**No. 26-7303**

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

SERVICE EMPLOYEES INTERNATIONAL UNION, *et al.*,
Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF JUSTICE, *et al.*,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California

# EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR IMMEDIATE ADMINISTRATIVE STAY AND STAY PENDING APPEAL AND PETITION FOR MANDAMUS

**RELIEF REQUESTED ON OR BEFORE NOVEMBER 2, 2026**

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# UNITED STATES COURT OF APPEALS
# FOR THE NINTH CIRCUIT

## Form 16. Circuit Rule 27-3 Certificate for Emergency Motion

*Instructions for this form: http://www.ca9.uscourts.gov/forms/form16instructions.pdf*

**9th Cir. Case Number(s)** 26-7303

**Case Name** Service Employees International Union, et al. v. U.S. DOJ

I certify the following:

The relief I request in the emergency motion that accompanies this certificate is:

1) An immediate administrative stay of the district court's preliminary injunction issued October 30, 2026.
2) On or before November 2, 2026, a stay pending appeal of the same order.

Relief is needed no later than *(date)*: Nov 2, 2026

The following will happen if relief is not granted within the requested time:

The district court's injunction will continue to interfere with ongoing federal law enforcement operations relevant to the security and integrity of the midterm elections to be held on November 3, 2026.

I could not have filed this motion earlier because:

The injunction was issued on October 30, 2026. The government prepared this appeal and stay motion as quickly as possible, within two days of the injunction being issued.

I requested this relief in the district court or other lower court: ◉ Yes ○ No

If not, why not:

I notified 9th Circuit court staff via voicemail or email about the filing of this motion: ◉ Yes ○ No

If not, why not:

I have notified all counsel and any unrepresented party of the filing of this motion:

On *(date)*: Nov 1, 2026

By *(method)*: Email

Position of other parties: oppose

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I declare under penalty of perjury that the foregoing is true.

**Signature** Sophia Shams **Date** Nov 1, 2026

*(use "*s/[typed name]*" to sign electronically-filed documents)*

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## INTRODUCTION

The district court has issued an injunction on the eve of a federal election that improperly interferes with the government's efforts to stop unlawful voting by noncitizens and its investigations of potential criminal violations of federal voting laws. The government respectfully requests a stay of that order pending appeal. Given the imminence of the election, we request an immediate administrative stay pending resolution of this motion, and request a ruling on the motion no later than Monday, November 2. To facilitate this Court's expeditious review of this motion, we waive our right to file a reply in support of this motion.

The U.S. Department of Homeland Security (DHS) and the U.S. Department of Justice (DOJ) are actively working to enforce the federal statutes that bar noncitizens from voting or registering to vote in federal elections. Working from the best information lawfully available, DHS compares immigration and voting records to preliminarily identify persons who may have registered or voted illegally. DHS has provided state and local elections officials with lists of names of registered voters who are likely ineligible noncitizens. DHS and DOJ have requested that

state and local election officials temporarily "pause or segregate ballots" of any individuals the federal government has credibly identified as potential noncitizens. DOJ has also initiated investigations of potential illegal voting by ineligible noncitizens, including whether election workers knowingly facilitated such illegal voting.

The district court held that by investigating unlawful voting and any efforts to knowingly facilitate such unlawful voting, defendants likely violated Section 11(b) of the Voting Rights Act of 1965 (VRA), 52 U.S.C. § 10307(b), and exceeded their authority under the Elections Clause of the U.S. Constitution, art. I, § 4, cl. 1. The district court enjoined defendants from taking actions to stop state and local elections officials from processing and counting the ballots of individuals identified as likely ineligible to vote, and from threatening criminal prosecution for failure to comply with requests to do so. The court further ordered DOJ "to inform the Court of any pending search warrant applications, grand jury subpoenas, or other demands to access election materials or ballots pertaining to any list of individuals alleged by Defendants to be ineligible to vote, or compel testimony related

thereto." The court's "temporary restraining order" (TRO) is to remain in effect for 17 days, until November 16, 2026.

The district court was wrong multiple times over, and its injunctive order should be immediately stayed pending appeal. The court's order is an appealable preliminary injunction given its duration and practical effect, and defendants are likely to succeed on the merits. Section 11(b) has no private right of action, does not apply to the federal government, and is not violated by the Executive Branch's efforts to prevent and investigate violations of federal criminal laws. Nor does investigation and prosecution of federal crimes contravene the Elections Clause, which applies only to Congress and does not constrain the Executive Branch's duty to enforce the law. The end result is that defendants may be effectively barred from enforcing federal voting law on the eve of a nationwide election, and enjoined to disclose grand jury materials in contravention of Federal Rule of Criminal Procedure 6(e). Immediate stay is warranted.

## STATEMENT

### A. Statutory Background

**Federal Prohibitions on Noncitizen Voting.** Congress has enacted multiple statutes that bar noncitizens from voting or registering to vote in federal elections. Fraudulently claiming U.S. citizenship in order to vote or register is a felony. 18 U.S.C. § 1015(f). Simply voting in a federal election while a noncitizen is generally a strict-liability misdemeanor. 18 U.S.C. § 611. And knowingly aiding-and-abetting the commission of a federal offense is itself a crime. *See* 18 U.S.C. § 2. Noncitizens who illegally vote or register to vote also face significant civil immigration consequences. An alien who votes unlawfully, or who falsely represents himself as a U.S. citizen for voter-registration purposes, is generally inadmissible and removable as a matter of law. 8 U.S.C. §§ 1227(a)(3)(D), (a)(6), 1182(a)(6)(C)(ii), (a)(10)(D).[1]

**The Voting Rights Act.** Section 11(b) of the VRA provides that "[n]o person, whether acting under color of law or otherwise,

[1] Each statute contains a narrow exception for certain people who "reasonably believed" they were citizens. 18 U.S.C. §§ 1015, 611(c); 8 U.S.C. §§ 1227(a)(3)(D)(ii), (a)(6)(B), 1182(a)(6)(c)(ii)(II), (a)(10)(D)(ii).

shall … intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any persons to vote or attempt to vote." 52 U.S.C. § 10307(b). The VRA authorizes the Attorney General to seek injunctions against any act prohibited by Section 11. *Id.* § 10308.

**The Elections Clause.** The Elections Clause, U.S. Const. art. I, § 4, cl. 1, provides that "[t]he 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."

### B. Factual Background

The President has ordered the Executive Branch to protect the integrity of federal elections by prioritizing the investigation and enforcement of laws that prohibit noncitizen voting. *Preserving and Protecting the Integrity of American Elections*, Exec. Order No. 14248 §§ 2(b)-(c), 2(e), 90 Fed. Reg. 14005, 14006-07 (Mar. 25, 2025); *Ensuring Citizenship Verification and Integrity in Federal Elections*, Exec. Order No. 14399 § 5, 91 Fed. Reg. 17125, 17127 (Mar. 31, 2026). In

furtherance of these directives, DHS and DOJ have worked to identify and investigate instances of unlawful noncitizen voting and voter registration.

A DHS component, United States Citizenship and Information Services (USCIS), identifies potential subjects of investigation by comparing federal immigration and naturalization records, along with relevant records available from commercial databases, against records of voting and voter registration that are "voluntarily provided by state and local jurisdictions" or otherwise "lawfully available" to the agency. *See* Declaration of Homeland Security Investigations (HSI Decl.) ¶ 10, *California Nurses Ass'n v. Mullin*, No. 4:26-cv-10680 (N.D. Cal. Sep. 28, 2026) (*Calif. Nurses*), ECF No. 46-2; Declaration of USCIS ¶ 9, *Calif. Nurses,* ECF No. 46-1.

Plaintiffs allege that DOJ and DHS have sent States and counties lists of names of registered voters who are likely ineligible non-citizens voters, and have asked election officials to sequester the ballots of those registered voters pending a determination of their eligibility. ECF No. 1, ¶¶ 8-9. Plaintiffs also allege that DOJ sent letters to election workers cautioning that processing a ballot cast by an ineligible voter might

constitute aiding-and-abetting illegal voting, and that federal prosecutors "opened a criminal investigation into county elections officials and issued federal grand jury subpoenas pursuant to that investigation." ECF No. 1, ¶¶ 11-12.

### C. Prior Proceedings

**1.** Plaintiffs—two labor unions that assertedly represent state and local employees who work as elections officials, as well as two organizations whose members are registered voters—brought this suit and, on October 30, sought an *ex parte* TRO against the government. ECF No. 1, 17.

**2.** On the same day the TRO motion was filed, and without giving the government any opportunity to respond, the district court granted what it styled as a "temporary restraining order" that entered verbatim the injunctive relief sought by the plaintiffs, to remain in effect for 17 days, *i.e.*, from October 30 until November 16, 2026. Order (ECF No. 26).

The district court held that plaintiffs "are likely to prevail" on the merits, reasoning that "Defendants likely violated Section 11(b) of the Voting Rights Act, 52 U.S.C. §10307(b), because the record shows that

Defendants intimidated, threatened, or coerced election workers," and further that "Defendants also exceeds [sic] their authority under the Elections Clause because the Constitution reserves to the States the 'authority to provide a complete code for congressional elections, 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.'" Order 4-5 (second citation and quotation omitted).[2]

Finally, the district court determined that the remaining equitable factors support a preliminary injunction. It held that the government was inflicting irreparable harm by "forc[ing] election workers … to choose between acceding to Defendants' unlawful demands or adhering to their duties and thereby subjecting themselves to a serious risk of

[2] Although the district court order states in conclusion that the defendants' alleged conduct also likely violates the "Fifth and Tenth Amendments; that these actions are ultra vires;" and that they are "contrary to law and exceed constitutional and statutory authority, and are arbitrary and capricious," Order 6, that is apparently a mistake resulting from the district court copying verbatim plaintiffs' proposed TRO, ECF No. 17-3. In fact, earlier in its order the district court expressly declines to decide "whether Defendants violate the Fifth Amendment and/or the APA." Order 5.

criminal investigation and prosecution," and further that "this irreparable harm may extend to tens of thousands of lawfully registered voters because Defendants allege they are non-citizens." Order 5. And it held that there is a paramount public interest "in ensuring that election officials and workers are able to carry out their work in accordance with federal law and election procedure." Order 6.

The district court enjoined defendants from threatening, intimidating, or coercing election officials "to demand that they halt processing the ballots of any registered voter solely on the basis" that they are believed to be ineligible noncitizens; to demand that any state or local election official remove a registered voter, refuse to issue a ballot, or segregate or not count the ballot of a voter suspected by federal officials to be ineligible; or threaten an election official with criminal prosecution for failure to do so. The Order also enjoined defendants to provide notice of the injunction. Finally, the Order enjoined the defendants "to inform the Court of any pending search warrant applications, grand jury subpoenas, or other demands to access election materials or ballots pertaining to any list of individuals alleged by Defendants to be ineligible to vote, or compel testimony related

thereto." Order 6-7. The district court ordered that the TRO "will expire at **5:00 p.m. on November 16, 2026**." Order 7 (emphasis in original).

**4.** On October 31, 2026, the government filed a timely notice of appeal from the preliminary injunction. ECF No. 31. On November 1, the government moved in district court for a stay pending appeal. ECF No. 33. The government requested an immediate ruling on the stay motion and noted its intent to seek a stay in this Court. *Id.* at 2. The district court has scheduled a hearing on that motion for 11:00 am on November 2.

## ARGUMENT

The government is entitled to a stay of the district court's injunction pending appeal because it is likely to succeed on the merits, because it will suffer irreparable harm absent a stay, and because the balance of the equities and public interest favor a stay. *See Nken v. Holder*, 556 U.S. 418, 425-26 (2009).

### I. Defendants Are Likely to Succeed on the Merits

The government is likely to prevail on the merits in challenging the district court's holding that defendants likely violated Section 11(b) of the VRA and the Elections Clause of the U.S. Constitution. This

Court may review the district court's injunction, which has the practical effect (and duration) of a preliminary injunction. On the VRA claim, there is no private cause of action to enforce Section 11(b), and even if that provision were privately enforceable, it does not apply to the federal government and, in any event, the record would not support a finding of intimidation. And the Elections Clause—which allocates responsibility between the States and Congress to establish the procedures for elections—does not restrict the Executive Branch's authority to enforce federal criminal law.

### A. The District Court's Order Is An Appealable Preliminary Injunction and Satisfies the Requirements for Mandamus.

This Court has jurisdiction to review the district court's injunctive order, and regardless, the government satisfies the criteria for mandamus relief.

First, a TRO that, on its face, lasts more than fourteen days is an appealable preliminary injunction. A TRO is "not to exceed 14 days." Fed. R. Civ. P. 65(b)(2). "When a temporary restraining order lasts longer than fourteen days, it becomes appealable as a preliminary injunction." *Tooele Cnty. v. United States*, 820 F.3d 1183, 1187 (10th

Cir. 2016) (citing *Sampson v. Murray*, 415 U.S. 61, 86 n.58 (1974)). "This is true even if the district court labels its order a temporary restraining order." *Id.*

Here, the injunction was entered on October 30, 2026, with immediate effect, and lasts through "*5:00 p.m. on November 16, 2026*." Order 6-7. That is a seventeen-day injunction. Because the TRO "lasts longer than fourteen days," it is an appealable preliminary injunction under 28 U.S.C. § 1292(a)(1). *Tooele*, 820 F.3d at 1187.

Second, in any event, a grant or denial of a TRO "may be appealed if the circumstances render the [grant or] denial 'tantamount to the [grant or] denial of a preliminary injunction.'" *Religious Tech. Ctr. v. Scott*, 869 F.2d 1306, 1308 (9th Cir. 1989) (quoting *Environmental Def. Fund, Inc. v. Andrus*, 625 F.2d 861, 862 (9th Cir. 1980)); *see Ohio Republican Party v. Brunner*, 543 F.3d 357, 360 (6th Cir. 2008). The Supreme Court has reiterated that even TROs that are properly temporally limited to fourteen days' time should be "construe[d] … as appealable injunctions," *Trump v. J.G.G.*, 604 U.S. 670, 671 (2025) (per curiam), when the enjoined party will otherwise lose its "opportunity to

effectually challenge" the order, *Carson v. American Brands, Inc.*, 450 U.S. 79, 86 (1981) (quotation marks omitted).

Here, the court's order prohibits defendants from making any demands of state or local election officials to prevent potential noncitizens from voting through the midterm elections, on the very eve of the election and subsequent ballot-counting. In particular, the order prohibits defendants from demanding that any state or local election official "segregate or otherwise not count any ballots by specific registered voters for the November 3, 2026 General Election, solely on the basis that the ballot belongs to an individual alleged by Defendants to be ineligible to vote." Order 6-7. But the voting tabulation for the election may be largely complete by the time that the injunction ends on November 16, 2026, and once ballots have been counted, there will be no way to undo that counting. Moreover, the court's order, which would prohibit the federal government from acting even if a state or local election official brazenly encouraged hordes of noncitizens to vote, threatens serious and irreparable consequences, as further explained below. *See infra* pp. 25-29. Accordingly, the court's order is tantamount

to the grant of a preliminary injunction and is immediately appealable under 28 U.S.C. § 1292(a)(1).

Third, any order requiring disclosure of materials protected by Federal Rule of Criminal Procedure 6(e) constitutes "a final decision under [28 U.S.C.] § 1291," which is immediately appealable. *Kalbers v. U.S. Dep't of Just.*, 166 F.4th 783, 789 (9th Cir. 2026) (citing *In re Sells*, 719 F.2d 985, 988 (9th Cir. 1983)). Thus, in *Kalbers*, this Court held that it had jurisdiction under § 1291 to review a minute order denying the government's objection, in a Freedom of Information Act lawsuit, that it disclose to a special master various grand jury materials while the court considered the propriety of the government's FOIA exceptions. *Id.* at 789-90.

Here, the court ordered DOJ "to inform the Court of any pending … grand jury subpoenas … pertaining to any list of individuals alleged by Defendants to be ineligible to vote." Order, at 7. No "attorney for the government" may disclose any "matter occurring before [a] grand jury" unless certain inapplicable exceptions apply. Fed. R. Crim. P. 6(e)(2)(B)(vi), (e)(3). Further, the court's order would apply to any grand jury proceedings in the country, but the court cannot appoint itself the

universal arbiter of grand jury proceedings. When disclosure of grand jury materials "arises out of a judicial proceeding in another district, the petitioned court must [generally] transfer the petition to the other court." Fed. R. Crim. P. 6(e)(3)(G). The Rules do not contemplate a single court receiving nationwide information about grand jury proceedings ongoing in other courts. Accordingly, the court's order requiring disclosure of any such grand jury subpoenas is immediately appealable as a final order under 28 U.S.C. § 1291. *See Kalbers*, 166 F.4th at 789.

Lastly, even if the injunction were not appealable as of right, defendants satisfy the standard for mandamus. Mandamus is warranted in a case like this where a petitioner has "no other adequate means to attain the relief desired," the petitioner shows "that the right to the writ is clear and indisputable," and "'the writ is appropriate under the circumstances.'" *Karnoski v. Trump*, 926 F.3d 1180, 1203 (9th Cir. 2019) (per curiam) (quoting *Cheney v. U.S. Dist. Court for the Dist. of Columbia*, 542 U.S. 367, 381 (2004)). In making that determination, the Court considers "(1) whether the petitioner has no other means, such as a direct appeal, to obtain the desired relief; (2) whether the

petitioner will be damaged or prejudiced in any way not correctable on appeal; (3) whether the district court's order is clearly erroneous as a matter of law; (4) whether the district court's order is an oft repeated error or manifests a persistent disregard of the federal rules; and (5) whether the district court's order raises new and important problems or issues of first impression." *Id.* These factors "serve as guidelines," and "[n]ot every factor need be present at once" or even "point in the same direction." *Hernandez v. Tanninen*, 604 F.3d 1095, 1099 (9th Cir. 2010).

Here, each mandamus factor is satisfied. First, if the Court disagrees with defendants' arguments as to appealability, then defendants would have no other means to obtain the desired relief. Second, because the midterm elections will be over on November 3 and the ballot processing and counting will happen in the days immediately following, defendants will otherwise be prejudiced in a way not correctable on appeal. Third, for the reasons set forth below, *see infra* pp. 17-25, the court's injunction is clearly erroneous. Fourth, the court's order manifests a persistent disregard of the federal rules by purporting to be a TRO despite lasting for more than fourteen days, *contra* Fed. R.

Civ. P. 65(b)(2), by ordering the disclosure of grand jury materials, *contra* Fed. R. Crim. P. 6(e), and by intruding on the Executive's ability to enforce federal law, *contra* 18 U.S.C. § 611. Fifth, the order raises important problems concerning the Executive's ability to enforce federal law. Accordingly, to the extent the Court deems the order not immediately appealable, defendants respectfully request that the Court grant mandamus.

### B. Plaintiffs' Voting Rights Act Claim Fails on the Merits

The government is also likely to prevail on the merits of plaintiffs' claim that DHS and DOJ have "intimidate[d], threaten[ed] or coerce[d]" them "for urging or aiding" others to vote. *See* 52 U.S.C. § 10307(b).

**1.** Section 11(b) does not contain an express private right of action, and nothing in that provision, or the rest of the VRA, suggests that Congress intended to create one by implication. Section 11(b) addresses regulated parties, providing that "[n]o person, whether acting under color of law or otherwise, shall … intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any persons for urging or aiding any person to vote or attempt to vote." 52 U.S.C. § 10307(b). That language, which reads like a regulation of conduct, does not constitute

the kind of "rights-creating language" for a "particular class of persons" that would suggest a private right of action. *Alexander v. Sandoval*, 532 U.S. 275, 288-89 (2001) (quotation marks omitted).

That the VRA expressly provides a remedial scheme that does not include a private right of action further counsels against implying a private right of action. As the Supreme Court recognized in *Sandoval*, "[t]he express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others," 532 U.S. at 290. Congress included such a remedial scheme here by authorizing the Attorney General to seek injunctions against "any act or practice prohibited by section … 10307." 52 U.S.C. § 10308(d). Contrast that with other provisions of the VRA, which do include an express private right of action. By expressly providing a remedial scheme that does not include a private right of action, Congress implicitly foreclosed a private right of action under section 11(b)." *California Nurses Ass'n v. Mullin*, No. 26-7139, slip op. at 15 (9th Cir. Oct. 30, 2026) (Tung, J., dissenting form denial of rehearing en banc).

While other provisions of the VRA include an express private right of action, none of those are implicated here. Those provisions are

expressly cabined to "proceeding[s] instituted … under" statutes enacted "to enforce the voting guarantees of the fourteenth or fifteenth amendment." 52 U.S.C. § 10302. Section 11(b)—which applies to private conduct as well as state action and requires no showing of discriminatory or race-based intent—is manifestly not based on those provisions. *Gardner v. Jessup*, 2025 WL 4743403, at *6 (S.D. Ga. June 26, 2025), *vacated on other grounds*, 2026 WL 3089236 (S.D. Ga. June 29, 2026); *Andrews v. D'Souza*, 696 F. Supp. 3d 1332, 1351 (N.D. Ga. 2023). Rather, it is based on Congress's authority to "make or alter … Regulations" governing federal elections. U.S. Const. art. I, § 4, cl 1; H.R. Rep. 89-439 (1965), *as reprinted in* 1965 U.S.C.C.A.N. 2437, 2462. In seeking and obtaining the TRO at issue here, plaintiffs did not invoke, and the district court did not cite, any Fourteenth or Fifteenth Amendment concern.

**2.** Even if Section 11(b) were privately enforceable, plaintiffs still would have no likelihood of success.

**a.** As an initial matter, Section 11(b), which bars a "person, whether acting under color of law or otherwise," 52 U.S.C. § 10307(b), from engaging in voter intimidation, does not apply to the federal

government. "In the absence of an express statutory definition," the Court applies a "longstanding interpretive presumption that 'person' does not include the sovereign and thus excludes a federal agency," *Return Mail, Inc. v. USPS*, 587 U.S. 618, 626 (2019), and federal officials sued in their official capacity. The conclusion that Section 11(b) does not apply to the federal government is confirmed by the statute's express enforcement mechanism, which is a civil action brought by the Attorney General "for the United States, or in the name of the United States." *See* 52 U.S.C. § 10308(d). It is nonsensical that the Attorney General would sue the United States on behalf of the United States, and given this context and background interpretive principles, it is clear that Congress did not intend for the "persons" governed by the statute to encompass the United States.

**b.** In any event, even if the United States is a "person" under Section 11(b), the plaintiffs' allegations do not make out any likely violation. By its plain terms, Section 11(b) does not reach every action that incidentally or inadvertently discourages someone from lawfully "urging or aiding" another person to vote, but only intimidating,

threatening, or coercing a person for engaging in protected voter mobilization and assistance. 52 U.S.C. § 10307(b).

Plaintiffs' allegations show at most that defendants have addressed and pursued suspected violations of federal law. It is beyond dispute that federal law prohibits noncitizens from voting in any election for federal office, *see* 18 U.S.C. § 611. DHS and DOJ have accordingly taken steps to further ensure that noncitizens are not permitted to vote and that their votes are not improperly counted by state and local officials. Defendants provided state and local officials with lists of individuals that the defendants reasonably believe might be noncitizens who are ineligible to vote. Those lists were compiled based on "multilayered, multiagency investigative methodology that relied upon internal immigration records, data matching, supervisory verification procedures, and more." ECF No. 19-8, at 10. Defendants have accordingly asked that state and local election officials and workers temporarily "pause or segregate ballots" from individuals the federal government has credibly flagged in order to confirm that such individuals are citizens eligible to vote in accordance with federal law.

The district court erroneously concluded—without any meaningful explanation or reasoning—that "the record shows that Defendants intimidated, threatened, or coerced election workers." Order 4. Its finding seems premised on plaintiffs' characterization of DOJ's letters to state and county officials as "threatening criminal prosecution of any election worker who participated in processing a ballot cast by a voter whom Defendants allege is ineligible to vote." Order 3 (alteration and quotation marks omitted). But the letters state only that, should election officials "knowingly tabulate ballots cast by individuals identified by federal agencies as noncitizens, they risk becoming aiders and abetters to a federal crime" if such individuals were indeed ineligible to vote. ECF No. 19-8, at 10. Such a reminder of the requirements of federal law—which plaintiffs do not dispute officials must comply with—cannot as a matter of law be properly characterized as "intimidat[ing], threaten[ing], or coerc[ing]" election workers, as opposed to ensuring that elections officials and workers counting ballots in the federal election only include those lawfully cast by U.S. citizens.

There is no reason to believe that, in enacting Section 11(b), Congress meant to prohibit the federal government from investigating

and prosecuting potential illegal voting by noncitizens, or to insulate states and local election officials from liability for knowingly encouraging and facilitating illegal voting by noncitizens. The district court's attempt to construe Section 11(b) as a sword against the federal government's ability to meaningfully combat undisputedly illegal voting is plainly incorrect.

None of the nonbinding decisions cited by the district court support injunctive relief here. *California Nurses Ass'n v. Mullin*, No. 26-cv-10680, 2026 WL 3166149 (N.D. Cal. Oct. 21, 2026), which the government has appealed and is currently pending before this Court, No. 26-7139, concerned alleged intimidation and coercion as to citizen voters, not as to state and local election officials who no one disputes are required to follow federal law. The second was vacated, *Arizona Alliance for Retired Americans v. Clean Elections USA*, 638 F. Supp. 3d 1033 (D. Ariz. 2022), *opinion vacated, appeal dismissed*, No. 22-16689, 2023 WL 1097766 (9th Cir. Jan. 26, 2023). And the third, *Michigan Welfare Rights Oregon v. Trump*, 642 F. Supp. 3d 98 (D.D.C. 2022), does not involve the challenged conduct at issue here—the federal

government's efforts to ensure that ballots cast by noncitizens ineligible to vote under federal law are indeed not counted.

### C. Plaintiffs' Elections Clause Claim Fails on the Merits.

The district court was equally wrong to conclude that plaintiffs are likely to succeed on their claim that the challenged letters violate the Elections Clause. The Elections Clause, U.S. Const. art. I, § 4, cl. 1, provides that "[t]he 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." Listed in Article I of the Constitution, the Clause plainly concerns Congress's authority to legislate with respect to the time, place, and manner of congressional elections, not the Executive Branch's ability to investigate and prosecute federal crimes.

The Elections Clause thus has no bearing here. Plaintiffs neither contest any such law enacted by Congress, nor do they contend that States may disregard federal law in this respect. Instead, plaintiffs contest only DOJ's and DHS's efforts to ensure compliance with federal law, which is a purely executive power that in no way implicates the

Elections Clause. Plaintiffs offer no reason as to why the Elections Clause should be read as a bar on the Executive's longstanding authority to enforce federal law, including through potential criminal investigations and prosecutions.

As the Supreme Court has recognized, "the President's duty to 'take Care that the Laws be faithfully executed' plainly encompasses enforcement of federal election laws passed by Congress." *Trump v. United States*, 603 U.S. 593, 627 (2024) (quoting U.S. Const. art. II, § 3). It would be absurd to construe the Elections Clause as prohibiting such executive enforcement—especially where no one disputes that States and localities must abide by the federal laws that the Executive Branch seeks to enforce.

The two cases cited by the district court, *Roudebush v. Hartke*, 405 U.S. 15 (1972), and *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013), are wholly inapplicable. Neither concerns executive enforcement of valid federal laws. While they recognize general principles of state authority over elections, they in no way discuss, much less undermine, the Executive's longstanding authority to enforce valid federal elections law. *See Trump*, 603 U.S. at 627.

## II. The Remaining Stay Factors Decisively Favor the Government

The Court should stay the injunction because the government and public interest will be irreparably injured absent a stay. The district court effectively seeks to enjoin the federal government from enforcing federal laws for the midterm elections. By itself, that violation of the separation of powers constitutes an irreparable harm to the Executive Branch. *See Trump v. CASA, Inc.*, 606 U.S. 831, 859 (2025). "As the [Supreme] Court has indicated, any time that the Government is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Noem v. Vasquez Perdomo*, 146 S. Ct. 1, 4 (2025) (Kavanaugh, J., concurring) (citation modified) (quoting *CASA*, 606 U.S. at 861).

When "the Federal Government has an obligation," an order that "prevents" it "from using the program it believes is best suited to the task" of fulfilling that obligation inflicts irreparable harm. *Dep't of Homeland Sec. v. League of Women Voters*, 609 U.S. ----, No. 26A308, 2026 WL 2879700, at *3 (U.S. Sep. 25, 2026) (per curiam). Federal law makes it unlawful for an alien to vote in a federal election. 18 U.S.C. § 611; *see* 8 U.S.C. §§ 1182(a)(6)(C)(ii), (a)(10)(D), 1227(a)(3)(D), (a)(6);

18 U.S.C. §§ 2, 1015(f). And Article II obliges the President (through his subordinates) to "take Care" that this prohibition "be faithfully executed." U.S. Const. art. II, § 3; *see Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 367 (2025) ("The Constitution charges the Executive Branch with enforcing federal law."). The injunction inflicts irreparable harm by preventing the Executive Branch from enforcing federal law. Because of the district court's order, a state or local election official may affirmatively and knowingly encourage noncitizens to vote in the midterm elections, and there is nothing the federal government can do to stop it until after the election is over and illegal votes are already tabulated.

The injunction undercuts the government's attempts to deter voter fraud. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008) ("There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters."). Congress passed section 611 and other statutes precisely to deter ineligible non-citizens from voting. *Cf. Sherman v. United States*, 356 U.S. 369, 372 (1958) ("The function of law enforcement is the prevention of crime and the apprehension of criminals."). When courts prohibit investigations by

judicial fiat, that deterrent effect evaporates. And once an unlawful vote has been cast, there is no way to unring the bell: "the postelection system of judicial review … generally cannot restore the state of affairs before an election." *Republican Party of Pa. v. Degraffenreid*, 592 U.S. 1287, 1294 (2021) (Thomas, J., dissenting from the denial of certiorari).

Further, this Court has recognized that "as a general proposition, a district court has no 'power to monitor executive investigations before a case or controversy arises.'" *Olagues v. Russoniello*, 770 F.2d 791, 799 (9th Cir. 1985) (quoting *Jett v. Castaneda*, 578 F.2d 842, 845 (9th Cir. 1978)). "[C]ourts are not to interfere with the free exercise of the discretionary powers of the attorneys of the United States in their control over criminal prosecutions[.]" *Id.* (citation and quotation omitted). If ever, "[o]nly the most extraordinary circumstances warrant anticipatory judicial involvement in criminal investigations." *Id.* at 800 (quotation marks omitted). Plaintiffs have not demonstrated that this is "the rarest of circumstances" where anticipatory judicial involvement in criminal investigations is appropriate. *Id.* (quotation marks omitted).

Nor will a stay injure plaintiffs or their members. None claims to have been charged, subpoenaed, or named as a subject of any

investigation. If that changes, they may raise every argument presented here before the grand jury's supervising court or in the criminal case. "[T]he cost, anxiety, and inconvenience of having to defend against a single criminal prosecution" is not irreparable injury. *Younger v. Harris*, 401 U.S. 37, 46 (1971).

Finally, "the balance of equities does not counsel against awarding the Government interim relief." *CASA*, 606 U.S. at 860. The injunction inflicts significant and irreparable harm on the government by improperly intruding on the operations of the Executive Branch, preventing the government from enforcing a federal statute, and undermining attempts to prevent voter fraud. In contrast, plaintiffs' alleged harms are tenuous and speculative, especially given that plaintiffs have not identified any state or local government that has complied with the federal government's requests. Accordingly, the Court should stay the district court's order.

## CONCLUSION

The Court should enter an immediate administrative stay and stay the injunctive order pending appeal.

Respectfully submitted,

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November 2026

## CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) and Ninth Circuit Rules 27-1(1)(d) and 32-3 because it contains 5,567 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Century Schoolbook 14-point font, a proportionally spaced typeface.

*s/ Sophia Shams*
Sophia Shams

# Addendum

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE, et al.,

Defendants.

Case No. 26-cv-12800-TLT

**ORDER GRANTING TEMPORARY RESTRAINING ORDER**

Re: Dkt. No. 17

One of the hallmarks of a fair election is the freedom to exercise the right to vote free from threat, fear, or intimidation. Free exercise of the right to vote is a core tenet of our democracy. It requires safeguarding to ensure full participation and public trust in our elections. Election Day is around the corner. Ballots have already been issued. Americans have already begun voting. Workers have already begun processing ballots. Given the consequences of inaction, the Court sees no reason to delay its ruling.

Pending before the Court is Plaintiffs Service Employees International Union, AFL-CIO, American Federation Of State County And Municipal Employees, AFL-CIO, League of United Latin American Citizens, National Association for the Advancement of Colored People (collectively, "Plaintiffs") *Ex Parte* Motion for Temporary Restraining Order. ECF 17. Plaintiffs requests that the Court enjoin Defendants United States Department of Justice, Attorney General Todd Blanche, United States Department of Homeland Security, and Secretary Markwayne Mullin (collectively, "Defendants") from carrying out a series of efforts to actually or attempting to

intimidate, threaten, or coerce election workers who aid others in exercising their right to vote. ECF 17-1 at 5.

Plaintiffs allege (1) intimidation in violation of Section 11(b) of Voting Rights Act, 52 U.S.C. §10307(b); (2) violation of Constitutional Federalism (citing U.S. Constitution Elections Clause U.S. Const. art. I, §4, cl. 1 and the Tenth Amendment); (3) violation of the Due Process Clause (Denial of the Fundamental Right to Vote); (4) violation of Due Process (Interference with Right to Fair Elections); (5) Ultra Vires Unlawful and Unconstitutional Governmental Action; (6) violation of the Administrative Procedure Act, 5 U.S.C. §706(2)(A) (Action Contrary to Law); (7) violation of Administrative Procedure Act, 5 U.S.C. §706(2)(C) (Action Exceeding Statutory Authority); (8) violation of Administrative Procedure Act, 5 U.S.C. §706(2)(B) (Action Exceeding Constitutional Authority); and (9) violation of Administrative Procedure Act, 5 U.S.C. §706(2)(A) (Arbitrary and Capricious Agency Action).

For the reasons stated below, the Court **GRANTS** Plaintiffs' *Ex Parte* Motion for Temporary Restraining Order.

## I. BACKGROUND

The following facts are drawn from Plaintiffs' *Ex Parte* Motion for Temporary Restraining order and Complaint:

Election day for the 2026 midterm election is approaching on November 3, 2026. ECF 17-1 at 6. In the lead-up to the election, high-ranking DOJ and DHS officials have engaged in a campaign to intimidate, threaten, and coerce state and local officials and employees who are engaged in administering the ongoing midterm 2026 election. Compl. ¶ 2. Although Defendants claim that their actions are designed to halt unlawful voting by noncitizens, their actions are likely to have the effect of interfering with election administration and disenfranchising lawful voters. *Id.* ¶ 4. "Specifically, Defendants have threatened the criminal prosecution of state and local election workers if they process and count ballots using procedures required by federal and state law." *Id.* ¶ 2.

Defendants have delivered letters to officials and employees in California threatening criminal prosecution under an aiding and abetting theory against any election worker who processes

the ballots of purportedly unlawful voters. *Id.* ¶¶ 9-10. On October 13, 2026 Defendants sent letters demanding that the California Secretary of State and Los Angeles County Registrar California officials sequester the ballots of approximately 20,000 registered California voters whom Defendants "believe" are "likely" non-citizens. *Id.* ¶ 9. When the State and Los Angeles County refused, Defendants sued them in the Central District of California. *Id.* ¶ 10.

Thereafter, on October 23, 2026, DOJ delivered letters to county officials and employees across California, "threaten[ing] criminal prosecution of any election worker who participated in processing a ballot cast by a voter whom Defendants allege is ineligible to vote." *Id.* ¶ 11. These letters were delivered by armed DHS officials. *Id.* ¶ 11. During the same time period, DOJ opened a criminal investigation into county elections officials and issued federal grand jury subpoenas pursuant to that investigation. *Id.* ¶ 12.

Several days letter, on October 26, 2026, Defendants sent a letter to the State of Washington identifying potential non-citizens and demanding that the Washington Secretary of State halt the processing of ballots. *Id.* ¶ 13.

On October 29, 2026, "it was publicly reported that DOJ directed federal prosecutors to pursue criminal subpoenas of state and local election officials in California, supposedly for facilitating unlawful voting." *Id.* ¶ 14. DOJ initiated a criminal investigation and issued grand jury subpoenas. *Id.* ¶ 14. Defendants' threats to criminally prosecute election workers and initiate criminal investigations are ongoing and are interfering with the lawful administration of elections. *Id.* ¶¶ 15-18.

## II. LEGAL STANDARD

The standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction. *See Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017) ("[T]he legal standards applicable to TROs and preliminary injunctions are substantially identical." (internal quotation marks and citation omitted)). An injunction is a matter of equitable discretion and is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). And "a TRO 'should be restricted to . . . preserving the status quo and preventing irreparable harm just so long as is

necessary to hold a [preliminary injunction] hearing and no longer.'" *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th Cir. 2018) (quoting *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974)).

A plaintiff seeking preliminary injunctive relief must establish "[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter*, 555 U.S. at 20. "[I]f a plaintiff can only show that there are serious questions going to the merits—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the balance of hardships tips sharply in the plaintiff's favor, and the other two *Winter* factors are satisfied." *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (internal quotation marks and citations omitted). "[W]hen the Government is the opposing party," the final two factors "merge." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

## III. DISCUSSION

As a preliminary matter, the Court finds that the requirements for issuing a temporary restraining order without notice pursuant to Federal Rule of Civil Procedure 65(b) are met. Given the fast-approaching date of the Election, Plaintiffs have set forth specific facts showing that immediate and irreparable injury, loss, or damage may result before the adverse party can be heard in opposition. Having found that the requirements of Federal Rule of Civil Procedure 65(b) are met, the Court also finds that Plaintiffs have demonstrated that they will likely succeed on the merits of their claims; will likely suffer irreparable harm in the absence of preliminary relief; and that the balance of equities and the public's interest weigh in favor of granting relief.

The Court finds that Plaintiffs are likely to prevail. On the first Winter factor, Defendants likely violated Section 11(b) of the Voting Rights Act, 52 U.S.C. §10307(b), because the record shows that Defendants intimidated, threatened, or coerced election workers. *See* ECF 19-3 ¶¶ 14, 19-7, Ex. 13, 19-8, Exs. 31, 32, 38, 41; *CNA v. Mullin*, No. 26-cv-10680, 2026 WL 3166149, at *8 (N.D. Cal. Oct. 21, 2026); *see also Ariz. All. for Retired Ams. v. Clean Elections USA*, 638 F. Supp. 3d 1033, 1041 (D. Ariz. 2022); *see also Mich. Welfare Rts. Org. v. Trump*, 642 F.Supp.3d 98, 106-07 (D.D.C. 2022).

Defendants also exceeds their authority under the Elections Clause because the Constitution reserves to the States the "authority to provide a complete code for congressional elections, 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." *Roudebush v. Hartke*, 405 U.S. 15, 24 (1972); *see* U.S. Const. art. I, § 4, cl. 1; *see also Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 9 (2013) (explaining that States retain "responsibility for the mechanics of congressional elections" (internal quotation marks omitted)). Given the urgency of the TRO, the Court does not find it necessary to analyze whether Defendants violate the Fifth Amendment and/or the APA at this time.

As to the second *Winter* factor, Defendants' conduct has already caused and continues to cause irreparable harm in the absence of a temporary restraining order. Defendants' intimidation, threats, and attempts at coercion force election workers daily to choose between acceding to Defendants' unlawful demands or adhering to their duties and thereby subjecting themselves to a serious risk of criminal investigation and prosecution. *See* ECF 19-1 ¶¶ 13–14, ECF 19-4 ¶¶ 6, 10–12, 21, 28–32, ECF 19-7, Ex. 17, ECF 19-8, Exs. 23–25. Further, this irreparable harm may extend to tens of thousands of lawfully registered voters because Defendants allege they are non-citizens. "[T]he deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation omitted); *accord Rodriguez v. Robbins*, 715 F.3d 1127, 1144–45 (9th Cir. 2013).

The final two *Winter* factors, the balance of the equities and public interest, merge and weigh heavily in favor of granting temporary relief. Because the public has a paramount interest in ensuring that election officials and workers are able to carry out their work in accordance with federal law and election procedure, and the official day of the Elections is only a couple of days away, the balance of the equities and public interest weigh in Plaintiffs' favor. *Am. Encore v. Fontes*, 152 F.4th 1097, 1120 (9th Cir. 2025) ("Vindication of constitutional rights is always in the public interest."); *United States v. California*, No. 2:26-cv-12025-DOC-ADS, 2026 WL 3252428, at *15 (C.D. Cal. Oct. 28, 2026) ("Constitutional rights and our democracy [for voting rights] are

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

## IV. CONCLUSION

For the foregoing reasons, the **GRANTS** Plaintiff's *Ex Parte* Motion for Temporary Restraining Order to preserve the status quo pending further briefing and a hearing on this matter.

Plaintiffs have established that Defendants' intimidation plan and implementing actions threatening state and local government elections workers with criminal prosecution likely violate Section 11(b) of Voting Rights Act of 1965, 52 U.S.C. §10307(b) and the United States Constitution's Elections Clause and Fifth and Tenth Amendments; that these actions are ultra vires; and that these actions are final agency actions within the meaning of the Administrative Procedure Act, are contrary to law and exceed constitutional and statutory authority, and are arbitrary and capricious. When state and local government employees perform the work of distributing, processing, or counting ballots or otherwise administering the 2026 midterm election in the manner required by their state and federal laws governing the administration of elections, they do not violate federal criminal law even if a particular ballot belongs to a registered voter alleged by Defendants to be ineligible to vote.

The Court therefore **ORDERS** that Defendants, as well as their officers, agents, servants, employees, and attorneys and other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B) (collectively, hereinafter, "Defendants"), are temporarily enjoined and stayed, including under 5 U.S.C. §705, from the following:

(1) Defendants shall not threaten, intimidate or coerce state or local elections officials or workers to demand that they halt processing the ballots of any registered voter solely on the basis that the ballot belongs to an individual alleged by Defendants to be ineligible to vote;

(2) Defendants shall not demand that any state or local election official (i) remove specific registered voters from their statewide voter registration lists; (ii) refuse to issue ballots to specific registered voters; or (iii) segregate or otherwise not count any ballots cast by specific registered voters for the November 3, 2026 General Election, solely on the

basis that the ballot belongs to an individual alleged by Defendants to be ineligible to vote;

(3) Defendants shall not threaten state or local election officials and workers with criminal prosecution for failure to comply with such demands;

(4) Defendants shall not threaten state or local election officials and workers with criminal prosecution for processing or counting ballots in the 2026 election in compliance with state and federal laws that govern election administration on the basis that a ballot belongs to an individual alleged by Defendants to be ineligible to vote.

(5) The Court further ORDERS Defendants to inform any State, county, or any other local government to which any Defendant sent a letter regarding the processing and counting of ballots in the 2026 election and any list of individuals alleged by Defendants to be ineligible to vote that the demands and threats of prosecution to election officials and workers reflected in that letter have been enjoined.

(6) The Court further ORDERS Defendant U.S. Department of Justice to inform the Court of any pending search warrant applications, grand jury subpoenas, or other demands to access election materials or ballots pertaining to any list of individuals alleged by Defendants to be ineligible to vote, or compel testimony related thereto.

## V. DATES AND DEADLINES

The General Election is set to occur on November 3, 2026. This Temporary Restraining Order will expire at **5:00 p.m. on November 16, 2026**.

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Based upon the evening filings, the briefing schedule [ECF 22] is amended as follows:

**Defendant** shall file papers responding to Plaintiffs' request for a preliminary injunction by no later than **noon on Monday, November 2, 2026**;

**Plaintiffs'** optional reply shall be due on **November 5, 2026 by noon.**

The Court will hold a preliminary injunction hearing on **November 13, 2026 at 11 a.m. in Department 9, 19th Floor**.

IT IS SO ORDERED.

Dated: October 30, 2026

TRINA L. THOMPSON
United States District Judge

United States District Court
Northern District of California