

IN THE
Supreme Court of the United States

No. 26A124

DONALD J. TRUMP, et al.,
Applicants,

v.

STATE OF CALIFORNIA, et al.,
Respondents.

**On Application for a Stay of the Injunction
Issued by the United States District Court
for the District of Massachusetts
and Request for Administrative Stay**

**BRIEF *AMICUS CURIAE* OF
AMERICA'S FUTURE,
CITIZENS UNITED, CITIZENS UNITED FOUNDATION,
THE PRESIDENTIAL COALITION, LLC
PUBLIC ADVOCATE OF THE U.S., PUBLIC ADVOCATE FOUNDATION,
U.S. CONSTITUTIONAL RIGHTS LEGAL DEFENSE FUND, AND
CONSERVATIVE LEGAL DEFENSE AND EDUCATION FUND
IN SUPPORT OF APPLICANTS**

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INTEREST OF THE *AMICI CURIAE*¹

Amici curiae America's Future, Citizens United, Citizens United Foundation, Public Advocate of the United States, Public Advocate Foundation, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under either section 501(c)(3) or 501(c)(4) of the Internal Revenue Code. The Presidential Coalition, LLC is a political committee. These entities, *inter alia*, participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

Some of these *amici* filed an *amicus* brief in the U.S. District Court for the District of Columbia in a parallel case challenging the Executive Order at issue here. *See DSCC v. Trump*, D.D.C. No. 1:26-cv-01114, [Brief Amicus Curiae of America's Future, et al.](#) (May 1, 2026).

Some of these *amici* filed an *amicus* brief in an earlier challenge to President Trump's 2025 Executive Order² relating to elections. *See California v. Trump*, 1st Cir. No. 25-1726, [Brief Amicus Curiae of Citizens United, et al.](#) (Oct. 14, 2025).

¹ It is hereby certified that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

² Challenge to Executive Order No. 14,248, "Preserving and Protecting the Integrity of American Elections" (Mar. 25, 2025).

Lastly, *amicus* America's Future filed comments in the U.S. Postal Service rulemaking on Ballot Mail for Federal Elections. See [America's Future Comments to U.S. Postal Service](#) (July 2, 2026).

STATEMENT OF THE CASE

On March 31, 2026, President Trump signed Executive Order 14,399, "Ensuring Citizenship Verification and Integrity in Federal Elections" (the "EO"). The EO contains a variety of provisions relating to federal elections, laying the foundation to help the states enforce the federal law limiting voting in federal elections to U.S. citizens.

Of relevance to this litigation, Section 2 of the EO directs the Department of Homeland Security ("DHS") to create lists of "individuals confirmed to be United States citizens who will be above the age of 18 at the time of an upcoming Federal election and who maintain a residence in the subject State." That section also requires the DHS to establish procedures related to the same. Section 3 requires the U.S. Postal Service ("USPS") to initiate a rulemaking regarding markings and barcodes for ballot mail, with the goal of adopting a final rule by July 29, 2026.

Before the DHS and the Postal Service had taken any final actions, the Respondent States filed a complaint and sought a preliminary injunction against future actions by those agencies. On June 25, 2026, the district judge issued a preliminary injunction against the federal government from implementing Sections 2 and 3 of the EO with respect to the November 2026 midterm elections. See App. 61a-63a, *California v. Trump*, 2026 U.S. Dist. LEXIS 141140 (D. Mass. June 25,

2026) (“*California I*”). On July 25, 2026, the First Circuit denied the federal government’s motion for stay pending appeal.³ *See* App. 1a, *et seq.* The same day, the Government filed its Application for a Stay.

Three days later, July 28, 2026, in a parallel challenge to the Trump EO in which some of these *amici* filed an *amicus* brief,⁴ the D.C. Circuit upheld the district court’s denial of a preliminary injunction. The Circuit Court took the position that “this case likely is unripe for review in its present posture.... On the present record, the district court did not abuse its discretion in denying a preliminary injunction due to the unripeness of Plaintiffs’ claims.” *DSCC v. Trump*, 2026 U.S. App. LEXIS 22325 at *7-8, 13 (D.C. Cir. July 28, 2026).

SUMMARY OF ARGUMENT

The District of Massachusetts issued an extraordinary injunction ordering two federal agencies in the Executive Branch of government to disregard directives from President Trump to take preliminary actions which violate no federal law. The only way the district court could enjoin DHS from creating a “State Citizenship List” was to mischaracterize it as a “state voter list.” The district court’s injunction against the Postal Service is the first time these *amici* are aware that a district court has enjoined an agency’s Notice of Proposed Rulemaking (“NPRM”) — ever. A

³ *California v. Trump*, 2026 U.S. App. LEXIS 22115 (1st Cir. July 25, 2026) (“*California II*”).

⁴ *See DSCC v. Trump*, D.D.C. No. 1:26-cv-01114, [Brief Amicus Curiae of America’s Future, et al.](#) (May 1, 2026).

NPRM is the very definition of an agency action which is not a final agency action. The district court had no authority as there was no case or controversy presented to it. However, this lawless injunction has already done great damage to the nation, as it has frozen efforts to enforce the federal ban on voting by noncitizens in federal elections. This delay accomplishes the Respondents' political objectives, but neither court below should have permitted this abuse of the judicial process.

The problem of noncitizens registering to vote, and voting, has been demonstrated, in Respondent State of New Jersey, and others, which should be quite embarrassing as New Jersey is apparently taking the position that it already enforces the ban on noncitizen voting.

Both to better enforce existing law, 18 U.S.C. section 611 (and other statutes), and the Safeguard American Voter Eligibility Act should it be passed by the Senate, the type of list that DHS is being prevented from creating is needed. The President has the duty to "take care" that federal laws are enforced, and the courts below erred badly in delaying the important effort to have the Congressionally enacted ban on voting by noncitizens. These *amici* urge this Court to quickly stay the district court's injunction.

ARGUMENT

I. THE DISTRICT COURT INJUNCTION FALSELY CONCLUDED THAT THE PRESIDENT'S EXECUTIVE ORDER HARMED THE STATES.

Whether based on either of the related doctrines of standing or ripeness, the district court clearly had no authority to issue its injunction, as there has been no

final agency action. The President has every right to order executive branch agencies to take the actions directed in Sections 2 and 3 of the EO.

EO Section 2(a) contains a directive to DHS to develop a list of U.S. citizens meeting certain criteria required by federal law to vote in federal elections, while EO Section 3 directs USPS to conduct a proposed rulemaking about how to handle mail-in ballots. Both of these directives come with the condition that they must be done consistent with applicable law. Therefore, the President has not directed these agencies to do anything in violation of any law. The President's EO is an exercise of his constitutional authority to take care that the nation's election laws be faithfully executed, which itself harms no one. The district court's entire basis for a finding of harm or injury is based on nothing but speculation about what might occur in the future, making any challenge at this point, at best, premature.

In addition, the central logical flaw in the district court opinion was its use of a technique which might be termed "distinction crushing" by incorrectly describing the list that DHS was directed to develop with the official "state voter list" of the respondent states. The EO directs DHS and other executive branch agencies to compile:

a list of individuals confirmed to be United States citizens who will be above the age of 18 at the time of an upcoming Federal election and who maintain a residence in the subject State (**State Citizenship List**). [EO Section 2 (emphasis added).]

This list was designed to be "transmit[ted] to the chief election official of each State." The district court acknowledges in a footnote early in its opinion that these

lists are described in the EO as “State Citizenship Lists,” but then switches to describing these lists as “**state voter lists.**” The district court contends the President has no authority to create a State Citizenship List because “nowhere in HAVA does Congress prescribe who should be included on **State voter lists.**” *California I* at *41 (emphasis added). It concludes: “the President lacks any authority to compile **voter lists** for each state.” *Id.* (emphasis added). Thus, the district court’s principle finding about the lists is wholly irrelevant to deciding the issue here. The President can have full authority to create a State Citizenship List, while lacking the authority to compile “state voter lists.”

With respect to the Postal Service, the district court must have assumed that the USPS Notice of Proposed Rulemaking, requesting comments from the public, will inevitably lead to the issuance of an unlawful rule. However, the court is not authorized to base an injunction on speculation and assumptions. Until this district court ruling, these *amici* cannot recall any prior federal court which has treated the issuance of a Notice of Proposed Rulemaking (“NPRM”) as if it were final agency action under the Administrative Procedure Act. Indeed, this district court’s impeding the NPRM would seem to be the very definition of a premature judicial act.

Neither of these agencies has taken a final action that a court would have authority to review to determine whether either has exceeded the bounds of applicable federal law.

II. CERTAIN RESPONDENT STATES ARE REPORTED TO HAVE ALLOWED NONCITIZENS TO REGISTER AND VOTE IN VIOLATION OF FEDERAL LAW.

The respondent states have convinced the district court to issue an injunction simply based on the fear of what **might** happen if the role of states in conducting federal elections was impaired. Although not at the center of the legal issue required to be resolved by this application for stay, it should be understood that if the injunction is allowed to stand, there is something quite bad that likely will happen. The voter rolls used in federal elections might not be cleaned up as reasonably required, and noncitizens who are ineligible voters — including illegal aliens — might remain on those voter rolls, thereby diluting the vote of every American citizen. Through their premature action to stop the President’s effort to clean up the voter rolls, the Respondent states reveal their concern that if only U.S. citizens vote in a federal election, it could alter the results of the election, and that would create an existential threat to the power of officeholders in those states. This is not a theoretical problem in these “blue states.”⁵

The Executive Order explains that it was issued for the stated purpose of protecting the “right to vote in Federal elections ... reserved exclusively for citizens

⁵ The other challenge to the EO was brought by national Democrat Party organizations and certain officials serving in some of the Respondent blue states herein, who alleged in Paragraph 7 of their Complaint that they will be “severely harmed” if mail-in voting is restricted to American citizens. That claim could be read to assert that the DSCC plaintiffs would be “severely harmed” politically if voting is restricted to those lawfully entitled to vote under federal law. *See DSCC v. Trump*, D.D.C. No. 1:26-cv-01114, DSCC Complaint (Doc #1).

of the United States” and of “preventing violations of Federal criminal law and maintaining public confidence in election outcomes.” EO Section 1. Neither the district nor circuit court considered the President’s duty to “take care” that this law be executed sufficient for it to outweigh other factors relevant to issuance of a preliminary injunction. App. 15a. The district court’s only references to the key statute making it unlawful for any noncitizen to vote in any federal election — 18 U.S.C. § 611 — were in passing. However, certain information only recently has become publicly available, which demonstrates that the President’s concerns regarding the registration of and voting by noncitizens are well-founded, as they are in fact both on the registered voter rolls of certain states, and some have been voting in federal elections.

Respondent New Jersey recently disclosed that a “serious system error ... led to an improper voter registration of thousands of individuals” in that state. *See* [Letter](#) of New Jersey Governor to the U.S. Department of Justice (July 28, 2026). In fact, **6,600 “noncitizens” were registered to vote between June 2023 and June 2024, and 400 of those actually voted.** *See* [Letter](#) of U.S. Department of Justice to the New Jersey Governor (July 21, 2026).

Pennsylvania (whose Governor is one of the Respondents) permitted “as many as 14,576 non-citizens” to be registered to vote, and some have voted in multiple elections.⁶

⁶ *See* [Letter from Secretary of Homeland Security Mullin to Pennsylvania Secretary of State](#) (July 16, 2026); *see also* [“ICE Arrests Criminal Illegal Alien who](#)

Respondent Arizona has allowed about 40,000-50,000 voters to be registered as “Federal only” and are not permitted to participate in state elections because they have not provided proof of citizenship or proof of residency as required by that state’s laws for state elections.⁷

Meanwhile, on June 29, 2026, this Court granted certiorari to determine whether states can require documentary proof of citizenship to register to vote. *See Republican National Committee v. Mi Familia Vota* (translation “My Family Votes”), No. 25-1017.

Additionally, recently declassified documents are reported to show that, even before the 2020 U.S. elections, China had hacked more than 220 million U.S. voter files (more than the total of 174 million voters registered in 2024⁸). China had access to “personal and sensitive information” about America’s voters.⁹ While China apparently has this information, certain Respondent states are refusing to

[Voted in Seven Federal Elections Since 2008](#),” *Department of Homeland Security* (Mar. 9, 2026) and Carter Walker, [“Why Pennsylvania’s secretary of the commonwealth has a unique understanding of noncitizen voting,”](#) *Votebeat Pennsylvania* (Apr. 9, 2026) (“168 noncitizens registering to vote [by PennDOT’s motor voter system] in Philadelphia alone and ... an additional 52 registered by other means [had] cast 227 votes.”).

⁷ See Michael Lee, [“Arizona to verify up to 50K people from voter rolls who failed to prove citizenship,”](#) *Fox News* (Apr. 13, 2025).

⁸ [“2024 Presidential Election Voting and Registration Tables Now Available,”](#) *U.S. Census Bureau* (Apr. 30, 2026).

⁹ See Rebecca Terrell, [“Trump Highlights Election-security Concerns,”](#) *The New American* (July 28, 2026).

provide voter information to the Department of Justice, claiming that the federal government should not have such “sensitive” information. *See United States v. Benson*, 179 F.4th 470 (6th Cir. 2026) and *U.S. v. Oregon/Weber*, 9th Cir. Nos. 26-1231 & 26-1232.¹⁰

III. THE CREATION OF A NATIONAL CITIZENS ELIGIBLE VOTER LIST IS ESSENTIAL TO THE IMPLEMENTATION OF EXISTING FEDERAL STATUTES AS WELL AS LEGISLATION PENDING IN THE U.S. SENATE.

The EO’s directing the preparation of the list in question would appear to be squarely within the authority of the President to “take care” that 18 U.S.C. §§ 241, 611, and 1015, 28 U.S.C. § 547, and 52 U.S.C. § 20511 are faithfully executed. *See* sec. V, *infra*. Additionally, such a list would be essential in the event of the passage of a bill currently pending in the U.S. Senate that could be enacted at any time.¹¹ The SAVE America Act (short for “Safeguard American Voter Eligibility Act”), [H.R. 7296 \(119th Congress\)](#), was introduced on January 30, 2026. This bill amends the “National Voter Registration Act of 1993” (also known as the “Motor Voter” law), and was passed by the House on February 11, 2026, by a vote of 218-213 (with one

¹⁰ Some of these *amici* filed *amicus* briefs in cases where the DOJ is seeking orders directing the states to make the voter lists available to the federal government. *See U.S. v. Oregon*, 9th Cir. No. 26-1231 and *U.S. v. Weber*, 9th Cir. No. 26-1232, [Brief Amicus Curiae of America’s Future, et al.](#) (Mar. 25, 2026) and *U.S. v. Benson*, 6th Cir. No. 26-1225, [Brief Amicus Curiae of America’s Future, et al.](#) (Mar. 30, 2026).

¹¹ The SAVE America Act is a refinement on [H.R. 22, the SAVE Act](#) (short for “Safeguard American Voter Eligibility Act”), which also was introduced by Congressman Chip Roy. It passed the House on April 10, 2025 by a vote of 220 to 208, with four Democrats voting yes.

Democrat voting yes), as an amendment to a Senate bill, [S. 1383](#). It is now back in the Senate.

Under this bill, states would be prohibited from accepting or processing voter registration applications for federal elections unless the applicant provides documentary proof of U.S. citizenship at the time of application. Additionally, voters would be required to show a valid photo ID to vote.

For purposes relevant here, states would be required to take ongoing affirmative steps to ensure that only citizens are registered to vote, including using Department of Homeland Security and Social Security Administration data to identify and remove noncitizens. The Congressional Research Service summary of S. 1383 explains:

Within 30 days of the bill's enactment, each state must take affirmative steps on an ongoing basis to ensure that only U.S. citizens are registered to vote, which shall include establishing a program to identify individuals who are not U.S. citizens using information supplied by certain sources. Further, each state must submit its complete official list of eligible voters to the Department of Homeland Security for comparison with the Systematic Alien Verification for Entitlements system, which is used to verify immigration status. Individuals who are identified as noncitizens must be given the opportunity to provide documentary proof of U.S. citizenship. Additionally, states must remove noncitizens from their official lists of eligible voters.¹²

If the President is barred from developing a list of eligible voters until after the SAVE America Act is enacted, and if that enactment is delayed until the weeks before the midterm elections this November, it would become practically impossible

¹² Bill Summary, "[Passed House \(02/11/2026\)](#)," *Congress.gov*.

to give effect to the new legislation before the election. That may well explain why this and the obviously premature *DSCC* challenges were filed. In a carefully selected district court, reporting to a carefully selected circuit, sufficient delay can be achieved to prevent the preparation of an eligible voter list until it is too late to protect the integrity of the November 2026 elections.

IV. THE POSTAL SERVICE HAS AUTHORITY TO ISSUE ITS NOTICE OF PROPOSED RULEMAKING.

The challenge to the USPS Notice of Proposed Rulemaking is clearly premature. However, the district court curiously asserted that the EO's directive to the USPS is unlawful because "no law enacted by Congress delegates authority to control mail-in voting to USPS." *California I* at *45. Again, the district court misstates the issue. Here, it characterizes the issue as USPS's controlling mail-in voting, when it is Congress which already has banned voting by noncitizens. It is Respondents who want to deprive the federal government of any means to ensure federal law is followed. Viewed differently, Respondents appear to want to have the USPS, as an agency of the federal government, to be required to facilitate unlawful, fraudulent voting by noncitizens if registered by states.

Respondent states actually deny that there is any problem whatsoever with noncitizens voting in their states. The Governor of lead-Respondent California, Gavin Newsom, has tweeted, "California law is clear: You **MUST** be a U.S. citizen to vote [in] state and federal elections ... Voter fraud is **EXTREMELY RARE** — and

almost always committed by U.S. citizens.”¹³ Even if only rare, it should be non-existent. Yet California and the other Respondent states travel to a Massachusetts district court to deny to the federal government any role in ensuring that these particular federal laws are followed by the states, especially when there is considerable evidence that they are not being followed. *See* sec. II, *infra*.

In any event, the USPS has the authority pursuant to 39 U.S.C. § 401(2) and (10) to promulgate the Rule it proposes. The stated purposes of the Proposed Rule are “to facilitate enforcement of federal law, reduce the risk of fraud, and help protect the integrity of federal elections.” 91 *Fed. Reg.* 32915. This Proposed Rule would be a much-needed and long-overdue effort to address the acknowledged concern about the risks associated with mail-in and absentee voting. The Commission on Federal Election Reform, in its Report on “Building Confidence in U.S. Elections” at 46 (Sept. 2005), concluded the following about voting by mail:

[T]here is no evidence that it significantly expands participation in federal elections.... Moreover, it raises concern about privacy, as citizen voting at home may come under pressure to vote for certain candidates, and it **increases the risk of fraud**. [*Id.* at 35.]

The right to vote in federal elections is restricted to “citizens of the United States under the Constitution and Federal law.” 18 U.S.C. § 241. Noncitizens are prohibited from registering to vote or voting in federal elections. *Id.*, 18 U.S.C. §§ 611, 1015; 52 U.S.C. § 20516. States that have enacted laws authorizing mail-in

¹³ See <https://x.com/govpressoffice/status/2077900078371528983?s=46>.

and absentee voting have chosen to implement those laws by using an agency of the federal government — the USPS — and certainly the USPS must follow federal law.

The Proposed Rule states that it is intended to “facilitate the process for states to enroll individuals with the Postal Service for inclusion on state-specific lists for mail-in and absentee ballot participation.” 91 *Fed. Reg.* 32916. Under the NPRM, States will continue to make the determination of which individuals will receive ballots, provided the determination does not violate applicable federal law. States notify the USPS of the individuals to whom they intend to send mail-in or absentee ballots.

The Proposed Rule includes the introduction of a unique barcode to be applied to the outbound and return ballot mail envelopes for the individuals identified by the states. Those individuals will be included on a Mail-In and Absentee Ballot Participation List. This new feature would contribute to improved efficiency and effectiveness of the process. Under the previously cited federal statutes, noncitizens may not be allowed to participate in federal elections and, therefore, may not be included in the Mail-In and Absentee Ballot Participation List. The Proposed Rule “will help determine adherence to federal law and facilitate law enforcement efforts.” 91 *Fed. Reg.* 32916.

V. MULTIPLE SUPREME COURT DECISIONS CONFIRM THE PRESIDENT HAS POWER UNDER THE “TAKE CARE CLAUSE” TO ORDER THIS RULE.

As the Supreme Court recognized 100 years ago, the Constitution vests in the President alone both the responsibility and the authority to “take care that the laws be faithfully executed.” In *Myers v. United States*, the Court noted:

Mr. Madison ... dwelt at length upon the necessity there was for construing Article II to give the President the sole power of removal in his responsibility for the conduct of the executive branch, and enforced this by emphasizing his duty expressly declared in the third section of the Article to “take care that the laws be faithfully executed.” Madison, 1 Annals of Congress, 496, 497. **The vesting of the executive power in the President was essentially a grant of the power to execute the laws.** [*Myers v. United States*, 272 U.S. 52, 1176 (1926) (emphasis added).]

Six years ago, this Court reiterated the exclusive vesting of the executive power in the President. “Article II of the Constitution vests ‘[t]he executive Power’ in the ‘President of the United States of America,’ §1, cl. 1, and directs that he shall ‘take Care that the Laws be faithfully executed’....” *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 239 (2020). This Court added:

Under our Constitution, the “executive Power” — all of it — is “vested in a President,” who must “take Care that the Laws be faithfully executed.” ... The President’s power to remove — and thus supervise — those who wield executive power on his behalf follows from the text of Article II, was settled by the First Congress, and was confirmed in the landmark decision *Myers v. United States*.” [*Id.* at 203-04 (cleaned up).]

Recently, the Court again stressed the complete commitment of the execution of the laws to the President. “To vest ‘the whole executive power’ in just one person was ... to establish a hierarchy — a Chief Magistrate with whom the buck stops,

and below him various assistants or deputies who derive their offices from his appointment and remain subject to his superintendence.” *Trump v. Slaughter*, 2026 U.S. LEXIS 2877, at *18 (2026).

This Court noted that, as the Framers settled the question of the independent executive:

Madison led the charge. “I conceive that if any power whatsoever is in its nature **Executive**,” and thus vested in the President, “it is the power of appointing, overseeing, and **controlling** those who execute the laws.” *Id.* at *24 (quoting 1 Annals of Cong. 463 (J. Madison) (emphasis added)). “[M]ore than 200 years have passed since we recognized” that the Constitution “vests the whole executive power in the President” alone. *Osborn v. Bank of United States*, 22 U.S. 738, 819 (1824) (Marshall, C.J., for the Court). [*Id.* at *37.]

The Court in *Slaughter* rejected congressional efforts to usurp the President’s executive authority.

“As a practical matter, successful insulation of administration from the President — even if accomplished in the name of ‘independence’ — will tend to enhance Congress’s own authority over the insulated activities.” Placing the power to administer laws in officers who enjoy “freedom from Presidential oversight (and protection),” in other words, does not deliver us to a promised land of technocratic governance — it often results only in an “increased subservience to congressional direction.” ... No branch may rely on adverse possession to claim power that the Constitution vests elsewhere. [*Id.* at *40.]

As Professors Steven G. Calabresi and Saikrishna B. Prakash argue, “[b]ecause the President alone has the constitutional power to execute federal law, it would seem to follow that ... the President must be able to execute [a] statute

interpreting it and applying it in concrete circumstances.”¹⁴ Providing numerous historical examples, they note that at the Founding, “everyone recognized that the President would administer federal law. Philadelphia and state convention delegates, Hamilton and Madison, other Federalists, and numerous Anti-Federalists understood this simple truth.... [S]peakers and essayists repeatedly proclaimed that the Constitution already granted the President the authority to execute federal law.” *Id.* at 622.

Indeed, this Court has endorsed inherent authority for the President to enforce federal law where the governing statute does not prohibit it. This Court explained that:

if the President or the Postmaster General is advised that the mails of the United States, possibly carrying treasure, are liable to be robbed and the mail carriers assaulted and murdered in any particular region of country, who can doubt the authority of the President or of one of the executive departments under him to make an order for the protection of the mail and of the persons and lives of its carriers. [*In re Neagle*, 135 U.S. 1, 65 (1890).]

The Court viewed this authority as inherent in the responsibility to “take care that the laws be faithfully executed.” Likewise, if the President is advised that the mails of the United States are being used to transport illegal ballots, he has the inherent authority to instruct “the executive departments under him” to take steps to ensure that no such ballots are transported and illegally inserted to pollute election results.

¹⁴ Steven Calabresi & Saikrishna Prakash, “The President’s Power To Execute the Laws,” 104 Yale L.J. 541, 595 (1994).

In fact, while the “Take Care Clause” has primarily been litigated in the context of removal of executive officers, it is noteworthy that in the seminal case delineating the removal power, the Court found that power to exist even where only implicit, since removal is not explicitly mentioned in Article II:

As he is charged specifically to take care that they be faithfully executed, **the reasonable implication, even in the absence of express words**, was that as part of his executive power he should select those who were to act for him under his direction in the execution of the laws. The further implication must be, **in the absence of any express limitation respecting removals**, that as his selection of administrative officers is essential to the execution of the laws by him, so must be his power of removing those for whom he can not continue to be responsible. [*Myers v. United States*, 272 U.S. 52, 117 (1926) (emphasis added).]

Likewise, criminal prosecution is the domain of the executive. “Under the authority of Art. II, § 2, Congress has vested in the Attorney General the power to conduct the criminal litigation of the United States Government. 28 U.S.C. § 516.” *United States v. Nixon*, 418 U.S. 683, 694 (1974). Preventing the use of the U.S. Postal Service to convey illegal documents is well within the purview of an executive order.

The President’s order involves the investigation and prosecution of federal crimes. 28 U.S.C. § 547 provides, “Except as otherwise provided by law, each United States attorney, within his district, shall ... prosecute for all offenses against the United States.” There is no provision for states to undertake such prosecutions. Federal election law violations, such as criminal voting by aliens, are the peculiar province of the executive:

“[I]t is to the President, and not to the Congress, that the Constitution entrusts the responsibility to ‘take Care that the Laws be faithfully executed.’” *Buckley v. Valeo*, 424 U.S. 1, 138 (1976). The Court has further made clear that it cannot remove the enforcement power from the President and transfer it elsewhere. In striking down the Brady Bill’s “conscription” of state law enforcement agencies to enforce the law, the Court noted that “the power of the President would be subject to reduction, if Congress could act as effectively without the President as with him, by simply requiring state officers to execute its laws.” [*Printz v. United States*, 521 U.S. 898, 922 (1997).]

VI. THIS DISTRICT COURT INJUNCTION WAS THE END RESULT OF CAREFUL FORUM SHOPPING.

It is reasonable for the public to wonder why the Respondent State of California decided not to file its complaint in the Southern, Central, Eastern, or even the Northern District of California, but rather chose to cross the country to file its complaint in the Massachusetts district court. The public understands that an appeal or request for stay from the Massachusetts district court goes to the First Circuit which, until late last year, had no Republican President-appointed judges.

Here, California followed the legal strategy established by Respondent State of New Jersey when it chose to challenge President Trump’s Birthright Citizenship EO and decided not to file in the District of New Jersey (Third Circuit), but rather in the same court as here — the District of Massachusetts (First Circuit). *See New Jersey v. Trump*, No. 1:25-cv-10139-LTS (D. Mass.).¹⁵

¹⁵ Anti-Trump forum shopping continues even after cases are filed, for after a challenge to the Birthright Citizenship EO was filed in the District of Columbia, it was dropped by plaintiffs when the case was randomly assigned to a Republican-appointed judge. *See OCA-Asian Pacific American Advocates v. Rubio*, 1:25-cv-00287-TJK (D.D.C.).

CONCLUSION

For the foregoing reasons, this Court should stay the district court injunction pending appeal.

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