APPENDIX

Court of appeals order denying injunction pending appeal
(9th Cir. Oct. 30, 2026) 1a

District court order denying temporary restraining order
(C.D. Cal. Oct. 28, 2026) 40a

Court of appeals order denying injunction pending appeal
(9th Cir. Oct. 26, 2026) 66a

FOR PUBLICATION

FILED

OCT 30 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

STATE OF CALIFORNIA; SHIRLEY WEBER, PH.D., in her official capacity as the California Secretary of State; DEAN LOGAN, in his official capacity as the County of Los Angeles Registrar-Recorder/County Clerk,

Defendants – Appellees,

SERVICES, IMMIGRANT RIGHTS AND EDUCATION NETWORK; MI FAMILIA EN ACCION; LEAGUE OF UNITED LATIN AMERICAN CITIZENS; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; CALIFORNIA-HAWAII STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,

Intervenors – Appellees.

No. 26-7231

D.C. No.
2:26-cv-12025-DOC-ADSCentral
District of California,
Los Angeles

ORDER

Before: Mark J. Bennett, Patrick J. Bumatay, and Gabriel P. Sanchez, Circuit Judges

PER CURIAM:
Dissent by Judge BUMATAY.

The United States sued the State of California and the County of Los Angeles (the "County")[1] (collectively, "Defendants"), alleging that the Supremacy Clause prohibits Defendants from knowingly sending vote-by-mail ballots to individuals the federal government has identified as "likely" noncitizens and counting those ballots in violation of 18 U.S.C. § 611. The district court denied the United States's application for a temporary restraining order ("TRO"), and the United States appeals. Presently before us is the United States's emergency motion for an injunction pending appeal.[2] We deny the United States's motion because the United States has failed to meet its burden in showing that an injunction pending appeal is warranted.

I.

Over the summer months of 2026, the U.S. Citizenship and Immigration Services and the Department of Homeland Security Investigations obtained California's voter roll and curated a list of "high-confidence" noncitizens who they

[1] The United States sued Shirley N. Weber, in her official capacity as the California Secretary of State, and Dean C. Logan, in his official capacity as the County of Los Angeles – Registrar-Recorder/County Clerk.

[2] The United States has asked us to expedite ruling and to rule by October 30, 2026. We do so.

believed were registered to vote in California. On October 12, 2026, the United States provided the list ("October List") to Defendants and asked them to sequester the ballots of every name on the list so that the voters' citizenships could be verified before the votes were separated from their envelopes and counted in the November 3, 2026, election. Defendants refused, expressing doubt about the veracity and reliability of the list. The United States sued Defendants on October 15, 2026, approximately two weeks before the 2026 midterm election, alleging that the Supremacy Clause prohibits Defendants from knowingly sending vote-by-mail ballots to likely noncitizens and counting those ballots. The United States claimed that these acts would violate 18 U.S.C. § 611. The United States moved for a TRO and appealed when the district court failed to rule on the TRO by a deadline the United States set for the court to rule.

On appeal, the United States asked us for emergency relief in the form of a mandatory injunction ordering Defendants to "(1) to set aside vote-by-mail ballots from persons identified by the Federal Government likely to be noncitizens and (2) to independently—or in collaboration with the Federal Government—verify their citizenship status before tabulating their vote-by-mail ballot." *United States v. California*, No. 26-7070, 2026 WL 3212945, at *1 (9th Cir. Oct. 26, 2026) ("*California I*") (per curiam). We held that we lacked jurisdiction over the appeal,

granted the County's motion to dismiss the appeal, and denied as moot the United States's emergency motion for relief. *Id.*

The district court then held a hearing on the TRO application on October 27, 2026. The next day, the district court issued an order denying the TRO. The United States immediately appealed and filed the instant emergency motion for an injunction pending appeal on October 29, 2026. The emergency motion seeks substantially the same relief, asking us to order California to sequester the relevant ballots and establish a process to verify the citizenship status of those voters before counting them.

II.

At the outset, and given the emergency posture of this case, we assume without deciding that the United States possesses both standing and a cause of action to sue Defendants. Under 28 U.S.C. § 1292(a)(1), we have appellate jurisdiction over appeals from interlocutory orders denying injunctive relief. "Ordinarily, we lack jurisdiction over the appeal of a TRO." *Newsom v. Trump*, 141 F.4th 1032, 1043 (9th Cir. 2025) (per curiam). But a "denial of a TRO may be appealed if the circumstances render the denial tantamount to the denial of a preliminary injunction." *Babaria v. Blinken*, 87 F.4th 963, 976 (9th Cir. 2023) (citation modified) (quoting *Religious Tech. Ctr., Church of Scientology Int'l, Inc. v. Scott*, 869 F.2d 1306, 1308 (9th Cir. 1989)). To decide that question, we have primarily considered

two factors: (1) whether there was a "full adversary hearing" in the district court; and (2) whether "in the absence of review, the appellants would be effectively foreclosed from pursuing further interlocutory relief." *Scott*, 869 F.2d at 1308 (quoting *Env't Def. Fund, Inc. v. Andrus*, 625 F.2d 861, 862 (9th Cir. 1980)). We have also considered whether "'the denial of the TRO effectively decided the merits of the case' and rendered plaintiff['s] claims moot." *Blinken*, 87 F.4th at 976 (quoting *Graham v. Teledyne-Cont'l Motors*, 805 F.2d 1386, 1388 (9th Cir. 1986)).

We have jurisdiction over this appeal. First, the district court conducted a two-hour "adversary hearing" at which it heard arguments from all parties on the merits of the United States's requested TRO. *See Andrus*, 625 F.2d at 862. Both the United States and Defendants were afforded "notice [and] an opportunity to respond," and both were able to submit briefing and "additional evidence" to the district court. *Blinken*, 87 F.4th at 976; *see also Washington v. Trump*, 847 F.3d 1151, 1158 (9th Cir. 2017) (per curiam) (finding appellate jurisdiction where both parties "vigorously contested the legal basis for the TRO in written briefs and oral arguments before the district court"); *Newsom*, 141 F.4th at 1043–44 (noting a TRO that was "strongly challenged" in the district court is more likely to be "best construed as an appealable preliminary injunction" (quoting *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 762 (9th Cir. 2018)).

In addition, the district court's order denying the United States's motion for a TRO "effectively foreclosed" the United States "from pursuing further interlocutory relief." *Scott*, 869 F.2d at 1308 (quoting *Andrus*, 625 F.2d at 862). In the United States's Complaint, it asked the district court to enjoin California from tabulating ballots from voters it had classified as "likely noncitizens in the upcoming federal election." Compl. at 3, No. 26-cv-12025 (C.D. Cal. Oct. 15, 2026), ECF No. 1.[3] But at the adversarial hearing, the district court stated that it did not have the "appropriate time" to develop a full record on the relevant "systems" and "algorithms" surrounding the veracity of the United States's list of "likely" noncitizens. TRO Hearing Transcript at 93, ECF No. 150. It thus appointed a special master to review the United States's voter roll data and suggested convening another hearing in two weeks—well after Election Day on November 3, 2026—to further develop a record on the issue. *Id*. at 93–94. And it noted that the purpose of the future hearing would be to determine the veracity of the October List, in the event the United States adds additional individuals to the list and wishes to bring "indictment[s] against them." *Id.* at 90. In doing so, the district court in large part rendered the United States's claim—which is ostensibly based on sequestering ballots in the instant election rather than prosecuting noncitizens afterward—"moot," or at least moot in substantial part because the election is days away. *See Blinken*, 87 F.4th at 976.

[3] All ECF cites refer to the entries in Case No. 26-cv-12025.

The "transcript of the hearing and the court's written order denying the application [for a TRO] make it unmistakably clear that the order was tantamount to a denial of a preliminary injunction." *Scott*, 869 F.2d at 1308. Thus, we have appellate jurisdiction and may proceed to the merits. *See Newsom*, 141 F.4th at 1044.

III.

"The standard for evaluating an injunction pending appeal is similar to that employed by district courts in deciding whether to grant a preliminary injunction." *Feldman v. Ariz. Sec'y of State's Off.*, 843 F.3d 366, 367 (9th Cir. 2016) (en banc). The United States "must establish that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

As to the first factor, which is the most important, *Env't Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 989 (9th Cir. 2020), the question is usually whether the movant is likely to succeed in arguing on appeal that the district court abused its discretion in denying the preliminary injunction, *see Brown ex rel. K.M.K. v. Wash. Interscholastic Activities Ass'n*, No. 26-5488, 2026 WL 2891827, at *2 (9th Cir. Sept. 25, 2026). "A district court abuses its discretion if it bases its decision on an erroneous legal standard or on clearly erroneous factual findings." *Id.* (quoting *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023)). And here, the United States's burden

is "doubly demanding," because it seeks a mandatory injunction requiring Defendants to segregate ballots that they would not otherwise segregate and to affirmatively verify certain voters' citizenship status before tabulating their vote-by-mail ballot. *See Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc). The United States therefore "must establish that the law and facts *clearly favor* [its] position, not simply that [it] is likely to succeed." *Id.*

IV.

A.

We begin with the United States's likelihood of success on the merits—"the most important" of the *Winter* factors—and whether the "law and facts *clearly favor* [its] position, not simply that [it] is likely to succeed." *Garcia*, 786 F.3d at 740. The United States once again requests that we order Defendants to segregate the ballots of alleged noncitizens because, it claims, 18 U.S.C. § 611 preempts California's constitutionally permitted statutory scheme adopted by the California legislature. But the United States has not made the required showing that such extraordinary relief, during an ongoing election, is clearly required by law.

Because this dispute focuses on California's *procedures* for administering its elections, the Elections Clause of the U.S. Constitution is directly implicated. *See Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8–9 (2013) ("*ITCA*"). The Elections Clause reads:

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

U.S. Const. art. I, § 4, cl. 1. This clause expressly dictates which sovereign has the authority to prescribe the manner by which congressional elections are conducted. Thus, the question remains whether California's *procedures* for enforcing election requirements, such as the State's statutory scheme for citizenship-based ballot challenges, have been preempted by Congress.

"[T]he [Elections] Clause functions as 'a default provision; it invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to pre-empt state legislative choices.'" *ITCA*, 570 U.S. at 9 (quoting *Foster v. Love*, 522 U.S. 67, 69 (1997)). This "broad authority," *Smiley v. Holm*, 285 U.S. 355, 367 (1932), conferred on states includes the authority over "notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, [and] duties of inspectors . . . in short, to enact the numerous requirements as to procedure and safeguards which . . . are necessary in order to enforce the fundamental right involved," *id.* at 366.

Congress, of course, "may supplement these state regulations or may substitute its own" because "[i]t has a general supervisory power over the whole subject." *Id.* at 366–67 (citation modified); *ITCA*, 570 U.S. at 14 (noting "[t]he

assumption that Congress is reluctant to pre-empt does not hold when Congress acts under" the Elections Clause). But Congress's exercise of its Elections Clause preemption power only goes "so far as it is exercised, and no farther." *ITCA*, 570 U.S. at 9 (quoting *Ex parte Siebold*, 100 U.S. 371, 392 (1880), *abrogated on other grounds by Glasgow v. Moyer*, 225 U.S. 420 (1912)). Indeed, when Congress "exercise[s] th[is] power, . . . we are bound to presume that Congress has done so in a judicious manner [and] that it has endeavored to guard as far as possible against any unnecessary interference with State laws and regulations." *Siebold*, 100 U.S. at 393.

Nothing in § 611, a statute that criminalizes voting by a noncitizen, preempts California's comprehensive statutory scheme that has been duly enacted under the Elections Clause. Section 611 provides that:

> (a) It shall be unlawful for any alien to vote in any election held solely or in part for the purpose of electing a candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, unless–
>
> (1) the election is held partly for some other purpose;
>
> (2) aliens are authorized to vote for such other purpose under a State constitution or statute or a local ordinance; and
>
> (3) voting for such other purpose is conducted independently of voting for a candidate for such Federal offices, in such a manner that an alien has the opportunity to vote for such other purpose,

> but not an opportunity to vote for a candidate for any one or more of such Federal offices.
>
> (b) Any person who violates this section shall be fined under this title, imprisoned not more than one year, or both.

18 U.S.C. § 611(a)–(b). Noticeably absent from the statute is an express preemption provision or any language setting forth regulations for how a state deals with citizenship challenges to vote-by-mail ballots. Nor is there any provision authorizing the Department of Justice to take charge of or intervene in a state's administration of an ongoing election.[4]

Exercising the power endowed to it by the Constitution, California comprehensively administers its elections, including by regulating voter eligibility. California law, like federal law, plainly prohibits voting by noncitizens. *Compare* 18 U.S.C. § 611, *with* Cal. Const. art. II, § 2(a) ("A United States citizen 18 years of age and resident in this State may vote."). To that end, California has established a comprehensive statutory scheme to ensure the integrity of its elections, including by requiring voter applicants to attest to citizenship under penalty of perjury, requiring election officials to match signatures on vote-by-mail ballots to voter registration records, and establishing processes for challenging ballots and canceling registration

[4] We do not hold that § 611 could never preempt any state actions or law under the Elections Clause, as that broad question is not before us. Instead, we hold only that—in this case and under these particular facts—the United States's attempted use of § 611's preemptive force to obtain the relief it seeks does not align with § 611's text or what § 611 either permits or forbids.

upon sufficient showing of voter ineligibility. *See California I*, 2026 WL 3212945, at *11–12, 19 (Bennett, J., concurring) (detailing California's statutory scheme on citizenship challenges to a voter and vote-by-mail ballots).

If Congress intends to preempt, "state law is preempted by the federal election-day statutes only so far as the conflict extends." *Watson v. Republican Nat'l Comm.*, 609 U.S. 672, 697 (2026) (internal quotations omitted); *see also Siebold*, 100 U.S. at 392–93 (noting Congress's power to regulate elections "supersede[s]" inconsistent state law "so far as it is exercised, and no farther" and presuming "that Congress . . . has endeavored to guard as far as possible against any unnecessary interference with State laws and regulations"). But it is unclear (at best) whether Congress intended § 611 to have any preemptive effect, much less a preemptive effect that forces states to set aside their own state election laws and procedures (which, in California's case, are both detailed and comprehensive) and segregate vote-by-mail ballots in a manner inconsistent with those laws and procedures based on the Department of Justice's unsubstantiated allegations that noncitizens may be voting. Nothing on the face of § 611 prescribes a process California must follow when handling challenged ballots or preempts Defendants' actions of mailing, counting, and resolving ballot challenges in accordance with California's duly enacted procedures. *See* 18 U.S.C. § 611(a)–(b).

Because Congress has not exercised the specific power granted to it under the Elections Clause to override California's established laws for challenging ballots or removing ineligible voters, the State Legislature's statutory scheme remains the only method to do so. California, and all states, "are given, and in fact, exercise a wide discretion in the formulation of a system for the choice by the people of representatives in Congress," *see United States v. Classic*, 313 U.S. 299, 311 (1941), by prescribing a detailed statutory and regulatory scheme, *see Moore v. Harper*, 600 U.S. 1, 29 (2023) ("[State l]egislatures must 'provide a complete code for congressional elections,' including regulations 'relati[ng] to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns.'" (second alteration in original) (quoting *Smiley*, 285 U.S. at 366)). Allowing the United States to misuse § 611 to prescribe how Defendants must process ballots would "override the plain and manifest dictates of the Constitution itself." *See Siebold*, 100 U.S. at 392.[5]

[5] The United States asserts that it is "absur[d] to say that an officer who receives or has custody of the ballots given for a representative owes no duty to the national government which Congress can enforce." *Siebold*, 100 U.S. at 388. But *Siebold* dealt with whether Congress had the power to regulate election integrity by punishing state election officials who commit fraud, not a misdemeanor statute that forbids noncitizens voting in federal elections. *See id.* at 372, 387–88. As explained by the Supreme Court, "[the government of the United States] is directly interested in the faithful performance, by the officers of election, of their respective duties. Those duties are owed as well to the United States as to the State. . . . A violation of

We decline the United States's invitation to contravene the Elections Clause by undermining the Constitution's plain text. *See Smiley*, 285 U.S. at 365–66 (recognizing the responsibilities given to states under the Elections Clause); *cf. Dooley v. United States*, 183 U.S. 151, 173 (1901) ("The plain language of the Constitution should not be made 'blank paper by construction,' and its specific mandate ought to be obeyed."). If the United States believes different procedures are necessary for vote-by-mail ballots, we believe it should take that suggestion to Congress, not the courts. *See Watson*, 609 U.S. at 695 ("As we have said time and again . . . policy arguments are properly directed to legislatures, not courts."). Therefore, we hold the law does not "*clearly favor*" the United States's preemption argument. *See Garcia*, 786 F.3d at 740.

Further, the potential violation of the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20507(c)(2), provides an independent reason to conclude that the United States has not shown a clear likelihood of success. The NVRA requires states to "complete, not later than 90 days prior to the date of a primary or

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duty is an offence against the United States, for which the offender is justly amenable to that government." *Id.* at 388. Because election officials owe a duty to both sovereigns, the Court concluded that it would be "almost absur[d] to say that an officer who receives or has custody of the ballots . . . owes no duty to the national government which Congress can enforce; or that an officer who stuffs the ballot-box cannot be made amenable to the United States." *Id.* This case is not about state election officials convicted of fraud, nor are there allegations that California's election officials were stuffing ballot boxes.

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 United States argues that the NVRA, which governs voter registration, does not govern the requested ballot segregation. But this focus potentially fails to grasp the broader mechanics of California's election code. The United States effectively seeks to cancel (or potentially cancel) "batches of registered voters based on a set procedure [which] is systematic as opposed to individualized." *Mi Familia Vota v. Fontes*, 129 F.4th 691, 716 (9th Cir. 2025), *cert. granted sub nom. Republican Nat'l Comm. v. Mi Familia Vota*, 146 S. Ct. 2799 (2026). Assuming that the October List provides or generates sufficient proof of voter ineligibility, under California law, when the "county elections official" receives "proof that [a registered voter] is otherwise ineligible to vote," the official "*shall* cancel the registration." Cal. Elec. Code § 2201(a)(8) (emphasis added). So the consequence of the United States's request is not merely ballot segregation, but ultimately both the cancellation of the ballot *and* the removal of voters from the voting rolls.

To be sure, as we have recognized, "the plain language of the 90-day Provision lets states continue any non-systematic cancellation of registrations within the 90-day window." *Mi Familia Vota*, 129 F.4th at 716. Indeed, Congress permitted such individualized cancellations but prohibited systematic ones "because such programs

can cause inaccurate removal and '[e]ligible voters removed days or weeks before Election Day will likely not be able to correct the State's errors in time to vote.'" *Id.* (alteration in original) (citing *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1346 (11th Cir. 2014)).

Such "rigorous individualized inquiry[] lead[s] to a smaller chance for mistakes." *Id.* But the United States seeks to challenge an entire batch of 20,000 ballots. In the district court's view, "Plaintiff's protocol raises significant concerns." For example, the district court determined that the United States "provided 'no error rates' or 'validation against a reliable benchmark' that would enable a determination of the accuracy of its findings." The district court also found that the United States did not provide any information on how the data enhancement was conducted—"It remains unknown how Lexis Nexis performed its analysis, such as how it 'linked names to Social Security numbers not available on the California public voter file.'" The suspect reliability of these lists found by the district court reflects the concern Congress sought to mitigate with the 90-day quiet period. This adds to our reasons for finding that overall, the district court did not abuse its discretion in refusing to grant the United States's proposed injunction, as the United States did not clearly show the NVRA permits its desired relief.

B.

The United States also fails to demonstrate that it will likely, let alone clearly, suffer irreparable harm. *See Garcia*, 786 F.3d at 740. Because the United States's preemption argument is likely unavailing, it follows that any resulting harm is also unlikely. *Cf. Hale v. Dep't of Energy*, 806 F.2d 910, 918 (9th Cir. 1986) ("Absent a First Amendment claim, the appellants have failed to establish that irreparable harm will flow from a failure to preliminarily enjoin defendants' actions."). The district court also found that the United States's process in creating the October List was not credible, and thus the United States's assertion that individuals on the October List are "highly likely to be noncitizens" is also not credible.[6] That finding, along with California's established procedures for ensuring voter eligibility, substantially weaken the United States's claim that it is likely to suffer irreparable harm from ballots being cast by noncitizens.

The balance of hardships and the public interest also do not weigh in the United States's favor. Major concerns remain that granting the United States's requested relief might result in immense hardship to Defendants and harm the public interest by risking the disenfranchisement of eligible voters and putting the entire tabulation process in jeopardy. The district court found that the United States's "request for election officials to identify and segregate ballots belonging to

[6] The United States challenges the district court's findings. But it fails to show any clear error given the conflicting evidence in the record. *See Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023).

individuals on the October List would force Defendants to create wholly new procedures while the election is already underway." Crediting the declaration of the County's Assistant Registrar of the Information Technology Bureau, the district court stated that the scale of the required technological changes to California's voter system "cannot be completed safely and uniformly before Election Day," and could result in a failure of the County's central election management system, "jeopardizing the Secretary's ability to meet the election certification deadline of December 11." As a result, the district court found that "granting [the United States]'s request would provoke catastrophic change, upending the administration of the election. This would likely cause 'voter confusion and consequent incentive to remain away from the polls' as individuals would wonder whether their ballots were likely to be withheld." (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006)).[7]

To be sure, there are countervailing public interests at stake. There is a public interest in maintaining the integrity of elections. But as discussed, the district court found that the risks that noncitizens are voting are, at best, uncertain, and also

[7] There were conflicting declarations on the potential burden that would result from granting the United States's requested relief. But the district court reasonably credited the declaration of the County's Assistant Registrar of the Information Technology Bureau, who is presumably informed about the inner workings of the County's electronic voter system, over the declaration from an elected Registrar from a different county. The district court certainly did not abuse its discretion in this regard.

tempered by California's established voter-eligibility procedures. In contrast, there is a material risk that granting the United States its requested relief would result in disenfranchisement and could jeopardize the County's entire election. Thus, the balance of hardships and the public interest weigh in Defendants' favor.

Finally, *Purcell* counsels that we should not intervene at this late hour. The *Purcell* principle reflects the wisdom that we must not "alter the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (per curiam). "The *Purcell* principle applies with even greater force" when, as here, an election is already underway. *People Not Politicians v. Onder*, No. 26A388, 2026 WL 2883222, at *2 (U.S. Sept. 25, 2026) (per curiam); *see California I*, 2026 WL 3212945, at *18 (Sanchez, J., concurring) (explaining that "it is not only voter confusion that matters in the *Purcell* analysis but election administration and broader electoral disorder stemming from late federal court-ordered changes to election rules"). Just this year, the Supreme Court emphasized that "late-breaking, court-ordered rule changes," such as those the United States requests, "can 'result in voter confusion and consequent incentive to remain away from the polls,' and thus undermine the '[c]onfidence in the integrity of our electoral processes . . . essential to the functioning of our participatory democracy.'" *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 80 (2026) (quoting *Purcell*, 549 U.S. at 4–5)).

Defendants, pursuant to their constitutional authority, established rules and procedures to challenge a voter's ineligibility in the months directly preceding an election. And the United States's requested relief is simple only in the abstract. As the district court found—and we discern no clear error—there is no feasible way to identify and segregate the ballots of specific individuals without potentially catastrophic effects on the entire system.[8]

The United States contends there is no *Purcell* problem, relying in part on *Republican Party of Pennsylvania v. Boockvar*, No. 20A84, 2020 WL 6536912, at *1 (Mem) (U.S. Nov. 6, 2020). The comparison is inapt. In *Boockvar*, Pennsylvania's Secretary of the Commonwealth had ordered county boards of elections to segregate ballots received by mail within three days of election night. *Id*. Justice Alito issued an interim order merely commanding electoral officials "to comply with the [Secretary's] . . . guidance." *Id*. The segregation process, therefore, followed existing state guidance and was markedly simpler than the injunction requested by the United States. As the district court found, "[b]ecause the county Registrar's current system 'ha[s] no function for setting aside the ballots of designated voters,' complying with [the United States's] request would require

[8] Indeed, the declaration of the County's Assistant Registrar of the Information Technology Bureau states: "[B]ased on my technical expertise, I have grave concerns about the potential catastrophic impact of implementing the DOJ's request to 'set aside vote-by-mail ballots from persons identified by the Federal Government likely to be noncitizens' based on a list of approximately 20,000 individuals . . . ."

'changes to systems and procedures that have already been tested and finalized for this election, the development and documentation of a new process, and the training of staff on it.'"

V.

For these reasons, the district court did not abuse its discretion in denying the United States's application for a temporary restraining order, and so we **DENY** the United States's emergency motion for injunctive relief.

FILED

OCT 30 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

United States v. California et al., No. 26-7231
BUMATAY, Circuit Judge, dissenting:

"A sovereign without the means of enforcing civil rights, or compelling the performance, either civilly or criminally, of public duties on the part of the citizens, would be a most extraordinary anomaly." 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1668 (1833).

In this case, the federal government believes that 20,000 noncitizens are registered to vote in California. Both state and federal law prohibit aliens from voting in our elections. Yet according to the federal government, those aliens received mail-in ballots for the upcoming election. If California receives these suspect ballots, mixes them with legitimate ballots, and then processes them, the potentially illegal votes will be counted toward the election of our representatives—threatening to dilute the vote of eligible citizens. The federal government proposes a modest remedy—stopping California from mixing the ballots of citizens and suspected noncitizens. This solution would not cancel any vote but would allow time to verify the eligibility of suspected noncitizens. The district court, and now our court, denies this reasonable request.

But the equitable remedy the federal government seeks has a long legal and historical pedigree. Throughout history, federal courts have acted to protect the voting and civil rights of our citizens by enjoining state action that violates the law. And common sense also tells us that the federal government shouldn't have to sit on

its hands while a State allows the violation of federal law, especially when the integrity of federal elections is at stake. As the Founders recognized, "an exclusive power of regulating elections for the national government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy. They could at any moment annihilate it." The Federalist No. 59, at 362–63 (A. Hamilton) (C. Rossiter ed., 1961) (simplified). So legal tradition, history, and common sense all support granting this limited injunctive relief.

This is all the more true given California's lax system for verifying citizenship. During oral argument, Los Angeles County, California's most populous county, could give no evidence that it independently verifies the citizenship of its voters. Instead, it apparently relies only on applicants' attestation of their citizenship. Further, the County claimed that nearly 40% of a sample of suspected noncitizens from the federal government's list had been born in the United States. But when the federal government ran the same sample through its systems, it confirmed that none were born here. And the County doesn't rebut the federal government beyond the say-so of the potential voters themselves. Now California says it can do nothing to prevent illegal voting. That undermines the federal government's interest in promoting election integrity and preventing the dilution of lawful votes.

The district court's order denying injunctive relief hamstrings the federal government's efforts to ensure only citizens vote in our elections. First, it criticized the federal government's actions to protect election integrity *in other States*—even though those actions were not before the court. It then attempted to tie the federal government's hands. It said that all the government could do under 18 U.S.C. § 611(a) was prosecute those who voted illegally. But in the next breath, it turned around and warned the federal government not to "threaten" criminal prosecutions under the law. Of course, the district court has no authority to order that. The federal government—not a judge—is tasked with preventing and prosecuting federal crimes. On the district court's view, § 611 could have no preemptive effect—rejecting obstacle preemption—and thus could not support any injunctive relief.

As I wrote in my first dissent, the federal government has satisfied the requirements for injunctive relief. *See Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). First, the federal government has shown a likelihood of success on the merits because California's actions encourage and induce the violation of federal law. Second, the federal government has shown irreparable harm—failing to act now means that suspected noncitizens will vote in our upcoming election and potentially dilute the vote of everyday citizens. *Cf. Hall v. D.C. Bd. of Elections*, 141 F.4th 200, 206 (D.C. Cir. 2025) ("Logically and mathematically, . . . granting the franchise to noncitizens will expand the D.C. electorate and reduce the voting

power of each U.S. citizen voter in local elections."). And third, the balance of interests supports relief: "The due and fair election of [congressional] representatives is of vital importance to the United States." *Ex parte Siebold*, 100 U.S. 371, 388 (1879). We should have granted relief on the federal government's initial emergency motion. More so now, when there is no question of our appellate jurisdiction. We should have ordered California to stop commingling suspected illegal ballots with legitimate ones to the extent feasible.

To my initial dissent, I add three points. First, because the Elections Clause authorized Congress to enact § 611(a), we should have been more willing to order injunctive relief over the administration of California's ballot counting. Second, criminal statutes—like § 611(a)—often preempt contrary state laws and actions. And third, given that California's actions would likely frustrate federal law, we should have invoked our longstanding and commonly used equitable authority to safeguard voting rights in the State.

I.

Section 611(a) Is an Elections Clause Statute

Congress "may at any time . . . make or alter" state regulations dealing with the "Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const. art. I, § 4, cl. 1. "What is the plain meaning of these words? . . . [W]e should not have any difficulty in understanding them." *Ex parte*

Siebold, 100 U.S. at 383. In fact, the meaning is obvious: While States set the initial rules in federal elections, Congress gets the final word.

The Elections Clause empowers Congress to safeguard federal elections. Congress can exercise that authority "not only as to times and places, but [also] in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns." *Smiley v. Holm*, 285 U.S. 355, 366 (1932). Thus, its power extends to innumerable "requirements as to procedure and safeguards" necessary to protect the integrity of federal elections. *Id.*

That power may also take the form of criminal sanctions. In 1870, Congress passed a criminal statute providing federal penalties for the violation of state election law. *See* Enforcement Act of 1870, ch. 114, 16 Stat. 140. Soon after, in *Ex parte Siebold*, five Maryland officials challenged the constitutionality of the Act, which supplemented Maryland's criminal election laws. 100 U.S. at 374, 380. The officials violated state law in many ways, including by stuffing the ballot box and refusing to let federal officials observe vote counting. *Id.* at 378–79. The Supreme Court held that the Enforcement Act was a valid exercise of the Elections Clause. *Id.* at 383–84; *see also United States v. Classic*, 313 U.S. 299, 321–23 (1941) (recognizing that Congress may criminalize interference with the right to vote once a State has

conferred the right). Even though the state officials violated state law, federal law could impose criminal liability for that same conduct.

The Enforcement Act also made it a felony to cast a ballot "without having a lawful right to vote" in federal elections. Enforcement Act of 1870, ch. 114, § 19, 16 Stat. 140, 144. While States decided which persons had the right to vote, Congress reinforced these preferences with criminal sanctions. *See Ex parte Siebold*, 100 U.S. at 388 ("[Congress] has only created additional sanctions for their performance, and provided means of supervision in order more effectually to secure such performance."). The fact that Congress's "Times, Places and Manner" authority supplemented state law made no difference because "no repugnance in the system of regulations can arise thence; for the power of Congress over the subject is paramount." *Id.* at 383–84; *see also Ex parte Coy*, 127 U.S. 731, 761 (1888) (Field, J., dissenting) (observing that "Congress had the power under the constitution to adopt the laws of the states respecting [congressional] election[s] . . . and that it could impose a punishment for a violation of such laws"). That follows from the plain meaning of the Clause—Congress can protect the "Manner" of federal elections in any way it sees fit.

In that vein, Congress passed § 611(a) against the backdrop of longstanding bans against alien voting. While suffrage is critically important, States regulate who may vote in elections. *Cf. Minor v. Happersett*, 88 U.S. (21 Wall.) 162, 178 (1874).

Some States conferred the right to vote on noncitizens in narrow situations. Take Wisconsin's original Constitution. It granted the right to vote to certain "citizens of the United States" and Native Americans, along with certain "persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States on the subject of naturalization." Wis. Const. art. III, § 1 (1848). Other States, however, made no distinction between aliens and citizens when they conferred the right to vote. *See, e.g.*, N.J. Const. art. IV (1776) ("[A]ll Inhabitants of this Colony of full age, who are worth Fifty Pounds proclamation money, clear estate in the same, and have resided within the county in which they claim a vote for twelve months immediately preceding the election, shall be entitled to vote . . . ." (simplified)).

By 1926, all States banned noncitizens from voting. Ron Hayduk, *Democracy for All* 19–20 tbl. 2.1 (2006). Public sentiment against noncitizen voting escalated as waves of immigrants landed on the Nation's shores. *Id.* at 18–26. In the biggest waves between 1880 and 1910, "12.5 million people streamed into the country." *Id.* at 26. State legislatures decided to end the practice of giving these noncitizens the vote. Arkansas became the last state to end this "political anomaly[,] . . . doubtless never to return." Leon E. Aylsworth, *The Passing of Alien Suffrage*, 25 Am. Pol. Sci. Rev. 114, 114 (1931).

So when Congress passed § 611(a) in 1996, alien voting was long gone. Congress did not displace what States had already universally set forth—it only reinforced it. Any debate over whether aliens should be permitted to vote had been resolved 70 years earlier. In other words, Congress did not swoop in and make the States' decisions for them. History shows that Congress worked in concert with the States to protect election integrity. In fact, California has *never* allowed aliens to vote. Hayduk, *supra*, at 19 tbl. 2.1. Section 611(a) disenfranchises no one. California defined its federal electorate. Congress enforced it.

Nor does the "unless" clause in § 611(a) change that it prescribes only the "Manner" of elections.[1] The best reading of the "unless" clause is that it recognizes that States may choose to allow noncitizens to vote in state elections. If that were the case, then the "unless" clause means that they could continue to do so without criminal sanction. So § 611(a) reinforces States' pre-existing, universal ban on alien

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[1] Section 611(a) applies "unless":

> (1) the election is held partly for some other purpose;
> (2) aliens are authorized to vote for such other purpose under a State constitution or statute or a local ordinance; and
> (3) voting for such other purpose is conducted independently of voting for a candidate for such Federal offices, in such a manner that an alien has the opportunity to vote for such other purpose, but not an opportunity to vote for a candidate for any one or more of such Federal offices.

18 U.S.C. § 611(a).

voting in federal elections by criminalizing that same behavior everywhere in the nation.

To be sure, Congress can pass laws under more than one power. *See, e.g.*, *United States v. Marigold*, 50 U.S. (9 How.) 560, 566–68 (1850) (upholding a criminal statute under the Foreign Commerce Clause and Coinage Clause); *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138, 144 (1948) ("The question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise."). History, however, confirms that § 611(a) is at minimum an exercise of Congress's Elections Clause authority. So it doesn't matter that Congress passed § 611(a) as part of an immigration bill, an area over which it also has "plenary authority." *See INS v. Chadha*, 462 U.S. 919, 940 (1983).

Because § 611(a) is an Elections Clause provision, the usual concerns we have over interference with state machinery are diminished. The Constitution has already decided that Congress can "make or alter" state election procedures. Anything California must do to stop its preempted actions is thus a natural consequence of the constitutional order.

II.

Section 611(a) Preempts California's Actions

Nor should it surprise anyone that § 611(a), a criminal law, preempts California's ballot mixing. Simply, "federal criminal prohibitions preempt

conflicting state law." *Absolute Healthcare v. NLRB*, 103 F.4th 61, 72 (D.C. Cir. 2024) (Walker, J., concurring) (citing U.S. Const. art. VI, cl. 2). That's true whether they impose felony or—as here—misdemeanor punishment. And it's true whether they preempt state criminal statutes or civil laws, rules, actions, and policies, like California's ballot commingling. *See United States v. California*, --- F.4th ----, 2026 WL 3212945, at *27–28 (9th Cir. Oct. 26, 2026) (Bumatay, J., dissenting).

In fact, federal misdemeanor laws like § 611(a) *routinely* preempt state civil laws—including through obstacle preemption. Take the Immigration Reform and Control Act of 1986 ("IRCA"), Pub. L. No. 99-603, 100 Stat. 3359. IRCA "makes it illegal for employers to knowingly hire, recruit, refer, or continue to employ unauthorized workers." *Arizona v. United States*, 567 U.S. 387, 404 (2012). The law is "enforced through criminal penalties and an escalating series of civil penalties tied to the number of times an employer has violated the provisions." *Id.* These criminal penalties top out at misdemeanor punishment: a fine of $3000 per illegal alien wrongfully employed, six months in prison, or both. *See* 8 U.S.C. § 1324a(f)(1).

Lawsuits often argue that IRCA preempts state civil law. Here's how it works. IRCA has an express preemption provision for "any State or local law imposing civil or criminal sanctions" on employers. *Chamber of Com. of the U.S. v. Whiting*, 563 U.S. 582, 587 (2011) (simplified). That's helpful for employers who'd like to get

out from under state laws and regulations. But there's a snag: IRCA has a "saving clause" that preserves state "licensing and similar laws" from *express* preemption. *Id.* (simplified). That saving clause stymies some preemption claims. *See, e.g.*, *id.* at 591–600 (holding that Arizona's employment law was a licensing law, and so was *not* expressly preempted).

But when express preemption doesn't work, employers have brought *implied* preemption claims—including under obstacle preemption, just like in our case. And they've succeeded. *See, e.g.*, *Club Madonna, Inc. v. City of Miami Beach*, 42 F.4th 1231, 1252–57 (11th Cir. 2022) (obstacle-preempting a licensing ordinance); *Lozano v. City of Hazleton*, 724 F.3d 297, 313, 321 (3d Cir. 2013), *cert. denied*, 134 S. Ct. 1491 (2014) (obstacle-preempting housing and employment ordinances); *Chamber of Com. of the U.S. v. Edmondson*, 594 F.3d 742, 765 (10th Cir. 2010) (obstacle-preempting state employment law).

What's more, the federal government uses IRCA to bring implied preemption challenges too. *See United States v. California*, 921 F.3d at 882, 885–88 (finding no obstacle preemption on the merits for two challenged state immigration statutes and declining to find obstacle preemption on the third because of commandeering concerns—concerns that don't apply to Elections Clause statutes, like § 611(a)).

Need another example of criminal laws preempting state civil law? Look at federal criminal forfeiture statutes. Forfeiture under these laws is "a criminal

sanction," *Libretti v. United States*, 516 U.S. 29, 40 (1995) (simplified), and "a form of monetary punishment subject to the Eight Amendment's Excessive Fines Clause," *United States v. Bajakajian*, 84 F.3d 334, 336 (9th Cir. 1996), *aff'd*, 524 U.S. 321 (1998). Even so, circuit courts have repeatedly said criminal forfeiture laws preempt "various provisions of state [civil] law." *United States v. Stevenson*, 834 F.3d 80, 87 (2d Cir. 2016) (preempting New York pension law); *see also United States v. Fleet*, 498 F.3d 1225, 1232 (11th Cir. 2007) (preempting "Florida's homestead exemption and tenancy by the entireties laws"); *United States v. Bollin*, 264 F.3d 391, 422–24 (4th Cir. 2001) (preempting Georgia pension statute), *overruled on other grounds by United States v. Chamberlain*, 868 F.3d 290 (4th Cir. 2017); *United States v. Curtis*, 965 F.2d 610, 616 (8th Cir. 1992) (preempting Iowa's homestead exemption law).

The throughline of this background—courts commonly recognize that federal criminal laws preempt state laws or actions. So we shouldn't be surprised that a federal misdemeanor statute like § 611(a) can preempt California's action to commingle illegal ballots. "[T]he power to define [federal] criminal offenses and to prescribe the punishments to be imposed upon those found guilty of them, resides wholly with the Congress." *Whalen v. United States*, 445 U.S. 684, 689 (1980). And once Congress defines and prescribes them, they—just like other federal laws—are supreme over state law.

III.

We Should Have Granted an Injunction to Protect Voters

Once we understand that federal law preempts state action, the remedy typically involves enjoining that state action. And as a matter of history, federal intervention in the state administration of elections is commonplace. So ordering California to stop commingling illegal ballots is a straightforward application of our equitable powers.

To begin, federal courts have regularly enjoined the implementation of state action or policy preempted by federal law. *See, e.g.*, *United States v. Alaska*, No. 22-cv-00054, 2024 WL 1348632, at *12 (D. Alaska Mar. 29, 2024), *aff'd*, 151 F.4th 1124 (9th Cir. 2025) (enjoining Alaska policies that conflicted with federal protections for subsistence fishing); *United States v. Arizona*, No. 10–cv–01413, 2012 WL 4076192, at *1 (D. Ariz. Sept. 18, 2012) (enjoining Arizona's immigration regulations for conflict with the federal immigration scheme); *United States v. Missouri*, 114 F.4th 980, 987 (8th Cir. 2024) (enjoining Missouri officials from enforcing a law ordering them not to comply with federal gun laws); *United States v. Alabama*, No. 11–cv–2746, 2013 WL 10799535, at *1 (N.D. Ala. Nov. 25, 2013) (enjoining Alabama from enforcing immigration regulations that intruded on the field occupied by federal law); *cf. United States v. Sup. Ct.*, 839 F.3d 888, 929 (10th

Cir. 2016) (prohibiting enforcement of certain state ethics rules against federal prosecutors).

In particular, we've seen the extension of equitable remedial power when state elections run afoul of federal law. *See, e.g.*, *Gomillion v. Lightfoot*, 364 U.S. 339, 347 (1960) (holding that federal courts can review state redistricting plans "when state power is used as an instrument for circumventing a federally protected right"); *Smiley*, 285 U.S. at 368, 375 (ordering a district court to enjoin Minnesota's Secretary of State from implementing an unlawful congressional redistricting scheme).

It's even more common when the challenged state conduct leads to vote dilution. *See, e.g.*, *Broom v. Wood*, 1 F. Supp. 134, 136 (S.D. Miss.), *rev'd on other grounds*, 287 U.S. 1 (1932) (ordering an injunction to remedy vote dilution); *Reynolds v. Sims*, 377 U.S. 533, 585 (1964) (holding that "once a State's legislative apportionment scheme has been found to be unconstitutional," a court is usually justified in "taking appropriate action to insure that no further elections are conducted under the invalid plan"); *id.* at 586 (affirming the district court's injunction "ordering into effect a reapportionment of both houses of the Alabama Legislature"); *White v. Regester*, 412 U.S. 755, 765 (1973) (affirming an injunction to stop congressional maps being used "invidiously to cancel out or minimize" minority "voting strength"); *Roe v. Alabama ex rel. Evans*, 43 F.3d 574, 581, 583

(11th Cir. 1995) (per curiam) (allowing an injunction where "failing to exclude the contested absentee ballots . . . would dilute the [legitimate] votes"). So ordering an injunction to enforce § 611(a), which protects against the dilution of citizens' votes, is nothing new.

To be sure, we should be skeptical of the overbroad use of federal courts' equitable remedial power. *See, e.g.*, *Brown v. Plata*, 563 U.S. 493, 555 (2011) (Scalia, J., dissenting) ("Structural injunctions depart from . . . historical practice, turning judges into long-term administrators of complex social institutions such as schools, prisons, and police departments."); *Missouri v. Jenkins*, 515 U.S. 70, 124 (1995) (Thomas, J., concurring) ("As with any inherent judicial power, . . . we ought to be reluctant to approve its aggressive or extravagant use, and instead we should exercise it in a manner consistent with our history and traditions." (simplified)).

But on this emergency posture, we should have at least granted the federal government temporary, narrow relief tailored to safeguarding the election. A limited injunction directing California to stop commingling suspected illegal ballots with legal ones is no extraordinary encroachment on state authority. *Cf. Roe*, 43 F.3d at 583 (ordering Alabama Secretary of State to sequester contested absentee ballots). Indeed, it is nothing like the structural injunctions regularly employed by federal courts in the past. In fact, Justice Alito recently ordered similar temporary relief in a state election—requiring that "all ballots received by mail . . . be segregated and

kept in a secure, safe and sealed container separate from other voted ballots," and that "all such ballots, if counted, be counted separately." *Republican Party v. Boockvar*, No. 20A84, 2020 WL 6536912, at *1 (U.S. Nov. 6, 2020) (Alito, J., in chambers) (simplified). When, as here, a "question has national importance, and there is a strong likelihood that the [state action] violates the Federal Constitution," an injunction is appropriate. *Boockvar*, 592 U.S. 1068, 1070 (2020) (statement of Alito, J., joined by Thomas and Gorsuch, JJ.). The government's request for "modest relief" should be granted. *Id.*

The point is simple: We as lower courts cannot ignore the federal government's historic interventions in election cases when the harm is as grave and as irreparable as the federal government asserts. "[I]njunctive relief has long been recognized as the proper means for preventing entities from acting [unlawfully]." *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001). This is especially true when the remedial relief would protect against voter dilution, which is at the heart of § 611(a).

California claims that such an injunction would be difficult to implement. I don't doubt it would be a challenge. But difficulty is no reason for courts to throw our hands in the air and give up—not when the threat is illegal votes undermining our elections. And there seems to be a factual dispute on the feasibility of enacting an injunction in short order. One county registrar attests that "locating and

segregating challenged ballots is entirely possible and not catastrophic." Curtis Decl. ¶ 3, *United States v. California*, No. 26-cv-12025 (C.D. Cal. Oct. 26, 2026), Dkt. 107-4. According to the declaration, "[e]very registrar of voters in the State of California uses an electronic information management system" that can flag potentially problematic ballots. *Id.* ¶ 4. The declaration states that "sorting machines will [be able to] flag [challenged] ballots before processing and automatically separating them into containers designed to capture segregated ballots." *Id.* And the declaration also asserts that counties could use a manual process to help accomplish the same task. *Id.* ¶ 5. The district court didn't even address the registrar's declaration. So California's asserted administrative burden is no reason to deny relief by itself. We can order relief to the extent it is technologically feasible.

Contrary to the district court's view, such a remedy would not violate other federal laws. The remedy doesn't require Secretary Weber to carry out a "program" to remove otherwise eligible voters from voter rolls, in contravention of the National Voter Registration Act of 1993, 52 U.S.C. § 20507(c)(2)(A). And neither the Voting Rights Act of 1970, 52 U.S.C. § 10307(a), nor the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(A), prevents California from investigating whether a particular mail-in ballot is cast by a qualified American citizen. After all, "[t]he right to vote is one of the badges of citizenship. The dignity and very concept of citizenship are diluted

if noncitizens are allowed to vote . . . ." *Barnett v. City of Chicago*, 141 F.3d 699, 704 (7th Cir. 1998) (Posner, C.J.).

This problem calls for a straightforward remedy: a simple command to stop commingling ballots. This narrow remedy avoids the "concerns associated with judges' running social institutions," *Plata*, 563 U.S. at 559 (Scalia, J., dissenting), and we should grant it.

IV.

CONCLUSION

Federal courts have a "virtually unflagging" duty to uphold the law. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014) (simplified). The federal government seeks limited relief before California election officials permanently separate likely noncitizen ballots from their mail-in envelopes. That harm cannot be undone. Because the Elections Clause vests Congress with power to protect the integrity of federal elections, I would hold that California's actions are preempted under § 611(a) and enjoin California from commingling its ballots further.

The federal government and the States can work together. California decided long ago that aliens can't vote in its elections. Today, the federal government merely seeks to safeguard that decision. We should have let them try.

I respectfully dissent.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

STATE OF CALIFORNIA, SHIRLEY N. WEBER, PH.D., DEAN C. LOGAN,

Defendants,

NAACP, NAACP California-Hawaii State Conference, and League of United Latin American Citizens; Services, Immigrant Rights and Education Network and Mi Familia en Accion,

Intervenors.

Case No. 2:26-cv-12025-DOC-ADS

ORDER DENYING TEMPORARY RESTRAINING ORDER [62]

I. INTRODUCTION

This case is about the right of every American citizen to vote in a free and fair election.

Never before in American history has the federal government, on the eve of an election, sought to coerce a state and local government to abandon their own Constitutional elections procedures and bend to the will of the Executive Branch. In bringing this lawsuit, the Executive would have this Court believe that it reigns as a sole sovereign. But California and its people are sovereign, too.

The right to vote has long been understood as integral to both citizenship and participation in our democracy. Ronald Reagan described this right as "the crown jewel of American liberties, and we will not see its luster diminished." *Remarks on Signing the Voting Rights Act Amendments of 1982* (June 19, 1982) (extending the Voting Rights Act of 1965). But access to voting has always been contested. At the inception of our country, African Americans and women of all ethnicities were denied access to the ballot. Their push to be recognized as equal citizens of this nation led to the Fifteenth Amendment in 1870 and the Nineteenth Amendment in 1920, which declared that the right to vote could not be denied due to someone's race or gender. But these amendments did not guarantee all citizens' enfranchisement in practice. Minority communities continued to fight for suffrage. Poll taxes, literacy tests, and other obstacles were further used to prevent individuals from casting their vote.

Every generation in our history has witnessed repeated clashes between those who seek to limit access to the ballot and those who fight to ensure it. In this case, the federal government seeks to segregate and exclude over 20,000 ballots. This request violates longstanding constitutional principles mandating that states have control over their elections. If Plaintiff's last-minute request for relief were granted, either party could create chaos for their own political purposes to disrupt the election process. Over 20,000 registered Californians would potentially lose the right that generations of Americans have fought to preserve.

The Government's Application for Temporary Restraining Order is **DENIED**.

II. BACKGROUND

A. The United States sent a list to California of those it believed were non-citizens on its voter rolls.

On July 16, 2026, the United States Department of Homeland Security ("DHS") sent a letter to Shirley Weber, California's Secretary of State. The DHS asserted that there "may be as many as 190,832 non-citizens registered to vote in California." Complaint (Compl.) *Id.* On July 23, 2026, Secretary Weber responded with "serious doubts" regarding the "data and accuracy" of DHS's claims. Compl. Ex. B. She indicated the statewide voter registration list had not been shared with any federal agency or official, including DHS. *Id.*

Accordingly, Secretary Weber requested detailed descriptions of "the methodology utilized by DHS to identify these allegedly ineligible voters" and "how DHS came into possession of the list of registered voters in California." *Id.* DHS did not comply. State Defendants' Opposition to Plaintiff's Application for Temporary Restraining order ("State Opp.") (Dkt. 31-1) at 2. Secretary Weber also explained that the National Voter Registration Act's ("NVRA") quiet period, which makes it unlawful to systematically cancel voter registrations during the 90-day period before a federal election, would go into effect on August 5, 2026. Compl. Ex. B at 1-2. The August 5, 2026 deadline came and went without further action from the Federal Government.

B. During the NVRA's quiet period and with the federal election already underway, the Federal Government sent California and Los Angeles County a new list and demanded action.

On October 13, 2026—after Los Angeles County ("County") had mailed approximately 5.9 million vote-by-mail ("VBM") ballots and processed over 331,000 ballots—the United States Department of Justice ("DOJ") hand-delivered a letter and password-protected thumb drive to Dean Logan, the Los Angeles County Registrar-Recorder and County Clerk. County Defendants' Opposition to Plaintiff's Application for a Temporary Restraining Order ("County Opp.") (Dkt. 32-1) at 13, 31; Compl. Ex. C. The thumb drive contained the "sensitive and personal identifiable information" of over 20,000 individuals. Declaration of Christopher Pelham ("Pelham Decl.") (Dkt. 32-2) Ex. C at 2. The federal government believed this

identifying information corresponded to "likely noncitizens who were sent a vote-by-mail ballot" for the November 2026 federal election. Compl. ¶ 4. The County was instructed to "review the list within 48 hours to determine whether any citizens [were] listed." Compl. Ex. D ("October List"). Following this review, the County was directed to (1) segregate the VBM ballots for any non-confirmed citizens, (2) withhold unsent ballots from listed individuals, and (3) not verify signatures or tabulate ballots until citizenship could be confirmed. *Id.* On the same day, Secretary Weber was emailed the same requests with a 48-hour deadline *without* an accompanying list. Compl. Ex. C.

The next day, on October 14, 2026, Mr. Logan issued a public statement, confirming receipt of the letter and explaining a review was being conducted "in coordination with the California Secretary of State and Attorney General to determine the next appropriate steps." Pelham Decl. Ex. C. The County further provided that "any action to remove a voter from eligibility must be based on verifiable information, not assertions of unconfirmed data matching." *Id.*

Before the 48-hour deadline expired on October 15, the County responded to the DOJ. Pelham Decl. Ex. D. From its preliminary review, the County concluded that the October List was unspecific to Los Angeles County because it contained addresses from throughout the State. *Id.* Additionally, the County found the DOJ's instructions were "legally prohibited" because the DOJ failed to provide any informational or evidentiary basis for the list of "likely noncitizens." *Id.* The County stated that DOJ did not provide methodology for the County to verify the citizenship of the 20,000 individuals on the List in general, let alone in 48 hours. *Id.* On the same day, Secretary Weber responded to the DOJ, rejecting the demands in the October 13th letter. Declaration of Rachel Evans ("Evans Decl.") (Dkt. 31-2) Ex. 2.

C. The United States sued in this Court.

Minutes after the 48-hour deadline, the United States of America, through the DOJ, filed this action. County Opp. at 14-15. The Complaint suggested the State of California ("State") and the County violated the Supremacy Clause by "knowingly" sending VBM ballots to "likely noncitizens" and ultimately counting these ballots—actions that are allegedly preempted by 18 U.S.C. § 611. Compl. ¶¶ 50-61. The DOJ requested that the Court issue a preliminary,

permanent injunction that would enjoin the State from tabulating VBM ballots from individuals on the October List until their citizenship statuses could be verified. *Id.* ¶¶ 62-64.

In its Complaint, the DOJ explained the process by which the October List of likely noncitizens was determined. *Id.* ¶¶ 33-49. The Government represents that first, Homeland Security Investigations ("HSI"), a component of the Department of Homeland Security ("DHS"), purchased a voter file that appeared to reflect "the actual voter rolls in California, that as of August 2025, may be used for the 2026 federal election," Declaration of Eric McLoughlin ("McLoughlin Decl.") (Dkt. 62-3) at ¶ 21. Subsequently, HSI sent the acquired voter profiles for analysis to the Fraud Detection and National Security Directorate ("FDNS"), a subset of U.S. Citizenship and Immigration Services ("USCIS"). *Id.* ¶ 14. FDNS then "enhance[d]" the voter data through a "reliable third-party data analytics" and matches the profile to an internal USCIS immigration number "that may be the same individual." Declaration of Nicolas Bartell ("Bartell Decl.") (Dkt. 62-2) ¶ 16. The matches are scored because "the resulting data may be incomplete, outdated, or mismatched." *Id.*

FDNS then compared the potential identity matches to Department of State and Social Security Administration data to screen out U.S. citizens. *Id.* ¶ 17. In the next step, a confidence level was assigned (where a high score supported a "strong identity link") and a manual review was conducted for each match to "determine which registered voters [the FDNS investigators] believe are very likely to be aliens based on USCIS' citizenship data." Bartell Decl. ¶ 19. FDNS sent its completed analysis to HSI, which undertook a "quality review" to identify issues such as "duplicate entries" and "incomplete records." McLoughlin Decl. ¶ 16. This was followed by an "enrichment process" that utilized "additional unique identifiers" to "improv[e]" the matching process. *Id.* ¶ 17. This process was used to create the list of 20,000 likely noncitizens that was delivered to Mr. Logan—and mentioned to Secretary Weber—on October 13, 2026. *Id.* ¶¶ 45-47.

The County's review of the List revealed that 7,035 out of more than 20,000 records had addresses in Los Angeles County. Declaration of Aman Bhullar ("Bhullar Decl.") (Dkt. 32-3) ¶ 25. A sample of two hundred records from the List revealed 42.4% were active, 42.9% were cancelled, and 4.6% were inactive. *Id.* ¶ 24. Furthermore, 71.2% of the List had never voted in past elections. *Id.*

D. The DOJ's actions are indicative of a broad, ongoing pattern of attempted election interference by federal officials.

The United States Department of Justice has filed at least thirty-one lawsuits in federal district courts across the country seeking complete voter rolls from the States.[1] Out of the twenty-six decided cases, the DOJ has prevailed in precisely *zero*.[2] This Court presided over the first of those cases. *See United States v. Weber*, 816 F. Supp. 3d 1168 (C.D. Cal. 2026).

In *Weber*, this Court held the DOJ's claim failed under Title III of the Civil Rights Act of 1960 ("CRA"), the National Voter Registration Act of 1993 ("NVRA"), and the Help America Vote Act of 2002 ("HAVA"). *See generally id.* The Court further held that DOJ's demands violated federal privacy laws, including the Privacy Act, the E-Government Act, and the Driver's Privacy Protection Act ("DPPA"). *Id.*

Beyond its failed attempt to seek State voter rolls, the United States has also requested that States act based on the Executive's own lists. As in the present case, DHS Secretary Mullin sent letters to Secretaries of State in New Jersey, Nevada, and Pennsylvania alleging that the States' voter rolls included non-citizens.[3]

In Nevada, Secretary Mullin stated that 15,903 non-citizens were registered to vote.[4] A manual review by DHS officials yielded a subset of 185 individuals that they argued were confirmed non-citizens.[5] Yet even within the DHS's hand-picked subset, Nevada reported that *every single individual* was a United States citizen.[6]

Sister district courts across the country have cast doubt about the United States' proffered lists. In the Northern District of California, for example, a district court recently found that USCIS's process of producing its own lists relies upon "unknown artificial intelligence tools" and "[c]ommercial databases." *Cal. Nurses Ass'n v. Mullin*, No. 26-cv-10680-AMO, 2026 WL

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[1] Justin Lam & Sara Steele, *Here's What 34 Courts Have Said About the Trump Administration's Attempts to Take Over Elections*, Brennan Ctr. For Justice (Oct. 20, 2026), https://www.brennancenter.org/our-work/research-reports/heres-what-34-courts-have-said-about-trump-administrations-attempts-take.
[2] *Id.*
[3] *DHS Secretary Markwayne Mullin Sends Letters to Secretaries of State Warning About Non-Citizens on Voter Rolls*, Dep't of Homeland Security (July 17, 2026), https://www.dhs.gov/news/2026/07/17/dhs-secretary-markwayne-mullin-sends-letters-secretaries-state-warning-about-non
[4] Jude Joffe-Block & Miles Parks, *DHS acknowledges the noncitizen numbers it touted on voter rolls were inflated*, NPR (updated Aug. 25,2026), https://www.npr.org/2026/08/25/nx-s1-5940807/noncitizen-voters-trump-nevada-call
[5] Nick Corasaniti, *From 16,000 to 185 to Zero: Trump's Claims of Illegal Voting in Nevada Fizzle*, N.Y. Times (Sept. 24, 2026), https://www.nytimes.com/2026/09/24/us/politics/nevada-voters-homeland-security-trump.html
[6] *Id.*

3166149, at *2 (N.D. Cal. Oct. 21, 2026). The court explained that the United States' process for generating lists creates a "high likelihood of error in review" because United States' lists include "faulty data sources that sweep in U.S. Citizens." *Id.* at *8. Another sister district court in the District Court of the District of Columbia likewise concluded recently that a list similar to the one that the federal government utilized here was "plagued with inaccuracies." *Common Cause v. U.S. Dep't of Justice*, 2026 WL 303772, *1, *26 (D.D.C. Oct. 9, 2026).

The Government has increased pressure on state and local election workers. On October 23, 2026, the United States sent letters to every county in California requiring them to set aside the votes of alleged non-citizens. The letters stated that election officials "risk significant federal scrutiny" if they failed to comply with the Government's demands. The government reiterated its threat in open court yesterday, stating that State and County election officials who do not comply with their letter risk federal charges under 18 U.S.C. § 2, which criminalizes aiding and abetting the commission of a criminal offense. The court reiterates what it said yesterday: these threats must stop.

E. Procedural History

On October 15, 2026, the United States of America ("Plaintiff") filed a lawsuit against Shirley N. Weber, in her official capacity as the California Secretary of State ("State Defendant"), and Sean C. Logan, in his official capacity as the County of Los Angeles Registrar – Recorder/County Clerk ("County Defendant"). *See generally* Complaint.

On the same day, the Services, Immigrant and Education Network ("SIREN") and Mi Familia en Acción ("MFA") moved to intervene as a Defendant (Dkt. 11). The following day, the League of United Latin American Citizens ("LULAC"), the National Association for the Advancement of Colored People ("NAACP"), NAACP California – Hawaii State Conference, and NAACP Los Angeles Branch (together "NAACP") similarly moved to intervene. (Dkt. 15). The court granted both motions (Dkt. 148). The NAACP and LULAC filed an Opposition to Plaintiff's TRO ("NAACP Opp.") (Dkt. 37-1). SIREN and MFA also filed an Opposition to Plaintiff's TRO ("SIREN Opp.") (Dkt. 58-1).

On October 19, 2026, Plaintiff filed an Ex Parte Application for a temporary restraining order ("TRO") and order to show cause why a preliminary injunction should not issue ("PI").

(Dkt. 22-2). The United States asked for relief by November 3, 2026, the day of the federal election. *Id.* On October 20, 2026, State and County Defendants opposed Plaintiff's TRO application (Dkt. 31–32).

On October 21, 2026, this case was transferred to this Court (Dkt. 44). Later that day, Plaintiff refiled its TRO Application, once again requesting that this Court rule by "November 3, 2026":

> This Court should order California to set aside vote-by-mail ballots from likely noncitizens in the federal election—including any ballots cast by the individuals charged with 18 U.S.C. § 611 crimes this morning—until the voter's citizenship status can be determined. The United States respectfully requests that this Court grant this relief **by November 3, 2026**, before the end of voting in the 2026 federal election. (Dkt. 62).

Pursuant to Plaintiff's requested deadline, this Court immediately set a hearing for Tuesday, October 27, 2026 (Dkt. 64). A few minutes before 9:00 p.m. that same night, Plaintiff filed an emergency request that the Court rule on the TRO by noon the following day, October 22, 2026 (Dkt. 67). When the Court did not comply with the United States' self-imposed deadline, Plaintiff filed a Notice of Appeal to the Ninth Circuit Court of Appeals, arguing that this "…Court's silence is a constructive denial of the United States' emergency application … which has the practical effect of denying a preliminary injunction" (Dkt. 74) at 1. The Plaintiff, State, and County Defendants presented their oral arguments before the Ninth Circuit on October 25, 2026. The Circuit ruled on October 26, 2026 that it did not have jurisdiction.

This Court heard oral arguments on October 27, 2026.

III. Legal Standard

The standards for issuing a temporary restraining order and a preliminary injunction are "substantially identical." *Stuhlbarg Int'l Sales Co. v. John D. Brushy & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A preliminary injunction is an "extraordinary remedy." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). A plaintiff seeking preliminary injunctive relief "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that

an injunction is in the public interest." *Am. Trucking Ass'n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009).

Alternatively, "serious questions going to the merits and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also met." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011) (internal quotation omitted). A "serious question" is one on which the movant "has a fair chance of success on the merits." *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1421 (9th Cir. 1984). Courts have recognized very few circumstances justifying the issuance of an *ex parte* temporary restraining order. *Reno Air Racing Ass'n., Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006).

IV. Discussion

A. Plaintiff has not established a likelihood of success on the merits.

1. The United States likely does not have standing or a cause of action to bring a claim for the civil relief it seeks.

As the plaintiff, the United States "bears the burden of establishing standing as of the time [s]he brought th[e] lawsuit and maintaining it thereafter." *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (citing *Carney v. Adams*, 592 U. S. 53, 59 (2020)). To be entitled to the injunctive relief it requests, the United States "'must make a clear showing of each element of standing.'" *L.A. Alliance for Hum. Rts. v. Cnty. of Los Angeles*, 14 F.4th 947, 956–957 (9th Cir. 2021) (citation omitted). Those elements include injury in fact, causation, and redressability by the court. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

The core of the United States' asserted injury is that Los Angeles County and the State of California are impeding its ability to enforce 18 U.S.C. § 611, a federal criminal statute which makes it "unlawful for any alien to vote in any [federal] election." 18 U.S.C. § 611(a). The County and the State's actions, the United States argues, amount to "an injury to [U.S.] sovereignty arising from violation of its laws." TRO at 15 (quoting *Vermont Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 771 (2000)). The United States also asserts that it suffers collateral injuries downstream of its alleged sovereign injury as the County and

the State's actions are both "caus[ing] the United States to expend substantial resources" and "dilut[ing] lawful voting," which "unduly influences who runs the Federal Government." TRO at 16. Finally, the United States argues that, perhaps even absent standing to sue under 18 U.S.C. §611, the Court may nevertheless grant "equitable relief to stop unlawful state action." TRO at 17. Each argument appears destined to fail on the merits. The Court addresses each in turn.

Initially, the United States argues that "[i]nterference with the federal government's interest in enforcing federal law is sufficient to establish" injury for standing purposes. TRO at 16 (citing *United States v. Missouri*, 114 F.4th 980, 984-85 (8th Cir. 2024)). The United States has not shown that the County and the State have "interfere[d]" with its ability to enforce 18 U.S.C. §611.

The United States, by its own admission, is actively enforcing this law. The very same day the United States filed its TRO in this Court, the Department of Justice brought charges against 28 individuals "to address noncompliance with … 18 U.S.C. 611(a)," many of whom were registered Los Angeles County voters. TRO at 1, 22 (citation omitted). The relevant question under Section 611 is whether a non-citizen voted. If fraudulent voting occurs, the United States should uphold the law and bring additional Section 611 indictments against those non-citizens it believes *actually* voted illegally in the current—or a prior—election.

Defendants do not "interfere" with the United States' ability to enforce Section 611 by administering an ongoing election in accordance with established State and Federal law, rather than assuming new obligations pursuant to a federal criminal law they are not responsible for enforcing. The United States' principal authority for its "interference" theory of standing, *United States v. Missouri*, is wholly inapposite. In that case, Missouri affirmatively "withdr[e]w from joint task forces with federal law enforcement" and terminated "information sharing" with the federal government. *Missouri*, 114 F.4th at 984–85. The United States does not allege that Defendants similarly "withdrew" from any existing agreements with federal law enforcement. Instead, the United States alleges that Defendants refused to segregate and stop counting

ballots. But "refusing to help [the federal government] is not the same as impeding it." *United States v. California*, 921 F.3d. 865, 888–89 (9th Cir. 2019).

The United States does not explain why Defendants continuing to count ballots impairs any present or future Section 611 prosecution. This raises redressability concerns. Requiring Defendants to segregate ballots, as the TRO seeks, would force Defendants to reallocate finite resources towards enabling the United States' preferred method of election administration. But enforcing such a requirement would not eliminate or prevent—that is, redress—any alleged "interference" with federal law enforcement.

Next, United States' argument that it has standing because "California has caused the United States to expend substantial resources" fares no better. "Monetary costs are of course an injury." *United States v. Texas*, 599 U.S. 670, 676 (2023). But the United States cites no case holding that states impose a "monetary cost" on the federal government when they opt not to use state resources to enforce federal laws.[7] Nor could such a case legally exist since, as the United States itself acknowledges, "a State is not required to help the Federal Government investigate and prosecute crimes." TRO at 23.

Federal law is enforced by the federal government. State participation (or lack thereof) in that enforcement does not bear on how the federal government chooses to allocate its own resources or officers. If the federal government decides to prioritize the enforcement of Section 611 by "draw[ing] federal resources from … a wide range of law enforcement areas" (TRO at 23), that choice cannot itself confer jurisdiction because it is well-established that a Plaintiff may not "spend its way into standing." *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 370 (2024). The government's "'unprecedented and limitless' view" that a state's refusal to allocate resources on the federal government's behalf constitutes an injury sufficient for standing has no limiting principle and is "flatly inconsistent with Article III." *Nat'l Park Serv. v. Nat'l Tr. for Historic Pres. in the United States*, 609 U.S. ___ (2026), 2026 WL 2564318, at *2 (U.S. Aug. 31, 2026) (citing *Alliance*, 602 U.S. at 391–92). Such a theory of standing has no

[7] Plaintiff cites *Missouri v. United States* but, once again, that case involved a state's "withdraw[al]" of resources from a joint federal state-project, not a state's refusal to support federal criminal enforcement. 114 F.4th at 984.

basis in law and threatens to undermine the "Framers' concept of the proper—and properly limited—role of the courts in a democratic society.'" *Alliance*, 602 U.S. at 380.

Further, the United States argues that it is injured by California "sending and tabulating vote-by-mail ballots" to persons "it knows are likely to be noncitizens," which "dilutes lawful voting." TRO at 16. This claim is too tenuous to establish standing. The Ninth Circuit has squarely rejected a similar claim of vote dilution as "insufficient to plead a plausible 'real and immediate' threat." *Lake v. Fontes*, 83 F.4th 1199, 1204 (9th Cir. 2023). Likewise, the federal government's claim here appears to "stretch[] the concept of imminence 'beyond its purpose.'" *Id.* (citing *Lujan*, 504 U.S. at 564 n2).

Plaintiff's vote dilution theory relies upon a "highly attenuated chain of possibilities." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013). Absent further verification of its proffered list, Plaintiff's allegation that the listed individuals will "unduly influence who runs the federal government" (TRO at 16) is the quintessential "allegation[] of *possible* future injury" that cannot establish Article III standing. *Id.* at 410.

Taken together, Plaintiff's theories of Article III standing are unpersuasive. "Absent some considerable revision to … existing standing doctrine," Defendants, not Plaintiff, appear "likely to succeed on the merits." *National Park Service*, 2026 WL 2564318, at *2.

Lastly, "like any other plaintiff, the federal government must first have a cause of action" to sue in federal court. *United States v. California*, 655 F.2d 914, 918 (9th Cir. 1980). Plaintiff argues that it has a cause of action in equity pursuant to the Supremacy Clause. That argument gets off to a difficult start because the Supremacy Clause "certainly does not create a cause of action." *Armstrong v. Exceptional Child Ctr., Inc*, 575 U.S. 320, 324-25 (2015) (Scalia, J.); *see also* TRO at 17 (conceding "there is no implied right of action under the Supremacy Clause.") Plaintiff instead asserts that the Department of Justice has inherent authority to sue under the "equitable tradition of suits to enjoin unconstitutional actions by state actors." TRO at 17. The Ninth Circuit has held, however, that the federal government may only sue in equity without a statutory grant of authority to protect "a property interest, interference with national security or a burden on interstate commerce." *United States v. Mattson*, 600 F.2d

1295, 1298-99 (9th Cir. 1979); *see also In re Debs*, 158 U.S. 564, 599 (1895) (recognizing a cause of action to protect interstate commerce). None of those interests are at issue here. The Supreme Court also explained recently that equitable remedies must be cabined to those "traditionally accorded by courts of equity at our country's inception." *Trump v. CASA, Inc.*, 606 U.S. 831, 841 (2025) (citation omitted). Plaintiff has not demonstrated such a historical "tradition" of federal courts sitting in equity requiring state election officials to comply with federal prosecutorial priorities. Rather, our tradition "prohibits the federal government from commandeering state and local officials to help enforce federal law." *Printz v. United States*, 521 U.S. 898, 935 (1997); *see infra Section IV.A.II.*

2. Plaintiff is not likely to succeed in its claim that 18 U.S.C. § 611 preempts California election law.

Plaintiff argues that California's election laws are preempted under the Supremacy Clause of the United States Constitution because they "stand[] as an obstacle" to the United States' enforcement of Section 611. Compl. ¶ 54 (citing *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000)); *see also* TRO at 15-17. Obstacle preemption is a high bar and the "Supreme Court has only found [it] in a small number of cases." *ConocoPhillips Alaska, Inc. v. Alaksa Oil & Gas Conservation Comm'n*, F.4th 964, 972 (9th Cir. 2026). Plaintiff fails to demonstrate a likelihood of meeting that bar in this preliminary posture for three primary reasons.

First, preemption requires a genuine conflict between state and federal law. To make out a successful preemption claim, "the mere fact that there is tension between federal and state law is not enough." *MetroPCS California LLC v. Picker*, 970 F.3d 1106, 1118. Here, there is no "tension" between California state law and Section 611 on the question of whether non-citizens may vote. Section 611 makes it "unlawful for any alien to vote in any election." 18 U.S. Code § 611. California's Constitution likewise makes clear that only citizens can vote in federal elections. *See* Cal. Const. art. II(a) ("A United States *citizen* 18 years of age and resident in this State may vote.") (emphasis added).

California enforces its constitutional mandate that only citizens may vote through a series of elections laws which, for example, require an attestation of citizenship under penalty of perjury in order to register to vote (Cal. Elec Code §§ 2101, 2102(c)); match signatures on mail-in ballots to records of those registrations (Cal. Elec Code §§ 2111, 3019); provide a process to cancel the registration of any voter upon proof that the individual was not eligible to vote (Cal. Elec. Code § 2201(a)(8), (c), 2213); and, most squarely in line with Section 611, criminalize fraudulent voting by ineligible voters (Cal. Elec. Code § 18560).

These procedures reinforce, rather than conflict with, Section 611's prohibition on non-citizen voting. State law does not obstruct federal law where, as here, it "trace[s]" it. *Chamber of Commerce of U.S. v. Whiting,* 563, U.S. 582, 602 (2011).

Second, the text of the Constitution's Elections Clause, U.S. Const. art. I, § 4, cl. 1, gives California the authority to set election procedures absent express preemption by the United States Congress. The text of the Elections Clause reads:

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

This Clause gives States the primary role in administering federal elections. For nearly a century, the Supreme Court has consistently interpreted the Clause to mean that that State Legislatures, "must provide a complete code for congressional elections," including regulations "relat[ing] to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns." *Moore v. Harper*, 600 U.S. 1, 29 (2023) (Roberts, C.J.) (quoting *Smiley v. Holm*, 285 U.S. 355, 361 (1932) (Hughes, C.J.)). Indeed, the Elections Clause operates as a "default provision," vesting States in the first instance "with responsibility for the mechanics of congressional elections." *Arizona v. Inter Tribal Council of Arizona, Inc.,* 570 U.S. 1, 9 (2013) ("ITCA").

Yes, the federal government may "pre-empt state legislative choices" regarding "*how* federal elections are held." *Id.* at 9, 16. Section 611, however, is not a vehicle for the preemption of state election procedures because it regulates individual conduct and is not procedural in nature. If "Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute." *Gregory v. Ashcroft*, 501 U.S. 452, 460-61 (1991). Plaintiff has failed to demonstrate that Section 611 carries Congress' "unmistakably clear … intention" to preempt California's current procedures for counting and processing ballots during a federal election.

Section 611 is a federal misdemeanor statute that sets forth criminal punishments for non-citizens who vote illegally. It includes no express preemption provision. It includes no language addressing the State administration of federal elections. And it includes no mechanism for the United States Department of Justice to intervene in an ongoing election to require a State and its officials to segregate and stop counting ballots.[8] What it *does* include, however, is an express exemption for non-citizens who are "authorized to vote … under a State constitution or statute or a local ordinance." §§ 611(a)(1)–(a)(3).

Congress, in other words, expressly incorporated state statutory and Constitutional law (and local law) within the scope of Section 611's criminal prohibition. Federal law only abrogates state election law "so far as it is exercised, and no farther." *ITCA*, 570 U.S. at 19. As the Supreme Court made clear just last term, "state [election] law is preempted by federal statutes only 'so far as the conflict extends.'" *Watson v. Republican Nat'l Comm.*, 609 U.S. 672, 697 (2026). It cannot reasonably be concluded that Congress, through a federal misdemeanor provision, intended to strip California of its Constitutionally-vested responsibility for election administration and implicitly granted that power to Executive Branch's Department of Justice.[9]

[8] If it did, it would likely violate the Tenth Amendment. *See infra*.

[9] Congress "does not, one might say, hide elephants in mouseholes." *Whitman v. American Trucking Associations, Inc.*, 531 U.S. 457 (2001) (Scalia, J.) (citing *MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, 512 U. S. 218, 231 (1994); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159-160 (2000)).

At the end of the day, "the possibility that federal enforcement priorities might be upset is not enough to provide a basis for preemption." *Kansas v. Garcia*, 589 U.S. 191, 212 (2010). "If Plaintiff believes requiring additional confirmation of citizenship is necessary for vote-by-mail ballots … the appropriate audience for that suggestion, in full accord with the plain language of the Elections Clause, is Congress, not the Courts." *United States v. California*, No. 26-7070 at 13 (9th Cir. 2026) (Bennett, J., concurring) (citing *Watson*, 609 U.S. at 695) ("[P]olicy arguments are properly directed to legislatures, not courts."). Congress knows how to displace state election procedures with federal law. *See National Voting Registration Act of 1993* (52 U.S.C. § 20510(a)); *Help America Vote Act of 2002 (HAVA)* (52 U.S.C. § 2111); *Voting Rights Act of 1965* (52 U.S.C. § 10307(a)); *Voting Accessibility for the Elderly and Handicapped Act of 1984 (VAEHA)* (42 U.S.C. §§ 1973ee–1973ee-6). Congress did not do so in Section 611.

Third, Plaintiff's preemption theory is also not likely to succeed because it raises constitutional concerns under the Tenth Amendment. The gravamen of Plaintiff's preemption theory is that "California is obstructing the United States' law enforcement efforts" by refusing to "work with" the Federal Government to prevent violations of federal criminal law. TRO at 23; Compl. ¶ ¶ 4, 47, 57-58. Plaintiff argues that they are not requesting that California or its officers *do* anything to enforce Section 611, but instead that they stop "induc[ing], encourage[ing] or promot[ing]" non-citizens to violate the statute.[10] TRO at 20. But the Tenth Amendment prohibits the federal government from commandeering States "to address particular problems" or "command[ing] the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program." *Printz*, 521 U.S. at 935.

[10] Plaintiff locates this principle in *Norwood v. Harrison*, 413 U.S. 455, 464-65 (1973), but that case does Plaintiff no such favors. For one, it did not concern the Supremacy Clause. It held only that the State of Mississippi violated the Equal Protection Clause of the Fourteenth Amendment when it lent textbooks to private schools with racially discriminatory practices because the textbooks were "tangible aid" to the schools' discrimination. *Id.* at 464. Counting ballots cast by registered voters does not provide "tangible aid" to unconstitutional private conduct. On the contrary, counting ballots is necessary to uphold the democratic principles enshrined in the Constitution.

The Constitution is clear that California "has the right, pursuant to the anti-commandeering rule, to refrain from assisting with federal efforts." *California*, 921 F.3d at 891.

3. The United States' requested relief would likely violate federal election law.

a. The United States' remedy would likely violate the National Voter Registration Act of 1993.

In 1993, Congress passed the National Voting Registration Act ("NVRA") to establish voter registration requirements for elections for federal office. The NVRA states the following as its purposes:

(1) To establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;

(2) To make it possible for Federal, State, and local governments to implement this Act in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;

(3) To protect the integrity of the electoral process; and

(4) To ensure that accurate and current voter registration rolls are maintained.

42 U.S.C. Section 1973gg(b).

The NVRA 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. Section 20507 (c)(2)(A). The Ninth Circuit has recognized that the 90-day provision was designed "to balance with care" the NVRA's purposes "by acting 'cautious[ly]' with respect to systematic cancellation programs in the lead up to an election." *Mi Familia Vota v. Fontes*, 129 F.4th 691,717 (9th Cir. 2026) *cert. granted sub nom. Republican Nat'l Comm. v. Mi Familia Vota* 146 S. Ct. 2799 (quoting *Arcia v. Florida Secretary of State*, 772 F.3d 1335, 1346 (11th Cir. 2014). This is because eligible voters who are removed from voter rolls shortly before Election Day will likely not have the time to correct the State's errors in time to vote. *Id.* Thus, the 90-day provision prohibits systematic removals in the period during which "the risk of disfranchising eligible voters is the greatest." *Arcia*, 772 F.3d at 1346.

Though Plaintiff claims that its process constituted compiling "individual removals", the October List "is precisely the type of systematic cancellation program that the 90-day Provision was meant to preclude." Reply at 6; *Mi Familia Vota*, 129 F.4th at 717. In *Mi Familia Vota* , the Ninth Circuit found that using "a mass computerized data-matching process to compare the voter rolls with other state and federal databases" to check voters' citizenship status constituted a systematic removal program. *Id.* at 716. Plaintiff's own description of how it compiled the October List likewise indicates a process that involved the "matching of voters to their immigration status" by relying on information from various databases, including USCIS, Department of State, and Social Security Administration data. Bartell Decl. ¶19; McLoughlin Decl. ¶¶15, 23.

Plaintiff argues that it is not in violation of the 90-day provision because it seeks "temporary" ballot segregation, not removal. TRO at 25. However, the effect of Plaintiff's request is no different. Complying with this request would place enormous burden upon Defendants as they would need to make multiple changes to their technological systems and administrative procedures, including retraining and redirecting hundreds of staff. State Opp. at 25-26; County Opp. at 31-32. Additionally, Defendants have no way of verifying individuals' citizenship as they lack the data necessary to do so. County Opp. at 32. Thus, it is highly likely that the County would be unable to verify the citizenship of the October List individuals by December 3, the deadline to certify results to the Secretary of State, jeopardizing the Secretary's ability to meet the election certification deadline of December 11. County Opp. at 31, 33; State Opp. Declaration of Monica Flores ¶¶11, 14.

b. The United States' remedy would likely violate the Voting Rights Act of 1970.

The Voting Rights Act provides that, "No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of chapters 103 to 107 of this title or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote." 52 U.S.C. Section 10307(a).

Plaintiff requests that the ballots of individuals on the October List be set aside solely because they "may be" noncitizens. TRO at 12. If their votes can be segregated solely because

of Plaintiff's unproven allegations (see section below on the unreliability of Plaintiff's claims), this would render the act of voter registration meaningless and diminish the significance of the Voting Rights Act itself , which Congress could not have intended. *See* SIREN Opp. at 17; *see generally* NAACP Opp.

c. The United States' remedy would likely violate the Civil Rights Act.

The Civil Rights Act provides that, "[N]o person acting under color of law shall in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote." 52 U.S.C. Section 10101(a)(2)(A).

Courts have repeatedly found that imposing a procedure on a subset of voters to the exclusion of others violates this section of the CRA, known as the DSPP provision. *See U.S. Student Ass'n Foundation v. Land*, 546 F.3d 373, 389 (6th Cir. 2008)(holding that Michigan needed to impose the same procedural requirements on everyone whose original ID was returned as undeliverable); *Shivelhood v. Davis*, 336 F. Supp. 1111, 1115 (D. Vt. 1971) (holding that the entity in charge of examining voter applications was required to ensure that a questionnaire regarding domicile applied equally to all applicants instead of being designed to target students); *Frazier v. Callicutt* 383 F. Supp. 15, 18–19 (N.D. Miss. 1974) (finding a violation where the registrar denied and referred the registration of every Black student who possessed a previous address outside the county to the board of election commissioners but approved nearly all registrations of non-student applicants with prior addresses outside the county).

In *Mi Familia Vota*, the Ninth Circuit held that an Arizona law requiring county officials to conduct citizenship tests on individuals they had "reason to believe" were not citizens violated the DSPP provision. 129 F.4th at 717. The Ninth Circuit's holding hinged on the fact that requiring the use of the SAVE program to check citizenship status violated the CRA because running a citizenship check on SAVE required an immigration number, which U.S.-

born citizens lacked. Because the Arizona law failed to verify citizenship status via a method "that could be applied to both naturalized and U.S.-born citizens", the law was deemed to apply "different standards, practices, or procedures" to naturalized citizens compared to U.S.-born citizens. *Id.* at 724.

On its face, Plaintiff's request clearly imposes a citizenship verification process with respect to only individuals on the October List and not the entire composition of registered voters in California. TRO at Second, Plaintiff compiled the October List after matching those voter profiles with "an internal USCIS alien number that may be the same individual." Bartell 3. Like the citizenship verification process that the Ninth Circuit held violated the CRA in *Mi Familia Vota*, Plaintiff's request does not apply a method "that could be applied to both naturalized and U.S.-born citizens." 129 F.4th at 723. Lastly, because it is impossible to segregate unreturned ballots and ballots that have already been processed, Plaintiff's request would only apply to a subset of individuals on the October List itself. Flores Decl. ¶¶ 36–38. Because Plaintiff's proposed method would impose "different standards, practices, or procedures" on a fraction of California voters, it violates the CRA. *See Mi Familia Vota*, 129 F.4th at 724.

B. Plaintiff will not likely suffer irreparable harm absent immediate injunctive relief.

"In this District, ex parte applications are solely for extraordinary relief and are rarely justified." *Vasquez Perdomo v. Noem*, 790 F. Supp. 3d 850, 873 (C.D. Cal. 2025). "A party filing an ex parte application must support its request for emergency relief with 'evidence . . . that the moving party's case will be irreparably prejudiced if the underlying motion is heard according to regularly noticed motion procedures,' and a showing 'that the moving party is without fault in creating the crisis that requires ex parte relief, or that the crisis occurred as a result of excusable neglect.'" *Id.* (quoting *Mission Power Eng'g Co. v. Cont'l Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995)). In short, "Ex Parte applications are not intended to save the day for parties who have failed to present requests when they should have." *Noem*, 790 F. Supp. 3d at 874 (quoting *Mission Power Eng'g Co*, 883 F. Supp. at 493).

Plaintiff's theoretical risk of imminent harm is solely due to its own neglect. Plaintiff submitted that it purchased a copy of the California Voter rolls from HSI for review on May 8, 2026. Bartell ¶ 21. Upon receiving this roster, Plaintiff deemed it "credible enough to initiate our investigative processes in accordance with our standard operating procedures." McLoughlin ¶ 20. Plaintiff subsequently notified Secretary Weber that "there may be as many as 190,832 non-citizens registered to vote in California" on July 16, 2026. Yet, Plaintiff chose to file suit on October 15, 2026, mere weeks before election day, and months into the NVRA's 90-day quiet period. Plaintiff's unexplained delay of multiple months refutes its eleventh-hour claim of irreparable harm. [11]

Where the federal government has developed substantial evidence of non-citizens voting in the current election, it should bring Section 611 indictments. Los Angeles County has indicated it would cooperate with these indictments.

C. The balance of the equities favors Defendants.

a. Plaintiff's allegations are not credible.

It is well-documented that matching voter registration records with data from other administrative databases presents "presents numerous challenges." NAACP Opp., Declaration of Kassra Oskooii ¶16. Multiple factors, such as differences in when and how information across databases is captured and common identifying information, can render it difficult to accurately match identities, let alone verify citizenship. Oskooii Decl. at 5-7. These difficulties can lead to errors, even when matching procedures are "carefully implemented." Oskooii Decl. ¶18. In the case of verifying citizenship, this can lead to false positives, such as a citizen incorrectly being identified as a noncitizen. Oskooii Decl. ¶ 16.

Plaintiff's protocol raises significant concerns. For example, Plaintiff failed to disclose "the specific matching rules, the specific criteria for its confidence thresholds, [or] any detailed information about the third-party platform and their procedures." Oskooii Decl. ¶ 14. Plaintiff waited until the night before the hearing to reveal that the third-party platform it relied on was Lexis Nexis. Supplement to Plaintiff's Application for TRO, Declaration #2 of Nicholas Bartell

[11] Plaintiff's theories of injury in fact and law are also unavailing. *See Section IV.A.1.*

¶ 15. It remains unknown how Lexis Nexis performed its analysis, such as how it "linked names to Social Security numbers not available on the California public voter file." Oskooii Decl. ¶ 14. Plaintiff likewise did not explain what its "enrichment process" entailed or how it occured. McLoughlin Decl. ¶¶ 17, 18. Plaintiff also provided "no error rates" or "validation against a reliable benchmark" that would enable a determination of the accuracy of its findings. Oskooii Decl. ¶ 26. Omissions of this critical information prevent an evaluation of Plaintiff's procedure, including how Plaintiff reduced its initial claim of nearly 200,000 alleged noncitizens to 20,000 individuals.

Plaintiff's disproven allegations with respect to noncitizen voting in other states raise further questions of credibility. In Nevada, DHS initially identified up to 15,903 registered voters as noncitizens based on "high-confidence" matches, but later reduced that number to 6,218, and then to 185 after conducting its manual review. NAACP Opp. at 20. Nevada officials later confirmed that all 185 individuals were citizens. *Id.* Plaintiff likewise initially claimed that nearly 200,000 registered California voters were noncitizens and later reduced its allegation to 20,000 individuals without sufficient explanation.

Given the vagueness of Plaintiff's descriptions of its procedures and the unreliability of its similar claims in other states, the Court cannot conclude that Plaintiff's process is credible. This calls into question its allegation that the individuals on the October List are "highly likely to be noncitizen[s]." TRO at 1. Given that Plaintiff's entire claim for relief rests on the sincerity of this allegation, Plaintiff's lack of credibility weighs against a finding in their favor.

b. Plaintiff's requested relief would create a significant administrative burden for Defendants, leading to chaos and upending the election.

With Election Day less than a week away, election staff throughout California are working diligently to ensure that the election proceeds smoothly and Californians can exercise their right to vote. This work becomes "more significant and urgent" in the days leading up and after the election. State Opp., Declaration of Jana Lean ¶ 14. During this period, staff in the Elections Divisions section of the Secretary of State's office are engaged in numerous tasks, including but not limited to, responding to voter inquiries and election complaints, testing

election night reporting technology, finalizing emergency preparedness protocols, conducting voter education and outreach events, and updating the website to communicate important election information. *Id.* Los Angeles County election staff are likewise occupied. The County opened 123 vote centers on October 24 and is gearing to open 523 more on October 31. County Opp., Declaration of Monica Flores ¶ 25. From October 24 to Election Day, the County is focused on preparing for the opening and managing of these centers, which includes training and assigning election workers to the vote centers, setting up call centers and the necessary technological supports, and ensuring the transportation and set up of voting equipment and supplies at the vote centers. *Id.* County staff also continue processing vote by mail ballots and anticipate receiving "much higher volumes" as Election Day nears. County Opp. at 11.

Plaintiff's request for election officials to identify and segregate ballots belonging to individuals on the October List would force Defendants to create wholly new procedures while the election is already underway. Because the county Registrar's current system "ha[s] no function for setting aside the ballots of designated voters", complying with Plaintiff's request would require "changes to systems and procedures that have already been tested and finalized for this election, the development and documentation of a new process, and the training of staff on it." Flores Decl. ¶43. This would also require updates to "multiple, separate software programs and hardware devices." County Opp., Declaration of Aman Bhullar ¶ 11. Initiating such processes during the election period would have "downstream effects on other election functions", such as the tabulation of ballots and would thus "impede the administration of the election for all voters." Bhullar Decl. ¶15. The scale of the required technological change is so significant such that it "cannot be completed safely and uniformly before Election Day." *Id.*

Additionally, complying with Plaintiff's request would require the diversion of resources from the areas outlined above. Neither the County nor the State possesses the resources to attend to Plaintiff's request and complete the election administration responsibilities their staff are currently engaged in. County Opp. at 31; State Opp. at 26. The diversion of key staff to ballot segregation would likely interfere with counting the election results and certifying the election, threatening both the County and State's abilities to meet statutory deadlines. Flores

Decl. ¶38; Lean Decl. ¶14. This would jeopardize the finalization of the election and the ability of newly elected officials to assume their responsibilities. Flores Decl. ¶ 50.

c. Plaintiff's requested relief would likely lead to voter disenfranchisement.

Granting the TRO would risk disenfranchising an untold number of voters. Plaintiff argues that the individuals on the October List are "highly likely to be noncitizen[s]." Reply at 8. However, as the Court explained earlier, Plaintiff has not provided credible evidence for its allegation. Rather, Plaintiff's own description of its methodology in creating the list was vague and raised multiple questions regarding reliability. Additionally, Plaintiff's similar allegations elsewhere have called into question its process of identifying noncitizens. SIREN Opp. at 4.

Plaintiff alleges that it merely seeks a "temporary segregati[on]" of ballots so that those individuals' citizenship can be verified. TRO at 25. However, Plaintiff has provided no process or access to information by which Defendants could verify individuals' citizenship, nor do Defendants possess the means to do so. County Opp. at 31. Furthermore, Plaintiff has admitted that it would be unable to complete the citizenship verification prior to election day. Compl. at ¶60. If the United States, with its capabilities, could not do so, there is no reason to believe that California or the County could. Thus, a ballot segregated, in effect, would be a ballot removed.

It bears mentioning that those most at risk of being disenfranchised are naturalized citizens. Individuals that the federal government recently identified as noncitizens on voter rolls in different states have repeatedly turned out to be naturalized citizens. SIREN Opp. at 4. This aligns with the disclosures made in a federal whistleblower report. The report revealed that individuals are identified as noncitizens "based solely on DHS data that is unverified, inconsistent with other information, and/or is unexplained" to the employees making the identifications. County Opp., Exh. H at 3. Furthermore, the report claimed that the government assigned employees a quota of 5 subjects to be reviewed per hour and 40 subjects per day. Further, the government gave employees "only twelve minutes to determine if a subject is a U.S. citizen." County Opp., Exh. H at 2. It is no surprise that citizens are wrongly identified as noncitizens. County Opp., Exh. H at 3.

Had Nevada officials accepted Plaintiff's allegations there as true, 185 citizens would have been deprived of their vote. This Court will not deprive Californians who have met the requirements for voter registration of their fundamental right because of Plaintiff's unfounded allegations.

d. Plaintiff's request would violate *Purcell*.

In *Purcell*, the Supreme Court vacated a Court of Appeals order that enjoined Arizona from requiring voters to provide proof of citizenship when registering to vote and to present identification when voting. *Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006). Emphasizing "the imminence of the election," the Supreme Court held that the election should proceed without disruption to the status quo. *Id. Purcell* stands for the principle that "lower federal courts should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm. 589 U.S. 423, 424 (2020).*

Here, "the election is not merely upcoming; it has already started." *People Not Politicians v. Onder*, 609 U.S. ____, 2026 WL 2883222, *2 (Sept. 25, 2026). That means "the *Purcell* principle applies with even greater force. *Id.* Since October 11, the County has been processing ballots and as of October 20, had already processed more than 331,000 vote by mail ballots. County Opp. at 11. It anticipates "much higher volumes" of vote by mail ballots to be received as election day nears. *Id.* . As discussed earlier, granting Plaintiff's request would provoke catastrophic change, upending the administration of the election. This would likely cause "voter confusion and consequent incentive to remain away from the polls" as individuals would wonder whether their ballots were likely to be withheld. *See Purcell* at 5.

Plaintiff argues that Purcell does not apply because the October List individuals are "likely ineligible noncitizens." Reply at 9. For the reasons discussed earlier, however, the Court does not give this allegation credence. Plaintiff further argues that its request would uphold the status quo. Reply at 1. But maintaining the status quo, as the Supreme Court did in *Purcell*, would entail ensuring that the governing laws and practices remain in place. Here, that would mean ensuring that no practice impedes registered voters, deemed eligible by California's voter

registration requirements, from voting. Plaintiff seeks to do the very opposite: disenfranchise voters.

D. The public interest favors the protection of voting rights.

Constitutional rights and our democracy are at stake**.** The public interest favors their protection. Individuals who have met the requirements of California's voter registration laws must not be deprived of a core right merely because of unfounded allegations stemming from a procedure rife with uncertainty and errors.

The public interest also favors the protection of election staff, who are working diligently to ensure that all citizens can cast their votes.

There is a clear remedy available. The United States can prosecute individuals according to Section 611, as it has historically and recently done. California also has established procedures to cancel the voter registrations of any individuals proven ineligible.

The Executive's requested relief, however, would wreak havoc and disrupt the election that is already underway, create a chilling effect on election workers and voters alike, and discount the votes of United States citizens. The Executive Branch cannot replace the remedy Congress carefully enacted with its own unlawful and unconstitutional solution instead.

Eroded trust in our democracy is irreparable. Once a vote is segregated, lasting harm has occurred. If the Executive can discount votes and threaten an ongoing election due to unproven allegations, then our democracy is in danger.

This Court declines to be a party to such process.

V. Disposition

Accordingly, the Court **DENIES** the Application for a Temporary Restraining Order (Dkt. 62).

DATED: October 28, 2026

David O. Carter

HON. DAVID O. CARTER
DISTRICT JUDGE

FOR PUBLICATION

FILED

OCT 26 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

STATE OF CALIFORNIA; SHIRLEY WEBER, PH.D., in her official capacity as the California Secretary of State; DEAN LOGAN, in his official capacity as the County of Los Angeles Registrar-Recorder/County Clerk,

Defendants - Appellees,

No. 26-7070

D.C. No.
2:26-cv-12025-DOC-ADS
Central District of California,
Los Angeles

ORDER

PER CURIAM:
Concurrence by Judge BENNETT;
Concurrence by Judge SANCHEZ;
Dissent by Judge BUMATAY

In this appeal, Plaintiff, the United States, asks us to issue a mandatory injunction and order Defendants, the State of California and the County of Los Angeles (the "County")[1]: "(1) to set aside vote-by-mail ballots from persons identified by the Federal Government likely to be noncitizens and (2) to independently—or in collaboration with the Federal Government—verify their

[1] The United States sued Dean C. Logan, in his official capacity as the County of Los Angeles – Registrar-Recorder/County Clerk.

citizenship status before tabulating their vote-by-mail ballot." But the United States failed to allow the district court adequate opportunity to consider its application for a Temporary Restraining Order ("TRO"). For that reason, we lack jurisdiction over this appeal. So we grant the County's motion to dismiss this appeal and deny as moot the United States's emergency motion for relief.

I.

In this case, the United States alleges that Defendants automatically mailed vote-by-mail ballots for the 2026 federal election to all registered voters in California, even after the United States informed Defendants that thousands of individuals "likely" to be noncitizens were on the voter rolls and would receive these ballots. The United States claims Defendants did not make a serious effort to work with the federal government to identify and remove "likely" noncitizens from the rolls and accuses Defendants of tabulating ballots from these individuals without verifying their citizenship. In this way, the United States claims Defendants are knowingly facilitating unlawful noncitizen voting in federal elections, in violation of federal law.

The dispute between the parties began months ago, when the U.S. Citizenship and Immigration Services ("USCIS") and Department of Homeland Security Investigations ("HSI") obtained California's voter roll in anticipation of the 2026 November midterm elections. The two agencies then curated a list of individuals

they believed with "high-confidence" were noncitizens registered to vote in California. They did so by cross-referencing the voter roster with both internal and third-party data regarding possible noncitizens.

In July, the Secretary of Homeland Security contacted Defendants' representatives and informed them that the United States was in possession of a list—developed by USCIS and HSI over the summer—of thousands of individuals registered to vote in their elections whom the agencies had labeled as "likely" noncitizens. The United States asked Defendants to coordinate with the federal government in confirming the citizenship status of those individuals on the list. Defendants responded with skepticism, seeking a more detailed description of the methodology utilized by DHS to identify these allegedly ineligible voters, among other indicia of veracity.

Hearing nothing further from the United States, and consistent with state law—which requires California to send vote-by-mail ballots to all registered voters before the election, *see* Cal. Elec. Code § 3000.5—Defendants mailed ballots to all registered voters on October 1, 2026.

On October 13, 2026, after the ballots were mailed, the United States again contacted Defendants, this time sending them a list of over 20,000 "likely" noncitizens registered to vote in California's November federal election (the "October List"). The United States asked Defendants to review the list within forty-

eight hours, confirm citizenship of the individuals, and, if Defendants were unable to independently confirm citizenship, to set aside ballots received from individuals on the October List until each individual's citizenship could be verified.

When Defendants refused to comply with that demand, the United States filed suit against Defendants on October 15, 2026. Essentially, the United States argued that Defendants were violating the Supremacy Clause, U.S. Const. art. VI, cl. 2, by knowingly facilitating the votes of noncitizens, which frustrated the federal prohibition against noncitizens voting in federal elections, *see* 18 U.S.C. § 611(a). And it asked the district court to "[i]ssue a preliminary and permanent injunction enjoining California from tabulating in federal elections vote-by-mail ballots received from individuals identified by the Federal Government as likely noncitizens until those individuals' citizenship status c[ould] be verified."

Four days later, on October 19, 2026, the United States filed an "Ex Parte Application to Exceed Page Limitation," seeking to file an overlength memorandum in support of a forthcoming application for a TRO. *See* Ex Parte Application to Exceed Page Limitation, No. 26-cv-12025 (C.D. Cal. Oct. 19, 2026), ECF No. 22.[2] The United States attached to that Motion a copy of its application for a TRO, *id.* at ECF No. 22-1, and a memorandum in support of the motion, *id.* at ECF No. 22-2.

[2] All ECF cites refer to the entries in Case No. 26-cv-12025.

In that TRO request, the United States told the district court that it was requesting a ruling on the motion by **November 3, 2026**:

> This Court should order California to set aside vote-by-mail ballots from likely noncitizens in the federal election—including any ballots cast by the individuals charged with 18 U.S.C. § 611 crimes this morning—until the voter's citizenship status can be determined. The United States respectfully requests that this Court grant this relief by **November 3, 2026,** before the end of voting in the 2026 federal election.

See id. at ECF No. 22-2 pp. 3–4 (emphasis in original). Two days later, on October 21, 2026, the case was reassigned to Judge David Carter.

The court, on October 21, 2026, granted the United States's request to file an overlength memorandum in support of its TRO. ECF No. 53. That same day, the United States filed its application for a TRO, which was virtually identical to the earlier version, ***including as to the request for a ruling by November 3, 2026***—*see* Emergency Ex Parte Application for TRO, ECF No. 62-1 p. 4. Judge Carter then set a hearing on the TRO motion for October 27, 2026, leaving about one week between the hearing date and the date by which the United States had requested a hearing. *See* In Chambers Order Setting Hearing, ECF No. 64.

At around 9:00 PM that night (October 21, 2026), the United States filed what it titled a "Request for Expedited Ruling on TRO." Request for Expedited Ruling on TRO, ECF No. 67. The United States emphasized that Defendants, in opposing the TRO, admitted that the County had processed more than 331,000 ballots since it

began counting them on October 5, 2026.[3] *Id.* at 1. Apparently surprised by this fact, the United States requested that the district court rule on its TRO fifteen hours (three business hours) later—"by noon on October 22, 2026." *See id.* at 2.

The district court did not rule on the motion by noon the next day, and the United States, later describing the district courts nonaction during this brief period as a "constructive denial" of the motion, appealed to this court on October 22, 2026. Despite the United States's appeal, Judge Carter continues to consider the United States's TRO; has reiterated his plans to hold a hearing on Tuesday, October 27, 2026; and has committed to "rul[ing] promptly after hearing from the Parties." *See* Order Reiterating Briefing Deadlines, ECF No. 85.

On appeal, the United States filed an emergency motion for injunctive relief, requesting that we immediately grant an injunction pending appeal that, as noted, would require Defendants "(1) to set aside vote-by-mail ballots from persons identified by the Federal Government likely to be noncitizens and (2) to independently—or in collaboration with the Federal Government—verify their citizenship status before tabulating their vote-by-mail ballot." The County soon filed an emergency motion to dismiss this appeal, contending that we lack jurisdiction to

[3] In Defendants' opposition to the TRO, a scrivener's error suggests that the County "began its VBM ballot processing operations on October 11, 2026." In fact, as clarified by the preceding sentence and the underlying declaration, the County "began its VBM ballot processing operations on October 5, 2026."

hear it. Both motions are fully briefed, and we held oral argument on October 25, 2026.[4]

II.

We start, as we must, with jurisdiction. *See HayDay Farms, Inc. v. FeeDx Holdings, Inc.*, 55 F.4th 1232, 1238 (9th Cir. 2022) ("It is the duty of federal courts to assure themselves that their jurisdiction is not being exceeded." (quoting *In re Ryther*, 799 F.2d 1412, 1414 (9th Cir. 1986))).

A.

Under 28 U.S.C. § 1292(a)(1), we have jurisdiction over appeals from "[i]nterlocutory orders of the district courts of the United States . . . granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court." 28 U.S.C. § 1292(a)(1). Thus, in the normal course, whenever a district court denies a preliminary injunction, that denial is an appealable interlocutory order. *Id.*

But we also have jurisdiction over interlocutory appeals in which "the district court effectively denied the motion" for injunctive relief. *Mt. Graham Red Squirrel v. Madigan*, 954 F.2d 1441, 1449–50 (9th Cir. 1992). This is because, since "preliminary relief must be granted promptly to be effective, simple inaction may

[4] Several entities have moved to intervene in this appeal. Dkt. Nos. 7, 27, 31. Because we dismiss for lack of jurisdiction, we deny as moot their motions to intervene.

have the practical effect of refusing an express request for a preliminary injunction." 16 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 3924.1 (3d ed. 2008). Nevertheless, because Section 1292(a)(1) creates only a "limited exception to the final-judgment rule," we are to "narrowly" construe our interlocutory jurisdiction. *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84 (1981).

Recently, in *A. A. R. P. v. Trump*, 605 U.S. 91, 92 (2025) (per curiam), the Supreme Court considered appellate jurisdiction arising from a so-called "constructive denial" of injunctive relief. There, the President invoked the Alien Enemies Act ("AEA"), 50 U.S.C. § 21, to remove Venezuelan nationals whom it had deemed members of Tren de Aragua. *Id.* When several detainees were "served notices of AEA removal and told that they would be removed 'tonight or tomorrow,'" the detainees moved for an emergency TRO preventing their removal and for a ruling or a hearing on the motion by the next day. *Id.* at 92–93. After the district court delayed ruling on the motion for "14 hours and 28 minutes," the detainees appealed the "constructive denial" of their emergency motion. *Id.* at 92–94 (brackets omitted).

When the case reached the Supreme Court, the Court held that the district court practically refused an injunction to the detainees, who were "facing an imminent threat of severe, irreparable harm." *Id.* at 94. This was in part due to the "district court's inaction in the face of extreme urgency," and in part due to the "high risk of 'serious, perhaps irreparable,' consequences" faced by the detainees in

absence of a ruling. *Id.* (citations omitted). For instance, the evidence in the record showed that many of the detainees had "already been loaded on to buses, presumably headed to the airport." *Id.* at 97. And the government had "represented on the record in federal court that it reserved the right to remove detainees after midnight." *Id.* The prospect of irreparable harm was amplified by recognition that, in a prior similar case, the United States had represented that it could not secure the return of a person deported to a prison in El Salvador. *Id.* at 95. That is, once deported, the Plaintiffs would have been irretrievably and permanently outside the jurisdiction of the United States. *Id.* For this reason, the Supreme Court repeatedly stressed that it held an interest in "preserv[ing] [its] jurisdiction," an interest the threatened harm would extinguish. *Id.* at 95–97. Under these circumstances, the Court concluded that the Circuit Court (and the Supreme Court) had jurisdiction "to issue injunctive relief to prevent irreparable harm" to the detainees. *Id.* at 97.

B.

In the emergency motion filed with this appeal, the United States went straight to the merits, and barely addressed our jurisdiction, making a conclusory assertion that because the district court "failed to rule" on its TRO, the court constructively denied it.[5] Defendants immediately filed their own emergency motion to dismiss

[5] In fact, the word "jurisdiction" does not even appear in the United States's emergency motion.

this appeal for lack of jurisdiction, arguing that the United States manufactured an emergency to prematurely reach our court, even though the district court is set to hear argument on the United States's motion this Tuesday, on October 27, 2026. In response to that motion, the United States addressed our jurisdiction, arguing that California's continued counting of ballots constituted an extreme harm that the district court—in the fifteen hours (three business hours) between 8:57 PM on October 21, 2026, to 12:00 PM on October 22, 2026—failed to remedy. The United States requested that we act with exigency, purportedly invoking our jurisdiction pursuant to *A.A.R.P. v. Trump*, 605 U.S. at 92.

Because the United States invoked *A. A. R. P. v. Trump*, 605 U.S. at 92, we start there. Recall that in *A. A. R. P.*, the Court decided that the district court's inaction—for "14 hours and 28 minutes"—in the "fac[e] [of] an imminent threat of severe, irreparable harm" amounted to a constructive denial of the requested injunction. *Id.* at 94. The United States gave the district court here about 15 hours (three business hours)[6] to rule on its TRO (from 8:57 PM on October 21, 2026, to 12:00 PM on October 22, 2026). When no ruling came, the United States appealed to this court, citing *A. A. R. P.* and claiming "an imminent threat of severe, irreparable harm." *See A. A. R. P.*, 605 U.S. at 94.

[6] We note that while in *A. A. R. P.*, the government was acting to deport individuals during non-business hours, the United States has not alleged that Defendants were counting ballots between 9:00 PM and 9:00 AM.

But *A. A. R. P.* does not stand for the proposition that litigants may appeal a request for an injunction whenever the district court fails to rule within fifteen hours of filing. *See id.* at 94 ("A district court's inaction . . . *may* have the effect of refusing an injunction (emphasis added)). Rather, that case dealt with an "imminent threat of severe, irreparable harm"—detainees were in the process of being loaded on buses and taken to the airport to be irretrievably deported *beyond the United States's jurisdiction*—and the detainees twice urgently attempted to obtain a TRO during deportation proceedings. *Id.* at 92–93. As we now explain, the United States has not treated this case with anywhere near the exigency of the detainees in *A. A. R. P.* and has thus failed to establish that the district court did not act "in the face of extreme urgency." *Id.* at 93. This case is meaningfully distinct from *A.A.R.P.* for several reasons.

First, unlike in *A.A.R.P.*, any delay in the availability of judicial relief is, at least in part, the product of the United States's own decisions. Throughout these proceedings, the district court accommodated the United States's desired timetable: it took the United States at its word, set a hearing on the TRO a week before the United States's requested deadline, and notified the parties it would "rule promptly after hearing from the Parties at oral argument . . . ." That the United States had overlooked the fact that counties across California would be working diligently to

process ballots for the millions of voters residing within the State does not equal inaction by the district court or circumstances outside the United States's control.

The United States's theory is that, absent an injunction, "every minute of processing that occurs without segregating the ballots of suspected ineligible voters causes untraceable disenfranchisement and dilution of the votes of United States citizens." But the United States had the information it needed to seek relief with exigency well before October 21, 2026, when it first requested relief. The United States has taken issue with California's voter rolls since at least July 16, when it sent a letter to California's Secretary of State citing its "[p]reliminary" analysis of California's voter rolls. And neither California's law permitting the processing of ballots twenty-nine days before an election, nor its law providing for the issuance of mail-in ballots to registered voters, is new. Cal. Elec. Code. §§ 15101(a), 3003. Yet the United States's complaint, filed on October 15, 2026—ten days after counties could begin counting, and months after it initially contacted California authorities—said nothing about irreparable harm, did not request a deadline for relief, and was not filed contemporaneously with a TRO or a motion for a preliminary injunction. *See* Complaint for Declaratory and Injunctive Relief, ECF No. 1. Instead, the United States waited four days, until October 19, 2026, to file an "Ex Parte Application to Exceed Page Limitation." *See* Ex Parte Application to Exceed Page Limitation, ECF No. 22. For the first time, the United States attached to its page limit motion a

request for a TRO, *id.* at ECF No. 22-1, and its memorandum in support of such injunctive relief, *id.* at ECF No. 22-2. It took the United States four days to prepare and file a TRO (ECF No. 22-1), and all the while, California was counting votes pursuant to its longstanding state law. *See Lydo Enters., Inc. v. City of Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984) ("A delay in seeking a preliminary injunction is a factor to be considered in weighing the propriety of relief.").

And then, the United States doubled down on its lack of urgency. More specifically, the United States twice told the district court—first on October 19, 2026 and then again on October 21, 2026, that it was requesting a ruling "by **November 3, 2026**:"

> This Court should order California to set aside vote-by-mail ballots from likely noncitizens in the federal election—including any ballots cast by the individuals charged with 18 U.S.C. § 611 crimes this morning—until the voter's citizenship status can be determined. The United States respectfully requests that this Court grant this relief by **November 3, 2026,** before the end of voting in the 2026 federal election.

See Memorandum in Support of The United States's Ex Parte Application for Temporary Restraining Order, ECF No. 22-2 p. 4 (emphasis in original); *id.* at ECF No. 62-1 p. 4 (same). During this time, Defendant Logan, with California's support, requested an expedited briefing schedule to resolve the matter swiftly, and reported that the United States declined to support the motion because it did not believe there was sufficient exigency to merit it. ECF No. 57 at 7; *see generally* ECF No. 61.

Seeing the United States's request for relief by November 3, the district court immediately set a hearing on the United States's TRO for Tuesday, October 27, 2026—one week before the United States's proposed November 3 deadline—specifically stating on October 23, 2026 that the "Court will rule promptly after hearing from the Parties at oral argument on Tuesday, October 27, 2026." ECF No. 85. Only after the district court set the hearing in accordance with the United States's twice-repeated timetable did the United States change tack. At **8:57 PM** on October 21, 2026 (the very same day the district judge received this case and set the hearing), the United States filed a "Request for Expedited Ruling on Emergency Application for a TRO," stressing the urgency of its motion and asking for a ruling by **12:00 PM** the next day. After just fifteen hours—most of them in the middle of the night—the United States appealed, telling us that the district court constructively denied its motion by failing to timely rule on it during that very brief time period. Specifically, the United States argued that, although it initially "sought relief by November 3, 2026," it did not see the alleged acute urgency in this matter until it received Defendants' opposing brief on October 20, 2026, where it learned the County had processed more than 300,000 vote-by-mail ballots. We note that ***the very next day***, however, the United States filed its application for a TRO and for the second time requested a ruling by November 3, 2026.

The United States's claimed emergency, at least in part, is a self-constructed one. At least part of the delay here is attributable to the United States's own delay in filing suit, in realizing that existing California state law governs the issuance and processing of ballots, in recognizing that California has millions of registered voters and processes ballots on a schedule aligned with that scale, and in communicating to the court its desired relief. The same cannot be said of *A.A.R.P.*, a case in which the plaintiffs sought relief on a short timeline for circumstances outside their control: notification by the federal government that it sought to deport them that very night or the following morning. *A.A.R.P.*, 605 U.S. at 92–93. "[I]t is a rule of equity that an unreasonable delay in asserting rights is a bar to relief." *Martin v. Gray*, 142 U.S. 236, 239 (1891). The *A.A.R.P.* plaintiffs acted as promptly as they could; the United States, here, has not.

Second, *A.A.R.P.* takes as its template the *Carson* factors in determining what constitutes a "constructive denial" of a plaintiff's request for relief. *A.A.R.P.*, 605 U.S. at 94 (citing *Carson*, 450 U.S. at 84)). Another *Carson* factor counsels finding jurisdiction when an interlocutory order can be "effectually challenged only by immediate appeal." *Carson*, 450 U.S. at 84 (citation modified). In three separate instances, the Supreme Court stressed the relevance of this factor to the facts of *A.A.R.P.*, noting that it wished to "preserve [its] jurisdiction." *A.A.R.P.*, 605 U.S. at 95, 97. Had the *A.A.R.P.* plaintiffs been deported, they would have been removed,

permanently, from the jurisdiction of the federal judiciary. *Id.* at 93. As the United States concedes at oral argument, absent appellate court intervention here, district court proceedings will continue, and any party dissatisfied with the outcome below may seek appellate review. There is here no loss of jurisdiction.

Third, the *A.A.R.P.* decision came following another, germane Supreme Court opinion confirming that, even in the context of the AEA, our Constitution "entitles aliens to due process of law in the context of removal proceedings." *Trump v. J.G.G.*, 604 U.S. 670 (2025) (citation modified) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). In *A.A.R.P.*, the Supreme Court called attention to this, commenting that it had already "explained—with all nine Justices agreeing—that 'AEA detainees must receive notice . . . that they are subject to removal under the Act . . . within a reasonable time and in such a manner as will allow them to actually seek habeas relief' before removal." *A.A.R.P.*, 605 U.S. at 95 (quoting *J.G.G.*, 604 U.S. at 673 (2025)). In seeking to deport the *A.A.R.P.* plaintiffs in the manner in which it proposed, the United States risked flouting the Supreme Court's clear mandate. *Id.* at 94–95. There is no analogous risk here.

C.

The emergency the United States asserts, partly created by its own actions, bears little resemblance to the extraordinary facts of *A.A.R.P. v. Trump*. The United States's theory could confer appellate jurisdiction nearly any time a party faced some

form of "irreparable harm." But to quote the D.C. Circuit, "[w]hile a deserving litigant is always harmed if judicial relief is delayed, such harm does not automatically rise to the irreparable level." *I.A.M. Nat'l Pension Fund Benefit Plan A v. Cooper Inds., Inc.*, 789 F.2d 21, 24–25 (D.C. Cir. 1986). Accordingly, we grant the County's motion to dismiss this appeal for lack of jurisdiction and deny as moot the United States's emergency motion for relief.

FILED

OCT 26 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

United States v. State of California, No. 26-7070

BENNETT, Circuit Judge, concurring:[1]

I fully concur with the per curiam order. I write separately, however, in light of the dissent. Even if I were to conclude we had jurisdiction over the appeal, and reach the merits, there are several reasons why I would deny the United States's emergency motion for injunctive relief pending appeal.

I.

A.

In this case, Plaintiff, the United States of America, alleges that Defendants, the State of California and the Los Angeles County[2], automatically mailed vote-by-mail ballots for the 2026 federal election to all registered voters in California, even after Plaintiff informed Defendants that thousands of individuals "likely" to be noncitizens were on the voter rolls and would receive these ballots. Plaintiff claims Defendants made no serious effort to work with the federal government to identify and remove "likely" noncitizens from the rolls, and accuses Defendants of tabulating

[1] Due to the time constraints in this emergency appeal, I do not address all merits issues, and focus only on several that I believe are dispositive.

[2] Plaintiff sued Dean C. Logan, in his official capacity as the County of Los Angeles Registrar-Recorder/County Clerk. I refer to this defendant as "the County" for simplicity.

ballots from these individuals without verifying their citizenship, thereby knowingly facilitating unlawful noncitizen voting in federal elections in violation of federal law.

According to Plaintiff, two United States agencies work in conjunction to develop predictive lists of noncitizens who may be registered to vote in federal elections. First, the U.S. Citizenship and Immigration Services ("USCIS") obtains voter rosters, which some states—like California here—make available for purchase. *See* Cal. Elec. Code § 2188. USCIS then compares that voter roll information with its own internal immigration records, and uses third-party software to generate high, medium, or low confidence identity matches. Once complete, USCIS then creates a table of individuals who it believes are "high-confidence" matches for noncitizens with no evidence of naturalization.

The high-confidence matches are then forwarded to the Department of Homeland Security Investigations ("HSI"), which serves as the primary investigative agency enforcing America's immigration laws. Working with USCIS, HSI reviews the high-confidence referrals and attempts to further investigate and tailor the list for accuracy. According to Plaintiff, HSI's review consists of using a "customary analytical platform" to correct "information mismatches" on the high-confidence list.

B.

Over the summer months of 2026, USCIS and HSI obtained California's voter roll in anticipation of the 2026 November midterm elections. In accordance with the procedures outlined above, the two agencies then curated a list of "high-confidence" noncitizens who they believed were registered to vote in California.

In July, the Secretary of Homeland Security contacted Defendants and informed them that Plaintiff was in possession of a list identifying thousands of individuals who were "likely" noncitizens improperly eligible to vote in their elections. Plaintiff asked Defendants to coordinate with the federal government in confirming the citizenship status of those on the list. Defendants responded with skepticism, seeking a more detailed description of the methodology used by DHS to identify these allegedly ineligible voters, among other indicia of veracity.

Hearing nothing further from Plaintiff regarding the list, and consistent with state law—which requires California to send vote-by-mail ballots to all registered voters, *see* Cal. Elec. Code § 3000.5—Defendants mailed ballots to all registered voters on October 1, 2026.

On October 13, 2026, after the ballots were mailed, Plaintiff again contacted Defendants, this time sending them a list of over 20,000 "likely" noncitizens who may vote in California's November federal election ("October List"). Plaintiff asked Defendants to review the list, confirm citizenship of the individuals, and, if

Defendants were unable to independently confirm citizenship, to set aside ballots received from individuals on the October List until each individual's citizenship could be verified.

When Defendants refused to comply with that demand, Plaintiff brought suit against Defendants on October 15, 2026. Essentially, Plaintiff argued that Defendants were violating the Supremacy Clause, U.S. Const. art. VI, cl. 2, because by knowingly facilitating the votes of noncitizens, Defendants were frustrating the federal prohibition against noncitizens voting in federal elections. *See* 18 U.S.C. § 611(a). And it asked the district court to "[i]ssue a preliminary and permanent injunction enjoining California from tabulating in federal elections vote-by-mail ballots received from individuals identified by the Federal Government as likely noncitizens until those individuals' citizenship status c[ould] be verified."

Plaintiff sought injunctive relief in the district court, as discussed in the per curiam order. When the district court failed to rule by Plaintiff's requested deadline,[3] Plaintiff treated the court's nonaction as a constructive denial of the motion and appealed.

On appeal, Plaintiff filed an emergency motion for injunctive relief, requesting that we immediately grant an injunction pending appeal that requires Defendants to (1) set aside vote-by-mail ballots from persons identified by the

[3] As the per curiam order notes, Plaintiff's "deadline" materially changed over time.

Federal Government likely to be noncitizens and (2) independently—or in collaboration with the Federal Government—verify their citizenship status before tabulating their vote-by-mail ballot. The County soon filed an emergency motion to dismiss this appeal, contending that we lack jurisdiction to hear it. We held oral argument on October 25, 2026.

II.

To obtain preliminary injunctive relief, a plaintiff "must establish that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Plaintiff argues that it needs an injunction to maintain the status quo, and that its proposed injunction does no more than maintain the status quo. I disagree. Because Plaintiff urges this court to require Defendants to take "affirmative action"—to segregate California's ballots that the State would not otherwise segregate and to affirmatively verify certain voters' citizenship status before tabulating their vote-by-mail ballot—Plaintiff requests a mandatory injunction. *See Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc).

"The standard for issuing a mandatory preliminary injunction is high." *Doe v. Snyder*, 28 F.4th 103, 111 (9th Cir. 2022). "In general, mandatory injunctions 'are not granted unless extreme or very serious damage will result and are not issued in

doubtful cases . . . .'" *Id.* (quoting *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009)). The movant "must establish that the law and facts *clearly favor* [its] position, not simply that [it] is likely to succeed." *Garcia*, 786 F.3d at 740. And in deciding to grant equitable relief, the remedy must be workable. *North Carolina v. Covington*, 581 U.S. 486, 488 (2017) (per curiam) (quotation marks omitted) (quoting *New York v. Cathedral Acad.*, 434 U.S. 125, 129 (1977)). In my view, Plaintiff fails to meet these heightened standards.

A.

First, I consider Plaintiff's likelihood of success on the merits of its claim—"the most important" of the *Winter* factors—and whether the "law and facts *clearly favor* [its] position, not simply that [it] is likely to succeed." *Garcia*, 786 F.3d at 740. Plaintiff asks this court—in an expedited and preliminary posture—to order Defendants to segregate the ballots of alleged noncitizens because, it argues, 18 U.S.C. § 611 preempts California's declination and preempts California from following the statutory scheme adopted by the California Legislature. Yet Plaintiff has not made the required showing that such extraordinary relief, in the days leading up to an election, is clearly required by law.

As an initial matter, there is no dispute that it is unlawful under both federal and California law for noncitizens to vote. *Compare* 18 U.S.C. § 611, *with* Cal. Const. art. II, § 2(a) ("A United States citizen 18 years of age and resident in this

State may vote."). Rather, this dispute is about the *procedures* used to enforce that prohibition, which plainly implicates the Elections Clause of the U.S. Constitution. *See Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8–9 (2013) ("*ITCA*"). The Elections Clause, U.S. Const. art. I, § 4, cl. 1, reads:

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

This clause expressly dictates which sovereign has the authority to prescribe the manner by which Congressional elections are conducted. The question therefore is whether Congress has spoken clearly—that is, whether California's *procedures* in enforcing the election requirements, such as citizenship or ballot challenges based on citizenship, have been preempted. Nothing in § 611—a statute that criminalizes voting by a noncitizen—preempts California's comprehensive statutory scheme that has been duly enacted under the Elections Clause.

While Plaintiff argues that the Supremacy Clause requires California to segregate several thousand ballots because failing to do so would at a minimum "induce, encourage or promote" the violation of § 611, this court has recognized that "the Elections Clause operates quite differently from the Supremacy Clause." *Gonzalez v. Arizona*, 677 F.3d 383, 391 (9th Cir. 2012) (en banc), *aff'd sub nom. Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013). "In practice, the [Elections] Clause functions as 'a default provision; it invests the States with

responsibility for the mechanics of congressional elections, but only so far as Congress declines to pre-empt state legislative choices.'" *ITCA*, 570 U.S. at 9 (quoting *Foster v. Love,* 522 U.S. 67, 69 (1997)). These state responsibilities on the "times, places, and manner" can include:

> notices, registration, supervision of voting, *protection of voters, prevention of fraud and corrupt practices*, *counting of votes, duties of inspectors* and canvassers, and making and publication of election returns; in short, to enact the numerous requirements as to *procedure and safeguards* which experience shows are necessary in order to enforce the fundamental right involved.

Smiley v. Holm, 285 U.S. 355, 366 (1932) (emphasis added).

Congress, however, "may supplement these state regulations or may substitute its own" because "[i]t has a general supervisory power over the whole subject." *Id.* at 366–67 (citation modified); *see also Gonzalez*, 677 F.3d at 391 ("[A] state's role in the creation and implementation of federal election procedures under the Elections Clause is to administer the elections through its own procedures until Congress deems otherwise; if and when Congress does so, the states are obligated to conform to and carry out whatever procedures Congress requires."). But federal law only displaces state election law in "so far as it is exercised, and no farther." *ITCA*, 570 U.S. at 9 (quoting *Ex parte Siebold*, 100 U.S. 371, 392 (1880), *abrogated on other grounds by Glasgow v. Moyer*, 225 U.S. 420 (1912)). Further, the Elections Clause confers broad authority only on Congress and the States, not the Executive. Indeed, to prevent the centralization of election management in the Executive, the Elections

Clause "empowers" only Congress and the "state governments to enact laws governing the mechanics of federal elections." *See Gonzalez*, 677 F.3d at 391.

I have, at the very least, serious doubts that Plaintiff's preemption claim is likely to succeed on the merits because Plaintiff has not shown that the law clearly favors its position. First, § 611 does what each party has determined is unlawful—it makes it a crime for a noncitizen to vote. Second, there is nothing in the text of § 611 that preempts the states' primary authority in election administration; California can still (and in fact, it must) craft its own *procedures* governing Congressional elections and ballot challenges in those elections.

1.

Plaintiff's sole ground for asserting preemption rests on § 611's misdemeanor criminal prohibition on noncitizen voting. To be sure, "when Congress acts under th[e] [Elections Clause] provision," Congress is empowered "to 'make or alter' state election regulations." *ITCA*, 570 U.S. at 14. But if Congress intends to preempt, "state law is preempted by the federal election[] statutes only so far as the conflict extends." *Watson v. Republican Nat'l Comm.*, 609 U.S. 672, 697 (2026) (citation modified); *see also Siebold*, 100 U.S. at 392 (noting Congress's power to regulate elections "supersede[s]" state law "so far as it is exercised, and no farther").

Section 611 provides that "[i]t shall be unlawful for any alien to vote in any" federal elections, except in certain circumstances, and that "[a]ny person who

violates this section shall be fined under this title, imprisoned not more than one year, or both." 18 U.S.C. § 611(a)–(b). Notably absent from the statute is any express preemption provision; language setting forth standards for election administration that might, explicitly or implicitly, prohibit a state from mailing and tabulating ballots; or text regulating how a state deals with challenges to ballots. A review of § 611 also reveals no hidden provision authorizing the Department of Justice ("DOJ") to superintend or intervene in a state's election administration. In fact, the statute's terms seemingly approve of state voter qualification laws. Depending on the type of election, the statute explicitly exempts "aliens [who] are authorized to vote . . . under a *State constitution or statute or a local ordinance*." 18 U.S.C. § 611(a)(1)–(a)(3) (emphasis added). Thus, far from providing a blanket preemption over a state's actions of mailing and tabulating ballots, the statute expressly incorporates state constitutions and laws when defining its scope.

On its face, the statute's plain text governs only an individual's conduct—it simply does not prescribe the processes a state must (or must not) use when handling ballots from allegedly unqualified voters. *See* 18 U.S.C. § 611(a)–(b) ("It shall be unlawful for *any alien* to vote in any [federal] election . . . . *Any person* who violates this section . . . ." (emphases added)). Again, federal election law only preempts "so far as the conflict extends." *Watson*, 609 U.S. at 697. A misdemeanor statute regulating individual conduct neither conflicts with nor preemptively extends to

Defendants' actions of sending vote-by-mail ballots, tabulating them on their return, or dealing with challenges to particular ballots.

The Elections Clause gives States the default "responsibility for the mechanics of congressional elections," *ITCA*, 570 U.S. at 9, and Congress's enactment of a criminal statute against individual aliens who unlawfully vote is not a grant of authority for the Executive to restructure state election administration. Regardless of whether the DOJ believes Defendants' "actions pose an obstacle to the United States' ability to implement Congress's purposes and objectives by enforcing 18 U.S.C. § 611(a)," "the possibility that federal enforcement priorities might be upset is not enough to provide a basis for preemption." *See Kansas v. Garcia*, 589 U.S. 191, 212 (2020). In other words, nothing in § 611 *requires* Defendants to follow Plaintiff's demand to segregate ballots, as § 611 regulates individual voters' conduct, not the states' administration of elections. *See* 18 U.S.C. § 611(a). Because § 611 says nothing about federal referrals, ballot segregation, or citizenship clearance, relabeling Defendants' noncooperation as "induc[ing], encourage[ing] or promot[ing]" aliens to violate § 611 cannot rewrite the statute to provide Plaintiff's requested relief. Thus, the law does not "*clearly favor*" Plaintiff's preemption argument. *See Garcia*, 786 F.3d at 740.

Furthermore, Congress has extensively exercised its power to regulate federal elections. Through various election statutes, Congress established a clear policy on voter eligibility, delegating responsibility for voter roll maintenance, ballot mailing, and vote processing to the states. For example, the National Voter Registration Act of 1993 ("NVRA") requires states to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists" for the death and changes in residence of the registrant; specifies limitations on how and when states may remove registrants from voter rolls; and mandates that each state shall designate an election official responsible for these tasks. 52 U.S.C. §§ 20507(a)(4), 20507(c)–(d), 20509. The NVRA also requires States to "accept and use the mail voter registration application form," which includes a citizenship attestation and signature under penalty of perjury. *Id.* §§ 20505(a)(1), 20508(b)(2). Similarly, the Help America Vote Act ("HAVA") requires a citizenship question on the mail registration form and assigns responsibility for a statewide voter registration list to state officials. *Id.* § 21083(a)(1), (b)(4)(A)(i).

Congress did not delegate any of these roles to the Executive Department; instead, Congress only authorized the Attorney General to sue to enforce the NVRA and HAVA. *Id.* §§ 20510(a), 21111. Plaintiff's complaint, however, never alleges a violation of these election statutes and never invokes the two provisions as its basis for preempting Defendants' actions. Because Congress limited the Executive's role

in enforcing these federal election statutes, allowing Plaintiff to use § 611 (a misdemeanor criminal provision) to prescribe how Defendants must process ballots once received would contravene the Elections Clause. *See Smiley*, 285 U.S. at 366 (recognizing the breadth of power given to the states under the Elections Clause concerning "registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, [and] counting of votes"). If Plaintiff believes requiring additional confirmation of citizenship is necessary for vote-by-mail ballots, I believe the appropriate audience for that suggestion, in full accord with the plain language of the Elections Clause, is Congress, not the courts. *See Watson*, 609 U.S. at 695 ("[P]olicy arguments are properly directed to legislatures, not courts.").

2.

Congress has not exercised the specific power granted to it under the Elections Clause to override the decisions of the California Legislature on how to remove ineligible voters from California's voter rolls. Thus, under the Elections Clause, the legislature's statutory scheme remains as the only method to do so. And the Legislature has "exercise[d] [its] wide discretion in the formulation of a system for the choice by the people of representati[on] in Congress," *see United States v. Classic*, 313 U.S. 299, 311 (1941), by prescribing a detailed statutory and regulatory scheme, *cf. Moore v. Harper*, 600 U.S. 1, 29 (2023) ("[State] Legislatures must 'provide a complete code for congressional elections,' including regulations

'relati[ng] to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns.'" (second alteration in original) (quoting *Smiley*, 285 U.S. at 366)).

California details the exact manner in which a citizenship challenge to a voter needs to be brought, not only in the days leading up to the election, but all the way through election day and the counting of the votes. Plaintiff's request to challenge vote-by-mail ballots, by asking Defendants to segregate ballots alleged to be cast by noncitizens, contravenes the State's procedures for handling such a challenge.

First, California law requires each voter to "prove he or she is a citizen by his or her certification under penalty of perjury on the affidavit of registration." Cal. Elec. Code § 2111; *accord* 52 U.S.C. § 20508(b)(2) (requiring that a mail voter registration form "include a statement that—(A) specifies each eligibility requirement (including citizenship); (B) contains an attestation that the applicant meets each such requirement; and (C) requires the signature of the applicant, under penalty of perjury"). And should "the county elections official" receive "proof that [a person registered to vote] is . . . ineligible to vote" the official "shall cancel the registration." Cal. Elec. Code § 2201(a)(8). To put it succinctly, California law

provides a mechanism for challenging the registration of a person—such as a noncitizen—who is ineligible from voting in federal elections.

This is not the only mechanism California provides to challenge a noncitizen who attempts to vote in a federal election. At the polls, California permits a challenge to the voter if that "voter is not a citizen of the United States." *Id.* § 14240(a)(3). While the challenge must be made by a member of the precinct board, the statute contemplates the ability for other individuals to express their challenge by sending "any document or list concerning the residence or other voting qualifications of any person or persons, with the express or implied suggestion, request, or demand that the person or persons be challenged." *Id.* § 14240(a), (c). In such a case, the precinct board member "shall first determine whether the document or list contains or is accompanied by evidence constituting probable cause to justify or substantiate a challenge." *Id.* § 14240(c).

As for vote-by-mail ballots, California provides election observers with the right to challenge a vote-by-mail voter, *id.* § 15104(b), and such challenges "may be made for the same reasons as those made against a voter voting at a polling place," *id.* § 15105. And because in this context "the voter is not present, the challenger shall have the burden of establishing extraordinary proof of the validity of the challenge at the time the challenge is made." *Id.* § 15106.

The regulations further explicate the level of specificity and reliability of evidence that a challenger to a vote-by-mail voter must present to meet their burden of proof:

> An example of such proof would be if a challenger alleges that a vote-by-mail ballot was cast by a voter who was deceased before vote-by-mail ballots were issued by the elections official, and the challenger provided a copy of that voter's death certificate to the elections official showing that the voter was deceased prior to the time vote-by-mail ballots were issued.

Cal. Code Regs. tit. 2, § 20879(b). And ultimately "[a]ny doubt in the interpretation of the Elections Code applicable to the challenge shall be resolved in favor of the challenged voter." *Id.*

Despite these various mechanisms to challenge the eligibility of a voter, Plaintiff prefers that this court require a different procedure to effectuate a challenge to over 20,000 voters solely because, in a different context, the California Legislature permits the segregation of ballots. *See* Cal. Code Regs. tit. 2, § 20363 (providing for the segregation of ballots in a recount). But Plaintiff's preference does not carry with it the force of law.

3.

Plaintiff also asserts that § 611 demands the State cull noncitizens from voting during an ongoing election, without considering that, in doing so, the State would potentially violate *another* federal law. The NVRA 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). We have held that "[b]ased on the ordinary meaning of 'any,' 'program' should be construed to have an expansive meaning." *Mi Familia Vota v. Fontes*, 129 F.4th 691, 715 (9th Cir. 2025) (citing 52 U.S.C. § 20501(b)(2)), *cert. granted sub nom. Republican Nat'l Comm. v. Mi Familia Vota*, 146 S. Ct. 2799 (2026). And while "states [may] continue any non-systematic cancellation of registrations within the 90-day window," *id.* at 716, such a program must "rel[y] on 'individualized information or investigation' to determine removal of ineligible voters from voting rolls rather than cancelling batches of registrations based on a set procedure such as 'us[ing] a mass computerized data-matching process to compare the voter rolls with other state and federal databases, followed by the mailing of notices.'" *Id.* (alteration in original) (quoting *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1344 (11th Cir. 2014)).

Here, Plaintiff effectively seeks to cancel "batches of registered voters based on a set procedure [which is] systemic as opposed to individualized." *See id.* This independent reason also calls into serious doubt whether Plaintiff can prevail on its preemption claim, particularly when the very relief it seeks potentially conflicts with another federal statute. Plaintiff's position, that § 611 preempts California's

inaction, gives short shrift to harmonizing its position with the clear command of the NVRA.

B.

Plaintiff argues that it will likely suffer irreparable harm because "irreparable harm necessarily results from the enforcement of a preempted state law." But as discussed above, whether Plaintiff will succeed on its preemption argument is at best unclear, and therefore it follows that it is also uncertain whether any harm will result based on preemption alone. Plaintiff also argues that it will suffer irreparable harm because once the ballots are opened and separated from their envelopes, there is no "way for officials to track or trace ballots cast by individuals later determined to be ineligible to vote" in violation of § 611. This alleged irreparable harm, however, is tempered by California's established process for ensuring voter eligibility (discussed above). Moreover, at this preliminary stage—given the conflicting evidence about whether the October List accurately identifies noncitizens[4] *and with no factual findings by the district court*—we cannot determine that Plaintiff will *likely* suffer irreparable harm.

On the other hand, as to the balance of hardships and the public interest, granting Plaintiff's requested relief might result in immense hardship to Defendants

[4] For example, Defendants' sample of 200 records from the October List showed that "among the records for which birthplace information was meaningfully reported, 38.9% indicated that they were born in the United States."

and harm the public by risking the disenfranchisement of eligible voters and putting the entire tabulation process in jeopardy. And as the declaration of the County's Assistant Registrar of the Information Technology Bureau states: "[B]ased on my technical expertise, I have grave concerns about the potential catastrophic impact of implementing the DOJ's request to 'set aside vote-by-mail ballots from persons identified by the Federal Government likely to be noncitizens' based on a list of approximately 20,000 individuals . . . ."

Defendants assert, with supporting declarations, that requiring them to segregate over 20,000 voters "would be a logistical and administrative nightmare: plaintiff's list does not contain the information necessary to identify voters; the Registrar has no established system for segregating ballots; and trying to create one now risks shutting down the system the Registrar needs to run the entire election." Indeed, the County's Assistant Registrar of the Information Technology Bureau declared that segregating ballots would require substantial changes to the Registrar's election systems, including the development and testing of new code and system updates to multiple, separate software programs and hardware devices. He further declared that the necessary changes could not be "completed safely and uniformly before Election Day," and even if they could, the effect of the changes is unknown and could result in a failure of the County's central election management system, "jeopardiz[ing] the Registrar's ability to meet federal and state [election] deadlines."

Beyond the infeasibility of and risks associated with segregating tens of thousands of ballots, Defendants also lack the ability to verify voters' citizenship status before December 4, 2026—the deadline for counties to certify their election results to the Secretary of State. *See* Cal. Elec. Code § 15372. As stated in the County's supporting declarations, "[t]he Registrar is not equipped to . . . verify voter citizenship because it does not independently house citizenship-related information beyond the voter attestation as identified in federal and state law . . . and certainly is not equipped to do so within the election period." Moreover, any verification process would have to allow for a reasonable time for notice and an opportunity to respond. *See Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) ("Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." (quoting *Baldwin v. Hale*, 68 U.S. 223, 233 (1863))). On the current record, there is a material risk that Defendants would be unable to complete the verification process for all voters on the October List by December 3. Thus, there is a real risk that granting Plaintiff its requested relief would result in disenfranchisement, and worse, could jeopardize the County's entire election.

Plaintiff argues that "California is well-equipped to provide a remedy, because it has laws on its books that facilitate the very relief sought here," citing Cal. Code Regs. tit. 2, § 20363. But as Defendants point out, that regulation is inapplicable because it applies only to challenges during a formal recount. *See* Cal. Regs. tit. 2

§ 20350 (explaining that the regulations in chapter 4.8, which includes § 20363, "establish standards and procedures for conducting *recounts* of votes cast or all elections in the State of California requested pursuant to Chapter 9 of Division 15 of the California Elections Code" (emphasis added)). Moreover, it says nothing about verifying a voter's citizenship status. Other than citing the inapplicable regulation, Plaintiff offers nothing to rebut Defendants' evidence that granting the requested relief here would result in substantial hardship to Defendants. I recognize that there are countervailing public interests at stake, as permitting ineligible voters to vote would dilute the votes of lawful voters. But, as discussed, the risk that noncitizen voters will vote is tempered by California's established processes for ensuring voter eligibility and is uncertain based on the current record.

Further, in deciding to grant equitable relief, we must consider "what is necessary, what is fair, and what is workable." *North Carolina*, 581 U.S. at 488 (quotation marks omitted) (quoting *New York*, 434 U.S. at 129). And "[e]very order granting an injunction . . . must . . . state its terms specifically" and "describe in reasonable detail . . . the act or acts restrained or required." Fed. R. Civ. P. 65(d)(1)(B).

Plaintiff seeks equitable relief, asking us to order Defendants to set aside vote-by-mail ballots from over 20,000 individuals whom Plaintiff believes are likely noncitizens. But Plaintiff offers no workable plan as to how this could be

accomplished, let alone how it could be accomplished without burdening Defendants more than necessary. Instead, Plaintiff simply claims that California has an existing regulation, Cal. Code Regs. tit. 2, § 20363, which provides for ballot segregation. But as discussed, that regulation is inapplicable. The regulation also provides no guidance on *how* elections officials would be able to segregate or "flag" the potentially over 20,000 vote-by-mail ballots. The declaration from the County's Assistant Registrar of the Information Technology Bureau states that the County would have to create, develop, and test a new "flag[ging]" process within its central election management system. And even if that change could be made safely during an ongoing election, the consequences are unknown and, as noted, "potential[ly] catastrophic," as it could result in the failure of California's central election management system. There is no reason in the record to discount this evidence.[5]

On balance, given the record and because Plaintiff has offered no workable plan of any kind as to how the remedy it seeks could be accomplished in practice without potential catastrophic consequences to California's ongoing election, the equities between the parties and the public's interest do not weigh in favor of granting the requested relief.

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[5] Had Plaintiff filed its suit earlier, and had there been time for a preliminary injunction hearing, we might have facts found by the district court which would have assisted us in balancing the hardships and determining the public interest. But again, that is not the way Plaintiff chose to proceed.

C.

One final note on the *Purcell*[6] principle, which becomes relevant when considering "granting an injunction pending appeal in an election case." *Feldman v. Arizona Sec'y of State's Off.*, 843 F.3d 366, 367 (9th Cir. 2016) (en banc). This principle dictates "that lower federal courts should ordinarily not alter the election rules on the eve of an election," *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (per curiam). I believe this principle is another reason showing that the law does not clearly favor Plaintiff's position. California's election has already begun, and Defendants have rules in place to process vote-by-mail ballots. Plaintiff's requested remedy would alter those rules during the election by requiring Defendants to segregate vote-by-mail ballots for voters on the October List and to then use some procedures that comport with due process to determine whether those voters are ineligible based on their citizenship status.

The requested remedy implicates several factors supporting application of *Purcell*. Most importantly, the "*Purcell* principle applies with even greater force here" when "[t]he election is not merely upcoming; it has already started." *People Not Politicians v. Onder*, No. 26A388, 2026 WL 2883222, at *2 (U.S. Sept. 25, 2026) (per curiam). California's election process has already begun and disturbing

[6] *Purcell v. Gonzalez*, 549 U.S. 1 (2006).

the established rules could have unintended consequences.[7] *See Lair v. Bullock*, 697 F.3d 1200, 1214 (9th Cir. 2012) (citing *Purcell* in support of its decision to stay an injunction given "the imminent nature of the election" and "important[ce] [of] not . . . disturb[ing] long-established expectations that might have unintended consequences"); *see also Democratic Nat'l Comm. v. Wisconsin State Legislature*, 592 U.S. 1039, 1043 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay) ("Even seemingly innocuous late-in-the-day judicial alterations to state election laws can interfere with administration of an election and cause unanticipated consequences."). The remedy would also affect the State of California's election processes by changing the conduct of election officials. *See Feldman*, 843 F.3d at 368 (considering under *Purcell* whether "the injunction . . . [would] affect the state's election processes or machinery" by "chang[ing] at all . . . the actual election process"). It would also not preserve the status quo. *See id.* 368–69 (considering under *Purcell* whether "the injunction [would] preserve the *status quo*").

These considerations suggest that the relief Plaintiff seeks may violate *Purcell*'s "basic tenet of election law: When an election is close at hand, the rules of the road should be clear and settled." *Democratic Nat'l Comm.*, 592 U.S. at 1043

[7] For example, Defendants' as-yet unrebutted evidence shows that setting up a segregation process would require modifications to their central registration database and that the consequences of such changes are unknown and could result in the failure of the entire database.

(Kavanaugh, J., concurring in denial of application to vacate stay). Thus, *Purcell* suggests that "[t]he equities dictate that we" deny Plaintiff's motion, especially since it is far from clear whether Plaintiff will succeed in prevailing on its claim for injunctive relief. *See Onder*, 2026 WL 2883222, at *2.

III.

For the reasons above, if I were to reach the merits, I would deny Plaintiff's emergency motion for mandatory injunctive relief pending appeal.

FILED

OCT 26 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

United States v. State of California, No. 26-7070
SANCHEZ, J., concurring:

With only fifteen days until the November 3, 2026 election and mail-in ballot voting well underway in California, the United States sought a federal court order to set aside vote-by-mail ballots of more than 20,000 registered voters whom the United States has identified in a list as potential noncitizens. The proposed order would also require state and local elections officials to verify their citizenship status before their ballots can be processed and tabulated. Defendants State of California and the County of Los Angeles have expressed serious doubts about the accuracy and reliability of the United States' data and methodology used to generate this list and contend that this extraordinary request threatens to disenfranchise thousands of California voters. Before the district court had issued any order on the United States' request for relief, the United States filed a notice of appeal and sought an injunction from this Court. Because we do not have jurisdiction to hear this appeal, I join the per curiam order in full.

I write separately to emphasize a distinct issue. The United States seeks to have a federal court dictate to California the manner in which it must administer its own electoral process by segregating mail-in ballots and undertaking a citizenship-verification process the State has never done before. The proposed injunction would transform California's election rules for an election that is already underway

and would cause widespread confusion among voters and election officials, divert election administration resources, and "usher in electoral chaos." *People Not Politicians v. Onder*, No. 26A388, 2026 WL 2883222, at *2 (U.S. Sept. 25, 2026). Therefore, even if we had jurisdiction to hear this appeal, the *Purcell* principle bars us from granting the injunction the United States seeks. *See Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam).

I

I begin with some factual context. That these proceedings encroach on the cusp of an election is a delay entirely of the United States' own making. While the federal litigation preceding this appeal has unfolded within a week, the Department of Homeland Security ("DHS") has harbored concerns about California's voter roll for months but did nothing about it until now. On July 16, 2026, Department of Homeland Security Secretary Markwayne Mullin wrote to California Secretary of State Dr. Shirley Weber, alerting her of the Department's "concern" that "as many as 190,832 non-citizens" may be registered to vote in California. Seven days later, Dr. Weber responded and expressed doubt about the reliability of DHS's data and its methodology, particularly because state law prohibits the sharing of unredacted voter rolls which contain voters' social security information. Dr. Weber requested that DHS identify the source of its data and provide a detailed explanation of its methodology, including the matching criteria used by the federal government.

Nothing more was heard from DHS.

Then on October 13, the Department of Justice ("DOJ") presented the County of Los Angeles with a list of 20,000 individuals it alleged were noncitizens registered to vote. DOJ followed this list with a letter outlining extraordinary requests. DOJ demanded that within forty-eight hours, the County of Los Angeles was to verify the citizenship of the thousands of individuals identified, withhold ballots from those on the list for whom citizenship was not verified, and instruct elections officials to segregate ballots received by that population—contrary to established procedures outlined in California election law for challenges to voter eligibility. DOJ directed the same requests to the Secretary of State. DOJ offered no guidance for how the County of Los Angeles or California could carry out such a task within forty-eight hours.

On October 15, counsel for the County of Los Angeles wrote to DOJ, advising it was legally, as well as practically, prohibited from fulfilling DHS's demands. The County of Los Angeles noted that DHS lacks any apparent authority to regulate a county's elections administration. And, regardless, the County of Los Angeles concluded it could not lawfully comply with the requests: voter registration on the basis of attestation of eligibility under penalty of perjury is permitted by both federal and state law. Moreover, in the County's view, DOJ's requests would violate not only the National Voter Registration Act's prescribed

ninety-day "quiet period," within which voters may not be systematically removed from rolls, *see* 52 U.S.C. § 20507(c)(2), but also the mandate under the Voting Rights Act to "permit any person to vote who is entitled to vote," 52 U.S.C. § 10307(a).

In addition to these legal barriers, the County of Los Angeles stressed the logistical infeasibility of complying with DOJ's requests. The County noted that election officials were fully occupied with ballot processing procedures and were required, by California law, to complete their count of most ballots by the thirteenth day following an election. *See* Cal. Elec. Code § 15307(a). Dr. Weber also responded to DOJ's demand, reiterating that the data on which the federal government based its list was unreliable and echoing the County's concerns about the legality of DOJ's requests. In California's view, DOJ's requests would jeopardize the constitutional right to vote and risk violation of the Voting Rights Act, the National Voter Registration Act, the California Constitution, and California state laws affording eligible voters the right to access a mail-in ballot and cast a vote. Once more, Dr. Weber invited the United States to share its data and methodology so that she and her office could "take the appropriate steps in compliance with federal and state law."

The United States instead filed the instant lawsuit. On October 15, the United States filed suit in the Central District of California seeking to have the

court declare California's actions preempted by a federal criminal statute and order California to segregate ballots received from those whom the DOJ alleges are likely noncitizens, pending the verification of each voter's citizenship. By then, the United States was well aware that California had already started sending out mail-in ballots to voters on October 1 and processing returned ballots on October 5—the United States stated as much in its complaint. At oral argument before this Court on Sunday, October 25, counsel for the United States conceded that the federal government has known as well that California election law authorizes the processing of mail-in ballots as soon as they are received by elections officials. *See* Cal. Elec. Code § 15101(a). Still, in its complaint, the United States specified no particular timing for its requested relief.

On October 19, the United States filed an ex parte application for a temporary restraining order ("TRO"), declaring a "heightened" urgency because California law permits the counting of ballots twenty days before an election. Notwithstanding this observation, the United States requested relief by *election day, November 3, 2026*. On October 21, the United States renewed its request for a TRO, once again citing November 3rd as its desired deadline for relief. That very night, the United States abruptly changed its position. No longer satisfied with the prospect of relief by November 3rd, the United States then sought to have the district court issue relief by noon the next day. In doing so, the United States gave

the district court mere hours to address and weigh complex technical claims about the provenance and processing of the data the United States offers, alongside looming legal questions. When the district court did not meet the United States' proposed deadline, the United States appealed to this Court.

In the midst of an ongoing election, the United States asks the federal court to dictate to a state legislature a matter squarely within the state's traditional domain, upending the state's policies in this regard and inviting disorder and confusion for voters and election officials alike. The *Purcell* principle does not allow it.

II

"[L]ate-breaking, court-ordered rule changes" such as those the United States requests, "can 'result in voter confusion and consequent incentive to remain away from the polls,' and thus undermine the '[c]onfidence in the integrity of our electoral processes . . . essential to the functioning of our participatory democracy.'" *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 72 (2026) (quoting *Purcell,* 549 U.S. at 4–5). *Purcell* prevents that.

Under the *Purcell* principle, "federal courts should not 'alter the election rules on the eve of an election.'" *Allen v. Milligan*, 608 U.S. 511, 514 (2026) (per curiam) (quoting *Republican Nat'l Comm. v. Democratic Nat'l Comm*, 589 U.S. 423, 424 (2020) (per curiam) ("*R.N.C.*")). The Supreme Court "has repeatedly

emphasized" this command, *R.N.C.*, 589 U.S. at 424, and once again did so just days ago, *see Scanlan v. Coalition for Open Democracy*, No. 26A512, 2026 WL 3167846, at *1 (U.S. Oct. 22, 2026). The *Purcell* principle serves two key goals. First, courts enforce the principle "to avoid . . . judicially created confusion." *RNC*, 589 U.S. at 425. Second, *Purcell* prevents judicially created changes that "would usher in electoral chaos" and "disorder." *Onder*, 2026 WL 2883222, at *2.

Onder, decided last month, demonstrates these twin interests. There, the Supreme Court stayed federal court orders that required the State of Missouri to use a 2025 redistricting map that the Missouri Supreme Court had held was ineffective until voters approved the changes. *See Onder*, 2026 WL 2883222, at *1. "As a matter of state law," *Onder* explained, the 2022 redistricting map was to be used in the 2026 congressional election. *Id.* But on September 21, the Court of Appeals for the Eighth Circuit ordered the district court to enter a permanent injunction requiring the use of the 2025 redistricting map instead of the 2022 map. *Id.*

The Supreme Court stayed the district court and Eighth Circuit's orders under *Purcell*, stating "this Court has repeatedly cautioned that 'lower federal courts should not alter the election rules of a state on the eve of an election.'" *Id.* at *2 (quoting *Allen*, 608 U.S. at 514). The Court emphasized that "[t]he *Purcell* principle applies with even greater force" when "[t]he election is not merely

upcoming . . . [but] has already started." *Id.* at *2. "Ballots using the 2022 map ha[d] been printed and mailed. Absentee voting ha[d] already begun, as ha[d] military and overseas voting." *Id*. Election officials declared that "[a]t this point, it is practically impossible to revert to the 2025 map." *Id*. (internal quotations omitted). "At this late date," the Supreme Court found, "ordering reversion to the 2025 map in the midst of an ongoing election would usher in electoral chaos." *Id*.

As *Onder* demonstrates, it is not only voter confusion that matters in the *Purcell* analysis but election administration and broader electoral disorder stemming from late federal court-ordered changes to election rules. *See also Democratic Nat'l Comm. v. Wis. State Legislature*, 592 U.S. 1039, 1043–44 (2020) ("*D.N.C.*") (Kavanaugh, J., concurring) ("That important principle of judicial restraint not only prevents voter confusion but also prevents election administrator confusion—and thereby protects the State's interest in running an orderly, efficient election and in giving citizens . . . confidence in the fairness of the election."). After an election has begun, the problems *Purcell* seeks to prevent are greatly magnified. When voters have already received ballots and begun voting, late-breaking federal court intervention risks not only voter confusion but also resource strain and chaos in the administration of elections. *See id* at 1044–45 (Kavanaugh, J., concurring) ("If a court alters election laws near an election, election administrators must first understand the court's injunction, then devise plans to

implement the late-breaking injunction, and then determine as necessary how best to inform voters, as well as state and local election officials and volunteers, about those last-minute changes.").

Applying the *Purcell* doctrine to the circumstances here, the injunction requested by the United States at this late stage would be barred even if we had jurisdiction to hear the appeal. To begin, the current electoral regime under state law is clear. California—like all states—comprehensively regulates the administration of its elections, and its officials are not free to diverge from the procedures directed by the state legislature. To register to vote in California, an individual must certify, under penalty of perjury, that he is a United States citizen. Cal. Elec. Code §§ 2101, 2102, 2111, 2112, 2150. And, under California law, mail-in ballots are available to all registered voters. *Id.* § 3003. Upon receipt of completed mail-in ballots, state officials process each ballot by "verifying the voter's signature on the . . . envelope." *Id.* §§ 15101(b)(1), 3019.

In the event of challenge to a voter's eligibility, California law prescribes a set procedure for the challenge. *Id.* §§ 14240(a), 15105, 15106. For example, challenges to a mail-in ballot may be raised upon a showing of "extraordinary proof of the validity of the challenge." *Id.* § 15106. But, there is no provision of California election law that contemplates a large-scale mechanism for challenge to, and database-centered verification of, the citizenship of tens of thousands of voters.

And, while California has a process for ballot sequestration, it undertakes that process during recounts, not standard election procedures. *See* Cal. Code Regs. tit. 2, § 20363.

The United States' requested injunctive relief would greatly alter California's election rules and procedures. First, the contemplated federal court order would require California to sequester up to 20,000 ballots submitted by individuals that the United States alleges, based on unverified and uncertain information, may be noncitizens—despite there being no formal statutory mechanism to do so. California would then be required to complete some undefined citizenship verification process for each of those ballots that goes beyond what either state or federal law requires. Regardless of the United States' characterizations, these are not minor changes.

According to the County of Los Angeles, the technological hurdles for complying with such an order would be profoundly disruptive. *See* Declaration of Aman Bhullar In Support of Defendant Dean C. Logan's Opposition to Plaintiff's Request For Temporary Restraining Order ¶ 3, No. 26-cv-12025 (C.D. Cal. Oct. 19, 2026), ECF No. 32.3.[1] Los Angeles information technology officials have declared "grave concerns about the potential catastrophic impact" of the requests, characterizing the potential consequences as "severe," and noting they could

[1] The ECF cite refers to the entry in Case No. 26-cv-12025.

include complete cessation of in-person voting or interference with vote-counting. *Id.*

To execute the requested ballot sequestration, the County's programmers would have to develop new code for the registration database and election management software, test it in an isolated computing environment, subject it to peer review, and designate a "fail period," in which computer error would be expected. *Id.* ¶ 4. This software manages voting operations and tracks voter registration information for close to 5.9 million voters in the County. *Id.* ¶ 12. But because technological changes closer to an election can prove disruptive, the County has a "Freeze Policy," under which major changes are barred from October 14, 2026 through November 6, 2026. *Id.* ¶ 10. According to Los Angeles officials, implementation of the DOJ's requests would violate this election safeguard. *Id.*.

While the United States wishes to frame its requested relief as the mere setting aside of ballots, the County of Los Angeles explains that it is an infeasible request of far greater magnitude. Indeed, the United States acknowledged in its complaint that "it is not practicable or feasible for the United States to investigate before the 2026 election concludes thousands, let alone tens of thousands, of individuals that two federal investigative offices identified on the California voter roster as likely being sent vote-by-mail ballots." In other words, at the eleventh

hour, the United States seeks to shift the burdens of its priorities onto California and co-opt the State into carrying out the Executive Branch's policies on a massive scale.

Even worse, the supposed emergency and last-minute attempted intrusion into a state's election process is entirely of the United States' own making. Despite claiming to know for months about the alleged noncitizens on California's voter rolls, the United States waited until voting had already commenced in California and vote-by-mail ballots were being processed for two weeks.

The results of the requested relief are predictable—and strike at the heart of the *Purcell* principle. Voters will likely be confused by a federal injunction mere days from the 2026 election. Some may interpret it as an endorsement of the United States' currently unsubstantiated allegation that roughly 20,000 noncitizens are on California's voter rolls. Voters may be dissuaded from voting because they could be wrongly labeled as voting illegally and would have to engage in any subsequent investigation. Other eligible voters may have their votes denied altogether. And without question, election administrators will be drawn away from their important and time-sensitive tasks to devise and implement an entirely new sequestration and voter-citizenship verification process of uncertain duration. And the number of votes that could remain uncounted after election day and require

potentially substantial investigation could be greater than the margin of victory in races, leaving election results unclear for a significant period.

Our dissenting colleague's view that *Purcell* is merely focused on preventing prospective voter confusion is not supported by Supreme Court precedent. In *Onder*, the Supreme Court made clear that *Purcell* also "protects against . . . disorder" and "electoral chaos." 2026 WL 2883222, at *2. That chaos included absentee voting that "ha[d] already begun," as well as ongoing "military and overseas voting." *Id.* Similarly, in *Bost*, the Supreme Court relied on the *Purcell* principle to explain that "[t]he democratic consequences [of late-stage judicial intervention] can be even more dire if courts intervene only after votes have been counted." 607 U.S. at 80. In other words, the *Purcell* principle applies beyond prospective voter confusion and contemplates broader disruptions to an election already underway. Neither of the two cases the dissent cites, *R.N.C.* and *D.N.C.*, expressly limit the *Purcell* doctrine to prospective voter confusion. *See R.N.C.*, 589 U.S. at 423–426; *D.N.C.*, 592 U.S. at 1043–44 (Kavanaugh, J., concurring) (discussing burdens on election administration). Moreover, as I've explained, the Government's requested relief would in fact spark significant prospective voter confusion about an unprecedented sequestration and citizenship-verification process.

An injunction from this Court will undoubtedly "interfere with

administration of an election and cause unanticipated consequences." *D.N.C.*, 592 U.S. at 1043 (Kavanaugh, J., concurring). The *Purcell* principle exists to handle cases like this. Aside from any other legal issue presented, *Purcell* would require us to reject the United States' request that will inject extraordinary disruption into California's electoral process.

FILED

OCT 26 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

United States v. California et al., No. 26-7070
BUMATAY, Circuit Judge, dissenting:

"Preserving the integrity of the electoral process" is an "interest[] of the highest importance." *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 788–89 (1978). According to the federal government, thousands of noncitizens are registered to vote in California. And those noncitizens received mail ballots to vote in this November's election. Those questionable ballots are now rolling in. Once those ballots are processed, it would be impossible to identify them, and they must be counted in the election. The federal government raised its concerns to California and asked the State to set aside those ballots. California's chief election official, its Secretary of State, told the federal government that California could not do so because of her reading of state and federal law.

The question—does the federal government have the power to stop this potential attack on the integrity of our elections? Under both federal law and the Constitution, the answer must be "yes." Simply, the federal government has a sovereign interest in safeguarding federal elections and ensuring that the votes of noncitizens do not undermine our electoral results.

Start with the Supremacy Clause. At all times, the Constitution and federal law trump state actions that contradict them. U.S. Const. art. VI, cl. 2. Next, the Elections Clause grants States the authority to set the rules for the "Times, Places

and Manner" of elections. *Id.* art. I, § 4, cl. 1. But the Elections Clause also lets Congress make or alter those rules. It did so with 18 U.S.C. § 611(a). Congress made it a crime for an alien to vote in any election for federal office. Thus, California's actions frustrate the federal prohibition on noncitizens voting, and federal law preempts what California has done. We should've enjoined it from accepting and processing ballots likely cast by aliens until their citizenship could be verified.

In this emergency posture, I only briefly highlight the reasons the federal government is entitled to relief.

First, we have appellate jurisdiction over the matter. After the federal government filed its initial complaint and asked for injunctive relief, it learned that mail-in ballots are being received and counted at a massive scale. 331,000 mail-in ballots in Los Angeles County alone. That meant that a potentially large number of noncitizens' ballots would be commingled with legal voters—harming the integrity of the election. To the federal government, delay was no longer an option. On October 21, 2026, it told the district court that it needed a ruling by October 22. The district court did not act. With the election only 13 days away and with every passing day bringing the possibility of more illegal votes, the federal government appealed to us. Under Supreme Court precedent, this is enough to confer appellate jurisdiction.

Second, the federal government may sue California. History and precedent support that it has both standing and an equitable cause of action to protect federal elections.

Third, the federal government is likely to prevail on the merits. California officials' interpretation of state and federal law—that the State must continue to commingle likely illegal and legal ballots after learning that aliens are receiving mail-in ballots—unacceptably frustrates Congress's prohibition on aliens voting in federal elections. So California's actions must be preempted.

Finally, none of California's counterarguments prevent the federal government from stepping in and seeking to stop California from burying its head in the sand while aliens may be voting in federal elections.

We should've granted the federal government relief—federal law precludes California from commingling ballots likely cast by aliens with legitimate ballots, because it encourages and induces illegal voting. Stopping that practice for those identified as likely noncitizens is the bare minimum. I respectfully dissent.

I.

BACKGROUND

In the past year, the federal government has increased its efforts to prevent instances of voting by noncitizens. In California alone, the Department of Justice has sent over 300 federal grand jury subpoenas for individual voter records to the

Secretary of State's office. And in early October, the Department announced that it arrested several foreign nationals who fraudulently voted in California elections. Press Release, U.S. Att'y's Off., Cent. Dist. of California, 11 Foreign Nationals Arrested in California on Federal Charges Alleging They Illegally Registered and Voted in U.S. Elections (Oct. 19, 2026).[1]

As part of those efforts, U.S. Secretary of Homeland Security Markwayne Mullin sent a letter to California Secretary of State Shirley N. Weber on July 16, 2026, alleging that over 190,000 noncitizens might be registered to vote in California. The letter asked California to "work collaboratively" with the Department of Homeland Security to verify the identity of these voters and "ensure that only U.S. citizens participate in our federal elections." In response, Secretary Weber sent a letter on July 23 that did not offer to verify the identity of these voters but instead emphasized California's commitment to complying with federal and state "voter list maintenance obligations." Homeland Security officials asked to schedule a call with Secretary Weber's office, but she declined to address the issue in a meeting.

On October 13, the Department of Justice gave Los Angeles County a revised list of over 20,000 people who the federal government believes are noncitizens registered to vote in California, and who received a ballot for the 2026 election. The

[1] https://perma.cc/53E8-BZZ8.

Department also sent a letter to Secretary Weber and asked that she review the list within 48 hours to determine whether any citizens were listed. The Department also requested that Secretary Weber "immediately instruct the appropriate elections official to segregate—not cancel—those individuals' vote-by-mail ballots until their citizenship status can be determined." The Department finally asked that Secretary Weber "take all immediate and reasonable steps to not provide a ballot . . . until we confirm their citizenship status."

On October 15, Secretary Weber responded by letter and rejected the federal government's requests.[2] Secretary Weber first observed that ballots had been sent to voters and that voting was well underway. She questioned the accuracy of the list and further argued that the federal government's requested measures were "contrary to both federal and state law." To Secretary Weber, "refrain[ing] from tabulating ballots already issued"—even ballots returned by noncitizens—would violate the California Constitution and California Election Code §§ 2300(a)(1)(A), 2000(a), 3303, 3005.(a), and 15109. She also claimed the request violated the federal Constitution; the Voting Rights Act of 1965, 52 U.S.C. § 10307(a); and the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20507(c)(2).

On the same day the federal government received Secretary Weber's letter, the United States filed suit in the district court against the State of California,

[2] https://perma.cc/LNG2-HMEC.

Secretary Weber, and Los Angeles County Registrar-Recorder/County Clerk Dean Logan. On October 19, the United States moved for a temporary restraining order and order to show cause why a preliminary injunction should not issue. It asked for relief by November 3, 2026—the day of the election. The federal government sought to "enjoin[] California from tabulating in federal elections vote-by-mail ballots received from individuals identified by the Federal Government as likely noncitizens until those individuals' citizenship status can be verified." In response, the district court scheduled a hearing for October 27.

On October 21, the United States moved again for a TRO, requesting relief by November 3. At some point, however, the United States received California's opposition to the TRO. The federal government says it learned from California that it was receiving mail-in ballots at a massive scale—331,000 in Los Angeles alone. Based on that, the United States requested an expedited ruling—asking the district court to rule by noon the next day, October 22. The federal government asserted that the harm to the "integrity of our elections" was immediate and irreversible without relief. The district court did not rule on October 22, and the United States filed a notice of appeal on the same day.

II.

Appellate Jurisdiction

We have jurisdiction to hear this appeal.

Under 28 U.S.C. §1292(a)(1), we only have jurisdiction over the district court's denial of injunctions. But that jurisdiction extends to district court inaction "that ha[s] the practical effect of refusing an injunction." *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) (simplified). "A district court's inaction in the face of extreme urgency and a high risk of serious, perhaps irreparable, consequences may have the effect of refusing an injunction." *Id.* (simplified). In *A.A.R.P.*, the Supreme Court ruled that a delay of 14 hours and 28 minutes was enough to constitute a "practical" refusal of an injunction when a party "fac[ed] an imminent threat of severe, irreparable harm." *Id.*

Preliminary relief is "customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." *Lackey v. Stinnie*, 604 U.S. 192, 200 (2025) (simplified). We grant relief "merely to preserve the relative positions of the parties' pending further proceedings." *A.A.R.P.*, 605 U.S. at 96 (simplified). And certainty isn't necessary. Even with a "limited" record, the Supreme Court has found jurisdiction when harm was "likely imminent." *Id.* In *A.A.R.P.*, an attorney's relaying a detainee's report of what immigration officers told the detainee was enough evidence to support jurisdiction. *Id.* Same with a nonprofit director's description of conversations with detainees' family members, together with video of detainees holding notices of removal. *Id.*

At this stage, the record supports that the district court's inaction created a "high risk of serious, perhaps irreparable, consequences." *Id.* at 94 (simplified). First, there are obvious irreparable consequences to the district court's refusal to decide the federal government's motion on an expedited basis. No one contests that, once a ballot is separated from its envelope, it's impossible to identify who cast it. So if an alien has voted by mail and California election officials process that ballot, the illegal vote of the alien is *forever* mixed with legitimate ballots and is counted in the final election. There is no way to remove that ballot before it's counted. So once California officials open the vote-by-mail envelope—even if it's sent by a noncitizen—that vote will count.

Yes, the federal government asked the district court to act quickly. It wanted the district court to rule within 15 hours and 2 minutes. *United States v. California*, No. 2:26-cv-12025, Dkt. 67 (C.D. Cal. Oct. 21, 2026). And the federal government ended up filing its appeal 19 hours and 33 minutes after it filed its motion for expedited relief. *Id.* at Dkt. 74. That was a quick turnaround. But that's similar to the timeline in *A.A.R.P.* After all, every hour that the district court failed to act, the more untraceable ballots would be added to the November election's tally.

Second, the risk of this harm was "high." *A.A.R.P.*, 605 U.S. at 94. In *A.A.R.P.*, it was enough that the government had "taken steps" toward removing detainees to create a high risk of irreparable consequences. *Id*. at 93. Here,

California has gone beyond taking steps. Despite being told by the federal government that as many as 20,000 aliens are registered to vote, California counties continue to count those ballots. California contests the accuracy of the federal government's lists. But the government counters that they prepared the list with a multistage verification process involving multiple federal agencies, and that the list contains *likely* noncitizen registered voters. These dueling allegations can and should be investigated. But the goal of interim relief is to "preserve the relative positions of the parties pending further proceedings." *Id*. at 96 (simplified). That means acting now. Inaction means that suspected noncitizens' votes are forever commingled and the federal government loses out on any possible redress.

Third, contrary to California's view, the federal government certainly is harmed by federal elections mired in illegal votes. California believes that the federal government's interest under 18 U.S.C. § 611(a) is in *prosecuting* noncitizens who vote in federal elections. California appears correct that the federal government can still prosecute noncitizens for voting after the fact because the State preserves the records of who voted (even if the State allows the noncitizen vote to count). But the federal government's interest in federal elections is broader. It also has an interest in stopping the illegal voting in the first place. After all, "every government ought to contain in itself the means of its own preservation," and "an exclusive power of regulating elections for the national government, in the hands of the State

legislatures, would leave the existence of the Union entirely at their mercy. They could at any moment annihilate it by neglecting to provide for the choice of persons to administer its affairs." The Federalist No. 59, at 362–63 (A. Hamilton) (C. Rossiter ed., 1961) (simplified). And this is especially true when noncitizens vote. "[T]he United States has a compelling interest . . . in limiting the participation of foreign citizens in activities of American democratic self-government." *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (Kavanaugh, J.), *aff'd*, 565 U.S. 1104 (2012) (mem.).

Fourth, the appellate jurisdiction analysis does not change because the federal government originally requested relief by November 3. The federal government states that it only learned of the volume of untraceable ballots after California filed its TRO opposition on October 20. To the federal government, that California had processed 331,000 mail-in ballots was a change in facts that meant they needed more urgent relief. The federal government then sought an expedited ruling the very next day. So the fact that the original filing requested relief by November 3 doesn't mean that *this* appeal is not urgent.

Fifth, the appellate jurisdiction analysis doesn't change because the federal government filed the original complaint on October 15 and the request for a TRO on October 19. At the filing of the complaint, the federal government represented that it thought relief by November 3 would be sufficient. Again, the federal government

didn't realize the immediacy of the emergency until California filed its opposition on October 20. And taking four days to write a request for a TRO that demands relief by November 3 isn't unreasonable—it doesn't mean there was no emergency. And two of those days were not business days—Saturday and Sunday. And the federal government filed the request first thing in the morning on October 19. So the federal government essentially filed for a TRO after just one business day—Friday, October 16. That's not proof that there was no urgency to the federal government's actions.

Finally, we shouldn't credit California's claims that the federal government manufactured the emergency by waiting until October 15 to file this suit. According to the federal government, it's unsuccessfully tried to "collaborate with California to prevent unlawful voting" for months. At the same time, the federal government has been reviewing California's voter rolls to produce its list of 20,000 noncitizens. And it represents that it delivered the refined list to California as soon as it was finalized. While the federal government agrees it could have filed its suit earlier, it felt it needed to wait for the refined list to strengthen its case. We shouldn't presume gamesmanship that would preclude our jurisdiction on these facts.

III.

Article III Standing

To invoke federal power, the federal government "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

The federal government easily clears this bar. It has standing to prevent current and future violations of federal law. Our law has long recognized "the injury to [the United States'] sovereignty arising from violation of its laws." *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 771 (2000); *see, e.g.*, *United States v. Missouri*, 114 F.4th 980, 984 (8th Cir. 2024), *cert. denied*, 146 S. Ct. 90 (2025) ("The United States has a legally protected interest in enforcing federal law."); *In re Debs*, 158 U.S. 564, 584 (1895) ("The obligations which it is under to promote the interest of all and to prevent the wrongdoing of one, resulting in injury to the general welfare, is often of itself sufficient to give it a standing in court."). In particular, "[t]he due and fair election of [congressional] representatives is of vital importance to the United States." *Ex parte Siebold*, 100 U.S. 371, 388 (1879). So the government's sovereign interests are especially strong when States frustrate federal election law.

California's actions inflict three injuries on the government—each of which suffices for standing.

The first injury: The federal government is harmed when States facilitate alien voting in federal elections. As a direct consequence of California's actions, the government says, thousands of noncitizens have registered to vote and received ballots throughout the State. That injures the government in two ways.

One, California's practice of commingling ballots makes it more likely aliens will successfully vote in the upcoming federal election. This "undermine[s] the integrity of the electoral process"—"a process of the most fundamental [constitutional] significance." *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 77–78 (2026) (simplified). Just like the political candidates in *Bost*, the federal government "suffer[s] when the process departs from the law." 607 U.S. at 77. "[F]ederal officeholders and candidates" alike "owe their existence and functions to the united voice of the whole, not of a portion, of the people." *Trump v. Anderson*, 601 U.S. 100, 111 (2024) (simplified). By making illegal voting easier, California threatens the election's legitimacy. After all, "the counting of unlawful votes . . . erodes public confidence that the election results reflect the people's will." *Bost*, 607 U.S. at 78. "[T]hat loss of legitimacy—or its diminution—is a concrete harm" to our government, just as it is to candidates. *Id.*

Two, it's not conjecture or speculation that aliens may end up voting in the federal election. Just recently, the federal government arrested and charged 28 noncitizens for illegal voting in the State. The government warned California of these suspect voters. Mail-in ballots are pouring in and being processed. And because California's commingling legal with illegal ballots, that's cause for the government's alarm. The government suffers an ongoing harm to its sovereignty when illegal voters participate in elections for federal office. *Vt. Agency*, 529 U.S. at 771.

The second injury: "Interference with the federal government's interest in enforcing federal law" confers standing. *Missouri*, 114 F.4th at 985. California's actions prevent the federal government from properly enforcing § 611(a). As the federal government notes, "it is not practicable or feasible for the United States to investigate before the 2026 election concludes." Taking these allegations as true, California's refusal to act prevents the government from learning whether aliens vote in congressional elections—in direct violation of § 611(a). That interference creates another cognizable sovereign injury. *See, e.g.*, *Island Airlines, Inc. v. C.A.B.*, 352 F.2d 735, 744 (9th Cir. 1965) ("The United States may lawfully maintain suits in its own courts to prevent interference with the means it adopts to exercise its powers of government and to carry into effect its policies." (simplified)); *United States v. Ekblad*, 732 F.2d 562, 563 (7th Cir. 1984) (per curiam) ("The United States has

standing to seek relief from actual or threatened interference with the performance of its proper governmental functions.").

And the third injury: California's frustration of federal law enforcement forces the federal government to spend resources to prevent and prosecute § 611(a) offenses. That implicates the government's pecuniary interests, which are textbook injuries in fact for sovereign plaintiffs just as they are for private plaintiffs. *See, e.g.*, *United States v. Texas*, 599 U.S. 670, 676 (2023) ("Monetary costs are of course an injury."); *id.* at 718 (Alito, J., dissenting) (concluding the same); *Biden v. Nebraska*, 600 U.S. 477, 490 (2023) ("This financial harm is an injury in fact . . . ."). In sum, the federal government's jeopardized elections, frustrated law enforcement efforts, and increased expenditures are all cognizable injuries.

The federal government's injuries are also "fairly traceable" to California's actions and "likely to be redressed" by a favorable decision in federal court. *Spokeo*, 578 U.S. at 338. California's ballot commingling directly causes the sovereign and pecuniary injuries the government faces. This court could prohibit California from frustrating federal law enforcement and forcing it to spend more money on doing what California could have done in the first place. So the federal government has standing to bring this suit.

IV.

Cause of Action

California "and [its] officers are bound by obligations imposed by the Constitution and by federal statutes that comport with the constitutional design." *Alden v. Maine*, 527 U.S. 706, 755 (1999). California's actions collide with the federal government's efforts to prevent unlawful voting in federal elections. 18 U.S.C. § 611(a). California insists the Executive branch has no cause of action—that the federal government is powerless as California erects obstacles to the "supreme Law of the Land." U.S. Const. art. 6, cl. 2. But "there is no such impotency in the national government," *In re Debs*, 158 U.S. at 582, and the federal government may sue California and its election officials.

Courts have long accepted that the United States may invoke equitable jurisdiction to vindicate the supremacy of federal law. *See, e.g.*, *Arizona v. United States*, 567 U.S. 387, 393–94 (2012); *see also United States v. Missouri*, 114 F.4th at 986 (collecting cases). This power does not arise under some implied right of action in the Supremacy Clause itself. *Cf. Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324–25 (2015). Rather, it follows from the general principle that "the United States may sue to protect its interests." *Wyandotte Transp. Co. v. United States*, 389 U.S. 191, 201 (1967); *see, e.g.*, *Sanitary Dist. v. United States*, 266 U.S. 405 (1925).

This equitable jurisdiction is longstanding. Courts of "[e]quity offered a mechanism for the Crown to secure justice where it would not be secured by the ordinary and existing processes of law." *Trump v. CASA, Inc.*, 606 U.S. 831, 842 (2025) (simplified). It is no surprise then that "[e]quity's roots in sovereign power have inflected the federal courts' development of equity since the Founding." Mila Sohoni, *Equity and the Sovereign*, 97 Notre Dame L. Rev. 2019, 2027 (2022). And with respect to *suits* in equity, "[t]he sovereign's special treatment in equity starts with its ability to bring a suit in equity in the first place." *Id.*; *cf. United States v. Texas*, 143 U.S. 621, 641 (1892) ("It would be a perfect novelty in the history of national jurisprudence, as well as of public law, that a sovereign had no authority to sue in his own courts." (simplified)).

The Executive's "most important constitutional duty" is to "take Care that the Laws be faithfully executed." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 577 (1992) (quoting U.S. Const. art. II, § 3). That California is a separate sovereign "does not confer upon [it] a concomitant right to disregard the Constitution or valid federal law." *Alden*, 527 U.S. at 754–55. With federal law on the line, "[t]his is not a controversy between equals." *Sanitary Dist.*, 266 U.S. at 425.

The federal government may sue to vindicate the Supremacy Clause here.

V.

Federal Law Likely Preempts California's Actions

The federal government needn't helplessly stand by when States act to frustrate federal elections. Here, common sense matches the law. California's actions—accepting potentially illegal ballots and mixing them with lawful ones—are likely preempted by federal law.

"The Supremacy Clause provides that 'the Laws of the United States' . . . 'shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.'" *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 376 (2015) (quoting U.S. Const. art. VI, cl. 2). The Supreme Court has long read the Clause to mean "Congress may implicitly pre-empt a state law, rule, or other state action." *Id.* (citing *Sprietsma v. Mercury Marine*, 537 U.S. 51, 64 (2002)). So "[a]lthough preemption often applies to state statutes, preemption can also invalidate actions of state executive branch officials . . . that conflict with federal law." *Williams v. Marinelli*, 987 F.3d 188, 198 (2d Cir. 2021) (first citing *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383–84 (1992); and then citing *Miss. Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354, 357 (1988)).

That's the federal government's claim here. The California Secretary of State interpreted election law to let California's election officials accept potentially illegal ballots and mix them with legal ones. The federal government asserts that this

"stands as an obstacle to the accomplishment and execution of" Congress's safeguarding federal elections by curbing illegal voting. *See ConocoPhillips Alaska, Inc. v. Alaska Oil & Gas Conservation Comm'n*, 177 F.4th 964, 968–69 (9th Cir. 2026) (simplified).

On these facts, California's ballot commingling is very likely preempted. *See Oneok*, 575 U.S. at 376–77. And we should've cleared away the obstacle California placed on the prohibition against aliens voting in federal elections.

A.

Preemption Applies to State Actions

To begin, the federal government brought this case as a preemption claim. That's fine under our precedent. After all, we've held that federal law preempts "state action," *Oneok*, 575 U.S. at 376, closely resembling what the California Secretary of State did here.

Take *Duke Energy Trading & Marketing, L.L.C. v. Davis*, 267 F.3d 1042 (9th Cir. 2001). There, we said federal energy law obstacle-preempted "orders issued by the Governor of California" under state authority to "seize options to buy very inexpensive power." *Id.* at 1045–47. The governor's "orders" interpreted state regulations in a way that made them frustrate federal authority. *Id.* at 1056–57. That made the "orders"—and his efforts to seize (electric and political) power under

them—"void under the Supremacy Clause" to the extent they "conflict[ed] with" federal law. *Id.* at 1058–59.

Likewise, in *Arizona Dream Act Coalition v. Brewer*, we said the Immigration and Nationality Act preempted the Arizona Department of Transportation's "policy classif[ying] noncitizens," which interpreted that Act. 855 F.3d 957, 963 (9th Cir. 2017). The "policy" was rooted in an order by the governor that prompted his subordinates in the state executive branch, as well as local authorities, to take action. *See id.* at 964–65.

Supreme Court caselaw also underscores that federal law preempts state executive action. Consider *Morales*. There, the Court said federal aviation law preempted state enforcement of guidelines written by state attorneys general. 504 U.S. at 383–84. The guidelines looked advisory; they seemed only to "explain in detail how existing state laws appl[ied]." *Id.* at 379 (simplified). But Justice Scalia's majority found they were explicitly used to justify lawsuits, which made the guidelines as well as the resulting "enforcement actions" valid targets for preemption claims. *Id.* at 384.

Finally, our sister circuits allow preemption challenges to state executive acts. *See Marinelli*, 987 F.3d at 198–99 (applying preemption to state assistant attorney general's actions); *E.T. v. Paxton*, 19 F.4th 760, 768–69 (5th Cir. 2021) (considering obstacle preemption of Texas governor's COVID-19 orders).

In short, federal law may preempt state executive "action" or "policy" when it obstructs federal law—just as it may preempt more formal state laws or rules. *Oneok*, 575 U.S. at 377; *Ariz. Dream*, 855 F.3d at 963.

B.

Secretary Weber's Actions Frustrate Federal Law

"Pre-emption . . . is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." *FMC Corp. v. Holliday*, 498 U.S. 52, 56–57 (1990). In 18 U.S.C. § 611(a), Congress made clear: "It shall be unlawful for any alien to vote in any [federal] election." So state actions that permit aliens to do so thwart "the accomplishment and execution" of federal law. *ConocoPhillips*, 177 F.4th at 968–69 (simplified).

When California Secretary of State Weber issued her letter interpreting federal and state election law to preclude separating illegal voters' ballots from legal ones, she directed state action subject to preemption. As California's chief elections officer, she's "responsible for executing and enforcing all state and federal law relating to elections within the State." On election law, her word counts for a lot. She has extensive power to investigate ballot procedures throughout the State. Cal. Gov't Code § 12172.5(b)–(c). She may "adopt regulations to ensure the uniform application and administration of state election laws." *Id.* § 12172.5(d). And she must provide "guidance on election laws and procedures," "training," "technical

information, advice, and assistance" to election officials. "In sum, [she] wielded potent authority"—just like the California governor in *Duke* who issued orders interpreting his executive power, the Arizona governor in *Arizona Dream* who issued orders interpreting immigration law, or the state attorneys general in *Morales* who published legal guidelines. *See Murthy v. Missouri*, 603 U.S. 43, 108 (2024) (Alito, J., dissenting). Thus, Secretary Weber's actions may be subject to preemption—and that's exactly what we should have held.

First, Secretary Weber's interpretation of state law frustrates § 611(a). She concluded that she could not "refrain from tabulating ballots already issued"—even ballots likely returned by noncitizens—because it would violate the California Constitution and California Election Code §§ 2300(a)(1)(A), 2000(a), 3303, 3005.(a), and 15109. For these reasons, Secretary Weber refused to "order any county elections official" to stop commingling lawful with unlawful ballots.

Second, Secretary Weber's interpretation of federal law frustrates § 611(a). *Cf. Ariz. Dream,* 855 F.3d at 963. Secretary Weber rejected the federal government's request to sequester ballots cast by suspected noncitizens because she claimed separating them would violate the federal Constitution, the Voting Rights Act of 1965, and 52 U.S.C. § 20507(c)(2). Instead, she cast aside the government's concerns merely because "California administers its elections in full compliance

with federal election law." In other words, she concluded that California could not frustrate § 611(a) because she believed the State was following other federal law.

Secretary Weber's directives cleared the Los Angeles County Recorder, and other election officials in the State, to keep commingling likely noncitizen ballots with legitimate ones. As counsel for the Recorder admitted at oral argument, the Recorder both agreed with Secretary Weber's reading of state and federal law and, as far as he knew, was bound to follow it. And the Secretary, working with the Recorder, concluded the federal government's list "lack[ed] both the detail and function to be of any investigative use," decided not to investigate further, and planned on commingling ballots in the upcoming election.

This situation is no different from *Duke*, *Arizona Dream*, and *Morales*. Executive action based on state officials' interpretations of law is fair game for preemption.

C.

Section 611(a) Preempts California's Ballot Commingling

When California election officials mix ballots cast by likely noncitizens with legal ballots, they frustrate § 611(a), which makes it "unlawful for any alien to vote in any election held solely or in part for the purpose of electing a candidate for [federal] office." That obstruction cannot stand.

Obstacle preemption applies to state action that "stands as an obstacle to the accomplishment and execution of" federal law. *City of Los Angeles v. AECOM Servs., Inc.*, 854 F.3d 1149, 1159 (9th Cir. 2017), *amended sub nom. City of Los Angeles ex rel. Dep't of Airports v. AECOM Servs., Inc.*, 864 F.3d 1010 (9th Cir. 2017) (simplified). We apply this doctrine with caution—it must not devolve into "freewheeling speculation about congressional purpose that roams well beyond statutory text." *Arizona v. United States*, 567 U.S. at 440 (Thomas, J., concurring in part and dissenting in part). And there must be more than a "perceived conflict[]" between state law and vague congressional purposes "that are not embodied within the text of federal law." *Wyeth v. Levine*, 555 U.S. 555, 583 (2009) (Thomas, J., concurring in the judgment). "[S]tate law is pre-empted to the extent that it actually conflicts with federal law." *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990). This case counsels the rare occasion when obstacle preemption is appropriate.

First, Congress made clear in § 611(a) that it's unlawful for aliens to vote. This protects "the choice, and right, of the people to be governed by their citizen peers." *Foley v. Connelie*, 435 U.S. 291, 296 (1978). "[T]his is not intended to denigrate the valuable contribution[s] of aliens." *Id.* Instead, it recognizes that "becoming a citizen is more than a ritual with no content beyond the fanfare of ceremony," and "[t]he individual, at that point, belongs to the polity and is entitled to participate in the processes of democratic decisionmaking." *Id.* at 295. So

criminalizing noncitizen voting respects the rights conferred by citizenship and protects the democratic process.

When aliens vote contrary to Congress's will, two related harms follow—the unlawful votes undermine confidence in the integrity of elections and dilute the impact of ballots cast by legal voters. To the first point, the Supreme Court has recognized that "the electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 194 (2008) (simplified). After all, "[v]oter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam).

That leads into the second harm: dilution. Dilution is a serious burden on the right to vote. "[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). When improper ballots are cast, not only do "fraudulent votes dilute the right of citizens to cast ballots that carry appropriate weight," but it "can affect the outcome of a close election." *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 672 (2021).

After learning of suspected noncitizens receiving mail-in ballots, California cannot commingle those ballots and act consistently with § 611(a). Turning a blind eye to aliens voting in federal elections necessarily frustrates Congress's criminalization of noncitizen voting. The conflict between state action and federal law is obvious. Secretary Weber made an executive decision to read federal and state law in a way that permits the acceptance and counting of mail-in ballots cast by those identified as likely noncitizens. The result is that California continues to accept potentially unlawful ballots, thwarting Congress's attempt to protect election integrity and the power of every legal vote.

Second, as fleshed out below, the Elections Clause authorizes Congress to enact § 611(a). And as Justice Scalia has said, the "presumption against preemption" principle doesn't apply with equal force in Elections Clause cases. *Arizona v. Inter Tribal Council of Ariz., Inc*., 570 U.S. 1, 13–15 (2013). That's because "[t]he assumption that Congress is reluctant to pre-empt does not hold when Congress acts under that constitutional provision, which empowers Congress to 'make or alter' state election regulations." *Id.* at 14 (quoting U.S. Const. art. I, § 4, cl. 1). "When Congress legislates with respect to the 'Times, Places and Manner' of holding congressional elections, it *necessarily* displaces some element of a pre-existing legal regime erected by the States." *Id.* Plus, "the federalism concerns underlying the presumption in the Supremacy Clause context are somewhat weaker" in Elections

Clause cases. *Id.* "Unlike the States' historic police powers, the States' role in regulating congressional elections—while weighty and worthy of respect—has always existed subject to the express qualification that it terminates according to federal law." *Id.* (simplified). So under binding authority, there's no traditional presumption against preemption here.

Congress—not California's Secretary of State—decided that noncitizen voting is unlawful. When faced with evidence that aliens likely received mail-in ballots, California can't ignore that and act inconsistently with Congress's will.

D.

Enjoining California from Commingling Illegal Ballots

Secretary Weber's actions simply can't be countenanced. By commingling ballots, California obstructs the federal design to prevent noncitizens from unlawfully voting in federal elections. The solution is an injunction stopping California from commingling these ballots. *See Ariz. Dream.*, 855 F.3d at 978. That remedy provides the government with complete relief, which is well within this court's equitable powers to grant. *See Morales*, 504 U.S. at 382; *see also CASA*, 606 U.S. at 862 (Thomas, J., concurring) ("[T]he complete-relief principle operates as a ceiling: In no circumstance can a court award relief beyond that necessary to redress the plaintiffs' injuries."). California will continue to commingle ballots unless we intervene. Thus, I would have ordered the district court to enter a limited injunction

preventing California election officials from mixing the ballots of those identified as suspected aliens on the federal government's list with the rest of the ballots.

VI.

Irreparable Injury

An irreparable injury, as the name suggests, is one that cannot be repaired by a trial court after a full merits proceeding. *See Ariz. Dream,* 757 F.3d at 1068. California admits that there is no way to trace a ballot after it is processed. So there is no way for the district court to repair the government's injury—noncitizens voting in a federal election. And the injury grows every day we wait to enjoin California, as hundreds of thousands of ballots are counted. Thus, the most important factors support a stay. *See Nken v. Holder*, 556 U.S. 418, 434 (2009) (describing likelihood of success on the merits and irreparable injury as "the most critical").

VII.

California's Counterarguments Fail

A.

Anti-Commandeering Does Not Apply

California argues that relief would violate the Tenth Amendment under the anti-commandeering doctrine. But anti-commandeering doesn't even apply to this case. The Elections Clause authorized Congress to criminalize noncitizen voting in congressional elections by enacting § 611(a). *See* U.S. Const. § 4, cl. 1 ("Congress

may at any time by Law make or alter [State] Regulations . . . ."). And "Congress may not always choose to exercise this power, [but] when exercised, the action of Congress, so far as it extends and conflicts with the regulations of the State, necessarily supersedes them." *Gonzalez v. Arizona*, 677 F.3d 383, 391 (9th Cir. 2012) (simplified), *aff'd sub nom. Inter Tribal Council*, 570 U.S. 1. Under *Voting Rights Coalition v. Wilson*, anti-commandeering is irrelevant in Elections Clause cases. 60 F.3d 1411, 1415 (9th Cir. 1995) (holding that, in the Elections Clause context, "Congress may conscript state agencies"); *see also Ex parte Siebold*, 100 U.S. at 382–97.

"Times, Places, and Manner . . . are comprehensive words which embrace authority to provide a complete code for congressional elections." *Inter Tribal Council*, 570 U.S. at 8–9 (simplified). This "complete code" can cover a broad range of subjects:

> not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved.

Smiley v. Holm, 285 U.S. 355, 366 (1932). Indeed, as an original matter, "'Manner' included a broad range of election regulations." *Mi Familia Vota v. Fontes*, 129 F.4th

691, 737 (9th Cir. 2025) (Bumatay, J., dissenting), *cert. granted sub nom. Republican Nat'l Comm. v. Mi Familia Vota*, 146 S. Ct. 2799 (2026).

When Congress enacted § 611(a), it was implementing a "safeguard[] . . . necessary in order to enforce the fundamental right involved." *Voting Rts. Coal*, 60 F.3d at 1414 (simplified). The manner it chose was to prosecute noncitizens who vote. 18 U.S.C. § 611(a). And Congress even recognized that § 611(a) is about elections—it put § 611 into Chapter 29 of Title 18, which is titled "Elections and Political Activities." An Act Making Omnibus Consolidated Appropriations for the Fiscal Year Ending September 30, 1997, and For Other Purposes, Pub. L. No. 104-208, § 216, 110 Stat. 3009, 3009–573 (1996).

At oral argument, California failed to provide a single authority that § 611(a) is anything but a "Manner" of holding congressional elections. That's unsurprising. Section 611(a) is not, as California argued, a voter qualification statute. To be sure, the Elections Clause vests States with power over voter qualifications. *See Mi Familia Vota*, 129 F.4th at 738 n.3 (Bumatay, J., dissenting). But § 611(a) doesn't itself impose voter qualifications. Instead, everyone agrees on what the voter qualifications are. California law independently disqualifies noncitizens from voting. Cal. Const. art. II, § 2(a); *see* Cal. Elec. Code §§ 2100, 2101, 2102(c), 2111, 2150(a)(1), 2264(a)(3), (b), 3019, 18560. Federal law also requires that States ask mail-in registrants to verify their eligibility. 52 U.S.C. §§ 20508(b)(2)(A),

21083(b)(4)(A)(i). As explained above, § 611(a) serves a different purpose altogether. *See* Lori A. Ringhand, Symposium, *The Regulation of Presidential Elections*, 2025 Wis. L. Rev. 509, 512 ("How registrants prove their citizenship is this type of regulation—it is about *how* a qualification is proven, not what the qualification is—which gives Congress authority to make rules regarding it."). Its deterrent effect is to prevent noncitizen votes from being cast at all, which is consistent with the preexisting qualifications already set by the states. As a result, § 611(a) helps protect the integrity of congressional elections. That's well within Congress's "Manner" power in "relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes," and more. *Smiley*, 285 U.S. at 366. So as we have noted before, "[t]he flaw in the State of California's argument is that it ignores Article I, section 4, which . . . empowers Congress to impose on the states precisely the burden at issue." *Voting Rts. Coal.*, 60 F.3d at 1415.[3]

Because California's actions frustrate § 611(a), the equitable remedy the government requests would adhere to Congress's command. Any action that California would have to take to not commingle ballots is a natural consequence of Congress's Elections Clause power. *See Inter Tribal Council*, 570 U.S. at 14–15.

[3] In any event, no party challenges § 611(a)'s constitutionality.

Because § 611(a) is an Elections Clause provision, the anti-commandeering doctrine simply does not apply.

B.

No *Purcell* Voter Confusion

The *Purcell* principle is a well-known safeguard against "[l]ate judicial tinkering with election laws." *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring). But the "principle . . . is not absolute." *Id.* It's prudential, and courts may consider the merits of the plaintiff's claim, whether the plaintiff will suffer irreparable harm without an injunction, whether the plaintiff "unduly delayed" in bringing the complaint, and whether the proposed changes "are at least feasible." *Id.*

So the doctrine does not immediately apply to all election-related cases. Instead, it stems from the commonsense observation that "[c]ourt orders affecting elections, especially conflicting orders, can . . . result in voter confusion and consequent incentive to remain away from the polls." *Purcell*, 549 U.S. at 4–5. Voters need to know "the rules of the road": "how, when, and where" to vote. *Democratic Nat'l Comm. v. Wis. State Legislature*, 592 U.S. 1039, 1043 (2020) (Kavanaugh, J., concurring).

But here, whether state officials commingle ballots that have already been submitted can't possibly cause voter confusion about how, when, or where to vote—

the only ballots affected will already have been cast. Nor does avoiding commingling affect whether votes are counted. If California—using the list provided by the federal government—found that a particular ballot came from a lawful voter, then not commingling preserves that vote. Not mixing ballots now just gives election officials a chance to determine whether ballots are legal.

So this case is far removed from *Republican National Committee v. Democratic National Committee*, in which the Court struck down a preliminary injunction requiring a State to accept absentee ballots postmarked on or before election day for up to six days more. 589 U.S. 423 (2020) (per curiam). That injunction affected "the rules of the road," specifically "when" to vote. *See Wis. State*, 592 U.S. at 1043 (Kavanaugh, J., concurring). If the injunction had stood, maybe a procrastinating would-be voter could've rushed to the mailbox and gotten their vote in after all, since they had more time than they thought. *That* would have been a big change—one that "fundamentally alter[s] the nature of the election by allowing voting for six additional days." *Republican Nat'l*, 589 U.S. at 426. A similar analysis explains *Democratic National Committee v. Wisconsin State Legislature* and other cases about ballot-collection deadlines. *See, e.g.*, *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1283 (11th Cir. 2020); *Common Cause Ind. v. Lawson*, 977 F.3d 663, 665 (7th Cir. 2020).

So too in *Scanlan v. Coalition for Open Democracy*, No. 26A512, slip op. (U.S. Oct. 22, 2026) (mem.), decided just last week. There, the district court struck down a state law that said student ID cards could not be used for voter identification, but the Court reinstated it under the *Purcell* principle. That makes sense. Voter ID is a part of "how" to vote: what documents do I need? If all I have is a student ID, am I eligible to vote? Changing the answers to those questions shortly before an election is likely to confuse prospective voters and could deter some from voting at all. Changing the electoral map at the start of mail-in voting also causes voter confusion—it would be unclear which candidates voters could even choose from. *See People Not Politicians v. Onder*, No. 26A388, 2026 WL 2883222 (U.S. Sept. 25, 2026). That's a massive change which undermines one of the most fundamental "rules of the road."

But in California, no one is changing the terms. Citizens can vote. Non-citizens can't. That's always been true. An injunction here isn't changing the rules but applying them.

C.

The National Voter Registration Act Does Not Bar Relief

California lastly asserts that the NVRA prevents it from cooperating with the federal government. The NVRA implements a 90-day "quiet period" before an election, during which a State cannot carry out a "program" of removing ineligible

voters from voter rolls. 52 U.S.C. § 20507(c)(2)(A). But the government is not asking the State to carry out a voter roll program. If injunctive relief were granted, no one would be removed from the voter rolls, and no one would be prevented from casting their ballot. A related argument is that the NVRA, Help America Vote Act ("HAVA"), and similar statutes are Congress's exclusive dictates about elections. That argument also fails. As explained above, § 611(a)—like those statutes—is a congressional mandate rooted in the Elections Clause, making congressional power "paramount." *Inter Tribal Council*, 570 U.S. at 9. The fact that Congress has passed other laws about elections does not negate that Congress has criminalized alien voting.

VIII.

CONCLUSION

The federal government came to us for help as it sought to enforce Congress's law against illegal voting by aliens. It did so because California would not help. Instead, California interpreted state and federal law to *stop* it from doing so, while *empowering* it to mix legal and likely illegal ballots together. Because the State frustrates federal law by relying on that interpretation to commingle ballots, its actions are preempted. We should've stopped it from doing so and effectuated Congress's will. I respectfully dissent.