

No. 25-1017

IN THE
Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE,
Petitioner,

v.
MI FAMILIA VOTA, ET AL.,
Respondents.

**On Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit**

**BRIEF OF *AMICI CURIAE*
FORMER U.S. DEPARTMENT OF JUSTICE
VOTING RIGHTS ATTORNEYS IN SUPPORT
OF RESPONDENTS**

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INTEREST OF *AMICI*¹

Amici curiae are attorneys who formerly worked on voting enforcement in the Civil Rights Division of the U.S. Department of Justice (DOJ). Some worked at DOJ decades ago; others worked there until more recently. Some were line attorneys; others were managers. Most worked in CRT's Voting Section, directly enforcing federal voting rights law; others worked alongside them as Appellate Section attorneys. Many *amici* have litigated under the National Voter Registration Act (NVRA) on behalf of the United States, including in cases regarding application of the NVRA's 90-Day Provision, 52 U.S.C. § 20507(c)(2).² *Amici* therefore have a strong interest in ensuring this Court properly interprets the 90-Day Provision.

DOJ, which began as a plaintiff in this suit (albeit raising other claims), has now filed a brief supporting Petitioner's view of the 90-Day Provision, *see* U.S. Br. 31-44, and has sought divided argument to present its position, *see* Mot. of the U.S. for Divided Arg. 1-2. *Amici* file this brief to present to the Court DOJ's

¹ Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici* or their counsel, made any monetary contribution intended to fund its preparation or submission.

² In past filings, DOJ has sometimes referred to 52 U.S.C. § 20507(c)(2) as the Quiet Period Provision. *See, e.g.*, Response in Opposition to Application for a Stay 19-29, *Beals v. Va. Coal. for Immigrant Rts.*, No. 24A407 (U.S. Oct. 29, 2024). The two labels are interchangeable.

longstanding interpretation of the Provision, which the Department has only just abandoned in this case.

SUMMARY OF ARGUMENT

“[T]he longstanding practice of the government—like any other interpretive aid—can inform a court’s determination of what the law is.” *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 386 (2024) (alterations and quotations omitted). This case involves the interpretation of the NVRA’s 90-Day Provision, which (with certain exceptions) prohibits States from starting or continuing within 90 days of a federal election “any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.” 52 U.S.C. § 20507(c)(2)(A). For years, under multiple Administrations, DOJ has taken the position that the 90-Day Provision bars systematic programs designed to remove suspected noncitizens from voter lists.

Arizona’s H.B. 2243 requires monthly database checks in an ongoing attempt to remove suspected noncitizens from its voter lists. Neither Petitioner nor DOJ contests that H.B. 2243 sets out a “program” for removing people from state voting lists, or that this program seeks to remove people “systematically.” *Id.* The only question before the Court is whether noncitizens are “ineligible voters” covered by the Provision. *Id.*; see U.S. Br. 32 (“The dispute here turns on what it means to be an ‘ineligible voter’ for purposes of Section 8.”); Pet. Br. 41 (“Noncitizens are not ‘ineligible voters’ in the NVRA’s scheme.”).

Under DOJ’s historical reading of the NVRA, H.B. 2243 violates the 90-Day Provision as applied to the

90-day period before any federal election. It is to this “longstanding practice of the government” that the Court should look, *Loper Bright*, 603 U.S. at 386, not to the new position DOJ cooked up for this case.

1. The 90-Day Provision forms a layer of protection for all those on state voter lists in the lead-up to federal elections. The NVRA sets out a series of voter-registration and list-maintenance requirements that are collectively designed to add as many eligible voters as possible to the rolls while eliminating those who are or become ineligible. Various provisions ensure that officials check the eligibility of applicants before they are added to the rolls. The General Removal Provision, 52 U.S.C. § 20507(a)(3), then limits the bases on which States can remove “registrants” who were validly added to the rolls. Under the General Removal Provision, only those who later become ineligible on four listed grounds can be removed. The 90-Day Provision provides an additional protection for those on States’ voter lists in the months before federal elections. It prohibits *any* systematic program designed to remove “ineligible voters” from the rolls unless it falls within certain enumerated exceptions. *Id.* § 20507(c)(2). Congress fashioned this Provision to protect eligible voters from last-minute erroneous removals, even if this prophylactic rule might prevent States from removing some potentially ineligible voters until after the election absent individualized evidence of their ineligibility.

2. DOJ has historically taken the position—including before this Court—that the 90-Day Provision sets a 90-day prohibition on systematic programs to remove suspected noncitizens from voting lists. DOJ

has brought several enforcement actions, under multiple Administrations, against States that have implemented such programs in the weeks before federal elections. Time and time again, DOJ has explained that the 90-Day Provision prohibits “*any* program” falling within its ambit, and that noncitizens fall comfortably within the set of “ineligible voters” discussed in the Provision. DOJ has also previously explained that, if the 90-Day Provision only protected “registrants” who were validly added in the first place and later *became* ineligible, then the Provision’s list of exceptions would nearly swallow the rule. Whenever defendants in DOJ’s enforcement actions proffered interpretations like those Petitioner and DOJ raise now, the prior DOJ refuted those unnatural readings of the NVRA. All three appellate courts to reach the issue have agreed with DOJ’s longstanding interpretation.

3. DOJ’s newly minted interpretation of the 90-Day provision does not pass muster. It relies principally on the idea that the phrase “official lists of eligible voters” in the 90-Day Provision must be referring, like the term “registrants” in the General Removal Provision, only to those who *were* eligible when they were originally added to the rolls. DOJ then claims that the 90-Day Provision’s prohibition on systematic attempts to remove “ineligible voters” must refer only to attempts to remove those who *became* ineligible after being validly added to the voter lists. But Congress is presumed to mean different things when it uses different terminology in the same statute. The phrase “official lists of eligible voters” means just what it says: the official list a State keeps of whom it has

deemed eligible to vote. Nothing in that phrase suggests the list cannot include people who were in fact ineligible but were mistakenly added. Indeed, that concern is the very reason why Arizona passed H.B. 2243. Had Congress wished to give the 90-Day Provision the meaning DOJ asserts, it could have referred to removing “ineligible *registrants*” from the official lists, or referred to the “official lists of *registrants*.” It did neither. Moreover, given the 90-Day Provision’s exemptions, DOJ’s reading would make the Provision applicable to only one type of systematic removal program: removals for change of residence. If that were all Congress wished to do, it would have written the Provision to say so, rather than making a far broader prohibition and carving out three exceptions.

The Court should affirm on the second question presented.

ARGUMENT

THE NINTH CIRCUIT’S DECISION COM- PORTS WITH THE UNITED STATES’S HISTOR- ICAL INTERPRETATION OF THE NVRA’S 90- DAY PROVISION

A. The 90-Day Provision Grants Protection To All Those On States’ Voter Lists Once States Have Reviewed Applications And Added Eligible Voters To The Rolls.

The 90-Day Provision is a key piece of the NVRA’s broader “superstructure of federal regulation” of the voter-registration and list-maintenance processes. *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 5 (2013). “The NVRA requires States to provide simplified systems for registering to vote in federal

elections,” and “imposes requirements about just when, and how, States may remove people from the federal voter rolls.” *Young v. Fordice*, 520 U.S. 273, 275-76 (1997) (emphasis omitted). These requirements ensure that even as States work “to protect the integrity of the electoral process” and maintain “accurate and current voter registration rolls,” States still fulfill the statute’s aims of “increas[ing] the number of eligible citizens who register to vote in elections for Federal office” and “enhanc[ing] the participation of eligible citizens as voters in elections for Federal office.” 52 U.S.C. § 20501(b).

In designing the NVRA’s procedures, Congress was “particularly interested in ensuring that election officials continue to make determinations as to applicant’s eligibility, such as citizenship, as are made under current law and practice.” H.R. Rep. No. 103-9, at 8 (1993). The NVRA therefore requires the voter registration forms that States have to provide for registration at DMVs, other state agencies, and by mail to “state[] each eligibility requirement (including citizenship)” and requires applicants to sign, “under penalty of perjury,” an “attestation that the applicant meets such requirements.” 52 U.S.C. §§ 20504(c)(2)(C), 20505(a), 20506(a)(6)(A)(i), 20508(b)(2). It then tells election officials to “ensure that any *eligible* applicant is registered to vote in an election” if the applicant submits a “*valid* voter registration form” 30 days or more before a federal election. *Id.* § 20507(a)(1) (emphases added). The NVRA also creates criminal penalties for anyone who knowingly submits a false voter registration application or knowingly casts a fraudulent ballot. *Id.* § 20511(2).

The General Removal Provision then states that, once eligible applicants are registered, “the name of a registrant may not be removed from the official list of eligible voters except” under certain enumerated circumstances. *Id.* § 20507(a)(3). These include (1) removals “at the request of the registrant”; (2) removals based on “criminal conviction or mental incapacity,” if “State law” provides that such determinations render someone ineligible to vote; and removals pursuant to a “general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of” either (3) “the death of the registrant” or (4) “a change in the residence of the registrant.” *Id.* § 20507(a)(3)-(4). The NVRA sets out various guardrails around how these removals of “registrant[s]” are to be conducted. *See id.* § 20507(c)(1), (d)-(f).

The 90-Day Provision provides an extra layer of protection to those on states’ voter lists in the run-up to federal elections. Subject to the safeguards in Section 7, 52 U.S.C. § 20507, the NVRA generally “permits removals based on individualized information at any time,” *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1346 (11th Cir. 2014). But “Congress decided to be more cautious” about allowing systematic attempts to remove voters. *Id.* Given the procedures that state law and the NVRA itself set out for verifying voters’ eligibility before adding them to the rolls, the vast majority of those on the “official lists of eligible voters” are likely to, in fact, be eligible voters. 52 U.S.C. § 20507(c)(2)(A). Any attempt to systematically sift through voter lists in search of ineligible voters will run a significant risk of ensnaring eligible ones.

This concern reaches its zenith in the few months before federal elections. “Eligible voters removed days or weeks before Election Day will likely not be able to correct the State’s errors in time to vote.” *Arcia*, 772 F.3d at 1346. And significant efforts to remove voters from the rolls leading up to an election run the risk of confusing or scaring voters out of voting even if they are not among those removed. To alleviate these concerns, the 90-Day Provision prohibits systematic removal programs “when the risk of disfranchising” or confusing “eligible voters is the greatest.” *Id.*

To achieve this goal, the 90-Day Provision requires States to “complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.” 52 U.S.C. § 20507(c)(2)(A). The Provision exempts from this prophylactic prohibition removals conducted on three of the four bases also authorized under the General Removal Provision: registrants’ requests, criminal conviction or mental incapacity, or death. *Id.* § 20507(c)(2)(B). Aside from these excepted circumstances, however, *any* program designed “to systematically remove the names of ineligible voters” from voter lists must be completed 90 days before a federal election. *Id.* § 20507(c)(2)(A).

B. DOJ Consistently Has Interpreted The 90-Day Provision As Barring Systematic Removals Based On Suspected Non-Citizenship.

Until its briefing before this Court in this case, DOJ had long held a consistent position on the 90-Day Provision’s scope. Across multiple administrations,

DOJ read the Provision to prohibit programs like Arizona's that use systematic methods to remove suspected noncitizens from the rolls just before federal elections. And lower courts have agreed.

1. DOJ is charged with enforcing the NVRA, including the 90-Day Provision. *See* 52 U.S.C. § 20510(a). As a result, DOJ's Civil Rights Division has filed numerous enforcement actions alleging violations of the 90-Day Provision. Several of these cases involved programs that, like the monthly database check in H.B. 2243, sought to systemically remove suspected noncitizens from the voter rolls:

United States v. Florida: Within 90 days of the 2012 federal primary election, the Florida Secretary of State “implemented ongoing procedures” to systematically check voter registration records against another state database “for purposes of identifying potentially ineligible voters based on lack of citizenship,” and began sending the results to county election officials to remove those voters from the rolls. Complaint ¶ 16, *United States v. Florida*, No. 4:12-cv-00285 (N.D. Fla. June 12, 2012), ECF No. 2. After DOJ notified the Secretary of the potential NVRA violation and the Secretary chose to continue the program, DOJ filed an enforcement action alleging a violation of the 90-Day Provision. *Id.* ¶¶ 21-23, 25.

Ultimately, the state abandoned its program, *United States v. Florida*, 2012 WL 13034013, at *1 (N.D. Fla. Nov. 6, 2012), and the parties agreed to dismiss the case, *see* Joint Stipulation of Dismissal, *Florida*, No. 4:12-cv-00285 (Jan. 10, 2013), ECF No. 54.

United States v. Virginia: Ninety days before the 2024 general election, Virginia implemented a systematic program to remove from the voter rolls anyone who could not verify to the DMV that they were citizens. Complaint ¶¶ 4, 20-23, *United States v. Virginia*, No. 1:24-cv-01807 (E.D. Va. Oct. 11, 2024), ECF No. 1. The program also required officials to compare a “list of individuals who have been identified as non-citizens to the list of existing registered voters and then [required] registrars [to] notify any matches of their pending cancellation unless they affirm their citizenship within 14 days.” *Id.* ¶ 24. At least some of those removed under this program were U.S. citizens. *Id.* ¶¶ 56-59. DOJ filed an enforcement action against Virginia, alleging a violation of the 90-Day Provision. *Id.* ¶¶ 60-62.

The district court granted a preliminary injunction barring continuation of the program. *Va. Coal. for Immigrant Rts. v. Beals*, 2024 WL 4577983, at *1 (E.D. Va. Oct. 25, 2024). The Fourth Circuit denied in relevant part the Commonwealth’s stay motion, finding it unlikely to succeed on the merits. *See Va. Coal. for Immigrant Rts. v. Beals*, 2024 WL 4601052, at *1-2 (4th Cir. Oct. 27, 2024). In the days before the election, this Court stayed the injunction pending appeal without comment. *Beals v. Va. Coal. for Immigrant Rts.*, 2024 WL 4608863 (U.S. Oct. 30, 2024) (mem.). The United States voluntarily dismissed its claim after the change in administration. *See* Notice of Voluntary Dismissal, *Va. Coal. for Immigrant Rts. v. Beals*, No. 1:24-cv-1778 (E.D. Va. Jan. 28, 2025), ECF No. 139. The private plaintiffs in a consolidated action continued litigating the case until, after a change in

administration in Virginia, the parties stipulated to dismissal of the case. Stipulation of Dismissal, *Va. Coal. for Immigrant Rts.*, No. 1:24-cv-1778 (Apr. 20, 2026), ECF No. 253.

United States v. Alabama: Within 84 days of the 2024 general election, Alabama began a process to remove suspected noncitizens from the voter rolls. See Complaint ¶ 4, *United States v. Alabama*, No. 2:24-cv-1329 (N.D. Ala. Sept. 27, 2024), ECF No. 1. The Alabama Secretary of State compared the state’s voter database against two other state databases and then sent form notices to 3,251 registrants who had supposedly been issued alien registration numbers. *Id.* ¶¶ 20-22. The Secretary’s process did not differentiate between those who received alien registration numbers before versus after they registered to vote, and it did not otherwise account for Alabama residents who became naturalized citizens or who were labeled noncitizens on state records due to paperwork errors. *Id.* ¶¶ 41-42, 49-50. Of those who received the letter, 717 Alabamians had their active voting status restored within five weeks, showing the program had *at least* a 22% error rate. *Id.* ¶¶ 55-57. DOJ sued Alabama, alleging a violation of the 90-Day Provision. *Id.* ¶¶ 81-83.

The district court agreed with DOJ and issued a preliminary injunction to last through the 2024 election. *Ala. Coal. for Immigrant Just. v. Allen*, 2024 WL 4510476, at *1 (N.D. Ala. Oct. 16, 2024). Alabama later indicated that it would consider a “different” system for removing suspected noncitizens after the election. Report of the Parties’ Planning Meeting 3, *Alabama*, No. 2:24-cv-1329 (Jan. 17, 2025), ECF No. 63.

Eventually, the United States and the private plaintiffs in a consolidated case voluntarily dismissed their claims. Notice of Voluntary Dismissal, *Alabama*, No. 2:24-cv-1329 (Mar. 14, 2025), ECF Nos. 67, 68.

2. In each of these cases—including in stay briefing filed by the Solicitor General before this Court, *see* Response in Opposition to Application for a Stay 19-29, *Beals v. Va. Coal. for Immigrant Rts.*, No. 24A407 (U.S. Oct. 29, 2024) (“*Beals* Stay Opp.”)—DOJ took the position that systematic programs to remove suspected noncitizens violate the 90-Day Provision to the extent they operate within 90 days of a federal election.

This Court has “previously noted that ‘[r]ead naturally, the word “any” has an expansive meaning, that is, “one or some indiscriminately of whatever kind.”’” *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) (quotation omitted). So the Provision’s “phrase ‘any program’ carries a ‘broad meaning.’” United States’ Motion for Preliminary Injunction 16, *Alabama*, No. 2:24-cv-1329 (Oct. 2, 2024), ECF No. 12 (quoting *Arcia*, 772 F.3d at 1344) (“*Alabama* PI Mot.”); *see* United States’ Brief in Support of Its Motion for Preliminary Injunction 11, *Virginia*, No. 1:24-cv-1807 (Oct. 16, 2024), ECF No. 9-1. The Provision is therefore presumed to apply to “whatever kind” of program otherwise falls within the statutory language; courts should not read in extratextual limitations. *Ali*, 552 U.S. at 219 (quotation omitted).

Systematic removals of noncitizens fall within the Provision’s plain, expansive text. The Provision applies to “any program” if its “purpose . . . is to systematically remove the names of *ineligible voters* from the

official lists of eligible voters.” 52 U.S.C. § 20507(c)(2)(A) (emphasis added). Under every State’s law, “noncitizens are ineligible to vote” in federal elections”; “[a] program to remove noncitizens from the voter rolls is thus a program to remove ‘ineligible voters.’” *Beals* Stay Opp. 24.

Examination of the statute’s exemptions confirms that removal of noncitizens falls within, rather than outside, the Provision’s reach. The 90-Day Provision only exempts from its pre-election prohibition removals based on death, criminal convictions, mental incapacity, or voters’ requests. 52 U.S.C. § 20507(c)(2)(B). “[A] systematic program to remove noncitizens does not fit within any of” these exceptions. *Beals* Stay Opp. 24; *accord* The United States’ Motion for a Temporary Restraining Order 14, *Florida*, No. 4:12-cv-00285 (June 15, 2012), ECF No. 7, 2012 WL 3000293; *Alabama* PI Mot. 16.

In the *Alabama* and *Virginia* cases, the defendants argued for the same interpretation that Petitioner and DOJ proffer now. They asserted that States may remove at any time those who are “categorically ineligible,” because the 90-Day Provision applies only to those who become ineligible after being validly registered. State Defendants’ Motion to Dismiss 23, *Alabama*, No. 2:24-cv-1329 (Oct. 2, 2024), ECF No. 13. But in those cases, DOJ defended the broader reading of the 90-Day Provision as the only permissible interpretation of the statute, pointing out that the defendants’ narrow reading would “[i]nject[] atextual exclusions” into the 90-Day Provision and practically “read the Provision out of existence.” United States’ Response in Opposition to Defendants’

Motion to Dismiss 20, *Alabama*, No. 2:24-cv-1329 (Oct. 9, 2024), ECF No. 26; *see Beals* Stay Opp. 24 (arguing Virginia’s narrow “interpretation would make a hash of the Quiet Period Provision”); *infra* Part C.

3. Courts uniformly have agreed with DOJ’s longstanding prior interpretation of the 90-Day Provision. In a case arising out of the same program at issue in *United States v. Florida*, the Eleventh Circuit held that a program to remove noncitizens from the voter rolls “is barred under the plain meaning of the [90-Day] Provision.” *Arcia*, 772 F.3d at 1344. The Fourth Circuit came to the same conclusion in its decision denying a stay in the *Virginia* case. *See Beals*, 2024 WL 4601052, at *1. Both circuits relied on the same textual and contextual evidence that DOJ had put forward. *See Arcia*, 772 F.3d at 1344-46; *Beals*, 2024 WL 4601052, at *1. And both rejected arguments from the defendants that “Congress only contemplated the removal of people who were once entitled to vote, not the removal of people who never had eligibility (like non-citizens).” *Arcia*, 772 F.3d at 1347; *see Beals*, 2024 WL 4601052, at *1-2. The Ninth Circuit was thus in accord with its sister circuits when it held that Arizona violates the 90-Day Provision “to the extent that H.B. 2243 authorizes systematic cancellation of registrations within 90 days before a federal election,” Pet. App. 47a, adopting the same reading of the Provision that DOJ had long espoused, *see* Pet. App. 42a-44a.³

³ *Bell v. Marinko*, 367 F.3d 588 (6th Cir. 2004), on which Petitioner (Br. 51-52) and DOJ (Br. 31) rely, does not disturb this

C. DOJ's Brand-New Interpretation Badly Misreads the 90-Day Provision.

As DOJ has acknowledged (Br. 32 n.3), it abruptly abandoned its long-held position on the 90-Day Provision after “the change in Administration.” It was mistaken to do so. Adopting DOJ’s new interpretation of the 90-Day Provision would impose on the statute a nonsensical reading of the phrase “ineligible voters,” artificially restrict the rest of the Provision’s plain text, and render most of the Provision superfluous.

1. DOJ acknowledges that the phrase “ineligible voters”—the language describing the set of people protected from systematic removal programs under the 90-Day Provision—naturally includes noncitizens. U.S. Br. 32. But DOJ asks the Court to read “ineligible voters” as “limited to the subset of properly registered voters who *merely become* ineligible due to some disqualifying change (e.g., moving residence).” U.S. Br. 33. As the amount of information DOJ tries to pack into this two-word phrase suggests, DOJ’s reading lacks any connection to the statutory text or its ordinary meaning. See *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 85 (2018) (when term “is not defined in the statute,” “we give the term its ordinary meaning” (quotation omitted)). To let DOJ speak to DOJ: “The ordinary meaning of ‘voter’ is ‘[o]ne who votes,’ and the ordinary meaning of ‘ineligible’ voter

lower-court consensus. In *Bell*, the Sixth Circuit interpreted the General Removal Provision not to “bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place.” 367 F.3d at 591-92. It did not mention, much less address, the 90-Day Provision.

is someone who is ‘[n]ot eligible’ or ‘not qualified’ to vote. That perfectly describes a noncitizen listed on a voter roll.” *Beals* Stay Opp. 25 (citation omitted).

2. The current DOJ nevertheless claims that this convoluted reading of the 90-Day Provision is warranted, based on an equally convoluted chain of reasoning. According to DOJ: (1) the statutory term “registrants” refers to the subset of “applicants” who are eligible to vote when added to the rolls; (2) therefore the 90-Day Provision’s phrase “the official lists of eligible voters’ [is] limited to *properly* registered voters”; and (3) the phrase “ineligible voters” thus must be limited to properly registered voters who later *become* ineligible. U.S. Br. 33. This logic fails at multiple steps.

Amici agree with DOJ that the term “registrants” applies only to those initially eligible when registered—a reading fully consistent with DOJ’s past position. *See Beals* Stay Opp. 27. After all, the NVRA requires States to “ensure that any *eligible* applicant is registered to vote in an election” if they submit a “*valid* registration form.” 52 U.S.C. § 20507(a)(1) (emphases added). “That provides a strong contextual indication that a ‘registrant’ is someone who validly registered.” *Beals* Stay Opp. 27 (emphasis omitted). And as DOJ and Petitioner both note, reading “registrants” to include even ineligible voters who are erroneously placed on the voter list would lead to the implausible conclusion that noncitizens wrongly added to the rolls could never be removed later, as non-citizenship is not one of the exclusive bases for removal of “registrant[s]” authorized by the NVRA’s General Removal Provision, 52 U.S.C. § 20507(a)(3). *See* U.S.

Br. 34-35, 38; Pet. Br. 51. To avoid such a questionable reading of the General Removal Provision, the Sixth Circuit has correctly interpreted that provision as not reaching “the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place.” *Bell*, 367 F.3d at 591-92.

DOJ’s remaining propositions, however, do not follow from this reading of the word “registrants.” DOJ assumes that, because the General Removal Provision discusses removal of registrants from “the official lists of eligible voters,” 52 U.S.C. § 20507(a)(3), the “official lists” must be limited to registrants (*i.e.*, initially eligible applicants), and that that same phrase must be similarly limited in the 90-Day Provision. *See* U.S. Br. 35. But Congress’s use of the term “registrants” already does the work of limiting the General Removal Provision to those initially deemed eligible. And the four categories of removals allowed under that provision all refer to changes that typically would occur after someone is deemed eligible and added to the rolls, further confirming that the General Removal Provision deals with removals of originally eligible registrants. *See* 52 U.S.C. § 20507(a)(3) (referring to registrants’ request to be removed, criminal conviction or determination of mental incapacity, death, and change of residence).

There is no reason, then, to artificially limit the phrase “official lists of eligible voters” to mean the same thing as “official lists of registrants.” After all, “we presume differences in language like this convey differences in meaning.” *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017). It is far more

natural to read the phrase “official lists of eligible voters” to mean exactly what it says: a State’s official record reflecting which voters it has deemed eligible (*i.e.*, entitled) to vote. Despite Congress’s best efforts to ensure that election officials add only eligible applicants to the rolls in the first instance, *see supra* at 6, a State’s official list could always include people who were erroneously added in the first place, rather than only people who later become ineligible. Indeed, the concern that noncitizens could have “erroneously made it onto the voter rolls” is why Arizona passed H.B. 2243 in the first place. Pet. Br. 1.

This factual reality also lays bare the problems with DOJ’s third and final proposition: that the phrase “ineligible voters” means only voters who *become* ineligible after being added to the rolls. As a practical matter, DOJ is simply wrong to assume (Br. 35) that “the ‘ineligible voters’ on” the official lists of eligible voters “must be voters who have become ineligible” after being “properly registered in the first instance.” Ineligible voters could just as easily have made it onto the list by mistake. *E.g.*, Pet. Br. 51 (discussing data error in New Jersey).⁴

More fundamentally, however, nothing in the relevant statutory text or context requires reading the

⁴ Petitioner is wrong to suggest (Br. 51) that a State could not address the discovery of such a data error under the 90-Day Provision. It is doubtful that removals made in response to the discovery of a specific data error, however large, would constitute a systematic program under the 90-Day Provision. *See* 52 U.S.C. § 20507(c)(2)(A). But the State could also reexamine its records for each affected voter individually and remove any voter determined to be ineligible based on individualized evidence.

phrase “ineligible voters” in the 90-Day Provision as a subset of the category of “registrants.”⁵ Unlike the General Removal Provision, the 90-Day Provision does not use the term “registrants.” It instead uses the phrase “ineligible voters.” 52 U.S.C. § 20507(c)(2)(A). When Congress uses different language in the same statute, it is presumed that those “different terms . . . have different meanings.” *Pulsifer v. United States*, 601 U.S. 124, 149 (2024). Under DOJ’s own theory, Congress already used the term “registrants” to refer to people who were deemed eligible when first added to the lists of eligible voters. And Congress used that term often—including in the paragraphs directly before and after the 90-Day Provision. *See, e.g.*, 52 U.S.C. § 20507(a)(3)-(a)(4), (c)(1), (d)-(f). If Congress wanted to limit the 90-Day Provision to those who became ineligible after being added to the voter list, it easily could have written its prohibition as applying to “ineligible *registrants*.” It didn’t. Congress instead prohibited systematic programs to remove all “ineligible *voters*.” *Id.* § 20507(c)(2)(A) (emphasis added).

DOJ’s reading of the 90-Day Provision is also difficult to square with the Provision’s exceptions. “Congress broadly prohibited ‘*any* program’ that seeks to systematically remove the names of ‘ineligible voters,’ but specifically carved out programs to remove voters

⁵ Petitioner instead focuses solely on the word “voter,” relying on definitions of “voter” meaning someone who is eligible and has the right to vote. Pet. Br. 41-42. But “that obviously is not what the word ‘voter’ means in the context of the phrase ‘ineligible voter’; a voter cannot be both ‘eligible’ and ‘ineligible’ at the same time.” *Beals Stay Opp.* 26.

based on the request of the registrant, death, criminal conviction, or mental capacity.” *Beals* Stay Opp. 26; see 52 U.S.C. § 20507(c)(2)(B). The General Removal Provision, in turn, already limits *all* removals of registrants to those same categories plus those who change residence. 52 U.S.C. § 20507(a)(3). So if DOJ were correct that “ineligible voters” must be read as a subset of the “registrants” referred to in the General Removal Provision, then the only effect of the 90-Day Provision would be to prohibit systematic removals within 90 days of federal elections based on change of residence. But if this were what Congress had meant to do, it could have eliminated the entire exceptions subparagraph and simply prohibited systematic programs to remove registrants based on change of residence—“saving dozens of words and three cross-references.” *Beals* Stay Opp. 26. “When a statutory construction thus ‘render[s] an entire subparagraph meaningless,’ this Court has noted, the canon against surplusage applies with special force.” *Pulsifer*, 601 U.S. at 143 (quotation omitted).

DOJ’s only response to this massive superfluity is speculation. It first assumes that, since the exceptions were added to “a previously categorical ban” as part of a “compromise,” the superfluity may have simply been happenstance. U.S. Br. 40. But the changes DOJ refers to occurred between the 102nd and 103rd Congresses, long before the NVRA passed. *See id.* (citing versions of NVRA from different Congresses). Indeed, the versions of the NVRA reported out of committee in both the House and the Senate in 1993 already contained the 90-Day Provision as it was later enacted. *See* H.R. Rep. No. 103-9, at 16 (1993); S. Rep. No. 103-

6, at 32 (1993). Given Congress’s strong preference for “shorter terms[]” and “simple sentences” where possible, Off. of the Leg. Counsel, *Senate Legislative Drafting Manual* § 102, U.S. Senate (Feb. 1997),⁶ it is highly unlikely Congress would have “opted for carve-outs nearly covering the waterfront of proper registrants,” U.S. Br. 40, rather than simply rewriting the Provision when it had plenty of time to do so.

DOJ also speculates that Congress might have chosen the prohibition/exceptions structure so that “if the exceptions to the general-removal ban are ever expanded, systematic programs to remove registrants on the additional grounds would automatically be covered by the 90-day bar.” *Id.* But DOJ pulls this idea out of thin air. There is no indication anyone in Congress thought this way. And if Congress had later sought to expand the exceptions to the General Removal Provision, it could just as easily have amended a simplified 90-Day Provision to cover systematic removals based on change of residence *and* the additional criteria exempted from the General Removal Provision.

3. DOJ’s few remaining objections to reading the 90-Day Provision as written are makeweight.

It would not “be impossible to remove people from the voter rolls based on lack of citizenship *at any time*” just because they cannot be systematically removed under the 90-Day Provision. U.S. Br. 37. Again, un-

⁶ https://law.yale.edu/sites/default/files/documents/pdf/Faculty/SenateOfficeoftheLegislativeCounsel_LegislativeDraftingManual%281997%29.pdf.

like the 90-Day Provision’s limits on removals of “ineligible voters,” the General Removal Provision only places limits on removals of “registrants” (which, in statutory context, means those properly placed on the rolls). So individualized removals can occur whenever warranted.

DOJ’s breathless concern about “a rush of noncitizens” trying to “illegally register shortly before a federal election,” Br. 43, ignores that federal law already requires States to take care to add only “*eligible* applicants” to the rolls. 52 U.S.C. § 20507(a)(1) (emphasis added); *see supra* at 6; *see also* 52 U.S.C. § 21083(a)(5) (Help America Vote Act, setting out additional preregistration eligibility-verification processes for state officials). State law, too, requires screening applicants for eligibility, *see e.g.*, Ariz. Rev. Stat. Ann. § 16-121.01(A)-(B), as Congress knew when it enacted the NVRA.⁷

DOJ also ignores that such actions are amply punished under criminal law. Knowingly and willfully submitting a false voter registration application is a felony offense under the NVRA, even if election officials properly reject the application and the perpetrator is never added to the rolls. *See* 52 U.S.C. § 20511(2)(A). The Voting Rights Act likewise makes

⁷ *E.g.*, H.R. Rep. No. 103-9, at 8; 139 Cong. Rec. 9229 (May 5, 1993) (statement of Rep. Fazio) (“This bill does not pave the way for noncitizens to vote; it does not permit noncitizens to fraudulently register. Again, a State’s actual registration procedures are not changed. There is no automatic registration; applications, along with other eligibility requirements, are still evaluated and then validated, or not, by the State’s election official.”).

it a felony to conspire to submit false voter registrations, or to knowingly or willfully provide certain information “for the purpose of establishing [one’s] eligibility to register or vote.” *Id.* § 10307(c); *see also* 18 U.S.C. § 241 (prohibiting conspiracies against rights). And it is a felony for any noncitizen to “falsely and willfully represent[] himself to be a citizen of the United States” generally, 18 U.S.C. § 911, or “in order to register to vote or to vote” specifically, *id.* § 1015(f). State laws likewise criminalize fraudulent voter registration. *See, e.g.*, Ariz. Rev. Stat. Ann. § 16-182(A). It is hard to imagine that noncitizens would “rush” to “illegally register,” U.S. Br. 43, when doing so—especially en masse—would threaten discovery, prosecution, and a high risk of deportation.

Finally, while DOJ thinks “the relative harms from illegal votes are far more pernicious” than “the relative risks of erroneous removals,” Br. 42, the 90-Day Provision is clear proof that Congress saw things differently. After all, *anyone* a State seeks to remove under *any* reading of the 90-Day Provision is someone suspected of being “ineligible” to vote. 52 U.S.C. § 20507(c)(2)(A). But Congress decided to prohibit systematic removal programs in “the 90 days before an election” anyway, “because that is when the risk of disfranchising eligible voters is the greatest.” *Arcia*, 772 F.3d at 1346. Congress viewed the potential for erroneous disenfranchisement as a greater threat, in this close window before federal elections, than the potential for fraudulent registrations. The Court should honor Congress’s choice.

CONCLUSION

For these reasons, this Court should affirm on the second question presented.

Respectfully submitted,

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October 20, 2026

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