EXHIBIT A

No. 26-7070

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

STATE OF CALIFORNIA; SHIRLEY WEBER, PH.D., IN HER OFFICIAL CAPACITY AS THE CALIFORNIA SECRETARY OF STATE; DEAN LOGAN, IN HIS OFFICIAL CAPACITY AS THE COUNTY OF LOS ANGELES REGISTRAR-RECORDER/COUNTY CLERK,

Defendants-Appellees,

SERVICES, IMMIGRANT RIGHTS AND EDUCATION NETWORK, ET AL.,

Proposed Intervenors-Appellees.

On Appeal from the United States District Court
for the Central District of California, No. 2:26-cv-12025-DOC-ADS (Carter, J.)

OPPOSITION OF PROPOSED INTERVENOR-DEFENDANTS AND IN THE ALTERNATIVE *AMICI CURIAE* LEAGUE OF UNITED LATIN AMERICAN CITIZENS; NAACP; NAACP CALIFORNIA/HAWAII STATE CONFERENCE; NAACP LOS ANGELES BRANCH TO PLAINTIFF-APPELLANT'S EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR INJUNCTION PENDING APPEAL

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RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1-1, Proposed Intervenor-Defendants and, in the alternative, *amici curiae* League of United Latin American Citizens; NAACP; NAACP California/Hawaii State Conference; and NAACP Los Angeles Branch certify that they are non-profit corporations with no parent corporations, and that no public held company own any interest in them.

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Sam Levine, *Nearly 200 people wrongly identified on Nevada's voter rolls as non-citizens*, The Guardian (Sep. 25, 2026), https://perma.cc/9VUK-LWWP 20

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Tierney Sneed, *Trump admin files 'long shot' lawsuit after California wouldn't open a thumb drive of alleged non-citizens*, CNN (Oct. 15, 2026), https://www.cnn.com/2026/10/15/politics/trump-doj-sues-california-non-citizens-voting. 20

INTRODUCTION

The Constitution vests primary responsibility for administering elections to the States, subject to regulation by Congress. *Gonzalez v. Arizona*, 677 F.3d 383, 391 (9th Cir. 2012). That the executive branch would have the power to regulate elections "does not appear to have crossed the Framers' minds." *League of United Latin Am. Citizens v. Exec. Off. of the President*, 780 F. Supp. 3d 135, 159 (D.D.C. 2025) (*LULAC I*). Courts have overwhelmingly rejected the Federal Government's recent efforts to exceed its authority in this sphere. *See, e.g.*, *Common Cause v. U.S. Dep't of Just.*, No. CV 26-1352, 2026 WL 3033772, at *36 (D.D.C. Oct. 9, 2026); *United States v. Henderson*, No. 2:26-cv-166-DBB, slip op. at 8 n.50 (D. Utah Oct. 23, 2026) (listing 27 cases dismissing attempts to compel states to produce unredacted voter lists).

During an ongoing federal election, the United States Department of Justice (USDOJ) has nonetheless demanded that the State of California refrain from tabulating up to 20,000 ballots cast by lawfully registered voters, unless and until those voters' citizenship could be "verif[ied]" to USDOJ's unspecified satisfaction. This demand violates multiple federal statutes and the Constitution, which protects the right to vote as "preservative of all rights." *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). USDOJ made this unprecedented demand based on flimsy evidence, notwithstanding its admission that the list of targeted voters may contain U.S.

citizens.[1] The district court acted promptly to adjudicate USDOJ's claims and has yet to issue an appealable order in the face of USDOJ's delays and invented emergency—there has been no constructive denial. And orders regarding this type of motion are not ordinarily appealable. This Court therefore lacks jurisdiction. Moreover, the United States cannot satisfy any of the factors for an injunction pending appeal. Thus, USDOJ's meritless Emergency Motion for Injunction Pending Appeal (Motion) should be denied and this appeal dismissed.[2]

STATEMENT OF THE CASE

A. Background

On July 16, 2026, the Secretary of the Department of Homeland Security (DHS), Markwayne Mullin, sent a letter to Shirley N. Weber, the California Secretary of State. Dkt. 1 ¶ 3 (Compl.); Dkt. 1-1.[3] Secretary Mullin's letter claimed that "results of a recent analysis of California's publicly available voter registration

[1] Sam Levin & Sam Levine, *DoJ charges 28 green card holders in California over alleged voter fraud*, The Guardian (Oct. 19, 2026), https://perma.cc/96P6-DUVN (quoting Acting Deputy U.S. Attorney General saying "[t]here may be some names on there who . . . ultimately are citizens.").

[2] The League of United Latin American Citizens (LULAC); NAACP; NAACP California/Hawaii State Conference; and NAACP Los Angeles Branch (together, NAACP) moved to intervene below; that motion was promptly scheduled to be heard along with the USDOJ TRO by the district court on October 27. Dkt. 64. They therefore submit this response to USDOJ's Motion as Proposed Intervenor-Defendants, or in the alternative, *amici* curiae.

[3] Docket cites in this brief are to the district court's docket.

database information" indicated that "there *may be* as many as 190,832 non-citizens registered to vote in California." Dkt. 1-1 (emphasis added). Secretary Weber responded on July 23, 2026, highlighting "serious doubts" about DHS's data and methodology. Compl. ¶ 3; Dkt. 1-2.

The Federal Government did not respond, or take any further action on this issue until October 13, 2026, when USDOJ sent a letter to Secretary Weber informing her that it had provided a thumb drive to Los Angeles County containing a list of "over 20,000" individuals whom the U.S. Citizenship and Immigration Services (USCIS) and Homeland Security Investigations (HSI) "believe are noncitizens registered to participate in the federal election in California." Compl. ¶ 47; Dkt. 1-3. USDOJ demanded that she review the thumb drive (which they had not provided to the State) "within 48 hours to determine whether any citizens are listed." Compl. ¶ 47; Dkt. 1-4. USDOJ further demanded that, for "individuals whom you cannot independently confirm citizenship status," Secretary Weber segregate any vote-by-mail ballots already received or "take all immediate and reasonable steps to not provide a ballot to those individuals until we confirm their citizenship status" and to contact DHS to confirm by noon EST on October 15. Dkt. 1-4.

B. Proceedings Below

On October 15, 2026, USDOJ sued, alleging that California's refusal "to independently verify the citizenship of people included on" the October 13, 2026 list violates the Supremacy Clause of the U.S. Constitution purportedly in light of a federal criminal statutory provision, 18 U.S.C. § 611(a). Compl. ¶ 58. Although USDOJ filed its Complaint nineteen days before the election, it waited four more days to file its application for a temporary restraining order. Dkts. 22-1, 22-2. The application requested that the district court order California to: (1) "set aside vote-by-mail ballots" from voters on the list; and (2) "verify their citizenship status before tabulating" such ballots. Dkt. 22-2 at 4, 29 (hereinafter, TRO). It requested relief by "**November 3, 2026,** before the end of voting in the 2026 federal election" and announced that it had charged 28 individuals with "election and immigration related crimes." TRO at 1, 4.[4]

On October 20, the State of California, Secretary Weber, Registrar Logan, and LULAC and NAACP (as proposed intervenors) each filed their opposition to the TRO. Dkts. 31-1, 32-1, 37-1. That day, the case was assigned to Judge Holcomb. Dkt. 34. On October 21, following the resolution of two notices of related cases, Dkts. 3, 10, the case was reassigned to Judge Carter. Dkt. 46. Judge Carter swiftly

[4] USDOJ asserts—falsely—that it filed its Complaint and TRO on the same day. Motion at 6.

set a hearing for the TRO on October 27 at 1 p.m. Dkt. 64. USDOJ only then requested an expedited ruling by noon on October 22. Dkt. 67. When that deadline passed, USDOJ noticed this appeal. Early the next morning, USDOJ filed an *Ex Parte* Motion for Injunction Pending Appeal in the district court, Dkt. 76, requesting relief by noon that day, as the original TRO remained pending, with court-ordered briefing to conclude on October 25, 2026, and a hearing scheduled for two days later. *See* Dkts. 64, 78.

LEGAL STANDARD

"The standard for evaluating an injunction pending appeal is similar to that employed by district courts in deciding whether to grant a preliminary injunction." *Feldman v. Ariz. Sec'y of State's Off.*, 843 F.3d 366, 367 (9th Cir. 2016) (en banc). "A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). A party is entitled to a preliminary injunction only if they establish that they are "likely to succeed on the merits"; "likely to suffer irreparable harm in the absence of preliminary relief"; "the balance of equities tips in [their] favor"; and "an injunction is in the public interest." *Id.* at 20.

ARGUMENT

I. This Court lacks appellate jurisdiction.

A. USDOJ improperly appealed prior to the district court resolving its request for a TRO.

Appellate jurisdiction requires an order or judgment from which the appeal can be taken. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 175 (1803); Fed. R. App. P. 3(c)(1)(B). Here, the district court has yet to rule on the TRO, but is taking steps to promptly resolve it, with briefing to conclude tomorrow and a hearing scheduled in just two days. USDOJ may not manufacture jurisdiction by creating "urgency" then crying foul. 16 Wright & Miller's Federal Practice & Procedure § 3924.1 (3d ed. 2012) ("Appeal cannot be achieved simply by asserting that the trial court has failed to act as promptly as wished."). Review of a district court's inaction is available "only when resort to the regular processes of litigation is unavailing, and the judge is unwilling to make a prompt decision even though delay erodes or obliterates the rights in question." *Allababidi v. Junkin*, No. 26-2162, 2026 WL 1753986, at *1 (7th Cir. June 4, 2026). Parties may not "simply say they need an expedited ruling and then appeal by claiming effective denial when they don't get it on their preferred timeline." *See In re Ft. Wor. Chamber of Com.*, 100 F.4th 528, 535 (5th Cir. 2024).

USDOJ has attempted to manufacture chaos and false urgency at every step of this litigation. The Federal Government claims it obtained the registration

information prior to May 2026, Motion at 15, raised its assertions about purported noncitizens on California's voting rolls in July, but took no further legal action until October 15, nineteen days before election day. It then waited four *more* days to file its TRO. After filing, USDOJ then moved its preferred deadline for relief from November 3 to October 22, then immediately appealed.[5]

Even if some exceptional forms of court inaction could amount to "refusal" of injunctive relief under 28 U.S.C. § 1291(a)(1), *Thompson v. Enomoto*, 815 F.2d 1323, 1326-27 (9th Cir. 1987), this district court's diligent and swift effort to study "the record and the applicable law" in advance of Tuesday's hearing falls far short of appealable refusal. *Overton v. City of Austin*, 748 F.2d 941, 951-52 (5th Cir. 1984). Indeed, briefing will not be over until Sunday afternoon. *See* Dkt. 85. Nor are there "serious, perhaps irreparable, consequences" for the Federal Government. *Thompson*, 815 F.2d at 1326-27. California continues to process mail ballots according to state law, *see* Cal. Elec. Code §§ 15101, 3019, and the applicable federal laws regarding voter registration list maintenance (laws that the USDOJ's demands here would violate). *See infra* Section II. The district court's expeditious handling of this matter is not a constructive denial of the TRO sufficient to confer

[5] USDOJ suggested that it learned that California was processing ballots from this case. Dkt. 67. California's procedures are described in law. Cal. Elec. Code § 15101.

appellate jurisdiction. This appeal should therefore be dismissed. *See* 9th Cir. R. 3-6(b).

B. Denial of a temporary restraining order is not an appealable order.

Even if the district court had *actually* denied the Federal Government's TRO, this Court should still find it lacks jurisdiction because "orders ruling on TRO motions 'are typically not appealable.'" *Babaria v. Blinken*, 87 F.4th 963, 975 (9th Cir. 2023) (quoting *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 659-60 (9th Cir. 2021)). This is particularly true where a district court does not deny a TRO on the merits. *We the Patriots USA, Inc. v. Ventura Unified Sch. Dist.*, No. 25-5239, 2026 WL 1182210, at *1 (9th Cir. Apr. 30, 2026) (*Patriots*).

In fact, a denial of the TRO on the merits in this case would not meet the standards for appeal because: (1) there has been no hearing whatsoever on the TRO—USDOJ appealed before the scheduled hearing could occur, *see Env't Def. Fund, Inc. v. Andrus*, 625 F.2d 861, 862 (9th Cir. 1980); (2) the Federal Government is not foreclosed from pursuing further interlocutory relief, *see id.*; (3) for much the same reason, USDOJ cannot claim that the district court's decision not to rule on its TRO before October 27 effectively decided the merits of the case, *see Patriots*, 2026 WL 1182210, at *1; and (4) the district court has not taken any unusual action, such as issuing a TRO of unlimited duration, that suggests the TRO is effectively a preliminary injunction, *see Andrus*, 625 F.2d at 862; *cf. Sampson v. Murray*,

415 U.S. 61, 86-87 (1974). Certainly, the district court's decision to accommodate USDOJ's initial requested timeline, notwithstanding their later conflicting requests, is not the type of (non)order over which this Court can exercise appellate jurisdiction.

II. The United States has no likelihood of success on the merits.

A. USDOJ's demand is contrary to multiple federal statutes protecting voting rights.

The demand that California segregate and leave uncounted more than 20,000 ballots violates multiple federal laws.

First, the relief sought conflicts with the National Voter Registration Act (NVRA) and Help America Vote Act (HAVA), which delegate responsibility for voter list maintenance, voter verification, and vote processing to the states.[6] The NVRA requires states to "conduct a general program that makes a reasonable effort to remove the names" of voters who have moved or died; specifies when and how states may (and may not) remove voters from the rolls; and compels states to

[6] USDOJ attempts to conjure a distinction between segregating (and ultimately discarding) ballots and conducting list maintenance. Motion at 9, 21. Semantics aside, USDOJ seeks to dictate what state election officials must do to assess the eligibility of alleged noncitizen voters to determine whether their ballots will count. This implicates the NVRA. *Mi Familia Vota v. Fontes*, 129 F.4th 691, 711 (9th Cir. 2025) (NVRA does not allow states to "place individuals' names on the voting rolls but then preclude those who do not provide [documentary proof of citizenship] from casting vote-by-mail ballots in federal elections"), *cert. granted on a different question sub nom. Republican Nat'l Comm. v. Mi Familia Vota*, 146 S. Ct. 2799 (2026).

designate a chief election official responsible for these tasks. 52 U.S.C. §§ 20507(a)(4), 20507(c)-(d), 20509. HAVA requires chief election officials to "implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list" and directs that "[t]he specific choices on the methods of complying . . . shall be left to the discretion of the State[s]." 52 U.S.C. §§ 21083(a)(1)(A), 21083(a)(2), 21085. USDOJ is limited to challenging a state's general list maintenance *program* prescribed by those statutes. *See id.* §§ 20507(a)(4) (NVRA), 21083(a)(2)(A)(i) (HAVA). "Congress did not confer a general auditing power to . . . [US]DOJ over state election officials" in the NVRA or HAVA to supersede states' list maintenance efforts. *United States v. Matthews*, No. 25-cv-3398, 2026 WL 2212877, at *5 (C.D. Ill. July 31, 2026) (citing *West Virginia v. EPA*, 597 U.S. 697, 721-23 (2022)). Congress expressly limited the executive's role in enforcing these statutes. It would flout Congressional intent to allow USDOJ to use 18 U.S.C. § 611 as a backdoor to impose its preferred maintenance procedures. And only Congress gets to decide *how* laws are to be enforced. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326 (2015). "In the absence of strong indicia of a contrary congressional intent, we [must] conclude that Congress provided precisely the remedies it considered appropriate." *Middlesex Cnty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 15 (1981).

Not only does USDOJ's request exceed the Department's express enforcement authority, but it also violates several substantive list maintenance requirements of the NVRA and HAVA. This includes the NVRA's 90-day pre-election moratorium on systematic cancellation programs. 52 U.S.C. § 20507(c)(2)(A). The NVRA also requires that list maintenance be "uniform" and "nondiscriminatory." 52 U.S.C. § 20507(b)(1). USDOJ's requested relief, however, would subject the individuals on its list to different ballot handling, ballot tabulation, and voter qualification procedures than the rest of the electorate in Los Angeles County and across the State. This Circuit has already affirmed that a "program or activity" designed to "ensur[e] the maintenance of an accurate and current voter registration roll" that is applied only to a subset of voters that the Federal Government deems worthy of further investigation is non-uniform and discriminatory. *Mi Familia Vota*, 129 F.4th at 714 (holding "citizenship checks" were "non-uniform and . . . discriminatory in effect" where the challenged law mandated checks of registered voters that election officials had "reason to believe" were not citizens). That the "methodology" described by USDOJ "[makes] it likely that the properly registered citizens who would be required to respond and provide documentation would be primarily newly naturalized citizens" and derived citizens underscores the discriminatory nature of the requested relief. *Id.* (quoting *United States v. Florida*, 870 F. Supp. 2d 1346, 1350 (N.D. Fla. 2012)).

Second, the Federal Government's demand violates the Civil Rights Act (CRA) of 1960. 52 U.S.C. § 10101(a)(2)(A) (prohibiting applying different standards, policies, or practices to determine voter qualifications within same jurisdiction); *see, e.g.*, *Frazier v. Callicutt*, 383 F. Supp. 15, 19 (N.D. Miss. 1974) (finding CRA violation where different procedures were applied to registrants with prior addresses from campus or another county). Applying this type of differential treatment to a "subset of the electorate" "invites county [officials] to pose a barrier to [voting] for any disfavored individual." *Mi Familia Vota*, 129 F.4th at 723-24. The CRA does not permit such *ad hoc* alteration of vote tabulation or voter qualification procedures. *See Shivelhood v. Davis*, 336 F. Supp. 1111, 1115 (D. Vt. 1971).

Third and finally, the Federal Government's improvised mandates violate Section 11(a) of the Voting Rights Act (VRA). 52 U.S.C. § 10307(a) ("No person acting under color of law shall . . . refuse to tabulate, count, and report" an eligible voter's ballot.). Because the Federal Government seeks to segregate—for an undefined period untethered to any certification deadline—the ballots of voters it admits may be U.S. citizens, the requested relief would result in refusing to tabulate an eligible voter's ballot. State and local election officials who complied with the Federal Government's unlawful demand would risk their actions running afoul of

Section 11(a). The VRA prohibits this type of governmental interference with the right to cast a ballot and have it counted.

B. USDOJ's demand will violate voters' constitutional rights.

The Constitution protects the fundamental right to vote from undue restrictions. *See Election Integrity Project Cal., Inc. v. Weber*, 113 F.4th 1072, 1083 (9th Cir. 2024). Under the *Anderson-Burdick* framework, "the rigorousness of [a court's] inquiry . . . depends upon the extent to which a challenged [government action] burdens First and Fourteenth Amendment rights." *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). "Severe" burdens on the right to vote must satisfy strict scrutiny and be "narrowly drawn to advance a state interest of compelling importance." *Id.* Because it is nearly certain to prevent eligible citizens from having their votes counted, *see infra* Section III.A, and threatens disenfranchisement, USDOJ's requested relief is a quintessential severe burden on the right to vote. *Cf. Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1189 (9th Cir. 2021). USDOJ's requested relief is all the more constitutionally suspect because it targets naturalized and derived citizens. *Id.* ("Laws that 'place a particular burden on an identifiable segment' of voters are more likely to raise constitutional concerns.") (citation modified) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 792 (1983)).

There is no state interest that supports this disenfranchisement, let alone a compelling one. USDOJ continues to charge individuals under 18 U.S.C. § 611,

Motion at 31-32, and California's refusal to undertake USDOJ's preferred list maintenance practices does not impede the Federal Government's enforcement. USDOJ's requested relief is not narrowly tailored because it is certain to sweep in thousands of eligible citizens. *See infra* III.

Segregating ballots in Los Angeles County also violates the Fourteenth Amendment's requirement of equal treatment in election administration. *Bush v. Gore*, 531 U.S. 98, 104-05 (2000) (per curiam). Allowing votes to be counted under "varying standards to determine what [i]s a legal vote" violates the Constitution. *Id.* at 107. Here, each of the voters the Federal Government identified as potential noncitizens completed the same process for registration and returning their mail ballots as all other voters. Putting them through a different process to have their votes processed and counted would impose a different standard. Our Constitution does not tolerate such unequal treatment.

Moreover, though the Federal Government claims that the flagged individuals are potentially ineligible to vote, it does not provide proof and identifies no articulable standards that local or state election workers could uniformly apply to treat these voters differently. *Id.* at 106 ("The problem inheres in the absence of specific standards to ensure [] equal application."). Even with such standards, the Federal Government's demands are based on a secretive, opaque, and unreliable data

matching process that largely amounts to: "don't tabulate these ballots because we said so." *See infra* Section III.A. That violates the Equal Protection Clause.

C. The Federal Government has no cause of action and lacks standing.

USDOJ's legal freewheeling suffers from foundational procedural defects that preclude any chance of success on the merits. USDOJ's purported "claim" does not exist as a legal cause of action and, even if it did, the Federal Government would not have Article III standing.

Neither the Supremacy Clause nor 18 U.S.C. § 611 create a civil cause of action. The Supremacy Clause is a "rule of decision," not a self-executing "cause of action." *Armstrong*, 575 U.S. at 324-25. Criminal prohibitions rarely allow courts to issue civil injunctions against the *target* of the prohibition, let alone *other* actors like California. *See, e.g.*, *United States v. Jalas*, 409 F.2d 358, 360 (7th Cir. 1969) (outlining narrow exceptions to general rule that federal courts lack authority to issue injunctions against commission of crime). USDOJ's Motion also fails to comply with Fed. R. App. P. 27(a)(2)(A): "A motion must state with particularity the grounds for the motion . . . and the legal argument necessary to support it." The Motion does not even mention the basis for its cause of action, much less "the legal argument necessary to support it." A viable cause of action is a necessary predicate for a plaintiff to have a likelihood of success on the merits, and the Federal

Government cannot cure this deficiency of its emergency motion in reply. *Cf. Newsom v. Trump*, No. 25-3727, 2026 WL 3180273, at *14 (9th Cir. Oct. 23, 2026).

Moreover, because 18 U.S.C. § 611 does not regulate California or its officials, the Federal Government cannot suffer a "sovereign injury" sufficient for it to have standing—the Federal Government's prosecutorial authority remains unimpeded by California's inaction. Nor is it an Article III injury for California to refrain from acting to make the Federal Government's job easier. *See United States v. California*, 824 F. Supp. 3d 1079, 1085 (C.D. Cal. 2026) ("Without requiring the United States to show some redressable injury, the federal government might initiate a campaign of preemption suits under the aegis of its sovereignty to bring state laws in line with its own political agenda."). And neither the Federal Government's Complaint nor its other papers allege facts that show any drain on federal resources. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

III. The Federal Government cannot demonstrate irreparable harm.

A. The Federal Government has not provided any credible evidence that the list it provided to California includes noncitizens.

The Federal Government offers no substantive evidence that even *one*, let alone more than 20,000 of California's lawfully-registered voters, is a noncitizen voter and therefore cannot show any harm even under its meritless legal theory. The matching protocol the Federal Government describes is highly likely to result in errors. *See* Dkt. 37-2 ¶¶ 13-15 (Oskooii Decl.). Moreover, none of USDOJ's filings

provide more than vague generalizations about USCIS's and HSI's processes, depriving courts of the detail necessary to credit or rely on their accuracy.

First, the matching protocol described does not give meaningful assurance of its reliability. Oskooii Decl. ¶ 17. Using multiple fields employing "combinations or sets of variables such as names, addresses, dates of birth, and gender" can lower the error rate, but "differences in how and when information is collected, recorded, and maintained across databases create additional obstacles." *Id.* ¶ 18. "Even carefully implemented matching procedures can leave uncertainty about whether linked records belong to the same person." *Id.* ¶ 19. Matching state voter files to federal administrative databases "introduces further challenges because of differences in the extent or volume of information, formatting, and record maintenance." *Id.* ¶ 21. The absence of unique identifiers in that matching can "lead to faulty conclusions." *Id.*

Second, the description of USCIS's and HSI's "multilevel process . . . falls far short of the information needed to independently assess the reliability of its conclusion." *Id.* ¶ 26. Each step of the process "introduc[es] the possibility of a false positive." *Id.* HSI and USCIS cannot even confirm that they started with California's current voter roll, stating that HSI "received *what appeared to be* the California voter roster . . . *as of August 2025*." Dkt. 22-3 ¶¶ 20-21 (McLoughlin Decl.) (emphasis added). Each step thereafter is replete with uncertainty. For instance, USCIS fails to identify which third-party platform it used or any information that could help assess

its reliability, *see* Dkt. 22-4 ¶ 16 (Bartell Decl.), which is "critical because information attributed to the wrong voter at this stage can adversely impact" the accuracy of subsequent stages. Oskooii Decl. ¶ 35. The Federal Government claims that "voting records USCIS receives contain information about the listed individual," including SSN, Bartell Decl. ¶ 16; *see also* McLoughlin Decl. ¶ 15, but the publicly available California voter file does not contain SSNs, so it is unclear how USCIS or HSI linked voter data to any SSN data and how that linkage was performed. *See* Oskooii Decl. ¶¶ 35-38.[7] Moreover, the Federal Government fails to disclose "the specific fields from voter records that were compared, whether comparisons required exact agreement or allowed variations, or the specific criteria and thresholds used to classify matches as 'high confidence.'" *Id.* ¶ 26. Thus, a "high confidence" match is a "meaningless qualitative classification rather than an empirically established level of accuracy." *Id.*

Third, the reviews following matching are equally opaque. After assigning the confidence level, USCIS investigators conduct an undefined "manual review" of the matches and a further undefined "second-level review of the match" before turning the data over to HSI. Bartell Decl. ¶¶ 19, 20. HSI conducts a purported "quality

[7] The Federal Government has sought to compel California to produce its unredacted voter roll, but its case was dismissed. *See United States v. Weber*, 816 F. Supp. 3d 1168, 1196 (C.D. Cal. 2026). The Federal Government all but admits that it received what it claims is a California voter registration list from some third-party entity. TRO at 11; Oskooii Decl. ¶¶ 33, 35, 37.

review that consists of identifying duplicate entries, incomplete records, inconsistent formatting, missing identifiers, and other data quality issues" and then "prepares the data for additional enrichment using approved analytic capabilities." McLoughlin Decl. ¶ 16. Nowhere does HSI acknowledge the depth or scope of quality issues with USCIS's data, how many of those issues are resolved, or what happens with those it cannot resolve. Nor does it provide any information about its "enrichment process[]" besides a circular claim that it "adds value . . . before voter records are disseminated as investigative referrals or routed for another authorized purpose." *Id.* ¶ 18. Thus, "it is difficult to determine whether this enrichment process" corrects errors or compounds them by "introduc[ing] further opportunities for error." Oskooii Decl. ¶ 30.

Fourth and finally, even if USCIS and HSI could be taken at their word, they miss a crucial step. Establishing an identity match alone does not establish an individual's citizenship status. *Id.* ¶ 22. At no point does the Federal Government explain the criteria used to resolve "incomplete or conflicting citizenship information" or "how current any of the underlying records are." *Id.* ¶ 14. Their declarations also fail to disclose "how many voter records entered the process, how many generated initial matches, or how many were excluded at each subsequent stage such as the alien-number linkage, citizenship review, second-level review, and HSI assessment." *Id.* ¶ 29.

B. The Federal Government's allegations of noncitizen voting have repeatedly been found unreliable.

The problems with the Federal Government's data, and therefore its inability to demonstrate harm, are not new. In July, at the same time DHS sent its letter to California, the agency sent similar letters to New Jersey, Nevada, and Pennsylvania.[8] In Nevada, DHS initially identified up to 15,903 non-citizen registered voters as the supposedly "high-confidence" matches, but later reduced that number to 6,218, and then to 185 after conducting its purported manual review.[9] Nevada officials later confirmed that, according to state records, all 185 registered voters are citizens.[10] The Federal Government's California list has already gone from 190,832 to approximately 20,000 without explanation, which does not demonstrate irreparable harm. *Winter*, 555 U.S. at 22.

Just days ago, a court held that USDOJ's efforts to "demand that states *remove* United States citizens from their rolls" was unlawful in part because the Federal Government had "downplay[ed] the risk of voter disenfranchisement—despite

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[8] Press Release, DHS, DHS Secretary Markwayne Mullin Sends Letters to Secretaries of State Warning About Non-Citizens on Voter Rolls (July 17, 2026), https://perma.cc/C5KH-B83G.

[9] Tierney Sneed, *Trump admin files 'long shot' lawsuit after California wouldn't open a thumb drive of alleged non-citizens*, CNN (Oct. 15, 2026), https://www.cnn.com/2026/10/15/politics/trump-doj-sues-california-non-citizens-voting.

[10] Sam Levine, *Nearly 200 people wrongly identified on Nevada's voter rolls as non-citizens*, The Guardian (Sep. 25, 2026), https://perma.cc/9VUK-LWWP.

knowingly relying on an inaccurate database to check voter eligibility." *Common Cause*, 2026 WL 3033772, at *1-2. Other federal courts have similarly found that the Federal Government's noncitizen lists are inaccurate,[11] which is unsurprising given the limitations of the available datasets. Oskooii Decl. ¶ 28. This problem extends beyond SAVE. *See* Letter from Senator Padilla & Senator Schumer, to DHS Leadership (Sep. 13, 2026), https://perma.cc/22SY-U5T6; *see also supra* Section IV.A. The Federal Government has thus failed to carry its burden that it is likely to suffer irreparable harm because it has made no showing that there are noncitizens on California's voter roll.

IV. The equities and public interest are squarely against the Federal Government.

The balance of equities and public interest require denial. "[F]ederal courts should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)). *Purcell* prevents "the uncertainty engendered by judicial disruptions to the status quo in the midst of elections [that] can and often will cause eligible voters to remain away from the polls." *Mi Familia Vota v. Fontes*, 111 F.4th 976, 985 (9th Cir. 2024). USDOJ, however, asks the Court

[11] *See, e.g.*, *Pub. Int. Legal Found., Inc. v. N.C. State Bd. of Elections*, 996 F.3d 257, 261 (4th Cir. 2021); *Weber*, 816 F. Supp. 3d at 1185 n.22, 1196.

to change the rules by requiring new election administration procedures and subjecting some voters to new, unlawful scrutiny of their citizenship status.

The public's "deep interest in fair elections" and protecting the fundamental right to vote also weigh against USDOJ. *Lair v. Bullock*, 697 F.3d 1200, 1215 (9th Cir. 2012); *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012) (public interest strongly favors protecting voting rights and "permitting as many qualified voters to vote as possible"). Conversely, "there is . . . no public interest in the perpetuation of unlawful [government] action." *Novedades Y Servicios, Inc. v. Fin. Crimes Enf't Network*, 181 F.4th 961, 981 (9th Cir. 2026).

Here, USDOJ seeks to prevent the tabulation of 20,000 ballots, based on no substantive evidence and an extraordinary legal theory. USDOJ waited until voting had *already started* to issue an impossible and illegal set of commands, threatening election officials with prosecution if they did not comply.[12] The balance of equities and public interest weigh strongly against an injunction.

[12] There is also no harm to federal law enforcement. California records voter participation "in near real time" and collects it in the statewide voter registration system. Cal. Code Regs. tit. 2, § 20027(a). This provides everything USDOJ would need to enforce criminal laws prohibiting noncitizen voting.

CONCLUSION

For the reasons stated herein, this Court should deny the Federal Government's Emergency Motion for Injunction Pending Appeal and dismiss this appeal.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) and Local Rules 27-1 and 32-3 because it contains 5,236 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Times New Roman Font.

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