

No. 26A124

IN THE SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., Applicants

v.

STATE OF CALIFORNIA, ET AL., Respondents.

ON APPLICATION TO STAY THE INJUNCTION ISSUED BY THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

**BRIEF OF COREY J. BIAZZO, ESQ. AS AMICUS CURIAE
IN SUPPORT OF PLAINTIFF-RESPONDENTS AND
IN OPPOSITION TO THE APPLICATION**

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July 29, 2026

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INTEREST OF AMICUS CURIAE

Corey J. Biazzo is an appellate advocate, civil litigator, author, and United States Navy veteran. He has a professional and civic interest in the separation of powers, federalism, and the evenhanded application of constitutional limits across administrations. Amicus submits this brief in his individual capacity to identify a narrow issue of emergency-relief methodology that warrants independent attention: Applicants rely on mutually incompatible accounts of how concrete Executive Order No. 14,399 is. That contradiction matters both to Article III and to the Government's claim of irreparable injury.¹

SUMMARY OF ARGUMENT

The application rests on a premise that changes when the legal question changes. To defeat standing and ripeness, Applicants describe implementation of the Executive Order as uncertain, discretionary, and perhaps never forthcoming. To establish emergency irreparable harm, they say the injunction is presently preventing implementation steps that must occur soon if they are to affect the November 3 election. Both accounts cannot supply the governing facts. If implementation remains genuinely contingent, the Government has no concrete emergency injury. If implementation is sufficiently fixed and imminent to be

¹ No counsel for a party authored this brief in whole or in part. No party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus made such a contribution.

irreparably impaired now, the Plaintiff-Respondents' compliance costs and disruption are not speculative either.

The text and chronology favor the latter understanding. Section 2(a) says the Secretary of Homeland Security “shall” compile and transmit State Citizenship Lists. Section 3 directs a Postal Service rulemaking and says that any final rule “shall be issued” within 120 days—July 29, 2026. Section 4(c) required DHS infrastructure within 90 days. USPS has already proposed the architecture contemplated by the Order: standardized envelopes, unique barcodes, State submissions of voter information, and nonacceptance of outbound ballot mail that does not comply. Those are concrete governmental steps directed at the 2026 election, not an unformed policy idea.

The application also understates the statutory problem. Sections 401 and 404 of Title 39 grant broad powers to operate a nationwide postal system. They do not clearly authorize USPS to construct voter-specific participation lists, condition a State's access to ordinary ballot-mail service on transfer of voter data, or make the Postal Service an auxiliary election administrator. In an area where the Constitution assigns primary election administration to the States subject to congressional regulation, such a consequential transfer of authority requires a clear congressional instruction. General operational language is not enough.

Finally, the equities favor preserving the rules under which States, voters, and election vendors are already preparing. Denying a stay maintains the familiar postal and election system while ordinary appellate review proceeds. Granting a stay invites

a new nationwide ballot-mail regime on the eve of a federal election. Purcell’s anti-disruption principle points in the same direction. The application should be denied. At minimum, any relief should preserve the injunction against Section 3’s ballot-mail conditions and against treating omission from a federal list, or nonparticipation in the proposed postal program, as a basis for coercive enforcement.

ARGUMENT

I. APPLICANTS CANNOT TREAT IMPLEMENTATION AS SPECULATIVE FOR ARTICLE III AND CERTAIN FOR IRREPARABLE HARM.

A stay is an exercise of judicial discretion, not a matter of right. *Nken v. Holder*, 556 U.S. 418, 433–34 (2009). The applicant must make a strong showing that it is likely to succeed on the merits and demonstrate that irreparable injury is likely absent a stay. *Id.* at 434–35. For relief extending through proceedings in this Court, the applicant must also demonstrate a reasonable probability that certiorari will be granted. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). Those inquiries address different legal elements, but they cannot proceed from contradictory factual premises.

Applicants’ merits theory is that the challenged directives are not concrete enough for adjudication. The application repeatedly characterizes agency action as unresolved: agencies are “still deliberating”; the Order leaves “substantial discretion”; and implementation may occur only “if at all.” Appl. 2, 11–12. On that account, any future burden on the States depends on choices agencies have not yet made. Applicants invoke *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013), and related cases to insist that the courts may not anticipate those choices.

But the asserted emergency injury depends on the opposite proposition. Applicants say the injunction is causing irreparable harm now because ordinary appellate review will come too late to implement the Order for the November election. Appl. 2, 26–29. That contention presupposes an identifiable implementation project, a present timetable, and concrete work that the injunction prevents. A merely abstract policy preference does not become irreparably injured because an agency might someday select a lawful means of pursuing it.

Nken makes the problem especially clear. Irreparable harm must be likely, not merely possible. 556 U.S. at 434–35. If the agencies remain free to decide whether to adopt material provisions, whether to issue a final postal rule, whether States must respond to citizenship lists, and whether any program can lawfully operate in 2026, then Applicants identify no nonconjectural injury from maintaining the injunction during expedited appellate review. They identify only lost time to pursue a plan whose content and legality supposedly remain unknown.

If, by contrast, implementation is developed enough that each passing day irreparably frustrates the federal project, then the States’ injuries are equally concrete. State election officials must design envelopes, contract with printers, prepare voter files, train local officials, test systems, and explain procedures to voters before ballots are mailed. The First Circuit record reflects that this work is already underway. App. 11a–15a. A nationwide postal rule that conditions acceptance of ballot mail on new designs, barcodes, enrollment procedures, and data transmissions necessarily changes those tasks before Election Day.

This is not a rule that Article III standing and irreparable injury always rise or fall together. It is a narrower point: when the same predicted agency conduct supplies both the plaintiff's injury and the Government's emergency injury, a court should not accept diametrically opposed levels of factual certainty without explanation. The Government may contest causation, redressability, or the legality of particular implementation choices. What it may not do is make the underlying implementation simultaneously nonexistent and urgent.

The Court can therefore deny a stay without resolving every issue in the merits appeal. If implementation is truly unsettled, Applicants have not carried their burden on irreparable harm. If it is imminent and sufficiently specified to create emergency harm, the application's threshold premise—that this litigation concerns only hypothetical future conduct—loses its force. Either way, the extraordinary relief requested is unwarranted.

II. THE ORDER'S COMMANDS, THE PROPOSED RULE, AND THE IMMINENT FINAL-RULE DEADLINE MAKE THIS CASE CONCRETE.

The Executive Order's operative language is not merely aspirational. Section 2(a) provides that, to the extent feasible and lawful, DHS "shall take appropriate action to compile and transmit" a citizenship list to each State, drawn from enumerated federal databases. It directs transmission no fewer than 60 days before each regularly scheduled federal election. Section 4(c) likewise says DHS "shall" establish the necessary infrastructure within 90 days and that SSA "shall provide all necessary citizenship and identity data." Exec. Order No. 14,399 §§ 2(a), 4(c), 91 Fed. Reg.

17,125, 17,127 (Mar. 31, 2026). The lawfulness provisos limit the means available; they do not convert the commanded project into a suggestion.

Section 3 is even more specific. It directed USPS to initiate a rulemaking within 60 days and prescribed what the proposal must include “at minimum.” Those required subjects included standardized ballot envelopes; unique Intelligent Mail barcodes; advance notice by States; State transmission of voter lists; enrollment on a USPS participation list; and a provision that USPS “shall not transmit” ballots from individuals outside that list. *Id.* § 3(b). Section 3(d) adds that any final rule pursuant to that section “shall be issued no later than 120 days” after the Order—July 29, 2026.

USPS complied with the first deadline. Its June 2 proposal did not merely announce that it would study ballot mail. It proposed a Federal Ballot Mail Program incorporating envelope reviews, designated markings, unique barcodes, voter-level information, and a rule that noncompliant outbound ballot mail would not be accepted. *Ballot Mail for Federal Elections*, 91 Fed. Reg. 32,915, 32,916–18 (June 2, 2026). The comment period closed July 2. *Id.* at 32,915. Section 3(d) sets July 29, 2026, as the deadline for any final rule issued pursuant to that section. Applicants emphasize that the phrase “any final rule” does not necessarily compel USPS to issue one. But that qualification does not erase the concrete steps already taken: the Order prescribed the proposal’s minimum contents, USPS issued the contemplated proposal, the comment period closed, and the specified deadline is imminent.

That record distinguishes *Trump v. New York*, 592 U.S. 125 (2020), where no final policy had been selected and the challenged memorandum left open whether and how the Secretary would transmit information to the President. *Id.* at 131–33. It also distinguishes the brief order in *Trump v. American Federation of Government Employees*, 145 S. Ct. 2635, 2635 (2025), which stayed an injunction directed at an executive order while expressly declining to address agency plans that were “not before this Court.” Here, by contrast, the States challenge specified list and postal mechanisms; USPS has proposed those mechanisms; and the calendar is doing the work Applicants say ordinary review cannot do.

The application’s position also creates an unstable remedial cycle. Before a final rule, the Government says review is premature. After a final rule, it may say election preparations are too advanced for meaningful relief or that courts should not alter election rules near Election Day. Article III does not require States to wait until federal and state deadlines collide, especially when the Government seeks emergency relief precisely because implementation must occur now.

The Court need not decide that every clause of the Order is equally concrete. Section 2(a)’s transmission of a federal citizenship list may present a narrower injury if it imposes no obligation on a State to use the list. But Section 3 is different in kind. A postal rule refusing to accept outbound ballot mail unless a State satisfies federal prerequisites acts directly on the service the State must use. That practical compulsion is present even if the Order labels a State’s advance notice or submission of information a “choice.”

III. GENERAL POSTAL POWERS DO NOT CLEARLY AUTHORIZE A VOTER-SPECIFIC FEDERAL ELECTION REGIME.

The Order identifies 39 U.S.C. § 401 and “other applicable authority” as the basis for the postal rulemaking. Exec. Order No. 14,399 § 3(b). Section 401 grants USPS operational powers: to sue and be sued, acquire property, enter contracts, determine internal organization, and adopt regulations necessary to execute Title 39. Section 404 authorizes postal services, facilities, rates, and related operational decisions. Those provisions are broad enough to support mail design standards and tracking technology. They do not clearly assign USPS the separate role of creating voter-specific eligibility or participation infrastructure for federal elections.

That distinction matters. The proposed program does not stop at ordinary mailability standards. It would require States wishing to use USPS for federal ballots to provide voter-level information; would create State-specific participation lists; would associate listed individuals with unique ballot identifiers; and would direct USPS not to accept outbound ballots that fail the program’s prerequisites. 91 Fed. Reg. at 32,916–18. Those features use postal operations to regulate who may receive the instrument of voting and on what conditions a State may send it.

This Court does not lightly read general statutory language to confer transformative regulatory authority. See *West Virginia v. EPA*, 597 U.S. 697, 721–24 (2022); *Biden v. Nebraska*, 600 U.S. 477, 502–07 (2023); *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014).

Whether or not the major-questions doctrine independently resolves this case, those decisions reinforce a more modest proposition: general operational provisions

should not be read to transfer authority over election administration to an agency that Congress charged with operating the mail.

Watson v. Republican National Committee, 609 U.S. ____ (2026), sharpens this point. *Watson* recognized that Congress possesses ultimate authority to make or alter regulations governing congressional elections, while explaining that, “[b]y default” . . . responsibility for the mechanics of those elections belongs to the States. *Id.* at ____ (slip op., at 1). The Court also emphasized that its decision was statutory and did not consider the scope of Congress’s constitutional authority to regulate federal elections. *Id.* at ____ (slip op., at 5). Its method is nevertheless directly relevant: because the election-day statutes said nothing about ballot receipt, the Court refused to create a national rule, explaining that “we cannot add to the words Congress chose.” *Id.* at ____ (slip op., at 22).

Here, too, Congress may enact a nationwide voter-data or ballot-mail regime. But 39 U.S.C. §§ 401 and 404 say nothing about voter eligibility, State voter files, or participation lists that condition the transmission of ballots. Those requirements cannot be supplied by a general postal delegation or a presidential directive. *See Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8–15 (2013). *Arizona* confirms that Congress may supersede state rules governing federal elections, but the asserted federal rule must derive from an enactment of Congress. General postal provisions that do not address voter eligibility, state voter files, or ballot-participation lists do not themselves supply that election-specific command.

Gonzales v. Oregon is instructive. There the Court rejected an Attorney General's effort to use a general registration statute to declare the medical legitimacy of a state-regulated practice. 546 U.S. 243, 267–75 (2006). An agency's authority over one instrumentality does not silently confer authority over the substantive regulatory domain in which that instrumentality is used. USPS may regulate envelopes, barcodes, processing, and delivery. It does not follow that it may condition ballot-mail service on a federal voter-information regime.

The Postal Reorganization Act's structure points the same way. USPS exercises powers granted by Congress through its Board of Governors and Postmaster General; a presidential order cannot enlarge those powers. Title 39 also contains specific procedures for postal changes with nationwide service effects. See, e.g., 39 U.S.C. § 3661. Whether those procedures independently apply can be resolved in the merits litigation. For present purposes, their existence confirms that §§ 401 and 404 are not blank checks for any policy that can be implemented through the mail.

Youngstown supplies the structural baseline. Presidential power must stem from an act of Congress or from the Constitution itself. 343 U.S. 579, 585 (1952). When Congress has assigned operational authority to an independent postal establishment but has not authorized voter-specific election regulation, the President cannot supply the missing delegation by command. See *id.* at 637–38 (Jackson, J., concurring). The Take Care Clause is a duty to execute law; it is not a source of power to create a new election code.

Applicants may ultimately show that portions of the proposed rule are ordinary postal standards severable from the voter-list and nonacceptance provisions. But that possibility supports narrower merits adjudication, not a wholesale stay. The provisions that convert mail operations into electoral conditions present the clearest statutory and constitutional difficulty and the greatest immediate risk to the States.

IV. THE EQUITIES FAVOR THE EXISTING ELECTION RULES, NOT A LATE FEDERAL EXPERIMENT.

The remaining stay factors merge when the Government is a party, but they still require a concrete comparison of harms. *Nken*, 556 U.S. at 435. Here the injunction preserves the postal and election practices in effect before March 31. Denying a stay does not alter ballot eligibility, cancel a postal service, or require any voter to take a new step. It leaves the parties free to litigate the appeal without changing election machinery midstream.

Granting a stay has the opposite practical effect. It would permit implementation of a program designed to affect the November 3 election after election administrators have begun procurement, programming, training, voter education, and mailing preparations. The proposed rule itself calls for State notice 90 days before an election and voter-list submissions 60 days before it. 91 Fed. Reg. at 32,917. Those dates demonstrate that the program cannot be turned on at the last moment without immediate state action.

Purcell v. Gonzalez cautions federal courts against changing election rules close to an election because such changes can create voter confusion and administrative difficulty. 549 U.S. 1, 4–5 (2006) (per curiam). That principle is not a one-way ratchet

favoring whichever sovereign requests emergency relief. The relevant status quo is the established system under which States prepare and USPS carries election mail—not a not-yet-final federal program announced during the election cycle.

Republican National Committee v. Democratic National Committee illustrates the concern. The Court acted to prevent a lower court from changing election procedures at the eleventh hour. 589 U.S. 423, 424–25 (2020) (per curiam). Here it is Applicants who seek permission to introduce new nationwide requirements after the election calendar is underway. The asserted federal interest in election integrity is weighty. So is the States’ interest in orderly elections. The injunction does not diminish either interest; it prevents an untested postal program from displacing established safeguards before appellate review.

The familiar proposition that a government suffers injury when prevented from enforcing a valid law cannot carry Applicants’ burden. *See Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). The premise is validity. An executive order is not an Act of Congress, and the disputed postal conditions have not been shown to fall within Congress’s delegation. Nor does that generalized interest establish irreparable injury when the Government simultaneously insists it may never adopt the measures enjoined.

The asymmetry of risk is decisive. If the stay is denied and Applicants prevail on appeal, lawful measures can be adopted for future elections after orderly rulemaking. If the stay is granted and the program proves unlawful, States and voters cannot reconstruct a completed election or undo confusion, rejected mailings, exposed voter

data, or altered deadlines. There is no do-over for an election administered under invalid rules.

V. *AT MINIMUM, ANY RELIEF SHOULD BE NARROW AND PRESERVE THE INJUNCTION AGAINST COERCIVE ENFORCEMENT.*

The application seeks a stay of the injunction as a whole, but its own arguments identify differences among the Order's provisions. If the Court concludes that merely compiling and transmitting a Section 2(a) citizenship list does not presently injure States because they remain free to disregard it, that conclusion does not justify allowing USPS to refuse ballot mail or allowing federal officials to convert nonparticipation into an enforcement trigger.

Any partial relief should therefore preserve the injunction as to Section 3(b)(iii), the proposed nontransmission or nonacceptance requirement, and as to voter-specific participation lists that condition access to ballot-mail service. Those are the provisions that operate directly on States' election machinery and that lack a clear statutory foundation. Preserving that relief would still permit USPS to study and propose conventional envelope, barcode, tracking, and design standards within its ordinary authority.

Any partial relief should also preserve the injunction to the extent it prevents federal officials from treating omission from a federal citizenship or participation list, standing alone, as an enforcement predicate. The Order identifies serious criminal statutes, including 18 U.S.C. §§ 2, 241, 371, 611, 1001, and 1015 and 52 U.S.C. §§ 10307 and 20511. But those statutes contain their own elements and mens rea

requirements. An executive order cannot add a list-based presumption or create an offense for declining to use a federal database.

That limiting principle respects both federal enforcement authority and state election administration. Federal officials remain free to investigate actual evidence of violations and to prosecute conduct that satisfies every statutory element. States remain responsible for eligibility determinations under governing law. What neither side may do is treat the incompleteness or nonuse of a newly created federal list as a substitute for law.

Narrow relief is particularly appropriate in the emergency posture. It avoids deciding abstract questions about every possible use of federal data, while preventing the specific forms of practical compulsion that threaten the ongoing election. But because Applicants have not shown a likelihood of success or irreparable harm sufficient to justify any stay, the better course is to deny the application in full.

VI. CONCLUSION

The application for a stay and request for an administrative stay should be denied. In the alternative, any relief should preserve the injunction against voter-specific ballot-mail conditions, nonacceptance of ballot mail, and coercive enforcement based solely on omission from—or nonparticipation in—a federal list.

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Dated: July 29, 2026