

**FIRST JUDICIAL DISTRICT COURT OF NEW MEXICO  
SANTA FE COUNTY**

MILLIONS FOR PRISONERS NEW MEXICO,  
TYLER WAYNE JACKSON, AMBER D'AUN  
SMITH, VIRGIL DIXON; and CHARLES  
CADENA,

*Plaintiffs,*

v.

MAGGIE TOULOUSE OLIVER, in her official  
capacity as Secretary of State of the State of New  
Mexico, the NEW MEXICO OFFICE OF THE  
SECRETARY OF STATE, ALISHA TAFOYA  
LUCERO, in her official capacity as Secretary of  
New Mexico Corrections Department, the NEW  
MEXICO CORRECTIONS DEPARTMENT,  
LINDA STOVER, in her official capacity as  
County Clerk for Bernalillo County, and OFFICE  
OF THE BERNALILLO COUNTY CLERK,

*Defendants.*

Case No. D-101-CV-2024-02341

**PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION AND MEMORANDUM OF LAW IN SUPPORT**

## TABLE OF CONTENTS

	<u>Pages</u>
INTRODUCTION .....	1
STATEMENT OF FACTS .....	3
I. Voter Registration in New Mexico .....	3
II. The New Mexico Voting Rights Act Expanded the Franchise for New Mexicans with Felony Convictions .....	5
III. Defendants Fail to Implement the NMVRA, Disenfranchising Eligible New Mexico Voters With Past Felony Convictions.....	6
A. Defendants Have Not Engaged in the Requisite Data Sharing to Ensure that Only Currently Incarcerated New Mexicans are Flagged as Ineligible. ....	7
B. Secretary of State Defendants Require In-Person Registration to Overcome Erroneous Denials. ....	8
C. Eligible Voters, Including Plaintiffs, Have Their Registration Applications Erroneously Denied Based on Outdated Information.....	9
IV. Defendants’ Actions Hinder Plaintiff Millions for Prisoners in its Efforts to Promote Electoral Participation .....	14
LEGAL STANDARD.....	15
ARGUMENT .....	15
I. Plaintiffs Have a Substantial Likelihood of Prevailing on the Merits Because Defendants’ Conduct Unconstitutionally Infringes Voting Rights and Violates the New Mexico Voting Rights Act .....	15
A. Defendants’ Actions Unconstitutionally Infringe the Fundamental Right to Vote, as Protected by the New Mexico Constitution and the New Mexico Civil Rights Act .....	15
B. Defendants’ Actions Violate the New Mexico Voting Rights Act.....	23
II. Plaintiffs Will Suffer Irreparable Harm Unless an Injunction Is Granted Because the Defendants’ Actions Deny Their Right to Vote.....	25
III. The Balance of Equities and the Public Interest Strongly Favor Emergency Relief to Protect the Right to Vote .....	32
REQUEST FOR RELIEF .....	33

COME NOW Plaintiffs Millions for Prisoners New Mexico, Tyler Wayne Jackson, Amber D'Aun Smith, Virgil Dixon, and Charles Cadena, by and through their undersigned counsel, and pursuant to Rule 1-066 NMRA, respectfully request that this Court issue a temporary restraining order and preliminary injunction granting the relief sought below.

### **INTRODUCTION**

This motion seeks emergency relief to prevent eligible voters from being deprived of the fundamental right to vote in the upcoming November 5, 2024 General Election. Despite recent New Mexico legislation extending the franchise to formerly incarcerated adult citizens regardless of probation or parole, the government is unlawfully denying voter registration applications from eligible voters with past felony convictions and saddling them with an in-person registration requirement that applies to no other group of voters. Voter confusion abounds, and the Defendants are stoking it by sending prospective voters misleading letters and failing to timely update all voter registration forms to reflect the new eligibility requirements. Meanwhile, the election is fast approaching: voter pre-registration ends October 8, and Election Day is November 5. Plaintiffs have attempted in good faith to negotiate solutions directly with the Office of the Secretary of State, but with just days remaining for voter registration, there is no time left to negotiate, and Plaintiffs must turn to this Court. Absent relief, many New Mexican eligible voters will be deterred or outright blocked from registering and casting ballots.

Elections in 2024 were supposed to be different. In 2023, the New Mexico Legislature enacted the New Mexico Voting Rights Act (“NMVRA”) to expand participation in democracy. In the words of the New Mexico Secretary of State, Defendant Maggie Toulouse Oliver, the

NMVRA was “a huge win for voters.”<sup>1</sup> Among other provisions, the NMVRA automatically restored voting rights to formerly incarcerated citizens, repealing the prior requirement that New Mexicans with past felony convictions complete any probation or parole before becoming eligible to vote. To facilitate this re-enfranchisement of returning citizens, the law requires the Department of Corrections to provide regular updates to the Secretary of State on New Mexico’s prison population. That way, when a citizen with a past felony conviction registered to vote by mail, online, or with a third-party voter registration organization, election officials would be able to confirm whether the applicant was currently incarcerated, and if not, grant the application.

Unfortunately, since the NMVRA took effect in July 2023, Defendants have failed to implement it. Their actions and omissions not only violate the NMVRA but unconstitutionally infringe eligible electors’ voting rights under the New Mexico Constitution and the New Mexico Civil Rights Act.

*First*, acting on guidance from Defendant Toulouse Oliver and the Office of the Secretary of State (“Secretary of State Defendants”), county election officials in New Mexico have outright denied hundreds of voter registration applications based on a past felony conviction, without regard to the applicant’s current incarceration status. These denials are issued based on stale, inaccurate data about past convictions, reflecting the Defendants’ failure to engage in inter-agency sharing of updated information as expressly required by the NMVRA. The individual plaintiffs in this action—eligible voters Tyler Wayne Jackson, Amber D’Aun Smith, Virgil Dixon, and Charles Cadena—have borne the brunt of this unlawful conduct. Each plaintiff tried registering to vote

---

<sup>1</sup> Press Release, Off. of the Governor, Michelle Lujan Grisham, Gov. Lujan Grisham Signs New Mexico Voting Rights Act into Law (Mar. 30, 2023) [hereinafter “Lujan Grisham Press Release”], <https://www.governor.state.nm.us/2023/03/30/gov-lujan-grisham-signs-new-mexico-voting-rights-act-into-law>.

after the NMVRA took effect; in response, each received a form denial letter from Defendants Stover and the Office of the Bernalillo County Clerk (“Bernalillo County Clerk Defendants”), falsely stating that they were “Not Eligible” to vote based on a past felony conviction. The county clerks continue to issue similarly erroneous denials to other eligible voters.

*Second*, to overcome these erroneous denials, Secretary of State Defendants have instructed county officials to force voters with past felony convictions to register to vote in person, rather than by mail, online, or through third-party voter registration. This in-person registration requirement does not apply to any other class of prospective voters. It is a burdensome and unnecessary way for potential voters to prove they are not incarcerated. The requirement deters registration by burdening applicants and creating confusion about whether they are eligible to register at all.

*Third*, it took over a year for Secretary of State Defendants to update New Mexico’s state voter registration form to reflect that parole and probation no longer affect voter eligibility. Though the Secretary has finally updated the state form, New Mexico is already awash in outdated forms, which falsely tell citizens on probation or parole for a past felony conviction that they cannot vote.

The Court can remedy these harms, giving Plaintiffs and other eligible voters an equal opportunity to participate in the upcoming election. The time to do so is now.

## **STATEMENT OF FACTS**

### **I. Voter Registration in New Mexico**

New Mexico’s Secretary of State, currently Defendant Maggie Toulouse Oliver (together with Defendant New Mexico Office of the Secretary of State, the “Secretary of State Defendants”), is the State’s chief election officer, responsible for (1) “obtain[ing] and maintain[ing] uniformity in the application, operation, and interpretation of the Election Code”; (2) making administrative

rules necessary for carrying out the Election Code; (3) maintaining the statewide voter registration electronic management system; (4) advising county clerks and other election officials and state organizations about their duties under the Election Code; and (5) prescribing the New Mexico voter registration application, which must have “clear and understandable” instructions.” NMSA 1978 §§ 1-2-1(B)(1)-(2); 1-5-30; 1-2-2; 1-2-3.1. To facilitate uniform statewide voter registration and list maintenance, the Secretary of State gathers and maintains information in New Mexico’s statewide voter registration electronic management system (“SERVIS”). New Mexico county clerks, including the Bernalillo County Clerk Defendants, are required to process the voter registration applications of qualified electors. NMSA 1978 §§ 1-4-5(B), 1-4-5.1(A), (H).

Eligible New Mexicans can register to vote online, via a mailed paper form, or in person at certain state agency offices. NMSA 1978 §§ 1-1-16.1, 1-4-5, 1-4-5.1, 1-4-18.1, 1-4-47, 1-4-48; *see also* 52 U.S.C. § 20504. Unless applying online or in person at a state agency, prospective voters must fill out one of two forms: the New Mexico state voter registration form promulgated by the Secretary of State (the “State Form”), or a federal voter registration form created by the U.S. Election Assistance Commission (the “Federal Form”). NMSA 1978 § 1-4-5.1.

New Mexico residents can register to vote online or by mail until 5:00pm Mountain Time on the twenty-eighth day immediately preceding an election. NMSA 1978 § 1-4-8(A); Voter Registration Eligibility Requirements and FAQs, New Mexico Off. of the Secretary of State, <https://portal.sos.state.nm.us/OVR/WebPages/Eligibility.aspx> (last visited Sept. 27, 2024). For the upcoming election on November 5, 2024 (the “General Election” or “November General Election”), New Mexico residents can register to vote online or by mail until 5:00pm on October 8, 2024. New Mexico also permits in-person, same day voter registration for registrant-applicants who appear in person at a polling place or county clerk’s office to register and cast their vote.

NMSA 1978 § 1-4-5.7; Voting & Elections, Same Day Voter Registration FAQ, New Mexico Office of the Secretary of State, <https://www.sos.nm.gov/voting-and-elections/voting-faqs/same-day-voter-registration-faq/> (last visited Sept. 27, 2024).

## **II. The New Mexico Voting Rights Act Expanded the Franchise for New Mexicans with Felony Convictions**

In March 2023, the New Mexico Legislature passed and the Governor signed the NMVRA—a comprehensive expansion of voting rights that Defendant Toulouse Oliver described as “a huge win for voters.” Lujan Grisham Press Release. This legislative action was the result of statewide grassroots advocacy, including tireless efforts by Plaintiff Millions for Prisoners. *Id.*; Guerrero Aff. ¶¶ 9-10.

The NMVRA re-enfranchises New Mexico residents who were previously convicted of a felony but are no longer—or never were—incarcerated. NMSA 1978 § 1-4-27.1(A) (“A voter is ineligible to vote while imprisoned in a correctional facility as part of a sentence for a felony conviction. Except as provided in this section, an otherwise qualified elector is ineligible to register to vote while imprisoned in a correctional facility as part of a sentence for a felony conviction.”). By establishing that the right to vote is restored upon release from prison, the NMVRA restored the voting rights of over 11,000 New Mexico residents who were on probation and parole for felony convictions.<sup>2</sup>

As one means to facilitate this restoration of voting rights to citizens with past felony convictions who are not incarcerated—and conversely limit disenfranchisement to those currently incarcerated—the NMVRA requires Defendant Corrections Department, led by Defendant Alisha

---

<sup>2</sup> The Sentencing Project, *Locked Out 2022: Estimates of People Denied Voting Rights Due to a Felony Conviction* at 16 (Oct. 2022), <https://www.sentencingproject.org/app/uploads/2024/03/Locked-Out-2022-Estimates-of-People-Denied-Voting.pdf> (estimating that 11,311 New Mexicans were disenfranchised in 2022 while on probation or parole for a felony conviction).

Tafoya Lucero (together, the “Corrections Department Defendants”), to provide the Secretary of State Defendants with information identifying which individuals are currently incarcerated for felony convictions. *See* NMSA 1978 § 1-4-27.1(C). The Secretary of State Defendants, in turn, must “maintain current information in [SERVIS] on the ineligibility status of an inmate to vote or register to vote pursuant to [the NMVRA], as well as an inmate’s eligibility status to vote upon release and to register to vote or update an existing voter registration while preparing for release.” NMSA 1978 § 1-4-27.1(C). The NMVRA also provides a secondary backstop for eligible registrants who are incorrectly marked ineligible in SERVIS as currently incarcerated: registrants can establish that they are not incarcerated, notwithstanding any outdated SERVIS data, by registering to vote in person. NMSA 1978 § 1-4-27.1(D).

### **III. Defendants Fail to Implement the NMVRA, Disenfranchising Eligible New Mexico Voters With Past Felony Convictions**

Despite the promise of the NMVRA, Defendants have dragged their feet on implementation and issued policies and practices that undermined its mandatory purposes.

As a primary matter, it took nearly a year for the Secretary of State Defendants to update the State Form, creating confusion about the eligibility criteria and leaving many ineligible New Mexicans unable to register to vote at all. Prior to the passage of the NMVRA, the State Form contained the instructions “if you have been convicted of a felony and are currently on parole or supervised probation, do not complete this form” and required registrants to, under penalty of perjury, “swear/affirm that . . . if I have been convicted of a felony, I have completed all conditions of parole and supervised probation, served the entirety of a sentence or have been granted a pardon by the governor.” *Bowie Aff. Ex. 6*. Until September 20, 2024, the Secretary of State’s website still directed would-be registrants to this outdated version of the form. *Bowie Aff. Ex. 6*. Under threat of litigation, the Secretary of State Defendants updated one part of the website to direct



would-be registrants to the right form, but the outdated version is *still* linked on other parts of the Secretary of State’s website. Bowie Aff. ¶ 15, Ex. 6. While these outdated forms are no longer linked directly on the Secretary of State’s “Voting FAQs” webpage,<sup>3</sup> they remain available elsewhere on the Secretary of State’s website and are among the first hits in search engine results related to New Mexico voter registration. Bowie Aff. ¶ 15. Further, the old forms are still widely used and in circulation among the county clerks. Guerrero Aff. ¶ 17.

The New Mexico specific instruction on the Federal Form about completing probation or parole has also not been updated as of October 1, 2024. Bowie Aff. ¶ 16, Ex 7. This is true despite Defendant Toulouse Oliver’s responsibility to contact the U.S. Election Assistance Commission to inform them of any change in New Mexico’s voter eligibility criteria within 30 days of the change. 11 C.F.R. § 9428.6(c). That 30-day deadline ran on July 31, 2023. Though Secretary of State Defendants now claim they are committed to contacting the Election Assistance Commission to revise the New Mexico instructions, the Federal Form remains unusable to thousands of eligible voters until such change occurs, with only days remaining for its use in the November General Election. But the most significant problems remain unresolved and are causing widespread illegal disenfranchisement.

**A. Defendants Have Not Engaged in the Requisite Data Sharing to Ensure that Only Currently Incarcerated New Mexicans are Flagged as Ineligible.**

The NMVRA requires the Corrections Department Defendants to provide the Secretary of State Defendants with accurate lists of people who are currently incarcerated and therefore ineligible to vote so elections officials can carry out the successful registration of all otherwise eligible individuals who are not incarcerated, including those on probation and parole, NMSA

---

<sup>3</sup> See *Voter Registration*, New Mexico Secretary of State, <https://www.sos.nm.gov/voting-and-elections/voting-faqs/voter-registration/> (last visited Sept. 30, 2024).

1978 § 1-4-27.1(C). But the Corrections Department Defendants have failed to fulfill their statutory obligations, despite plainly possessing records of the people incarcerated in New Mexico. See *Bowie Aff. Ex. 13* (showing that, as of mid-April 2024, Corrections Department data and SERVIS data were still not linked). The Secretary of State Defendants and the Bernalillo County Clerk Defendants therefore do not have accurate lists of people currently incarcerated for felony convictions and are instead relying on evidence of past felony status in SERVIS as a proxy for current incarceration status. The stale, inaccurate data in SERVIS form the basis for erroneous denials by Bernalillo County Clerk Defendants and other county clerks of eligible individuals attempting to register to vote. But a felony flag in SERVIS merely demonstrates that a person has been convicted of a felony at some point in time and, under New Mexico law, having once been convicted of felony does not permanently disqualify a person from voting. NMSA 1978 § 1-4-27.1(A). Because it is populated with outdated information, SERVIS flags many if not most registrants who have ever been reported to be convicted of a felony as ineligible—regardless of that person’s current imprisonment status—unless the felony flag has been manually removed. *Guerrero Aff.* ¶ 12; *Bowie Aff. Ex. 12*. Despite knowing this data is woefully inaccurate and by no means reflects who is *currently* incarcerated, the Secretary of State Defendants and the Bernalillo County Clerk Defendants rely on this data to deny registrant-applicants if they appear in SERVIS as having a past felony conviction.

**B. Secretary of State Defendants Require In-Person Registration to Overcome Erroneous Denials.**

Despite the NMVRA making all adult citizens eligible to vote unless *currently* incarcerated for a felony, NMSA 1978 § 1-4-27.1(A), Secretary of State Defendants have issued regulations and guidance that effectively disenfranchise eligible voters with past felony convictions.

*First*, these Defendants promulgated regulations requiring county clerks to issue a “[r]ejection for felony incarceration confirmation” to any person who applies by mail or online and is flagged by SERVIS as having “a positive match with a felony record.” NMAC § 1.10.35.8(C)(4). Under Defendants’ regulation, unless the prospective voter applies in person, “the county clerk shall process the application with a status of ‘*not eligible*’ and a status reason of ‘*felony incarceration*,’” regardless of the applicant’s actual eligibility and incarceration status. *Id.* (emphasis added).

*Second*, Secretary of State Defendants issued guidance to the New Mexico county clerks stating that individuals with past felony convictions “cannot register without being physically present,” Bowie Aff. Ex. 3 at Ex. F, and providing them with form denial letters telling registrant-applicants they are “Not Eligible” to register because they “have been incarcerated for a felony.” *Id.*

Again, these policies are in place despite the significant inaccuracy of data in SERVIS and despite the fact that voter registration applicants attest to their eligibility as not being incarcerated under penalty of perjury.

**C. Eligible Voters, Including Plaintiffs, Have Their Registration Applications Erroneously Denied Based on Outdated Information**

The regulations and guidance issued by the Secretary of State Defendants have already had the effect of disenfranchising hundreds of eligible voters. Since the NMVRA went into effect on July 1, 2023, at least 119 voters living in Bernalillo County alone have been denied registration because of past felony convictions, without regard to current incarceration status. Bowie Aff. Ex. 2. Among them are the four individual plaintiffs in this action (“Individual Plaintiffs”). Despite being fully qualified to vote under New Mexico law, each Individual Plaintiff received at least one denial letter erroneously stating that he or she was “Not Eligible” to vote. Even when attempting

to register in person post-NMVRA, one Individual Plaintiff (Mr. Cadena) was still denied based on a past conviction. These erroneous denials reflect that Defendants are still relying on stale felony-conviction data in SERVIS as a proxy for voter eligibility, in violation of the NMVRA's mandate that they share, maintain, and use up-to-date information on applicants' *current incarceration status*, the only relevant criterion for voter eligibility. NMSA 1978 § 1-4-27.1(A)-(C). The results are injurious to the Individual Plaintiffs and harmful to New Mexico's democracy.

Despite the NMVRA's changes to eligibility criteria, because Secretary of State Defendants are not maintaining an accurate list of people incarcerated in New Mexico and instead rely on evidence of a past felony conviction as a proxy for eligibility, *see supra* Statement of Facts § III.A, registrant-applicants with previous felony convictions who are not currently incarcerated are flagged as ineligible and sent a denial letter by Defendant Stover and other county clerks each time they attempt to register online, by mail, or through a third-party voter registration agent. *See, e.g.*, Jackson Aff. ¶¶ 6-12; Cadena Aff. ¶¶ 6-9. The denial letters unlawfully inform the registrant-applicant they are "Not Eligible" to vote. *See, e.g.*, Bowie Aff. Exs. 8-11; Jackson Aff. Ex. 1.

**Plaintiff Charles Cadena** completed his full sentence—including parole—in 1994. Cadena Aff. ¶ 4. Mr. Cadena has been eligible to vote since 2001, when New Mexico law restored the right to vote to all individuals who fully completed the terms of their sentence, including probation or parole. NMSA 1978 § 31-13-1 (2001); *Id.* ¶ 5. Mr. Cadena has attempted to register to vote by mail or through a third-party registration agent multiple times since 2013, but has received a denial letter, based on his past felony conviction, from the Bernalillo County Clerk Defendants every time. *Id.* ¶¶ 6-9. For example, Mr. Cadena attempted to register by mail in Bernalillo County for the 2016 General Election but received a denial letter from the Bernalillo County Clerk Defendants on the grounds that he had a felony conviction. *Id.* ¶ 6. Mr. Cadena tried

to register again in early 2024 for the June Primary Election but was denied again on the same grounds. *Id.* ¶ 8; Bowie Aff. Ex. 11. Mr. Cadena then tried to register to vote in-person, on election day for the June 2024 Presidential Preference Primary Election (“June Primary Election”), but was again illegally denied on the grounds that he had a felony conviction. Cadena Aff. ¶ 9.

**Plaintiff Tyler Wayne Jackson** completed the full sentences—including all supervision—for his two felony convictions in 2014, and has accordingly been eligible to vote for the last decade. Jackson Aff. ¶ 3-6. Mr. Jackson has attempted to register to vote numerous times—including at every opportunity given to him by a public assistance or government agency, *Id.* ¶ 6—but has been repeatedly denied based on his prior felony convictions. In September 2024, Mr. Jackson received his most recent denial letter from the Bernalillo County Clerk Defendants, which erroneously and unlawfully stated that “you have been incarcerated for a felony conviction and your voter registration status has been changed to ‘Not Eligible.’” Jackson Aff. Ex. 1.

**Plaintiff Virgil Dixon** has been eligible to vote since 2001, when he completed unsupervised probation for a felony conviction for which he was never incarcerated. Dixon Aff. ¶ 3; NMSA 1978 § 31-13-1 (2001). Mr. Dixon has attempted to register to vote multiple times but has been denied each time. *Id.* ¶¶ 8-13. Mr. Dixon first tried to register to vote with the assistance of a voter registration agent in about July 2023, the month the NMVRA took effect. *Id.* ¶¶ 8-9. He received a denial letter from the Bernalillo County Clerk Defendants on July 27, 2023, citing incorrect eligibility criteria. *Id.* ¶ 9; Bowie Aff. Ex. 10. While the NMVRA had gone into effect on July 1, 2023, this letter stated that New Mexicans with past felony convictions are not eligible to register to vote until completion of probation and parole. *Id.* He then tried to register to vote in-person again with Millions for Prisoners organizer Justin Allen, a registered third-party voter

registration agent, in or about early September 2024, after which he received another unlawful and erroneous denial letter. Dixon Aff. ¶¶ 11-12.

Mr. Dixon would like to register and vote by mail because he does not have reliable transportation to comply with the in-person registration requirement. *Id.* ¶¶ 18-20. He also experiences post-traumatic stress disorder (“PTSD”) from his military service as a Vietnam-era veteran, which makes in-person interactions at busy and loud locations more strenuous for him than for others. *Id.* ¶ 19.

**Plaintiff Amber D’Aun Smith** has been eligible to vote since she finished her sentence approximately 26 years ago for a felony conviction for which she was never incarcerated. Smith Aff. ¶ 4; NMSA 1978 § 31-13-1 (2001). Ms. Smith tried to register to vote numerous times since completing her probation sentence and received a denial letter each time, which made her believe that she simply could never vote again in New Mexico because of her past felony conviction. *Id.* ¶ 5-6. After the NMVRA passed, Ms. Smith heard that the law changed and attempted to register to vote again in 2023, but she was denied again by the Bernalillo County Clerk Defendants. *Id.* ¶ 7. The denial letter erroneously and illegally stated that she would need to submit documentation—which she does not have and does not know how to get—confirming that all conditions of her sentence had been completed. *Id.* ¶ 7; Bowie Aff. Ex. 9. This made Ms. Smith believe yet again that she was permanently ineligible to vote. Smith Aff. ¶ 7. It was only later, through Millions for Prisoners, that she learned she could register in person to overcome the denial. *Id.* ¶ 8. Ms. Smith appeared at the Bernalillo County Clerk Defendants’ office to comply with Defendant Toulouse Oliver’s in-person requirement to register. *Id.* ¶ 9. While Ms. Smith is now registered to vote, she is moving residences prior to the November General Election and so must update her voter

registration. *Id.* ¶ 10. If she attempts to update her voter registration online or by mail, she fears she may be denied anew. *Id.* ¶ 11.

**Plaintiff Millions for Prisoners** has core organizers who have, themselves, been wrongfully denied voter registration while eligible. Guerrero Aff. ¶ 18. For example, one core organizer who has a past felony conviction, but was eligible to vote, attempted to register and was erroneously denied. *Id.* ¶ 18. After passage of the NMVRA, Millions for Prisoners tried to assist people with felony convictions with registering to vote. *Id.* ¶ 11. Based on their observations, each eligible voter with a past felony conviction who has attempted to register to vote by mail, online, or with a third party has been incorrectly flagged as ineligible and denied. *Id.* ¶ 11. Since the NMVRA went into effect, Millions for Prisoners organizers have volunteered their time and resources to take at least 15 applicants, on different occasions, to register to vote in person because they were unlawfully prohibited from applying online or by mail. *Id.* ¶ 14-15. Furthermore, Millions for Prisoners New Mexico has been unable to hold voter registration drives for New Mexicans with past felony convictions because the State's wrongful implementation of the NMVRA makes remote registration essentially impossible. *Id.* ¶ 16.

**Affiant Jennifer Lynn Coffin** has been eligible to vote since she was released from probation in 2015. Coffin Aff. ¶ 8; NMSA 1978 § 31-13-1 (2001). Ms. Coffin tried to register to vote numerous times since completing her sentence, but she was denied each time. Coffin Aff. ¶ 8. Ms. Coffin does not recall receiving denial letters from the Bernalillo County Clerk Defendants, though she understands that one was mailed to her in December 2023. *Id.* ¶ 9. She does not recall receiving these denial letters and, therefore, did not know about the ability to go in person to register to vote. *Id.* ¶¶ 9, 14. On September 17, 2024, she was erroneously and illegally informed by the Bernalillo County Clerk Defendants that she could register only in person and only if she

brought proof of residence. *Id.* ¶ 14. Finding time to go in person during business hours is difficult for Ms. Coffin, due to her extensive work schedule. *Id.* ¶¶ 9, 15. Because she cannot easily go in person to register to vote, Ms. Coffin still has not been able to register despite her eligibility. *Id.* ¶¶ 9, 14-15.

#### **IV. Defendants' Actions Hinder Plaintiff Millions for Prisoners in its Efforts to Promote Electoral Participation**

In addition to directly infringing the voting rights of the Individual Plaintiffs and other non-incarcerated New Mexicans with past felony convictions, the Defendants' approach to implementing the NMVRA hampers Plaintiff Millions for Prisoners New Mexico ("Millions for Prisoners") in its efforts to encourage political participation among the very voters the NMVRA was intended to enfranchise. Guerrero Aff. ¶¶ 6-8, 11, 14-16.

Millions for Prisoners is an organization founded in 2017, with the mission to advance the rights and wellbeing of people affected by the criminal legal system. *Id.* ¶¶ 2, 6-8. Among other services, Millions for Prisoners organizers help individuals with prior felony convictions navigate the voter registration process. *Id.* ¶ 8.

Millions for Prisoners was a key member of the coalition of organizations and legislators who helped pass the NMVRA. *Id.* ¶ 9. Because Defendants are failing to lawfully implement the NMVRA, however, Millions for Prisoners has had to divert resources—in the form of organizer time and capacity—to assist applicants with prior felony convictions who were wrongfully denied in their attempts to register to vote, including taking wrongly denied applicants to register in person. *Id.* ¶¶ 14-15. Spending more time with individual applicants with prior felony convictions, including driving them to register in person, takes organizers' time and capacity away from helping other eligible New Mexicans register to vote.



## LEGAL STANDARD

A preliminary injunction is warranted when “(1) the plaintiff will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any damage the injunction might cause the defendant; (3) issuance of the injunction will not be adverse to the public’s interest; and (4) there is a substantial likelihood plaintiff will prevail on the merits.” *LaBalbo v. Hymes*, 115 N.M. 314, 318 (N.M. Ct. App. 1993) (citing *Tri-State v. Shoshone River Power, Inc.*, 805 F.2d 351 (10th Cir. 1986)); *see also* Rule 1-066(A) NMRA. To determine whether a TRO is warranted, New Mexico courts consider the same four factors applied to motions for preliminary injunctions. *See Lovelace Health Sys., Inc. v. X-Ray Assocs. of N.M., P.C.*, 2002 WL 33963964 (N.M. Dist. Dec. 31, 2002). Plaintiffs here do not seek a TRO *ex parte*, but have notified opposing counsel who will appear at any hearing held by the Court.

## ARGUMENT

### **I. Plaintiffs Have a Substantial Likelihood of Prevailing on the Merits Because Defendants’ Conduct Unconstitutionally Infringes Voting Rights and Violates the New Mexico Voting Rights Act**

Plaintiffs are likely to succeed on each of their claims because Defendants’ actions (1) unlawfully deny or impede the right to vote of eligible New Mexico voters by rejecting their voter registrations in violation of the New Mexico Constitution, and (2) violate the express mandates of the New Mexico Voting Rights Act.

#### **A. Defendants’ Actions Unconstitutionally Infringe the Fundamental Right to Vote, as Protected by the New Mexico Constitution and the New Mexico Civil Rights Act**

Defendants have violated the New Mexico Constitution and the New Mexico Civil Rights Act by (1) denying voter registration applications—and thus denying the right to vote—based solely on outdated data reflecting applicants’ felony conviction status rather than current incarceration status; and (2) requiring voters who have been convicted of felonies to appear in

person to overcome the denial of their voter registration applications—a requirement that does not apply to any other class of New Mexico voters. These actions unconstitutionally deny and burden the fundamental right to vote. Plaintiffs are therefore likely to succeed on their claims under the New Mexico Constitution and the New Mexico Civil Rights Act.

The New Mexico Civil Rights Act authorizes actions to establish liability and seek injunctive relief in any New Mexico district court where a person “claims to have suffered a deprivation of any rights privileges or immunities pursuant to the bill of rights of the constitution of New Mexico due to acts or omissions of a public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body[.]” NMSA 1978 § 41-4A-3(B). The bill of rights referenced in the CRA includes all sections of Article II of the New Mexico Constitution, several of which are alleged to have been violated here.

The right to vote “is the essence of our country’s democracy, and therefore the dilution of that right strikes at the heart of representative government.” *Grisham v. Van Soelen*, 539 P.3d 272, 282 (N.M. 2023). “The courts of New Mexico have long held that in service of this important right, courts should guard against voter disenfranchisement whenever possible[.]” *Id.* Reflecting its importance, the franchise is protected by multiple provisions of the New Mexico Constitution. The state Equal Protection Clause, N.M. Const. art II, § 18, which affords “broader protection than the [federal] Fourteenth Amendment,” *Grisham*, 539 P.3d at 286-87, requires courts to provide remedies for denial or dilution of the right to vote. *Id.* at 283-84. Unlike the federal Constitution, the New Mexico Constitution also expressly guarantees that “[a]ll elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage,” N.M. Const. art II, § 8—a “[b]road [p]rotection” that is “intended to promote voter participation during elections,” *Grisham*, 539 P.3d at 282; *see also id.* (recognizing New Mexico’s

Freedom of Elections clause, N.M. Const. Art. II, § 8 is “substantively identical” to Missouri’s Free and Open clause); *Crum v. Duran*, 390 P.3d 971, 974 (N.M. 2017) (noting that the Missouri Constitution’s “substantively identical Free and Open Clause to that of New Mexico, . . . “mean[s] that every qualified voter may freely exercise the right to vote without restraint or coercion of any kind”). The state Constitution further provides that “[a]ll political power is vested in and derived from the people,” N.M. Const. art II, § 2, and that “[t]he people of the state have the sole and exclusive right to govern themselves as a free, sovereign and independent state.” N.M. Const. art II, § 3. Courts “read Article II, Section 18 together with Sections 2, 3, and 8 to evaluate an individual’s right to vote under the New Mexico Constitution.” *Grisham*, 539 P.3d at 283.

Because voting is “a fundamental personal right or civil liberty,” restrictions on voting rights “ordinarily . . . warrant strict scrutiny.” *Id.* at 291. Under that standard, a restriction is unconstitutional unless it is “narrowly drawn to advance a state interest of compelling importance.” *Montano v. Los Alamos Cnty.*, 926 P.2d 307, 310 (N.M. Ct. App. 1996) (quoting *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)). Even where strict scrutiny does not apply, voting restrictions are subject to at least “intermediate scrutiny,” under which the government’s “burden” is “to prove that the classification is substantially related to an important governmental interest.” *Grisham*, 539 P.3d at 290-01; *see also Kane v. City of Albuquerque*, 358 P.3d 249, 255-56 (N.M. 2015) (voting regulations that “burden an identifiable segment of voters” are subjected to “heightened scrutiny”). The deferential “rational basis” test is inappropriate for infringements of voting rights, “regardless of the importance of the governmental interest” at issue. *Grisham*, 539 P.3d at 291.

Defendants’ challenged policies warrant strict scrutiny because they amount to outright denials of, or at least severe restrictions on, the right to vote. The challenged policies cannot survive any level of scrutiny, let alone strict scrutiny.

*First*, Defendants’ denials of Individual Plaintiffs’ voter registration applications based on having been once convicted of a felony—despite the Individual Plaintiffs meeting all voter qualifications under New Mexico law—amounts to an outright denial of their right to vote. *See infra* Argument § II. The Individual Plaintiffs are entitled to vote under New Mexico law because they are adult U.S. citizens who have completed their terms of incarceration or never served time in prison at all for their past felony convictions. NMSA 1978 § 1-4-27.1(A). Before casting ballots, however, they must be able to register to vote. NMSA 1978 § 1-4-1. Individual Plaintiffs properly followed all required steps to register—but the Bernalillo County Clerk Defendants, following the guidance of the Secretary of State Defendants, denied their registration applications solely on the ground that they had previously been convicted of a felony. *See supra* Statement of Facts § III.C. They are not alone: Since the NMVRA took effect, at least 119 voters in Bernalillo County alone have been denied registration because of past felony convictions, without regard to current incarceration status. Bowie Aff. Ex. 2.

While voters with prior felony convictions whose applications are erroneously rejected are in theory permitted to re-apply in person, that does not cure the effect of the prior unlawful denials. As explained below, registration in person is often a burdensome option. Moreover, Defendants’ letters denying voter registration applications are likely to leave prospective voters with the impression that they *cannot* register, even in person. The letters misleadingly state that the voter’s status is “Not Eligible,” which voters would reasonably understand as a final denial. *See* Bowie Aff. Exs. 8-11; Jackson Aff. Ex. 1; *see also Mullins v. Cole*, 218 F. Supp. 3d 488, 495 (S.D.W. Va. 2016) (finding “a high likelihood that online applicants . . . will be confused about whether they can vote” and granting preliminary injunction where county sent letters rejecting online voter registrations and directing applicants to register by other means). Indeed, that is how Plaintiff

Smith reasonably interpreted her denial letter before consulting with Millions for Prisoners. Smith Aff. ¶ 6-8. Other eligible registrants, like Affiant Coffin, who either do not receive or read their denial letters, perceive the repeated denials of their voting rights as “discouraging and confusing.” Coffin Aff. ¶¶ 9-10.

The government has no valid interest in perpetuating these erroneous denials of the right to vote, let alone an interest that could justify Defendants’ conduct under strict or intermediate scrutiny.

The NMVRA specifically *enfranchises* voters with felony convictions who are not currently incarcerated, precluding any argument that New Mexico’s state actors have a legitimate interest in disenfranchising those voters. *See Navajo Nation v. San Juan Cnty.*, 150 F. Supp. 3d 1253, 1270 (D. Utah 2015) (“[T]here is no legitimate governmental interest in the violation of state law.”).

Defendants’ actions do not preserve the integrity of the voter rolls; rather, Defendants’ actions lead to more inaccurate voter rolls by keeping eligible voters off them. Defendants are aware that the data in SERVIS cannot be relied upon as evidence that a person is, in fact, incarcerated and therefore ineligible. That data is therefore not a useful tool to keep ineligible voters off the rolls; instead, it harms the integrity of the voter rolls by leading to erroneous denials of eligible voters. As a result, the Secretary of State Defendants’ policy requiring reliance on that list to deny certain voter registrations is not narrowly tailored or even substantially related to that interest. Moreover, there are other pathways available to Defendants that would ensure that only eligible registrants are added to the rolls—starting with the mandate of the NMVRA itself that Corrections Department Defendants maintain accurate data to provide to the Secretary of State Defendants to maintain accurate records of ineligible voters. Beyond that, the Secretary of State

Defendants could direct county clerks to accept the attestations of eligibility that voters sign under penalty of perjury at face value—as they do for other eligibility criteria and classes of registrants. The Secretary of State Defendants could also direct county clerks, when any uncertainty arises, to verify the incarceration status of individual registrants with felony convictions directly with the Corrections Department.<sup>4</sup> Defendants’ wrongful denials of eligible voters’ registrations are unconstitutional and require a remedy.

*Second*, the Secretary of State Defendants have created a statewide discriminatory policy, which the Bernalillo County Clerk Defendants have implemented, of requiring prospective voters with prior felony convictions—but no other class of voters—to register in person. *See supra* Statement of Facts § III.B. Under this policy, the Individual Plaintiffs were instructed to report in person to a government office or polling location to re-apply for registration when their prior applications were denied. *Id.*

The requirement that voters with prior felony convictions register in person functions as a severe burden on, and sometimes outright denial of, the right to vote. For many prospective voters, the putative option of in-person registration is illusory or, at best, highly burdensome. Plaintiff Cadena, for example, tried to register in person after receiving a wrongful denial letter, only to be denied again on the grounds that he had a felony conviction. Cadena Aff. ¶¶ 8-9. Other voters, such as Plaintiff Dixon, cannot register in person because of their age, health condition, or disability; for them, a letter denying their application to register by mail, online, or with a third-party is, for all intents and purposes, a final denial of the right to vote. Dixon Aff. ¶¶ 18-20. Some

---

<sup>4</sup> To the extent Defendants contend that the government would be burdened by the efforts needed to avoid erroneous denials of voter registration applications, again, their grievance is with the NMVRA itself. The statute explicitly requires inter-agency sharing of updated data on the incarcerated prison population, precisely to avoid such erroneous denials. NMSA 1978 § 1-4-27.1(C).

voters, like Affiant Coffin, cannot easily register in person during regular business hours due to demanding work schedules. Coffin Aff. ¶¶ 9, 15.

And even for those voters who *can* register in person after receiving a wrongful denial letter, the requirement to do so—which the Secretary of State Defendants have no legitimate statutory basis for—is not only inconvenient, but stigmatizing. *See* Smith Aff. ¶ 14. It singles out voters with prior felony convictions by burdening them with an administrative hurdle that applies to no other class of voters, sending the message that the government views these voters’ political participation as suspect, despite the unambiguous provisions of the NMVRA that automatically restore their voting rights so long as they are not currently incarcerated. The State infringes on voting rights when it consigns a group of eligible voters to second-class status in the registration process. *See, e.g., Auerbach v. Kinley*, 499 F. Supp. 1329, 1341 (N.D.N.Y. 1980) (granting a preliminary injunction where “prospective student voters [were] accorded different treatment in the registration process than non-student applicants”); *Stringer v. Hughs*, 2020 WL 6875182, at \*27 (W.D. Tex. Aug. 28, 2020) (granting a preliminary injunction against “procedure that accept[ed] simultaneous voter registration applications [with driver’s license changes] for some, while rejecting them for others”).

No governmental interest justifies this differential treatment of voters with prior felony convictions. The NMVRA plainly contemplates that voters with past felony convictions who have completed any terms of incarceration may register to vote by mail or online, not only in person. *See* NMSA 1978 § 1-4-27.1(B) (incarcerated individuals preparing for release may “register to vote or update an existing registration by means of an online portal provided by the secretary of state or, if such a portal is not available, by means of a paper registration form”). Indeed, the NMVRA’s requirement of inter-agency data sharing, NMSA 1978 § 1-4-27.1(C), would make no

sense if voters with past felony convictions were required to register in person; the evident purpose of maintaining updated records on the prison population is to determine an applicant's incarceration status *without* the applicant having to appear in person. Defendants have no interest in preventing voters from registering in a manner the Legislature authorized.

To the extent that Defendants rely on NMSA 1978 § 1-4-27.1(D) to justify the in-person requirement, they misconstrue a safeguard, intended to protect eligible voters, as a requirement that severely burdens the people it was intended to protect. That section reads,

Notwithstanding a person's status in the statewide voter registration electronic management system, a voter or a qualified elector who appears personally before a county clerk, the clerk's authorized representative or a precinct board member, at an office of the motor vehicle division of the taxation and revenue department or at a state agency that provides public assistance or services to persons with disabilities is presumed to meet the eligibility requirement of non-imprisonment for voting and registering to vote pursuant to the provisions of this section.

NMSA 1978 § 1-4-27.1(D). The Secretary reads this section as mandating in-person registration where the statewide voter registration data fails. While this section provides an opportunity for a person to prove that they are not incarcerated by registering in person, it plainly does not require it. More importantly, Section D works in conjunction with Section C, which explains,

The secretary of state shall maintain current information in the statewide voter registration electronic management system on the ineligibility status of an inmate to vote or register to vote pursuant to this section, as well as an inmate's eligibility status to vote upon release and to register to vote or update an existing voter registration while preparing for release.

NMSA 1978 § 1-4-27.1(C). Section D, therefore, is a secondary backstop giving a registrant an optional way to overcome an erroneous denial that is premised on incorrect information about their incarceration status. However, because of Defendants' failure to implement Section C, the data currently maintained by the Secretary of State cannot fairly be described as data about



incarceration status—rather it is data about felony conviction status which cannot lawfully be used as a proxy for eligibility. In sum, Section D contemplates that if the Secretary Defendants were in compliance with Section C, which they are not, registering in person would offer a safeguard to protect voters in the theoretically rare instance that there is a lag in the data—for example, if someone is released and registers to vote before the Secretary’s data can be updated.<sup>5</sup> The Secretary’s current policy cannot be justified by this provision because it turns the exception into a rule to the detriment of the very people the legislature intended to protect.

Because Defendants’ challenged actions and omissions severely impinge on the right to vote and cannot be justified under any level of scrutiny, Plaintiffs are highly likely to succeed on the merits of their New Mexico constitutional claims and the New Mexico Civil Rights Act.

#### **B. Defendants’ Actions Violate the New Mexico Voting Rights Act**

Plaintiffs are also likely to succeed on their NMVRA claim. Courts in New Mexico “interpret statutes broadly to favor the right to vote.” *Grisham*, 539 P.3d at 282 (citation omitted). Here, the evidence shows that Defendants are violating the plain text of the NMVRA in three ways.

*First*, since the NMVRA went into effect, the Bernalillo County Clerk Defendants, following the guidance of the Secretary of State Defendants, have, without regard to current incarceration status, denied at least 119 voter applications on the ground that the applicant was “Not Eligible” because of a past conviction. Bowie Aff. Ex. 2 (compiling voter application denials in response to a request under the Inspection of Public Records Act). That is a straightforward

---

<sup>5</sup> If Defendants *were* in compliance with Section C, an indicator in the Secretary of State’s SERVIS system that a person is currently incarcerated would be sufficiently reliable to justify an initial denial. Section D would then function as intended—as a failsafe to ensure that, *if* the Section C data (although generally reliable) failed, individuals could still overcome any denial based on that by appearing to register in person. But since there is no reliable data on incarceration status in SERVIS, a denial based on that data is simply unlawful. So too is a misreading of Section D to require in person registration.

violation of the NMVRA, which makes past felony convictions irrelevant to voter eligibility unless the applicant is currently incarcerated. NMSA 1978 § 1-4-27.1(A).

*Second*, the Secretary of State Defendants and the Corrections Department Defendants have failed to adhere to the provision of the NMVRA that mandates timely and accurate data sharing between state agencies to ensure newly eligible voters have access to the ballot and can register to vote. Under the NMVRA, the Corrections Department must “deliver to the secretary of state information and data necessary to carry out” the re-enfranchisement of formerly incarcerated individuals, and the Secretary of State must “maintain current information in the statewide voter registration electronic management system on the ineligibility status of an inmate to vote or register to vote.” NMSA 1978 § 1-4-27.1(C). Defendants have not satisfied these requirements. Their failure to do so is proven by the experiences of the Individual Plaintiffs, Affiant Coffin, and several of Plaintiff Millions for Prisoners’s organizers, who had their registration applications denied based on outdated information that would have been updated if Defendants had performed their data-sharing responsibilities. Plaintiff Jackson, for example, received multiple denial letters from the Bernalillo County Clerk Defendants—including, most recently in September 2024—stating he was ineligible to vote because he “ha[d] been incarcerated for a felony conviction.” Bowie Aff. Ex. 8; Jackson Aff. ¶ 12, Ex. 1. That was inaccurate: Mr. Jackson completed his term of incarceration long ago and was eligible to vote when he applied for registration. Plaintiffs Cadena, Dixon, and Smith, core organizers for Millions for Prisoners, and Affiant Coffin all had similar experiences.<sup>6</sup> Bowie Aff. Exs. 8-11; Jackson Aff. Ex. 1; Guerrero Aff. ¶ 18; Coffin Aff. ¶ 8.<sup>7</sup>

---

<sup>6</sup> The inaccuracy of Defendants’ data is further evidenced by the fact that Plaintiffs Dixon and Smith were never incarcerated as part of their sentences. Dixon Aff. ¶ 3; Smith Aff. ¶ 4.

<sup>7</sup> Liability for failure to satisfy the NMVRA’s data sharing requirements rests on both the Secretary of State Defendants and the Corrections Department Defendants. The Corrections Department

*Third*, the Secretary of State Defendants and Bernalillo County Clerk Defendants have violated the NMVRA by requiring in-person registration for voters with past felony convictions. The plain text of the NMVRA permits all eligible voters to register by mail or online unless they are currently incarcerated. NMSA 1978 § 1-4-27.1. While the statute *permits* voters with prior felony convictions to register in person as a safeguard against any system error that misclassifies them as currently incarcerated, NMSA 1978 § 1-4-27.1(D), nothing in the NMVRA suggests that any group of voters is *required* to register in person. The imposition of this extra-statutory requirement on voters with felony convictions is stigmatizing and burdensome, especially for voters like Plaintiff Dixon whose age, health condition, or disability make in-person registration all but impossible. Dixon Aff. ¶¶ 18-20; *see infra* Argument § II.

## **II. Plaintiffs Will Suffer Irreparable Harm Unless an Injunction Is Granted Because the Defendants’ Actions Deny Their Right to Vote**

“[T]he right to vote is the essence of our country’s democracy,” and accordingly “is of paramount importance in New Mexico.” *Grisham*, 539 P.3d at 282 (citation omitted). Without emergency relief, Defendants’ unlawful actions—and inactions—will irreparably infringe that “fundamental” right in the imminent General Election. *Id.* (citation omitted). The Individual Plaintiffs, like many other eligible voters throughout New Mexico, have been, and will continue to be unable to register to vote and thereby be denied the right to vote, or at best, will be severely burdened in their attempts to exercise that right. They are also singled out and required to register in person, despite the fact that every other group of eligible voters is permitted to register by mail, online, or through a third-party voter registration agent. Plaintiff Millions for Prisoners, similarly,

---

Defendants’ failure to share updated data does not excuse the Secretary of State Defendants’ statutory duty to implement the NMVRA as prescribed. *See* NMSA 1978 § 1-2-1(B); NMSA 1978 § 1-2-2(A)-(B); *see also State ex rel. Riddle v. Oliver*, 487 P.3d 815, 827-29 (N.M. 2021) (enforcing Secretary of State’s “nondiscretionary duties” under New Mexico Election Code).

will be prevented from fulfilling its mission because Defendants’ actions hamper efforts to increase political participation among New Mexicans with past felony convictions. The time to avert or mitigate these harms is now, before the October 8, 2024 voter registration deadline<sup>8</sup> and before the November General Election.

To satisfy the requirement of irreparable harm, Plaintiffs need only show that they “face a real risk of future injury or that they are imminently threatened with injury.” *Leavell v. New Mexico Env’t Improvement Bd.*, 2010 WL 1607553 (N.M. Dist. Apr. 13, 2010) (internal quotation omitted). “[W]here deprivation of [a] constitutional right is shown, no further showing of irreparable harm need be demonstrated.” *LaBalbo*, 115 N.M. at 318 (citation omitted); *see also Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (“A restriction on the fundamental right to vote . . . constitutes irreparable injury.”). That is especially true for deprivations of the right to vote: “once the election occurs, there can be no do-over and no redress.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014); *see also Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016) (“[D]enial of [the right to vote] weighs heavily in determining whether plaintiffs would be irreparably harmed absent an injunction.”). Similarly, “[a] discriminatory interference with the exercise of a constitutional right, here the fundamental right to vote, is plainly ‘an injury for which a monetary award cannot be adequate compensation.’”

---

<sup>8</sup> New Mexico residents can register to vote online or by mail until 5:00pm on October 8, 2024. New Mexico also permits in-person, same day voter registration for registrant-applicants who appear in person at a polling place or county clerk’s office to register and cast their vote. NMSA 1978 § 1-4-5.7; Voting & Elections, Same Day Voter Registration FAQ, New Mexico Office of the Secretary of State, <https://www.sos.nm.gov/voting-and-elections/voting-faqs/same-day-voter-registration-faq/> (last visited Oct. 1, 2024). However, as discussed *supra* Statement of Facts § III.C, some Individual Plaintiffs will not be able to take advantage of same day voter registration because they have difficulties complying with an in-person registration requirement, Dixon Aff. ¶¶ 18-20, or are otherwise reluctant to depend on it, having already been denied when attempting to register in person, Cadena Aff. ¶¶ 9-10.

*Auerbach*, 499 F. Supp. at 1340-41 (quoting *Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc.*, 596 F.2d 70, 72 (2d Cir. 1979)).

Each Individual Plaintiff needs emergency relief before the upcoming November General Election to prevent irreparable injury. Plaintiffs Jackson, Dixon, and Cadena and Affiant Coffin—despite being eligible for years, and for over two decades for Mr. Cadena, and multiple attempts to register—remain unregistered to vote because of the Bernalillo County Clerk Defendants’ denial of their recent registration applications; as a result, they will be denied their most fundamental right in the General Election absent relief from this Court. Jackson Aff. ¶ 1-13; Dixon Aff. ¶¶ 8-13; Cadena Aff. ¶¶ 6-9, 12-13; Coffin Aff. ¶¶ 8-9 14-15. Ms. Smith will also need to re-register for General Election because of her change of address, Smith Aff. ¶ 10, and given the prior wrongful denials of her attempts to register, Bowie Aff. Ex. 9, she risks her updated registration being rejected for the General Election, denying her the right to vote absent relief from this Court. Likewise, Millions for Prisoners continues to be hamstrung in its efforts to register its constituents to vote because it cannot register people remotely and must instead divert significant resources to help registrants appear in person.

Defendants’ policies heighten the risk that eligible voters will believe they are ineligible to register and vote at all based on their past felony convictions. Indeed, all of the Individual Plaintiffs received misleading letters from the Bernalillo County Clerk Defendants stating that they are “Not Eligible.” Bowie Aff. Exs. 8-11; Jackson Aff. Ex. 1. Based on such denial letters, the Individual Plaintiffs and others did and might reasonably believe that they were ineligible to vote. *See* Bowie Aff. Ex. 2 (compiling voter application denials in response to a request under the Inspection of Public Records Act, showing that at least 119 voters have received such denials from the Bernalillo County Clerk Defendants alone). Plaintiff Smith did interpret her denial letter in that manner

before consulting with Millions for Prisoners. Smith Aff. ¶ 6-8. Others, like Affiant Coffin, might not receive or read the denial letters at all, leaving them uncertain about their eligibility. Coffin Aff. ¶ 9.

The Secretary of State Defendants’ guidance requiring in-person registration for only certain eligible voters—the Individual Plaintiffs and others with past felony convictions—will also cause irreparable harm if not enjoined. For some New Mexicans, registering and voting in person is not an option due to age, health, physical or mental disabilities, or transportation difficulties, so Defendants’ policy will result in a denial of the right to vote—an irreparable harm.<sup>9</sup> *See generally State ex rel. Riddle v. Oliver*, 487 P.3d 815, 826 (N.M. 2021) (recognizing the paramount importance of the right to vote and that registration by mail and mail ballots may be essential to allow voters to cast their ballots given the circumstances). For example, Plaintiff Dixon, an elderly veteran, cannot register or vote in person because his PTSD makes it difficult to be in loud public places and because he lacks reliable transportation. Dixon Aff. ¶¶ 15-20. Denial of his right to register and vote, as Defendants have already imposed, *Id.* ¶¶ 8-9, 11-12; Bowie Aff. Ex. 10, may amount to a complete denial of his right to vote in the General Election. *See Fish*, 840 F.3d at 752-53 (rejecting argument that plaintiffs could avoid injury by complying with an unlawful state regime—in this action, the Secretary’s in-person requirement—and affirming the district court’s finding that plaintiffs established irreparable harm).

Moreover, the Secretary of State Defendants’ policy to require in-person voter registration for individuals with prior felony convictions does not guarantee that Individual Plaintiffs will be

---

<sup>9</sup> Lisa Schur et al., *Disability and Voting Accessibility in the 2022 Elections*, at 5 (July 2023), [https://www.eac.gov/sites/default/files/2023-07/EAC\\_2023\\_Rutgers\\_Report\\_FINAL.pdf](https://www.eac.gov/sites/default/files/2023-07/EAC_2023_Rutgers_Report_FINAL.pdf) (last visited Oct. 1, 2024) (finding that voters with disabilities are more than three times more likely than voters without disabilities to report issues with voting in person.).

able to register in person. While the NMVRA on its face *should* enable New Mexicans with past felony convictions to register to vote in person regardless of whether SERVIS flags them as potentially incarcerated, NMSA 1978 § 1-4-27.1(D), widespread confusion—caused in part by stale SERVIS data and outdated registration forms still in circulation—subjects eligible voters to a high risk of erroneous denial even if they apply in person. This is not a speculative risk. Plaintiff Cadena attempted to register to vote in person (i.e., proving that he is not currently incarcerated) on Election Day during the June Primary Election, but he was denied—disenfranchising him for that election and causing him irreparable harm. Cadena Aff. ¶ 9; *See, e.g., League of Women Voters of N.C.*, 769 F.3d at 247 (denial of the right to vote is irreparable harm). Absent the injunctive relief requested here, Mr. Cadena may face the same result when trying to register in person for the November General Election, because SERVIS will still flag him as having a past felony conviction, which, under the Secretary of State Defendants’ guidance, may lead an election worker to improperly deny his registration.

Denial of Individual Plaintiffs’ right to vote—and the right to vote of other New Mexicans with felony convictions—for the November General Election thus remains a near certainty such that these eligible voters are likely to suffer irreparable harm.

The Secretary of State Defendants’ guidance also irreparably harms the Individual Plaintiffs by effectively forbidding a group of eligible voters from exercising their fundamental right in the same manner as all other voters, as only individuals with prior felony convictions are denied the ability to register to vote by mail, online, or with third-party voter registration agents. *See Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1354 (11th Cir. 2005) (noting federal law requires all states to accept voter registrations by mail). The Individual Plaintiffs and

similarly situated eligible New Mexicans cannot be adequately compensated for deprivation of the right to register like all other groups of voters. *Auerbach*, 499 F. Supp. at 1340-41.

Plaintiff Millions for Prisoners will also be irreparably harmed absent emergency relief, because unlawful barriers to registration constructed by Defendants thwart the organization’s core mission and divert organizers’ time and resources. Misinformation—including communication of incorrect registration requirements, issuance of wrongful registration denials, and reliance on outdated registration forms that incorrectly tell qualified electors they are not lawfully allowed to vote—creates voter confusion, which in turn reduces voter registration rates.<sup>10</sup> Millions for Prisoners is dedicated to helping formerly incarcerated and criminal legal system-impacted individuals, who are often subject to disproportionately high amounts of misinformation,<sup>11</sup> overcome misinformation barriers, so it will have to expend resources to correct the

---

<sup>10</sup> See Marc Meredith & Michael Morse, *Do Voting Rights Notification Laws Increase Ex-Felon Turnout?*, 651 *Annals Am. Acad. Pol. & Soc. Sci.* 220, 222-23 (2014) (synthesizing existing studies on voter disenfranchisement of people with prior felony convictions and concluding “there may be a sizeable number of voting-eligible ex-felons who would vote if they did not believe (incorrectly) that they are ineligible to do so”); Alec Ewald, *A ‘Crazy-Quilt’ of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law*, Sent’g Project, at ii, 8 (2005) (finding “[c]onfusing policies” about voter eligibility of formerly incarcerated individuals “lead to the exclusion of legal voters and the inclusion of illegal voters”); Marc Meredith & Michael Morse, *The Politics of the Restoration of Ex-Felon Voting Rights: The Case of Iowa*, 10 *Q.J. Pol. Sci.* 40, 71, 76-78 (2015) (finding “application requirements in lifetime disenfranchisement states prevent a sizeable number of ex-felons from voting” and finding misinformation causes felon disenfranchisement); Don Waisanen et al., *States of Confusion: How Our Voter ID Laws Fail Democracy and What to Do About It* 16 (2023) (“[S]mall impediments to voting can have outsized effects on the voters who are least likely to vote.”).

<sup>11</sup> See, e.g., Meredith & Morse, *The Politics of the Restoration of Ex-Felon Voting Rights: The Case of Iowa*, *supra* note 8, at 71; Ernest Drucker & Ricardo Barreras, *Studies of Voting Behavior and Felony Disenfranchisement Among Individuals in the Criminal Justice System in New York, Connecticut, and Ohio*, Sent’g Project, at 10 (2005) (finding people with past arrests and convictions often believe they are ineligible to vote even where they are not legally disenfranchised); David S. McCahon, *Combating Misinformation in the Ex-Felon Population: The Role Probation and Parole Agencies Can Play to Facilitate Civic Reintegration in the United States*, 64 *Prob. J.* 1 (2015).



misinformation. Defendants' actions also directly inhibit much of Millions for Prisoners' work, including organizing and participating in voter registration drives. *See supra* Statement of Facts § IV. Millions for Prisoners organizers are forced to devote time and resources to bringing New Mexicans with past felony convictions in person to try to register to vote, taking them away from helping other eligible New Mexicans register to vote. *See supra* Statement of Facts § IV.

Plaintiffs have acted diligently in seeking relief from Defendants' unlawful conduct. It was reasonable to expect that Defendants would comply with the NMVRA. Lujan Grisham Press Release (Toulouse Oliver calling the NMVRA a "huge win for voters"); *see also Self Advoc. Sols. N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1055 (D.N.D. 2020) (finding that plaintiffs exercised reasonable diligence even though plaintiffs had some recognition that the state had improper procedures a year before it filed the action). But Defendants did not implement necessary changes for the June Primary Election. Bowie Aff. Exs. 8-14. Promptly following the June Primary Election, in which Defendants' actions and inactions disenfranchised thousands of eligible voters with prior felony convictions, Plaintiffs' counsel sent a formal notice to the Secretary of State Defendants on behalf of Plaintiff Millions for Prisoners indicating that Defendants were in violation of the NMVRA. Bowie Aff. Ex. 3. On September 20, 2024, Plaintiffs' counsel reached out to the Secretary of State Defendants again, to provide notice of this action. Bowie Aff. ¶ 12, Ex. 4. Although the Secretary of State Defendants appear to have agreed to correct the outdated registration forms, this has not yet been fully implemented, and the Secretary of State Defendants are unwilling to end their unlawful policies that deny eligible voter registrations based on stale data and that require in-person registrations to overcome the erroneous denials. *See supra* Statement of Facts § III.B. Plaintiffs promptly filed this action on September 26, 2024, as soon as it became clear that the

Secretary of State Defendants would not reach an agreement on the challenged policies. Bowie Aff. ¶ 13.

### **III. The Balance of Equities and the Public Interest Strongly Favor Emergency Relief to Protect the Right to Vote**

The balance of equities and the public interest weigh heavily in Plaintiffs' favor. The injury to the Individual Plaintiffs and other eligible voters with prior felony convictions in New Mexico is immense: "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Injunctive relief would serve the public interest in protecting these citizens' fundamental right to vote. *Husted*, 697 F.3d at 436-37. Absent an injunction, more than 11,000 otherwise-eligible voters will face a severe—likely insurmountable—barrier to voting. See Sent'g Project, *Locked Out 2022: Estimates of People Denied Voting Rights Due to a Felony Conviction*, *supra* note 2.

Moreover, Plaintiffs' "extremely high likelihood of success on the merits is a strong indicator that a preliminary injunction would serve the public interest" because "[t]here is generally no public interest in the perpetuation of unlawful agency action." *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). Rather, there is a strong public interest in effectuating the public policy of New Mexico, embodied in its statutes and Constitution. See *Grand River Enters. Six Nations, Ltd. v. New Mexico ex rel. N.M. Off. Of the Att'y Gen.*, No. D-101-CV-2011-00364, 2011 WL 12882192, at \*1 (N.M. Dist. June 30, 2011) ("It is in the public's interest to see that the Attorney General applies the laws of this State in a manner that is consistent with the statutory scheme and constitutional protections."). The NMVRA, in particular, is a high-profile statute enacted by New Mexico's elected representatives just last year. Defendant Toulouse

Oliver herself touted the NMVRA upon its enactment as “a huge win for voters” that “represents years of dedicated work from community members, the bill sponsors, and election administrators from around the state.” Lujan Grisham Press Release. New Mexicans have a strong interest in seeing the NMVRA’s pro-enfranchisement policy come to fruition. Indeed, Defendants’ interest should also be in seeing the NMVRA fully implemented and Plaintiffs’ constitutional rights respected.

Plaintiffs are seeking appropriately tailored relief that is necessary to redress the specific violations of the New Mexico Constitution, the New Mexico Civil Rights Act, and the NMVRA that Plaintiffs have identified. It is not unduly burdensome for Defendants to perform their mandatory duties that the Constitution and state statutes already require. *See supra* Argument § I. The need to avoid the mass denial of a fundamental constitutional right vastly outweighs any administrative burdens Defendants may assert. *See Fish*, 840 F.3d at 752-53.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Issue against all Defendants a temporary restraining order and a preliminary injunction, each providing that:
  - a. Immediately upon entry of such temporary restraining order or preliminary injunction and lasting through the November 5, 2024 General Election, Defendants and their agents, officers, employees, successors, and all persons acting in concert with each or any of them, are enjoined from (1) rejecting valid voter registrations based solely on felony status information in SERVIS; and (2) enforcing the in-person registration requirement for eligible voters with prior felony convictions;
  - b. By no later than two days after the date of such temporary restraining order or preliminary injunction, whichever is earlier, Defendant Toulouse Oliver shall issue guidance to all county clerks, including Defendant Stover, (1) that they must accept a voter registrant’s attestation on a voter registration form that they are not currently incarcerated as evidence of their eligibility to register to vote; (2) that they must register an individual based on that attestation of eligibility absent credible information establishing that a

person is ineligible; and (3) clarifying that, as it stands, information on felony convictions in SERVIS does not constitute credible information establishing that a person is currently incarcerated;

- c. If not already done voluntarily by Defendants, by no later than two days after the date of such temporary restraining order or preliminary injunction, whichever is earlier, Defendant Office of the Secretary of State and Defendant Toulouse Oliver shall (1) notify the Election Assistance Commission of New Mexico's current eligibility requirements for people with felony convictions, including those on probation or parole, (2) issue guidance to ensure that only the correct, updated forms are in use by county clerks during early voting and on Election Day, and if necessary provide the clerks with copies of the correct form, and (3) remove the inaccurate forms from all places on Defendant Toulouse Oliver's website;
  - d. By no later than one day after the date of such temporary restraining order or preliminary injunction, whichever is earlier, the Corrections Department Defendants shall provide election officials with a means of contact by which an election official may request and shall be provided current information on a particular registrant's incarceration status;
  - e. By no later than one day after the date of such temporary restraining order or preliminary injunction, whichever is earlier, Defendant Toulouse Oliver shall issue guidance to all county clerks, including Defendant Stover, instructing them to (1) reprocess all voter registration forms submitted by voters with felony convictions that were denied since July 1, 2023, (2) register the voters with felony convictions who were denied based on unreliable information in SERVIS absent *credible* information *demonstrating* that they are currently incarcerated, and (3) inform the new registrants that they have been registered within one week of the Court's grant of relief;
  - f. By no later than one week after the date of such temporary restraining order or preliminary injunction, whichever is earlier, Defendant Stover shall (1) reprocess all voter registration forms submitted by voters with felony convictions that were denied since July 1, 2023, including those from the Individual Plaintiffs, (2) register the voters with felony convictions who were denied based on unreliable information in SERVIS absent *credible* information *demonstrating* that they are currently incarcerated, and (3) inform the new registrants that they have been registered;
2. Grant such further relief as the Court deems just and proper.

Dated: October 1, 2024

Respectfully submitted,  
*/s/ DANIEL YOHALEM*

---

Daniel Yohalem  
Attorney at Law  
1121 Paseo De Peralta  
Santa Fe, NM 87501  
Phone: 505-690-2193  
Fax: 505-989-4844  
[daniel.yohalem@gmail.com](mailto:daniel.yohalem@gmail.com)

**CAMPAIGN LEGAL CENTER**

*/s/ Blair Bowie*

---

Blair Bowie\*  
Melissa Neal\*  
Campaign Legal Center  
1101 14th St. NW, Suite 400  
Washington, DC 20005  
[bbowie@campaignlegalcenter.org](mailto:bbowie@campaignlegalcenter.org)  
[mneal@campaignlegalcenter.org](mailto:mneal@campaignlegalcenter.org)

**SELENDY GAY PLLC**

*/s/ Faith E. Gay*

---

Faith E. Gay\*\*  
Elizabeth H. Snow\*\*  
Jeffrey Zalesin\*\*  
SELENDY GAY PLLC  
1290 Avenue of the Americas  
New York, NY 10104  
Tel: 212-390-9000  
[fgay@selendygay.com](mailto:fgay@selendygay.com)  
[esnow@selendygay.com](mailto:esnow@selendygay.com)  
[jzalesin@selendygay.com](mailto:jzalesin@selendygay.com)

*Attorneys for Plaintiffs*

*\*admitted pro hac vice*

*\*\*pro hac vice applications forthcoming*