in actions brought by "the Attorney General *or an aggrieved person* ... under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment") (emphasis added); 52 U.S.C. §10308(f) (conferring district courts jurisdiction over "*a person*" bringing claims pursuant to the VRA, including Section 10 and Section 11(b)) (emphasis added); 52 U.S.C. §10310(e) (providing for attorneys' fees for "the prevailing party, *other than the United States*") (emphasis added).

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The specific references to the Attorney General in Section 12(d) and (e) on which Defendants rely are "certainly no specific exclusion of private actions," but rather are necessary additions to grant "the Attorney General power to bring suit to enforce what might otherwise be viewed as 'private' rights." *Allen v. State Bd. of Elections*, 393 U.S. 554, 555 n.18 (1969); *see also Morse v. Republican Party of Virginia*, 517 U.S. 186, 234-35 (1996) (squarely rejecting that Attorney General enforcement supplants private right of action). Section 11(b) effectuates the Fourteenth and Fifteenth Amendments just the same as other provisions of the Act in which the Supreme Court has found private causes of action. *See United States v. Clark,* 249 F.Supp. 720, 727 (S.D. Ala 1965); *Katzenbach v. Original Knights of Ku Klux Klan,* 250 F. Supp. 330, 353 (E.D. La. 1965); *Morse*, 517 U.S. at 234. It is well-established that federal statutes often rest on an "aggregate of powers" rather than a "single enumerated power." *Legal Tender Cases*, 12 Wall. 457, 535 (1871); *United States v. Park*, 938 F.3d 354, 363 (D.C. Cir. 2019) (collecting cases). Defendants' reliance on two out-of-circuit district court decisions, *Andrews v. D'Souza*, 696 F. Supp. 3d 1332, 1351 (N.D. Ga. 2023) and *Gardner v. Jessup*, 2025 WL 4743403, at *6 (S.D. Ga. June 26, 2025), *vacated on other grounds*, 2026 WL 3089236 (S.D. Ga. June 29, 2026) (relying entirely on *Andrews*), is insufficient to overcome the Act's text, consensus across the Circuits and the majority of district courts, and Supreme Court precedents.

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Even if this Court were to find that Section 11(b) does not permit private claims, a stay denial would still be required because Plaintiffs are also likely to succeed on their claims under the Administrative Procedure Act ("APA"), which provides that a court must "hold unlawful and set aside agency action" that is "not in accordance with law," 5 U.S.C. §706(2)(A), is "contrary to constitutional right, power, privilege, or immunity," *id.* §706(2)(B), or is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," *id.* §706(2)(C).[11] For all the reasons that Defendants' conduct violates Section 11(b) of the VRA (52 U.S.C. §10307(b)) and exceeds their authority under the Elections Clause, Defendants' conduct is also contrary to law and constitutional authority in violation of the APA and must be set aside.[12]

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[11] Defendants' decisions to threaten, intimidate, and coerce state and local elections workers were made at the highest level of DOJ and DHS. This policy of targeting state and local election workers with intimidation, coercion, and threats of criminal prosecution, as well as the issuance of specific threat letters and criminal subpoenas to election workers pursuant to that policy, constitute final agency action subject to APA review, because it (1) "mark[s] the consummation of the agency's decisionmaking process" and (2) determines "rights or obligations" or if "legal consequences will flow" from it. *Bennett v. Spear,* 520 U.S. 154, 178 (1997) (internal quotations omitted); *see S.F. Herring Ass'n v. DOI*, 946 F.3d 564, 577-78 (9th Cir. 2019).

[12] Defendants' conduct may also be set aside because it is arbitrary and capricious, for all the reasons stated in Plaintiffs' memorandum in support of the TRO. On appeal from an injunction, this Court "may 'affirm the district court on any ground supported by the record.'" *Sierra Club v. Trump*, 929 F.3d 670, 688 n.14 (9th Cir. 2019) (quoting *Sony Computer Entm't Inc. v. Connectix Corp.*, 203 F.3d 596, 608 (9th Cir. 2000) (internal citations omitted) (denying stay of an injunction).

Likewise, even if this Court were to find that Section 11(b) does not permit private claims, Plaintiffs' claims are proper based on the inherent "power of federal courts of equity to enjoin … violations of federal law by federal officials," as there is no manifest Congressional intent to foreclose what would be judicially administrable relief. *Armstrong v. Exceptional Child Ctr., Inc*., 575 U.S. 320, 327-28 (2015). It is already well established that both private parties and the Attorney General are empowered to sue under the Act, 52 U.S.C. §10302, meaning equitable relief would not displace a "carefully crafted and intricate remedial scheme" enabling affected parties to present violations to a specified executive agency with enforcement authority. *See Seminole Tribe of Fla. v. Fla*., 517 U.S. 44, 74 (1996). And, as detailed above, the text provides a judicially administrable prohibition on voter intimidation. Thus, Plaintiffs have an equitable action under *Armstrong*.

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2. Section 11(b)'s Prohibitions Apply Equally to Federal Agents as to All Other Persons

Next, Defendants wrongly contend that the VRA does not apply to federal officials and that, even if it does, it can never apply to the valid exercise of prosecutorial authority. If accepted, these two concocted extra-textual "exceptions" to Section 11(b) would amount to a sweeping grant of immunity for federal law enforcement—under the pretext of prosecutorial discretion—to engage in the very voter intimidation that Congress outlawed.

The plain text of Section 11(b) is fatal to Defendants' argument that federal officials enjoy wholesale immunity from its prohibitions. "Because the plain text of the Voting Rights Act prohibits any person, 'whether acting under color of law or otherwise' from intimidating someone urging or aiding any person to vote or attempting to vote, 52 U.S.C. §50307(b), ... there is no readily apparent basis to limit the reach of the statute." *CNA I*, 2026 WL 3166149, at *8 (applying VRA to federal law enforcement intimidation).

Nor is there any basis to textually carve out actions by federal prosecutors from the reach of the VRA, which is to be given "the broadest possible scope." *Colo. Mont. Wy. State Area Conf. of the NAACP v. Smith*, 180 F.4th 1266, 1281 (10th Cir. 2026). By its explicit terms, the law applies to those "acting under color of law," which includes federal government officials. *Accord* 42 U.S.C. §1983. Section 11(b)'s use of "under color of law," without reference to "under color of *state* law," as in 42 U.S.C. §1983, further demonstrates Congress' intent that it apply to federal prosecutors because "he who acts under 'color' of law may be a federal officer or a state officer. He may act under 'color' of federal law or of state law." *Screws v. United States*, 325 U.S. 91, 108 (1945); *see also United States v. Otherson*, 637 F.2d

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1276, 1278 (9th Cir. 1980) (relying on *Screws* to apply 18 U.S.C. §242 to U.S. Border Patrol).[13]

Indeed, when Congress enacted Section 11(b), voter intimidation case law enjoining harassing policing actions made clear that "acts otherwise entirely within the law may violate [voter intimidation laws] if they have the proscribed effect" of intimidating voters. *United States v. McLeod*, 385 F.2d 734, 740 (5th Cir. 1967) (applying section 131(b), Section 11(b)'s predecessor). It is "no excuse or defense" for Defendants to invoke abstract legal authority. *See United States v. Bruce*, 353 F.2d 474, 476-77 (5th Cir. 1965) (invocation of trespass law for purpose of intimidation no shield against Section 131(b)).[14]

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But specifically in the voter intimidation context, courts have repeatedly recognized that judicial intervention is appropriate when government tactics chill and impede protected voting rights, particularly where, as here, the threats of prosecution are baseless. For example, during the Civil Rights Era, courts enjoined harassing investigations and arrests that intimidated voters. *See McLeod*, 385 F.2d at

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[13] That the Act provides the Attorney General with enforcement authority, Mot. at 20, says nothing about its applicability to the federal government, in light of the private right of action it provides.

[14] Of course, Plaintiffs here are not challenging any duly brought prosecution. They are challenging only threats of baseless future prosecution, and the TRO only enjoins such threats. *Cf. Juluke v. Hodel*, 811 F.2d 1553, 1557 (D.C. Cir. 1987) ("When the civil action does not seek to enjoin an ongoing prosecution and where the movants are not being prosecuted, an injunction may issue.").

740, 747–48 ("Harassment in the form of baseless arrests and prosecutions is one of the most effective means of putting a halt to a voter registration drive" and "can be stopped only by a federal (remedy) as broad as the evil itself"); *United States v. Wood*, 295 F.2d 772, 784–85 (5th Cir. 1961) (reversing district court's refusal to grant a restraining order against state officials whose continued prosecution of voter registration worker would intimidate voters); *Whatley*, 399 F.2d at 526 (baseless arrests and prosecutions covered by Section 11(b)); *Clark*, 249 F.Supp. at 728 ("[T]his Court is not blind to the effect of baseless arrests, unjustified prosecutions, unwarranted and illegal injunctions, and any other acts or conduct .... The inevitable effect of such acts and conduct is to severely discourage, intimidate, threaten and coerce .... This is precisely the type of conduct proscribed by . [Section 131(b)]."); *see also* Am. Br. of the United States on the Constitutionality and Interpretation of Section 11(b) of the Voting Rights Act, *Fair Fight, Inc. v. True the Vote, Inc*., No. 20-302, ECF 198-1, at 19 n.9 (pdf page 28) (N.D. Ga. 2023) ("Section 11(b) was designed to provide a remedy against government officials and others who weaponized state law to intimidate and coerce voters with conduct ranging from

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baseless arrests and prosecutions to abuse of voter registration laws, challenges, and purges.").[15]

In *Olagues v. Russoniello*, a now-vacated en banc Ninth Circuit decision (although applying an incorrect section 11(b) standard) explained that Section 11(b) "unquestionably" applied to "unwarranted interference by prosecutorial officials." 797 F.2d 1511, 1519 (9th Cir. 1986) (en banc), *vacated as moot*, 484 U.S. 806 (1987); *accord Smith v. Meese*, 821 F.2d 1484, 1489–91 (11th Cir. 1987) (holding justiciable a challenge to DOJ policy of investigating Black electoral activity). And earlier this year, a district court enjoined the Texas Attorney General's baseless investigation of plaintiff for violating Section 11(b). *Jolt Initiative, Inc. v. Paxton*, 821 F.Supp.3d 706, 711, 727 (W.D. Tex. 2026) ("Defendant has not convinced the Court that his actions are legitimate attempts to enforce election law. Therefore, the Court finds that Defendant's actions sufficiently constitute intimidation under § 11(b)."). *See also CNA I*, 2026 WL 3166149, at *8 (rejecting argument that exercise of federal investigative authority is immunized from 11(b) claim). Put simply,

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[15] The United States has in the past also recognized that the very conduct that has prompted its baseless threats of prosecution (the submission of its fatally flawed lists of potentially ineligible voters) can itself be actionable under Section 11(b). Amicus Brief for the United States, *Fair Fight, Inc. v. Engelbrecht*, No. 24-10372, ECF 27, at 12-13 (pdf pages 18-19) (11th Cir. 2024) ("submitting mass voter challenges with the knowledge that some voters are in fact eligible, or with reckless disregard as to their eligibility, can constitute intimidation, threats, or coercion under Section 11(b).").

"[c]ommunicating the prospect of adverse legal consequences, including arrest or prosecution, may rise to the level of an unlawful threat or intimidation." *Nat'l Coal. on Black Civic Participation v. Wohl* ("*NCBCP I*"), 498 F.Supp.3d 457, 481 (S.D.N.Y. 2020). *See also* Statement of Interest of the United States of America, *NCBCP I*, No. 20-cv-8668, ECF 235, at 4-7 (pdf pages 9-12) (S.D.N.Y. 2022) (arguing that threats of legal consequences qualify as unlawful intimidation).

That is precisely the case here. Contrary to Defendants' straw man argument, Plaintiffs do not contend that Section 11(b) "reach[es] every action that incidentally or inadvertently discourages someone from lawfully 'urging or aiding' another person to vote." Mot. at 20. They contend only what Section 11(b)'s plain text and six decades of precedent have long established: that whether prosecutorial conduct constitutes unlawful intimidation is, as in every 11(b) case, a highly context-specific inquiry that turns on "all of the surrounding facts." *McLeod*, 385 F.2d at 744. And where, as here, Defendants are actively engaged in a highly publicized campaign to threaten election workers with baseless prosecutions if they do not yield to their last-minute demands to disenfranchise voters on their admittedly flawed "lists," that conduct falls squarely within what Congress proscribed.[16]

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[16] Similarly, Defendants' mischaracterization of the TRO as somehow broadly prohibiting the government from investigating potential illegal voting or insulating election officials from criminal liability, Mot. at 22-23, ignores the order's focus on the specific factual context of the government's threats and the specific terms of the District Court's order.

3. The Record Amply Demonstrates a Section 11(b) Violation

Finally, the district court correctly held that "the record shows Defendants intimidated, threatened, or coerced election workers" in violation of 11(b). ECF 26 at 4 (citing ECF 19-3 ¶¶14, 19-7 Ex. 13, 19-8 Exs. 31, 32, 38, 41) [Add. 4]. Defendants' principal response, that their letters are mere statements of federal law, is a striking misrepresentation of what those letters say and altogether elides the broader relevant circumstances of Defendants' conduct.

Conduct violates Section 11(b) if "a reasonable recipient, familiar with the context of the message, would interpret [it] as a threat of injury"—including the "nonviolent" injury of legal repercussions—"intended to deter individuals from" aiding others in voting. *Nat'l Coal. on Black Civic Participation v. Wohl* ("*NCBCP II*"), 512 F. Supp. 3d 500, 509 (S.D.N.Y. 2021); *see also Cal. Nurses Ass'n*, 2026 WL 3166149, at *7 (N.D. Cal. Oct. 21, 2026) ("Unlawful intimidation includes '[a]ctions or communications that inspire fear of ... legal repercussions[.]'") (citation omitted); *cf. Clark*, 249 F. Supp. at 728 ("The success or failure of intimidation, threats or coercion, is immaterial, since 'attempts' are equally proscribed.").

The record amply supports the district court's finding that reasonable election workers would understand Defendants' threats of prosecution as coercing them into not assisting voters in casting their ballots. As detailed in the record below, beginning in July 2026, the Assistant Attorney General for Civil Rights warned "every state

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and local election official" that they were "on notice" that they could be "criminally prosecuted for aiding and abetting" voter fraud if they processed and counted ballots cast by lawfully registered voters who the federal government alleged were noncitizens (based on questionable sources and unreliable methodologies). Dkt. 19-7 Exs. 5–7 [App. 589-600]. The Secretary of Homeland Security publicly threatened state and local election officials with "prison time" if they did not cooperate with Defendants' demands to stop counting ballots cast by individuals who Defendants allege *may* be noncitizens (based on a faulty and unreliable process, *supra* at _)." Dkt. 19-7 Exs. 9, 10, 13 [App. 603-08, 625]. After ballots had been mailed and voting was underway, DOJ sent letters demanding that officials stop processing ballots from targeted individuals, warning that officials who "knowingly tabulate ballots cast by individuals identified by federal agencies as noncitizens ... risk becoming aiders and abettors to a federal crime," and telling officials that "[a]dministrative difficulty is not a defense." Dkt. 19-8 Exs. 21, 23 [App. 689-91, 696-98]. On October 23, the threats expanded as uniformed DHS agents hand-delivered letters containing similar language to county officials and employees across California. Dkt. 19-8 Exs. 30, 32 [App. 723-24, 729-30]; Dkt. 29-1 ¶¶7–8 & Ex. A [App. 820, 824-27]; Dkt. 29-5 ¶¶5-6 [App. 843]. And DOJ has acted on these threats, opening a criminal investigation into Los Angeles County election officials and issuing grand jury subpoenas. Dkt. 19-8 Ex. 41 [App. 784-92]. Federal marshals served one official at home after that

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official had already been served at work. Dkt. 19-8 Exs. 38, 41 [App. 768-72, 784-92]; Dkt. 29-1 ¶14 [App. 822].

Such threats are objectively and reasonably understood as acts of intimidation and coercion by high-ranking federal officials to achieve the express stated objective of forcing state and local election workers to halt the processing of ballots, and thereby interfering with voting in this election. Indeed, election officials and workers understood the letters precisely as Defendants intended. Santa Clara's Registrar read them to treat any "failure to comply with the demands of DOJ's letter as 'knowingly' processing the ballots of noncitizens." Dkt. 29-1 ¶13 [App. 821]. San Benito's Clerk-Recorder "understood this visit as an effort to intimidate me." Unsure whether he "might be arrested," he drew up an emergency plan for running his office without him. Dkt. 29-5 ¶¶6–8 [App. 843]. Election workers across the country now fear prosecution simply for doing their jobs. Dkt. 29-1 ¶¶23–24, 29, 34, 38–39; Dkt. 19-1 ¶¶13–14; Dkt. 19-8 Ex. 33; Dkt. 29-2 ¶¶5–7; Dkt. 29-3 ¶¶3–4; Dkt. 29-4 ¶¶9–10 [App. 73–77, 83, 731–40, 834–35, 837, 841, 843].

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Defendants attempt to recast their threats as a mere "remind[er] … that federal law makes it a crime for a noncitizen to vote in a federal election." Mot. at 1. The letters say something very different. Far from merely reciting the elements of aiding and abetting noncitizen voting, they *declare that the recipient now satisfies them*. The October 23 letter enclosed a list of named, registered voters, warned that state

self-attestation procedures do not protect officials "*when they are on actual notice of noncitizen voting*," stated that "[o]nce the United States provides credible evidence that certain ballots may be unlawful to count, election officials may not disregard that information," and added that "[a]dministrative difficulty is not a defense to ... aiding or abetting a federal offense." Dkt. 29-1 Ex. A [App. 824-27]; *see also* Dkt. 19-8 Ex. 32 [App. 729-30] (emphasis in original). The letters purported "to make unmistakably clear the legal implications of continuing to send vote-by-mail ballots to those people on the list or tabulating ballots cast by them," and demanded compliance within 48 hours. *Id.* The message could not be clearer. In Defendants' view, their list supplies the knowledge element, and any election worker who processes those ballots after receiving it commits a federal crime.

That is not an "accurate statement of federal criminal law," Mot. at 1, but a baseless threat dressed up as one. Aiding-and-abetting liability requires intent to facilitate the specific crime. *Rosemond v. United States*, 572 U.S. 65, 76–77 (2014). An election worker who processes a registered voter's ballot in accordance with state law, knowing only that federal agencies have labeled the voter a "suspected," "likely" noncitizen, does not intend to facilitate a noncitizen's vote. Nor does §611 require or authorize election officials to abandon state-law election procedures because the federal government has made an allegation. *California II*, 2026 WL 3252428, at *6; *California I*, 2026 WL 3212945, at *9 (Bennett, J., concurring); *see*

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supra Section II.B. This is particularly so given that what Defendants claim supplies the requisite "notice" of noncitizenship is in fact a list that experts and federal courts have found to be not credible. *Supra* Background Section 1. Defendants attempt to distinguish *McLeod*, *Clark*, and *Wohl* as cases involving "false or baseless threats," Mot. at 11, but this is precisely such a case. And it is no answer that a prosecution on Defendants' baseless theory could never succeed—threats of "baseless arrests [and] unjustified prosecutions" are the core of what the statute forbids. *Clark*, 249 F. Supp. at 728; *McLeod*, 385 F.2d at 740–41.

Defendants have warned state and local election officials and workers that if they process and count ballots cast by lawfully registered voters who appear on Defendants' "lists" of suspected noncitizens, as federal and state election procedures require them to do, they will be subject to criminal prosecution. That is a direct threat aimed squarely at the heart of what the Voting Rights Act protects. The district court did not err, let alone abuse its discretion, in finding that Defendants' conduct likely violates Section 11(b).

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III. All Equitable Factors Weigh Against a Stay

The equities overwhelmingly weigh against staying the District Court's TRO. While Defendants cannot establish any irreparable harm from this temporary TRO during the ongoing election, *supra* Section I, election workers and the voters represented by Plaintiffs will suffer extraordinary and irreparable harm if the TRO

is stayed. As the District Court found and as established by the record, Defendants' attempts to threaten, intimidate, and coerce state and local election workers into halting the processing of ballots cast by lawfully registered voters are causing and will continue to cause catastrophic and irreparable harm to Plaintiffs' members and others in the absence of immediate injunctive relief.[17] The TRO provides essential interim relief so that election workers can continue their crucial work of administering the ongoing election in accordance with federal and state election procedures free from intimidation, threats, or coercion, and lawfully registered voters can exercise their constitutional right to vote without risk of disenfranchisement. *See Am. Encore v. Fontes*, 152 F.4th 1097, 1120 (9th Cir. 2025) ("Vindication of constitutional rights is always in the public interest.")

The public interest, too, strongly weighs against a stay. *See Wolford v. Lopez*, 116 F.4th 959, 976 (9th Cir. 2024) (equities and public interest merge when government is a party). The public has an overwhelming interest in protecting free

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[17] Defendants argue that Plaintiffs are not harmed because they have not yet been prosecuted (Mot. at 28-29), but individuals subject to the threat of prosecution need not wait for criminal charges to be filed before they have standing or are harmed. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158–59 (2014); *Peace Ranch, LLC v. Bonta*, 93 F.4th 482, 487 (9th Cir. 2024) ("For pre-enforcement plaintiffs, the injury is the anticipated enforcement of the challenged statute in the future."). "[T]he value of a sword of Damocles is that it hangs—not that it drops." *First Choice Women's Res. Centers, Inc. v. Davenport*, 608 U.S. 174, 192 (2026) (quoting *Arnett v. Kennedy*, 416 U.S. 134, 231 (1974) (Marshall, J., dissenting)).

and fair elections, which are "the very foundation of our republican form of government." *Reynolds v. Sims*, 377 U.S. 533, 564 n.41 (1967); *see Am. Encore v. Fontes*, 152 F.4th 1097, 1120 (9th Cir. 2025). The public thus has a paramount interest in ensuring that election officials and workers—the hard-working, nonpartisan civil servants responsible for administering our elections—are able to carry out their crucial work in accordance with federal and state election procedures free from threats, intimidation, and coercion. *See California II*, 2026 WL 3252428, at *15. Defendants will suffer no harm by refraining from such conduct for the next two weeks of the ongoing election, consistent with DOJ's own longstanding policy of election non-interference.

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CONCLUSION

For the foregoing reasons, the Court should deny Defendants' motion for a stay pending appeal.

DATED: November 1, 2026 Respectfully submitted,

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