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13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**

15 _____)
16 League of United Latin American)
17 Citizens Arizona; Arizona Students')
18 Association,)

19 Plaintiffs,)

20 v.)

21 Michele Reagan, in her official)
22 capacity as Secretary of State of Arizona;)
23 Adrian Fontes, in his official)
24 capacity as Maricopa County Recorder)

25 Defendants.)
26 _____)

No. 2:17-cv-04102-DGC

**MOTION TO COMPEL
COMPLIANCE WITH CONSENT
DECREE**

(Expedited Relief Requested)

27 Luis Cisneros, who filed a motion with this Court three days ago as a non-party
28 intended beneficiary of the Consent Decree entered earlier this year, is an eligible Arizona
voter at risk of having his ballot rejected because of noncompliance with that Consent Decree.
Plaintiffs LULAC-Arizona and Arizona Students' Association join Mr. Cisneros's motion to

1 compel compliance in full and seek additional relief against Defendant Reagan and nonparty
2 Pima County Recorder Rodriguez to ensure that no voter's properly cast ballot is rejected
3 because of noncompliance with this Court's order. Recorder Rodriguez has been served notice
4 of this motion as required by Fed. R. Civ. P. 5. Because under Arizona state law provisional
5 ballots are due to be verified by 10 days after the election (November 16, 2018) and the
6 official canvass is due to be conducted by 20 days after the election (November 26, 2018),
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8 Plaintiffs seek emergency treatment of this motion.
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10 As the Cisneros motion explains, the Consent Decree in this case was designed, *inter*
11 *alia*, to ensure that his right to vote would not be hindered by stale citizenship data from the
12 Motor Vehicle Division ("MVD"). Indeed, Mr. Cisneros's circumstances are among those that
13 led Plaintiffs to bring this case in the first place. He was naturalized as a citizen in 2014 and
14 was a qualified elector who voted in Cochise County in the 2016 elections. He then moved to
15 Pima County and thus was required to re-register, including providing new documentary proof
16 of citizenship ("DPOC") to the Pima County Recorder. His registration in Pima County was
17 rejected because the MVD database showed that he had an "F-type" driver's license, meaning
18 the State had reason to believe he was not a citizen. He then showed the Pima County
19 Recorder's office DPOC (an American passport) and was registered before the 2018 elections
20 but after the registration deadline for those elections. He was told he was not allowed to vote
21 in those elections but cast a provisional ballot. If the procedure mandated in the Consent
22 Decree had been followed properly, Mr. Cisneros and others similarly situated would have cast
23 regular ballots without hindrance. This Court must act expeditiously to ensure that the Court's
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1 order is followed when it matters most—when valid ballots cast are on the line—and that
2 eligible Arizona citizens are not wrongfully disenfranchised.

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4 This Court should order the following relief:

5 (1) Order that Mr. Cisneros be made a full ballot voter and have his provisional ballot
6 counted;

7 (2) Order Defendant Reagan and Recorder Rodriguez to produce a list of all prospective
8 voters who have been flagged because of an F-type license since June 18, 2018, including all
9 status changes since June 18, 2018;

10
11 (3) Order Defendant Reagan and Recorder Rodriguez to produce the notices sent to all
12 such prospective voters;

13
14 (4) For all such prospective voters who provided DPOC after the registration deadline
15 but before Thursday November 1, 2018 at 5 p.m. (the deadline set forth in the Consent
16 Decree), order that they be made full ballot voters as of their registration date and any
17 provisional ballot cast by them be counted; and

18
19 (5) For all such prospective voters who have not provided DPOC (or provided DPOC
20 after the Thursday deadline) but did not receive adequate notices under the Consent Decree
21 and who cast provisional ballots in this election, order that the prospective voters be notified
22 (by phone and/or email where possible) and given the opportunity to provide DPOC before the
23 official canvass and have their provisional ballots counted.

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25 Given the deficiencies in compliance highlighted by Mr. Cisneros's experience,
26 Plaintiffs believe additional discovery and relief may be necessary. However, the relief recited
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1 above is what must be addressed in an expedited manner to ensure that provisional ballots cast
2 by eligible voters are counted.

3 4 **STATEMENT OF FACTS**

5 The Cisneros motion adequately reviews the relevant facts that establish both his right
6 to vote and the violation of the Consent Decree in this case. Plaintiffs join his statement of
7 facts and only add the following regarding Defendant Reagan’s compliance with the Consent
8 Decree thus far, specifically with respect to prospective voters with F-type licenses.
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10 On July 18, 2018, pursuant to the terms of the Consent Decree, Defendant Reagan
11 provided all 15 Arizona county recorders guidance on the the terms of the Consent Decree
12 including: (1) the Consent Decree itself, (2) a new documentary proof of citizenship form
13 (“DPOC”) form to use, (3) the proposed addendum to the Election Procedures Manual, and
14 (4) a PowerPoint presentation explaining the necessary changes. *See* Ex. A. Slide 5 of the
15 PowerPoint presentation instructs all recorders to send prospective voters with an F-type
16 license a notice informing them that they can provide proof of citizenship along with the
17 DPOC submission form. *Id.* Slide 6 explains that the voter is eligible to vote a full ballot in an
18 upcoming election if he or she turns in that proof of citizenship by 5 p.m. on the Thursday
19 before the election. *Id.*
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23 However, the DPOC submission form given as a sample to the county recorders was
24 not one that could be used for prospective voters with “F-type” licenses. The sample DPOC
25 submission form only applied to those who did not provide documentary proof of citizenship
26 and were therefore made Federal-Only voters. *See* Ex. A. By contrast, under the Consent
27 Decree, those with “F-type” licenses are not permitted to vote in any races until they provide
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1 documentary proof of citizenship, which they are permitted to do until the Thursday before an
2 election. Doc. 37 at 9, 11. Plaintiffs alerted Defendant Reagan to the need for an additional “F-
3 type” notice and submission form on August 1, 2018 and asked for a copy of those “F-type”
4 documents. *See* Ex. B. Two weeks later on August 14, 2018, Plaintiffs asked again for an
5 update on the DPOC submission forms. *Id.* On August 16, 2018, Defendant’s counsel
6 indicated that the DPOC Form was “a priority” but the Elections Director Eric Spencer was
7 busy with ballot initiatives and the primary and would “review [Plaintiffs’] suggestions as
8 soon as he can.” *Id.* Defendant never responded to Plaintiffs’ request to see the “F-type”
9 notice. On October 10, 2018, Plaintiff again inquired about receiving the final DPOC forms,
10 noting that there should be two: one for most applicants and one for those with “F-type”
11 licenses. *Id.* On October 11, 2018, Defendant’s counsel indicated that he would “check with
12 the Client for the DPOC submission forms.” *Id.* Plaintiffs never received the DPOC
13 submission form that should have been prepared for voters with “F-type” licenses. Given the
14 evidence in Mr. Cisneros’s case—he did not receive the proper DPOC form pursuant to the
15 Consent Decree—Plaintiffs fear that the proper forms were never distributed for those with “F-
16 type” licenses.
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22 ARGUMENT

23 I. This Court Should Enter the Requested Relief to Effectuate the Terms of the 24 Consent Decree.

25 A district court retains jurisdiction to enforce its judgments, including Consent
26 Decrees. *Hook v. State of Ariz., Dep't of Corr.*, 972 F.2d 1012, 1014 (9th Cir. 1992) (quoting
27 *City of Las Vegas, Nev. v. Clark County, Nev.*, 755 F.2d 697, 701 (9th Cir.1985)). Indeed, in
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1 the Consent Decree itself, the Court expressly retained jurisdiction over this action until
2 December 31, 2020 to enter “such further relief as may be necessary for the effectuation of the
3 terms of this Consent Decree.” Doc. 37 at 16.
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5 As the Cisneros motion makes plain, Mr. Cisneros should have been allowed to vote a
6 regular ballot based on his provision of documentary proof of citizenship on October 22, 2018,
7 well before the November 1 deadline. That he was instead required to cast a provisional ballot
8 that may not be counted is a violation of the decree. Doc. 37 at 11. Moreover, Mr. Cisneros’s
9 case, together with Defendant Reagan’s failure to furnish an “F-type” DPOC notice and
10 submission form, and Recorder Rodriguez’s own statements, *see* Doc. 39, Lee Dec.; at ¶ 7,
11 suggests noncompliance that extends beyond this one instance. First, it is clear that at least the
12 Pima County Recorders’ office was not using the proper notice and DPOC submission form
13 for individuals with F-type licenses. Second, that office was not complying with the
14 requirement that such voters be permitted to update their registration with DPOC up until the
15 Thursday before Election Day. Third, Defendant Reagan’s failure to furnish the F-type
16 documents, which Plaintiffs have repeatedly requested, suggests that many or all recorders
17 may have been providing deficient notices to prospective voters with “F-type” licenses.
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22 Because of Defendant Reagan’s failure to ensure compliance with the Consent Decree,
23 many eligible new Americans seeking to cast their first vote as a citizen of the United States
24 and resident of Arizona may be denied their right to vote. This is not the welcome to our
25 democracy they deserve. But there is still time to right this wrong, at least for those affected
26 prospective voters who chose to cast provisional ballots.
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1 First, Defendant Reagan should identify all affected prospective voters by producing a
2 list of all registrants flagged for having an F-type license since June 18, 2018 with all status
3 changes and producing the notices sent to those registrants.¹
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5 Second, among those affected registrants, there are two categories of voters who merit
6 expedited emergency relief: (1) those who provided DPOC prior to the Thursday before
7 Election Day and cast provisional ballots; and (2) those who have not provided DPOC but
8 received defective notices under the Consent Decree and cast provisional ballots. With respect
9 to the first group, they followed the procedures outlined in the Consent Decree. Pursuant to
10 that order, they should be deemed fully registered as of their initial registration date and their
11 provisional ballots should be counted. With respect to the second group,² those voters did not
12 receive adequate notice of how to provide DPOC and thus complete their registration. They
13 should be given the opportunity to do so now. Defendant Reagan should ensure they receive
14 notice of the deficiency and allow them until at least Friday at 5 p.m. to verify their ballot by
15 providing DPOC to their county recorder.
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19 Even this relief will not make Arizona voters whole. There will undoubtedly be voters
20 affected by these violations who, believing they were not eligible, chose not to cast provisional
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22 ¹ This type of discovery would be appropriate even if Plaintiffs had not already established a
23 clear violation of the Consent Decree. *See California Dep't of Soc. Servs. v. Leavitt*, 523 F.3d
24 1025, 1034 (9th Cir. 2008) (“When considering whether to permit discovery prior to resolution
25 of such a motion, the kind and amount of evidence of noncompliance required to justify
26 discovery is, necessarily, considerably less than that needed to show actual noncompliance. If
27 significant questions regarding noncompliance have been raised, appropriate discovery should
28 be granted.”).

² There may be a third small category of individuals who received defective notices yet
provided DPOC between Friday November 2 and today. Since they received defective notices,
the timeliness of their provision of DPOC should be waived. Those individuals should be
deemed fully registered as of their initial registration date and their provisional ballots should
be counted.

1 ballots and therefore permanently lost their right to vote in this election. Plaintiffs will seek
2 further discovery and relief to ensure that this failure does not repeat itself. However, for the
3 moment, this relief for provisional voters is necessary on an emergency basis to effectuate the
4 terms of the Consent Decree.
5

6 **II. Secretary Reagan is the Appropriate Defendant to Carry Out This Relief.**

7 Defendant Reagan has suggested that she has no jurisdiction to correct the foregoing
8 violations of the Consent Decree. Doc. 39, Lee Decl. at ¶ 4. This is incorrect. First, it appears
9 that Defendant Reagan may have caused these violations by failing to disseminate a proper “F-
10 type” DPOC notice and submission form to the recorders and by failing to properly train the
11 recorders on this aspect of the Consent Decree. *See supra*. Second, Defendant Reagan has
12 previously attempted to minimize her role and responsibilities vis-à-vis county recorders
13 before the District of Arizona without success. In *Arizona Democratic Party v. Reagan*, the
14 court correctly explained her role as follows:
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18 The Secretary is Arizona’s chief election officer who is responsible for
19 overseeing and administering elections in Arizona. *See* Ariz. Rev. Stat. § 16-
20 142(A). The Secretary has the authority to promulgate rules and procedures for
21 elections, such as voter registration, which encompasses determining voter
22 registration deadlines. *See* Ariz. Rev. Stat. § 16-452(A); § 16-168(J).

23 The Secretary does not serve as a mere legal adviser to the counties. From her
24 statutory responsibility to oversee elections in Arizona flows not only authority,
25 but a duty to ensure that voter registration regulations are administered in a fair
26 and uniform manner. This duty and authority extends to the Secretary’s
27 oversight of voter registration as carried out by the counties, and is embodied in
28 Arizona’s voter registration regulations. *See, e.g.*, Ariz. Rev. Stat. § 16-407(A) §
16-168(J) § 16-168(L)

29 *Arizona Democratic Party v. Reagan*, No. CV-16-03618-PHX-SPL, 2016 WL 6523427, at *6
(D. Ariz. Nov. 3, 2016) (citing Ariz. Rev. Stat. §§ 16-142(A), 16-452(A), 16-168(J), 16-

1 407(A), 16-168(L) in establishing Defendant Reagan’s role and responsibilities). Given the
2 foregoing, Defendant Reagan is responsible for ensuring that county recorders comply with the
3 Consent Decree she signed and “the mere possibility that a county might not follow the
4 Secretary’s directive is insufficient to show that an injunction against her would not accord the
5 [Plaintiffs] the complete relief they seek.” *Id.* at *7.
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7 **III. This Court Has Jurisdiction to Order Recorder Rodriguez to Carry Out This**
8 **Relief as Well.**

9 Although Defendant Reagan is a sufficient party to provide adequate relief, given the
10 expediency of the matter and Recorder Rodriguez’s direct responsibility over Mr. Cisneros’s
11 provisional ballot and others situated similarly to him, the Court should include Recorder
12 Rodriguez in its order enforcing the Consent Decree as well.
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14 Under Federal Rule of Civil Procedure 71, this Court can enforce the Consent Decree
15 against Recorder Rodriguez, even though she was not a named Defendant in the original
16 matter. Fed. R. Civ. P. 71 (“When an order grants relief for a nonparty or may be enforced
17 against a nonparty, the procedure for enforcing the order is the same as for a party.”). Federal
18 courts “have the inherent power to protect their jurisdiction from being obstructed by the
19 actions of nonparties properly on notice of their order.” *Envtl. Def. Fund, Inc. v. Env’tl. Prot.*
20 *Agency*, 485 F.2d 780, 784 (D.C. Cir. 1973). Recorder Rodriguez was plainly put on notice of
21 the Consent Decree, which was sent to her with training materials on July 18. Ex. A. Thus, the
22 Court would be well within its jurisdiction to include Recorder Rodriguez in its order
23 enforcing the Consent Decree. *See, e.g., Peterson v. Highland Music, Inc.*, 140 F.3d 1313,
24 1323 (9th Cir. 1998) (when an injunction is addressed to a non-party and he is given notice of
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1 the injunction, Rule 71 permits a district court to use “the same processes for enforcing
2 obedience to the order as if [he were] a party,” such as holding him in contempt for violating
3 it); *NAACP, Jefferson Cty. Branch v. Brock*, 619 F. Supp. 846, 852 (D.D.C. 1985) (“[T]he
4 Court can use its inherent powers to protect its final decrees, especially when the nonparty’s
5 actions threaten the adjudicated public rights of a party to the litigation.”); *Land v. Dollar*, 188
6 F.2d 629, 632 (D.C. Cir. 1951) (“The District Court is directed to enforce obedience to its
7 order, as herein modified, whether effective process is against the present named defendants or
8 is against another official, or other officials, against whom the order might be lawfully
9 enforced if he or they were a party or parties to the suit.”); *see also Washington v. Washington*
10 *State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, 693 (1979) (“[T]he
11 commercial fishing associations and their members are probably subject to injunction under
12 either the rule that nonparties who interfere with the implementation of court orders
13 establishing public rights may be enjoined[.]”).

14 By including Recorder Rodriguez in the order, the Court can be certain that the
15 necessary relief will be carried out in the necessary timeframe.

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18 **IV. The Harm to Arizona Voters Will Be Irreparable Absent Immediate Action by
19 This Court.**

20 Plaintiffs recognize the short timeframe provided to the Court to adjudicate this matter
21 and enter an order. However, absent a speedy adjudication, Arizona voters will be irreparably
22 harmed by the loss of their right to vote. Once voters lose the opportunity to participate in an
23 election, “there can be no do-over and no redress.” *League of Women Voters of N.C. v. North*
24 *Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). Thus, the loss of the right to vote is, by
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1 definition, irreparable. *See, e.g., Krieger v. City of Peoria*, No. CV-14-01762-PHX-DGC, 2014
2 WL 4187500, at *6 (D. Ariz. Aug. 22, 2014) (“Plaintiffs do not assert their right to win the
3 election; they assert their right to a fair election and the voters' right to cast an accurate and
4 valid vote. The loss of these rights satisfies the irreparable harm requirement.”); *Ron Barber*
5 *for Cong. v. Bennett*, No. CV-14-02489-TUC-CKJ, 2014 WL 6694451, at *8 (D. Ariz. Nov.
6 27, 2014) (“The Court finds that, because the votes of the three individual voter Plaintiffs will
7 not count if a TRO is not issued, Plaintiffs have met their burden of showing irreparable
8 harm.”); *Arizona Democratic Party v. Arizona Republican Party*, No. CV-16-03752-PHX-JJT,
9 2016 WL 8669978, at *11 (D. Ariz. Nov. 4, 2016) (“[I]t is clear that abridgement of
10 the right to vote constitutes irreparable injury.”).

14 CONCLUSION

15 Based on the foregoing, Plaintiffs move this Court to compel compliance with the
16 Consent Decree. In particular, Plaintiffs move this Court to order the following statewide relief
17 against Defendant Reagan and countywide relief against Recorder Rodriguez:

18 (1) Order that Mr. Cisneros be made a full ballot voter and have his provisional ballot
19 counted;

20 (2) Order Defendant Reagan and Recorder Rodriguez to produce a list of all prospective
21 voters who have been flagged because of an F-type license since June 18, 2018, including all
22 status changes since June 18, 2018;

23 (3) Order Defendant Reagan and Recorder Rodriguez to produce the notices sent to all
24 such prospective voters;

1 (4) For all such prospective voters who provided DPOC after the registration deadline
2 but before Thursday November 1 at 5 p.m., order that they be made full ballot voters as of
3 their registration date and any provisional ballot cast by them be counted; and
4

5 (5) For all such prospective voters who have not provided DPOC (or provided DPOC
6 after the Thursday deadline) but did not receive adequate notices under the Consent Decree
7 and who cast provisional ballots in this election, order that the prospective voters be notified
8 (by phone and/or email where possible) and given the opportunity to provide DPOC before the
9 official canvass and have their provisional ballots counted.
10

11 (6) Schedule a hearing in December of 2018 to identify and evaluate other instances of
12 non-compliance by Defendant Reagan.
13

14
15 November 12, 2018

Respectfully submitted,

16 s/ Danielle Lang

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