In the Supreme Court of the United States

STATE OF ALABAMA, ET AL., APPLICANTS

v.

STATE OF CALIFORNIA, ET AL.

APPLICATION FOR STAY

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PARTIES TO THE PROCEEDINGS

Applicants (intervenor defendants-appellants below) are Alabama; Florida; Indiana; Kansas; Louisiana; Missouri; Montana; Nebraska; Oklahoma; South Carolina; South Dakota; and Texas.

Respondents (plaintiffs-appellees below) are California; Massachusetts; Nevada; Washington; Arizona; Colorado; Connecticut; Delaware; the District of Columbia; Illinois; Maine; Maryland; Michigan; Minnesota; New Jersey; New Mexico; New York; North Carolina; Oregon; Rhode Island; Vermont; Virginia; Wisconsin; and Josh Shapiro, Governor of Pennsylvania.

Respondents (defendants-appellants below) are Donald J. Trump, President of the United States; the United States Department of Justice; Todd Blanche, Acting Attorney General; the United States Department of Homeland Security; Markwayne Mullin, Secretary of Homeland Security; the United States Social Security Administration; Frank J. Bisignano, Commissioner of the Social Security Administration; the United States Postal Service; David Steiner, Postmaster General and Chief Executive Officer of the Postal Service; Douglas Tulino, Deputy Postmaster General, Chief Operating Officer, and Chief Human Resources Officer of the Postal Service, and Member of the Postal Service Board of Governors; Amber McReynolds, Chair of the Postal Service Board of Governors; Derek T. Kan, Vice Chairman of the Postal Service Board of Governors; Ronald Stroman, Member of the Postal Service Board of Governors; and Daniel Mark Tangherlini, Member of the Postal Service Board of Governors.

RELATED PROCEEDINGS

United States District Court (D. Mass.):

State of California v. *Trump*, No. 26-cv-11581 (June 18, 2026) (order granting motion to dismiss in part)

State of California v. *Trump*, No. 26-cv-11581 (June 25, 2026) (order granting summary judgment and denying motion to dismiss in part)

State of California v. *Trump*, No. 26-cv-11581 (July 7, 2026) (order granting seven-day administrative stay but otherwise denying stay)

United States Court of Appeals (1st Cir.):

State of California v. *Trump*, Nos. 26-1774, 26-1779 (July 25, 2026) (order denying motion for stay pending appeal)

In the Supreme Court of the United States

STATE OF ALABAMA, ET AL., APPLICANTS

v.

STATE OF CALIFORNIA, ET AL.

APPLICATION FOR STAY

Pursuant to Rule 23 of the Rules of this Court and 28 U.S.C. § 1651, the States of Alabama, Florida, Indiana, Kansas, Louisiana, Missouri, Montana, Nebraska, Oklahoma, South Carolina, South Dakota, and Texas ("State Defendants") respectfully request that this Court stay the injunction issued by the United States District Court for the District of Massachusetts (App., *infra*, at 18a–54a) pending appeal to the United States Court of Appeals for the First Circuit and any proceedings in this Court.

The District Court issued a bizarre injunction prohibiting federal agencies from implementing Executive Order No. 14399, *Ensuring Citizenship Verification and Integrity in Federal Elections*, 91 Fed. Reg. 17,125 (Mar. 31, 2026) ("EO"). The EO imposes no direct obligations on States or the public—but merely instructs federal agencies to consider potential reforms furthering the President's policy goal of bolstering election integrity. Nevertheless, the District Court enjoined the EO based on rampant speculation about *potential* future federal policies that continue to evolve before they are finalized and put into effect. Indeed, the District Court *admitted* this

point, acknowledging "[t]here are clearly many uncertainties as to how the agencies will ultimately implement the EO." App., *infra*, at 10a.

In enjoining the EO anyway, the District Court violated core Article III standing principles. Examining the three disputed parts of the EO makes this point clear.

Start with Respondents' challenge to Section 2(a), which instructs federal agencies to consider whether and how to create lists of voting-age-eligible citizens in each State—and to transmit these lists to each State, which would retain the *option* whether to use them. *See* App., *infra*, at 77a (Dunlap, J., dissenting in part). The District Court speculated that these lists will be inaccurate and potentially cause States to remove eligible voters from the registration rolls. App., *infra*, at 43a. But at the time Respondents sued, important details about the policy were not set. *See DSCC v. Trump*, No. 26-5193, *6 (D.C. Cir. July 28, 2026). That is true even now; for example, the parties still do not know *which* databases federal agencies will use, whether those databases will be inaccurate, and whether and how each individual State would use the lists. *See* Memorandum from Dep't of Homeland Security on Executive Order 14399 Implementation (June 8, 2026) (D. Ct. Doc. 188-1).

Next, Section 2(b) directs the Attorney General to "prioritize the investigation" and "prosecution of State and local officials or any others involved in the administration of Federal elections who issue Federal ballots to individuals not eligible to vote in a Federal election." In other words, it simply prioritizes the enforcement of *longstanding* federal election laws. Even assuming Respondents can

challenge the federal government's prosecutorial discretion, *contra Wayte v. United States*, 470 U.S. 598, 607 (1985), they cannot show any actual or imminent injury from the enforcement of unchallenged election laws—especially given that Respondents do not allege any intent to violate any election statute or that any individual has been investigated or prosecuted pursuant to the EO. *Cf Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014).

Speculation also dominates Respondents' challenge to Section 3(b)'s instruction for the U.S. Postal Service (USPS) to engage in rulemaking on potential reforms designed to strengthen the security of mail-in voting. Since Respondents filed suit and sought preliminary relief, USPS has issued a proposed rule—one which is quite different than what Respondents predicted before the District Court. For example, contrary to Respondents' complaint and briefs, the proposed rule does not "grant[] federal agencies decisive control of th[e] [USPS] list, preventing States from ensuring accuracy." D. Ct. Doc. 65 ¶ 176. On the contrary, the proposed rule provides that "states"—not USPS or any agency of the federal government—"would retain full control over who would (or would not) be able to vote by mail in federal elections within each state, as states would control enrollment with the Postal Service for inclusion on the state's Mail-In and Absentee Participation List." Ballot Mail for Federal Elections, 91 Fed. Reg. 32,915, 32,916 (proposed June 2, 2026).

Even now, the parties are jousting over potential policies in a *proposed rule*—and it is black-letter law that challenges to proposed rules are not ripe. *See Bennett v. Spear*, 520 U.S. 154, 177–78 (1997); *In re Murray Energy Corp.*, 788 F.3d 330, 335

(D.C. Cir. 2015) (Kavanaugh, J.) (explaining that "courts have never reviewed *proposed* rules"). After all, the proposed rule could easily change as a result of rulemaking. Courts do not (as Respondents ask) "presume that the [the agency] is violating the law by going into that process with its mind made up." *Alaska v. U.S. Dep't of Agric.*, 17 F.4th 1224, 1229 n.5 (D.C. Cir. 2021). Indeed, USPS *must* consider changes in response to comments; thus, only after USPS finalizes its rule can Respondents challenge it, because only then will they actually know what they are challenging. *See id.* at 1228–29.

This Court should reaffirm fundamental Article III standing principles and enter a stay. Merits aside, the federal government and State Defendants easily satisfy the requirements for a stay. On their side of the irreparable harm balance, Respondents can point only to speculative injuries from non-finalized policies—which they can challenge if and when those policies become final. *See DSCC*, No. 26-5193, at *6. On the other side, the federal government is irreparably harmed when courts do not give it a chance to lawfully implement the President's policy agenda. And State Defendants are irreparably harmed by being blocked from (1) accessing the optional State Citizenship Lists envisioned by Section 2(a) of the EO and (2) benefitting from the potential reforms in Section 3(b) that could strengthen the security of mail-in voting. Finally, this case is certworthy. One panel of the D.C. Circuit already held that it is too early to challenge the EO, *DSCC*, No. 26-5193, at *6 (Millett, Wilkins, Katsas, JJ.), while a separate panel stayed a preliminary injunction against the EO on the same basis, *NAACP v. U.S. Postal Service*, No. 26-

5257, *1–2 (D.C. Cir. July 17, 2026) (Henderson, Walker, Garcia, JJ.). And more broadly, this case is part of a growing trend whereby litigants challenge executive orders instead of waiting to sue over finalized agency policies. *See, e.g.*, *Trump v. Am. Fed'n of Gov't Emps.*, 145 S. Ct. 2635, 2635 (2025) (per curiam). In granting a stay, the Court could help check that trend, which undermines core Article III standing rules.

STATEMENT

I. Factual Background

On March 31, 2026, President Trump issued Executive Order No. 14399, *Ensuring Citizenship Verification and Integrity in Federal Elections*. The EO recognized the President's "duty under Article II of the Constitution of the United States to enforce Federal law, which includes preventing violations of Federal criminal law and maintaining public confidence in election outcomes." EO § 1. As relevant to this stay application, the EO furthers these ends in three ways.

First, Section 2(a) directs federal agencies to create "State Citizenship Lists" and to transmit the Lists to "State election officials," "[t]o the extent feasible and consistent with applicable law, including but not limited to the Privacy Act of 1974." EO § 2(a). The State Citizenship Lists are simply lists of a State's potentially lawful voters—"individuals confirmed to be United States citizens who will be above the age of 18 at the time of an upcoming Federal election and who maintain a residence in the subject State." *Id.* Under the EO, federal agencies must give States the option "to routinely supplement and provide suggested modifications or amendments to the

State Citizenship List" and must allow individuals "to access their individual records as well as to update or correct them in advance of elections." *Id.* As of the date of this filing, it is still unknown precisely which databases federal agencies will use. Memorandum from Dep't of Homeland Security on Executive Order 14399 Implementation (June 8, 2026) (D. Ct. Doc. 188-1). It is also unknown which States will choose to use the State Citizenship Lists, and how individual States would use the Lists. *Id.*

Second, Section 2(b) directs the Attorney General to "prioritize the investigation" and "prosecution of State and local officials or any others involved in the administration of Federal elections who issue Federal ballots to individuals not eligible to vote in a Federal election, including under 18 U.S.C. 2(a), 18 U.S.C. 241, 18 U.S.C. 371, 18 U.S.C. 611(a), 18 U.S.C. 1001, 18 U.S.C. 1015, 52 U.S.C. 10307, and 52 U.S.C. 20511."

Third, Section 3(b) requires USPS to initiate rulemaking under 39 U.S.C. § 401 and other applicable authority to enhance the security mail-in and absentee ballots. Section 3(b)(i) provides that "Official Election Mail" shall bear tracking barcodes, which are already ubiquitous for other kinds of mail. Section 3(b)(ii) provides that States "may choose" to provide USPS "a list of voters eligible to vote" absentee. Section 3(b)(iii) then provides that USPS "shall not transmit" absentee ballots from unidentified individuals. Section 3(b)(iv) requires USPS to create a process by which each State receives "a list of individuals . . . for mail-in or absentee ballots provided by such State, along with unique ballot envelope identifiers."

The EO also provides that the preparation and transmission of these lists "shall comply with the Privacy Act and all applicable use agreements." EO § 3(b)(iv). Section 3(b)(v) then directs the creation of "procedures enabling each State to routinely supplement and provide suggested modifications or amendments to the State's Mail-In and Absentee Participation List in advance of any Federal election, consistent with applicable State law."

There is no final USPS rule as of the date of this filing. On June 2, 2026, USPS published its notice of proposed rulemaking (NPRM) in response to the EO. *See* Ballot Mail for Federal Elections, 91 Fed. Reg. 32,915. Under this proposal, USPS would not send mail-in ballots to individuals who are not on lists of eligible voters provided by the States. *Id.* at 32,916. Moreover, "states"—not USPS or any federal agency—"would retain full control over who would (or would not) be able to vote by mail in federal elections within each state, as states would control enrollment with the Postal Service for inclusion on the state's Mail-In and Absentee Participation List." *Id.* "The Postal Service would not change the information provided by the state when compiling the lists" but would rather merely "provide technical assistance to states and localities regarding the secure submission of this data." *Id.*

II. Procedural History

The President promulgated the EO on March 31, 2026, and Respondents challenged it almost immediately, filing their original complaint on April 3. D. Ct. Doc. 1. The District Court subsequently granted State Defendants' motion to intervene and defend the EO. *See* D. Ct. Doc. 179.

Respondents filed their First Amended Complaint on April 17. D. Ct. Doc. 65. On April 23, Respondents moved for summary judgment, declaratory relief, and a permanent injunction. D. Ct. Doc. 97. On June 18, the District Court dismissed without prejudice Plaintiff's First Amended Complaint "as to their claims regarding the EO and its implementation with regard to elections occurring after November 3, 2026" on ripeness grounds, App., *infra*, at 17a, explaining that "[t]here are clearly many uncertainties as to how the agencies will ultimately implement the EO, including the source and accuracy of DHS' Confirmed Citizen Lists, and what final rule, if any, will be adopted by the USPS," *id.* at 10a. The District Court denied the motion to dismiss "with regard to the November 3, 2026 election, and all earlier elections." *Id.* at 17a.

On June 25, the District Court granted Respondents' motion for summary judgment, declaratory relief, and injunction, holding that "Sections 2 and 3 of the EO are legally void as they are ultra vires and unconstitutionally violate the separation of powers." App., *infra*, at 51a. The District Court further enjoined Federal Defendants from implementing or enforcing Sections 2 and 3(b)(i)–(v) or (d) of the EO as to Plaintiff States with respect to the November 3, 2026 or any earlier federal election. *Id.* at 51a–53a.

The State Defendants timely appealed and filed motions to stay in the District Court and First Circuit. D. Ct. Docs. 201, 202; Nos. 26-1774, 1779 (1st Cir. July 10, 2026). Both courts denied the motion—with Judge Dunlap partially dissenting from the denial of the stay at the First Circuit. App., *infra*, at 55a–81a.

ARGUMENT

An applicant seeking a stay pending the filing and disposition of a petition for a writ of certiorari must show "(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). This Court should stay the District Court's injunction because Respondents lack standing to challenge the EO. Moreover, the balance of equities is one-sided in favor of State Defendants and the federal government. Finally, this case warrants this Court's attention because two panels of the D.C. Circuit disagreed with the First Circuit on whether Respondents have standing to challenge this EO. And more broadly, this Court should police the growing trend of litigants challenging non-self-executing executive orders instead of waiting to sue over final agency actions.

I. State Defendants Are Likely to Succeed on the Merits Because Respondents Lack Standing.

To establish Article III standing, Respondents must plausibly allege that they suffered a cognizable injury fairly traceable to Defendants and that the injury is likely to be redressed by a favorable judicial decision. *See Allen v. Wright,* 468 U.S. 737, 751 (1984). Respondents must show an "injury in fact"—a harm suffered by the plaintiff that is "actual or imminent, not 'conjectural' or 'hypothetical.'" *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998) (internal quotation omitted). The threatened injury must be "certainly impending," and an "objectively reasonable

likelihood" of future harm is insufficient. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409–10 (2013).

Even if standing exists, courts should not resolve challenges that are prudentially unripe. *See Nat'l Park Hospitality Ass'n v. Dep't of the Interior*, 538 U.S. 803, 807–08 (2003) ("Ripeness is a justiciability doctrine" that is "'drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction.'" (quoting *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 57 n.18 (1993))). This principle "prevent[s] the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also . . . protect[s] the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Id.* at 807–08 (quotation omitted).

Here, both doctrines demand staying the District Court's injunction pending appeal.

A. Respondents lack standing to challenge Section 2(a).

1. Respondents lack a cognizable injury to challenge Section 2(a).

Respondents lack standing to challenge Section 2(a) for a painfully obvious reason: Even assuming the federal government finalizes the policy envisioned by Section 2(a), it would impose *zero* obligation on any State, including Respondents. *See DSCC v. Trump,* --- F. Supp. 3d ---, 2026 WL 1487833, at *2 (D.D.C. May 28, 2026). The EO is clear that any use of the State Citizenship Lists would be *optional*. Indeed, Section 2(a) merely orders the provision of information to States. *See* EO

§ 2(a) (directing the Secretary of Homeland Security to "take appropriate action to compile and transmit to the chief election official of each State a list of individuals confirmed to be United States citizens who will be above the age of 18 at the time of an upcoming Federal election and who maintain a residence in the subject State"). Once the States receive that information, they could simply refuse to act on it. *See DSCC*, 2026 WL 1487833, at *2. Given that reality, Respondents cannot identify a cognizable Article III injury permitting them to challenge Section 2(a). *See Allen*, 468 U.S. at 751.

Unsurprisingly, Respondents failed to articulate a cogent theory of standing below. In their complaint, they claimed Section 2(a) harms them because it "transgress[es] Plaintiff States' constitutional power to prescribe the time, place, and manner of federal elections" and "attempts to coerce Plaintiff States to act contrary to existing state laws and practices related to voter rolls and the determination of voter eligibility." D. Ct. Doc. 65 ¶ 138. But that is utterly implausible because, again, nothing Section 2(a)'s text proscribes States from doing anything or mandates any action in response to the State Citizenship List. EO § 2(a).

Respondents also alleged that Section 2(a) will harm them by "introduc[ing] chaos as the 2026 midterm elections approach, imposing a significant burden on Plaintiff States' electoral systems." D. Ct. Doc. 65 ¶ 139; *see also* App., *infra*, at 75a. This would harm States, Respondents hypothesized, because "citizens who access their records on the State Citizenship List and find that they are not listed will likely turn to Plaintiff States with questions about why they are not listed." D. Ct. Doc. 65

¶ 143. But courts routinely reject this kind of standing theory—which relies on speculation about the "independent action of some third party not before the court." *Allen*, 468 U.S. at 757 (quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41 (1976)); *see also FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 383 (2024); *Clapper*, 568 U.S. at 414 n.5 ("Plaintiffs cannot rely on speculation about the unfettered choices made by independent actors not before the courts.") (quotations and citations omitted). This Court should likewise reject the speculation required to sustain Respondents' "chaos" injury.

For its part, the First Circuit majority relied on its belief that Section 2(a) has forced state election officials to expend resources. App., *infra*, at 69a. But again, this is simply implausible when the text of Section 2(a) obviously allows Respondents to ignore the State Citizenship Lists if they do not wish to use them. *See DSCC*, 2026 WL 1487833, at *12. To the extent that state election officials are voluntarily *choosing* to divert resources in response to Section 2(a), *see* App., *infra*, at 31a (crediting that concern), that is a self-inflicted injury that cannot confer standing. *See Clapper*, 568 U.S. at 418; *Alliance for Hippocratic Medicine*, 602 U.S. at 394 (litigants "cannot spend [their] way into standing" by expending "considerable resources" in response to challenged policy).

2. Respondents' challenge to Section 2(a) is premature.

Even assuming Respondents have somehow identified a cognizable injury related to Section 2(a), their claim is not ripe. Article III of the Constitution requires that injuries be "actual or imminent." *Clapper*, 568 U.S. at 409. Correspondingly, a

litigant lacks standing where a potential injury relies on speculation about future events. *Id.* at 410–14.

That is clearly true here. At the time Respondents filed their complaint—and still today—the federal government has not finalized the policy envisioned by Section 2(a). *See* Memorandum from Dep't of Homeland Security on Executive Order 14399 Implementation (June 8, 2026) (D. Ct. Doc. 188-1). It is still up in the air: (1) *which* databases federal agencies might use to compile the State Citizenship Lists; (2) how federal agencies would comply with the Privacy Act, including by potentially designating relevant information as being used for a "routine use," 5 U.S.C. § 552a(b)(3); and (3) whether the State Citizenship Lists will be circulated to the States at all, given the EO's express command to only create the Lists consistent with the Privacy Act, EO § 2(a). As even the District Court admitted "[t]here are clearly many uncertainties as to how the agencies will ultimately implement the EO, including the source and accuracy of DHS' Confirmed Citizen Lists, and what final rule, if any, will be adopted by the USPS." App., *infra*, at 10a. The District Court should have taken that insight to its logical conclusion: Respondents' injury is not "actual or imminent" as required by Article III. *Clapper*, 568 U.S. at 409.

This Court addressed a nearly identical fact pattern in *Trump v. New York*, 592 U.S. 125 (2020) (per curiam). Just as Section 2(a) qualifies its directive to the Secretary of Homeland Security that it shall compile and transmit the lists "[t]o the extent feasible and consistent with applicable law," the Trump Administration's 2020 policy regarding congressional apportionment regulation had the exact same

disclaimer. *See Trump v. New York*, 592 U.S. at 131. Because "the President [had] qualified his directive by providing that the Secretary should gather information 'to the extent practicable' and take action 'to the extent feasible,'" "[a]ny prediction how the Executive Branch might eventually implement this general statement of policy [was] no more than conjecture at th[e] time." *Id.* (internal quotation marks and citation omitted). So too here. Until the federal government makes a formal determination that Section 2(a) of the EO can be implemented consistent with the Privacy Act and other applicable law, judicial review is premature. *See Am. Fed'n of Gov't Emps.*, 145 S. Ct. at 2635 (Sotomayor, J., concurring in the grant of stay).

Below, Respondents asked the District Court to *assume* that the State Citizenship Lists will be based on the SAVE database, and that the Lists will be inaccurate because the SAVE database is purportedly incomplete—so that "[t]he State Citizenship List will inevitably suffer from the same defects as SAVE." D. Ct. Doc. 65 ¶¶ 133–36. But *even* assuming the SAVE database has inaccuracies, Section 2(a) makes clear that the Lists could be based on *other* sources of information, including "Federal citizenship and naturalization records, SSA records, SAVE data, and other relevant Federal databases." EO § 2(a). The parties still do not know *which* databases federal agencies will use and whether those databases will be inaccurate. *See* D. Ct. Doc. 188-1.

Respondents' challenge to Section 2(a) is riddled with contingencies and speculation that impede judicial review. *See Texas v. United States*, 523 U.S. 296, 300 (1998) (precluding claims that are "contingent future events that may not occur

as anticipated, or indeed may not occur at all"); *Clapper*, 568 U.S. at 409–10, 414 n.5. The Court should enter a stay pending appeal.

B. Respondents lack standing to challenge Section 2(b).

Section 2(b) directs the Attorney General to investigate and, as appropriate, prosecute "State and local officials," "individuals," and "public or private entities" who provide ballots to individuals not eligible to vote in a Federal election. EO § 2(b). Respondents do not have standing to challenge this directive—for at least two reasons.

First, any fear-of-prosecution injury would not be redressed by enjoining Section 2(b). *See, e.g.*, *Alliance for Hippocratic Medicine*, 602 U.S. at 380. The EO merely prioritizes the enforcement of preexisting and *unchallenged* federal election laws. *See* EO § 2(b). Thus, even if Section 2(b) remains enjoined, nothing would stop the federal government from enforcing those other laws—which have not been enjoined. Respondents therefore cannot establish redressability. *See, e.g.*, *Inst. for Free Speech v. Johnson*, 148 F.4th 318, 331 (5th Cir. 2025) ("[R]edressability is undermined where an independent and unchallenged law also causes the plaintiff's injury.").

Second, Respondents have failed to show that they face an "actual or imminent" risk of criminal prosecution. *Clapper*, 568 U.S. at 409. They offer no evidence that any individual—let alone a state official—has been criminally investigated or prosecuted because of Section 2(b). And it is hard to imagine such prosecutions happening given that Respondents do not dispute that, under federal

and state law, only of-age United States citizens can vote and that the provision of fraudulent ballots is unlawful. *See* 18 U.S.C. § 611; 52 U.S.C. § 20511. But regardless of how Respondents read the EO, a plaintiff's subjective and irrational fear of prosecution is simply not enough to confer standing. *See Laird v. Tatum*, 408 U.S. 1, 13–14 (1972) ("Allegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm[.]").

The First Circuit reached a contrary conclusion by crediting Respondents' unsubstantiated fears of prosecution. *See* App., *infra*, at 73a–74a. But the evidence supporting that fear is even weaker than that credited by this Court in *Susan B. Anthony List v. Driehaus*, a case applying a somewhat relaxed imminence standard for cases where an individual is being chilled from exercising his constitutional rights. *See* 573 U.S. at 157–61. But even in that context, this Court still requires a plaintiff to allege "[(1)] an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and [(2)] there exists a credible threat of prosecution thereunder." *Id.* at 159 (quotations and citations omitted). And unlike the plaintiff in *Susan B. Anthony List*, Respondents have *not alleged* they plan to violate any federal election law. *See id.* at 166; *see also generally* D. Ct. Doc 65. And while the organization in *Susan B. Anthony List* had recently been threatened with prosecution for violating the law at issue, 573 U.S. at 164–65, there is no evidence of any sort of prosecution risk in this case.

This Court should stay the District Court's injunction against Section 2(b) pending appeal.

C. Respondents lack standing to challenge Section 3(b) because their challenge is not ripe.

It is black-letter law that litigants cannot challenge proposed regulations—but must instead wait for finalized agency policies. *See* 5 U.S.C. § 704; *Bennett*, 520 U.S. at 177–78; *In re Murray Energy Corp.*, 788 F.3d at 334 (Kavanaugh, J.) (explaining that "courts have never reviewed *proposed* rules"). Once again, Article III standing requires a sufficiently concrete challenged policy to assess the imminence of a threatened injury. *See Trump v. New York*, 592 U.S. at 131–32.

This rule is important and should be rigorously enforced. In allowing ongoing administrative proceedings to be completed, courts "respect the Executive Branch's interest in 'crystallizing its policy before that policy is subjected to judicial review.'" *Common Cause v. Trump*, 506 F. Supp. 3d 39, 46 (D.D.C. 2020) (quoting *Am. Petroleum Inst. v. EPA*, 683 F.3d 382, 387 (D.C. Cir. 2012)). Where, as here, "the possibility that further [administrative] consideration will actually occur before implementation is not theoretical, but real," "[j]udicial intervention at this time would inappropriately interfere with ongoing action within the Executive Branch." *Id.* at 45–46 (first alteration in original) (quoting *Wyo. Outdoor Council v. U.S. Forest Serv.*, 165 F.3d 43, 48 (D.C. Cir. 1999)).

At the time Respondents filed their operative complaint and challenged section 3(a) of the EO, not even a proposed rule existed. Thus, the complaint *admitted* Respondents did not know key details about how Section 3(b) might be implemented. *See* D. Ct. Doc. 65 ¶ 128 (stating the EO itself "does not specify how [USPS] 'enroll[ment]' will be effectuated, nor the entity charged with effectuating it"). During

litigation over Respondents' preliminary injunction motion, the federal government issued a proposed rule and solicited public comments. 91 Fed. Reg. 32,915. Indeed, the federal government committed not to promulgate a final rule until the comment period was over. D. Ct. Doc. 156-3 ¶ 5. To this day, the federal government still has not issued a final rule.

In entering its preliminary injunction, the District Court issued an advisory opinion against a hypothetical policy—directly contrary to this Court's precedent. *See Trump v. New York*, 592 U.S. at 131–32. Section 3(b) of the EO does not require federal agencies to adopt a particular policy. Rather, it directs the USPS to *initiate* rulemaking about mail-in and absentee ballots, and the administrative process remains in USPS's hands. *See* EO § 3(b)(iv) (directing "[p]roposed provisions specifying that the USPS shall provide each State with a list of individuals (Mail-In and Absentee Participation List) who are enrolled with the USPS, *pursuant to a process specified in the rulemaking directed by this subsection*" (emphasis added)); *id.* § 3(b)(v) (directing unspecified "procedures enabling each State to routinely supplement and provide suggested modifications or amendments to the State's Mail-In and Absentee Participation List").

During the notice-and-comment process, proposed policies can and do change because agencies *must* consider suggestions and objections contained in comments. *See Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015); *see also* App., *infra*, at 10a ("The implementation of the EO may well result in the evolving and dynamic process described by Defendants, in which Plaintiffs may participate in a comment period

that could result in their concerns being incorporated in agency decision making."). Here, the EO also specifically instructs USPS to implement the President's proposed reforms in "compl[iance] with the Privacy Act and all applicable use agreements," and "consistent with applicable State law." EO § 3(b)(iv)–(v). USPS has not yet made these determinations—because this litigation short-circuited an ongoing regulatory process. Entering a preliminary injunction before such determinations are made is unlawful. *See, e.g.*, *Am. Fed'n of Gov't Emps.*, 145 S. Ct. at 2635 (Sotomayor, J., concurring in the grant of stay).

The First Circuit concluded otherwise by crediting Respondents' claim that they will have to divert resources to comply with what they predict the final rule will be. App., *infra*, at 68a–72a. Once again, diverting resources in response to speculation about future, non-final rules is a self-inflicted injury that cannot confer standing. *See Alliance for Hippocratic Medicine*, 602 U.S. at 394. Thus, contrary to the First Circuit's reasoning, Respondents must wait to assert potential pocketbook injuries—like the speculative cost of redesigning mail-in ballot envelopes—until a final policy exists. *Contra* App., *infra*, at 72a. Holding otherwise would open the door to a broad range of speculative injuries—even though such speculation can prove to be wrong.

Indeed, this case demonstrates the wisdom of the traditional rule that litigants must wait for finalized agency policies to sue. *See In re Murray Energy Corp.*, 788 F.3d at 334–36. Since Respondents filed suit and sought injunctive relief, USPS has issued a proposed rule—one which is different than the one Respondents

hypothesized before the District Court in their complaint and original briefs. For example, Respondents alleged in their complaint that "Section 3 of the EO grants federal agencies decisive control of this [USPS] list, preventing States from ensuring accuracy." D. Ct. Doc. 65 ¶ 176. But the proposed rule says the opposite. Under the rule being considered, "states"—not USPS or any agency of the federal government—"would retain full control over who would (or would not) be able to vote by mail in federal elections within each state, as states would control enrollment with the Postal Service for inclusion on the state's Mail-In and Absentee Participation List." 91 Fed. Reg. at 32,916. The proposed rule also expressly states that "[t]he Postal Service would not change the information provided by the state when compiling the lists" but would rather merely "provide technical assistance to states and localities regarding the secure submission of this data." *Id.* Rather than opining on an evolving, non-final policy, the District Court should have heeded Article III and denied Respondents' premature request for injunctive relief.

The Court should enter a stay pending appeal.

II. The Irreparable Harm and Balance of Equities Factors Favor Granting a Stay

The other stay factors also weigh in favor of staying the District Court's injunction pending appeal. First, the stay applicants have demonstrated irreparable harm. *See Hollingsworth*, 558 U.S. at 190. The federal government is clearly harmed when courts prevent federal agencies from attempting to implement the President's policy agenda in a lawful manner. *See* Fed. Gov. Stay App. at 27. Additionally, State Defendants are irreparably harmed because the District Court's order is preventing

the federal government from developing Section 2(a)'s State Citizenship Lists and providing this optional resource to the States. D. Ct. Doc. 74 at 11–12. Further, State Defendants have a concrete interest in ensuring that mail-in ballots cast by their voters are securely delivered and counted. *See, e.g.*, *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam). Allowing the federal government to promulgate final rules advancing election integrity reforms enhances the ability of States to ensure the security of mail voting within their jurisdictions. And State Defendants cannot themselves implement some of these commonsense proposed reforms—such as improved USPS delivery systems for election mail. *See* D. Ct. Doc. 74 at 7.

The equitable factors also favor a stay. *See Hollingsworth*, 558 U.S. at 190. On their side of the balance, Respondents can point only to speculative injuries based on non-final agency actions. *See supra* Parts I.A.1, I.C. But as the D.C. Circuit explained, litigants worried about potential final agency actions can protect their interests by waiting to challenge final agency actions. *DSCC*, No. 26-5193, at *2. There is thus no equitable need for this Court to bend traditional standing rules to protect Respondents' interests.

On the other hand, the federal government has a strong interest in getting a chance to implement executive orders lawfully. *See Common Cause*, 506 F. Supp. 3d at 46. Presidents frequently articulate policy objectives, but they rely on agencies to use their expertise to implement policy ideas lawfully. *See Seila Law LLC v. CFPB*, 591 U.S. 197, 203–04 (2020). Giving agencies a chance to lawfully implement policies—rather than reflexively barring presidential directives that do not bind the

public—reflects the respect due to the executive branch as a coordinate branch of government. *See Common Cause*, 506 F. Supp. 3d at 46.

At the same time, the federal courts also have a strong interest in not being forced to adjudicate rushed, speculative cases like this one. Federal courts exist to resolve concrete legal disputes based on specific factual circumstances. *See Allen-Bradley Loc. No. 1111, United Elec., Radio & Mach. Workers of Am. v. Wis. Emp. Rels. Bd.*, 315 U.S. 740, 746 (1942). But as recognized by multiple federal judges, there are still many unknowns about how the EO will be implemented. *See DSCC*, No. 26-5193, at *6; App., *infra*, at 10a ("There are clearly many uncertainties as to how the agencies will ultimately implement the EO, including the source and accuracy of DHS' Confirmed Citizen Lists, and what final rule, if any, will be adopted by the USPS."); *DSCC*, 2026 WL 1487833, at *6, *10. Entertaining challenges to non-final, evolving policies—like Respondents demand—only pulls federal courts away from the foundational principles that constrain and guide judicial power. *See Trump v. New York*, 592 U.S. at 131–32.

III. This Case is Certworthy.

Finally, there is a reasonable probability that this Court would grant certiorari in this case. *See Hollingsworth*, 558 U.S. at 190.

To start, two panels of the D.C. Circuit have already split with the First Circuit on whether it is too early to challenge the EO. Just today, the D.C. Circuit affirmed Judge Nichols's denial of a preliminary injunction against the EO because it is too early to challenge it. *See DSCC*, No. 26-5193, at *2. Another panel of the D.C. Circuit stayed a preliminary injunction against the EO—again, because it concluded the EO

"is likely neither constitutionally nor prudentially ripe for review." *U.S. Postal Service*, No. 26-5257, at *1. In declining to grant a stay, the First Circuit reached the opposite conclusion. *See* App., *infra*, at 68a–75a. The existence of a circuit split as to whether litigants have standing to challenge the EO suggests this case warrants this Court's attention. *See* Sup. Ct. R. 10(a) (listing whether "a United States court of appeals has entered a decision" that conflicts with "the decision of another United States court of appeals" as the first consideration in reviewing petitions for writs of certiorari).

More broadly, this case would merit certiorari because it underscores the need to police a growing trend of courts granting injunctions against non-self-executing executive orders instead of waiting for federal agencies to issue final polices. *See, e.g.*, *Am. Fed'n of Gov't Emps.*, 145 S. Ct. at 2635 (staying district court preliminary injunction against executive order); *LULAC v. Exec. Off. of the President*, 818 F.Supp.3d 34, 116–17 (D.D.C. 2026) (granting injunctive relief against parts of election-related executive order); *Nat'l Ass'n of Diversity Officers in Higher Ed. v. Trump*, 769 F.Supp.3d 465, 470–72 (D. Md. 2025) (enjoining implementation of executive order calling on Attorney General to develop plan to end racial discrimination), *stayed by* 2025 WL 4936000 (4th Cir. Mar. 14, 2025). This trend threatens to undermine core Article III rules and the principles of judicial restraint they protect. As this Court has reiterated time and again, litigants cannot brings lawsuits based on hypotheticals about potential future injuries. *See Clapper*, 568 U.S. at 416. There is no exemption for challenges to executive orders or proposed

agency rules. *See, e.g.*, *Trump v. New York*, 592 U.S. at 131–32. As the D.C. Circuit recognized, the EO in this case "is not self-executing." *DSCC*, No. 26-5193, at *2. Where, as here, a presidential directive is subject to change and agency discretion before being implemented, courts and litigants must pause and wait for final agency actions. In granting a stay, this Court would help ensure the continued integrity of basic Article III rules.

CONCLUSION

For the foregoing reasons, this Court should stay the injunction of the United States District Court for the District of Massachusetts, pending resolution of the State Defendants' appeal to the United States Court of Appeals for the First Circuit and any proceedings in this Court. This Court should also grant an immediate administrative stay of the injunction to while this application is pending.

Dated: July 28, 2026

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APPENDIX

Memorandum and Order from U.S. District Court District of Massachusetts (June 18, 2026) 1a

Memorandum and Order from U.S. District Court District of Massachusetts (June 25, 2026) 18a

Memorandum and Order from U.S. District Court District of Massachusetts (July 7, 2026) 55a

Court of Appeals order denying stay (July 25, 2026) 62a

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LEAGUE OF WOMEN VOTERS OF MASSACHUSETTS, et al., Plaintiffs, v. DONALD J. TRUMP, in his official capacity as President of the United States, et al., Defendants, and STATE OF MISSOURI, et al., Intervenor-Defendants.	*	Civil Action No. 1:26-cv-11549-IT
STATE OF CALIFORNIA, et al., Plaintiffs, v. DONALD J. TRUMP, in his official capacity as President of the United States, et al., Defendants, and STATE OF MISSOURI, et al., Intervenor-Defendants.	*	Civil Action No. 1:26-cv-11581-IT

MEMORANDUM & ORDER

June 18, 2026

TALWANI, D.J.

Following the publication of President Donald J. Trump's Executive Order 14399, Ensuring Citizenship Verification and Integrity in Federal Elections, 91 Fed. Reg. 17125 (Mar. 31, 2026) (the "EO"), two groups of plaintiffs challenged the EO in the United States District Court for the District of Massachusetts. In the first action, eight non-profit organizations involved with voter education (collectively, "Plaintiff Organizations"),[1] assert that their U.S. citizen members will be excluded from voting if the EO is implemented.[2] In the second action, 23 states and the District of Columbia (collectively, "Plaintiff States"),[3] challenge the EO "to safeguard their constitutional authority to administer state and federal elections."[4] A group of twelve states[5] moved to intervene in each case, asserting their "concrete interest in receiving the

[1] The Plaintiff Organizations are the League of Women Voters of Massachusetts, League of Women Voters Lotte E. Scharfman Memorial Education Fund, League of Women Voters of the United States, League of Women Voters Education Fund, Association of Americans Resident Overseas, U.S. Vote Foundation, OCA-Asian Pacific American Advocates, and Delta Sigma Theta Sorority.

[2] See League of Women Voters of Massachusetts, et al. v. Trump, et al. ("LWVM"), No. 1:26-cv-11549, Compl. ¶ 1 [Doc. No. 1].

[3] The Plaintiff States are Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, Washington, Wisconsin, and Josh Shapiro in his official capacity as Governor of Pennsylvania.

[4] State of California, et al. v. Trump, et al. ("California"), No. 1:26-cv-11581, Am. Compl. ¶ 1 [Doc. No. 65].

[5] The Intervening States are Alabama, Florida, Indiana, Kansas, Louisiana, Missouri, Montana, Nebraska, Oklahoma, South Carolina, South Dakota, and Texas.

resources ordered in [the EO] and in seeing increased security for mail ballots cast in their elections[,]"[6] and the court has granted permissive intervention in both cases.[7]

Defendants, joined by Intervenors, seek dismissal of both suits under Federal Rules of Civil Procedure 12(b)(1) and (6).[8] The court consolidated the two cases for a hearing on these and other pending motions.[9]

In this consolidated Order, the court addresses Defendants' and Intervenor States' ripeness challenge, which raises issues common to both actions, and GRANTS dismissal without prejudice as to claims regarding the EO and its implementation for elections occurring after November 3, 2026, otherwise DENIES the ripeness challenge, and reserves on other issues raised in the motions to dismiss.

I. BACKGROUND

A. The Executive Order

The EO asserts "an unavoidable duty under Article II of the Constitution of the United States to enforce Federal law, which includes preventing violations of Federal criminal law and

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[6] California, No. 1:26-cv-11581, Mot. to Intervene 2 [Doc. No. 73]; LWVM, No. 1:26-cv-11549, Mot. to Intervene 2 [Doc. No. 44].

[7] See California, No. 1:26-cv-11581, Elec. Order [Doc. No. 179]; LWVM, No. 1:26-cv-11549, Elec. Order [Doc. No. 106].

[8] See LWVM, No. 1:26-cv-11549, Defs.' Mot. to Dismiss [Doc. No. 126], Intervenors' Mot. to Dismiss [Doc. No. 124]; California, No. 1:26-cv-11581, Defs.' Mot. to Dismiss [Doc. No. 154], Intervenors' Brief [Doc. No. 153] (opposing Plaintiff States' dispositive motion on ripeness grounds).

[9] See California, No. 1:26-cv-11581, Order [Doc. No. 88]; LWVM, No. 1:26-cv-11549, Order [Doc. No. 57]. The other motions are Plaintiff Organizations' motion to preliminarily enjoin implementation of Section 3 of the EO, see LWVM, No. 1:26-cv-11549, Mot. for Prelim. Inj. [Doc. No. 73], and Plaintiff States' motion for summary judgment on their claims, see California, No. 1:26-cv-11581, Mot. for Summ. J. [Doc. No. 97].

maintaining public confidence in election outcomes." Exec. Order 14399 § 1. The EO notes that several executive agencies maintain records that "can assist in verifying identity and Federal election voter eligibility" and finds that "additional measures are necessary[]" to "enhance election integrity via the United States Mail[.]" Id.

Section 2 of the EO directs the Director of the United States Citizenship and Immigration Services ("USCIS"), a component within the Department of Homeland Security ("DHS"), in coordination with the Commissioner of the Social Security Administration ("SSA"), "[t]o the extent feasible and consistent with applicable law," to compile lists of citizens eligible to vote in a specific state (the "Confirmed Citizen Lists"[10]). Id. § 2(a). The EO provides that the Confirmed Citizen Lists "shall be derived from Federal citizenship and naturalization records, SSA records, SAVE [Systematic Alien Verification for Entitlements] data,[11] and other relevant Federal databases." Id.; see also id. § 4(c) (the SSA Commissioner must "provide all . . . citizenship and identity data [necessary]" to compile the Confirmed Citizen Lists for the DHS secretary, "consistent with applicable law[.]").[12] The EO defines the Confirmed Citizen Lists as limited to

[10] The EO refers to these federally created lists as "State Citizenship Lists." Id. § 2(a)

[11] SAVE is a system administered by DHS that is "designed to help federal, state, tribal, and local government agencies confirm citizenship and immigration status prior to granting benefits and licenses, as well as for other lawful purposes." DHS, Privacy Impact Assessment for the Systematic Alien Verification for Entitlements Program, DHS Ref. No. DHS/USCIS/PIA-006(c), at 2 (2020), https://perma.cc/HU2M-NTL8 (2020 PIA). SAVE users "formalize the purpose and use in which they use SAVE through a Memorandum of Agreement (MOA) or Computer Matching Agreement" establishing "the terms and conditions for the user agency's participation in SAVE." Id. at 2–3. One purpose for which states can enter into an agreement to use SAVE is to verify the citizenship of registered voters. Privacy Act of 1974, 5 U.S.C. § 552a; Notice of Modified System of Records, 90 Fed. Reg. 48948, 48952 (Oct. 31, 2025) (2025 SORN). DHS does not dispute that the SAVE system has erroneously flagged citizens as noncitizens. See California, No. 1:26-cv-11581, Pls.' Statement of Material Facts ¶¶ 15–16 [Doc. No. 105]; Defs.' Statement of Material Facts ¶¶ 15–16 [Doc. No. 155].

[12] Defendants deny that USCIS has made "any final decision about what, if any, information will be included in any [Confirmed Citizenship Lists] that may ultimately be created," and contend that EO § 2(a) "lists 'SAVE data' as a potential source of data[.]" See California, No. 1:26-cv-

"individuals confirmed to be United States citizens who will be above the age of 18 at the time of an upcoming Federal election and who maintain a residence in the subject State[.]" Id. § 2(a).

The EO requires DHS to "establish the infrastructure necessary to compile, maintain, and transmit" the Confirmed Citizen Lists by **June 29, 2026**. Id. § 4(c) (emphasis added). Also by **June 29, 2026**, DHS must designate a point of contact regarding List-related inquiries from individuals and State election officials. Id. The EO requires that DHS update and transmit the Confirmed Citizen List for each State to State election officials at least 60 days before each regularly scheduled Federal election, or upon request regarding a special Federal election. Id. § 2(a). Accordingly, for the November 3, 2026 general election, the EO requires DHS to provide the Confirmed Citizen Lists to State election officials by **September 4, 2026**.

Section 3 of the EO directs the Postmaster General of the United States Postal Service ("USPS") to initiate a proposed rulemaking to ensure the integrity of mail voting, see id. § 3(a); Notice of Proposed Rulemaking, 91 Fed. Reg. 32915 (June 2, 2026), and requires that a final rule be published by **July 29, 2026**. The EO requires that the proposed rule (1) include requirements regarding election mail design; and (2) specify that USPS, after receiving State-furnished lists of voters approved to vote by mail, shall provide each State with a list of individuals who are "enrolled with the USPS" pursuant to a process specified in the rule, and shall not transmit the ballot of any voter unless the individual has been so "enrolled." Exec. Order 14399 § 3(b). The EO requires that the proposed rule specify that States may choose to notify USPS of their intent to use mail ballots no fewer than 90 days prior to a Federal election, and may submit to the

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11581, Defs.' Statement of Material Facts ¶ 15 [Doc. No. 155] (citing Mayhew Decl. ¶¶ 5–10 [Doc. No. 156-1]). As of June 8, 2026, DHS has not confirmed whether or in what capacity SAVE data will be used. See California, No. 1:26-cv-11581, Defs.' Notice 2 [Doc. No. 188]; LVWM, No. 1:26-cv-11549, Defs.' Notice 2 [Doc. No. 164].

USPS, no fewer than 60 days before the election, a list of voters to whom the State intends to provide mail ballots. Id. § 3(b)(ii). Accordingly, for the November 3, 2026 general election, States may notify USPS by August 5, 2026, of their intent to use mail ballots, and by September 4, 2026, of their voter lists. Id.

In Sections 2 and 5, the EO describes several criminal offenses, both directly and indirectly relating to election fraud, and requires the Attorney General to prioritize the investigation and prosecution of State and local officials who issue ballots to non-eligible voters. Id. §§ 2(b), 5. The EO also provides that "[s]tates and localities should preserve, for a 5-year period, all records and materials – excluding ballots cast – evidencing voter participation in any Federal election (e.g., ballot envelopes, regardless of carrier)." Id. § 5 (emphasis added).

B. Overview of the Causes of Action in the two Complaints

Plaintiff Organizations assert six counts in their Complaint [Doc. No. 1], with four of these brought against the President and USPS Defendants.[13] Plaintiff Organizations assert that Section 3 of the EO violates the Separation of Powers doctrine (Count I), is ultra vires (Count II), violates principles of Federalism (Count III), and violates their member's right to vote (Count IV). LWVM, No. 1:26-cv-11549, Compl. ¶¶ 120–168 [Doc. No. 1]. Plaintiff Organizations also assert a violation of the Voting Rights Act by the USPS Defendants (Count V), id. ¶¶ 181–184,

[13] The USPS Defendants in both cases are the USPS, the Postmaster General, the Deputy Postmaster General, and the Chairwoman, Vice Chairman, and other members of the USPS Board of Governors. LWVM, No. 1:26-cv-11549, Compl. ¶¶ 41–48 [Doc. No. 1]; California, No. 1:26-cv-11581, Am. Compl. ¶¶ 47–54 [Doc. No. 65].

and violations of the Privacy Act and Administrative Procedure Act by DHS Defendants[14] and SSA Defendants[15] (Count VI), id. ¶¶ 185–205.

Plaintiff States bring three counts in their Amended Complaint. Plaintiff States assert that Section 2 of the EO is unconstitutional, bringing a claim against the President, the Department of Justice ("DOJ"), and the acting Attorney General,[16] the DHS Defendants, the SSA Defendants, and the Department of Commerce ("DOC") Defendants.[17] California, No. 1:26-cv-11581, Am. Compl. ¶¶ 150–166 [Doc. No. 65]. Against the President, acting Attorney General, and USPS Defendants, Plaintiff States assert that Section 3 of the EO is unconstitutional. Id. ¶¶ 167–178. Finally, Plaintiff States allege, against the President, Department of Justice, and acting Attorney General, that Section 5 is unconstitutional. Id. ¶¶ 179–189.

II. PRUDENTIAL RIPENESS

Defendants maintain that the EO is merely an "intra-Executive Branch directive" that directs future agency action and that "of its own force[] does not change anything at all about elections in any State."[18] They assert that judicial review will be appropriate later, after implementation actions have been taken, because Defendant agencies are still considering and

[14] The DHS Defendants in both cases are DHS, the Secretary of DHS, USCIS, and the Director of USCIS. LWVM, No. 1:26-cv-11549, Compl. ¶¶ 50–51, 54–55 [Doc. No. 1]; California, No. 1:26-cv-11581, Am. Compl. ¶¶ 41–44 [Doc. No. 65].

[15] The SSA Defendants in both cases are SSA and the Commissioner of SSA. LWVM, No. 1:26-cv-11549, Compl ¶¶ 52–53 [Doc. No. 1]; California, No. 1:26-cv-11549, Am. Compl. ¶¶ 52-53 [Doc. No. 65].

[16] California, No. 1:26-cv-11581, Am. Compl. ¶¶ 39–40 [Doc. No. 65].

[17] The DOC Defendants are DOC and the Commerce Secretary. California, No. 1:26-cv-11581, Am. Compl. ¶¶ 55–56 [Doc. No. 65].

[18] California, No. 1:26-cv-11581, Defs.' Mem. 8 [Doc. No. 157]; LWVM, No. 1:26-cv-11549, Defs.' Mem. 8 [Doc. No. 128].

deliberating future action.[19] They argue further that no active case or controversy will exist until the agencies implement the EO, particularly given the EO's saving clause and express limitations that agencies shall only act pursuant to their legal authority. California, No. 1:26-cv-11581, Defs.' Mem. 12–16 [Doc. No. 157]. Similarly, Intervenor States argue that "[t]he prudential ripeness doctrine . . . strongly counsels against considering Plaintiffs' constitutional arguments before final agency actions exist." LWVM, No. 1:26-cv-11549, Intervenors' Mem. 1 [Doc. No. 125].

Plaintiffs assert that their claims are ripe for judicial review because the 2026 federal elections are imminent and the EO has caused significant uncertainty and confusion regarding planning. Plaintiff States have asserted, and Defendants do not dispute, that preparation for the election is currently underway. See California, No. 1:26-cv-11581, Pls.' Statement of Material Facts ¶ 8 [Doc. No. 105]; id., Defs.' Statement of Material Facts ¶ 8 [Doc. No. 155]. Plaintiff States have further asserted that their election officials fear criminal prosecution if they issue ballots to voters who are not on the Confirmed Citizen List or if they issue ballots to eligible 17-year-old voters in connection with federal primary elections. See id. Pls.' Statement of Material

[19] California, No. 1:26-cv-11581, Defs.' Mem. 9 [Doc. No. 157] (citing Monteith Decl. ¶ 3 [Doc. No. 156-3]; Mayhew Decl. ¶ 5 [Doc. No. 156-1]; MacBride Decl. ¶ 5 [Doc. No. 156-2]); LWVM, No. 1:26-cv-11549, Defs.' Mem. 9 [Doc. No. 128] (citing Monteith Decl. ¶ 3 [Doc. No. 127-3]; Mayhew Decl. ¶ 5 [Doc. No. 127-1]; MacBride Decl. ¶ 5 [Doc. No. 127-2]). But see California, No. 1:26-cv-11581, Defs.' Notice [Doc. No. 188-1] (On June 8, 2026, DHS Secretary approved a "technological approach" toward implementing the infrastructure, where "USCIS, in coordination with SSA and [the Department of State ('DOS')], would deliver by June 30, 2026, a mechanism for State use that provides . . . access to citizenship-related information from each agency[,]" "endors[ed] a phase plan under which citizen-facing portal capabilities would be developed and implemented later in 2026[,]" and approved DHS "continu[ing] preliminary conversations with USPS concerning potential data-sharing arrangements[.]"); LWVM, No. 1:26-cv-11549, Defs.' Notice [Doc. No. 164-1].

Facts ¶¶ 36–37 [Doc. No. 105].[20] Similarly, Plaintiff Organizations have alleged that they are currently wrestling with the impact of the EO on their members and on their voter education programming. See, e.g., LWVM, No. 1:26-cv-11549, Canavan Decl. ¶ 28 [Doc. No. 75-2] ("LWVMA has stopped actively disseminating any new voter-education materials about mail voting because of [the EO]."). All Plaintiffs assert substantial confusion regarding the EO's impact on the 2026 elections and on elections in general. See California, No. 1:26-cv-11581, Pls.' Statement of Material Facts ¶¶ 37, 39 [Doc. No. 105]; LWVM, No. 1:26-cv-11549, Pls.' Mem. 22 [Doc. No. 74].

A. Relevant Law

"Ripeness is a justiciability doctrine designed 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." Nat'l Park Hosp. Ass'n v. Dep't of Interior, 538 U.S. 803, 807–08 (2003) (quoting Abbott Labs. v. Gardner, 387 U.S. 136, 148–49 (1967)). "[T]he question of ripeness turns on 'the fitness of the issues for judicial decision' and 'the hardship to the parties of withholding court consideration.'" Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n, 461 U.S. 190, 201 (1983) (quoting Abbott Labs., 387 U.S. at 149). As to the

[20] Defendants contend that Plaintiff States' assertions "assume[] without basis that it is 'feasible' and 'consistent with applicable law' to compile and transmit a [Confirmed Citizen List] and further assume[] without basis that states will be required to use any such list." California, No. 1:26-cv-11581, Defs.' Statement of Material Facts ¶¶ 36–37 [Doc. No. 155]. Defendants further deny that failure to comply with the EO in and of itself is a criminal offense. See California, No. 1:26-cv-11581, Defs.' Reply 24 [Doc. No. 167] ("[Plaintiff States'] assertion that the Order imposes both duties, under the threat of criminal prosecution no less, is without basis in the text of the Order."); LVWM, No. 1:26-cv-11549, Defs.' Reply 24 [Doc. No. 147]. Defendants do not address election officials' fear of such prosecution.

former, "[a] claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" Texas v. United States, 523 U.S. 296, 299 (1998) (quoting Thomas v. Union Carbide Agric. Prods. Co., 473 U.S. 568, 580–01 (1985)). The fitness for review prong is more easily satisfied when it "presents an issue that is 'purely legal, and will not be clarified by further factual development.'" Susan B. Anthony List v. Driehaus, 573 U.S. 149, 167 (2014) (quoting Thomas, 473 U.S. at 581). On the second prong, "it is necessary to evaluate the extent to which withholding judgment will impose hardship—an inquiry that typically 'turns upon whether the challenged action creates a 'direct and immediate' dilemma for the parties." Stern v. U.S. Dist. Court for Dist. of Mass., 214 F.3d 4, 10 (1st Cir. 2000) (internal citations omitted). Hardship to the plaintiffs may be "easily satisfied" where the challenged actions "forc[es] them to choose between [constitutionally protected activity] on the one hand, or engaging in [that activity] and risking costly . . . proceedings and criminal prosecution on the other." Susan B. Anthony List, 573 U.S. at 167–68. "Both prongs of the test ordinarily must be satisfied, although a very strong showing on one axis may compensate for a relatively weak showing on the other." Stern, 214 F.3d at 10.

B. Analysis

1. *Future Elections (after the November 3, 2026 Midterm Election)*

There are clearly many uncertainties as to how the agencies will ultimately implement the EO, including the source and accuracy of DHS' Confirmed Citizen Lists, and what final rule, if any, will be adopted by the USPS. The implementation of the EO may well result in the evolving and dynamic process described by Defendants, in which Plaintiffs may participate in a comment period that could result in their concerns being incorporated in agency decision making. See California, No. 1:26-cv-11581, Defs.' Mem. 18–19 [Doc. No. 157]; see also DSCC v. Trump, __ F.Supp.3 ___, 2026 WL 1487833, *1 (D.D.C. May 28, 2026) ("[T]he issuance of a notice of

proposed rulemaking, or other preliminary proceedings undertaken to promote a proposed rule, often will not be ripe for review because the rule may or may not be adopted or enforced.'" (quoting Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin., 710 F.2d 842, 846 (D.C. Cir. 1983))). And where some issues may be addressed in part or narrowed well before more distant elections, withholding court consideration of the EO as it relates to distant elections will pose little hardship where there will be sufficient time for legal challenges to the EO after implementation.

Accordingly, the challenge to the EO's implementation as it impacts elections after the November 3, 2026 election is dismissed without prejudice on prudential ripeness grounds.

2. *The November 3, 2026 Midterm Election (and Earlier Elections)*

Plaintiffs' challenge to the EO as it impacts the November 3, 2026 election itself and the multiple primaries and special elections that are scheduled to occur prior to that date, however, is different. The November 3, 2026 election will occur in less than five months and the EO explicitly requires that certain actions be taken before then. See Exec. Order 14399 § 3(b) (requiring that USPS issue a Notice of Proposed Rule Making regarding new election integrity requirements within 60 days of the EO–i.e., by **May 31, 2026**); id. § 4(c) (requiring DHS to establish the infrastructure necessary to compile Confirmed Citizen Lists within 90 days of the EO–i.e., by **June 29, 2026**); id. § 3(d) (requiring that USPS issue a final rule no later than 120 days from the date of the EO–i.e., by **July 29, 2026**); id. § 3(b)(ii) (requiring the Notice of Proposed Rulemaking to include provisions specifying that 90 days prior to a federal election–i.e., by **August 5, 2026**, for the November 3, 2026 election, a State may choose to notify the USPS if it intends to allow ballots to be transmitted by the USPS, and advising the States to notify the USPS if the State intends to allow Mail Ballots and to submit a list of voters to whom ballots will be sent by sixty days before a federal election–i.e., by **September 4, 2026**, for the

November 3, 2026); id. § 2(a) (requiring DHS, in coordination with SSA, to compile and transmit to State officials, to the extent feasible and consistent with applicable law, including the Privacy Act, Confirmed Citizen Lists to the States no later than 60 days before each regularly scheduled Federal election–i.e., by **September 4, 2026**, for the November 3, 2026 election).

In light of the EO's specific deadlines over the next three months, and the reality that elections will be occurring throughout this period with the November 3, 2026 midterm occurring in just five months, postponing judicial review is impracticable and may inflict significant hardship on Plaintiffs. The EO has "create[d] a 'direct and immediate' dilemma for" Plaintiffs, Stern, 214 F.3d at 10 (quoting W.R. Grace & Co. v. EPA, 959 F.2d 360, 364 (1st Cir. 1992)), because the EO requires State elections officials and voters to reckon today with both the likelihood that the executive branch agencies will follow the EO's multiple directed actions and simultaneously with the uncertainty that exists as the details are slowly rolled out over the next few months. Both sets of Plaintiffs have offered unrebutted evidentiary support for their allegations that significant preparation and planning underpin and facilitate elections and that such efforts are already underway. See California, No. 1:26-cv-11581, Rosenberg Decl. ¶ 26 [Doc. No. 100-7] (Connecticut election official explaining that "major changes to the election process . . . are typically planned for a year or more preceding an election[.]"); Linnell Decl. ¶ 11 [Doc. No. 100-14] ("Preparation for the 2026 midterm elections already consumes all of [Minnesota election official's] team's time."); LVWM, No. 1:26-cv-11549, Canavan Decl. ¶¶ 28–29 [Doc. No. 75-2] (describing presently ongoing voter education efforts of LVWM); Nguyen Decl. ¶¶ 15–21 [Doc. No. 75-7] (describing efforts to translate election materials into other languages by Plaintiff Organization OCA-Asian Pacific American Advocates).

For example, Plaintiff State of California mails every registered voter a ballot, as required by state law. See California, No. 1:26-cv-11581, Lean Decl. ¶¶ 28, 37 [Doc. No. 100-1]; Cal. Elec. Code § 3000.5 ("[F]or each election, the elections official shall, no later than 29 days before the day of the election, begin mailing [ballots and return mail] to every registered voter."). Even without a USPS Final Rule on mail ballot procedures, California election officials "must prepare now for how to align California's administration of mail voting with the EO." California, No. 1:26-cv-11581, Lean Decl. ¶ 40 [Doc. No. 100-1]. The Plaintiff States cannot wait for the Final Rule where the practical realities of running an election require Plaintiffs to take actions for the upcoming election now. See Abbott Labs., 387 U.S. at 149 (in analyzing ripeness, courts must assess the hardship that would result from delaying review); see also LWVM, No. 1:26-cv-11549, Amicus Br. of. State and Loc. Elections Offs. 12 [Doc. No. 136] (explaining that "[A]s a purely practical matter, implementing this EO—particularly with so little time remaining before the rapidly approaching November 2026 midterm elections—would wreak havoc on electoral processes nationwide.").

The compilation of a Confirmed Citizen List also vividly illustrates the problem. During the June 2, 2026 hearing, the government admitted that compliance with federal privacy law would necessarily render any Confirmed Citizen List underinclusive.[21] Moreover, the list will also be underinclusive as a result of feasibility issues, where the federal government may be unaware of name changes (such as when a woman changes her name at marriage) or residence changes (where a citizen moves from state to state). But the EO does not require feasibility of an accurate, complete list of United States citizens. Instead, it orders preparation and delivery to the

[21] See California, No. 1:26-cv-11581, June 2, 2026 H'rg Tr. 24:6–17 [Doc. No. 181]; LVWM, No. 1:26-cv-11549, June 2, 2026 H'rg Tr. 24:6–17 [Doc. No. 155].

states of a list of individuals confirmed as citizens "to the extent feasible and consistent with applicable law"—in other words, the EO orders preparation and delivery of a list of United States citizens residing in each state that will necessarily be incomplete. Exec. Order 14399 § 2(a). Accordingly, even assuming that implementing agencies will comply with all legal requirements set out in the EO and will only create lists to the extent feasible, incomplete Confirmed Citizen Lists will still be compiled, thereby creating a "direct and immediate dilemma for Plaintiffs." Stern, 214 F.3d at 10 (citation omitted).

Further, despite Defendants' assertions that agencies are merely "deliberating" as to plans to implement the EO, Defendants have recently updated the court that, on June 8, 2026, the DHS Secretary approved a plan to comply with § 4(a) of the EO, requiring that DHS implement necessary infrastructure by June 29, 2026.[22]

With an ever-narrowing window of time in which review is appropriate and practicable, and where that review may well require timely involvement by the Court of Appeals or Supreme Court prior to the November 3, 2026 election in order to "maintain[] public confidence in election outcomes[,]" see Exec. Order 14399 § 1, the court finds that the legality of the EO as to the November 3, 2026 election (and earlier elections) is both ripe and fit for review. See Abbott Labs., 387 U.S. at 149.

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[22] See California, No. 1:26-cv-11581, Defs.' Notice [Doc. No. 188]; LWVM, No. 1:26-cv-11549, Defs.' Notice [Doc. No. 164]; see also id., Pls.' Sur-Reply 1 [Doc. No. 160] (Defendants' Notice "demonstrate[s] that agency implementation of the [EO's] directives is underway [and] that agency action follows directly from the [EO]."). Defendants' Notice also indicated that DHS and USPS are continuing to consider data-sharing across agencies, including with the USPS, in implementing the EO. California, No. 1:26-cv-11581, Defs.' Notice [Doc. No. 188] (On June 8, 2026, DHS Secretary authorized "DHS [to] continue preliminary conversations with USPS concerning potential data-sharing arrangements," but stating further that "allow[ing] DHS to leverage USPS data related to mail-in and absentee ballot participation lists . . . is neither contemplated nor required by EO 14399."); LWVM, No. 1:26-cv-11549, Defs.' Notice [Doc. No. 164].

Defendants and Intervenor States' reliance on a recent Supreme Court decision merits additional discussion. In Trump v. New York, a coalition of States and non-profit organizations challenged a Presidential memorandum announcing a policy of excluding noncitizens from the decennial census for the purposes of congressional apportionment and then directing the Secretary of Commerce to advise the President on how to implement that policy "to the maximum extent feasible and consistent with the discretion delegated to the executive branch." 592 U.S. 125, 129–30 (2020) (quoting 85 Fed. Reg. 44680 (2020)). The impact of any apportionment policy change would not be experienced until the States first received an apportionment report from Congress and then subsequently both implemented redistricting and held elections, potentially years after the Commerce Secretary's report pursuant 13 U.S.C. § 141(b). See 2 U.S.C. § 2a. The Supreme Court found that the plaintiffs lacked standing to challenge the memorandum and that the challenge was not ripe because the "case [was] riddled with contingencies and speculation that impede judicial review. . . . Any prediction how the Executive Branch might eventually implement this general statement of policy is 'no more than conjecture' at this time." Trump, 592 U.S. at 131 (quoting Los Angeles v. Lyons, 461 U.S. 95, 108 (1983)). The Court based its decision on the uncertainty regarding implementation of the memorandum and the President's qualifying language regarding feasibility and legality requirements. Id. [23]

[23] Defendants also point to Justice Sotomayor's concurrence in Trump v. Am. Fed'n of Gov't Emps., 606 U.S. _, 145 S.Ct. 2635 (2025). In a two-paragraph unsigned opinion, the Supreme Court granted an application for a stay of a district court's preliminary injunction order while the Ninth Circuit considered the government's appeal. The Court granted the stay "because the Government is likely to succeed on its [merits] argument," without making any findings as to justiciability. Id. In her concurrence in the grant of the stay, Justice Sotomayor noted that the Executive Order "direct[ed] agencies to plan reorganizations and reductions in force 'consistent with applicable law[,' and t]he plans themselves are not before this Court, at this stage, and [the Court] thus ha[s] no occasion to consider whether they can and will be carried out consistent

Unlike the President's request for the Commerce Secretary to implement a policy statement in Trump v. New York, the EO here both includes multiple specific directives as to certain actions that federal agencies must take at specified times and requires that definite "substantive outcomes" be implemented that will affect the upcoming election. League of United Latin American Citizens ("LULAC") v. Executive Office of the President (LULAC II), 818 F. Supp. 3d 34, 78 (D.D.C. 2026) (citing Trump v. New York, 592 U.S. 125 (2020)). And, unlike in Trump v. New York, it is neither speculation nor "conjecture" that DHS will compile Confirmed Citizen Lists where directed to compile those lists by the President, that States will have to grapple with preparing for mail ballots for the November 3, 2026 election, while USPS is simultaneously engaged in rulemaking, and that elections officials will have to respond to the impact of both the Confirmed Citizen Lists and to whatever USPS rule may be enacted before the November 3, 2026 election.

Where Plaintiffs have raised constitutional challenges that may be addressed without further development of the Confirmed Citizen Lists or the Proposed Rule and in light of imminently impending elections, prudential considerations do not warrant deferring consideration of Plaintiffs' challenges with respect to the 2026 elections. See Wesberry v. Sanders, 376 U.S. 1, 17 (1964) ("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.").

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with the constraints of law." Id. (Sotomayor, J., concurring). Here, in contrast, the limitation that the Confirmed Citizen List will be created "to the extent feasible and consistent with applicable law," does not mean a list will not be created, but only that it will by definition be incomplete. Exec. Order 14399 § 2(a).

III. CONCLUSION

For all of the above reasons, the court GRANTS Defendants' and Intervenor States' motions to dismiss Plaintiff Organizations' complaint and Plaintiff States' amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) on prudential ripeness grounds as to their claims regarding the EO and its implementation with regard to elections occurring after November 3, 2026, and dismisses such claims without prejudice. The court DENIES Defendants' and Intervenor States' motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) on prudential ripeness grounds as to Plaintiff Organizations' complaint and Plaintiff States' amended complaint with regard to the November 3, 2026 election, and all earlier elections.[24]

IT IS SO ORDERED.

June 18, 2026

/s/ Indira Talwani
United States District Judge

[24] Defendants' and Defendant Intervenors' Article III challenges pose different issues as to the two different groups of Plaintiffs. These challenges will be addressed in case specific orders, together with the Plaintiffs' pending motion in each case.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STATE OF CALIFORNIA, et al.,	*	
Plaintiffs,	*	
v.	*	
DONALD J. TRUMP, in his official capacity as President of the United States, et al.,	*	Civil Action No. 1:26-cv-11581-IT
Defendants,	*	
and	*	
STATE OF MISSOURI, et al.,	*	
Intervenor-Defendants.	*	

MEMORANDUM & ORDER

June 25, 2026

TALWANI, D.J.

Twenty-three States[1] and the District of Columbia (collectively, "Plaintiff States") challenge Sections 2, 3, and 5 of Executive Order 14399, Ensuring Citizenship Verification and Integrity in Federal Elections (the "EO"), 91 Fed. Reg. 17125 (Mar. 31, 2026), as ultra vires and unconstitutional, arguing that the provisions violate the separation of powers, the Elections and Electors Clauses, and the Tenth Amendment's anti-commandeering doctrine. Am. Compl. ¶¶ 150–189 [Doc. No. 65]. Plaintiff States assert these claims against the President, and the various agencies and agency heads listed in the EO. Id.[2]

[1] The Plaintiff States are Arizona, California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, Washington, Wisconsin, and Josh Shapiro in his official capacity as Governor of Pennsylvania.

[2] Count I, challenging Section 2 of the EO, is brought against President Donald J. Trump; the U.S. Department of Justice and the Acting Attorney General (collectively, "DOJ Defendants");

Defendants, joined by Intervenor States,[3] seek dismissal of Plaintiff States' Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Defs.' Mot. to Dismiss [Doc. No. 154]; Intervenors' Opp'n to Pls.' Mot. for Summ. J. ("Intervenors' Opp'n") 2–7, 13–17 [Doc. No. 153]. Plaintiff States have moved for summary judgment and request that the court declare Sections 2, 3, and 5 of the EO as unconstitutionally void and permanently enjoin Defendant agencies and agency heads from implementing or enforcing those provisions. Pls.' Mot. for Summ. J. [Doc. No. 97].

I. Background

A. The Executive Order

The EO asserts "an unavoidable duty under Article II of the Constitution of the United States to enforce Federal law, which includes preventing violations of Federal criminal law and maintaining public confidence in election outcomes." Exec. Order 14399 § 1. The EO notes that several executive agencies maintain records that "can assist in verifying identity and Federal election voter eligibility" and finds that "additional measures are necessary[]" to "enhance election integrity via the United States Mail[.]" Id.

The EO directs agency heads to take certain actions. Pls.' Statement of Undisputed Material Facts ("Pls.' SUMF") ¶ 4 [Doc. No. 105]; Defs.' Statement of Undisputed Material

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the U.S. Department of Commerce and its Secretary (collectively, "Commerce Defendants"); the U.S. Department of Homeland Security and its Secretary; U.S. Citizenship and Immigration Services and its Director; and the Social Security Administration and its Commissioner. Am. Compl. ¶¶ 150–66 [Doc. No. 65]. Count II, challenging Section 3 of the EO, is brought against the President; the Acting Attorney General; and the U.S. Postal Service, Postmaster General, Deputy Postmaster General, U.S. Postal Service Board of Governors Chairwoman, Board of Governors Vice Chairman, and Board of Governor Members. Id. ¶¶ 167–78. Count III, challenging Section 5 of the EO, is brought against the President and DOJ Defendants. Id. ¶¶ 179–189.

[3] The Intervenor States are Alabama, Florida, Indiana, Kansas, Louisiana, Missouri, Montana, Nebraska, Oklahoma, South Carolina, South Dakota, and Texas.

Facts ("Defs.' SUMF") ¶ 4 [Doc. No. 155]. Section 2 of the EO directs the Director of the U.S. States Citizenship and Immigration Services ("USCIS"), a component within the Department of Homeland Security ("DHS"), in coordination with the Commissioner of the Social Security Administration ("SSA"), to compile lists of citizens eligible to vote in a specific state (the "Confirmed Citizen Lists"[4]) "[t]o the extent feasible and consistent with applicable law[.]" Exec. Order 14399 § 2(a). The EO defines the Confirmed Citizen Lists as limited to "individuals confirmed to be United States citizens who will be above the age of 18 at the time of an upcoming Federal election and who maintain a residence in the subject State[.]" Id.

The EO requires DHS to "establish the infrastructure necessary to compile, maintain, and transmit" the Confirmed Citizen Lists by **June 29, 2026**. Id. § 4(c) (emphasis added). Also by **June 29, 2026**, DHS must designate a point of contact regarding List-related inquiries from individuals and State election officials. Id. The EO requires that DHS update and transmit the Confirmed Citizen List for each State to State election officials at least 60 days before each regularly scheduled Federal election, or upon request regarding a special Federal election. Id. § 2(a). Accordingly, for the November 3, 2026 general election, the EO requires DHS to provide the Confirmed Citizen Lists to State election officials by **September 4, 2026**.

Section 3 of the EO directs the Postmaster General of the U.S. Postal Service ("USPS") to initiate a proposed rulemaking to ensure the integrity of mail voting and requires that a final rule be published by **July 29, 2026**. Id. § 3(a); USPS Notice of Proposed Rulemaking, Ballot Mail for Federal Elections, 91 Fed. Reg. 32915 (June 2, 2026). The EO requires the proposed rule to (1) include requirements regarding election mail design; and (2) specify that USPS, after receiving State-furnished lists of voters approved to vote by mail, shall provide each State with a

[4] The EO refers to these federally created lists as "State Citizenship Lists." Exec. Order 14399 § 2(a).

list of individuals who are "enrolled with the USPS" pursuant to a process specified in the rule, and shall not transmit the ballot of any voter unless the individual has been so "enrolled." Exec. Order 14399 § 3(b). The EO requires the proposed rule to specify that States may choose to notify USPS of their intent to use mail ballots no fewer than 90 days prior to a Federal election, and States may submit to USPS, no fewer than 60 days before the election, a list of voters to whom the State intends to provide mail ballots. Id. § 3(b)(ii). Accordingly, for the November 3, 2026 general election, States may notify USPS by **August 5, 2026**, of their intent to use mail ballots, and by **September 4, 2026**, of their mail-ballot voter lists. Id.

In Sections 2 and 5, the EO describes several criminal offenses, both directly and indirectly relating to voter fraud, and requires the Attorney General to prioritize the investigation and prosecution of State and local officials who issue ballots to individuals not eligible to vote. Id. §§ 2(b), 5. The EO also provides that "[s]tates and localities should preserve, for a 5-year period, all records and materials—excluding ballots cast—evidencing voter participation in any Federal election (e.g., ballot envelopes, regardless of carrier)." Id. § 5 (emphases added).

B. Federal Election Law

1. Constitutional Framework

a. The State's Role in Federal Elections

The U.S. Constitution empowers the States to determine voter eligibility in federal elections.

Under the Voter Qualifications Clause, Members of the U.S. House of Representatives must be elected by voters who "have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." U.S. CONST. art. I, § 2, cl. 1. The Seventeenth Amendment likewise prescribes that voters for U.S. Senators "shall have the qualifications requisite for electors of the most numerous branch of the State legislatures." U.S. CONST. amend.

XVII. Therefore, because the States determine who is eligible to vote for their state legislators, the Constitution indirectly grants the States authority to determine who is eligible to vote for federal legislators.

Article I of the Constitution also empowers the States to prescribe the "Times, Places, and Manner of holding" congressional elections. U.S. CONST. art. I, § 4, cl. 1. "[T]hese comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes" among other issues. Smiley v. Holm, 285 U.S. 355, 366 (1932).

The President is elected by vote of the Electoral College. See U.S. CONST. amend. XII. The Electors Clause empowers each State to appoint electors to the Electoral College "in such Manner as the Legislature thereof may direct." U.S. CONST. art. II, § 1, cl. 2. The States require their electors be appointed by popular vote of qualified voters. See Chiafalo v. Washington, 591 U.S. 578, 584 (2020). Accordingly, the States alone determine voter-eligibility requirements, subject only to the outer limits of the Constitution. See, e.g., U.S. CONST. amend. XIX ("The right of citizens of the United States to vote shall not be denied or abridged . . . on account of sex."); U.S. CONST. amend. XXVI ("The right of citizens of the United States, who are eighteen years of age or older, to vote, shall not be denied or abridged . . . on account of age."). For presidential elections, the Electors Clause gives States the primary authority to decide how electors are chosen. U.S. CONST. art. II, § 1, cl. 2.

b. Congress's Role in Federal Elections

The Elections Clause empowers Congress to "make or alter" State election laws "at any time[.]" U.S. CONST. art. I, § 4, cl. 1. "In practice, the Clause functions as 'a default provision; it invests the States with responsibility for the mechanics of congressional elections, but only so far

as Congress declines to pre-empt state legislative choices.'" Arizona v. Inter Tribal Council of Arizona, Inc., 570 U.S. 1, 9 (2013) (quoting Foster v. Love, 522 U.S. 67, 69 (1997)).

While the Electors Clause does not explicitly reserve supervisory authority to Congress for presidential electors, the Supreme Court has extended "the broad power given to Congress over congressional elections . . . to presidential elections." Voting Rts. Coal. v. Wilson, 60 F.3d 1411, 1414 (9th Cir. 1995) (citing Burroughs v. United States, 290 U.S. 534, 545 (1934)); see Arizona, 570 U.S. at 14–15 ("Because the power the Elections Clause confers is none other than the power to pre-empt, the reasonable assumption is that the statutory text accurately communicates the scope of Congress's preemptive intent . . . . Unlike the States' historic police powers, the States' role in regulating congressional elections . . . has always existed subject to the express qualification that it terminates according to federal law.").

Accordingly, the Elections Clause "grants Congress 'the power to override state regulations' by establishing uniform rules for federal elections, binding on the States." Foster, 522 U.S. at 69 (quoting U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 833 (1995)).

c. President's Limited Role in Federal Elections

The Constitution does not grant the President any specific powers over elections.[5] Broadly, the Constitution vests the President with "executive Power" and commands him to "take Care that the Laws be faithfully executed." U.S. CONST. art. II, §§ 1, 3. The President "plays no direct role in the process" of appointing electors, "nor does he have authority to control the state officials who do." Trump v. United States, 603 U.S. 593, 627 (2024). As the Supreme

[5] Regarding the allocation of election-related authority across the States and Congress, the Framers explained: "[T]here were only three ways in which this power could have been reasonably modified and disposed: that it must either have been lodged wholly in the national legislature, or wholly in the State legislatures, or primarily in the latter and ultimately in the former." THE FEDERALIST NO. 59 (Alexander Hamilton). Notably, the Framers excluded the Executive Branch from any allocation formulation.

Court has observed, "the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker." Medellín v. Texas, 552 U.S. 491, 526–27 (2008) (quoting Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 587 (1952)).

2. Statutory Landscape

Pursuant to its Elections Clause power, see U.S. CONST. art. I, § 4, cl. 1, Congress has enacted several laws regulating voting and elections. For example, the Voting Rights Act, Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified at 52 U.S.C. §§ 10101), prohibits discriminatory voting or election practices. The Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), Pub. L. No. 99-410, 100 Stat. 924 (1986) (codified at 52 U.S.C. §§ 20301–11) requires States (as well as U.S. territories and the District of Columbia) to permit otherwise-qualified voters residing or stationed overseas to vote in the last place they were domiciled prior to leaving the United States. 52 U.S.C. §§ 20302, 20310. UOCAVA guarantees military and overseas voters the right "to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office[.]" 52 U.S.C. § 20302(a)(1); see 52 U.S.C. § 20302(a)(8)(A) (requiring States to transmit absentee ballots to UOCAVA voters at least 45 days before an election for federal office to provide voters sufficient time to receive, mark, and return absentee ballots).

The National Voter Registration Act of 1993 (the "NVRA") sets forth certain voter registration requirements with respect to elections for federal office. 52 U.S.C. §§ 20501–20511.[6] Section 5 of the NVRA requires that States offer voter registration opportunities at State

[6] Legislation has been introduced in earlier sessions and in the current session of Congress to amend the NVRA to require individuals to provide documentary proof of citizenship when registering to vote, see Safeguard American Voter Eligibility (SAVE) Act, H.R. 8281, 118th Cong. (2024); Safeguard American Voter Eligibility (SAVE) Act, H.R. 22, 119th Cong. (2025), but has not been enacted into law.

motor vehicle agencies. Section 6 of the NVRA requires that States offer voter registration opportunities by mail-in application and limits registration to using a prescribed federal form.

The Help America Vote Act of 2002 ("HAVA"), Pub. L. No. 107-252, 116 Stat. 1666, was passed after the 2000 Presidential election and "aimed 'to alleviate a significant problem voters experience'—eligible voters being turned away at the polls because their names were missing from voter registration lists." United States v. Benson, ___ F.4th ___, 2026 WL 1815425, *3 (6th Cir. June 24, 2026) (quoting Sandusky Cnty. Democratic Party v. Blackwell, 387 F.3d 565, 569 (6th Cir. 2004) (per curiam)). HAVA requires states to maintain an electronic statewide voter registration list.[7] 52 U.S.C. § 21083.

C. The Plaintiff States and the Administration of Federal Elections

Plaintiff States and their localities administer elections for federal office. Pls.' SUMF ¶ 6 [Doc. No. 105]; Defs.' SUMF ¶ 6 [Doc. No. 155]. Plaintiff States and their localities are responsible for, inter alia, carrying out voter registration, maintaining and updating voter rolls, issuing ballots to registered voters, tabulating votes, and certifying results in all elections for federal office. Pls.' SUMF ¶ 7 [Doc. No. 105]; Defs.' SUMF ¶ 7 [Doc. No. 155].

[7] In 2025, officials in DOJ's Civil Rights Division began sending letters to the Secretaries of various States, requesting access to State's electronic voter registration lists, and the federal government has sued the Secretaries of States who have denied access. The United States' lawsuits have been consistently dismissed and the government's requests held by courts to be facially deficient. See, e.g., Benson, ___ F.4th ___, 2026 WL 1815425; United States v. DeMarinis, 2026 WL 1780586, *5 (D. Md. June 18, 2026); United States v. Wis. Elections Comm'n, __ F. Supp. 3d __ , 2026 WL 1430354 (W.D. Wis. May 21, 2026); United States v. Bellows, ___ F. Supp. 3d ___, 2026 WL 1430481 (D. Me. May 21, 2026); United States v. Fontes, ___ F. Supp. 3d ___, 2026 WL 1177244 (D. Ariz. Apr. 28, 2026); United States v. Amore, ___ F. Supp. 3d ___, 2026 WL 1040637 (D.R.I. Apr. 17, 2026); United States v. Galvin, ___ F. Supp. 3d,___, 2026 WL 972129 (D. Mass. Apr. 9, 2026); United States v. Oregon, ___ F. Supp. 3d ___, 2026 WL 318402 (D. Or. Feb. 5, 2026); United States v. Weber, 816 F. Supp. 3d 1168 (C.D. Cal. 2026).

Plaintiff States are currently in the process of preparing to administer the November 2026 general election, and many are also actively administering or preparing to administer federal primaries. Pls.' SUMF ¶ 8 [Doc. No. 105]; Defs.' SUMF ¶ 8 [Doc. No. 155]. As part of this process, Plaintiff States and their localities conduct programs to remove from their lists of eligible voters those who have died and those who are no longer eligible to vote for various reasons, including a change in residence, or other State law grounds for ineligibility. Pls.' SUMF ¶ 9 [Doc. No. 105]; Defs.' SUMF ¶ 9 [Doc. No. 155].

In accordance with federal law, Plaintiff States do not systematically remove voters from voter rolls during the 90 days prior to a federal election, except as permitted by the NVRA. See 52 U.S.C. § 20507(c)(2)(A); Pls.' SUMF ¶ 10 [Doc. No. 105]; Defs.' SUMF ¶ 10 [Doc. No. 155].[8] For the November 2026 general election, the NVRA 90-day quiet period begins on August 5, 2026. Pls.' SUMF ¶ 10 [Doc. No. 105]; Defs.' SUMF ¶ 10 [Doc. No. 155].

Plaintiff States and their localities require verification of eligibility to register voters, including by attestation, reporting identifying information, or other means, for federal elections. Pls.' SUMF ¶ 11 [Doc. No. 105] (citing the statutory requirements for each Plaintiff state).[9]

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[8] Plaintiff States' assertion is supported by declarations from state officials. See Lean (CA) Decl. ¶ 14 [Doc. No. 100-1]; Tassinari (MA) Decl. ¶ 29 [Doc. No. 100-2]; Wlaschin (NV) Decl. ¶ 17 [Doc. No. 100-3]; Holmes (WA) Decl. ¶ 27 [Doc. No. 100-4]; Varvel (AZ) Decl. ¶ 13 [Doc. No. 100-5]; Rudy (CO) Decl. ¶ 17 [Doc. No. 100-6]; Rosenberg (CT) Decl. ¶ 16 [Doc. No. 100-7]; Albence (DE) Decl. ¶ 19 [Doc. No. 100-8]; Miller (DC) Decl. ¶ 10 [Doc. No. 100-9]; Berry (MD) Decl. ¶ 39 [Doc. No. 100-11]; Flynn (ME) Decl. ¶ 14 [Doc. No. 100-10]; Brater (MI) Decl. ¶ 16 [Doc. No. 100-12]; Barber (NJ) Decl. ¶ 18 [Doc. No. 100-15]; Vigil (NM) Decl. ¶ 18, [Doc. No. 100-16]; Stavisky (NY) Decl. ¶ 16 [Doc. No. 100-17]; Brunton (NC) Decl. ¶ 9 [Doc. No. 100-18]; Dawson (OR) Decl. ¶ 15 [Doc. No. 100-19]; Marks (PA) Decl. ¶ 14 [Doc. No. 100-20]; Rock (RI) Decl. ¶ 19 [Doc. No. 100-21]; Koski (VA) Decl. ¶ 18 [Doc. No. 100-23]; Hanzas (VT) Decl. ¶ 14 [Doc. No. 100-22]; Michalowski (Cook County, IL) Decl. ¶ 11 [Doc. No. 100-24]; Wise (King County, WA) Decl. ¶ 27 [Doc. No. 100-25]. Defendants' response that they "lack knowledge" as to Plaintiffs' compliance, see Defs.' SUMF ¶ 10 [Doc. No. 155], is not sufficient on summary judgment to rebut Plaintiffs' showing.

[9] Defendants claim that Plaintiffs' assertion that "Plaintiff States and their localities require verification of eligibility (by attestation, reporting identifying information, or other means) to

Plaintiff States also allow individuals to register to vote up to at least 30 days before a federal election, and in some States, individuals may register closer to or on Election Day. Pls.' SUMF ¶ 12 [Doc. No. 105] (citing Lean (CA) Decl. ¶ 12 [Doc. No. 100-1] (registration up to 15 days before election; conditional registration "up to and on Election Day," citing Cal. Elec. Code § 2102(a)); see also Cal. Elec. Code § 2119.5; Cal. Code Regs. 2 § 20020, et seq.); Tassinari (MA) Decl. ¶ 28, [Doc. No. 100-2] (10 days before Election Day, citing Mass. Gen. Laws ch. 51, § 26); Wlaschin (NV) Decl. ¶ 14 [Doc. No. 100-3] (Election Day registration, citing Nev. Rev. Stat. § 293.5847); Holmes (WA) Decl. ¶ 15 [Doc. No. 100-4] (Election Day registration, citing Wash. Rev. Code § 29A.08.140); Varvel (AZ) Decl. ¶ 11 [Doc. No. 100-5] (29 days before Election Day, citing Ariz. Rev. Stat. §§ 16-101(A)(3), 16-134(C)); Rudy (CO) Decl. ¶ 15 [Doc. No. 100-6] (8 days before election to receive a mail ballot, or up to and including Election day in person, citing Colo. Rev. Stat. § 1-2-508); Rosenberg (CT) Decl. ¶ 14 [Doc. No. 100-7] (voters can register by mail up to 18 days before Election Day, in person during early voting, and on Election Day, if they satisfy applicable requirements, citing Conn. Gen. Stat. § 9-23g); Albence (DE) Decl. ¶ 17 [Doc. No. 100-8] (registration up to the third Monday before Election Day, citing Del. Code. Tit. 15 § 1902(c)); Miller (DC) Decl. ¶ 11 [Doc. No. 100-9] (Election Day registration, citing D.C. Code § 1-1001.07(g)); Berry (MD) Decl. ¶ 37 [Doc. No. 100-11] (registration up to 21 days before Election Day, at early voting centers during early voting period, and on Election Day itself, citing Md. Elec. Law § 3-302); Flynn (ME) Decl. ¶ 12 [Doc. No. 100-10] (Election Day Registration, citing Me. Stat. tit. 21, § 121-A); Brater (MI) Decl. ¶ 14

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register voters for federal elections" does not require Defendants' response on the grounds that "[the assertion] is a legal conclusion[.]" Defs.' SUMF ¶ 10 [Doc. No. 155]. The court finds Defendants' statement to be nonresponsive and finds Plaintiff States' showing that they and their localities require eligibility verification to register voters for federal elections undisputed for purposes of the pending motions.

[Doc. No. 100-12] (registration up to and including Election Day if certain requirements are met, citing Mich. Comp. Laws § 168.497); Linnell (MN) Decl. ¶ 13 [Doc. No. 100-14] (registration up to 20 days before an election, citing Minn. Stat. § 201.061); Barber (NJ) Decl. ¶ 16 [Doc. No. 100-15] (registration up to 21 days before an election, citing N.J. Rev. Stat. § 19:31-6); Vigil (NM) Decl. ¶ 16 [Doc. No. 100-16] (New Mexico allows qualified individuals to register in person on Election Day, citing N.M. Stat. § 1-4-5.7); Stavisky (NY) Decl. ¶ 14 [Doc. No. 100-17] (qualified individuals permitted to register up to ten days before election day, citing N.Y. Elec. Law § 5-210(3)); Brunton (NC) Decl. ¶ 7 [Doc. No. 100-18] (25 days before election and during early voting, citing N.C. Gen. Stat. §§ 163-82.6(d), 163-82.6B); Dawson (OR) Decl. ¶ 11 [Doc. No. 100-19] (21 days before election, citing Or. Rev. Stat. § 247.025); Marks (PA) Decl. ¶ 12 [Doc. No. 100-20] (15 days before election, citing Pa. Cons. Stat. § 3071); Rock (RI) Decl. ¶¶ 15–17 [Doc. No. 100-21] (30 days before Election Day; registration on Election Day to vote for president and vice–president, citing R.I. Gen. Laws § 17-9.1-1); Koski (VA) Decl. ¶ 17 [Doc. No. 100-23] (electronic and mail applications to register up to 11 days before Election day, citing VA. Code 24.2–416; 24.2–416.4); Hanzas (VT) Decl. ¶ 12 [Doc. No. 100-22] (registration up to and including election day, citing Vt. Stat. tit. 17, § 2144a); Michalowski (Cook County, IL) Decl. ¶ 9 [Doc. No. 100-24] (16 days before election and in person during early voting and on Election Day, citing 10 Ill. Comp. Stat. 5/5-50); Wise (King County, WA) Decl. ¶¶ 24, 26 [Doc. No. 100-25] (Election Day registration, citing Wash. Rev. Code § 29A.08.140); Hilby (Sun Prairie, WI) Decl. ¶ 8 [Doc. No. 100-26] (Election Day registration, see Wisc. Stat. § 6.15)).[10]

[10] Defendants do not rebut Plaintiffs' assertion that Plaintiff States also allow individuals to register to vote up to at least 30 days before a federal election, and in some States, individuals may register closer to or on Election Day, contending instead that Plaintiffs' assertion "is a legal conclusion" that does not require a response. Defs.' SUMF ¶ 10 [Doc. No. 155]. The court finds Defendants' statement to be nonresponsive and finds the assertion that Plaintiff States and their

In some of the Plaintiff States, 17-year-old citizens who will be 18 years old by the next federal general election are eligible to register to vote in federal primary elections. Pl. SUMF ¶ 14 [Doc. No. 105] (citing Holmes (WA) Decl. ¶ 48 [Doc. No. 100-4] (citing Wash. Rev. Code §§ 29A.04.061, 29A.08.170); Rosenberg (CT) Decl. ¶ 36 [Doc. No. 100-7] (citing Conn. Gen. Stat. § 9-12(b)); Albence (DE) Decl. ¶ 41 [Doc. No. 100-8] (citing 15 Del. Code § 1701(a)); Miller (DC) Decl. ¶ 22 [Doc. No. 100-9] (citing D.C. Code § 1-1001.07(a-2)); Berry (MD) Decl. ¶ 61 [Doc. No. 100-11] (citing Md. Elec. Law § 3-102(a)(2)(i)); Flynn (ME) Decl. ¶ 33 [Doc. No. 100-10] (citing Me. Rev. Stat. tit. 21-A,§ 111-A); Barber (NJ) Decl. ¶ 41 [Doc. No. 100-15] (citing N.J. Stat. §§ 19:31-5, 19:4-1.2); Vigil (NM) Decl. ¶ 37 [Doc. No. 100-16] (citing N.M. Stat. § 1-4-2(B)(3)); Brunton (NC) Decl. ¶ 8 [Doc. No. 100-18] (citing N.C. Gen. Stat. § 163-59); Rock (RI) Decl. ¶ 38 [Doc. No. 100-21] (citing R.I. Gen. Laws § 17-1-3(b)); Koski (VA) Decl. ¶ 34 [Doc. No. 100-23] (citing Va. Code § 24.2-403); Hanzas (VT) Decl. ¶ 33 [Doc. No. 100-22] (citing Vt. Stat. tit. 17, § 2121); Michalowski (Cook County, IL) Decl. ¶ 28 [Doc. No. 100-24] (citing 10 Ill. Comp. Stat. 5/3-6); Wise (King County, WA) Decl. ¶ 44 [Doc. No. 100-25] (citing Wash. Rev. Code § 29A.08.170)); see Minn. Stat. § 201.071 (allowing voter registration, but not voting, for 16-year-olds).[11]

localities require eligibility to register voters for federal elections undisputed for purposes of the pending motions.

[11] Defendants do not rebut Plaintiffs' assertion that in some Plaintiff States, 17-year-old citizens who will be 18 years old by the next federal general election are eligible to register to vote in federal primary elections, contending instead that Plaintiffs' statement does not require a response on the grounds that "[it] is a legal conclusion[.]" Defs.' SUMF ¶ 10 [Doc. No. 155]. The court finds Defendants' statement to be nonresponsive and finds the assertion that some Plaintiff States and their localities allow 17-year-old citizens who will be 18 years old by the next federal general election to register to vote in federal primary elections undisputed for purposes of the pending motions.

II. Defendants' Motion to Dismiss for Lack of Subject-Matter Jurisdiction

A. Ripeness

Defendants and Intervenor States contend that judicial review will be appropriate later, after implementation actions have been taken, because Defendant agencies are still considering and deliberating future action. Defs.' Mem. ISO Mot. to Dismiss and Opp'n ("Defs.' Mem.") 9 [Doc. No. 157]; Intervenors' Opp'n 7, 15 [Doc. No. 153]. The court has accepted this argument in part and dismissed without prejudice Plaintiffs States' amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) on prudential ripeness grounds as to their claims regarding the EO and its implementation with regard to elections occurring after November 3, 2026. Mem. & Order [Doc. No. 190]. The court denied dismissal pursuant to Federal Rule of Civil Procedure 12(b)(1) on prudential ripeness grounds with regard to the November 3, 2026 election, and all earlier elections. Id.

B. Standing

Defendants and Intervenor States contest this court's subject matter jurisdiction in this case, arguing that Plaintiff States lack standing to challenge the EO. See Defs.' Mem. 7–12 [Doc. No. 157]; Intervenors' Opp'n 2, 13 [Doc. No. 153]. "Article III confines the federal judicial power to the resolution of 'Cases' and 'Controversies.'" TransUnion LLC v. Ramirez, 594 U.S. 413, 423 (2021). "Such a case or controversy exists only when the plaintiff demonstrates such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends." Gustavsen v. Alcon Labs., Inc., 903 F.3d 1, 6–7 (1st Cir. 2018) (citations omitted). "For there to be a case or controversy under Article III, the plaintiff must have a 'personal stake' in the case – in other words, standing." Ramirez, 594 U.S. at 423 (citation omitted). To establish standing, "a plaintiff must show (i) that he suffered an injury in fact that is concrete, particularized, and actual or

imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." Id. "If the plaintiff does not claim to have suffered an injury . . . there is no case or controversy for the federal court to resolve." Id. (citation and internal quotation marks omitted).

Defendants characterize the EO as an "intra-Executive Branch directive" that "of its own force[] does not change anything at all about elections in any State." Defs.' Mem. 8 [Doc. No. 157]. They argue that the EO merely directs possible future agency action that is insufficiently imminent for an Article III injury. Id. at 9–11. Intervenor States similarly contend that the EO, on its face, does not require any action of Plaintiff States and that any injury claimed by Plaintiff States will be too speculative for this court's review until the EO is implemented. Intervenors' Opp'n 2–7 [Doc. No. 153].

Plaintiff States assert that the EO's directives require them to immediately prepare to comply with the EO and respond to federal implementation of the EO in anticipation of the November 2026 general election. Pls.' Opp'n to Defs.' Mot. to Dismiss and Reply ("Pls.' Reply") 2–9 [Doc. No. 163]. Many Plaintiff States "are actively administering or preparing to administer federal primaries" and all Plaintiff States are presently preparing to administer the November 2026 general election. Pls.' SUMF ¶ 4 [Doc. No. 105]; see, e.g., Tassinari Decl. ¶ 36 [Doc. No. 100-2] (Massachusetts has already "begun preparing training materials, guidance documents and communications to local election officials for the upcoming election cycle and have planned training sessions already scheduled."); Rosenberg Decl. ¶ 26 [Doc. No. 100-7] (Connecticut election officials are busy with endorsements and primary preparations in May and June, conducting primaries in September, processing absentee ballots in late September and October, and conducting the general election in November 2026). Defendants do not dispute these presently ongoing efforts. Defs.' SUMF ¶ 8 [Doc. No. 155].

Plaintiff States' statutory obligations—undisputed by Defendants, see Defs.' SUMF ¶ 43 [Doc. No. 155]—require immediate action from Plaintiffs. For example, Connecticut has already had to pull elections staff from critical projects required by statute, e.g., translating election materials, as required by the Voting Rights Act, to analyze and develop a compliance plan for the EO. See Rosenberg Decl. ¶ 12 [Doc. No. 100-7].

Additionally, because state law requires Plaintiff States to provide mail ballots to voters entitled to vote by mail,[12] Plaintiff States must plan to comply with the EO's directives on mail ballots. Nearly half of Plaintiff States have already purchased mail ballot envelopes for the 2026 federal election cycle that will not be in compliance with the requirements the EO has directed USPS to adopt by rulemaking. Pls.' SUMF ¶ 62 [Doc. No. 105]; see also USPS Notice of Proposed Rulemaking, Ballot Mail for Federal Elections, 91 Fed. Reg. 32915 (June 2, 2026) (requiring new envelope and design standards, including Intelligent Mail Barcodes, for election mail). For example, Massachusetts has already spent approximately $3 million on its mail ballot envelopes, see Tassarini Decl. ¶ 81 [Doc. No. 100-2], and both Maine and Rhode Island have already spent over $50,000 on ballot envelopes and return envelopes that lack Intelligent Mail barcodes. Flynn (ME) Decl. ¶¶ 67–68 [Doc. No. 100-10]; Rock (RI) Decl. ¶¶ 72–73 [Doc. No. 100-21]. And Delaware has already purchased envelopes, received approval from USPS on the design, and "does not have funds budgeted" for purchasing new envelopes that would be compliant with the proposed rule. Albence Decl. ¶¶ 75–76 [Doc. No. 100-8].

Defendants and Intervenors dispute that these monetary expenditures qualify as Article III injury, because the EO does not force Plaintiff States to redesign their ballots, but rather

[12] See, e.g., Ariz. Rev. Stat. § 16-541; Cal. Elec. Code § 3000.5; Con. Gen. Stat. Ch. 145, § 9; Me. Stat. tit. 21-A, ch. 9, § 753-B; Mass. Gen. Laws ch. 54, §§ 25B(a)(2), 89; Nev. Rev. Stat. § 293.269911; Or. Rev. Stat. § 254.470.

merely directs USPS to issue an NPRM that requires Plaintiff States to redesign their ballots. See Defs.' SUMF ¶ 62 [Doc. No. 155]. Accordingly, they argue that any fiscal injury incurred by Plaintiff States is insufficiently traceable to the EO. See Intervenors' Opp'n 13–14 [Doc. No. 153]. Further, Defendants dispute that the EO threatens Plaintiff States' election officials with criminal enforcement, sufficient to comprise an imminent Article III injury-in-fact. See Defs.' Mem. 11–12 [Doc. No. 157] (citing Susan B. Anthony List v. Driehaus, 573 U.S. 149, 157–58 (2014)).

Defendants and Intervenors are incorrect. Plaintiff States are actively working to conduct primary, special, and general elections. The EO has ordered administrative agencies to take action in the coming months that has already required Plaintiff States to respond given the practical nature of an election cycle. A list of several federal criminal offenses relating to voter fraud appears multiple times in the EO: first as supporting the purpose of the EO, i.e., to reduce voter fraud, see Exec. Order 14399 § 1, and then again in describing an enforcement plan as to both Section 2 specifically, see id. § 2(b), and the EO as a whole, see id. § 5. The EO's prescriptive and proscriptive language, in conjunction with multiple references to criminal penalties, implicitly threatens enforcement of those enumerated laws against election officials who furnish ballots to voters excluded from the Confirmed Citizen Lists or the USPS Lists, and that threat is sufficiently imminent for Article III injury. See N.H. Lottery Comm'n v. Rosen, 986 F.3d 38, 49–51 (1st Cir. 2021) (Courts "do not require a plaintiff to expose [themselves] to liability before bringing suit to challenge the basis for the threat.") (quotation omitted).

Moreover, not only are Plaintiff States experiencing injury now with respect to planning, but it is undisputed that, should the EO's directives go into effect, Plaintiff States will incur compliance costs. Defs.' SUMF ¶ 63 [Doc. No. 155]. An order declaring the EO as unlawful and enjoining its implementation for the November 2026 or earlier elections would redress Plaintiff

States' immediate injuries because they would no longer have to plan to comply or actually comply with the EO prior to those elections, and Plaintiff States' election officials would no longer be threatened with criminal prosecution. Accordingly, Plaintiff States have standing to challenge the EO as unconstitutional. See California v. Trump, 786 F. Supp. 3d 359, 377 (D. Mass. 2025) (states have standing to challenge Executive Order No. 14248, Preserving and Protecting the Integrity of American Elections); Washington v. Trump, 814 F. Supp. 1173, 1198–98 (W.D. Wash. 2026) (same).

Therefore, the court DENIES Defendants' motion, joined by the Intervenor States, to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of standing with regard to the November 3, 2026 (and all earlier) elections.

III. Defendants' Motion to Dismiss for Failure to State a Claim

A. Standard of Review

In assessing a complaint under Federal Rule of Civil Procedure 12(b)(6), the court assumes "the truth of all well-pleaded facts" and draws "all reasonable inferences in the plaintiff's favor." Nisselson v. Lernout, 469 F.3d 143, 150 (1st Cir. 2006). To survive dismissal, a complaint must contain sufficient factual material to "state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations . . . [f]actual allegations must be enough to raise a right to relief above the speculative level[.]" Id. at 555 (citations omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

B. Cause of Action

Defendants argue that Plaintiff States lack a statutory cause of action to challenge the EO and that ultra vires review is unavailable because Plaintiffs fail to plead a specific statutory violation. Defs.' Mem. 23–25 [Doc. No. 157]. Defendants argue that Plaintiffs must wait until the EO is implemented and then sue the implementing agencies under the Administrative Procedure Act ("APA"). Id.; see also Intervenors' Opp'n 16 [Doc. No. 153].

A claim in federal court requires a valid cause of action. See Davis v. Passman, 442 U.S. 228, 236–41 (1979). While a party challenging executive action typically brings suit under the APA, the APA is unavailable to challenge an executive order because "the President is not an agency within the meaning of" the APA, and the issuance of an executive order is not a final agency action. Franklin v. Massachusetts, 505 U.S. 788, 796 (1992).

In the absence of a statute authorizing suit, parties "are entitled to bring a non-statutory cause of action questioning the legality of [an] Executive Order.'" Chamber of Commerce v. Reich, 74 F.3d 1322, 1327 (D.C. Cir. 1996)); see New York v. McMahon, 784 F. Supp. 3d 311, 352 (D. Mass. 2025) (noting that "[a] claim alleging that the President acted in excess of his statutory authority is judicially reviewable even absent an applicable statutory review provision") (quoting Am. Forest Res. Council v. United States, 77 F.4th 787, 796 (D.C. Cir. 2023)); New Hampshire Indonesian Cmty. Support, 765 F. Supp. 3d 102, 112 (D.N.H. 2025) (vacated on other grounds) ("[T]he plaintiffs have a cause of action to seek injunctive relief to redress certain governmental actions that contravene the Constitution or a federal statute.") (citing Youngstown, 343 U.S. at 582). "To act ultra vires a government official is either acting in a way that is impermissible under the Constitution or acting outside of the confines of his statutory authority." New York, 784 F. Supp. 3d 311, 352 (D. Mass. 2025) (quotation omitted). "The nonstatutory review action finds its jurisdictional toehold in the general grant of federal-question jurisdiction

of 28 U.S.C. § 1331." Rhode Island Dep't of Env't Mgmt. v. United States, 304 F.3d 31, 42 (1st Cir. 2002) (citation omitted).

This cause of action is subject to certain limitations, however. Judicial review is available only if the Executive Branch has "taken action entirely 'in excess of its delegated powers and contrary to a specific prohibition' in a statute." Nuclear Regul. Comm'n v. Texas, 605 U.S. 665, 681 (2025) (quoting Ry. Clerks v. Ass'n for Benefit of Non-contract Emps., 380 U.S. 650, 660 (1965)). Further, judicial review is unavailable if an existing "statutory review scheme [1] provides aggrieved persons 'with a meaningful and adequate opportunity for judicial review[;]'" or "[2] forecloses all other forms of judicial review." Id. (quoting Bd. of Governors, FRS v. MCorp Fin., Inc., 502 U.S. 32, 43–44 (1991)).

Here, Plaintiffs have a cause of action, sounding in equity, to seek injunctive and declaratory relief to redress governmental action that allegedly contravenes the Constitution. See Youngstown, 343 U.S. at 585. Defendants admit that no statutory review scheme would provide Plaintiffs with a "meaningful and adequate opportunity for judicial review" at this time. Nuclear Regul. Comm'n, 605 U.S. at 681. Having found Plaintiffs sufficiently injured due to the short timeframe required by the EO's directives prior to the November 3, 2026, and earlier elections, the court will review Plaintiffs' facial challenge to the constitutionality of the EO, sounding in equity, and Defendants' Motion to Dismiss [Doc. No. 154] based on a failure to plead a cause of action is DENIED.

C. Dismissal of President Trump

Defendants argue next that President Trump should be dismissed as a defendant because the court lacks jurisdiction to issue injunctive or declaratory relief as to the President in the performance of his official duties. See Defs.' Mem. 30–31 [Doc. No. 157], id. at 46–47 (citing Mississippi v. Johnson, 71 U.S. 475 (1866) and Franklin, 505 U.S. at 827 (Scalia, J.,

concurring)). Plaintiff States seek a declaration that the EO is unlawful but do not seek an injunction against the President. Am. Compl. at ECF 44 [Doc. No. 65].

Contrary to Defendants' assertions, Presidential action is not inherently unreviewable. Franklin, 505 U.S. at 828 (Scalia, J., concurring) (citing Youngstown, 343 U.S. 579); Nixon v. Fitzgerald, 457 U.S. 731, 753–54 (1982) ("separation-of-powers doctrine does not bar every exercise of jurisdiction over the President of the United States"). Rather, "the President is subject to judicial process in appropriate circumstances[,]" Clinton v. Jones, 520 U.S. 681, 703 (1997), and the Supreme Court has expressly rejected the notion of "an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances," id. at 704 (quoting United States v. Nixon, 418 U.S. 683, 706 (1974)).

Defendants primarily rely on Justice Scalia's concurrence in Franklin, in which he stated, "I think we cannot issue a declaratory judgment against the President. It is incompatible with his constitutional position that he be compelled personally to defend his executive actions before a court." Franklin, 505 U.S. at 827 (Scalia, J., concurring). However, six years after Franklin, the Supreme Court expressly stated in Clinton v. City of New York, 524 U.S. 417, 433 n.22 (1998), that a declaratory judgment against the President could redress the plaintiff's injuries. Ultimately, the case law does not support a firm prohibition on a declaratory judgment against the President. See Kingdom v. Trump, No. 25-cv-691-RCL, 2025 WL 1568238, at *16 (D.D.C. June 3, 2025) (declining to dismiss declaratory judgment claim against President); Missouri v. Biden, 662 F. Supp. 3d 626, 682 (W.D. La. 2023) (same); Stone v. Trump, 400 F. Supp. 3d 317, 359 (D. Md. 2019) (same). Therefore, where Plaintiffs seek only declaratory and not injunctive relief as to the President, the court DENIES Defendants' Motion [Doc. No. 154] to dismiss the President from this action.

D. Dismissal of Commerce Defendants

Defendants argue that the Department of Commerce and Commerce Secretary Lutnick should be dismissed as Defendants because the EO includes no express role for the Commerce Defendants, only minimal "coordinat[ion]" regarding implementation. See Defs.' Mem. 30–31 [Doc. No. 157]. Plaintiffs assert only Count I of the Amended Complaint [Doc. No. 65] against the Commerce Defendants, id. ¶¶ 150–66. Plaintiff States argue that both the President and Commerce Defendants "play a critical role in the EO's issuance and implementation[.]" See Pls.' Reply 30 [Doc. No. 163].

The EO features the Commerce Secretary minimally in its directives. The Commerce Secretary is mentioned only in Section 4 of the EO, which requires that "[t]he Secretary of Homeland Security, the Commissioner of SSA, and the Postmaster General shall coordinate with the Secretary of Commerce in effectuating all relevant aspects of the implementation of this order." Exec. Order 14399 § 4(a). But while the specifics of the Commerce Secretary's role are not yet clear, where the court is considering a facial attack against the EO, and the EO explicitly charges the Commerce Secretary with implementation of the EO, the court DENIES Defendants' Motion [Doc. No. 154] to dismiss the Department of Commerce and the Secretary of Commerce.

IV. Plaintiffs' Motion for Summary Judgment

Plaintiffs ask the court to declare Sections 2, 3, and 5 of the EO facially unconstitutional and enjoin all agency heads from implementing the EO's directives. See Pls.' Proposed Order [Doc. No. 97-1].

A. Standard of Review

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is material when, under

the governing substantive law, it could affect the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Baker v. St. Paul Travelers Ins. Co., 670 F.3d 119, 125 (1st Cir. 2012). A dispute is genuine if a reasonable jury could return a verdict for the non-moving party. Anderson, 477 U.S. at 248.

The moving party bears the initial burden of establishing the absence of a genuine dispute of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once established, the burden shifts to the non-moving party to set forth facts demonstrating that a genuine dispute of material fact remains. Id. at 322. The non-moving party cannot oppose a properly supported summary judgment motion by "rest[ing] upon mere allegations or denials of [the] pleadings." Anderson, 477 U.S. at 256. Rather, the non-moving party must "go beyond the pleadings and by [his or] her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." Celotex Corp., 477 U.S. at 324 (quotations omitted). Disputes over facts "that are irrelevant or unnecessary" will not preclude summary judgment. Anderson, 477 U.S. at 248.

Generally, such a motion is brought after the parties have completed discovery. See Celotex Corp., 477 U.S. at 322. Nonetheless, unless a local rule or court order provides otherwise, the movant may file a summary judgment motion before discovery is complete or before it has even commenced. See Fed. R. Civ. P. 56(b) ("[A] party may file a motion for summary judgment at any time until 30 days after the close of all discovery."). However, "the party opposing the motion for summary judgment bears the burden of responding only after the moving party has met its burden of coming forward with proof of the absence of any genuine issues of material fact." Celotex Corp., 477 U.S. at 322 (citation omitted).

When reviewing a motion for summary judgment, the court must take all properly supported evidence in the light most favorable to the non-movant and draw all reasonable

inferences in the non-movant's favor. Griggs-Ryan v. Smith, 904 F.2d 112, 115 (1st Cir. 1990). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge . . . ruling on a motion for summary judgment[.]" Anderson, 477 U.S. at 255.

Here, as set forth above, see supra Section I, there is no genuine dispute of material facts for purposes of the pending motion.

B. Saving Language

As a threshold issue, much of Defendants' opposition is based on the EO's qualifying language, directing executive agencies to act "[t]o the extent feasible and consistent with applicable law[.]" Exec. Order 14399 § 2(a). Defendants argue that the EO cannot be facially unlawful, because the EO explicitly requires that its directives comply with the law. Defs.' Mem. 44 [Doc. No. 157]; see also Intervenors' Opp'n 7 [Doc. No. 153].

"The mere possibility that some agency might make a legally suspect decision" and disregard a saving clause's command to follow the law when implementing an executive order "does not justify an injunction against enforcement" of that order. Bldg. and Constr. Trades Dep't, AFL-CIO v. Allbaugh, 295 F.3d 28, 33 (D.C. Cir. 2002). Accordingly, if an executive order containing a saving clause directs a subordinate to achieve a goal that could be achieved in multiple—both legal and illegal—ways, a reviewing court will interpret the order in light of the saving clause to direct only permissible action. Common Cause v. Trump, 506 F. Supp. 3d 39, 49–50, 53 n.8 (D.D.C. 2020); see also Trump v. New York, 592 U.S. 125, 131 (2020).

"If 'consistent with law' precludes a court from examining whether the Executive Order is consistent with law," however, "judicial review is a meaningless exercise, precluding resolution of the critical legal issues." City & Cnty. of San Francisco v. Trump, 897 F.3d 1225,

1240 (9th Cir. 2018). Accordingly, where, as here, the parties' dispute whether certain action required by an order is permissible, review is not precluded by a saving clause.

Moreover, executive orders, "cannot be held to destroy themselves through saving clauses." Common Cause, 506 F. Supp. 3d at 53 n.8 (quoting FTC v. Credit Bureau Ctr., LLC, 937 F.3d 765, 755 (7th Cir. 2019)). If an executive order unambiguously "command[s] . . . action that a saving[ ] clause purports to negate," a reviewing court must interpret the order's operative provision as written, even if that requires disregard of the saving language. Id. Where a plaintiff argues that an executive order is invalid in all possible applications, the saving clause itself cannot preclude review. See Allbaugh, 295 F.3d at 33 (citing Reno v. Flores, 507 U.S. 292, 301 (1993)). If implementation consistent with applicable law is impossible, an executive order's saving clause or otherwise qualifying language "is meaningless." League of United Latin Am. Citizens v. Exec. Off. of President, 780 F. Supp. 3d 135, 176 (D.D.C. 2025). Therefore, the court declines to interpret the EO as nullifying its meaning through saving language and considers whether the President has the authority to issue the EO regardless of the qualifying language. Id.

C. Section 2 of the EO

Section 2 directs the USCIS director to compile a Confirmed Citizen List for each State, including individuals who could be eligible to vote in an upcoming election based on citizenship, age, and State residency. Exec. Order 14399 § 2(a). The EO requires USCIS to compile these Lists, "[t]o the extent feasible and consistent with applicable law," from various federal records/databases (including DHS naturalization and citizenship records, SSA records, and the SAVE database) and to send the Lists to State election officials 60 days before a federal election, after which the State will have an opportunity to review and send in suggested

corrections/modifications. Id. Section 2 then identifies several federal criminal offenses[13] and, citing those offenses, directs DOJ to prioritize the investigation and prosecution of federal election officials or administrators "who issue Federal ballots to individuals not eligible to vote in a Federal election[.]" Id. § 2(b).

1. Section 2(a): Establishment of Confirmed Citizen Lists

Plaintiff States argue the President lacks authority to establish Confirmed Citizen Lists. Pls.' Mem. 8–12 [Doc. No. 106]. Consistent with Constitutional principles of State control over elections, all States already maintain registered voter databases, subject to some general structural requirements imposed by Congress. HAVA requires each State to implement a "single, uniform, official, centralized, interactive computerized statewide voter registration list," 52 U.S.C. § 21083(a)(1), and to maintain that list regularly by adding newly eligible voters and removing ineligible voters. Id. §§ 21083(a)(2)(A)(iii), (a)(2)(B). HAVA provides only a minimum set of requirements for categories of information included on voter registration lists. 52 U.S.C. § 21083(a)(1)(A)(ii)–(iii) (requiring that voters' name and registration information be included in the list and that each voter be assigned a unique identifier). Further, state election officials retain discretion under HAVA to determine the appropriate method for creating, storing, and maintaining their State's voter registration list as well as to establish procedures for registering to vote. Id. § 21085 ("The specific choices on the methods of complying with the requirements of this subchapter shall be left to the discretion of the State."); id. § 20503 ("[E]ach State shall establish procedures to register to vote in elections for Federal office[.]").

[13] Namely, 18 U.S.C. § 2(a) (Aiding and Abetting Liability); 18 U.S.C. § 241 (Conspiracy Against Rights); 18 U.S.C. § 371 (Conspiracy or Offense to Defraud the United States); 18 U.S.C. § 611(a) (Voting by Aliens); 18 U.S.C. § 1001 (Criminalizing False Statements); 18 U.S.C. 1015 (Criminalizing False Statements re: Citizenship); 52 U.S.C. § 10307 (False Information in Voting); and 52 U.S.C. § 20511 (Criminal Penalties for Election Officials who, inter alia, procure false ballots).

Defendants do not defend the establishment of the Lists directly, arguing that "it is not even clear whether or when these [Confirmed Citizen L]ists will be created—much less in what form, based on what data, or how they might be used." Defs.' Mem. 18 [Doc. No. 157]; but see Defs.' Notice [Doc. No. 188] (notifying the court that, on June 8, 2026, DHS Secretary approved USCIS' plan to build infrastructure necessary to establish the Confirmed Citizen Lists). Intervenor States do defend the Lists, characterizing Section 2 as "organiz[ing] information already within the Executive Branch's possession" and asserting that the compilation of the Confirmed Citizen Lists supports "the President's duty to 'take Care that the Laws be faithfully executed[.]'" Intervenors' Opp'n at 8–9 [Doc. No. 153] (citing U.S. CONST. art. II, § 3).

It is clear that the federal agencies charged with compiling Confirmed Citizen Lists lack the ability to create complete and accurate lists of the U.S. citizens residing in every State. The EO provides that the Confirmed Citizen Lists "shall be derived from Federal citizenship and naturalization records, SSA records, SAVE [Systematic Alien Verification for Entitlements] data,[14] and other relevant Federal databases." Exec. Order 14399, § 2(a); see also id. § 4(c) (the SSA Commissioner must "provide all . . . citizenship and identity data [necessary]" to compile the Confirmed Citizen Lists for the DHS secretary, "consistent with applicable law[.]").[15] But

[14] SAVE is a system administered by DHS that is "designed to help federal, state, tribal, and local government agencies confirm citizenship and immigration status prior to granting benefits and licenses, as well as for other lawful purposes." DHS, Privacy Impact Assessment for the Systematic Alien Verification for Entitlements Program, DHS Ref. No. DHS/USCIS/PIA-006(c), at 2 (2020), https://perma.cc/HU2M-NTL8 (2020 PIA). SAVE users "formalize the purpose and use in which they use SAVE through a Memorandum of Agreement (MOA) or Computer Matching Agreement" establishing "the terms and conditions for the user agency's participation in SAVE." Id. at 2–3. One purpose for which States can enter into an agreement to use SAVE is to verify the citizenship of registered voters. Privacy Act of 1974, 5 U.S.C. § 552a; Notice of Modified System of Records, 90 Fed. Reg. 48948, 48952 (Oct. 31, 2025) (2025 SORN). DHS does not dispute that the SAVE system has erroneously flagged citizens as noncitizens. See Pls.' SUMF ¶¶ 15–16 [Doc. No. 105]; Defs.' SUMF ¶¶ 15–16 [Doc. No. 155].

[15] Defendants deny that USCIS has made "any final decisions about what, if any, information will be included in any [Confirmed Citizenship Lists] that may ultimately be created" and, in

where a list of citizens will only be created "[t]o the extent feasible and consistent with applicable law," individual information may only be shared within the limitations of the Privacy Act.[16] More than that, while the EO provides that the Confirmed Citizen Lists "shall be derived from" certain federal records, id. § 2(a), those records do not necessarily track name changes (such as when a woman changes her name at marriage) or residence changes when citizens move from State to State. Accordingly, these Confirmed Citizen Lists will necessarily be incomplete.

Further, while Section 2 labels these Lists as "Citizenship Lists," the EO does not order the creation of a national database comprised exclusively of U.S. citizenship information. Instead, Section 2 directs the compilation of "Lists" for each State limited to "individuals confirmed to be United States citizens who will be above the age of 18 at the time of an upcoming Federal election and who maintain a residence in the subject State[.]" Id. § 2(a) (emphasis added). However, the EO includes no relevant statutory or constitutional authority for the compilation of "Lists" that include individuals who meet the States' additional and particular criteria for residence. Similarly, the EO points to no authority to limit voting eligibility in primary elections to citizens above the age of 18. Neither Defendants nor Intervenors maintain that any such authority exists. The Constitution provides that only the States determine voter-eligibility requirements, subject, of course, to Constitutional restraints. U.S. CONST. art. I, § 2, cl. 1; art. II, § 1, cl. 2; amend. XVII; amend. XXVI. Both Congress and the President lack any role regarding voter eligibility.

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response to Plaintiffs' showing that the SAVE system has erroneously flagged citizens as noncitizens, contend that EO § 2(a) "lists 'SAVE data' as a potential source of data[.]" Defs.' SUMF ¶ 15 [Doc. No. 155] (citing Mayhew Decl. ¶¶ 5–10 [Doc. No. 156-1]). As of June 8, 2026, DHS has not confirmed whether or in what capacity SAVE data will be used. See Defs.' Notice 2 [Doc. No. 188].

[16] The Privacy Act strictly limits government agencies from disclosing records about an individual. See 5 U.S.C. § 552a(a)(4) (defining "record"); id. § 552a(b) (limiting disclosure).

Notably, nowhere in HAVA does Congress prescribe who should be included on State voter lists. Further, neither in HAVA nor any other federal statute does Congress authorize the federal government to create their own voting database. Instead, Congress, consistent with the Constitution, has left that authority to the States alone. Accordingly, the creation of the Confirmed Citizen Lists is ultra vires because the President lacks any authority to compile voter lists for each State. See Youngstown, 343 U.S. at 582.

2. Section 2(b): List Enforcement

After describing the requirements surrounding the compilation and transmission of the Confirmed Citizens Lists, Section 2 then requires that DOJ prioritize the investigation and prosecution of election officials and administrators "who issue Federal ballots to individuals not eligible to vote in a Federal election," including specific criminal offenses, largely relating to voter-fraud. Exec. Order 14399 § 2(b). Plaintiffs argue that Section 2 threatens criminal investigation and prosecution "on a legally baseless theory" to "improperly conscript Plaintiff States and their elections officials to carry out a presidential policy." Pls.' Reply at 16 [Doc. No. 163]. Defendants characterize Section 2(b) as a matter of prosecutorial discretion, exempt from judicial review. Defs.' Reply at 23 [Doc. No. 167]. Intervenor States also dispute that the EO does anything more than direct DOJ to enforce existing federal election laws. Intervenors' Opp'n 11 [Doc. No. 153].

Certainly, the President may direct DOJ to prioritize the investigation and prosecution of certain criminal offenses. See Trump v. United States, 603 U.S. 593, 620 (2024) ("[T]he Executive Branch has 'exclusive authority and absolute discretion' to decide which crimes to investigate and prosecute, including with respect to allegations of election crime.") (citing United States v. Nixon, 418 U.S. 683, 693 (1974)). And, the Constitution empowers the President to "take care that [18 U.S.C. §§ 2(a), 241, 371, 611(a), 1001, 1015; 52 U.S.C. §§ 10307, and 20511

are] faithfully executed" and prioritize the enforcement of violators accordingly. U.S. CONST. art. II, § 3. However, criminal offenses are defined by Congress and neither the Take Care nor Guarantee Clause empowers the President to create a new criminal offense. See U.S. CONST. art. I, § 8 ("Congress shall have the power . . . [t]o define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations.").

Congress may explicitly delegate the power to define a criminal offense to the President. See United States v. Grimaud, 220 U.S. 506, 517 (1911) ("[W]hen Congress had legislated and indicated its will, it could give to those who were to act under such general provisions 'power to fill up the details' by the establishment of administrative rules and regulations, the violation of which could be punished by fine or imprisonment fixed by Congress, or by penalties fixed by Congress, or measured by the injury done."). But neither the EO, nor the parties' briefing references a statute that delegates such authority from Congress to the President in this voting-related context. Cf. Touby v. United States, 500 U.S. 160 (1991) (upholding a delegation of power to the Attorney General to bypass (for a limited time) several of the requirements for permanent drug scheduling and expedite the designation of a substance as "controlled").

Defendants argue that no legal significance, criminal or otherwise, attaches to a State's decision to utilize or disregard DHS' Confirmed Citizens List. Defs.' Mem. at 36 [Doc. No. 157]. Defendants describe the Lists as "optional resource[s] that states can use or ignore[.]" Id. (citation omitted). Intervenor States also assert that the "use of the Lists by the States is optional[,]" Intervenors' Opp'n 5 [Doc. No. 153] (emphasis in original), but then point to the law enforcement implications of the EO, see id. at 9 (citing U.S. CONST. art. II, § 3 and arguing that the compilation of the Lists supports "the President's duty to 'take Care that the Laws be faithfully executed[.]'"). Where the President seeks to have the Attorney General and DOJ rely on the Confirmed Citizens Lists to support the President's stated mission to reduce voter fraud,

see Exec. Order 14399 § 1 ("Purpose and Policy"), the Lists are being used as an enforcement mechanism that has some type of legal consequence, or at minimum, as a threatened enforcement mechanism that will chill local election officials from complying with legal obligations to ensure that all eligible citizens may vote. Accordingly, to the extent the EO attempts to intimidate local election officials to use the necessarily incomplete Confirmed Citizenship Lists as a resource, lest they face criminal prosecution, such efforts fall outside the Presidents' Article II and otherwise-delegated authority.

D. Section 3 of the EO

Plaintiff States argue that Section 3 of the EO, which directs USPS to engage in rulemaking regarding regulating absentee and mail-in ballots, unconstitutionally interferes with "States' and Congress's authority to regulate elections and Congress's power to regulate USPS." Pls.' Mem. 14 [Doc. No. 106]. Defendants argue that the merits are impossible to argue because the ultimate agency action that USPS will take is still unknown. Defs.' Mem. 31–37 (Doc. No. 157]. Intervenor States assert that the President, vested with all the power of the Executive Branch, inherently has the authority to direct USPS. Intervenors' Opp'n 17–20 [Doc. No. 153].

Section 3 of the EO directs USPS to compile its own Lists of individuals eligible to vote by mail and prohibits the transmission of a mail-in ballot completed by anyone not on USPS' Lists. See Exec. Order 14399 § 3(b); see also USPS Notice of Proposed Rulemaking, Ballot Mail for Federal Elections, 91 Fed. Reg. 32915, 32918 (June 2, 2026) (Mail ballots "that do not comply with [standards required by the EO] will not be accepted and will be returned to the authorized ballot mailer."). But the Constitution reserves the power to determine voter eligibility to the States alone. U.S. CONST. art. I, § 2, cl. 1; amend. XII; amend. XVII. Neither the Executive Branch nor Congress may interfere with this power.

Additionally, Congress has empowered USPS to "adopt, amend, and repeal such rules and regulations, not inconsistent with this title, as may be necessary in the execution of its functions[.]" 39 U.S.C.§ 401(2). However, no law enacted by Congress delegates authority to control mail-in voting to USPS. The voting-related guidance currently issued by USPS is not binding on the States, merely recommended. See USPS Pub. 631, Official Election Mail – Graphic Guidelines and Logos (https://about.usps.com/publications/pub631.pdf) (Feb. 2026); USPS Kit 600, Official Election Mail Guide (https://about.usps.com/kits/kit600.pdf) (Feb. 2026).[17] Accordingly, USPS lacks statutory authorization to promulgate any binding regulations on mail-in voting.

Finally, the EO's directive that USPS require all States to use a specific mail-in ballot is inconsistent with USPS rulemaking procedure. If seeking to make a "change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis," USPS must submit a proposal to the Postal Regulatory Commission ("PRC"), for an advisory opinion. 39 U.S.C. § 3661(b). The PRC then has 90 days to issue its advisory opinion. 39 C.F.R. § 3020.102(a). The EO requires USPS to issue an NPRM by May 30, 2026, and then a final rule by July 29, 2026. This timeframe provides no allowance for Congress' mandated procedure regarding USPS rulemaking. 39 U.S.C. § 3661(b). Therefore, USPS lacks authority to

[17] USPS created and published these election mail guidance documents pursuant to a 2021 settlement agreement between USPS and the NAACP, arising out of litigation regarding USPS' announcement and implementation of policy changes to reduce mail pick-up in advance of the 2020 general election. See Stip. of Settlement, Ex. A at 2, NAACP v. USPS, No. 1:20-cv-02295-EGS (D.D.C. Dec. 17, 2021), Dkt. No. 170. The 2021 settlement agreement required USPS, inter alia, to prioritize the timely delivery of election mail for every national election through 2028. Id. The NAACP has filed a motion to enforce that settlement agreement, arguing that the EO directs USPS to violate the settlement agreement. See Pls.' Mot. to Enforce Compliance, NAACP v. USPS, No. 1:20-cv-02295-EGS (D.D.C. June 3, 2021), Dkt. No. 171.

promulgate regulations on voting and the EO's directive that USPS do so constitutes ultra vires executive action.

E. Section 5 of the EO

Section 5 requires DOJ and all other executive agencies "with relevant authority" to "take all lawful steps to deter and address noncompliance with Federal law." Exec. Order 14399 § 5. Section 5 also states that "[e]vidence of violations of existing Federal laws by State or local election officials . . . may be referred to [DOJ] for consideration of investigation or charges under," 18 U.S.C. §§ 2(a), 241, 371, 611(a), 1001, 1015, as well as under 52 U.S.C. §§ 10307 and 20511 (the same criminal provisions listed in Sections 1, 2(b), and 3(a) of the EO). Id. (emphasis added). Finally, Section 5 provides that "States and localities should preserve, for a 5-year-period, all records and materials–excluding ballots cast–evidencing participation in any Federal election (e.g., ballot envelopes, regardless of carriers)." Id. (emphasis added).

Plaintiff States argue that Section 5 is unconstitutional because it regulates States' election record retention processes without authority to do so. Pls.' Mem. at 19–20 [Doc. No. 106]. Defendants argue that Section 5 merely sets out the President's view on record retention policies and that the EO does not establish any "legal consequences" for State and local officials who decline to retain all election materials for five years. Defs.' Mem. at 11–12 [Doc. No. 157]. In response, Plaintiff States request the court to "expressly find that [Section 5] does not impose any requirements on Plaintiff States" if the court agrees with Defendants' characterization of Section 5 as strictly precatory. Pls.' Reply at 27 [Doc. No. 163]. Intervenor States make no argument regarding Section 5. Intervenors' Opp'n [Doc. No. 153].

The Civil Rights Act of 1960 establishes record retention rules on election materials. Title III provides that "[e]very officer of election shall retain and preserve, for a period of twenty-two months from the date of any [federal] election . . . all records and papers which come into his

possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election," and makes the failure to do so punishable by up to one year of imprisonment. 52 U.S.C. § 20701. Title III also provides that "[a]ny record or paper" subject to that preservation requirement "shall, upon demand in writing by the Attorney General or his representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying[.]" Id. § 20703.[18]

Congress, pursuant to its Elections Clause power, has set a maximum record retention period of twenty-two months for election materials. U.S. CONST. art. I, § 4, cl. 1.; 52 U.S.C. § 20701. Congress has also expressly provided a role for the Executive Branch, permitting DOJ to investigate and execute the law by obtaining access to those papers pursuant to a specific process. 52 U.S.C. § 20703. Nowhere in Title III of the Civil Rights Act, or any other federal law, does Congress delegate to the President the power to set additional record retention requirements. Accordingly, the EO's 5-year record retention statement must be precatory, because the President lacks any authority to impose such a requirement. Cf. Libertarian Party of Ind. v. Packard, 741 F.2d 981, 988 (7th Cir. 1984) (Where the government lacks the authority to "compel [action], it should not be able to coerce.").

In interpreting the gloss of "should" in other contexts, courts have found that "use of the terms 'should' . . . indicate[s] that the statute is merely precatory." Monahan v. Dorchester Counseling Ctr., Inc., 961 F.2d 987, 994–95 (1st Cir. 1992) (analyzing 42 U.S.C. § 10841, titled the "Restatement of Bill of Rights for Mental Health Patients"). The verb "should" is precatory rather than mandatory because it "neither requires nor prohibits any action on the part of the

[18] It is upon this statutory basis that DOJ has recently claimed authority to demand access to States' electronic voter registration lists, a claim routinely dismissed by courts across the country. See supra Note 6.

states or any other party." Id. at 995 (quoting Brooks v. Johnson & Johnson, Inc., 685 F. Supp. 107, 108 (E.D. Pa. 1988)).

Therefore, in light of the President's lack of constitutional or statutory authority to impose an election materials record retention requirement, already expressly limited role in the Civil Rights Act record retention scheme, and a plain-meaning interpretation of the EO's language, Section 5 does not and cannot require the States to retain records of all election materials for five years.

V. Conclusion

The court has previously dismissed without prejudice Plaintiffs States' amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) on prudential ripeness grounds with regard to elections occurring after November 3, 2026. Mem. & Order [Doc. No. 190]. For the foregoing reasons, as to the November 3, 2026 election, and all earlier elections, Defendants' Motion to Dismiss [Doc. No. 154] pursuant to Federal Rules of Procedure 12(b)(1) and 12(b)(6) is DENIED and Plaintiffs' Motion for Summary Judgment [Doc. No. 97] pursuant to Rule 56 is GRANTED.

Accordingly, it is hereby ORDERED and DECLARED that Sections 2 and 3 of the EO are legally void as they are ultra vires and unconstitutionally violate the separation of powers, and that Section 5 of the EO is merely precatory.

In addition, other than the President, Defendants and their officers, agents, servants, and employees are hereby ENJOINED from implementing or giving effect to Sections 2 and 3 of the EO with respect to the November 3, 2026 or any earlier federal election in the Plaintiff States as follows:

a. Defendants United States Department of Justice, Acting Attorney General Todd Blanche, United States Department of Homeland Security, Secretary Markwayne Mullin, United

States Citizenship and Immigration Services, Director Joseph B. Edlow, United States Social Security Administration, Commissioner Frank Bisignano, United States Department of Commerce, and Secretary Howard Lutnick, including their officers, agents, servants, and employees, are enjoined from implementing, giving effect to, or enforcing Section 2 of the EO as to Plaintiff States with respect to the November 3, 2026 or any earlier federal election, including taking any steps to create a new federal program to superintend and control Plaintiff States' maintenance of their voter rolls; or initiating any investigation or prosecution of Plaintiff States, their officials, local officials, or agents of such state or local officials involved in the administration of federal elections within Plaintiff States, stemming from the unconstitutional provisions in Section 2 of the EO. This injunction does not bar the federal government from providing assistance with verifying the citizenship or eligibility of any voter if the assistance is provided at the request of any State and within the framework provided by Congress.

b. Defendants United States Department of Justice, Acting Attorney General Todd Blanche, United States Postal Service, Postmaster General David Steiner, Deputy Postmaster General Doug Tolino, Chair Amber McReynolds, Vice Chair Derek T. Kan, and Members Ronald Stroman and Daniel Tangherlini, including their officers, agents, servants, and employees, are enjoined from implementing, giving effect to, or enforcing Section 3(b)(i)–(v) or (d) of the EO as to elections mail for elections administered by Plaintiff States and ballot envelopes used by Plaintiff States with respect to the November 3, 2026 or any earlier federal election, including refusing to transmit mail-in or absentee ballots from voters registered in Plaintiff States to elections officials in Plaintiff States, regardless of the voters' location; or otherwise initiating or completing rulemaking to promulgate the specific regulations outlined in Section 3(b)(i)–(v) or (d) of the EO as to

elections mail for elections administered by Plaintiff States and ballot envelopes used by Plaintiff States for the November 3, 2026 election, or any earlier election. This injunction does not bar the federal government from providing non-binding USPS guidance on ballot mail envelopes or from providing assistance with verifying citizenship or eligibility of any voter if the assistance is provided at the request of any Plaintiff State and within the framework provided by Congress.

c. Defendants United States Department of Justice and Acting Attorney General Todd Blanche, including their officers, agents, servants, and employees, are enjoined from initiating any investigation or prosecution of Plaintiff States, their officials, local officials, or agents of such state or local officials involved in the administration of federal elections within Plaintiff States, with respect to the November 3, 2026 or any earlier federal election, stemming from the unconstitutional provisions in Sections 2 and 3 of the EO.

d. Defendants, other than the President, are hereby ORDERED that they must, in good faith, take such steps as are necessary to prevent explicit or implicit implementation of Sections 2, 3 and 5 of the EO, and to cease and reverse any implementation of those provisions, as to Plaintiff States, with respect to the November 3, 2026 or any earlier federal election.

Further, Defendants, other than the President, are hereby ORDERED to:

(a) Within seven (7) calendar days of entry of this Order, provide written notice of this Order to all Defendants and their employees, and to further notify them that Sections 2 and 3 of the EO are unlawful, null, and void and Section 5 is merely precatory, as to Plaintiff States with respect to the November 3, 2026 or any earlier federal election;

(b) Notify all recipients that they are required to comply with this Order, under penalty of contempt; and

(c) Provide counsel for Plaintiff States with a copy of the notice and/or communications referred to in (a)–(b) on the docket, within seven (7) days of issuance of such notice and/or communications.

Defendants are hereby ORDERED to file a status report with the court within seven (7) days of entry of this Order describing steps taken to ensure compliance with it. The court retains jurisdiction to enforce the injunction and judgment and to award other such relief as may be appropriate.

Plaintiff States are directed to file a proposed Judgment for entry in this matter within seven (7) days of entry of this Order.

IT IS SO ORDERED.

June 25, 2026

/s/ Indira Talwani
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STATE OF CALIFORNIA, et al.,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	
	*	
DONALD J. TRUMP, in his official capacity as President of the United States, et al.,	*	Civil Action No. 1:26-cv-11581-IT
	*	
Defendants,	*	
	*	
and	*	
	*	
STATE OF MISSOURI, et al.,	*	
	*	
Intervenor-Defendants.	*	

MEMORANDUM & ORDER

July 7, 2026

TALWANI, D.J.

Before the court are motions to stay pending appeal filed by Defendants[1] and Intervenor-Defendants.[2] On June 18, 2026, the court granted in part and denied in part Defendants' motion

[1] Defendants are Donald J. Trump, in his official capacity as President of the United States; United States Department of Justice; Todd Blanche, in his official capacity as Acting U.S. Attorney General; United States Department of Homeland Security; Markwayne Mullin, in his official capacity as Secretary for the Department of Homeland Security; United States Social Security Administration; Frank Bisignano, in his official capacity as Commissioner of the U.S. Social Security Administration; United States Postal Service; David Steiner, in his official capacity as Postmaster General and Chief Executive Officer of the Postal Service; Doug Tolino, in his official capacity as Deputy Postmaster General, Chief Operating Officer and Chief Human Resources Officer of the Postal Service and Member of the Postal Service Board of Governors; Amber McReynolds, in her official capacity as Chair of the Postal Service Board of Governors; Derek T. Kan, in his official capacity as Vice Chairman of the Postal Service Board of Governors; Ronald Stroman, in his official capacity as a Member of the Postal Service Board of Governors; and Daniel Tangherlini, in his official capacity as a Member of the Postal Service Board of Governors.

[2] Intervenor-Defendants are Alabama, Florida, Indiana, Kansas, Louisiana, Missouri, Montana, Nebraska, Oklahoma, South Carolina, South Dakota, and Texas.

to dismiss, dismissing without prejudice on prudential ripeness grounds the Amended Complaint filed by Plaintiff States,[3] as to claims regarding Executive Order 14399, Ensuring Citizenship Verification and Integrity in Federal Elections (the "EO"), 91 Fed. Reg. 17125 (Mar. 31, 2026), and its implementation with regard to elections occurring after November 3, 2026, denying Defendants' motion to dismiss on prudential ripeness grounds as to the November 3, 2026 and any earlier elections, and reserving on remaining arguments. Mem. & Order [Doc. No. 190]. On June 25, 2026, the court denied the balance of the motion and granted Plaintiffs summary judgment in part, holding that Sections 2 and 3 of the EO are unconstitutional and ultra vires, and enjoining any implementation of those sections by Defendant agencies as to Plaintiff States with respect to elections occurring on or before November 3, 2026. Mem. & Order [Doc. No. 191]. Defendants and Intervenor-Defendants appealed, see California v. Trump, No. 26-01774 (1st Cir. July 2, 2026); California v. Trump, No. 26-01779 (July 6, 2026), and have moved to stay the court's injunction, pending appeal before the United States Court of Appeals for the First Circuit. See Defs.' Mot. to Stay [Doc. No. 193]; Intervenors' Mot. to Stay [Doc. No. 202]. The court thereafter entered Final Judgment [Doc. No. 207] and treats the motions to stay as directed to that Final Judgment as well.

I. Standard of Review

A district court may stay an injunction while an appeal is pending. Fed. R. Civ. P. 62(d). "A stay pending appeal is an 'intrusion into the ordinary processes of administration and judicial review' and relief is not granted as 'a matter of right.'" Rhode Island v. Trump, 155 F.4th 35, 41

[3] Plaintiff States are Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, Washington, Wisconsin, and Josh Shapiro in his official capacity as Governor of Pennsylvania.

(1st Cir. 2025) (quoting New York v. Trump, 133 F.4th 51, 65 (1st Cir. 2025)). The movants "bear the burden of demonstrating that they are entitled to the 'extraordinary' relief that they seek." Id. (quoting Somerville Pub. Schs. v. McMahon, 139 F.4th 63, 68 (1st Cir. 2025)).

The Supreme Court has explained that movants must (1) make a strong showing that they are likely to succeed on the merits on appeal; (2) show that they will be irreparably injured absent a stay; (3) show that a stay will not substantially injure the other parties interested in the proceeding; and (4) show that the stay would be in the public interest. Nken v. Holder, 556 U.S. 418, 426 (2009). Likelihood of success and irreparable injury are "the most critical" factors. Id. at 434. "It is not enough that the [movant's] chance of success on the merits be better than negligible." Id. (internal quotations and citation omitted). Similarly, "simply showing some possibility of irreparable injury fails to satisfy the second factor." Id. at 434–35 (internal quotations and citation omitted). Courts assess the harm to other interested parties and weigh the public interest "[o]nce an applicant satisfies the first two factors." Id. at 435.

II. Discussion

A. Merits

For the reasons discussed in its June 18, 2026 Memorandum and Order [Doc. No. 190] and June 25, 2026 Memorandum and Order [Doc. No. 191], the court finds that as to the November 3, 2026 and earlier elections, Plaintiff States' claims are ripe, Plaintiffs have Article III standing, and Sections 2 and 3 of the EO are unconstitutional and ultra vires. Accordingly, Defendants and Intervenor-Defendants are unlikely to succeed on the merits of their appeal.

Defendants and Intervenor-Defendants assert that the court's June 18, 2026 Memorandum and Order [Doc. No. 190], dismissing Plaintiff States' claims concerning elections after November 3, 2026, supports their argument that Plaintiff States lack Article III standing and that

their claims are not ripe for adjudication. Defs.' Mem. ISO Mot. to Stay ("Defs.' Mem.") 7–15 [Doc. No. 195]; Intervenors' Mem. ISO Mot. to Stay ("Intervenors' Mem.") 4–10 [Doc. No. 203].

While "originat[ing] from the same Article III limitation," prudential ripeness is both related to yet distinct from standing. Jensen v. R.I. Cannabis Control Comm'n, 160 F.4th 18, 24 (1st Cir. 2025) (citation omitted); see Mem. & Order 9–10 [Doc. No. 190] and cases cited therein. In dismissing Plaintiffs' claims on ripeness grounds only as to elections after November 3, 2026, the court acknowledged the reality with which neither Defendants nor Intervenor-Defendants are willing to engage: while claims as to distant elections may not yet be ripe, the claims as to the upcoming elections are ripe because States are actively planning to and currently administering such elections. The "possibility of future judicial review" is neither practicable nor feasible where the EO directs that specific agency action be taken in a constricted timeframe, thereby interfering with Plaintiffs' present efforts to administer elections. Defs.' Mem. 10 [Doc. No. 195]. Therefore, Plaintiffs' claims as to elections on and before November 3, 2026, are logically fit for judicial review and denying review on prudential ripeness grounds until some point in the future, e.g., even closer to the midterms for which they are currently preparing, would impose needless hardship to Plaintiffs. See Abbott Labs. v. Gardner, 387 U.S. 136, 148–49 (1967).

B. Irreparable Injury

As a threshold matter, the court's injunction is clearly limited to Plaintiff States alone. Final J. [Doc. No. 207]. Accordingly, nothing in the court's order prevents Defendant agencies from endeavoring to implement the EO with respect to non-Plaintiff States.

Defendants argue that the court's injunction causes irreparable harm because Defendant agencies are unable to implement the directives required by the EO on the EO's prescribed timeline. Defs.' Mem. 18–19 [Doc. No. 195]. A USCIS official speculates that "in the event the Court's order is stayed or vacated at some future date, USCIS will be required to expend additional resources and perform work under potentially tight timelines to fully implement the E.O. at that time." Mayhew Supp. Decl. ¶ 10. [Doc. No. 194-1]. But the injunction does not prevent any steps to implement the EO, on the exact timeline prescribed by the President, to prepare for elections that will occur after November 3, 2026.

Agency officials' concern with their ability to timely implement the EO for the November 3, 2026 election does nothing more than highlight the current ripeness of Plaintiffs' claims. Just as Plaintiff States are diligently working to plan for and administer elections, agency officials are working hard to implement the EO's directives pursuant to the EO's short deadlines. See Exec. Order 14399 § 4(c) (USCIS must have already established infrastructure relevant to the Confirmed Citizen Lists). Defendants have and will continue to take action that renders Plaintiffs' claims ripe for future elections. That Defendants may have to work harder later, in the event that this court's order is reversed, does not rise to the level of irreparable injury contemplated by the Supreme Court in Nken. 556 U.S. at 435 (even wrongful removal of a noncitizen is not "categorically irreparable").

A USPS official similarly explains that the court's order prevents USPS from implementing the EO for non-Plaintiff States because USPS would be unable to promulgate regulations as to only certain states prior to the November 3, 2026 elections. Monteith Decl. ¶ 4 [Doc. No. 194-2] (describing feasibility limitations with respect to a "two-tiered system"). This argument is not persuasive. First, USPS has now been enjoined from implementing the

provisions in the Notice of Proposed Rulemaking as directed by the EO in any state. See NAACP v. USPS, No. 1:20-cv-02295-EGS (D.D.C. July 1, 2026), Dkt. No. 181. Second, USPS' acknowledgment that the anticipated final rule will apply to ballot mail received in association with the November 3, 2026 elections only serves to demonstrate that Plaintiffs' claims as to those and earlier elections are ripe for judicial review. Monteith Decl. ¶ 8 [Doc. No. 194-2] ("For states to be ready to [engage with USPS in creating the absentee and mail-in lists], [USPS] need[s] enough time prior the November 2026 to train [their] employees . . . and to coordinate with mailers."). Third, the court finds that Defendants have made no showing that "delay" of the EO's deadlines for USPS' implementation constitutes irreparable injury. Nken, 556 U.S. at 435.

C. Other and Public Interests

Plaintiff States oppose a stay, arguing it would require Plaintiffs to immediately "develop[] procedures for reviewing and correcting the Confirmed Citizenship List, redesign[] ballot envelopes to comply with the requirements, and rush-order[] the new envelopes," all at significant effort and cost while Plaintiffs are actively administering primaries and special elections, as well as preparing to administer the November 3, 2026 midterms. Pls.' Mem. in Opp'n to Defs.' Mot. to Stay ("Pls.' Opp'n") 7 [Doc. No. 200].

Intervenor-Defendants argue that they will be injured by Defendant agencies' inability to fully implement the EO prior to the November 3, 2026 elections and that the "security of their elections" is "irreparably harmed by the [court's] injunction." Intervenors' Mem. 10–11 [Doc. No. 203]. However, the EO's directives are not aligned with its stated purpose of reducing voter fraud and enhancing election integrity. See Exec. Order 14399 § 1. Instead, the EO directs DHS and USCIS to create incomplete lists of confirmed citizens for each state. Id. § 2. A state could do nothing more with the list than rely upon it as additional proof of citizenship, but not as proof

of noncitizenship. June 2, 2026 H'rg Tr. 24:6–17 [Doc. No. 181]. Indeed, in conceding that the lists are necessarily incomplete, Defendants have acknowledged that a voter's absence from the lists required by the EO does not signify that voter's ineligibility.

Having weighed the interests of Plaintiff and Intervenor-Defendants and the remaining public, the court finds these factors weigh against granting a stay. See New Jersey v. Trump, 131 F.4th 27, 34 (1st Cir. 2025).

III. Conclusion

Having failed to meet their burden to show that circumstances justify a stay pending appeal, Defendants' and Intervenor-Defendants' Motions [Doc. Nos. 193, 202] for a stay pending appeal are therefore DENIED. The court permits a 7-day administrative stay to permit time for Defendants and Intervenor-Defendants to renew their stay request before the First Circuit.

IT IS SO ORDERED.

July 7, 2026

/s/ Indira Talwani
United States District Judge

United States Court of Appeals
For the First Circuit

Nos. 26-1774, 26-1779

STATE OF CALIFORNIA; COMMONWEALTH OF MASSACHUSETTS; STATE OF NEVADA; STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; DISTRICT OF COLUMBIA; STATE OF ILLINOIS; STATE OF MAINE; STATE OF MARYLAND; STATE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE OF NORTH CAROLINA; STATE OF OREGON; STATE OF RHODE ISLAND; STATE OF VERMONT; COMMONWEALTH OF VIRGINIA; STATE OF WISCONSIN; JOSH SHAPIRO, in the official capacity as Governor of the Commonwealth of Pennsylvania,

Plaintiffs, Appellees,

v.

DONALD J. TRUMP, in the official capacity as President of the United States; UNITED STATES DEPARTMENT OF JUSTICE; TODD BLANCHE, in the official capacity as Acting United States Attorney General; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; MARKWAYNE MULLIN, in the official capacity as Secretary of the United Stated Department of Homeland Security; UNITED STATES SOCIAL SECURITY ADMINISTRATION; FRANK BISIGNANO, in the official capacity as Commissioner of the United States Social Security Administration; UNITED STATES POSTAL SERVICE; DAVID STEINER, in the official capacity as Postmaster General and Chief Executive Officer of the Postal Service; DOUG TULINO, in the official capacity as Deputy Postmaster General, Chief Operating Officer, and Chief Human Resources Officer of the Postal Service and Member of the Postal Service Board of Governors; AMBER MCREYNOLDS, in the official capacity as Chair of the Postal Service Board of Governors; DEREK T. KAN, in the official capacity as Vice Chairman of the Postal Service Board of Governors; RONALD STROMAN, in the official capacity as a Member of the Postal Service Board of Governors; DANIEL TANGHERLINI, in the official capacity as a Member of the Postal Service Board of Governors,

Defendants, Appellants,

STATE OF ALABAMA; STATE OF MISSOURI; STATE OF FLORIDA; STATE OF INDIANA; STATE OF KANSAS; STATE OF LOUISIANA; STATE OF MONTANA; STATE

OF NEBRASKA; STATE OF OKLAHOMA; STATE OF SOUTH CAROLINA; STATE OF SOUTH DAKOTA; STATE OF TEXAS,

Interested Parties, Appellants.

Before

Gelpí, Rikelman, and Dunlap,
Circuit Judges.

ORDER OF COURT
Entered: July 25, 2026

Under the Constitution, state and local officials are responsible for administering federal elections. In the spring of 2026, President Trump issued an executive order with nationwide effects on how state and local officials can administer federal elections, including the upcoming primary and general elections in September and November. In particular, the executive order directed substantial involvement by the United States Postal Service in deciding which ballots sent to and from voters would be delivered. The plaintiffs in this case -- 23 states and the District of Columbia (the "Plaintiff States") -- filed this lawsuit against the President, federal agencies, and agency heads, challenging the executive order as ultra vires and unconstitutional. The district court entered final judgment in favor of the Plaintiff States as to some of their claims and enjoined most of the defendants (but not the President) from implementing certain provisions of the executive order, but only as to federal elections on or before November 3, 2026, and only in the Plaintiff States. The federal defendants and 12 states that intervened in the case in support of the executive order have now filed separate motions seeking a stay of the district court's injunction pending appeal, arguing only that the Plaintiff States lack standing to bring their claims and that those claims are not ripe. We deny their motions.

I. BACKGROUND

On March 31, 2026, President Trump issued Executive Order 14399: "Ensuring Citizenship Verification and Integrity in Federal Elections" (the "EO"). 91 Fed. Reg. 17125 (Mar. 31, 2026). The EO targets voting by mail. In Section 1, titled "Purpose and Policy," the EO declares that "[t]o enhance election integrity via the United States Mail, additional measures are necessary." Id. at 17125. It then directs federal agencies and officials to take certain actions at specific times in the months leading up to "regularly scheduled Federal election[s]," including the November 3, 2026 election. Id.

This lawsuit focuses on Sections 2, 3, and 5 of the EO. Section 2 is titled "Establishment and Transmission of State Citizenship Lists and Prioritization of Investigations and Prosecutions

Related to Election Fraud." Id. Section 2(a) directs the Department of Homeland Security (DHS), along with other agencies, to compile lists of "individuals confirmed to be United States citizens who will be above the age of 18 at the time of an upcoming Federal election and who maintain a residence in the subject State" ("DHS Citizenship Lists"). Id. Under Section 2(a), federal officials "shall . . . transmit" the DHS Citizenship Lists to state election officials "no fewer than 60 days before each regularly scheduled Federal election," meaning by September 4, 2026, for the November 3, 2026 general election. Id. Also, DHS "shall establish procedures" to permit individuals to "access" and "update" their records and states "to routinely supplement and provide suggested modifications or amendments" to these lists. Id. Section 2(b) orders the Attorney General to "prioritize the investigation and . . . prosecution" of two groups of individuals and entities: (1) "State and local officials or any others involved in" federal election administration who issue ballots to individuals not eligible to vote in federal elections and (2) "individuals and public or private entities engaged in . . . the printing, production, shipment, or distribution of ballots to individuals" not eligible to vote in federal elections. Id. at 17126.

Section 3 of the EO is titled "United States Postal Service Rulemaking on Mail-In and Absentee Ballots," and focuses on the United States Postal Service (USPS). Section 3(b) directs the Postmaster General to "initiate a proposed rulemaking" within 60 days of the EO's issuance to "protect the integrity of the mail" in federal elections. Id. The notice of proposed rulemaking "shall include, at minimum," various requirements for the design of envelopes used by state and local officials to enable voting by mail, including specific markings and unique barcodes for all such envelopes.[1] Id. Section 3(b) then requires that the proposed rule provide that "all outbound ballot mail" sent by states and localities to voters "must be mailed" in such envelopes and that USPS "shall not transmit mail-in or absentee ballots from any individual" voter unless the individual's name appears on a state-specific list. Id. Finally, Section 3(d) directs that "[a]ny final rule" adopted pursuant to Section 3 "shall be issued no later than 120 days from the date of" the EO, meaning by July 29, 2026. Id. at 17127.

Section 5, titled "Enforcement," orders the Attorney General and agency heads to "take all lawful steps to deter and address noncompliance with Federal law" by the two groups targeted by the order: "State or local election officials" and "public or private entities engaged in" ballot printing or distribution. Id. For example, it directs federal officials to "withhold[] Federal funds from noncompliant States and localities where such withholding is authorized by law." Id. It invites referral to the Department of Justice of "[e]vidence of violations" by these two groups for "consideration of investigation or charges." Id. Section 5 also requires states and localities to "preserve, for a 5-year period, all records and materials" related to voter participation in federal elections. Id.

In early April, the Plaintiff States brought this action against the President and the various agencies and agency heads identified in the EO. In their amended complaint, they challenged Sections 2, 3, and 5 of the EO as ultra vires and unconstitutional, in violation of the separation of

[1] USPS issued a proposed rule on June 2, 2026. See Ballot Mail for Federal Elections, 91 Fed. Reg. 32915 (proposed June 2, 2026) (to be codified at 39 C.F.R. pt. 111).

powers, the Elections and Electors Clauses, and the Tenth Amendment's anti-commandeering doctrine. See U.S. Const. art. I, § 4, cl. 1; id. art. II, § 1, cl. 2; id. amend. X.

The federal defendants and the intervenor states (collectively, the "Government") moved to dismiss the Plaintiff States' claims for lack of ripeness and Article III standing, as well as on the merits.[2] The district court ultimately granted the motion in part. In an initial ruling, the district court addressed the ripeness challenge and reserved on the other arguments.[3] It dismissed without prejudice the Plaintiff States' claims on prudential ripeness grounds as to federal elections occurring after November 3, 2026. It reasoned that postponing judicial review of the EO "as it relates to distant elections will pose little hardship." By contrast, the court concluded that the Plaintiff States' claims as to the November 2026 elections were ripe for review because the EO created a "direct and immediate dilemma" for the Plaintiff States. (Quoting Stern v. U.S. Dist. Ct. for the Dist. of Mass., 214 F.3d 4, 10 (1st Cir. 2000) (citation modified).)

One week later, the district court granted the Plaintiff States' motion for summary judgment. It concluded, given the undisputed facts in the summary judgment record, that the Plaintiff States had standing to sue based on both current and certainly impending injuries. Among these injuries, the court explained, were planning and compliance costs and the threat of criminal prosecution.

To start, the district court determined that the Plaintiff States are "experiencing injury now" because the EO disrupted their ongoing efforts to administer multiple elections in the coming months. As the court pointed out, it was uncontroverted that, at the time they filed their lawsuit, the Plaintiff States were "actively administering or preparing to administer federal primaries" -- some of which are scheduled for as early as September 2026 -- and "preparing to administer the November 2026 general election." And, by the time they filed their summary judgment motion, certain Plaintiff States "already had to pull elections staff from critical projects required by statute" to "develop a compliance plan for the EO," given that the EO directs multiple changes to the voting-by-mail process. The court also determined that, both for legal and practical reasons, the Plaintiff States could not delay these planning and compliance efforts. For example, in several of the Plaintiff States, statutes require officials to provide mail-in ballots to individuals eligible to vote by mail weeks in advance, and thus they "must plan to comply with the EO's directives on mail ballots" now. These state statutory obligations were "undisputed" by the Government. And as a practical matter, the court relied on record evidence that delays in planning would increase the "financial strain" on state election offices and threaten disenfranchisement of some of the Plaintiff States' citizens.

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[2] Because the federal defendants and the intervenor states raise largely overlapping arguments in their stay motions, we discuss those arguments together. The intervenor states do press a separate argument as well, which we identify and analyze below.

[3] In addition to the lawsuit by the Plaintiff States giving rise to this appeal, eight nonprofit organizations filed a separate lawsuit also challenging the EO. The district court consolidated the two cases pursuant to Federal Rule of Civil Procedure 42(a) but only for limited purposes. Its initial ruling on prudential ripeness applied to both cases. Its subsequent summary judgment ruling now on appeal to us, however, applied only to the Plaintiff States' claims.

Relatedly, the district court determined that the Plaintiff States faced certainly impending compliance costs from the EO's directives. For example, it noted that "[n]early half of [the] Plaintiff States have already purchased mail ballot envelopes for the 2026 federal election cycle that will not be in compliance with the requirements" listed in the EO, assuring that they will incur monetary costs from any change required by USPS. And the states would have no choice but to purchase new envelopes: The EO directs USPS to propose a rule that it will not "transmit" non-compliant mail-ballot envelopes. See 91 Fed. Reg. at 17125-26. Thus, it was "undisputed" by the Government that, absent an injunction, the Plaintiff States "will incur compliance costs" in the coming weeks or months.

Finally, the district court concluded that the Plaintiff States faced a credible threat of criminal prosecution under the EO. Reading the EO as a whole, the court determined that multiple sections of the EO "implicitly threaten[ed] enforcement" of federal criminal statutes against state and local officials who, for example, furnished ballots to voters who are not included on the DHS Citizenship Lists. And, the court pointed out, the Government conceded that any list it compiled under Section 2(a) would "necessarily be incomplete," based on the limitations of its own records, meaning that some citizens who were eligible to vote in a particular state nevertheless would be missing from the list. Reading the EO based on those undisputed facts, the court reasoned that the threat of criminal enforcement was "sufficiently imminent" as to the 2026 elections to create Article III injury. Thus, the court determined that the Plaintiff States had standing to challenge the EO.

The district court then turned to the merits. It ultimately concluded that the President lacked constitutional authority to order changes to how states and localities administer federal elections. The federal defendants and the intervenor states then filed separate notices of appeal and motions to stay in the district court. The court denied the stay motions.

On July 7, 2026, the district court entered its final judgment.[4] It declared that Sections 2 and 3 are "ultra vires and violate the separation of powers." Then, it enjoined the federal defendants, not including the President, from "implementing, giving effect to, or enforcing" Sections 2 and 3 of the EO "as to [the] Plaintiff States with respect to the November 3, 2026 or any earlier federal election." Notably, the court did not enjoin the federal defendants from taking any actions under Sections 2 and 3 in states other than the Plaintiff States for federal elections on or before November 3, 2026. Nor did it enjoin the federal defendants from taking such actions in any state for federal elections after November 3, 2026. Finally, the court dismissed with prejudice the Plaintiff States' challenge to the recordkeeping portion of Section 5 based on its ruling that this portion of the EO was merely "precatory."

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[4] Although the district court entered final judgment after the notices of appeal were filed, we have appellate jurisdiction under Federal Rule of Appellate Procedure 4(a)(2) because the district court's order "announce[d] a decision purporting to dispose of all of [the Plaintiff States'] claims." FirsTier Mortg. Co. v. Invs. Mortg. Ins., 498 U.S. 269, 277 (1991); see Fed. R. App. P. 4(a)(2) ("A notice of appeal filed after the court announces a decision or order -- but before the entry of the judgment or order -- is treated as filed on the date of and after the entry.").

That same day, the federal defendants filed this emergency motion to stay the district court's injunction pending appeal. The separate stay motion of the intervenor states followed.

II. LEGAL STANDARD

"'A stay is an intrusion into the ordinary processes of administration and judicial review' and is not granted as 'a matter of right.'" Washington v. HUD, 171 F.4th 473, 488 (1st Cir. 2026) (quoting Nken v. Holder, 556 U.S. 418, 427 (2009)). In seeking a stay, the Government bears the burden of showing that it is "entitled to this 'extraordinary remedy' under Nken's familiar four-factor test." Id. (quoting Nken, 556 U.S. at 437 (Kennedy, J., concurring)).

Under the Nken test, the Government must (1) make "a strong showing" that it is likely to succeed on the merits of its appeal and also show that (2) it "will be irreparably injured absent a stay"; (3) the issuance of the stay will not "substantially injure the other parties interested in the proceeding"; and (4) the public interest weighs in favor of a stay. Id. (quoting Nken, 556 U.S. at 434). The first two factors are the "most critical." Id. (quoting Nken, 556 U.S. at 434). When assessing the fourth factor, "we consider the interests of the public in general," including American voters, "not just the interests of the parties." Id.

Because "addressing interlocutory motions on a tight timeline is not always optimal for orderly judicial decisionmaking," in this posture we are "especially . . . rel[iant] on the parties to frame the issues for decision." New York v. Trump, 133 F.4th 51, 66 (1st Cir. 2025) (citation modified).

III. DISCUSSION

Before analyzing the Nken factors, we set out the scope of the issues presented to us in the stay motions. Although the district court held that the EO is unconstitutional, that question is not presently before us because the Government does not defend the legality of the EO in requesting a stay. Instead, it argues only that the Plaintiff States do not have standing to challenge the EO because their claims are premature. And its standing and ripeness arguments focus on a single claim: that the EO was not injuring the Plaintiff States at the time they filed their complaint, and that it would not injure them soon, because the federal defendants were still implementing it.

The Government also does not contest the district court's assessment of the summary judgment record that informed its final ruling.[5] Before the district court, the Government did not dispute the declarations and other factual submissions by the Plaintiff States. And in its request for a stay pending appeal, it contests only the legal implications of those undisputed facts.

Finally, the Government has conceded several points in the district court and in its motion to our court. For example, it concedes that the federal defendants have been moving ahead to implement the directives in the EO, including by "[e]stablishing infrastructure to" "compile, maintain, and transmit [the DHS] Citizenship Lists" and "taking steps to create a [USPS] portal" for collecting information about individuals who are eligible to vote by mail. The Government

[5] The intervenor states largely ignore the summary judgment record and cite instead to allegations in the Plaintiff States' complaint in their stay motion.

also has conceded that it seeks to enforce the EO nationwide for the November 2026 election and would do so but for the district court's injunction. And the Government has indicated that it may use the DHS Citizenship Lists to conduct investigations and potential criminal prosecutions of state and local officials. As we will explain, these concessions undermine its arguments that the Plaintiff States lack standing to challenge the EO because their claims are premature.

A. Likelihood of Success on the Merits

The parties' dispute centers on whether the Plaintiff States have suffered an injury in fact to establish their standing to sue and, relatedly, whether the Plaintiff States' claims are ripe for review. We conclude that the Government has not made a "strong showing" that it is likely to prevail on its standing and ripeness arguments on appeal. Washington, 171 F.4th at 488 (quoting Nken, 556 U.S. at 434).

1. Article III Injury

Article III of the Constitution grants federal courts jurisdiction to decide only those legal disputes that qualify as "Cases" or "Controversies." U.S. Const. art. III, § 2, cl. 1. To establish Article III standing, a party must meet a familiar three-part test and show that it has "suffered an injury in fact" that is caused by the "conduct complained of" and that will likely be "redressed by a favorable decision." Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992) (citation modified). The asserted injury must be "concrete, particularized, and actual or imminent." TransUnion LLC v. Ramirez, 594 U.S. 413, 423 (2021). The doctrines of standing and ripeness "originate from the same Article III limitation" and can "boil down to the same question": "whether the harm asserted has matured sufficiently to warrant judicial intervention." Jensen v. R.I. Cannabis Control Comm'n, 160 F.4th 18, 24 (1st Cir. 2025) (citation modified).

The Government focuses on the injury-in-fact requirement and contends that the Plaintiff States' alleged injuries are merely speculative. According to the Government, the Plaintiff States have not suffered any current or impending injuries from the EO itself and are basing their claims on "potential future actions agencies may take to implement it." In particular, the Government emphasizes that Section 2(a) imposes no obligations on the Plaintiff States and USPS has not finalized the details of its new rule.

The district court concluded that the Plaintiff States had suffered three current or certainly impending injuries that were sufficient to satisfy the requirements of Article III. In opposing the Government's stay motion, the Plaintiff States also point to a fourth injury: the EO's intrusion into their sovereign interests in administering state elections consistent with the Constitution and state statutes. To secure a stay, the Government would need to make a strong showing that it is likely to succeed on appeal in demonstrating that none of these injuries are sufficient to confer Article III standing. We conclude that it has not done so with the arguments presented in the stay motions.

First, the district court concluded that the EO imposed a present injury because it required Plaintiff States to begin planning now on how to comply with its directives, given that the September and November elections were just months away. As the Plaintiff States put it, the EO "require[s] [them] to expend time and resources now to prevent . . . chaos, confusion, and

disenfranchisement." See, e.g., Sierra Club v. U.S. Dep't of Transp., 125 F.4th 1170, 1181 (D.C. Cir. 2025) (holding states had standing to challenge suspended regulation that caused it to "undertake expenditures to mitigate and recover from harms that could have been prevented if that regulation had not been enacted" (citation modified)). For example, the summary judgment record reflects that the EO has forced Connecticut officials to take "immediate action," including by "coordinat[ing] with other state and local agencies" to develop a plan that would achieve the EO's stated goals "on the designated timeline and with no financial support." As part of that planning, officials worked to identify and develop the "technical specifications . . . necessary" to share "large volumes of confidential data" comprising state citizenship and voting information with the federal defendants, as contemplated under Sections 2 and 3 of the EO, and consistent with applicable privacy and disclosure laws. Further, given the truncated timing, including the fast-approaching deadline to prepare and review voter lists described in the EO, Connecticut and multiple other states have had to "plan for and begin" "providing training and guidance to elections officials" to comply with the EO's terms. And given their limited resources, the states' efforts have necessarily entailed a diversion of staff time and attention from other pressing election-related tasks -- such as preparing public-education materials for voters and rolling out new voting technology -- to coordinate the implementation of the changes articulated in the EO. All told, between the compressed timelines and anticipated changes to states' election processes, the summary judgment record indicates that the EO has already "produced an incredible strain" on state election officials and their teams.

In its stay motion, the Government does not dispute that the Plaintiff States have begun expending time and "divert[ing] resources" in reaction to the EO. Rather, it responds only that the EO does not mandate any immediate efforts on their part. Thus, in the Government's view, the Plaintiff States that have begun preparing for the EO's directives have done so "voluntarily" and based only on possible government conduct, which it maintains cannot support standing under the Supreme Court's decisions in Clapper v. Amnesty International USA, 568 U.S. 398 (2013), and Trump v. New York, 592 U.S. 125 (2020).

The Government's suggestion that the Plaintiff States' injuries here are akin to those held insufficient in Clapper is unpersuasive given the different facts of that case. Clapper involved a challenge to a new federal statute that, in some circumstances, authorized government surveillance without probable cause of communications by foreign citizens located outside the United States. See 568 U.S. at 404-05. The plaintiffs included individual attorneys, who were United States citizens, and advocacy organizations, all of which were located inside the United States. See id. at 401, 406. The Supreme Court explained that the statute in question did not target the plaintiffs, so their claims that their communications with foreign citizens would ever be surveilled under its terms, as opposed to other federal statutes, relied entirely on "the decisions of independent actors," id. at 414, and a series of additional "contingencies," id. at 410. See id. at 410-16. Thus, the Court concluded that the plaintiffs' various pocketbook costs and changes to their processes in response to the statute's enactment could not support standing because they were "incurred in response to a speculative threat." Id. at 416 (stating that litigants "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm").

But unlike the relationship between the plaintiffs and the statute they challenged in Clapper, the EO targets the Plaintiff States explicitly and repeatedly. Further, state and local officials are assigned primary responsibility for administering federal elections under the Constitution, and the EO directs various changes to the voting-by-mail process for these elections that will impact how those officials administer elections, regardless of the details of USPS's final rule. See U.S. Const. art. I, § 4, cl. 1; art. II, § 1, cl. 2.

As a result, the Government has failed to convince us that the impact of the EO on the Plaintiff States is "hypothetical" in the sense of the plaintiffs' alleged harms in Clapper. As the district court reasoned, the EO lays out a clear set of rapidly approaching deadlines by which states must coordinate with federal officials and comply with new voting procedures -- all while the states must also ensure that their officials and the public understand the evolving set of rules that would govern the upcoming September and November elections. The Plaintiff States have no practical choice but to respond to the EO now.[6] See Merrill v. Milligan, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring) (emphasizing that "state and local election officials need substantial time to plan for elections" because "[r]unning elections state-wide is extraordinarily complicated and difficult . . . and pose[s] significant logistical challenges").

Given the undisputed summary judgment record, we are also unpersuaded by the Government's contention that New York is "indistinguishable" from this case. New York concerned a presidential memorandum calling for the Secretary of Commerce to produce a report that might, in the future, allow the President to exclude undocumented immigrants from the official population counts that would be used to apportion congressional seats. See 592 U.S. at 129-30. Although the district court had concluded that the plaintiffs had standing based on the memorandum's chilling effect on census responses by immigrants, the plaintiffs conceded that this impact had dissipated by the time the case reached the Supreme Court. See id. at 130-31. The Court then concluded that the dispute was not ripe for review for several reasons: the Secretary of Commerce had already conducted the census using the normal procedures; the government conceded that it would not be possible to exclude all undocumented immigrants from the official population count the Secretary would transmit to the President; and it was not clear that a partial exclusion could have any impact on apportioning congressional seats or federal funding to the states, or that any such changes could be made before a looming deadline. See id. at 132-33. Thus, at the time of the Supreme Court's decision, it was speculative whether the presidential memorandum would have any impact at all on the plaintiffs. See id. at 131.

The Government has failed to explain how New York is controlling given the substantially different and undisputed facts of this case. In New York, there was no claim of present injury whatsoever, whereas the (far more specific) EO here, which is designed to affect elections just weeks away, has already forced the Plaintiff States into action. In New York, the plaintiffs failed to show that any future injury was imminent or would ever occur. By contrast, if the district court's

[6] The Government's reliance on FDA v. Alliance for Hippocratic Medicine, 602 U.S. 367, 394 (2024), is even further afield. The Plaintiff States' injuries in fact have nothing to do with "public advocacy." Id. Instead, they are taking actions necessary to administer fast-approaching elections as the Constitution, federal statutes, and state laws require.

injunction is lifted, the Plaintiff States will promptly be forced to divert staff resources and incur costs flowing from the EO in the coming days and weeks. In New York, there was "[n]othing in the record" showing that congressional apportionment would be affected by a "partial implementation of the memorandum," which the parties agreed was the only way it could be implemented at all. Id. at 133. Here, the Government does not dispute, as a factual matter, the EO's current and impending effects on the Plaintiff States, irrespective of how exactly USPS implements it. Thus, the nature, timing, and certainty of the Plaintiff States' injuries are all distinct from those in New York.

The Government next relies on Trump v. American Federation of Government Employees, 145 S. Ct. 2635 (2025), but that case also does not support its stay request. In a two-paragraph order, the Supreme Court stayed a preliminary injunction in a challenge to an executive order directing the Office of Management and Budget to submit plans to the President to reduce the size of the federal government's workforce. See id. at 2635. The Supreme Court's order did not address the plaintiffs' standing to sue or the ripeness of their claims, which were not at issue. To the contrary, the Court stayed the injunction because it determined that the defendants were likely to succeed on the merits of their argument that the executive order was lawful. See id. The Government points to Justice Sotomayor's one-paragraph concurrence, which observed that "[t]he plans themselves are not before this Court, at this stage," and thus the Court had "no occasion to consider whether they can and will be carried out consistent with the constraints of law." Id. (Sotomayor, J., concurring). But, again, that was a discussion of the merits of the plaintiffs' claims, and the Government has failed to explain how that discussion is relevant to the standing and ripeness issues on which its stay motion is based.[7]

[7] The Government discusses two other cases, filed outside this Circuit, related to the EO. In one, a private plaintiff moved to enforce USPS's compliance with a settlement agreement arising from a lawsuit related to the 2020 federal election, which had alleged claims under the Administrative Procedure Act. See NAACP v. USPS, No. 20-cv-2295, 2026 WL 1893762 (D.D.C. July 1, 2026). The district court granted the motion and enjoined USPS from implementing its proposed rule pursuant to Section 3 of the EO, reasoning that the proposed rule would violate the parties' settlement agreement. See id. at *4, *7. Subsequently, the U.S. Court of Appeals for the District of Columbia Circuit stayed that order. Order, NAACP v. USPS, No. 26-5257 (D.C. Cir. July 17, 2026). The D.C. Circuit indicated that it reached that decision based on the government's arguments that the plaintiff's claims were not ripe, the EO likely would not violate the settlement agreement, and the government would experience irreparable harm from an order that prohibited USPS from promulgating a final rule. The court did not provide its reasoning for those determinations. See id. In the other case, the district court held in part that the plaintiffs, private organizations representing individual voters and candidates, had not shown that the EO would affect particular voters' ability to vote or particular candidates' ability to win. See DSCC v. Trump, Nos. 26-cv-01114, 26-cv-01132, 26-cv-01151, 2026 WL 1487833, at *6-7, *9 (D.D.C. May 28, 2026). These decisions have limited bearing here given the substantial factual differences in the three cases. For example, only in this case are the plaintiffs the very states and state officials that the EO identifies and targets.

Second, the district court concluded that the Plaintiff States faced certainly impending pocketbook injuries from the EO's direction that USPS control the design of envelopes in all federal voting-by-mail processes. In doing so, it relied on the summary judgment record, which indicated that several states had already ordered mail-ballot envelopes for the 2026 federal election cycle around the time they filed their complaint. Indeed, as of April 2026, Massachusetts alone had already purchased $3 million-worth of envelopes for mail-in ballots. Yet Section 3(b) of the EO directs USPS to propose a rule that "shall include, at minimum," a requirement for all mail-ballot envelopes to "bear[] a unique Intelligent Mail barcode" and logo marking the envelope as "Official Election Mail." 91 Fed. Reg. at 17126. The court determined that redesigning mail-ballot envelopes to conform to the EO's express requirements would unquestionably impose financial costs on the Plaintiff States. As one Rhode Island official explained, because the state had already purchased mail-ballot envelopes, "[c]hanging [the state's] envelope order . . . would cost the state tens of thousands of dollars that was not budgeted." And even beyond ordering new envelopes and devoting staff time to coordinating with USPS about the new envelope design requirements, several states have indicated that they would incur significant other costs as a result of the EO, including to update training materials for local election officials and their staffs.

Again, the Government has failed to demonstrate any error in the district court's analysis, especially because, during the district court proceedings, it did not contest that several states had already purchased mail-ballot envelopes and even conceded "that making design changes to mail-ballot envelopes or adding Intelligent Mail barcodes would add costs to Plaintiff States." The Government nevertheless argues in its stay briefing that these anticipated pocketbook injuries cannot support standing because USPS has not yet issued a final rule implementing Section 3 of the EO.

As the district court determined, the summary judgment record reflects that any change to the kind of envelopes state and local officials must use for voting by mail will necessarily force the Plaintiff States to incur monetary and operational costs. The Government does not put forward any argument that USPS will not issue a final rule or will issue a final rule that provides no new design requirements for the envelopes used by the states in their voting-by-mail processes. Thus, we fail to see how it has made a strong showing that the Plaintiff States will incur no costs as a result of the EO. And the only question before us in assessing Article III standing is whether the Plaintiff States will incur any pocketbook injuries, not the magnitude of those injuries. See Czyzewski v. Jevic Holding Corp., 580 U.S. 451, 464 (2017) ("For standing purposes, a loss of even a small amount of money is ordinarily an 'injury.'").

In any event, as the Supreme Court held just last year, a litigant at "substantial risk [of] harm" from a government policy need not "wait and see" how exactly it will be implemented to bring suit. See Mahmoud v. Taylor, 606 U.S. 522, 559-60 (2025) (allowing pre-enforcement challenge to county's Board of Education policy of encouraging the use of certain education material without "specific allegations describing how the books are actually being used in classrooms" (citation modified)). With its arguments, the Government has failed to make a strong showing that the Plaintiff States do not face a "substantial risk" of incurring traditional pocketbook

injuries as a result of the EO and thus must "wait and see" the exact logo or barcode that USPS will require for mail-in ballots before filing suit. Id.

Third, the district court concluded that the EO threatens the Plaintiff States and their officials with criminal penalties if they do not comply with its directives and that the "threat is sufficiently imminent for Article III injury." For example, reading Section 2(a) and 2(b) of the EO together, the court determined that the Plaintiff States faced a credible threat of criminal prosecution if they failed to use the DHS Citizenship Lists to verify voter eligibility in upcoming elections, even though the undisputed record demonstrated that those lists would necessarily be underinclusive when transmitted to the states. The court also discussed that Section 2(b)'s definition of individuals who are "eligible to vote in a Federal election" as limited to U.S. citizens who are "18 years of age or older by the date of the upcoming election" conflicted with laws in some states permitting certain 17-year-old residents to vote in federal primary elections. As a result, the court highlighted that officials in those Plaintiff States credibly feared prosecution for delivering ballots to eligible 17-year-old voters in connection with federal primary elections.

For its part, the Government has not explained why the district court's interpretation of the EO's text as threatening the Plaintiff States with criminal prosecution if they violate its directives is incorrect, other than to suggest that the DHS Citizenship Lists do not expressly "require the [Plaintiff] States to do anything." In making this argument, the Government reads each section of the EO in isolation and all but ignores Section 2(b). At the same time, it does not point to any precedent undermining the court's determination that it was required to interpret the EO as a whole, just as it would any statute.[8] Cf. Otero-Burgos v. Inter Am. Univ., 558 F.3d 1, 8 (1st Cir. 2009) ("Instead of culling selected words from a statute's text and inspecting them in an antiseptic laboratory setting, a court engaged in the task of statutory interpretation must examine the statute as a whole . . . ." (citation modified)). And other precedent supports the court's conclusion that the Plaintiff States face an imminent and credible threat of penalties if they do not use USPS-designed envelopes or permit voters who are not on the DHS-provided Citizenship Lists to vote in any federal election. See N.H. Lottery Comm'n v. Rosen, 986 F.3d 38, 50 (1st Cir. 2021) (explaining that "the threatened enforcement of a law may suffice" for standing even without "an actual arrest, prosecution, or other enforcement action" (citation modified)).

Importantly, in challenging the district court's interpretation of the EO, the Government overlooks that the EO expressly targets state and local officials, both overall and in numerous

[8] Our dissenting colleague would grant the stay as to the portions of the district court's judgment concerning Section 2(a) and, in part, 2(b), on the ground that those specific provisions of the EO do not inflict any injury on the Plaintiff States. The district court, however, read Section 2(b) as enforcing Section 2(a), based on both the EO's text and the Government's concessions. And in its stay motion to our court, the Government never argued or explained why it would be likely to succeed in showing that the Plaintiff States could not challenge Section 2(a) and part of 2(b) even if they had standing to challenge the rest of the EO. See American Federation of Government Employees Local 2305 v. U.S. Dep't of Veterans Affs., 177 F.4th 1, 11 n.2 (1st Cir. 2026) (noting that we do not rule on jurisdictional arguments that are not raised when "considering whether to stay an order's operation" (citation modified)).

subsections. See 91 Fed. Reg. at 17125-27 (Sections 2, 3, and 5). The EO also expressly directs "the investigation and, as appropriate, the prosecution of State and local officials" who violate federal law, invites referral to the Attorney General of any such violations by "State or local election officials" or "States or localities, including any instrumentalities thereof," and threatens the withholding of funding. Id. at 17126-27 (Sections 2(b) and 5). The Government does not explain why the district court's reading of the EO is incorrect given these provisions.

The Government's stay arguments on this issue are further undermined by its representations before the district court. In fact, the Government repeatedly indicated below that the DHS Citizenship Lists could be used to "facilitate . . . post-election law-enforcement activity," including prosecuting violations of laws that "explicitly prohibit non-citizens from registering to vote." (Quoting 91 Fed. Reg. at 17125.) And when the district court asked whether the Government would have probable cause to prosecute a state official merely for sending a ballot to someone not on the DHS Citizenship Lists, the Government's counsel equivocated, stating: "I don't know the answer to that question, Your Honor." State and local officials are no exception to the commonsense rule that "[p]eople do not lightly disregard public officers' thinly veiled threats to institute criminal proceedings against them if they do not come around." Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 68 (1963); see also Dep't of Com. v. New York, 588 U.S. 752, 785 (2019) (explaining that, in their legal rulings, courts "are 'not required to exhibit a naiveté from which ordinary citizens are free'" (quoting United States v. Stanchich, 550 F.2d 1294, 1300 (2d Cir. 1977))). Thus, the Government has not met its burden to show that it is likely to succeed on appeal in demonstrating that none of the injuries to the Plaintiff States credited by the district court were sufficient to establish an Article III controversy.

Finally, the Plaintiff States oppose the Government's request for a stay by arguing that the EO "burdens [their] sovereign interests by interfering with their ability to carry out state laws regarding mail voting and voter eligibility." Although the district court did not address the Plaintiff States' sovereign interests in its standing analysis, it did recognize throughout its ruling that states have a unique and primary role in administering elections, including federal elections. See U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 805 (1995) (observing that the Constitution "express[ly] delegat[es] . . . power to the [s]tates to act with respect to federal elections").

The EO directs unprecedented levels of involvement by federal officials in how states administer elections. In doing so, the EO plainly affects the Plaintiff States' "sovereign power . . . to create and enforce a legal code" for elections. Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez, 458 U.S. 592, 601 (1982). Regardless of the details of how federal officials implement the EO, at its core, the EO contemplates that states will have to coordinate with DHS and USPS to ensure that various lists, whether maintained by the agencies or the states, reflect current mail-voter information (which can change daily up until Election Day), or else risk disenfranchisement for certain voters and penalties for states and their officials. The Supreme Court has held that political candidates have standing to challenge mail-voting rules because of their "interest in a fair process." Bost v. Ill. State Bd. of Elections, 607 U.S. 71, 77 (2026). In Bost, it noted that the "untenable" and "undemocratic" consequences of waiting to hear "election disputes . . . shortly before election day" weighed in favor of adjudication even before the rules'

effects on the plaintiffs had come into full view. See id. at 79-80. We see no reason to treat the Plaintiff States' similar interests, which the EO will impact well before Election Day, any differently. Thus, these considerations further undermine the Government's ability to make a strong showing that it will likely succeed on its standing arguments on appeal.

2. Prudential Ripeness

We turn next to the intervenor states' separate prudential ripeness argument. Although the federal defendants address standing and ripeness together, focusing on the injury-in-fact requirement, the intervenor states contend that we should grant a stay because the "prudential ripeness doctrine[]" bars our review of the Plaintiff States' claims about the 2026 primary and general elections. But the intervenor states fail to develop any argument why, if they are wrong on the injury-in-fact analysis, they can nevertheless make a "strong showing" that they will succeed on their prudential ripeness contentions on appeal. Washington, 171 F.4th at 488 (quoting Nken, 556 U.S. at 434).

The "prudential component[s]" of the ripeness doctrine are twofold: (1) "whether resolution of the case turns on 'legal issues not likely to be significantly affected by further factual development'" and (2) "whether the challenged action creates a 'direct and immediate' dilemma for the parties." Algonquin Gas Transmission, LLC v. Weymouth, 919 F.3d 54, 62 (1st Cir. 2019) (first quoting Ernst & Young v. Depositors Econ. Prot. Corp., 45 F.3d 530, 536 (1st Cir. 1995); and then quoting W.R. Grace & Co.--Conn. v. EPA, 959 F.2d 360, 364 (1st Cir. 1992)). We note that the Supreme Court has left uncertain the doctrine's "continuing vitality." Susan B. Anthony List v. Driehaus, 573 U.S. 149, 167 (2014).

Turning to the contentions in the stay motion, the intervenor states make no argument that the EO does not create a "direct and immediate dilemma for" the Plaintiff States. Algonquin Gas Transmission, LLC, 919 F.3d at 62 (citation modified). Instead, they contend that the Plaintiff States' "theories of injury turn on speculation about future events." They do not clarify, however, how that argument differs, if at all, from their standing argument, which we addressed above. Otherwise, the intervenor states point to factual uncertainties having to do with the precise contents of USPS's final rule. But the Plaintiff States do not challenge the final (or any) rule; instead, they challenge the EO as exceeding the President's authority under the Constitution. The intervenor states fail to identify which of the "legal issues" comprising that decision require further factual development. For example, they fail to explain why the President's power to issue the EO is not a "purely legal question[]." Sidak v. U.S. Int'l Trade Comm'n, 174 F.4th 151, 158 (D.C. Cir. 2026). And any implication that this case lacks "final agency action," which is a prerequisite for judicial review under the Administrative Procedure Act (APA), is not dispositive when the Plaintiff States have not brought an APA action and "rel[y] on an implied constitutional right of action in equity" that has "no finality requirement." Id.

Thus, the intervenor states have not made a strong showing that they are likely to prevail on their prudential ripeness arguments on appeal.

B. Remaining Stay Factors

Because the federal defendants and the intervenor states have failed to make a strong showing on their likelihood of success on the merits of their appeals, we briefly address the remaining three Nken factors and conclude that they also do not favor a stay.

To start, the irreparable injury arguments offered by the federal defendants and the intervenor states do not persuade us that a stay is warranted. For their part, the federal defendants argue that the injunction will hinder their efforts to comply with the EO's deadlines in time for the upcoming 2026 elections. Relatedly, the intervenor states contend that the injunction will compromise their ability to ensure that their voters' mail-in ballots are securely delivered and counted. But the district court's injunction does not prevent the federal defendants from implementing the EO for the 2026 federal elections in states other than the Plaintiff States, including in the intervenor states. And, of course, the district court's injunction does nothing to prevent the federal defendants from taking steps today to implement the EO for federal elections in all states after November 3, 2026. The federal defendants do maintain that a "two-tiered system" of mail-ballot rules poses "operational confusion" for USPS, but the only statement in the record supporting this claim is entirely conclusory. They do not explain why an online USPS portal cannot be used by some states and not others or why, in a regional post office system, it is impossible to direct changes to how election mail is handled in certain states. See New York, 133 F.4th at 72 (concluding that the defendants' "speculative and conclusory statements" failed to meet their burden of showing irreparable injury); cf. Nken, 556 U.S. at 434-35 ("Simply showing some possibility of irreparable injury fails to satisfy the second factor." (citation modified)). To be sure, the injunction prevents the federal defendants from enforcing the EO in the Plaintiff States' upcoming primary and general federal elections in September and November. But even assuming that restriction will lead to irreparable harm, it does not overcome the federal defendants' failure to meet their burden on the other Nken factors.

Turning to the substantial injury to the other interested parties, neither the federal defendants nor the intervenor states grapple with the numerous "'immediate, predictable' harms" that the Plaintiff States would face absent the injunction. Washington, 171 F.4th at 493 (quoting R.I. State Council of Churches v. Rollins, 158 F.4th 304, 316 (1st Cir. 2025)). As we have detailed above, the record reflects that the Plaintiff States would suffer multiple harms if the EO were enforced, including diversion of staff time to comply with the EO, pocketbook injuries, potential funding cuts and criminal prosecution of their officials, and sovereignty harms.

Finally, neither the federal defendants nor the intervenor states presented any argument on the fourth stay factor, the public interest, thus waiving any argument on that aspect of the Nken analysis. See United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990). In any event, eligible voters have a "strong interest in exercising the fundamental political right to vote." Purcell v. Gonzalez, 549 U.S. 1, 4 (2006) (citation modified). The undisputed summary judgment record indicates that, were the EO to take effect for the elections taking place in September and November, it would sow confusion and threaten disenfranchisement of many eligible voters. And given that the Government "make[s] no argument that [its] actions were legal on the merits," and "there is generally no public interest in the perpetuation of unlawful [government] action," the public

interest does not favor a stay. Rhode Island v. Trump, 155 F.4th 35, 50 (1st Cir. 2025) (citation modified).

IV. CONCLUSION

For all these reasons, we **deny** the motions to stay.[9]

DUNLAP, Circuit Judge, concurring in part and dissenting in part. I conclude that the Government and the Intervenor States have shown that Plaintiff States likely lack standing to challenge certain, though not all, aspects of Executive Order 14399 (the "EO"). 91 Fed. Reg. 17125 (Mar. 31, 2026); see TransUnion LLC v. Ramirez, 594 U.S. 413, 423 (2021) (to establish standing, a party must demonstrate injury that is "concrete, particularized, and actual or imminent," that is "likely caused by the defendant," and that "would likely be redressed by judicial relief"); see also Town of Chester v. Laroe Ests., Inc., 581 U.S. 433, 439 (2017) ("Our standing decisions make clear that 'standing is not dispensed in gross.'") (quoting Davis v. Fed. Election Comm'n, 554 U.S. 724, 734 (2008)). For the following reasons, I would grant in part and deny in part the motions to stay, staying the injunction insofar as it pertains to Section 2(a) and, in part, Section 2(b) of the EO. See Nken v. Holder, 556 U.S. 418, 425-26 (2009) (describing factors for granting a stay).[10]

The Government and Intervenor States are likely to succeed in challenging Plaintiff States' standing insofar as it relates to Plaintiff States' request for an injunction barring implementation of Section 2(a). That provision directs the Secretary of Homeland Security to "compile and transmit" to state election officials a list of United States citizens who will be eighteen years or older at the time of an upcoming federal election and who maintain a residence in the subject State (the "State Citizenship List"). Exec. Order § 2(a). Section 2(a) thus merely orders the provision of information to States; it does not order States, including Plaintiffs, to take any action based on the State Citizenship List. As one court has correctly noted, "nothing in Section 2(a) (or any other

[9] There are two pending motions for leave to file amici briefs in relation to the stay motions. We **grant** the motions, and the amici briefs are accepted for filing as of this date.

[10] There is no bar to granting the motions in part as the majority suggests. Although the Government and Intervenor States did not request a partial stay, they addressed the asserted injuries to Plaintiff States from the various provisions of the EO (as they did below) and sought a stay based on the argument that Plaintiff States failed to identify actual or imminent injury from each provision. Cf. Am. Fed'n of Gov't Emps. Loc. 2305 v. U.S. Dep't of Veterans Affs., 177 F.4th 1, 11 n.2 (1st Cir. 2026) (declining to reach an argument not raised in a party's primary brief in this court or below). Disagreement with some arguments raised by the parties does not mandate rejection of the arguments in their entirety; we can grant less than the requested relief. See, e.g., Nat'l Insts. of Health v. Am. Pub. Health Ass'n, 145 S. Ct. 2658, 2658 (2025) (granting in part and denying in part an application for stay, notwithstanding the government's request for a stay in entirety).

part of the [EO]) purports to require any State to do anything with the State Citizenship List it is provided, let alone to remove otherwise eligible individuals on State voter registration lists." DSCC v. Trump, 26-cv-01114, 2026 WL 1487833, at *6 (D.D.C. June 4, 2026). Provision of a State Citizenship List for informative purposes, allowing (but not requiring) States to use the list as a resource to check their own voter registration rolls, would cause Plaintiff States no injury. Because any injury from the compilation and distribution of State Citizenship Lists is thus speculative and hypothetical, Plaintiff States can show no harm stemming from that provision and lack standing to challenge Section 2(a). See Clapper v. Amnesty Int'l USA, 568 U.S. 398, 409 (2013) (noting that "threatened injury must be certainly impending to constitute injury in fact" (quoting Whitmore v. Arkansas, 495 U.S. 149, 158 (1990))); see generally Katz v. Pershing, LLC, 672 F.3d 64, 79 (1st Cir. 2012) (standing absent where harm was "purely theoretical" and "d[id] not rise to the level of a reasonably impending threat").

My colleagues raise enforcement concerns, citing Section 2(b), as the basis for concluding that the Government and the Intervenor States have failed to show a likelihood of success as to their challenge to Plaintiff States' standing regarding Section 2 generally. That provision directs the Attorney General to prioritize investigation and prosecution of State and local officials "who issue Federal ballots to individuals not eligible to vote in a Federal election." Exec. Order § 2(b).[11] "[E]ligible to vote in a Federal election" is in turn defined to include "citizen[s] of the United States, 18 years of age or older by the date of the upcoming election, and otherwise qualified" to vote under state law. Id. I agree that imminent enforcement of a voting-age requirement (not established by federal statute) that conflicts with certain States' laws permitting voting by certain 17-year-olds in primaries suggests that those States would have standing to challenge that aspect of Section 2(b). See Susan B. Anthony List v. Driehaus, 573 U.S. 149, 159 (2014) (explaining that the injury-in-fact component of standing exists where "threatened enforcement" of a law is "sufficiently imminent"). But that does not mean that all Plaintiff States have standing to challenge Section 2(b) insofar as it relates to enforcement of laws banning voting by noncitizens. There is no question under federal law that noncitizens are not allowed to vote, see 18 U.S.C. § 611, and States have no standing to challenge the Executive Branch's discretionary decision to prioritize enforcement of such laws, see generally United States v. Texas, 599 U.S. 670, 678 (2023) ("[T]he Executive Branch possesses authority to decide 'how to prioritize and how aggressively to pursue legal actions against defendants who violate the law.'" (quoting TransUnion LLC, 594 U.S. at 429)). Nor does it mean that the potential use of State Citizenship Lists in enforcement actions gives rise to actual or imminent injury under Section 2(a). There are no immediate deadlines that require States to do anything in relation to the State Citizenship Lists; and the opportunity for

[11] It is not clear what is meant by "Federal election." Arguably, it may be limited to general elections. See generally Exec. Order § 2(b) (referencing "the date of the upcoming election"); 2 U.S.C. § 7 (establishing the Tuesday after the first Monday in November in even numbered years "as the day for the election"). Another reading is also possible, however; at least in the context of campaign finance, "election" refers not only to general elections but also primaries for federal offices. See 52 U.S.C. § 30101(1)(A). The government has not urged a narrowed definition in response to the Plaintiff States' arguments regarding the potential scope and application of the EO to primaries, so I will assume that Section 2(b) applies to primary elections.

States to supplement those lists, see Exec. Order § 2(a), means that the prospect of any use of the lists to wrongfully prosecute state or local officials for allowing eligible voters to exercise their right to vote is purely speculative. See Clapper, 568 U.S. at 409.

The contrast between Sections 2(a) and 3 of the EO reinforces this conclusion, while also leading to the conclusion that the Government and Intervenor States failed to establish likelihood of success regarding Plaintiff States' standing as to Section 3. Section 3 requires the Postmaster General to initiate rulemaking that would include provisions (1) requiring States to use specified mail-in ballot envelopes, Exec. Order § 3(b)(i), and (2) precluding the United States Postal Service from transmitting mail-in or absentee ballots that are not included in "State-specific Mail-In and Absentee Participation List[s]" (which are separate and distinct from the State Citizenship Lists to be compiled by the federal government under Section 2), id. § 3(b)(ii)-(v). In turn, the proposed rules promulgated by the Postmaster General provide new standards for ballot envelope design, allow States to submit State-specific Mail-In and Absentee Participation Lists, and would limit the distribution of mail-in ballots to individuals included in such lists. 91 Fed. Reg. 32915, 32915-16. Generally, possible future injury based on proposed rulemaking cannot establish standing. See generally Trump v. New York, 592 U.S. 125, 129-131, 134 (2020) (holding that where President issued a memorandum to the Secretary of Commerce that "announced a policy of excluding 'from the apportionment base aliens who are not in a lawful immigration status'" for the 2020 census, challenges to that memorandum were "premature" because "[a]ny prediction how the Executive Branch might eventually implement th[at] general statement of policy [wa]s 'no more than conjecture' at th[at] time" (quoting Los Angeles v. Lyons, 461 U.S. 95, 108 (1983))). But the proposed changes set forth in the EO have more than speculative future effect. As explained by my colleagues, Plaintiff States are already preparing for the impending November 2026 elections and preceding primaries -- as they must. See generally Merrill v. Milligan, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). Because many Plaintiff States have already ordered mail-in ballot envelopes that would have to be quickly replaced and would have to promptly provide the federal government with State-specific Mail-In and Absentee Ballot Lists to avoid disruptions in the mail-in balloting process for the November 2026 elections and any prior elections, the uncontested record suggests that Plaintiff States must necessarily take initial steps to comply with these proposed rules as framed by the EO even prior to the promulgation of the anticipated regulations. Thus, although final regulations must normally exist before standing can arise, the specificity of the EO's stated timelines and the inescapable legal requirements and impending deadlines that States currently face in facilitating mail-in and absentee balloting for immediately upcoming elections together establish sufficient concrete injury from the EO in this unusual case. Unlike Section 2(a), therefore, the Government and Intervenor States have failed to show a substantial likelihood of success as to their argument that Plaintiff States will not suffer actual or imminent harm sufficient to establish standing to challenge Section 3.[12] See Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992).

[12] Because the Government and Intervenor States mount no substantive defense of Section 3, they have no other basis to demonstrate likelihood of success as to the injunction barring implementation of that provision.

The remaining stay factors -- irreparable harm, harm to interested parties, and the public interest, Nken, 556 U.S. at 434 -- largely flow from the assessment of likelihood of success on the merits. Where Section 2(a) of the EO does not command Plaintiff States to do anything, they have suffered no certain harm at present, much less irreparable harm. See DSCC, 2026 WL 1487833, at *13; see generally Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 22 (2008) (requiring plaintiffs to "demonstrate that irreparable injury is likely in the absence of an injunction"). The Government, however, would be harmed absent a stay of the injunction of Section 2(a) and, in part, Section 2(b) because it would be prevented from taking steps that may provide States with further resources for purposes of the November 2026 election and from enforcing valid federal laws. See League of Women Voters of U.S. v. Newby, 838 F.3d 1, 9 (D.C. Cir. 2016) (noting that there can be "no do over" once the registration deadlines from an election have passed (quoting League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 247 (4th Cir. 2014))); Dist. 4 Lodge of the Int'l Ass'n of Machinists & Aerospace Workers Loc. Lodge 207 v. Raimondo, 18 F.4th 38, 47 (1st Cir. 2021) ("[A]ny time a [government] is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." (quoting Maryland v. King, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)) (alterations in original)). The contrary is true as to Section 3, as well as Section 2(b) insofar as it affects States permitting certain 17-year-olds to vote in primaries; Plaintiff States would suffer irreparable harm, for instance, if they were unable to timely comply with various mail-in ballot deadlines. See Merrill, 142 S. Ct. at 880 (Kavanaugh, J., concurring). This harm outweighs the Government's countervailing interests. The public interest factor largely reflects the same balancing of harms and does not separately counsel a different result.

With respect, I concur in part and dissent in part.

By the Court:

Anastasia Dubrovsky, Clerk

cc: Hon. Indira Talwani, Robert Farrell, Clerk, United States District Court for the District of Massachusetts, Ian D. Prior, Alexander Barrett Bowdre, Louis Joseph Capozzi III, Graham Miller, John Michael Patton, Benjamin S. Gilberg, David M.S. Dewhirst, James A. Barta, James R. Rodriguez, Kelsey L. Smith, Christian B. Corrigan, Cody S. Barnett, Garry M. Gaskins II, Joseph David Spate, Grant Michael Flynn, Monroe David Bryant Jr., Donald Campbell Lockhart, Rayford A. Farquhar, Abraham R. George, Laura Myron, David C. Kravitz, Michael Patrick Moore Jr., Jared B. Cohen, Vanessa Arslanian, Jennifer Utrecht, Heidi Parry Stern, Kiel Ireland, Ian Fein, Thomas Patterson, Aaron Daniel Pennekamp, Anne P. Bellows, Kevin Lee Quade, Lisa Catherine Ehrlich, Malcolm Andreas Brudigam, Michael Surren Cohen, Samuel Thomas Harbourt, Robert William Setrakian, Jane Reilley, Nicholas W. Brown, Cristina Sepe, Syreeta Tyrell, Karen J. Hartman-Tellez, Shannon Wells Stevenson, Peter Baumann, William M. Tong, Maura Bridget Murphy, Vanessa L. Kassab, Ian R. Liston, Caroline S. Van Zile, Alex Hemmer, Katherine Thompson, Virginia Anne Williamson, Neil Giovanatti, Erik Grill, Angela Behrens, Allen Barr, Joshua Paul Bohn, Meghan Musso, Jonathan B. Mangel, James Grayson, Bailey Colfax, Barbara D. Underwood, Rabia Muqaddam, Judith N. Vale, Daniel Paul Mosteller, Robert A. Koch, Daniel A. Rayfield, James J. Arguin, Kyla Duffy, Ryan P. Kane, Tillman J. Breckenridge, Lynn Kristine

Lodahl, Michael J. Fischer, Inga S. Bernstein, Richard D. Bernstein, Jonathan Benjamin Miller, Raphael Kalikstein, Carey Dunne, Mónica Pilar Folch, Charanya Krishnaswami, Jason J. Muehlhoff, J. Benjamin Aguiñaga, Stephen Michael Pezzi, Esam Al-Shareffi, Jak Kundl, Robert Bonta, Seth Goldstein, L. Nicole Allan, Aaron D. Ford, Karl D. Smith, Tera M. Heintz, Kristin K. Mayes, Joshua M. Whitaker, Kara M. Karlson, Philip J. Weiser, Kathleen Jennings, Brian L. Schwalb, Eliza Simon, Kwame Raoul, Holly F.B. Berlin, Jane Elinor Notz, Vikas Didwania, Aaron M. Frey, Anthony G. Brown, Dana Nessel, Keith Ellison, Lindsey E. Middlecamp, Jennifer Davenport, Raul Torrez, Letitia James, Colleen K. Faherty, Jeffrey N. Jackson, Laura Howard, Thomas H. Castelli, Charity R. Clark, Jay Jones, Joshua L. Kaul, Charlotte Gibson, Jacob Boyer, Alex Goldstein, Matthew James O'Brien, Stephen S. Cha-Kim, Andrew James Rising, Emily Kirby, Allegra Chapman, Carlos Guevara, Inbar Pe'er, Julia Spiegel, Kevin Trowel, Zack Goldberg, Martha Reiser