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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Strong Communities Foundation of Arizona
10 Incorporated, et al.,
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12 Plaintiffs,
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14 v.
15 Stephen Richer, et al.,
16
17 Defendants.

No. CV-24-02030-PHX-KML
ORDER

18 Fifty-one days before the general election, Plaintiffs Strong Communities
19 Foundation of Arizona (which refers to itself as “EZAZ.org”) and Yvonne Cahill lodged
20 a motion seeking to require every county recorder in Arizona to perform “voter list
21 maintenance” by submitting a list of certain registered voters to the U.S. Department of
22 Homeland Security (“DHS”) “to verify the[ir] citizenship and immigration status[.]”¹ By
23 plaintiffs’ own admission, the recorders—many of whom had not been served when
24 EZAZ.org lodged its oversized emergency motion—would be required to submit tens of
25 thousands of voter names. Plaintiffs’ mandatory injunction would also require defendants
26 to provide certain information to the Arizona Attorney General.

27 Plaintiffs are not entitled to a preliminary injunction because they have not made a
28 sufficiently clear showing they have standing. Plaintiffs’ request raises no more than a

¹ Plaintiffs filed their motion as a request for a temporary restraining order and preliminary injunction. Because “[t]he legal standard for a [temporary restraining order] is substantially identical to the standard for a preliminary injunction,” the court will treat the motion as one for a preliminary injunction. *Facebook, Inc. v. BrandTotal Ltd.*, 499 F. Supp. 3d 720, 732 (N.D. Cal. 2020) (citing *Stuhlbarg Int’l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)).

1 “generalized grievance” shared by every Arizona voter that elected officials must follow
2 the law. Cahill has not established an individualized injury in fact and EZAZ.org
3 therefore lacks representational standing. The Ninth Circuit’s recent opinion in *Arizona*
4 *Alliance for Retired Americans v. Mayes* (“*Arizona Alliance*”), --- F.4th ----, 2024 WL
5 4246721 (9th Cir. 2024), applying the Supreme Court’s decision in *FDA v. All. for*
6 *Hippocratic Medicine* (“*Hippocratic Medicine*”), 602 U.S. 367 (2024), compels the
7 rejection of EZAZ.org’s organizational standing arguments. And even if plaintiffs had
8 shown an injury in fact, the mismatch between their shifting requests for emergency relief
9 and stated goals would prevent a federal court from redressing their injury.

10 Alternatively, plaintiffs are not entitled to emergency relief because the election is
11 too close to require the action they request. The court declines to order Arizona’s county
12 recorders to divert resources from preparing for the general election to instead submitting
13 thousands of requests to DHS when plaintiffs have not shown clearcut injury, particularly
14 when the relief they originally requested—“ensur[ing] that ‘voters . . . who are not
15 eligible to vote [in federal elections] are removed’” from voter rolls (Doc. 12 at 2 (citing
16 52 U.S.C. § 21083(a)(2)(B)(i))²—is currently precluded by the National Voter
17 Registration Act (“NVRA”) quiet period.

18 **I. Factual Background**

19 No party has requested an evidentiary hearing, presumably because none believe
20 one is necessary. Compare *Int’l Molders’ & Allied Workers’ Loc. Union No. 164 v.*
21 *Nelson*, 799 F.2d 547, 555 (9th Cir. 1986) (hearing may be merited when there are
22 “sharply disputed . . . facts”), with *Charlton v. Est. of Charlton*, 841 F.2d 988, 989 (9th
23 Cir. 1988) (hearing need not be held when “facts are not in dispute”) (quoting *Pro. Plan*
24 *Examiners of New Jersey, Inc. v. Lefante*, 750 F.2d 282, 288 (3d Cir. 1984)). For
25 purposes of resolving plaintiffs’ motion, the court accepts as true the facts alleged in the
26 complaint and set forth in the exhibits to plaintiffs’ motion except as otherwise noted.
27 (Docs. 12, 57 at 36–165.)

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² Pincites in this order refer to the page number in the ECF header of the document.

1 Federal and Arizona law prohibit non-citizens from voting. (Doc. 12 at 3 (citing
2 18 U.S.C. § 611(a); Ariz Const. Art. VII § 2(A); Ariz. Rev. Stat. § 16-101(A)(1)).)
3 Despite those prohibitions, plaintiffs allege non-citizens appear on voter lists and have
4 voted. (Doc. 12 at 17.) The focus of the present suit is on ensuring the accuracy of the
5 lists of registered voters maintained by each county recorder. The parties refer to the
6 efforts at maintaining accuracy as “voter list maintenance.” Plaintiffs’ complaint defines
7 “voter list maintenance” as “ensur[ing] that ‘voters . . . who are not eligible to vote [in
8 federal elections] are removed” from voter registration lists. (Doc. 12 at 17 (quoting 52
9 U.S.C. § 21083(a)(2)(B)(ii)).)

10 Federal law requires States to perform voter list maintenance in certain prescribed
11 ways. *See* 52 U.S.C. § 21083(a)(2) (voter list maintenance); 52 U.S.C. § 20507(b)(1)
12 (requiring voter list maintenance to be “uniform,” “nondiscriminatory,” and to comply
13 with the Voting Rights Act of 1965). Arizona law also requires county recorders to
14 perform various acts of voter list maintenance. In 2022, Arizona adopted additional voter
15 list maintenance requirements. *See* 2022 Ariz. Legis. Serv. Ch. 370 (H.B. 2243); 2022
16 Ariz. Legis. Serv. Ch. 99 (H.P. 2492); Ariz. Rev. Stat. §§ 16-121.01, 16-143, 16-165.
17 Plaintiffs allege the county recorders have not complied with their obligations under the
18 2022 Arizona laws and are discriminating against certain voters by only submitting
19 citizenship checks to DHS when a voter has provided an alien number or other DHS
20 numeric identifier. (Doc. 12 at 31–32.)

21 **A. Arizona’s Voter Registration System**

22 Arizona’s system of voter registration is bifurcated such that some voters are only
23 eligible to vote in federal elections and not state or local ones. (Doc. 12 at 14.) This
24 system developed due to the interplay between federal and state election laws.

25 A federal statute, the NVRA, requires all states to “accept and use” the voter
26 registration form authorized by a federal body. 52 U.S.C. § 20505(a)(1). The federal form
27 is designed to “guarantee[] that a simple means of registering to vote in *federal* elections
28 will be available.” *Arizona v. Inter Tribal Council of Arizona, Inc.* (“ITCA”), 570 U.S. 1,

1 12 (2013) (emphasis added). The federal form requires applicants to certify under penalty
2 of perjury that they are United States citizens but does not require them to submit
3 documentary proof of that citizenship. (*See* Doc. 57 at 52.) And the NVRA prohibits
4 states from imposing a proof-of-citizenship requirement on registrants who use the
5 federal voter registration form. *ITCA*, 570 U.S. at 15.

6 Although Arizona is required to accept the federal form, it is also permitted to use
7 its own state registration form that “may require information the Federal Form does not.”
8 *Id.* at 12. Voters who use the Arizona form and submit documentary proof of citizenship
9 (“DPOC”) are registered to vote in federal, state, and local elections. (Doc. 12 at 13–14.)
10 Individuals who register using the federal form *and* provide DPOC are likewise
11 registered to vote in federal, state, and local elections. *Mi Familia Vota v. Fontes*, --- F.
12 Supp. 3d ----, 2024 WL 862406, at *2 (D. Ariz. 2024). But individuals who register using
13 the federal form without providing DPOC are only allowed to vote in primary and
14 general elections for candidates running in federal races. (Doc. 12 at 14.) These voters are
15 referred to as “Federal-Only Voters.”

16 The NVRA does not preclude states from “deny[ing] registration based on
17 information in [their] possession” which establishes an applicant’s ineligibility. *ITCA*,
18 570 U.S. at 15 (citation omitted). In effect, the interplay between *ITCA* and the NVRA
19 requires Arizona to allow individuals to apply to register to vote in federal elections using
20 the federal form but, after receiving the application, it may investigate the applicant’s
21 eligibility and deny registration to any person who it finds ineligible to vote.

22 In 2022, Arizona amended its election statutes “to impose stricter voter list
23 maintenance requirements for Federal-Only Voters.” (Doc. 12 at 12.) These relatively-
24 new voter list maintenance requirements serve as the basis for the present suit.

25 **B. Arizona’s 2022 Changes**

26 Under the 2022 laws, county recorders must take specific actions after receiving a
27 new voter registration application on the federal form when that form is not accompanied
28 by “satisfactory evidence of citizenship.” Ariz. Rev. Stat. § 16-121.01(D). “Within ten

1 days after receiving” an application on the federal form, a county recorder “shall use all
2 available resources to verify the citizenship status of the applicant.” Ariz. Rev. Stat.
3 § 16-121.01(D). At a minimum, a country recorder “shall compare the information” on
4 the federal form “with the following, provided the county has access”:

- 5 1. The department of transportation databases of Arizona
6 driver licenses or nonoperating identification licenses.
- 7 2. The social security administration (SSA) databases.
- 8 3. The United States citizenship and immigration services
9 systematic alien verification for entitlements program
10 (SAVE), if practicable.
- 11 4. A national association for public health statistics and
12 information systems electronic verification of vital events
13 system (EVVE).
- 14 5. Any other state, city, town, county or federal database and
15 any other database relating to voter registration to which the
16 county recorder or officer in charge of elections has access,
17 including an electronic registration information center
18 database.

19 Ariz. Rev. Stat. § 16-121.01(D)(1)-(5).

20 Some new voter list maintenance provisions require county recorders to perform
21 certain monthly checks “[t]o the extent practicable,” such as comparing the voter list
22 against specified databases maintained by the Social Security Administration and U.S.
23 Citizenship and Immigration Services. Ariz. Rev. Stat. §§ 16-165(G), (H), (I). But the
24 new provision plaintiffs invoke in this suit does not require monthly action. (See Doc. 12
25 at 16–17 (quoting Ariz. Rev. Stat. § 16-165(K).) Instead, it requires: “[t]o the extent
26 practicable, the county recorder shall review relevant city, town, county, state and federal
27 databases to which the county recorder has access to confirm information obtained that
28 requires cancellation of registrations pursuant to this section.” Ariz. Rev. Stat.
§ 16-165(K).

Finally, the 2022 changes imposed a new requirement regarding sharing
information with the Arizona Attorney General. That statute reads “[t]he secretary of
state and each county recorder shall make available to the attorney general a list of all
[Federal-Only Voters] and shall provide, on or before October 31, 2022, the applications

1 of individuals who are [Federal-Only Voters].” Ariz. Rev. Stat. § 16-143(A).

2 **C. Parties**

3 There are two named plaintiffs: EZAZ.org and Yvonne Cahill. EZAZ.org is a
4 nonprofit organization headquartered in Arizona whose mission “is to make civic
5 participation easy and accessible for all Americans.” (Docs. 12 at 4, 57 at 38.) “An
6 essential part” of EZAZ.org’s mission “is ensuring that Arizona’s elections are free, fair,
7 and lawfully administered, which includes proper voter list maintenance.” (Docs. 12 at 5,
8 57 at 38.) It allegedly has over 59,000 mailing list subscribers, has received donations
9 from over 4,000 people, conducts 90 or more public events a year, and has 3,001
10 volunteers. (Doc. 57 at 38.) EZAZ.org purportedly has 573 members who are Arizona
11 citizens and are registered in each of Arizona’s fifteen counties. (Doc. 57 at 39.)

12 EZAZ.org’s volunteers conduct “door-knocking campaigns to educate voters.”
13 (Doc. 57 at 39.) During those campaigns, volunteers have allegedly “been encountering
14 an increasing number of voters (of all political persuasions) who state that they do not
15 believe that their votes matter because they believe that their votes will be cancelled out
16 by illegal votes.” (Doc. 57 at 39.) Because of this, EZAZ.org alleges they have had to
17 “expend significant amounts of time and money responding to . . . voter concerns
18 and . . . conducting voter education about this issue.” (Doc. 57 at 40.)

19 The other plaintiff is Yvonne Cahill. She is a naturalized citizen of the United
20 States and an Arizona resident. (Doc. 12 at 5.) She regularly votes in Arizona’s primary
21 and general elections and “plans to vote in Arizona’s upcoming federal and state
22 elections.” (Doc. 12 at 5.) Because Cahill plans to vote in “state elections,” she is not a
23 Federal-Only Voter. But based on Cahill’s plan to vote, she allegedly “has a clear interest
24 in supporting the enforcement of Arizona’s election laws, including list maintenance
25 requirements.” (Doc. 12 at 5.)

26 Defendants are comprised of all fifteen Arizona counties³ and each of their county

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28 ³ As Mohave County points out, plaintiffs “do not allege illegal activity on the part of the
Counties,” but rather by their recorders. (Doc. 82 at 6.) Naming the counties may have
been unnecessary but there is no need to resolve that issue at this time.

1 recorders. (Doc. 12 at 1–2.) Twelve counties joined Maricopa County’s opposition (Doc.
2 48), while Mohave County filed its own opposition (Doc. 82). Only Greenlee County
3 “cannot . . . find a reasonable reason for opposing” a preliminary injunction because for
4 it, compliance would only “result in a few county man-hours” compared to how long it
5 will take to answer the lawsuit. (Doc. 77 at 2.) Greenlee County has five active Federal-
6 Only Voters and four inactive ones. (Doc. 77 at 2.)

7 **D. Plaintiffs’ Allegations**

8 Plaintiffs allege defendants have failed to comply with the 2022 statutory changes.
9 Plaintiffs argue one obstacle the county recorders have faced in performing voter list
10 maintenance is that “Secretary of State Adrian Fontes has neglected to obtain access . . .
11 to the three databases that the statutes specifically require be consulted to verify
12 citizenship:” the SAVE, SSA, and EVVE databases.⁴ (Doc. 12 at 16.) But they do not
13 name Fontes as a defendant, and even universal use of these three databases would not
14 satisfy plaintiffs because these databases are “insufficient to definitively verify the
15 citizenship of all Federal-Only Voters.” (Doc. 12 at 18.) Thus, plaintiffs allege consulting
16 these databases would be “insufficient to fulfill a County Recorder’s list maintenance
17 duties under State and federal law.” (Doc. 12 at 18.)

18 Instead, plaintiffs allege Ariz. Rev. Stat. §§ 16-121.01(D) (which applies during
19 the first ten days after a Federal-Only Voter registers) and 16-165(K) (governing
20 cancellation after the first ten days) require county recorders to make specific requests to
21 DHS asking to verify individuals’ citizenship status. (Doc. 12 at 15–16, 24–25.) Plaintiffs
22 reach this conclusion by reference to 8 U.S.C. § 1373(c), which requires DHS to respond
23 to government agencies requesting to verify an individual’s citizenship status “for any
24 purpose authorized by law.” (Doc. 12 at 22.) These requests to DHS are referred to as
25 “1373 requests.” Plaintiffs believe DHS’s responses to 1373 requests would provide
26 accurate results regarding voters’ citizenship. They further allege a 1373 request qualifies

27 ⁴ The statutory text is not as demanding as plaintiffs claim. It does not “specifically
28 require” these three databases be consulted (Doc. 12 at 16): the SAVE and SSA databases
must be consulted “[t]o the extent practicable” and the EVVE database must be consulted
“if accessible.” Ariz. Rev. Stat. § 16-165(H), (I), (J).

1 as an “available resource[]” under Ariz. Rev. Stat. § 16-121.01(D) and a “federal
2 database[] to which the county recorder has access” under Ariz. Rev. Stat. § 16-165(K)
3 such that county recorders “have a mandatory obligation” to submit 1373 requests even
4 later than ten days after a Federal-Only Voter registers. (Doc. 12 at 24.) In plaintiffs’
5 view, federal law also requires county recorders to submit 1373 requests to fulfill their
6 obligations to make ““reasonable effort[s]’ to remove potentially ineligible voters.” (Doc.
7 12 at 24 (citing 52 U.S.C. § 21003(a)(2)(A), (a)(4)(A), (a)(2)(B)(ii).)

8 Plaintiffs allege defendants have not been submitting 1373 requests. Their
9 evidence is “the number of Federal-Only Voters increasing in recent months by
10 unprecedented amounts.” (Doc. 57 at 27, 40.) In other words, plaintiffs believe there has
11 been an unprecedented surge of individuals registering to vote and if the county recorders
12 were to submit 1373 requests, they would discover some of those new registrants are
13 ineligible. Plaintiffs do not provide any plausible factual allegations supporting this
14 belief.⁵ Despite this, EZAZ.org claims it has been forced “to expend significant resources
15 and money to monitor data about the registration of Federal-Only Voters.” (Doc. 57 at
16 27, 40.) And it claims it has had to “expend more resources on educating State
17 Legislators” about the alleged issues and possible solutions to them. (Doc. 57 at 27, 40.)

18 Plaintiffs fault the county recorders for not submitting 1373 requests, but they also
19 complain the county recorders have refused to provide the Arizona Attorney General with
20 the lists required by Ariz. Rev. Stat. § 16-143(A). That statute states “each county
21 recorder shall make available to the attorney general a list of all [Federal-Only Voters]
22 and shall provide, on or before October 31, 2022, the applications of individuals who are
23 [Federal-Only Voters].” Ariz. Rev. Stat. § 16-143(A). Plaintiffs’ complaint does not
24 differentiate between the requirement to “make available” a list of all Federal-Only

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26 ⁵ Plaintiffs’ motion cites an August 2024 opinion poll in which 1.9 percent of “likely
27 [Arizona] voters” (as classified by Rasmussen and NumberUSA, who conducted the poll)
28 reported they are not U.S. citizens. (Doc. 57 at 9.) Plaintiffs’ reply tries to remedy this
deficiency, citing “definitive evidence” that emerged while their motion was pending
“that foreign citizens *are* registered to vote in Arizona[.]” (Doc. 86 at 9.) That evidence,
however, does not establish that 1373 requests would have a meaningful impact in
detering alleged noncitizens from registering to vote.

1 Voters and the requirements to “provide” a list of all Federal-Only Voters no later than
2 October 31, 2022.

3 **E. Procedural History**

4 On August 5, 2024, plaintiffs filed this suit in state court. (Doc. 1-1 at 14.) One
5 week later, Maricopa County and its recorder removed the case to federal court. (Doc. 1).
6 On August 16, Voto Latino and One Arizona moved to intervene.⁶ (Doc. 9.) On August
7 30, plaintiffs filed their opposition to the motion to intervene. (Doc. 11.)

8 On September 3, plaintiffs filed an amended complaint which remains the
9 operative complaint. (Doc. 12.) The amended complaint asserts four claims under
10 Arizona law and one under the NVRA. (Doc. 12 at 28–31.) The four state claims are
11 different ways of alleging the counties and their recorders are violating the 2022 voter list
12 maintenance requirements by failing to make 1373 requests or by failing to provide
13 information to the Arizona Attorney General. The federal claim is that defendants’
14 handling of a subset of registration forms submitted by Federal-Only Voters violates the
15 NVRA. The complaint’s stated goal is “to restore public trust in [Arizona’s] electoral
16 system by holding the Defendants accountable for their failures and to ensure that the list
17 maintenance required by the law—and common sense—is performed[,]” with “voter list
18 maintenance” defined as including the removal of ineligible voters. (Doc. 12 at 3–4.) The
19 amended complaint requests declaratory and injunctive relief establishing Arizona’s
20 county recorders must make 1373 requests for all Federal-Only Voters and provide
21 information to the Arizona Attorney General. (Doc 12. at 32–33.)

22 On September 15, plaintiffs filed a motion to exceed the page limits and lodged a
23 motion for a temporary restraining order and preliminary injunction.⁷ (Docs. 15, 16.) That

24 ⁶ “Voto Latino is a nonprofit, nonpartisan 501(c)(4) corporation dedicated to growing
25 political engagement in historically underrepresented communities, specifically young
26 and Latinx voters.” (Doc. 5 at 7.) “One Arizona is a nonprofit, nonpartisan 501(c)(3)
27 corporation with a mission of building a culture of civic engagement and democratic
28 participation among historically underrepresented communities in Arizona.” (Doc. 5 at
7.)

⁷ Plaintiffs argue they did not wait to seek injunctive relief because the same day they
filed their complaint in state court, they also filed what they describe as a “procedurally
proper” request for injunctive relief. (Doc. 89.) That is correct but it does not explain
plaintiffs’ behavior after the case was removed to federal court on August 12, 2024. If

1 motion seeks to require defendants “to conduct uniform and nondiscriminatory voter list
2 maintenance by submitting a list of [Arizona’s] Federal-Only Voters to [DHS] to verify
3 the citizenship and immigration status of these registrants.” (Doc. 57 at 10.) Plaintiffs
4 again define “voter list maintenance” as encompassing removing ineligible voters from
5 the rolls (Doc. 57 at 9) and explain that the urgency justifying injunctive relief is “the
6 proximity of the general election in November[.]” (Doc. 57 at 33–34.) Plaintiffs claim
7 they “will suffer even greater harm” due to “disenfranchisement and vote dilution” if
8 defendants do not submit the 1373 requests and thus perform the allegedly necessary list
9 maintenance “before the election.” (Doc. 57 at 34.) However, after defendants pointed
10 out that the NVRA prohibits systematic voter-list purges within 90 days of a federal
11 election (Doc. 48 at 15), plaintiffs’ reply clarified their motion “merely” seeks “the
12 sending of a letter to DHS and not the removal of *any* voters.” (Doc. 86 at 16.)

13 The motion’s September 15 lodging date means plaintiffs waited 41 days after
14 filing their complaint to request emergency injunctive relief. The lodging date also means
15 plaintiffs sought to compel every county recorder in Arizona to submit 1373 requests for
16 tens of thousands of Federal-Only Voters to DHS—in addition to their regular voter
17 registration and election-planning duties—51 days before the general election. Arizona
18 allows for early voting beginning October 9, so plaintiffs’ motion was lodged 24 days
19 before voting began.

20 Plaintiffs had not served most defendants when they lodged their motion. Between
21 September 15 and September 26, plaintiffs were able to serve the unserved defendants.
22 On September 26, the Democratic National Committee filed a motion to intervene. (Doc.
23 46.) On September 27, Maricopa County and its recorder filed an opposition to the
24 lodged motion for injunctive relief. (Doc. 48.) The court granted plaintiffs’ request to
25 exceed page limits and the case was transferred to a different judge late on September 30.

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28 plaintiffs believed their request filed in state court was still pending, they should have
filed a notice of pending motion pursuant to Local Rule 3.6(d). Alternatively, plaintiffs
could have immediately filed a new motion seeking injunctive relief. Instead, plaintiffs
waited 34 days after the case was removed to lodge their request for injunctive relief.

1 (Doc. 61.) The court issued a briefing order the following day. (Doc. 64.) That order
2 notified plaintiffs it would treat the proposed intervenors as amici for purposes of
3 resolving the motion. (Doc. 64.)

4 **II. For Purposes of this Motion, Plaintiffs Lack Standing**

5 Plaintiffs' motion seeks to alter the current status quo by requiring county
6 recorders to submit 1373 requests before the general election. Requests to alter the status
7 quo on an emergency basis—*i.e.*, mandatory injunctions—are “particularly disfavored.”
8 *Am. Freedom Def. Initiative v. King Cnty.*, 796 F.3d 1165, 1173 (9th Cir. 2015) (quoting
9 *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878–79 (9th
10 Cir. 2009)). District courts should not grant these requests in “doubtful cases.” *Id.*

11 Here, the court need not reach the merits of plaintiffs' preliminary injunction
12 request for two reasons. First, plaintiffs have not made a clear showing that they have
13 standing. Second, even if they had, the court would decline to compel Arizona's county
14 recorders to divert their resources to submitting tens of thousands of 1373 requests a mere
15 25 days before the general election.

16 Defendants argue plaintiffs lack standing to sue. (Doc. 48 at 8–13.) “Standing is a
17 threshold matter central to [a federal court's] subject matter jurisdiction.” *Bates v. United*
18 *Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007). The standing requirement flows
19 from the principle that federal courts do not “operate as an open forum for citizens ‘to
20 press general complaints about the way in which government goes about its business.’”
21 *Hippocratic Medicine*, 602 U.S. at 379 (quoting *Allen v. Wright*, 468 U.S. 737, 760
22 (1984)). Standing ensures that federal courts exercise power that is “judicial in nature” by
23 tailoring remedies to concrete injuries rather than “engag[ing] in policymaking properly
24 left to elected representatives.” *Lance v. Coffman*, 549 U.S. 437, 441 (2007) (per curiam);
25 *Hollingsworth v. Perry*, 570 U.S. 693, 700 (2013).

26 A plaintiff seeking a preliminary injunction “must make a clear showing of each
27 element of standing[.]” *Yazzie v. Hobbs*, 977 F.3d 964, 966 (9th Cir. 2020). These
28 elements are: (1) “that she has suffered or likely will suffer an injury in fact”; (2) “that

1 the injury likely was caused or will be caused by the defendant”; and (3) “that the injury
2 likely would be redressed by the requested judicial relief.” *Hippocratic Medicine*, 602
3 U.S. at 380. Here, plaintiffs have not shown an injury in fact, nor (independently) that the
4 injury they claim is likely to be redressed by granting their motion.

5 **A. Lack of Injury in Fact**

6 The injury in fact requirement applies whether a plaintiff asserts individual
7 standing (like Cahill), representational standing (like EZAZ.org, on behalf of its
8 members), or organizational standing (like EZAZ.org, as its own entity). “An injury in
9 fact must be ‘concrete,’ meaning that it must be real and not abstract.” *Hippocratic*
10 *Medicine*, 602 U.S. at 381. It must be “particularized,” meaning that it affects the plaintiff
11 “in a personal and individual way” rather than being a “generalized grievance.” *Id.*
12 (simplified). And the injury “must be actual or imminent, not speculative[.]” *Id.*

13 The injury in fact requirement exists to “screen[] out plaintiffs who might have
14 only a general legal, moral, ideological, or policy objection to a particular government
15 action.” *Id.* Plaintiffs may not sue “based only on an ‘asserted right to have the
16 Government act in accordance with law’” no matter how sincere or committed they are to
17 that principle because that general interest is common to all members of the public and
18 not individualized. *Id.* (quoting *Allen*, 468 U.S. at 754); *Carney v. Adams*, 592 U.S. 53,
19 58 (2020). To show injury in fact, a plaintiff must therefore raise a claim more particular
20 to that specific person or organization than “harm to his and every citizen’s interest in
21 proper application of the . . . laws” and “seek[] relief that . . . more directly and tangibly
22 benefits him than it does the public at large[.]” *Hollingsworth*, 570 U.S. at 706 (quoting
23 *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 573-74 (1992)).

24 **1. Cahill Has Not Established Injury in Fact**

25 Plaintiffs argue Cahill has been injured in two ways. First, as a naturalized citizen
26 with an alien number, she is subject to “greater scrutiny than natural-born citizens and
27 unlawfully present foreigners who lack an alien number” (including through citizenship
28 verifications conducted via the SAVE database). (Doc. 57 at 24.) Second, “every vote

1 cast by a foreign citizen dilutes the votes of eligible voters” like Cahill. (Doc. 57 at 24.)
2 Plaintiffs’ scrutiny and voter-dilution arguments both fail under existing law.

3 Plaintiffs’ scrutiny argument appears to depend on two demonstrably-false
4 premises. Cahill alleges “she is subject[ed] to citizenship verifications through SAVE”
5 while other registered voters are not subject to such verifications. (Doc. 57 at 24.) To
6 demonstrate ongoing or future injury, plaintiffs necessarily must believe that Cahill is
7 being or will be subjected to repetitive checks of her citizenship status through
8 defendants’ use of SAVE. That is wrong. As explained by another judge in the District of
9 Arizona, defendants have access to “SAVE pursuant to a memorandum of agreement
10 between the Secretary of State and USCIS[.]” *Mi Familia Vota*, 2024 WL 862406, at *6.
11 That memorandum of agreement “permits county recorders to verify citizenship
12 information of naturalized and derived U.S. citizens only ‘when they register to vote’”
13 and “Arizona currently may not use SAVE for any other purpose.” *Id.* Plaintiffs allege no
14 personalized facts supporting their theory that Cahill is subject to repeated SAVE checks,
15 and such checks appear to be precluded by the memorandum of agreement. *See Sprewell*
16 *v. Golden State Warriors*, 266 F.3d 979, 988, *opinion amended on denial of reh’g*, 275
17 F.3d 1187 (9th Cir. 2001) (“The court need not . . . accept as true allegations that
18 contradict matters properly subject to judicial notice[.]”); *DiRuzza v. Cnty. of Tehama*,
19 206 F.3d 1304, 1310 n.3 (9th Cir. 2000) (court may take judicial notice of a
20 memorandum of understanding). To the extent Cahill’s asserted injury depends on
21 ongoing citizenship verifications through SAVE, it fails.

22 Plaintiffs also attempt to show Cahill has suffered a sufficient injury by arguing
23 the general practice of using SAVE to verify citizenship “subjects naturalized citizens,
24 including Ms. Cahill, to greater scrutiny than natural-born citizens and unlawfully present
25 foreigners who lack an alien number.” (Doc. 57 at 24.) Again, it is not entirely clear what
26 theory of harm plaintiffs invoke. Cahill is not currently subject to any SAVE checks, so
27 she is not being subjected to “greater scrutiny.” Even if she was, that “greater scrutiny”
28 does not require any action on her part, *Mi Familia*, 2024 WL 862406, at *20, and has

1 not impaired her plans to vote in federal or state elections (Doc. 12 at 5). More generally,
2 Cahill has not shown that “alleged under-regulation of other[]” foreign-born voters
3 injures her at all. *Hippocratic Medicine*, 602 U.S. at 392–93; *Election Integrity Project*
4 *Cal., Inc. v. Weber*, 113 F.4th 1072, 1089 (9th Cir. 2024) (“[T]he inadvertent counting of
5 some invalid ballots, without more, does not limit, prevent, or otherwise burden the
6 ability of any voter to cast a lawful ballot consistent with their voting preference, or to
7 have their ballot counted equally in determining the final tally.”) (simplified). Put simply,
8 without personalized injury, Cahill’s scrutiny argument amounts to nothing more than
9 one that the law has not been followed, which is “precisely the kind of undifferentiated,
10 generalized grievance about the conduct of government” that is insufficient to confer
11 standing. *Lance*, 549 U.S. at 442; *see also Bowyer v. Ducey*, 506 F. Supp. 3d 699, 711
12 (D. Ariz. 2020).

13 Finally, Plaintiffs argue Cahill has suffered an injury because greater numbers of
14 potentially-ineligible registrants dilute her vote. (Doc. 57 at 24.) But Ninth Circuit
15 precedent is clear: “[W]hether evaluated in the context of [standing] or on the merits, . . .
16 the mere fact that some invalid ballots have been inadvertently counted, without more,
17 does not suffice to show a distinct harm to any group of voters over any other.” *Election*
18 *Integrity Project Cal., Inc. v. Weber*, 113 F.4th 1072, 1089 n.13 (9th Cir. 2024); *see also*
19 *Bowyer*, 506 F. Supp. 3d at 711 (“As courts have routinely explained, vote dilution is a
20 very specific claim . . . and cannot be used generally to allege voter fraud.”). Instead, “[a]
21 vote dilution claim requires a showing of *disproportionate* voting power for some voters
22 over others[.]” *Election Integrity Project Cal.*, 113 F.4th at 1082. Because vote dilution
23 “in an absolute sense[] occurs any time the total number of votes increases in an
24 election[.]” the crux of a cognizable vote dilution claim is “*inequality* of voting power—
25 not diminishment of voting power *per se*.” *Id.* at 1087. Accordingly, even if Cahill’s vote
26 was “diluted” in the colloquial sense plaintiffs allege, that type of “dilution” does not
27 give Cahill particularized injury in fact because it is also suffered by every other voter.
28 Cahill’s voter dilution theory is therefore insufficient to establish her standing.

1 organizations must “show that a challenged governmental action directly injures the
2 organization’s pre-existing core activities and does so *apart* from the plaintiffs’ response
3 to that governmental action.” *Id.* (citing *Hippocratic Medicine*, 602 U.S. at 395–36). An
4 organization cannot establish injury in fact by “expending money to gather information
5 and advocate against” a defendant’s (in)action, by making “vague claims that a policy
6 hampers their mission,” by “spending money voluntarily” on “public advocacy” or
7 “public education” functions “in response to a governmental policy,” or by “divert[ing]
8 resources in response to a governmental policy that frustrates its mission.” *Id.* at 2–10;
9 *Hippocratic Medicine*, 602 U.S. at 394. In other words, when a defendant’s action or
10 inaction does not directly require or prohibit an organizational plaintiff from doing
11 anything, courts must examine the organization’s core mission and pre-existing activities
12 to determine whether there is injury in fact for standing.

13 EZAZ.org describes its core mission as “teach[ing] people how to become active
14 in the political process in their local communities and to help voters get engaged in a
15 positive way.” (Doc. 57 at 38.) Other components of EZAZ.org’s mission are “mak[ing]
16 civic participation easy and accessible for all Arizonans[,]” “train[ing] Arizonans about
17 becoming more civically involved[,]” and “increas[ing] civic engagement [by] ensuring
18 that Arizona’s elections are free, fair, and lawfully administered, which includes proper
19 voter list maintenance.” (Doc. 57 at 38.) It identifies six pre-existing activities in service
20 of that mission it claims are affected by defendants’ actions: (1) door-knocking
21 campaigns to educate voters which sometimes identify ineligible voters that EZAZ.org
22 volunteers report to county officials; (2) encounters with voters who “do not believe that
23 their votes matter” because of ineligible foreign-citizen voters on Arizona’s rolls; (3)
24 recruiting new volunteers, who are “extremely discourag[ed]” because of the recorders’
25 list maintenance failures; (4) educating state legislators, which costs more money due to
26 list maintenance failures; (5) monitoring data about Federal-Only Voters; and (6)
27 encouraging legal voters to cast their ballots despite concerns about ineligible voters
28 diluting their vote. (Docs. 57 at 26–27, 86 at 7–9.)

1 Neither EZAZ.org’s core mission nor its pre-existing activities meaningfully differ
2 from those found insufficient for standing in *Hippocratic Medicine* and *Arizona Alliance*.
3 See *Hippocratic Medicine*, 602 U.S. at 384 (noting that “in ‘many cases the standing
4 question can be answered chiefly by comparing the allegations of the particular complaint
5 to those made in prior standing cases.’”) (quoting *Allen*, 468 U.S. at 751–52).

6 To start, the only components of EZAZ.org’s core mission that defendants’
7 alleged inaction affects are “public education” and “public advocacy” functions. See
8 *Arizona Alliance*, 2024 WL 4246721, at *8. Making civic participation easy, training
9 Arizonans to become more civically involved, and increasing civic engagement by
10 ensuring free and fair elections are all “broadly stated mission[s] or goal[s]” on which
11 organizational standing may no longer be premised. *Id.*; see also *id.* (“No matter how
12 much a defendant’s conduct can be said to frustrate an organization’s abstract mission,
13 alleged injuries to an organization’s ‘general legal, moral, ideological, and policy
14 concerns do not suffice on their own’ to confer . . . standing[.]”) (citing *Hippocratic*
15 *Medicine*, 602 U.S. at 386).

16 Nor does the defendants’ alleged (in)action “directly affect[] and interfere[] with”
17 EZAZ.org’s claimed core pre-existing activities as *Hippocratic Medicine* requires. 602
18 U.S. at 395; see also *Arizona Alliance*, 2024 WL 4246721, at *8. Defendants’ actions do
19 not prevent EZAZ.org volunteers from encouraging voters or educating legislators or
20 making efforts to recruit new volunteers; those functions would continue unaffected but
21 for EZAZ.org’s own decision to devote more time during these pre-existing activities to
22 voter list maintenance topics. As in *Arizona Alliance*, plaintiffs’ decision “to shift some
23 resources from one set of pre-existing activities in support of their overall mission to
24 another, new set of such activities” in response to defendants’ actions is insufficient to
25 confer organizational standing. 2024 WL 4246721, at *8, *10.

26 More generally, EZAZ.org has failed to show it is doing anything more than
27 choosing to alter the emphasis of its pre-existing activities “in response to . . .
28 government[al] [in]action.” *Id.* at *8. For example, EZAZ.org’s decision to report

1 ineligible voters it encounters during door-knocking campaigns, and the time the
2 resulting reporting takes, is no more than a “diversion of resources *in response* to a
3 policy[.]” *Id.* So too its decision to “expend more resources on educating State
4 Legislators” and eligible voters about voter list maintenance instead of other topics. (Doc.
5 57 at 27.) EZAZ.org admits as much. (Doc. 86 at 7 (“because of increasing concerns
6 among voters about foreign citizens voting, a considerable amount of resources for voter
7 education is now being diverted to responding to these issues”).) To allow standing based
8 on this type of organizational resource-prioritization would violate *Hippocratic*
9 *Medicine’s* command that “an organization that has not suffered a concrete injury caused
10 by a defendant’s action cannot spend its way into standing simply by expending money to
11 gather information and advocate against the defendant’s action.” 602 U.S. at 394; *see*
12 *also Arizona Alliance*, 2024 WL 4246721, at *8 (“[W]e must not allow the diversion of
13 resources *in response* to a policy to confer standing—instead, the organization must show
14 that the new policy directly harms its *already-existing* core activities.”).

15 For all these reasons, EZAZ.org has not clearly shown that defendants’ alleged
16 conduct has harmed its core activities sufficient to establish an injury in fact.

17 **B. Lack of Redressability**

18 Setting aside *Arizona Alliance*, plaintiffs’ standing argument suffers from an
19 independently-fatal flaw in the context of their request for emergency relief: they fail to
20 show that the relief they now request—“merely the sending of a letter to DHS and not the
21 removal of *any* voters” (Doc. 86 at 16)—will redress their claimed imminent harm of
22 “disenfranchisement and vote dilution” in the November 5 general election (Doc. 57 at
23 34).

24 Plaintiffs’ motion sought to compel defendants to send 1373 requests on an
25 emergency basis as a part of “perform[ing] the necessary list maintenance before the
26 election.” (Doc. 57 at 34.) They repeatedly cite a definition of “voter list maintenance”
27 that includes removing ineligible voters from the rolls, both before this court and in
28 letters demanding the county recorders take action. (Docs. 12 at 3, 57 at 9, 10, 13, 20, 26,

1 51, 53, 61, 64, 68, 71, 75, 78, 82, 85, 89, 92, 96, 99, 103, 106, 110, 113, 117, 120, 124,
2 127, 131, 134, 138, 141, 145, 148, 152, 155.) But after defendants and amici pointed out
3 that the NVRA precludes states from conducting “any program the purpose of which is to
4 systematically remove the names of ineligible voters from the officials lists of eligible
5 voters” within 90 days of an election (Docs. 48 at 15 (citing 52 U.S.C. § 20507(c)(2)(A)),
6 46-3 at 11–12 (same), 62 at 13–15 (same)), plaintiffs honed their request. They now
7 claim to seek nothing more than to have the recorders send 1373 requests to “begin[] the
8 investigation process.” (Doc. 86 at 19.)

9 This evolution poses a new problem for plaintiffs. At the preliminary injunction
10 stage, in addition to injury in fact, plaintiffs must clearly show both causation and “that
11 the injury likely would be redressed by the requested judicial relief.” *Yazzie*, 977 F.3d at
12 966; *Hippocratic Medicine*, 602 U.S. at 380. Causation and redressability “are often flip
13 sides of the same coin” in that “enjoining the [defendant’s] action . . . will typically
14 redress [an] injury” the defendant has caused. *Hippocratic Medicine*, 602 U.S. at 380–81
15 (simplified). To satisfy these standards, plaintiffs’ showings of causation and
16 redressability must not be speculative, attenuated, or rely on “the unfettered choices made
17 by independent actors not before the courts” or “distant (even if predictable) ripple
18 effects[.]” *Id.* at 383 (simplified). “Instead, plaintiffs must show a sufficiently close and
19 predictable link between the challenged action and their injury-in-fact” and that enjoining
20 the defendants “will cure their injury.” *Arizona Alliance*, 2024 WL 4246721, at *5-*6
21 (quoting *Hippocratic Medicine*, 602 U.S. at 383). And they must show it is “likely, as
22 opposed to merely speculative, that the injury will be redressed by a favorable decision.”
23 *Lujan*, 504 U.S. at 561 (simplified).

24 Plaintiffs’ narrowed request that defendants “begin[] the investigation process”
25 (Doc. 86 at 19) does not meet this standard. Redressing their claimed harm of
26 “disenfranchisement and vote dilution” before the general election (Doc. 57 at 34)
27 requires more than *starting* an investigation: it requires *removing* ineligible voters from
28 the rolls at the *end* of the investigation. That result in turn relies on choices by

1 independent actors and factual showings of the likely timing of those choices and results
2 of the investigation that plaintiffs simply have not made. For example, plaintiffs argue
3 DHS can respond to 1373 requests containing only a name and birthdate—a fact
4 defendants dispute, but which the court takes as true for purposes of resolving the
5 motion—and that DHS officials are mandated to respond to these requests (*i.e.*, their
6 choices are not “unfettered”). (Docs. 57 at 14, 18–20, 22, 86 at 11–12.) But they provide
7 no evidence, nor do they even allege, that DHS will be able to respond to tens of
8 thousands of requests before the general election. Moreover, their claims about the likely
9 results of the investigation rely on a public opinion poll, *see supra* at 8 n.5, and evidence
10 adduced for the first time in their reply. Even if the court were to exercise its discretion to
11 consider all of that evidence—which it should not without giving defendants a chance to
12 respond to the new facts in the reply, *see Flathead-Lolo-Bitterroot Citizen Task Force v.*
13 *Montana*, 98 F.4th 1180, 1188–89 (9th Cir. 2024)—it is speculative and attenuated. In
14 short, plaintiffs have not shown their request that the defendants be required to begin an
15 investigation by sending 1373 requests will likely redress the harm they claim.

16 Because plaintiffs have not clearly shown they have standing, the court must deny
17 their motion for injunctive relief.

18 **III. Even if Plaintiffs Had Standing, Their Emergency Relief Request Comes Too** 19 **Soon Before the Election**

20 Even if plaintiffs had standing, their injunction request would be denied because
21 they waited too long before seeking relief. The Supreme Court “has repeatedly
22 emphasized that lower federal courts should ordinarily not alter the election rules on the
23 eve of an election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423,
24 424 (2020) (citing cases); *see also Short v. Brown*, 893 F.3d 671, 676 (9th Cir. 2018)
25 (“[T]he Supreme Court has warned us many times to tread carefully where preliminary
26 relief would disrupt a state voting system on the eve of an election.”). Importantly,
27 “[w]hen the preliminary relief sought would interfere with state voting procedures shortly
28 before an election, a court considering such relief must weigh, ‘in addition to the harms
attendant upon issuance or nonissuance of an injunction, considerations specific to

1 election cases and its own institutional procedures.” *Id.* at 675-76 (quoting *Purcell v.*
2 *Gonzalez*, 549 U.S. 1, 4, (2006) (per curiam)).

3 One purpose of the *Purcell* principle is to prevent voter confusion, but another is
4 to prevent eleventh-hour “administrative burdens for elected officials.” *Lake v. Hobbs*,
5 623 F. Supp. 3d 1015, 1031 (D. Ariz. 2022) (simplified); *see also Arizona Democratic*
6 *Party v. Hobbs*, 976 F.3d 1081, 1086 (9th Cir. 2020) (noting the public interest is best
7 served by preserving existing laws “rather than by sending the State scrambling to
8 implement and to administer a new procedure . . . at the eleventh hour.”). This is because
9 running state-wide elections is “extraordinarily complicated and difficult,” poses
10 “significant logistical challenges[,]” and requires “enormous advance preparations by
11 state and local officials[.]” *Merrill v. Milligan*, 142 S.Ct. 879, 880 (2022) (Kavanaugh, J.,
12 concurring). As a result, plaintiffs seeking an injunction close in time to an election
13 should show the merits are “entirely clearcut” in their favor and “the changes in question
14 are at least feasible before the election without significant cost, confusion, or hardship.”
15 *Id.* at 881.

16 Plaintiffs have not made those showings here, despite their arguments to the
17 contrary. (Doc. 86 at 16–18.) They pooh-pooh the possibility that the 1373 requests will
18 take any additional time, ignoring amici’s assertion that plaintiffs’ requested injunction
19 would require the recorders to undertake a new system of citizenship checks for 42,301
20 registered voters (Doc. 46-3 at 16). Plaintiffs reference the Arizona Supreme Court’s
21 recent descriptions of the steps county recorders must take to provide due process before
22 cancelling a voter’s registration, but that decision—issued nearly three weeks ago before
23 early voting had begun—does not speak to the additional time required to submit 1373
24 requests and in any event declined to change the election rules with “so little time
25 remaining before the beginning of the 2024 General Election.” *Richer v. Fontes*, No. CV-
26 24-0221-SA, 2024 WL 4299099, at *3 (Ariz. Sept. 20, 2024).

27 Plaintiffs waited until shortly before the election to file this lawsuit despite
28 allegedly suffering irreparable harm since Arizona’s 2022 voter list maintenance laws

1 went into effect. They have not made a clearcut showing of harm, nor that the action they
2 request is feasible in the midst of a general election. The court must tread carefully as the
3 Ninth Circuit and Supreme Court have instructed, and would decline to grant a
4 mandatory injunction here for that reason even if plaintiffs had established standing for
5 emergency relief.

6 **IV. Conclusion**

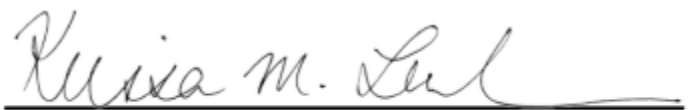
7 Plaintiffs lack standing to seek injunctive relief. Cahill has not shown an injury in
8 fact and EZAZ.org's argument for organizational standing is precluded by *Arizona*
9 *Alliance*. But even if *Arizona Alliance* was not presently binding precedent, plaintiffs
10 would lack standing because the relief they seek—an order “merely” compelling every
11 Arizona county recorder to begin an investigation into the citizenship of tens of
12 thousands of Federal-Only Voters—would not redress their asserted harm. And in any
13 event, the court would decline to issue such an order three-and-a-half weeks before the
14 general election with early voting underway.

15 Accordingly,

16 **IT IS ORDERED** granting plaintiffs' motion for leave to file excess pages for
17 their reply in support of their temporary restraining order and preliminary injunction
18 (Doc. 85).

19 **IT IS FURTHER ORDERED** denying plaintiffs' motion for a temporary
20 restraining order and preliminary injunction (Doc. 57).

21 Dated this 11th day of October, 2024.

22
23 

24 **Honorable Krissa M. Lanham**
25 **United States District Judge**