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

REPLY BRIEF FOR RESPONDENTS STATE OF ARIZONA AND ITS ATTORNEY GENERAL

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INTRODUCTION

The State of Arizona and its Attorney General (hereafter "Arizona") filed a merits brief regarding the first question presented: whether the National Voter Registration Act or a federal consent decree prohibit Arizona from requiring proof of U.S. citizenship[1] for applicants registering using the state registration form.

Arizona's merits brief supported petitioner's position with respect to the National Voter Registration Act, arguing that the Act does not prohibit Arizona from requiring proof of citizenship for State Form users. But on the consent decree, the State's brief supported the outcome (although not the reasoning) advocated for by the nonprofit respondents. Specifically, Arizona argued that the consent decree remains binding unless or until it is modified or vacated under Federal Rule of Civil Procedure 60(b). It thus asked the Court to uphold the Ninth Circuit's decision on the consent decree pending further Rule 60 proceedings.

Arizona's position on the first question presented is not fully aligned with either petitioner or the other respondents. Arizona elected to follow petitioner's briefing schedule because Arizona agrees with petitioner on the National Voter Registration Act issue and does not otherwise view the consent decree as a categorical impediment to future enforcement of its laws. Arizona thus filed its merits brief the same day as petitioner and respondents the United States

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[1] This brief uses the shorthand term "proof of citizenship" to refer to "satisfactory evidence of citizenship."

and Warren Petersen and Steve Montenegro, Arizona Senate President and Arizona House of Representatives Speaker ("legislator respondents"). Consequently, Arizona has had no opportunity to respond to arguments made in those parties' briefs regarding the consent decree. Arizona's Reply therefore addresses arguments raised by the nonprofit respondents regarding the National Voter Registration Act, as well as arguments raised by petitioner and those aligned respondents regarding the consent decree.

I. The National Voter Registration Act permits Arizona to require proof of citizenship for State Form users.

A. Arizona's requirement is "necessary" to assess voter eligibility.

1. A state registration form may require "only" such information as is "necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process." 52 U.S.C. § 20508(b)(1).

Similar to the Ninth Circuit majority, the nonprofit respondents[2] propose that this Court should

[2] Arizona uses the term "nonprofit respondents" to collectively refer to the Mi Familia Vota, Voto Latino, Arizona Asian American Native Hawaiian and Pacific Islanders for Equity Coalition ("AZ AANHPI"), Living United for Change in Arizona ("LUCHA"), League of United Latin American Citizens, Arizona Students' Association, ADRC Action, Inter Tribal Council of Arizona, Inc., San Carlos Apache Tribe, Arizona Coalition for Change, Promise Arizona and Southwest Voter Registration Education Project respondents.

read "necessary" under § 20508(b)(1) as "essential." *See* Mi Familia Vota Br. at 14–20; LUCHA Br. at 19–21. Adopting that reading, however, transforms the term into a stringent limitation on state authority unsupported by the provision's surrounding context. More problematically, the nonprofit respondents' approach would also improperly limit State Forms to Federal Form requirements, creating constitutional problems and conflicting with this Court's guidance from *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013).

a. Undefined statutory terms must be read in context—a concept that even the nonprofit respondents do not meaningfully contest. *E.g.,* Mi Familia Vota Br. at 16. That is particularly true when, like here, competing dictionary definitions buttress that the word "necessary" is "susceptible of various meanings." *Necessary*, Black's Law Dictionary (6th ed. 1990) (explaining that "necessary" "must be considered in the connection in which it is used."); *see also Cellular Telecomms. & Internet Ass'n v. F.C.C.*, 330 F.3d 502, 509–10 (D.C. Cir. 2003) (explaining that when "dueling . . . dictionary definitions . . . fail[] to produce any plain meaning of [a] disputed word," courts must turn to "the context in which the word is used in order to comprehend its meaning").

Here, the surrounding context favors adopting a less restrictive meaning than essential. *See, e.g.*, Ariz. Br. at 16; RNC Br. at 20–27; United States at 16–19; Petersen Br. at 12–13. And none of the nonprofit respondents' countervailing arguments supply a reason to depart from that reading of the term.

For example, the nonprofit respondents urge that "necessary" deserves a narrow construction because it is limited by the word "only" within 52 U.S.C. § 20508(b)(1). *See* LUCHA Br. at 20–21; Mi Familia Vota Br. at 18–19. But the adverb "only" limits the noun that follows—"information"—not the word "necessary." 52 U.S.C. § 20508(b)(1) (limiting state requirements to "only such identifying information . . . and other information . . . as is necessary" to determine eligibility). Thus, "only" operates to narrow the type of information a state can require.

Contrary to the nonprofit respondents' claim, that constraint is not meaningless. *See* Mi Familia Vota Br. at 19. Rather, it precludes a state from *requiring* information on a State Form that is unrelated to the goal of assessing eligibility. Thus, Arizona can request a voter's tribal affiliation, occupation, party preference, and contact information on its State Form, but it may not *require* this information unless it is necessary to assess voter eligibility. 52 U.S.C. § 20508(b)(1).

Furthermore, reading "necessary" to mean "essential" in § 20508(b)(1) does not fit with Congress' use of the term elsewhere in the National Voter Registration Act. For example, Section 5 of the Act provides that States can require "only *the minimum amount* of information necessary" to enable officials to assess voter registration eligibility on driver's license applications. 52 U.S.C. § 20504(c)(2)(B) (emphasis added). If the word "necessary" sufficed on its own to limit states to only "essential" information, Congress would have no need to add the qualification "only the minimum amount."

The nonprofit respondents suggest that Section 5 merely underscores "that Congress consistently limited states to demanding only 'necessary' information." LUCHA Br. at 28–29. But if "necessary" is the term doing the work of limiting states to only "essential" information, it makes little sense that Congress would use different language in Section 5 and Section 9. *Pulsifer v. United States*, 601 U.S. 124, 149 (2024) ("In a given statute, the same term usually has the same meaning and different terms usually have different meanings.").

In short, the nonprofit respondents' textual arguments only reinforce that "necessary" should not be read as "essential" in this context.

b. The more fundamental flaw in the nonprofit respondents' position is that it runs headlong into this Court's guidance in *Inter Tribal Council of Arizona* and creates constitutional difficulties.

States—not Congress—determine voters' eligibility. *Inter Tribal Council of Ariz.*, 570 U.S. at 16. While the Elections Clause "empowers Congress to regulate *how* federal elections are held," states are left to determine "*who* may vote in them." *Id.*; *see also Shelby County v. Holder*, 570 U.S. 529, 543 (2013) (explaining that states retain "broad powers to determine the conditions under which the right of suffrage may be exercised" (quoting *Carrington v. Rash*, 380 U.S. 89, 91 (1965))).

As such, this Court has already recognized that "state-developed forms may *require* information the Federal Form does not." *Inter Tribal Council of Ariz.*, 570 U.S. at 12 (emphasis added). Any contrary result would impede a state's prerogative to set and enforce

eligibility requirements and thereby "raise serious constitutional doubts." *Id.* at 17–18.

The nonprofit respondents' interpretation, however, would make State Forms into de facto copies of the Federal Form. For example, they take the position that if "necessary" has the same meaning across both Federal and State Forms, a State Form may not require proof of citizenship if that information is not a "necessary" requirement for the Federal Form. *See, e.g.*, Mi Familia Vota Br. at 14; LUCHA Br. at 27–28. The term "necessary," however, can be given the same meaning—useful, conducive, appropriate, etc.—without cabining State Forms to Federal Form requirements. What is necessary for a given form depends on the eligibility requirements being assessed. 52 U.S.C. § 20508(b)(1).

The nonprofit respondents' interpretation collapses any meaningful difference between State and Federal Form requirements—something that this Court has already foreclosed. *Inter Tribal Council of Ariz.*, 570 U.S. at 12 (rejecting the idea that Federal and State forms requirements must mirror each other). If the State Form's independent existence is to survive, this Court should not accept the nonprofit respondents' contention that the absence of a proof of citizenship requirement for the Federal Form means a State Form may never require it.

2. In any event, while context supports not construing "necessary" to mean "essential," Arizona's proof of citizenship requirement does not offend the National Voter Registration Act regardless of which definition of "necessary" this Court adopts.

If this Court determines, as Arizona, petitioner, and the United States urge, that "necessary" means useful, conducive, appropriate, or suitable for assessing applicants' eligibility to vote, then Arizona's proof of citizenship requirement does not offend the National Voter Registration Act. *See* Ariz. Br. at 14–17. Proof of citizenship is self-evidently a useful and appropriate piece of information to assess both citizenship itself and proof of citizenship—both of which are voter eligibility requirements under Arizona law. *See* A.R.S. § 16-101(A); A.R.S. § 16-121(A).

Yet, even if this Court adopts the restrictive definition of "essential" pushed by the nonprofit respondents, Arizona's requirement still survives. Proof of citizenship *is* essential or indispensable to assessing the requirement that a voter provide proof of citizenship itself. *Id.* Indeed, it is the only piece of information that state officials can use to assess that eligibility requirement.

In response, the nonprofit respondents caution this Court away from accepting Arizona's decision to make proof of citizenship itself an eligibility requirement. *See* Mi Familia Vota at 25–26; LUCHA Br. at 25. But this Court should not ignore a state's chosen voter qualifications because they differ from federal voter qualifications. A state's power over voter eligibility is constitutionally enshrined and must be respected. *See* U.S. Const. art. I, § 2, cl. 1; *id.* art. II, § 1, cl. 2. And "the power to establish voting requirements is of little value without the power to enforce those requirements." *Inter Tribal Council of Ariz.*, 570 U.S. at 17.

Mi Familia Vota suggests that, taken to an extreme, a state might attempt to evade use of the Federal Form altogether by mandating the use of a State Form as an eligibility criteria. Mi Familia Vota Br. at 25–26. To be clear, Arizona is not arguing that it, or any state, should be allowed to evade federal law or make any criteria whatsoever an eligibility requirement under any circumstance. But that type of hypothetical free-for-all is unlikely to occur. There are multiple constitutional provisions and federal statutes that limit a state's power to set voting qualifications. *E.g.*, U.S. Const. amends. XIV, XV, XIX, XXIV, XXVI; 52 U.S.C. § 20505(a)(1); 52 U.S.C. § 10301. And such theoretical concerns do not warrant misinterpreting Section 9 to be more restrictive than its text supports.

Ultimately, Arizona, like any state, may exercise its prerogative to determine voter eligibility requirements. The National Voter Registration Act does not purport to disturb this constitutional arrangement; it authorizes (if any authorization were necessary) states to "develop and use" their own State Form and to require the information "necessary" to assess voter eligibility as set by state law. 52 U.S.C. § 20505(a)(2); 52 U.S.C. § 20508(b)(1). Arizona's proof of citizenship requirement adheres to that standard, and this Court should reverse the Ninth Circuit's contrary holding.

B. The Forms' equivalency, or lack thereof, does not change that outcome.

1. The Ninth Circuit panel majority also held that Section 7 of the National Voter Registration Act, which requires public assistance agencies to distribute

the Federal Form or an "equivalent," preempts Arizona's proof of citizenship requirement. 52 U.S.C. § 20506(a)(6)(A)(ii). The majority reasoned that the State Form would not be "equivalent" if proof of citizenship were required. RNC. App. 51a–52a. But as Judge Bumatay pointed out in his dissent, even if Arizona's State Form is not "equivalent" to the Federal Form, "the remedy isn't to redesign Arizona's chosen form" but "to have 'public assistance agencies' distribute the federal form." RNC App. 116a.

Arizona's merits brief emphasized (at 17–20) the practical point made by Judge Bumatay. On its face, Section 7 simply requires public assistance agencies to provide the Federal Form if the State Form is not "equivalent." 52 U.S.C. § 20506(a)(6)(A) (requiring state public assistance agencies to distribute either the Federal Form "*or*" the State Form if the State and Federal Forms are "equivalent" (emphasis added)). So the only result that hinges on whether the State and Federal Forms are "equivalent" is whether Arizona public assistance agencies must supply Federal Forms. And they already do, thanks to an injunction entered after this Court's decision in *Inter Tribal Council of Arizona*. *See Gonzalez v. Arizona*, No. CV-06-1268-PHX-ROS, 2013 WL 7767705, at *1 (D. Ariz. Sep. 11, 2013) (requiring Arizona and county officials to make the Federal Form available through all channels they use to make the State Form available).

2. The LUCHA respondents argue that Arizona has forfeited its right to assert that its public assistance agencies would be required to distribute the Federal Form or some other equivalent if this

Court were to hold the State Form is not equivalent to the Federal Form. LUCHA Br. at 32–33. Not so.

The LUCHA respondents do not dispute that whether Arizona's State Form and the Federal Form are equivalent under Section 7 of the National Voter Registration Act is fully briefed and properly before the Court. Accordingly, Arizona's citation to the plain text of Section 7 does not improperly inject anything new. *See United States v. Speers*, 382 U.S. 266, 277 & n.22 (1965) (concluding Court could properly consider "novel" argument regarding interplay of various subsections offered as a statutory construction aid).

Nor is it inappropriate for Arizona to advise this Court about the practice of its public assistance agencies regarding distribution of the Federal and State Forms under a binding injunction. The LUCHA respondents suggest (at 32) that this contradicts the record because "the Section 7 holding below rested solely on the undisputed fact that public assistance agencies solely used the State Form." But that's not accurate. The Section 7 holding below noted that "public assistance agencies in Arizona *typically* use the state form," and said nothing about their practices with respect to the Federal Form. RNC App. 51a (emphasis added); *see also* RNC App. 191a (district court finding that public assistance agencies in Arizona "typically use the State Form"). So Arizona has not lobbed a disputed fact into settled record; it has simply informed the Court of the existing landscape as it relates to the equivalency question.

II. In no event should the Court invalidate the consent decree in this collateral proceeding.

The Ninth Circuit held that "[t]he *LULAC* Consent Decree remains an enforceable, binding final judgment." RNC App. 48a. It then reasoned, "Because H.B. 2492 requires county recorders to violate the LULAC Consent Decree's requirements, the LULAC Consent Decree bars enforcement of this provision of H.B. 2492." *Id.*

The various parties offer starkly different positions on the impact of the LULAC consent decree on this case. The nonprofit respondents contend that the Ninth Circuit correctly held that it remains binding and also correctly enforced it to prevent implementation of H.B. 2492 here. Petitioner recognizes the continued validity of the decree but asks the Court to rule that it does not bar enforcement of H.B. 2492 given changed circumstances. But others, like the United States and legislator respondents, urge this Court to go further and declare the consent decree defunct. *See, e.g.*, United States Br. at 28 (urging that changed law warrants "*dissolution* of the consent decree" (emphasis added)).

The Ninth Circuit was undoubtedly correct that the consent decree remains an enforceable, binding final judgment because it has never been modified or vacated. The orderly process of law is best served by affirming the outcome of the Ninth Circuit decision while making clear that modification or dissolution of the Decree can be sought under Federal Rule of Civil Procedure 60(b). *See* Ariz. Br. at 20–27.

But even if the Court were to conclude that the Ninth Circuit erred by *enforcing* the LULAC consent

decree here, it should not invalidate that decree in this collateral proceeding. Doing so is unnecessary to resolve the case and would create significant uncertainty in the otherwise settled law governing consent decrees.

A. The Ninth Circuit correctly held that the consent decree remains a binding and enforceable final judgment.

1. Although the consent decree is no longer consistent with Arizona law, it remains a federal court injunction and a final judgment. *See Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 391 (1992). Accordingly, the consent decree is "subject to the rules generally applicable to other judgments," *Rufo*, 502 U.S. at 378, and "should be enforced according to its terms" unless and until it is modified or vacated, *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 441–42 (2004).

No one disputes that courts possess a traditional equitable power "to stop enforcing an injunction 'in light of changed circumstances.'" United States Br. at 25 (quoting *Frew*, 540 U.S. at 441). But parties "subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, *even if they have proper grounds to object to the order*." *Celotex Corp. v. Edwards*, 514 U.S. 300, 306 (1995) (emphasis added) (quoting *GTE Sylvania, Inc. v. Consumers Union of U.S., Inc.*, 445 U.S. 375, 386 (1980)). And the proper path for modifying or vacating an injunction contained in a final judgment is Rule 60(b)(5). *Frew*, 540 U.S. at 441; *Horne v. Flores*, 557 U.S. 433, 439 (2009).

No party has moved to vacate or modify the consent decree under Rule 60(b)(5). The Arizona

legislature's enactment of H.B. 2492 cannot, on its own, permit a court to "revise[], overturn[] or refuse[] faith and credit" to the consent decree in a collateral proceeding. *Taylor v. United States*, 181 F.3d 1017, 1024 (9th Cir. 1999) (en banc) ("[O]nce court decisions achieve finality they 'may not lawfully be revised, overturned or refused faith and credit by another Department of Government.'" (quoting *Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp.,* 333 U.S. 103, 113 (1948))). The consent decree therefore remains binding and "should be enforced according to its terms." *Frew*, 540 U.S. at 442.

2. Petitioner, the United States, and the legislator respondents propose that this Court determine in the first instance whether changes in state law require the consent decree to yield to H.B. 2492. *See* RNC Br. at 36, 39–41; United States Br. at 24–30; Petersen Br. at 16–18. But for both procedural and institutional certainty, any modification or vacatur of the consent decree should occur through Rule 60(b)(5) and not in a collateral proceeding.

First, Rule 60 already provides a clear legal path to the relief petitioner seeks here. Rule 60(b)(5) "encompasses the traditional power of a court of equity to modify its decree in light of changed circumstances." *Frew*, 540 at U.S. 441. It is precisely this traditional power that petitioner and the aligned respondents invoke when asking the Court to declare the consent decree unenforceable here. *See* RNC Br. at 35–41; United States at Br. 25–38; Petersen Br. at 18–23. Because the procedural tool for accessing this equitable power already exists, the Court need not—

and should not—fashion a new procedural path for relief from a final judgment in a collateral proceeding.

Perhaps another case might require the Court to decide whether a petitioner could obtain relief from a final judgment in a collateral proceeding because no other path exists. But that's not the case here. Binding precedent makes clear that affected non-parties can seek intervention under Rule 24 and subsequently move for relief under Rule 60(b). *See Horne*, 557 U.S. at 443–45 (permitting Arizona legislators to intervene and seek Rule 60(b) relief from an injunction entered before the legislators had intervened as parties).[3]

Second, Rule 60(b)(5) relief is particularly well suited for addressing the heightened federalism and separation of powers concerns cited by petitioner and the aligned respondents. This Court's precedents provide explicit guidance on the proper handling of such concerns under Rule 60(b)(5) in the context of institutional reform litigation. *See Horne*, 557 U.S. at 450. The well-developed body of law regarding Rule 60(b)(5) motions based on changed circumstances guards against error and inconsistency.

Third, routing all modifications or vacaturs of final judgments through Rule 60(b)(5) ensures the "orderly process of the law." *Celotex*, 514 U.S. at 313. Permitting consent decrees to be modified or vacated in a collateral proceeding based on arguments by third

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[3] Notably, two of the parties presently disputing the enforceability of the consent decree (petitioner and the legislator respondents) intervened in the case under Rule 24; neither was named as a defendant. *See* RNC App. 245a.

parties invites forum shopping, inconsistent judicial decisions, and undermines the validity of final judgments.

If a court in a collateral proceeding can declare a consent decree unenforceable, defendants or even third parties may be tempted to ask courts that they perceive as more favorable to declare a consent decree void. Beyond forum-shopping, the risk of inconsistent judgments is obvious. Furthermore, allowing a consent decree to be declared unenforceable in a collateral proceeding at the behest of a nonparty to the decree poses real practical problems for government and institutional actors bound or affected by consent decrees, who may not be aware of all related or relevant proceedings.

3. Citing *Martin v. Wilks*, the United States and the legislator respondents argue that a collateral attack is permissible here because they are nonparties to the consent decree. United States Br. at 30; Petersen Br. at 16–17 (asserting that "[l]ower courts . . . have repeatedly relied on *Martin* [*v. Wilks*, 490 U.S. 755 (1989)] or its logic to permit non-parties whose rights or interests are adversely affected by a consent decree to collaterally attack the judgment"). But that rule is backwards—it would give nonparties more rights than parties. And *Martin* does not countenance a collateral challenge to a consent decree based on changed circumstances.

In *Martin*, a group of white firefighters sued their city employer alleging that they were being racially discriminated against in promotion decisions. 490 U.S. at 758. The plaintiffs argued that the city was making promotion decisions on the basis of race in

reliance on consent decrees previously entered in an earlier suit, and that those decisions constituted impermissible racial discrimination. *Id.* The district court granted the city's motion to dismiss, holding that the plaintiffs were precluded from challenging employment decisions taken pursuant to the consent decrees under the "impermissible collateral attack" doctrine, which immunizes parties to a consent decree from discrimination charges by nonparties for actions taken pursuant to the decree. *Id.* at 760–61. The Eleventh Circuit reversed and this Court affirmed, explaining that nonparties are not precluded from challenging employment decisions taken pursuant to consent decrees. *Id.* at 761–62.

Martin simply clarified that a consent decree cannot bar independent claims by nonparties. It said nothing about modifying or vacating a consent decree based on changed circumstances. Nor did any court in *Martin* actually modify or vacate the consent decree in question.

The remaining authority offered by the United States and legislator respondents is similarly inapposite. Many cases, like *Frew*, involved direct challenges to a consent decree rather than a collateral attack. *See Frew*, 540 U.S. at 435–36; *Rufo*, 502 U.S. at 371–72; *Miller v. French*, 530 U.S. 327, 334–35 (2000). Others held that a consent decree did not bar separate litigation by a nonparty where the claims asserted were not covered by the consent decree. *Navajo Nation v. San Juan County*, 929 F.3d 1270, 1274, 1279 (10th Cir. 2019); *City of Warren v. City of Detroit*, 495 F.3d 282, 284, 287 (6th Cir. 2007); *see also Salazar v. Buono*, 559 U.S. 700, 717 (2010) (plurality

op.) (reversing injunctive relief based on prior judgment in *Buono I* where "[t]he Government's right to transfer the land was not adjudicated in *Buono I* or compromised by the [earlier] injunction."). Another case held that the Anti-Injunction Act did not prevent a third party not bound by a consent decree from mounting a state-law challenge to the authority of those who entered it. *Dunn v. Carey*, 808 F.2d 555, 558–59 (7th Cir. 1986).

Here, petitioner and the aligned respondents attempt a collateral attack on the enforceability of a consent decree, entirely outside the context of a Rule 60 proceeding. *Cf. Frew*, 540 U.S. at 438–42 (rejecting Eleventh Amendment challenge to enforcement of consent decree but observing that Rule 60(b)(5) could allow for modification to address the state's officials' concerns). Unlike in *Navajo* and *Warren*, plaintiffs have not tried to use the consent decree as a shield against independent claims by the defendants or others that were not parties to the decree. *Cf. Navajo*, 929 F.3d at 1279; *Warren*, 495 F.3d at 284–85, 287. Nor do they challenge the authority of state officials to enter into the LULAC consent decree in the first instance, as in *Dunn*. *See* 808 F.2d at 556–57. In short, no cited authority supports a collateral attack on the enforceability of a consent decree based on changed circumstances. To the contrary, this Court's precedent confirms that Rule 60(b)(5) is the appropriate avenue for such arguments. *See, e.g.*, *Horne*, 557 U.S. at 439.

To be sure, the procedural history of the consent decree aspect of this case is messy. The district court that issued the consent decree explicitly declined to

address the relationship between the consent decree and Arizona's proof of citizenship requirement. *See* Ariz. Br. at 8–9. And the district court that did address and choose to enforce the consent decree did so entirely *sua sponte*. RNC App. 365a–66a, 381a, 383a; *see* Ariz. Br. at 9–10. As a result, it is reasonable to ask, what is the harm of a collateral attack here, when everyone is on notice and the burden of enforcement is on the plaintiffs? But bad facts make bad law, and the Court should not use this unusual and unlikely-to-recur fact pattern to open the door to collateral attacks on the validity of final judgments.

In sum, the orderly process of law is best served by affirming the outcome of the Ninth Circuit decision while making clear that modification or dissolution of the consent decree can be sought under Federal Rule of Civil Procedure 60(b).

B. Even if the Ninth Circuit erred in enforcing the LULAC consent decree, the remedy is remand.

1. Petitioner, the United States, and the legislator respondents all argue that the Ninth Circuit erred in relying on the consent decree to issue a new injunction because it failed to consider whether changed circumstances made its enforcement inequitable. They diverge, however, with respect to the continued validity of the consent decree. Petitioner challenges only the enforcement of the consent decree; it does not dispute its continued validity. RNC Br. at 40–41. The United States and the legislator respondents go further, arguing not only that the Ninth Circuit erred in enforcing the decree, but also that changed circumstances warrant its

"dissolution." *See, e.g.*, United States Br. at 28 (urging that changed law warrants "*dissolution* of the consent decree" (emphasis added)); Petersen Br. at 18 ("The LULAC Consent Decree *does not survive* the enactment Ariz. Rev. Stat. § 16-121.01(C)") (emphasis added).

Even if the Court were to conclude that the Ninth Circuit erred enforcing the consent decree, in no event should the Court declare the consent decree dissolved or vacated. Even assuming the Court could do so,[4] that result conflicts with settled law and threatens irreparable damage to the validity of judicial decrees. *See, e.g.*, *Rufo*, 502 U.S. at 378 (subjecting consent decrees "to the rules generally applicable to other judgments and decrees"); *Frew*, 540 U.S. at 442 (unless a party has established equitable bases to modify a decree, "the decree should be enforced according to its terms"); *Horne*, 557 U.S. at 439 (recognizing Rule 60(b)(5) as "the vehicle" for vacating or modifying a final judgment based on changed circumstances). After all, a consent decree is a settled judgment like any other, so it "cannot be attacked collaterally, and in every other court must be given full force and effect, irrespective of the reasons upon which it is based." *Deposit Bank of Frankfort v. Bd. of Councilmen*, 191 U.S. 499, 512 (1903).

2. Instead, the Court should reaffirm that the consent decree remains binding and clarify how its enforcement should be evaluated on remand. That

[4] It is unclear how the Court would have jurisdiction to dissolve a final judgment in a case not before it.

approach preserves the important distinction between the enforceability of a final judgment and its validity.

The Court took a similar approach in *Martin v. Wilks*, 490 U.S. 755. In *Martin*, the district court dismissed the plaintiff's discrimination claims after a trial, concluding that they were barred by existing consent decrees under the "impermissible collateral attack" doctrine. *Id.* at 760–61. The Eleventh Circuit reversed the district court and remanded for a new trial on the plaintiffs' claims. *Id.* at 761. When doing so, the Eleventh Circuit provided guidance to the district court regarding the appropriate legal standard for evaluating the impact of the consent decrees on the plaintiffs' claims at trial. *See In re Birmingham Reverse Discrimination Emp. Litig.*, 833 F.2d 1492, 1500–02 (11th Cir. 1987). This Court affirmed the Eleventh Circuit, including its guidance to the district court. *Martin*, 490 U.S. at 769.

So too here. If the Court concludes that the Ninth Circuit erred by failing to consider changed circumstances when deciding whether to issue a new injunction, it should not rule on the ultimate enforceability or validity of the consent decree. Instead, the Court should instruct the district court regarding the appropriate changed circumstances analysis and remand for the district court to undertake such analysis in the first instance.

CONCLUSION

The Court should reverse the judgment of the court of appeals in part and affirm in part. Alternatively, the Court should reverse the judgment and remand for further proceedings.

Respectfully submitted,

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