



July 16, 2024

VIA EMAIL

Larry Noble
Apache County Recorder
75 West Cleveland
St. Johns, Arizona 85936
voterreg@apachecountyaz.gov

Dear Recorder Noble:

I write to you on behalf of our clients, Arizona Free Enterprise Club and Strong Communities Foundation of Arizona, to remind you of your obligation to remove foreign citizens from your voter rolls. If you continue to fail to fulfill this important duty, our clients may take legal action against you to compel you to do so.

Fortunately, there is an easy way for you to confirm the citizenship of registered voters and thus fulfill your responsibility. Congress has given you two critical tools to verify the citizenship status of individuals registered to vote in your county: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—requests under sections 1373 and 1644 *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher.

Furthermore, Arizona law imposes on you a mandatory duty to consult "relevant ... federal databases to which the county recorder has access to confirm information

obtained that requires cancellation of registrations.”¹ Because federal law secures to you the right of access to DHS’s information, you have a mandatory duty under Arizona law to take advantage of that access to verify the citizenship of voters. If you act now, there is still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your county’s voter rolls before the fall elections.

I. State and federal law prohibit foreign nationals from voting or registering to vote.

As you know, only U.S. citizens can legally vote in State and federal elections.² Further, it is a State and federal crime for any foreign national to register to vote or to vote in State or federal elections.³ No foreign national is authorized to register to vote in or to vote in State or federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls. As you know, Arizona law requires that persons registering to vote provide documentary proof of citizenship.⁵ However, the U.S. Supreme Court has held that the State may not impose these voter registration requirements for federal races because such information is not required on the federal voter registration form.⁶

The Help America Vote Act (HAVA) established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does

¹ A.R.S. § 16-165(K).

² See, e.g., Ariz. Const. art. VII, § 2(A) (requiring that all voters be U.S. citizens); A.R.S. § 16-101(A)(1) (same); National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

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⁴ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

⁵ A.R.S. § 16-166(F).

⁶ *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013).

not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁷

I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: / /
Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.⁸

Because the National Voter Registration Act (NVRA) requires States to “accept and use”⁹ the EAC’s form,¹⁰ and because that form does not require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹¹ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹² However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”¹³ Further, the Court noted that the NVRA only requires states to register eligible persons.¹⁴ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁵ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that

⁷ *Register to Vote in your State by Using this Postcard Form and Guide*, U.S. ELECTION ASSISTANCE COMMISSION, <https://tinyurl.com/4wj6vm6r> (located in Box 9 on the fourth page of the document; the page is titled “Voter Registration Application”).

⁸ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

⁹ 52 U.S.C. § 20505(a)(1).

¹⁰ The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

¹¹ 570 U.S. 1 (2013).

¹² *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

¹³ *Id.* (cleaned up) (emphasis added).

¹⁴ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹⁵ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.¹⁶

According to the Arizona Secretary of State’s Office, as of April 2024, 35,273 registered voters in Arizona had failed to provide proof of citizenship and were, therefore, registered only to vote in federal races.¹⁷

II. State and federal law require counties to conduct voter list maintenance and remove foreign nationals from voter rolls.

Both State and federal law require you to remove ineligible voters from your voter rolls. Arizona law requires you to perform monthly list maintenance to confirm the citizenship of federal-only registered voters.¹⁸ Additionally, HAVA¹⁹ requires you to “perform list maintenance” of your voter rolls,²⁰ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed.”²¹ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”²²

You are also required to send “to the attorney general a list of all individuals who are registered to vote and who have not provided satisfactory evidence of citizenship”²³ so that the Attorney General may fulfill her obligation “to use all available resources to verify the citizenship status of the applicant[s].”²⁴ Surprisingly, even though this statutory provision is currently in force and not enjoined by any court, we understand that none of the county recorders have fulfilled their obligations under this statute.

Additionally, county recorders must “prominently post on the recorder’s website the number of persons who are registered to vote... who have not provided proof of citizenship” as of January 2, February 20, April 1, and July 1 of this year.²⁵ After a diligent review, we could not locate those totals on your website.

Additionally, Arizona’s list maintenance statute requires counties to consult monthly several specific databases to determine the citizenship of federal-only voters: SAVE²⁶,

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¹⁷ ARIZONA SECRETARY OF STATE’S OFFICE, *Federal Only Registrants as of April 1st, 2024*, (Apr. 1, 2024), <https://tinyurl.com/3apvrsub>.

¹⁸ A.R.S. § 16-165.

¹⁹ P.L. 107-252, 116 Stat. 1666 (2002).

²⁰ 52 U.S.C. § 21083(a)(2)(A).

²¹ 52 U.S.C. § 21083(a)(2)(B)(ii).

²² 52 U.S.C. § 21083(a)(4)(A).

²³ A.R.S. § 16-143(A).

²⁴ A.R.S. § 16-143(B).

²⁵ A.R.S. §§ 16-161(B), -168(G)(1).

²⁶ A.R.S. § 16-165(I).

the Social Security Administration (SSA) database²⁷, and the National Association for Public Health Statistics and Information Systems.²⁸ Unfortunately, the Secretary of State has failed to negotiate access to these databases for list maintenance, so county recorders are currently unable to use them for list maintenance.²⁹ Furthermore, SAVE and SSA have design flaws that hinder their effectiveness for performing voter list maintenance.³⁰

Notwithstanding the unavailability of the SAVE, SSA, and NAPHSIS databases because of the Secretary of State’s negligence in obtaining access, Arizona law still imposes broad duties on counties to perform list maintenance using other databases, requiring that “[t]o the extent practicable, the county recorder shall review relevant city, town, county, state and federal databases to which the county recorder has access to confirm information obtained that requires cancellation of registrations.”³¹

III. County recorders have access to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, counties have an alternative solution for obtaining information about individuals on their voter rolls. And they can do so without the need to access the SAVE, SSA, or NAPHSIS databases.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires DHS to “respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of *any* individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.”³² The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”³³

As explained above, State and federal law unambiguously require that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. State and federal law also impose on counties the duty of ensuring that ineligible

²⁷ A.R.S. § 16-165(H).

²⁸ A.R.S. § 16-165(J).

²⁹ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *5, *6, *7 (D. Ariz. Feb. 29, 2024).

³⁰ AMERICA FIRST LEGAL FOUNDATION, *America First Legal Sends All 50 States a Plan for How to Use Existing Federal Law to Prevent Foreign Nationals from Illegally Voting in American Elections*, (June 24, 2024), <https://tinyurl.com/ys48bs5n>.

³¹ A.R.S. § 16-165(K).

³² 8 U.S.C. § 1373(c) (emphasis added).

³³ 8 U.S.C. § 1644.

voters are removed from voter rolls.³⁴ Also, Arizona’s Constitution and statutes impose citizenship requirements, and 8 U.S.C. § 1644 confers on counties unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a county to ask DHS about the citizenship status of presently registered voters.

Notably, DHS already can verify an individual’s citizenship. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.³⁵ This means that, *right now*, DHS can answer all of your inquiries about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost. You already have the authority to submit citizenship inquiries about registered voters to DHS, and you can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* foreign nationals, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to follow the procedures outlined in A.R.S. § 16-165((A)(10) for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

Because this system of verification relies on information in DHS’s databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

³⁴ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

³⁵ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁶

IV. Conclusion

You have a mandatory obligation under Arizona law to remove foreign nationals from your voter rolls and to “review relevant ... federal databases” to accomplish this.³⁷ Congress has provided you with access to a critical database to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Because this database is one that you are entitled to access under federal law, you have a mandatory obligation to submit a request to DHS. Doing so is easy—all you need to do is send a letter to DHS invoking your authority under 8 U.S.C. §§ 1373 and 1644 and listing all your county’s federal-only voters.

We ask that you respond to this letter by the close of business on Tuesday, July 23, confirming that you have:

- (1) Submitted a request to DHS for citizenship confirmation of all federal-only voters registered in your county;
- (2) Submitted the list of your county’s federal-only voters to the Attorney General; and
- (3) Posted the number of federal-only voters registered as of January 2, February 20, April 1, and July 1, 2024, on the county recorder website.

If you fail to confirm the above information in writing, then our clients may take legal action against you to compel you to fulfill your mandatory duties under Arizona law.

Best regards,

/s/ James Rogers
James Rogers
Arizona State Bar No. 027287
Senior Counsel
America First Legal Foundation

³⁶ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS’s failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).

³⁷ A.R.S. § 16-165(K).



July 16, 2024

VIA EMAIL

David W. Stevens
Cochise County Recorder
1415 Melody Lane, Bldg. B
Bisbee, Arizona 85603
voterreg@cochise.az.gov

Dear Recorder Stevens:

I write to you on behalf of our clients, Arizona Free Enterprise Club and Strong Communities Foundation of Arizona, to remind you of your obligation to remove foreign citizens from your voter rolls. If you continue to fail to fulfill this important duty, our clients may take legal action against you to compel you to do so.

Fortunately, there is an easy way for you to confirm the citizenship of registered voters and thus fulfill your responsibility. Congress has given you two critical tools to verify the citizenship status of individuals registered to vote in your county: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

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Furthermore, Arizona law imposes on you a mandatory duty to consult "relevant ... federal databases to which the county recorder has access to confirm information

obtained that requires cancellation of registrations.”³⁸ Because federal law secures to you the right of access to DHS’s information, you have a mandatory duty under Arizona law to take advantage of that access to verify the citizenship of voters. If you act now, there is still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your county’s voter rolls before the fall elections.

I. State and federal law prohibit foreign nationals from voting or registering to vote.

As you know, only U.S. citizens can legally vote in State and federal elections.³⁹ Further, it is a State and federal crime for any foreign national to register to vote or to vote in State or federal elections.⁴⁰ No foreign national is authorized to register to vote in or to vote in State or federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴¹

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls. As you know, Arizona law requires that persons registering to vote provide documentary proof of citizenship.⁴² However, the U.S. Supreme Court has held that the State may not impose these voter registration requirements for federal races because such information is not required on the federal voter registration form.⁴³

The Help America Vote Act (HAVA) established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does

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not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁴⁴

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Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that

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States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.⁵³

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II. State and federal law require counties to conduct voter list maintenance and remove foreign nationals from voter rolls.

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Additionally, county recorders must “prominently post on the recorder’s website the number of persons who are registered to vote... who have not provided proof of citizenship” as of January 2, February 20, April 1, and July 1 of this year.⁶² After a diligent review, we could not locate those totals on your website.

Additionally, Arizona’s list maintenance statute requires counties to consult monthly several specific databases to determine the citizenship of federal-only voters: SAVE⁶³,

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⁵⁷ 52 U.S.C. § 21083(a)(2)(A).

⁵⁸ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁵⁹ 52 U.S.C. § 21083(a)(4)(A).

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the Social Security Administration (SSA) database⁶⁴, and the National Association for Public Health Statistics and Information Systems.⁶⁵ Unfortunately, the Secretary of State has failed to negotiate access to these databases for list maintenance, so county recorders are currently unable to use them for list maintenance.⁶⁶ Furthermore, SAVE and SSA have design flaws that hinder their effectiveness for performing voter list maintenance.⁶⁷

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III. County recorders have access to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, counties have an alternative solution for obtaining information about individuals on their voter rolls. And they can do so without the need to access the SAVE, SSA, or NAPHSIS databases.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires DHS to “respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of *any* individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.”⁶⁹ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”⁷⁰

As explained above, State and federal law unambiguously require that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. State and federal law also impose on counties the duty of ensuring that ineligible

⁶⁴ A.R.S. § 16-165(H).

⁶⁵ A.R.S. § 16-165(J).

⁶⁶ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *5, *6, *7 (D. Ariz. Feb. 29, 2024).

⁶⁷ AMERICA FIRST LEGAL FOUNDATION, *America First Legal Sends All 50 States a Plan for How to Use Existing Federal Law to Prevent Foreign Nationals from Illegally Voting in American Elections*, (June 24, 2024), <https://tinyurl.com/ys48bs5n>.

⁶⁸ A.R.S. § 16-165(K).

⁶⁹ 8 U.S.C. § 1373(c) (emphasis added).

⁷⁰ 8 U.S.C. § 1644.

voters are removed from voter rolls.⁷¹ Also, Arizona’s Constitution and statutes impose citizenship requirements, and 8 U.S.C. § 1644 confers on counties unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a county to ask DHS about the citizenship status of presently registered voters.

Notably, DHS already can verify an individual’s citizenship. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.⁷² This means that, *right now*, DHS can answer all of your inquiries about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost. You already have the authority to submit citizenship inquiries about registered voters to DHS, and you can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* foreign nationals, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to follow the procedures outlined in A.R.S. § 16-165((A)(10) for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

Because this system of verification relies on information in DHS’s databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

⁷¹ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

⁷² *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.⁷³

IV. Conclusion

You have a mandatory obligation under Arizona law to remove foreign nationals from your voter rolls and to “review relevant ... federal databases” to accomplish this.⁷⁴ Congress has provided you with access to a critical database to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Because this database is one that you are entitled to access under federal law, you have a mandatory obligation to submit a request to DHS. Doing so is easy—all you need to do is send a letter to DHS invoking your authority under 8 U.S.C. §§ 1373 and 1644 and listing all your county’s federal-only voters.

We ask that you respond to this letter by the close of business on Tuesday, July 23, confirming that you have:

- (1) Submitted a request to DHS for citizenship confirmation of all federal-only voters registered in your county;
- (2) Submitted the list of your county’s federal-only voters to the Attorney General; and
- (3) Posted the number of federal-only voters registered as of January 2, February 20, April 1, and July 1, 2024, on the county recorder website.

If you fail to confirm the above information in writing, then our clients may take legal action against you to compel you to fulfill your mandatory duties under Arizona law.

Best regards,

/s/ James Rogers
James Rogers
Arizona State Bar No. 027287
Senior Counsel
America First Legal Foundation

⁷³ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS’s failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).

⁷⁴ A.R.S. § 16-165(K).



July 16, 2024

VIA EMAIL

Patty Hansen
Coconino County Recorder
110 East Cherry Avenue
Flagstaff, Arizona 86001
voterservices@coconino.az.gov

Dear Recorder Hansen:

I write to you on behalf of our clients, Arizona Free Enterprise Club and Strong Communities Foundation of Arizona, to remind you of your obligation to remove foreign citizens from your voter rolls. If you continue to fail to fulfill this important duty, our clients may take legal action against you to compel you to do so.

Fortunately, there is an easy way for you to confirm the citizenship of registered voters and thus fulfill your responsibility. Congress has given you two critical tools to verify the citizenship status of individuals registered to vote in your county: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—requests under sections 1373 and 1644 *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher.

Furthermore, Arizona law imposes on you a mandatory duty to consult "relevant ... federal databases to which the county recorder has access to confirm information

obtained that requires cancellation of registrations.”⁷⁵ Because federal law secures to you the right of access to DHS’s information, you have a mandatory duty under Arizona law to take advantage of that access to verify the citizenship of voters. If you act now, there is still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your county’s voter rolls before the fall elections.

I. State and federal law prohibit foreign nationals from voting or registering to vote.

As you know, only U.S. citizens can legally vote in State and federal elections.⁷⁶ Further, it is a State and federal crime for any foreign national to register to vote or to vote in State or federal elections.⁷⁷ No foreign national is authorized to register to vote in or to vote in State or federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁷⁸

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls. As you know, Arizona law requires that persons registering to vote provide documentary proof of citizenship.⁷⁹ However, the U.S. Supreme Court has held that the State may not impose these voter registration requirements for federal races because such information is not required on the federal voter registration form.⁸⁰

The Help America Vote Act (HAVA) established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does

⁷⁵ A.R.S. § 16-165(K).

⁷⁶ *See, e.g.*, Ariz. Const. art. VII, § 2(A) (requiring that all voters be U.S. citizens); A.R.S. § 16-101(A)(1) (same); National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

⁷⁷ *E.g.* A.R.S. § 16-182(A) (making false registration to vote a class 6 felony); A.R.S. § 16-184(A) (making it a class 5 felony to “knowingly swear[] falsely to an affidavit” required by Arizona’s election statutes); A.R.S. § 16-1016(1) (making it a class 5 felony to for a person “[n]ot being entitled to vote, [who] knowingly votes”); 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine); 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

⁷⁸ *See* 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

⁷⁹ A.R.S. § 16-166(F).

⁸⁰ *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013).

not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁸¹

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.⁸²

Because the National Voter Registration Act (NVRA) requires States to “accept and use”⁸³ the EAC’s form,⁸⁴ and because that form does not require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*⁸⁵ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”⁸⁶ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”⁸⁷ Further, the Court noted that the NVRA only requires states to register eligible persons.⁸⁸ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,⁸⁹ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that

⁸¹ *Register to Vote in your State by Using this Postcard Form and Guide*, U.S. ELECTION ASSISTANCE COMMISSION, <https://tinyurl.com/4wj6vm6r> (located in Box 9 on the fourth page of the document; the page is titled “Voter Registration Application”).

⁸² *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

⁸³ 52 U.S.C. § 20505(a)(1).

⁸⁴ The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

⁸⁵ 570 U.S. 1 (2013).

⁸⁶ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

⁸⁷ *Id.* (cleaned up) (emphasis added).

⁸⁸ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

⁸⁹ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

States nevertheless could access information via other means to help them resolve questions about a voter registration applicant's citizenship status.⁹⁰

According to the Arizona Secretary of State's Office, as of April 2024, 35,273 registered voters in Arizona had failed to provide proof of citizenship and were, therefore, registered only to vote in federal races.⁹¹

II. State and federal law require counties to conduct voter list maintenance and remove foreign nationals from voter rolls.

Both State and federal law require you to remove ineligible voters from your voter rolls. Arizona law requires you to perform monthly list maintenance to confirm the citizenship of federal-only registered voters.⁹² Additionally, HAVA⁹³ requires you to “perform list maintenance” of your voter rolls,⁹⁴ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed.”⁹⁵ You must “ensure that voter registration records in the State are accurate and are updated regularly, including ... [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁹⁶

You are also required to send “to the attorney general a list of all individuals who are registered to vote and who have not provided satisfactory evidence of citizenship”⁹⁷ so that the Attorney General may fulfill her obligation “to use all available resources to verify the citizenship status of the applicant[s].”⁹⁸ Surprisingly, even though this statutory provision is currently in force and not enjoined by any court, we understand that none of the county recorders have fulfilled their obligations under this statute.

Additionally, county recorders must “prominently post on the recorder's website the number of persons who are registered to vote... who have not provided proof of citizenship” as of January 2, February 20, April 1, and July 1 of this year.⁹⁹ After a diligent review, we could not locate those totals on your website.

Additionally, Arizona's list maintenance statute requires counties to consult monthly several specific databases to determine the citizenship of federal-only voters:

⁹⁰ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

⁹¹ ARIZONA SECRETARY OF STATE'S OFFICE, *Federal Only Registrants as of April 1st, 2024*, (Apr. 1, 2024), <https://tinyurl.com/3apvrsub>.

⁹² A.R.S. § 16-165.

⁹³ P.L. 107-252, 116 Stat. 1666 (2002).

⁹⁴ 52 U.S.C. § 21083(a)(2)(A).

⁹⁵ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁹⁶ 52 U.S.C. § 21083(a)(4)(A).

⁹⁷ A.R.S. § 16-143(A).

⁹⁸ A.R.S. § 16-143(B).

⁹⁹ A.R.S. §§ 16-161(B), -168(G)(1).

SAVE¹⁰⁰, the Social Security Administration (SSA) database¹⁰¹, and the National Association for Public Health Statistics and Information Systems.¹⁰² Unfortunately, the Secretary of State has failed to negotiate access to these databases for list maintenance, so county recorders are currently unable to use them for list maintenance.¹⁰³ Furthermore, SAVE and SSA have design flaws that hinder their effectiveness for performing voter list maintenance.¹⁰⁴

Notwithstanding the unavailability of the SAVE, SSA, and NAPHSIS databases because of the Secretary of State’s negligence in obtaining access, Arizona law still imposes broad duties on counties to perform list maintenance using other databases, requiring that “[t]o the extent practicable, the county recorder shall review relevant city, town, county, state and federal databases to which the county recorder has access to confirm information obtained that requires cancellation of registrations.”¹⁰⁵

III. County recorders have access to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, counties have an alternative solution for obtaining information about individuals on their voter rolls. And they can do so without the need to access the SAVE, SSA, or NAPHSIS databases.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires DHS to “respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of *any* individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.”¹⁰⁶ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”¹⁰⁷

As explained above, State and federal law unambiguously require that voters in federal elections be United States citizens and prohibits all foreign nationals, even

¹⁰⁰ A.R.S. § 16-165(I).

¹⁰¹ A.R.S. § 16-165(H).

¹⁰² A.R.S. § 16-165(J).

¹⁰³ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *5, *6, *7 (D. Ariz. Feb. 29, 2024).

¹⁰⁴ AMERICA FIRST LEGAL FOUNDATION, *America First Legal Sends All 50 States a Plan for How to Use Existing Federal Law to Prevent Foreign Nationals from Illegally Voting in American Elections*, (June 24, 2024), <https://tinyurl.com/ys48bs5n>.

¹⁰⁵ A.R.S. § 16-165(K).

¹⁰⁶ 8 U.S.C. § 1373(c) (emphasis added).

¹⁰⁷ 8 U.S.C. § 1644.

those who are lawfully present in the United States, from registering to vote or voting. State and federal law also impose on counties the duty of ensuring that ineligible voters are removed from voter rolls.¹⁰⁸ Also, Arizona's Constitution and statutes impose citizenship requirements, and 8 U.S.C. § 1644 confers on counties unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a "purpose authorized by law" under 8 U.S.C. § 1373(c) for a county to ask DHS about the citizenship status of presently registered voters.

Notably, DHS already can verify an individual's citizenship. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.¹⁰⁹ This means that, *right now*, DHS can answer all of your inquiries about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost. You already have the authority to submit citizenship inquiries about registered voters to DHS, and you can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* foreign nationals, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS's databases is insufficient evidence in and of itself to remove an individual from a State's voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State's voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to follow the procedures outlined in A.R.S. § 16-165((A)(10) for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability

¹⁰⁸ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

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to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.¹¹⁰

IV. Conclusion

You have a mandatory obligation under Arizona law to remove foreign nationals from your voter rolls and to “review relevant ... federal databases” to accomplish this.¹¹¹ Congress has provided you with access to a critical database to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Because this database is one that you are entitled to access under federal law, you have a mandatory obligation to submit a request to DHS. Doing so is easy—all you need to do is send a letter to DHS invoking your authority under 8 U.S.C. §§ 1373 and 1644 and listing all your county’s federal-only voters.

We ask that you respond to this letter by the close of business on Tuesday, July 23, confirming that you have:

- (1) Submitted a request to DHS for citizenship confirmation of all federal-only voters registered in your county;
- (2) Submitted the list of your county’s federal-only voters to the Attorney General; and
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If you fail to confirm the above information in writing, then our clients may take legal action against you to compel you to fulfill your mandatory duties under Arizona law.

Best regards,

/s/ James Rogers
James Rogers
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¹¹⁰ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS’s failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).

¹¹¹ A.R.S. § 16-165(K).



July 16, 2024

VIA EMAIL

Sadie Jo Bingham
Gila County Recorder
1400 East Ash Street
Globe, Arizona 85501
sbingham@gilacountyaz.gov

Dear Recorder Bingham:

I write to you on behalf of our clients, Arizona Free Enterprise Club and Strong Communities Foundation of Arizona, to remind you of your obligation to remove foreign citizens from your voter rolls. If you continue to fail to fulfill this important duty, our clients may take legal action against you to compel you to do so.

Fortunately, there is an easy way for you to confirm the citizenship of registered voters and thus fulfill your responsibility. Congress has given you two critical tools to verify the citizenship status of individuals registered to vote in your county: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—requests under sections 1373 and 1644 *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher.

Furthermore, Arizona law imposes on you a mandatory duty to consult "relevant ... federal databases to which the county recorder has access to confirm information

obtained that requires cancellation of registrations.”¹¹² Because federal law secures to you the right of access to DHS’s information, you have a mandatory duty under Arizona law to take advantage of that access to verify the citizenship of voters. If you act now, there is still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your county’s voter rolls before the fall elections.

I. State and federal law prohibit foreign nationals from voting or registering to vote.

As you know, only U.S. citizens can legally vote in State and federal elections.¹¹³ Further, it is a State and federal crime for any foreign national to register to vote or to vote in State or federal elections.¹¹⁴ No foreign national is authorized to register to vote in or to vote in State or federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.¹¹⁵

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls. As you know, Arizona law requires that persons registering to vote provide documentary proof of citizenship.¹¹⁶ However, the U.S. Supreme Court has held that the State may not impose these voter registration requirements for federal races because such information is not required on the federal voter registration form.¹¹⁷

The Help America Vote Act (HAVA) established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does

¹¹² A.R.S. § 16-165(K).

¹¹³ *See, e.g.*, Ariz. Const. art. VII, § 2(A) (requiring that all voters be U.S. citizens); A.R.S. § 16-101(A)(1) (same); National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

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¹¹⁵ *See* 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

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not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”¹¹⁸

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹¹⁹

Because the National Voter Registration Act (NVRA) requires States to “accept and use”¹²⁰ the EAC’s form,¹²¹ and because that form does not require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹²² that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹²³ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”¹²⁴ Further, the Court noted that the NVRA only requires states to register eligible persons.¹²⁵ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹²⁶ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that

¹¹⁸ *Register to Vote in your State by Using this Postcard Form and Guide*, U.S. ELECTION ASSISTANCE COMMISSION, <https://tinyurl.com/4wj6vm6r> (located in Box 9 on the fourth page of the document; the page is titled “Voter Registration Application”).

¹¹⁹ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹²⁰ 52 U.S.C. § 20505(a)(1).

¹²¹ The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

¹²² 570 U.S. 1 (2013).

¹²³ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

¹²⁴ *Id.* (cleaned up) (emphasis added).

¹²⁵ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

¹²⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

States nevertheless could access information via other means to help them resolve questions about a voter registration applicant's citizenship status.¹²⁷

According to the Arizona Secretary of State's Office, as of April 2024, 35,273 registered voters in Arizona had failed to provide proof of citizenship and were, therefore, registered only to vote in federal races.¹²⁸

II. State and federal law require counties to conduct voter list maintenance and remove foreign nationals from voter rolls.

Both State and federal law require you to remove ineligible voters from your voter rolls. Arizona law requires you to perform monthly list maintenance to confirm the citizenship of federal-only registered voters.¹²⁹ Additionally, HAVA¹³⁰ requires you to “perform list maintenance” of your voter rolls,¹³¹ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed.”¹³² You must “ensure that voter registration records in the State are accurate and are updated regularly, including [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”¹³³

You are also required to send “to the attorney general a list of all individuals who are registered to vote and who have not provided satisfactory evidence of citizenship”¹³⁴ so that the Attorney General may fulfill her obligation “to use all available resources to verify the citizenship status of the applicant[s].”¹³⁵ Surprisingly, even though this statutory provision is currently in force and not enjoined by any court, we understand that none of the county recorders have fulfilled their obligations under this statute.

Additionally, county recorders must “prominently post on the recorder's website the number of persons who are registered to vote... who have not provided proof of citizenship” as of January 2, February 20, April 1, and July 1 of this year.¹³⁶ After a diligent review, we could not locate those totals on your website.

Additionally, Arizona's list maintenance statute requires counties to consult monthly several specific databases to determine the citizenship of federal-only voters:

¹²⁷ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

¹²⁸ ARIZONA SECRETARY OF STATE'S OFFICE, *Federal Only Registrants as of April 1st, 2024*, (Apr. 1, 2024), <https://tinyurl.com/3apvrxub>.

¹²⁹ A.R.S. § 16-165.

¹³⁰ P.L. 107-252, 116 Stat. 1666 (2002).

¹³¹ 52 U.S.C. § 21083(a)(2)(A).

¹³² 52 U.S.C. § 21083(a)(2)(B)(ii).

¹³³ 52 U.S.C. § 21083(a)(4)(A).

¹³⁴ A.R.S. § 16-143(A).

¹³⁵ A.R.S. § 16-143(B).

¹³⁶ A.R.S. §§ 16-161(B), -168(G)(1).

SAVE¹³⁷, the Social Security Administration (SSA) database¹³⁸, and the National Association for Public Health Statistics and Information Systems.¹³⁹ Unfortunately, the Secretary of State has failed to negotiate access to these databases for list maintenance, so county recorders are currently unable to use them for list maintenance.¹⁴⁰ Furthermore, SAVE and SSA have design flaws that hinder their effectiveness for performing voter list maintenance.¹⁴¹

Notwithstanding the unavailability of the SAVE, SSA, and NAPHSIS databases because of the Secretary of State’s negligence in obtaining access, Arizona law still imposes broad duties on counties to perform list maintenance using other databases, requiring that “[t]o the extent practicable, the county recorder shall review relevant city, town, county, state and federal databases to which the county recorder has access to confirm information obtained that requires cancellation of registrations.”¹⁴²

III. County recorders have access to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, counties have an alternative solution for obtaining information about individuals on their voter rolls. And they can do so without the need to access the SAVE, SSA, or NAPHSIS databases.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires DHS to “respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of *any* individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.”¹⁴³ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”¹⁴⁴

As explained above, State and federal law unambiguously require that voters in federal elections be United States citizens and prohibits all foreign nationals, even

¹³⁷ A.R.S. § 16-165(I).

¹³⁸ A.R.S. § 16-165(H).

¹³⁹ A.R.S. § 16-165(J).

¹⁴⁰ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *5, *6, *7 (D. Ariz. Feb. 29, 2024).

¹⁴¹ AMERICA FIRST LEGAL FOUNDATION, *America First Legal Sends All 50 States a Plan for How to Use Existing Federal Law to Prevent Foreign Nationals from Illegally Voting in American Elections*, (June 24, 2024), <https://tinyurl.com/ys48bs5n>.

¹⁴² A.R.S. § 16-165(K).

¹⁴³ 8 U.S.C. § 1373(c) (emphasis added).

¹⁴⁴ 8 U.S.C. § 1644.

those who are lawfully present in the United States, from registering to vote or voting. State and federal law also impose on counties the duty of ensuring that ineligible voters are removed from voter rolls.¹⁴⁵ Also, Arizona's Constitution and statutes impose citizenship requirements, and 8 U.S.C. § 1644 confers on counties unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a "purpose authorized by law" under 8 U.S.C. § 1373(c) for a county to ask DHS about the citizenship status of presently registered voters.

Notably, DHS already can verify an individual's citizenship. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.¹⁴⁶ This means that, *right now*, DHS can answer all of your inquiries about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost. You already have the authority to submit citizenship inquiries about registered voters to DHS, and you can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* foreign nationals, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS's databases is insufficient evidence in and of itself to remove an individual from a State's voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State's voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to follow the procedures outlined in A.R.S. § 16-165((A)(10) for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability

¹⁴⁵ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

¹⁴⁶ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP'T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. ("Status verifiers may conduct queries based on an individual's name and date of birth."); DEP'T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that "[y]ou can review the applicant's information by ... entering the name and date of birth of the individual").

to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.¹⁴⁷

IV. Conclusion

You have a mandatory obligation under Arizona law to remove foreign nationals from your voter rolls and to “review relevant ... federal databases” to accomplish this.¹⁴⁸ Congress has provided you with access to a critical database to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Because this database is one that you are entitled to access under federal law, you have a mandatory obligation to submit a request to DHS. Doing so is easy—all you need to do is send a letter to DHS invoking your authority under 8 U.S.C. §§ 1373 and 1644 and listing all your county’s federal-only voters.

We ask that you respond to this letter by the close of business on Tuesday, July 23, confirming that you have:

- (1) Submitted a request to DHS for citizenship confirmation of all federal-only voters registered in your county;
- (2) Submitted the list of your county’s federal-only voters to the Attorney General; and
- (3) Posted the number of federal-only voters registered as of January 2, February 20, April 1, and July 1, 2024, on the county recorder website.

If you fail to confirm the above information in writing, then our clients may take legal action against you to compel you to fulfill your mandatory duties under Arizona law.

Best regards,

/s/ James Rogers
James Rogers
Arizona State Bar No. 027287
Senior Counsel
America First Legal Foundation

¹⁴⁷ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS’s failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).

¹⁴⁸ A.R.S. § 16-165(K).



July 16, 2024

VIA EMAIL

Polly Merriman
Graham County Recorder
921 Thatcher Boulevard
Safford, Arizona 85546
recordersoffice@graham.az.gov

Dear Recorder Merriman:

I write to you on behalf of our clients, Arizona Free Enterprise Club and Strong Communities Foundation of Arizona, to remind you of your obligation to remove foreign citizens from your voter rolls. If you continue to fail to fulfill this important duty, our clients may take legal action against you to compel you to do so.

Fortunately, there is an easy way for you to confirm the citizenship of registered voters and thus fulfill your responsibility. Congress has given you two critical tools to verify the citizenship status of individuals registered to vote in your county: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—requests under sections 1373 and 1644 *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher.

Furthermore, Arizona law imposes on you a mandatory duty to consult "relevant ... federal databases to which the county recorder has access to confirm information

obtained that requires cancellation of registrations.”¹⁴⁹ Because federal law secures to you the right of access to DHS’s information, you have a mandatory duty under Arizona law to take advantage of that access to verify the citizenship of voters. If you act now, there is still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your county’s voter rolls before the fall elections.

I. State and federal law prohibit foreign nationals from voting or registering to vote.

As you know, only U.S. citizens can legally vote in State and federal elections.¹⁵⁰ Further, it is a State and federal crime for any foreign national to register to vote or to vote in State or federal elections.¹⁵¹ No foreign national is authorized to register to vote in or to vote in State or federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.¹⁵²

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls. As you know, Arizona law requires that persons registering to vote provide documentary proof of citizenship.¹⁵³ However, the U.S. Supreme Court has held that the State may not impose these voter registration requirements for federal races because such information is not required on the federal voter registration form.¹⁵⁴

The Help America Vote Act (HAVA) established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does

¹⁴⁹ A.R.S. § 16-165(K).

¹⁵⁰ *See, e.g.*, Ariz. Const. art. VII, § 2(A) (requiring that all voters be U.S. citizens); A.R.S. § 16-101(A)(1) (same); National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

¹⁵¹ *E.g.* A.R.S. § 16-182(A) (making false registration to vote a class 6 felony); A.R.S. § 16-184(A) (making it a class 5 felony to “knowingly swear[] falsely to an affidavit” required by Arizona’s election statutes); A.R.S. § 16-1016(1) (making it a class 5 felony to for a person “[n]ot being entitled to vote, [who] knowingly votes”); 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine); 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

¹⁵² *See* 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

¹⁵³ A.R.S. § 16-166(F).

¹⁵⁴ *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013).

not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”¹⁵⁵

I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: / /
Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁵⁶

Because the National Voter Registration Act (NVRA) requires States to “accept and use”¹⁵⁷ the EAC’s form,¹⁵⁸ and because that form does not require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹⁵⁹ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁶⁰ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”¹⁶¹ Further, the Court noted that the NVRA only requires states to register eligible persons.¹⁶² Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,¹⁶³ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that

¹⁵⁵ *Register to Vote in your State by Using this Postcard Form and Guide*, U.S. ELECTION ASSISTANCE COMMISSION, <https://tinyurl.com/4wj6vm6r> (located in Box 9 on the fourth page of the document; the page is titled “Voter Registration Application”).

¹⁵⁶ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹⁵⁷ 52 U.S.C. § 20505(a)(1).

¹⁵⁸ The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

¹⁵⁹ 570 U.S. 1 (2013).

¹⁶⁰ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

¹⁶¹ *Id.* (cleaned up) (emphasis added).

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¹⁶³ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

States nevertheless could access information via other means to help them resolve questions about a voter registration applicant's citizenship status.¹⁶⁴

According to the Arizona Secretary of State's Office, as of April 2024, 35,273 registered voters in Arizona had failed to provide proof of citizenship and were, therefore, registered only to vote in federal races.¹⁶⁵

II. State and federal law require counties to conduct voter list maintenance and remove foreign nationals from voter rolls.

Both State and federal law require you to remove ineligible voters from your voter rolls. Arizona law requires you to perform monthly list maintenance to confirm the citizenship of federal-only registered voters.¹⁶⁶ Additionally, HAVA¹⁶⁷ requires you to “perform list maintenance” of your voter rolls,¹⁶⁸ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed.”¹⁶⁹ You must “ensure that voter registration records in the State are accurate and are updated regularly, including [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”¹⁷⁰

You are also required to send “to the attorney general a list of all individuals who are registered to vote and who have not provided satisfactory evidence of citizenship”¹⁷¹ so that the Attorney General may fulfill her obligation “to use all available resources to verify the citizenship status of the applicant[s].”¹⁷² Surprisingly, even though this statutory provision is currently in force and not enjoined by any court, we understand that none of the county recorders have fulfilled their obligations under this statute.

Additionally, county recorders must “prominently post on the recorder's website the number of persons who are registered to vote... who have not provided proof of citizenship” as of January 2, February 20, April 1, and July 1 of this year.¹⁷³ After a diligent review, we could not locate those totals on your website.

Additionally, Arizona's list maintenance statute requires counties to consult monthly several specific databases to determine the citizenship of federal-only voters:

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¹⁶⁶ A.R.S. § 16-165.

¹⁶⁷ P.L. 107-252, 116 Stat. 1666 (2002).

¹⁶⁸ 52 U.S.C. § 21083(a)(2)(A).

¹⁶⁹ 52 U.S.C. § 21083(a)(2)(B)(ii).

¹⁷⁰ 52 U.S.C. § 21083(a)(4)(A).

¹⁷¹ A.R.S. § 16-143(A).

¹⁷² A.R.S. § 16-143(B).

¹⁷³ A.R.S. §§ 16-161(B), -168(G)(1).

SAVE¹⁷⁴, the Social Security Administration (SSA) database¹⁷⁵, and the National Association for Public Health Statistics and Information Systems.¹⁷⁶ Unfortunately, the Secretary of State has failed to negotiate access to these databases for list maintenance, so county recorders are currently unable to use them for list maintenance.¹⁷⁷ Furthermore, SAVE and SSA have design flaws that hinder their effectiveness for performing voter list maintenance.¹⁷⁸

Notwithstanding the unavailability of the SAVE, SSA, and NAPHSIS databases because of the Secretary of State’s negligence in obtaining access, Arizona law still imposes broad duties on counties to perform list maintenance using other databases, requiring that “[t]o the extent practicable, the county recorder shall review relevant city, town, county, state and federal databases to which the county recorder has access to confirm information obtained that requires cancellation of registrations.”¹⁷⁹

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Fortunately, counties have an alternative solution for obtaining information about individuals on their voter rolls. And they can do so without the need to access the SAVE, SSA, or NAPHSIS databases.

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As explained above, State and federal law unambiguously require that voters in federal elections be United States citizens and prohibits all foreign nationals, even

¹⁷⁴ A.R.S. § 16-165(I).

¹⁷⁵ A.R.S. § 16-165(H).

¹⁷⁶ A.R.S. § 16-165(J).

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¹⁷⁸ AMERICA FIRST LEGAL FOUNDATION, *America First Legal Sends All 50 States a Plan for How to Use Existing Federal Law to Prevent Foreign Nationals from Illegally Voting in American Elections*, (June 24, 2024), <https://tinyurl.com/ys48bs5n>.

¹⁷⁹ A.R.S. § 16-165(K).

¹⁸⁰ 8 U.S.C. § 1373(c) (emphasis added).

¹⁸¹ 8 U.S.C. § 1644.

those who are lawfully present in the United States, from registering to vote or voting. State and federal law also impose on counties the duty of ensuring that ineligible voters are removed from voter rolls.¹⁸² Also, Arizona's Constitution and statutes impose citizenship requirements, and 8 U.S.C. § 1644 confers on counties unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a "purpose authorized by law" under 8 U.S.C. § 1373(c) for a county to ask DHS about the citizenship status of presently registered voters.

Notably, DHS already can verify an individual's citizenship. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.¹⁸³ This means that, *right now*, DHS can answer all of your inquiries about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost. You already have the authority to submit citizenship inquiries about registered voters to DHS, and you can demand immediate responses from DHS.

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Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to follow the procedures outlined in A.R.S. § 16-165((A)(10) for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability

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¹⁸³ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP'T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. ("Status verifiers may conduct queries based on an individual's name and date of birth."); DEP'T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that "[y]ou can review the applicant's information by ... entering the name and date of birth of the individual").

to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.¹⁸⁴

IV. Conclusion

You have a mandatory obligation under Arizona law to remove foreign nationals from your voter rolls and to “review relevant ... federal databases” to accomplish this.¹⁸⁵ Congress has provided you with access to a critical database to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Because this database is one that you are entitled to access under federal law, you have a mandatory obligation to submit a request to DHS. Doing so is easy—all you need to do is send a letter to DHS invoking your authority under 8 U.S.C. §§ 1373 and 1644 and listing all your county’s federal-only voters.

We ask that you respond to this letter by the close of business on Tuesday, July 23, confirming that you have:

- (1) Submitted a request to DHS for citizenship confirmation of all federal-only voters registered in your county;
- (2) Submitted the list of your county’s federal-only voters to the Attorney General; and
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Senior Counsel
America First Legal Foundation

¹⁸⁴ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS’s failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).

¹⁸⁵ A.R.S. § 16-165(K).



July 16, 2024

VIA EMAIL

Sharie Milheiro
Greenlee County Recorder
253 5th Street
Clifton, Arizona 85533
smilheiro@greenlee.az.gov

Dear Recorder Milheiro:

I write to you on behalf of our clients, Arizona Free Enterprise Club and Strong Communities Foundation of Arizona, to remind you of your obligation to remove foreign citizens from your voter rolls. If you continue to fail to fulfill this important duty, our clients may take legal action against you to compel you to do so.

Fortunately, there is an easy way for you to confirm the citizenship of registered voters and thus fulfill your responsibility. Congress has given you two critical tools to verify the citizenship status of individuals registered to vote in your county: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—requests under sections 1373 and 1644 *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher.

Furthermore, Arizona law imposes on you a mandatory duty to consult "relevant ... federal databases to which the county recorder has access to confirm information

obtained that requires cancellation of registrations.”¹⁸⁶ Because federal law secures to you the right of access to DHS’s information, you have a mandatory duty under Arizona law to take advantage of that access to verify the citizenship of voters. If you act now, there is still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your county’s voter rolls before the fall elections.

I. State and federal law prohibit foreign nationals from voting or registering to vote.

As you know, only U.S. citizens can legally vote in State and federal elections.¹⁸⁷ Further, it is a State and federal crime for any foreign national to register to vote or to vote in State or federal elections.¹⁸⁸ No foreign national is authorized to register to vote in or to vote in State or federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.¹⁸⁹

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls. As you know, Arizona law requires that persons registering to vote provide documentary proof of citizenship.¹⁹⁰ However, the U.S. Supreme Court has held that the State may not impose these voter registration requirements for federal races because such information is not required on the federal voter registration form.¹⁹¹

The Help America Vote Act (HAVA) established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does

¹⁸⁶ A.R.S. § 16-165(K).

¹⁸⁷ *See, e.g.*, Ariz. Const. art. VII, § 2(A) (requiring that all voters be U.S. citizens); A.R.S. § 16-101(A)(1) (same); National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

¹⁸⁸ *E.g.* A.R.S. § 16-182(A) (making false registration to vote a class 6 felony); A.R.S. § 16-184(A) (making it a class 5 felony to “knowingly swear[] falsely to an affidavit” required by Arizona’s election statutes); A.R.S. § 16-1016(1) (making it a class 5 felony to for a person “[n]ot being entitled to vote, [who] knowingly votes”); 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine); 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

¹⁸⁹ *See* 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

¹⁹⁰ A.R.S. § 16-166(F).

¹⁹¹ *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013).

not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”¹⁹²

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: / /
Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.¹⁹³

Because the National Voter Registration Act (NVRA) requires States to “accept and use”¹⁹⁴ the EAC’s form,¹⁹⁵ and because that form does not require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*¹⁹⁶ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”¹⁹⁷ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”¹⁹⁸ Further, the Court noted that the NVRA only requires states to register eligible persons.¹⁹⁹ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,²⁰⁰ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that

¹⁹² *Register to Vote in your State by Using this Postcard Form and Guide*, U.S. ELECTION ASSISTANCE COMMISSION, <https://tinyurl.com/4wj6vm6r> (located in Box 9 on the fourth page of the document; the page is titled “Voter Registration Application”).

¹⁹³ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

¹⁹⁴ 52 U.S.C. § 20505(a)(1).

¹⁹⁵ The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

¹⁹⁶ 570 U.S. 1 (2013).

¹⁹⁷ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

¹⁹⁸ *Id.* (cleaned up) (emphasis added).

¹⁹⁹ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

²⁰⁰ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.²⁰¹

According to the Arizona Secretary of State’s Office, as of April 2024, 35,273 registered voters in Arizona had failed to provide proof of citizenship and were, therefore, registered only to vote in federal races.²⁰²

II. State and federal law require counties to conduct voter list maintenance and remove foreign nationals from voter rolls.

Both State and federal law require you to remove ineligible voters from your voter rolls. Arizona law requires you to perform monthly list maintenance to confirm the citizenship of federal-only registered voters.²⁰³ Additionally, HAVA²⁰⁴ requires you to “perform list maintenance” of your voter rolls,²⁰⁵ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed.”²⁰⁶ You must “ensure that voter registration records in the State are accurate and are updated regularly, including [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”²⁰⁷

You are also required to send “to the attorney general a list of all individuals who are registered to vote and who have not provided satisfactory evidence of citizenship”²⁰⁸ so that the Attorney General may fulfill her obligation “to use all available resources to verify the citizenship status of the applicant[s].”²⁰⁹ Surprisingly, even though this statutory provision is currently in force and not enjoined by any court, we understand that none of the county recorders have fulfilled their obligations under this statute.

Additionally, county recorders must “prominently post on the recorder’s website the number of persons who are registered to vote... who have not provided proof of citizenship” as of January 2, February 20, April 1, and July 1 of this year.²¹⁰ After a diligent review, we could not locate those totals on your website.

Additionally, Arizona’s list maintenance statute requires counties to consult monthly several specific databases to determine the citizenship of federal-only voters:

²⁰¹ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

²⁰² ARIZONA SECRETARY OF STATE’S OFFICE, *Federal Only Registrants as of April 1st, 2024*, (Apr. 1, 2024), <https://tinyurl.com/3apvrxub>.

²⁰³ A.R.S. § 16-165.

²⁰⁴ P.L. 107-252, 116 Stat. 1666 (2002).

²⁰⁵ 52 U.S.C. § 21083(a)(2)(A).

²⁰⁶ 52 U.S.C. § 21083(a)(2)(B)(ii).

²⁰⁷ 52 U.S.C. § 21083(a)(4)(A).

²⁰⁸ A.R.S. § 16-143(A).

²⁰⁹ A.R.S. § 16-143(B).

²¹⁰ A.R.S. §§ 16-161(B), -168(G)(1).

SAVE²¹¹, the Social Security Administration (SSA) database²¹², and the National Association for Public Health Statistics and Information Systems.²¹³ Unfortunately, the Secretary of State has failed to negotiate access to these databases for list maintenance, so county recorders are currently unable to use them for list maintenance.²¹⁴ Furthermore, SAVE and SSA have design flaws that hinder their effectiveness for performing voter list maintenance.²¹⁵

Notwithstanding the unavailability of the SAVE, SSA, and NAPHSIS databases because of the Secretary of State’s negligence in obtaining access, Arizona law still imposes broad duties on counties to perform list maintenance using other databases, requiring that “[t]o the extent practicable, the county recorder shall review relevant city, town, county, state and federal databases to which the county recorder has access to confirm information obtained that requires cancellation of registrations.”²¹⁶

III. County recorders have access to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, counties have an alternative solution for obtaining information about individuals on their voter rolls. And they can do so without the need to access the SAVE, SSA, or NAPHSIS databases.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires DHS to “respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of *any* individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.”²¹⁷ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²¹⁸

As explained above, State and federal law unambiguously require that voters in federal elections be United States citizens and prohibits all foreign nationals, even

²¹¹ A.R.S. § 16-165(I).

²¹² A.R.S. § 16-165(H).

²¹³ A.R.S. § 16-165(J).

²¹⁴ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *5, *6, *7 (D. Ariz. Feb. 29, 2024).

²¹⁵ AMERICA FIRST LEGAL FOUNDATION, *America First Legal Sends All 50 States a Plan for How to Use Existing Federal Law to Prevent Foreign Nationals from Illegally Voting in American Elections*, (June 24, 2024), <https://tinyurl.com/ys48bs5n>.

²¹⁶ A.R.S. § 16-165(K).

²¹⁷ 8 U.S.C. § 1373(c) (emphasis added).

²¹⁸ 8 U.S.C. § 1644.

those who are lawfully present in the United States, from registering to vote or voting. State and federal law also impose on counties the duty of ensuring that ineligible voters are removed from voter rolls.²¹⁹ Also, Arizona's Constitution and statutes impose citizenship requirements, and 8 U.S.C. § 1644 confers on counties unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a "purpose authorized by law" under 8 U.S.C. § 1373(c) for a county to ask DHS about the citizenship status of presently registered voters.

Notably, DHS already can verify an individual's citizenship. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²²⁰ This means that, *right now*, DHS can answer all of your inquiries about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost. You already have the authority to submit citizenship inquiries about registered voters to DHS, and you can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* foreign nationals, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS's databases is insufficient evidence in and of itself to remove an individual from a State's voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State's voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to follow the procedures outlined in A.R.S. § 16-165((A)(10) for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability

²¹⁹ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

²²⁰ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP'T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. ("Status verifiers may conduct queries based on an individual's name and date of birth."); DEP'T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that "[y]ou can review the applicant's information by ... entering the name and date of birth of the individual").

to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.²²¹

IV. Conclusion

You have a mandatory obligation under Arizona law to remove foreign nationals from your voter rolls and to “review relevant ... federal databases” to accomplish this.²²² Congress has provided you with access to a critical database to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Because this database is one that you are entitled to access under federal law, you have a mandatory obligation to submit a request to DHS. Doing so is easy—all you need to do is send a letter to DHS invoking your authority under 8 U.S.C. §§ 1373 and 1644 and listing all your county’s federal-only voters.

We ask that you respond to this letter by the close of business on Tuesday, July 23, confirming that you have:

- (1) Submitted a request to DHS for citizenship confirmation of all federal-only voters registered in your county;
- (2) Submitted the list of your county’s federal-only voters to the Attorney General; and
- (3) Posted the number of federal-only voters registered as of January 2, February 20, April 1, and July 1, 2024, on the county recorder website.

If you fail to confirm the above information in writing, then our clients may take legal action against you to compel you to fulfill your mandatory duties under Arizona law.

Best regards,

/s/ James Rogers
James Rogers
Arizona State Bar No. 027287
Senior Counsel
America First Legal Foundation

²²¹ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS’s failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).

²²² A.R.S. § 16-165(K).



July 16, 2024

VIA EMAIL

Richard Garcia
La Paz County Recorder
1112 Joshua Avenue, Suite 201
Parker, Arizona 85344
recorder@lapazcountyaz.org

Dear Recorder Garcia:

I write to you on behalf of our clients, Arizona Free Enterprise Club and Strong Communities Foundation of Arizona, to remind you of your obligation to remove foreign citizens from your voter rolls. If you continue to fail to fulfill this important duty, our clients may take legal action against you to compel you to do so.

Fortunately, there is an easy way for you to confirm the citizenship of registered voters and thus fulfill your responsibility. Congress has given you two critical tools to verify the citizenship status of individuals registered to vote in your county: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—requests under sections 1373 and 1644 *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher.

Furthermore, Arizona law imposes on you a mandatory duty to consult "relevant ... federal databases to which the county recorder has access to confirm information

obtained that requires cancellation of registrations.”²²³ Because federal law secures to you the right of access to DHS’s information, you have a mandatory duty under Arizona law to take advantage of that access to verify the citizenship of voters. If you act now, there is still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your county’s voter rolls before the fall elections.

I. State and federal law prohibit foreign nationals from voting or registering to vote.

As you know, only U.S. citizens can legally vote in State and federal elections.²²⁴ Further, it is a State and federal crime for any foreign national to register to vote or to vote in State or federal elections.²²⁵ No foreign national is authorized to register to vote in or to vote in State or federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.²²⁶

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls. As you know, Arizona law requires that persons registering to vote provide documentary proof of citizenship.²²⁷ However, the U.S. Supreme Court has held that the State may not impose these voter registration requirements for federal races because such information is not required on the federal voter registration form.²²⁸

The Help America Vote Act (HAVA) established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does

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not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”²²⁹

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.²³⁰

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²³⁴ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

²³⁵ *Id.* (cleaned up) (emphasis added).

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States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.²³⁸

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Additionally, county recorders must “prominently post on the recorder’s website the number of persons who are registered to vote... who have not provided proof of citizenship” as of January 2, February 20, April 1, and July 1 of this year.²⁴⁷ After a diligent review, we could not locate those totals on your website.

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²⁴² 52 U.S.C. § 21083(a)(2)(A).

²⁴³ 52 U.S.C. § 21083(a)(2)(B)(ii).

²⁴⁴ 52 U.S.C. § 21083(a)(4)(A).

²⁴⁵ A.R.S. § 16-143(A).

²⁴⁶ A.R.S. § 16-143(B).

²⁴⁷ A.R.S. §§ 16-161(B), -168(G)(1).

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III. County recorders have access to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, counties have an alternative solution for obtaining information about individuals on their voter rolls. And they can do so without the need to access the SAVE, SSA, or NAPHSIS databases.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires DHS to “respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of *any* individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.”²⁵⁴ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁵⁵

As explained above, State and federal law unambiguously require that voters in federal elections be United States citizens and prohibits all foreign nationals, even

²⁴⁸ A.R.S. § 16-165(I).

²⁴⁹ A.R.S. § 16-165(H).

²⁵⁰ A.R.S. § 16-165(J).

²⁵¹ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *5, *6, *7 (D. Ariz. Feb. 29, 2024).

²⁵² AMERICA FIRST LEGAL FOUNDATION, *America First Legal Sends All 50 States a Plan for How to Use Existing Federal Law to Prevent Foreign Nationals from Illegally Voting in American Elections*, (June 24, 2024), <https://tinyurl.com/ys48bs5n>.

²⁵³ A.R.S. § 16-165(K).

²⁵⁴ 8 U.S.C. § 1373(c) (emphasis added).

²⁵⁵ 8 U.S.C. § 1644.

those who are lawfully present in the United States, from registering to vote or voting. State and federal law also impose on counties the duty of ensuring that ineligible voters are removed from voter rolls.²⁵⁶ Also, Arizona's Constitution and statutes impose citizenship requirements, and 8 U.S.C. § 1644 confers on counties unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a "purpose authorized by law" under 8 U.S.C. § 1373(c) for a county to ask DHS about the citizenship status of presently registered voters.

Notably, DHS already can verify an individual's citizenship. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁵⁷ This means that, *right now*, DHS can answer all of your inquiries about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost. You already have the authority to submit citizenship inquiries about registered voters to DHS, and you can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* foreign nationals, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS's databases is insufficient evidence in and of itself to remove an individual from a State's voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State's voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to follow the procedures outlined in A.R.S. § 16-165((A)(10) for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability

²⁵⁶ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

²⁵⁷ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP'T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. ("Status verifiers may conduct queries based on an individual's name and date of birth."); DEP'T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that "[y]ou can review the applicant's information by ... entering the name and date of birth of the individual").

to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.²⁵⁸

IV. Conclusion

You have a mandatory obligation under Arizona law to remove foreign nationals from your voter rolls and to “review relevant ... federal databases” to accomplish this.²⁵⁹ Congress has provided you with access to a critical database to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Because this database is one that you are entitled to access under federal law, you have a mandatory obligation to submit a request to DHS. Doing so is easy—all you need to do is send a letter to DHS invoking your authority under 8 U.S.C. §§ 1373 and 1644 and listing all your county’s federal-only voters.

We ask that you respond to this letter by the close of business on Tuesday, July 23, confirming that you have:

- (1) Submitted a request to DHS for citizenship confirmation of all federal-only voters registered in your county;
- (2) Submitted the list of your county’s federal-only voters to the Attorney General; and
- (3) Posted the number of federal-only voters registered as of January 2, February 20, April 1, and July 1, 2024, on the county recorder website.

If you fail to confirm the above information in writing, then our clients may take legal action against you to compel you to fulfill your mandatory duties under Arizona law.

Best regards,

/s/ James Rogers
James Rogers
Arizona State Bar No. 027287
Senior Counsel
America First Legal Foundation

²⁵⁸ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS’s failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).

²⁵⁹ A.R.S. § 16-165(K).



July 16, 2024

VIA EMAIL

Stephen Richer
Maricopa County Recorder
111 South 3rd Avenue, #103
Phoenix, Arizona 85003
voterinfo@risc.maricopa.gov

Dear Recorder Richer:

I write to you on behalf of our clients, Arizona Free Enterprise Club and Strong Communities Foundation of Arizona, to remind you of your obligation to remove foreign citizens from your voter rolls. If you continue to fail to fulfill this important duty, our clients may take legal action against you to compel you to do so.

Fortunately, there is an easy way for you to confirm the citizenship of registered voters and thus fulfill your responsibility. Congress has given you two critical tools to verify the citizenship status of individuals registered to vote in your county: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—requests under sections 1373 and 1644 *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher.

Furthermore, Arizona law imposes on you a mandatory duty to consult "relevant ... federal databases to which the county recorder has access to confirm information

obtained that requires cancellation of registrations.”²⁶⁰ Because federal law secures to you the right of access to DHS’s information, you have a mandatory duty under Arizona law to take advantage of that access to verify the citizenship of voters. If you act now, there is still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your county’s voter rolls before the fall elections.

I. State and federal law prohibit foreign nationals from voting or registering to vote.

As you know, only U.S. citizens can legally vote in State and federal elections.²⁶¹ Further, it is a State and federal crime for any foreign national to register to vote or to vote in State or federal elections.²⁶² No foreign national is authorized to register to vote in or to vote in State or federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.²⁶³

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls. As you know, Arizona law requires that persons registering to vote provide documentary proof of citizenship.²⁶⁴ However, the U.S. Supreme Court has held that the State may not impose these voter registration requirements for federal races because such information is not required on the federal voter registration form.²⁶⁵

The Help America Vote Act (HAVA) established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does

²⁶⁰ A.R.S. § 16-165(K).

²⁶¹ *See, e.g.*, Ariz. Const. art. VII, § 2(A) (requiring that all voters be U.S. citizens); A.R.S. § 16-101(A)(1) (same); National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

²⁶² *E.g.* A.R.S. § 16-182(A) (making false registration to vote a class 6 felony); A.R.S. § 16-184(A) (making it a class 5 felony to “knowingly swear[] falsely to an affidavit” required by Arizona’s election statutes); A.R.S. § 16-1016(1) (making it a class 5 felony to for a person “[n]ot being entitled to vote, [who] knowingly votes”); 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine); 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

²⁶³ *See* 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

²⁶⁴ A.R.S. § 16-166(F).

²⁶⁵ *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013).

not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”²⁶⁶

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: / /
Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.²⁶⁷

Because the National Voter Registration Act (NVRA) requires States to “accept and use”²⁶⁸ the EAC’s form,²⁶⁹ and because that form does not require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*²⁷⁰ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”²⁷¹ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”²⁷² Further, the Court noted that the NVRA only requires states to register eligible persons.²⁷³ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,²⁷⁴ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that

²⁶⁶ *Register to Vote in your State by Using this Postcard Form and Guide*, U.S. ELECTION ASSISTANCE COMMISSION, <https://tinyurl.com/4wj6vm6r> (located in Box 9 on the fourth page of the document; the page is titled “Voter Registration Application”).

²⁶⁷ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

²⁶⁸ 52 U.S.C. § 20505(a)(1).

²⁶⁹ The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

²⁷⁰ 570 U.S. 1 (2013).

²⁷¹ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

²⁷² *Id.* (cleaned up) (emphasis added).

²⁷³ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

²⁷⁴ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.²⁷⁵

According to the Arizona Secretary of State’s Office, as of April 2024, 35,273 registered voters in Arizona had failed to provide proof of citizenship and were, therefore, registered only to vote in federal races.²⁷⁶

II. State and federal law require counties to conduct voter list maintenance and remove foreign nationals from voter rolls.

Both State and federal law require you to remove ineligible voters from your voter rolls. Arizona law requires you to perform monthly list maintenance to confirm the citizenship of federal-only registered voters.²⁷⁷ Additionally, HAVA²⁷⁸ requires you to “perform list maintenance” of your voter rolls,²⁷⁹ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed.”²⁸⁰ You must “ensure that voter registration records in the State are accurate and are updated regularly, including [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”²⁸¹

You are also required to send “to the attorney general a list of all individuals who are registered to vote and who have not provided satisfactory evidence of citizenship”²⁸² so that the Attorney General may fulfill her obligation “to use all available resources to verify the citizenship status of the applicant[s].”²⁸³ Surprisingly, even though this statutory provision is currently in force and not enjoined by any court, we understand that none of the county recorders have fulfilled their obligations under this statute.

Additionally, Arizona’s list maintenance statute requires counties to consult monthly several specific databases to determine the citizenship of federal-only voters: SAVE²⁸⁴, the Social Security Administration (SSA) database²⁸⁵, and the National Association for Public Health Statistics and Information Systems.²⁸⁶ Unfortunately, the Secretary of State has failed to negotiate access to these databases for list maintenance, so county recorders are currently unable to use them for list

²⁷⁵ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

²⁷⁶ ARIZONA SECRETARY OF STATE’S OFFICE, *Federal Only Registrants as of April 1st, 2024*, (Apr. 1, 2024), <https://tinyurl.com/3apvrxub>.

²⁷⁷ A.R.S. § 16-165.

²⁷⁸ P.L. 107-252, 116 Stat. 1666 (2002).

²⁷⁹ 52 U.S.C. § 21083(a)(2)(A).

²⁸⁰ 52 U.S.C. § 21083(a)(2)(B)(ii).

²⁸¹ 52 U.S.C. § 21083(a)(4)(A).

²⁸² A.R.S. § 16-143(A).

²⁸³ A.R.S. § 16-143(B).

²⁸⁴ A.R.S. § 16-165(I).

²⁸⁵ A.R.S. § 16-165(H).

²⁸⁶ A.R.S. § 16-165(J).

maintenance.²⁸⁷ Furthermore, SAVE and SSA have design flaws that hinder their effectiveness for performing voter list maintenance.²⁸⁸

Notwithstanding the unavailability of the SAVE, SSA, and NAPHSIS databases because of the Secretary of State’s negligence in obtaining access, Arizona law still imposes broad duties on counties to perform list maintenance using other databases, requiring that “[t]o the extent practicable, the county recorder shall review relevant city, town, county, state and federal databases to which the county recorder has access to confirm information obtained that requires cancellation of registrations.”²⁸⁹

III. County recorders have access to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, counties have an alternative solution for obtaining information about individuals on their voter rolls. And they can do so without the need to access the SAVE, SSA, or NAPHSIS databases.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires DHS to “respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of *any* individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.”²⁹⁰ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”²⁹¹

As explained above, State and federal law unambiguously require that voters in federal elections be United States citizens and prohibits all foreign nationals, even those who are lawfully present in the United States, from registering to vote or voting. State and federal law also impose on counties the duty of ensuring that ineligible voters are removed from voter rolls.²⁹² Also, Arizona’s Constitution and statutes impose citizenship requirements, and 8 U.S.C. § 1644 confers on counties unrestricted authority to obtain information about the immigration status of aliens in the United

²⁸⁷ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *5, *6, *7 (D. Ariz. Feb. 29, 2024).

²⁸⁸ AMERICA FIRST LEGAL FOUNDATION, *America First Legal Sends All 50 States a Plan for How to Use Existing Federal Law to Prevent Foreign Nationals from Illegally Voting in American Elections*, (June 24, 2024), <https://tinyurl.com/ys48bs5n>.

²⁸⁹ A.R.S. § 16-165(K).

²⁹⁰ 8 U.S.C. § 1373(c) (emphasis added).

²⁹¹ 8 U.S.C. § 1644.

²⁹² 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

States. Therefore, it is a “purpose authorized by law” under 8 U.S.C. § 1373(c) for a county to ask DHS about the citizenship status of presently registered voters.

Notably, DHS already can verify an individual’s citizenship. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.²⁹³ This means that, *right now*, DHS can answer all of your inquiries about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost. You already have the authority to submit citizenship inquiries about registered voters to DHS, and you can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* foreign nationals, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS’s databases is insufficient evidence in and of itself to remove an individual from a State’s voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State’s voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to follow the procedures outlined in A.R.S. § 16-165((A)(10) for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

Because this system of verification relies on information in DHS’s databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

²⁹³ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.²⁹⁴

IV. Conclusion

You have a mandatory obligation under Arizona law to remove foreign nationals from your voter rolls and to “review relevant ... federal databases” to accomplish this.²⁹⁵ Congress has provided you with access to a critical database to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Because this database is one that you are entitled to access under federal law, you have a mandatory obligation to submit a request to DHS. Doing so is easy—all you need to do is send a letter to DHS invoking your authority under 8 U.S.C. §§ 1373 and 1644 and listing all your county’s federal-only voters.

We ask that you respond to this letter by the close of business on Tuesday, July 23, confirming that you have:

- (1) Submitted a request to DHS for citizenship confirmation of all federal-only voters registered in your county; and
- (2) Submitted the list of your county’s federal-only voters to the Attorney General.

If you fail to confirm the above information in writing, then our clients may take legal action against you to compel you to fulfill your mandatory duties under Arizona law.

Best regards,

/s/ James Rogers
James Rogers
Arizona State Bar No. 027287
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²⁹⁵ A.R.S. § 16-165(K).



July 16, 2024

VIA EMAIL

Lydia Durst
Mohave County Recorder
700 West Beale Street
Kingman, Arizona 86402
voterregistration@mohave.gov

Dear Recorder Durst:

I write to you on behalf of our clients, Arizona Free Enterprise Club and Strong Communities Foundation of Arizona, to remind you of your obligation to remove foreign citizens from your voter rolls. If you continue to fail to fulfill this important duty, our clients may take legal action against you to compel you to do so.

Fortunately, there is an easy way for you to confirm the citizenship of registered voters and thus fulfill your responsibility. Congress has given you two critical tools to verify the citizenship status of individuals registered to vote in your county: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—requests under sections 1373 and 1644 *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher.

Furthermore, Arizona law imposes on you a mandatory duty to consult "relevant ... federal databases to which the county recorder has access to confirm information

obtained that requires cancellation of registrations.”²⁹⁶ Because federal law secures to you the right of access to DHS’s information, you have a mandatory duty under Arizona law to take advantage of that access to verify the citizenship of voters. If you act now, there is still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your county’s voter rolls before the fall elections.

I. State and federal law prohibit foreign nationals from voting or registering to vote.

As you know, only U.S. citizens can legally vote in State and federal elections.²⁹⁷ Further, it is a State and federal crime for any foreign national to register to vote or to vote in State or federal elections.²⁹⁸ No foreign national is authorized to register to vote in or to vote in State or federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.²⁹⁹

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls. As you know, Arizona law requires that persons registering to vote provide documentary proof of citizenship.³⁰⁰ However, the U.S. Supreme Court has held that the State may not impose these voter registration requirements for federal races because such information is not required on the federal voter registration form.³⁰¹

The Help America Vote Act (HAVA) established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does

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²⁹⁷ *See, e.g.*, Ariz. Const. art. VII, § 2(A) (requiring that all voters be U.S. citizens); A.R.S. § 16-101(A)(1) (same); National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

²⁹⁸ *E.g.* A.R.S. § 16-182(A) (making false registration to vote a class 6 felony); A.R.S. § 16-184(A) (making it a class 5 felony to “knowingly swear[] falsely to an affidavit” required by Arizona’s election statutes); A.R.S. § 16-1016(1) (making it a class 5 felony to for a person “[n]ot being entitled to vote, [who] knowingly votes”); 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine); 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

²⁹⁹ *See* 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

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³⁰¹ *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013).

not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”³⁰²

9 I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: / /
Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.³⁰³

Because the National Voter Registration Act (NVRA) requires States to “accept and use”³⁰⁴ the EAC’s form,³⁰⁵ and because that form does not require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*³⁰⁶ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”³⁰⁷ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”³⁰⁸ Further, the Court noted that the NVRA only requires states to register eligible persons.³⁰⁹ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,³¹⁰ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that

³⁰² *Register to Vote in your State by Using this Postcard Form and Guide*, U.S. ELECTION ASSISTANCE COMMISSION, <https://tinyurl.com/4wj6vm6r> (located in Box 9 on the fourth page of the document; the page is titled “Voter Registration Application”).

³⁰³ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

³⁰⁴ 52 U.S.C. § 20505(a)(1).

³⁰⁵ The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

³⁰⁶ 570 U.S. 1 (2013).

³⁰⁷ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

³⁰⁸ *Id.* (cleaned up) (emphasis added).

³⁰⁹ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

³¹⁰ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.³¹¹

According to the Arizona Secretary of State’s Office, as of April 2024, 35,273 registered voters in Arizona had failed to provide proof of citizenship and were, therefore, registered only to vote in federal races.³¹²

II. State and federal law require counties to conduct voter list maintenance and remove foreign nationals from voter rolls.

Both State and federal law require you to remove ineligible voters from your voter rolls. Arizona law requires you to perform monthly list maintenance to confirm the citizenship of federal-only registered voters.³¹³ Additionally, HAVA³¹⁴ requires you to “perform list maintenance” of your voter rolls,³¹⁵ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed.”³¹⁶ You must “ensure that voter registration records in the State are accurate and are updated regularly, including [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”³¹⁷

You are also required to send “to the attorney general a list of all individuals who are registered to vote and who have not provided satisfactory evidence of citizenship”³¹⁸ so that the Attorney General may fulfill her obligation “to use all available resources to verify the citizenship status of the applicant[s].”³¹⁹ Surprisingly, even though this statutory provision is currently in force and not enjoined by any court, we understand that none of the county recorders have fulfilled their obligations under this statute.

Additionally, county recorders must “prominently post on the recorder’s website the number of persons who are registered to vote... who have not provided proof of citizenship” as of January 2, February 20, April 1, and July 1 of this year.³²⁰ After a diligent review, we could not locate those totals on your website.

Additionally, Arizona’s list maintenance statute requires counties to consult monthly several specific databases to determine the citizenship of federal-only voters:

³¹¹ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

³¹² ARIZONA SECRETARY OF STATE’S OFFICE, *Federal Only Registrants as of April 1st, 2024*, (Apr. 1, 2024), <https://tinyurl.com/3apvrxub>.

³¹³ A.R.S. § 16-165.

³¹⁴ P.L. 107-252, 116 Stat. 1666 (2002).

³¹⁵ 52 U.S.C. § 21083(a)(2)(A).

³¹⁶ 52 U.S.C. § 21083(a)(2)(B)(ii).

³¹⁷ 52 U.S.C. § 21083(a)(4)(A).

³¹⁸ A.R.S. § 16-143(A).

³¹⁹ A.R.S. § 16-143(B).

³²⁰ A.R.S. §§ 16-161(B), -168(G)(1).

SAVE³²¹, the Social Security Administration (SSA) database³²², and the National Association for Public Health Statistics and Information Systems.³²³ Unfortunately, the Secretary of State has failed to negotiate access to these databases for list maintenance, so county recorders are currently unable to use them for list maintenance.³²⁴ Furthermore, SAVE and SSA have design flaws that hinder their effectiveness for performing voter list maintenance.³²⁵

Notwithstanding the unavailability of the SAVE, SSA, and NAPHSIS databases because of the Secretary of State’s negligence in obtaining access, Arizona law still imposes broad duties on counties to perform list maintenance using other databases, requiring that “[t]o the extent practicable, the county recorder shall review relevant city, town, county, state and federal databases to which the county recorder has access to confirm information obtained that requires cancellation of registrations.”³²⁶

III. County recorders have access to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, counties have an alternative solution for obtaining information about individuals on their voter rolls. And they can do so without the need to access the SAVE, SSA, or NAPHSIS databases.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires DHS to “respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of *any* individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.”³²⁷ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”³²⁸

As explained above, State and federal law unambiguously require that voters in federal elections be United States citizens and prohibits all foreign nationals, even

³²¹ A.R.S. § 16-165(I).

³²² A.R.S. § 16-165(H).

³²³ A.R.S. § 16-165(J).

³²⁴ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *5, *6, *7 (D. Ariz. Feb. 29, 2024).

³²⁵ AMERICA FIRST LEGAL FOUNDATION, *America First Legal Sends All 50 States a Plan for How to Use Existing Federal Law to Prevent Foreign Nationals from Illegally Voting in American Elections*, (June 24, 2024), <https://tinyurl.com/ys48bs5n>.

³²⁶ A.R.S. § 16-165(K).

³²⁷ 8 U.S.C. § 1373(c) (emphasis added).

³²⁸ 8 U.S.C. § 1644.

those who are lawfully present in the United States, from registering to vote or voting. State and federal law also impose on counties the duty of ensuring that ineligible voters are removed from voter rolls.³²⁹ Also, Arizona's Constitution and statutes impose citizenship requirements, and 8 U.S.C. § 1644 confers on counties unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a "purpose authorized by law" under 8 U.S.C. § 1373(c) for a county to ask DHS about the citizenship status of presently registered voters.

Notably, DHS already can verify an individual's citizenship. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.³³⁰ This means that, *right now*, DHS can answer all of your inquiries about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost. You already have the authority to submit citizenship inquiries about registered voters to DHS, and you can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* foreign nationals, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS's databases is insufficient evidence in and of itself to remove an individual from a State's voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State's voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to follow the procedures outlined in A.R.S. § 16-165((A)(10) for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability

³²⁹ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

³³⁰ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP'T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. ("Status verifiers may conduct queries based on an individual's name and date of birth."); DEP'T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that "[y]ou can review the applicant's information by ... entering the name and date of birth of the individual").

to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³³¹

IV. Conclusion

You have a mandatory obligation under Arizona law to remove foreign nationals from your voter rolls and to “review relevant ... federal databases” to accomplish this.³³² Congress has provided you with access to a critical database to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Because this database is one that you are entitled to access under federal law, you have a mandatory obligation to submit a request to DHS. Doing so is easy—all you need to do is send a letter to DHS invoking your authority under 8 U.S.C. §§ 1373 and 1644 and listing all your county’s federal-only voters.

We ask that you respond to this letter by the close of business on Tuesday, July 23, confirming that you have:

- (1) Submitted a request to DHS for citizenship confirmation of all federal-only voters registered in your county;
- (2) Submitted the list of your county’s federal-only voters to the Attorney General; and
- (3) Posted the number of federal-only voters registered as of January 2, February 20, April 1, and July 1, 2024, on the county recorder website.

If you fail to confirm the above information in writing, then our clients may take legal action against you to compel you to fulfill your mandatory duties under Arizona law.

Best regards,

/s/ James Rogers
James Rogers
Arizona State Bar No. 027287
Senior Counsel
America First Legal Foundation

³³¹ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS’s failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).

³³² A.R.S. § 16-165(K).



July 16, 2024

VIA EMAIL

Michael Sample
Navajo County Recorder
100 East Code Talkers Drive/South Hwy 77
Holbrook, Arizona 86025
Michael.Sample@navajocountyaz.gov

Dear Recorder Sample:

I write to you on behalf of our clients, Arizona Free Enterprise Club and Strong Communities Foundation of Arizona, to remind you of your obligation to remove foreign citizens from your voter rolls. If you continue to fail to fulfill this important duty, our clients may take legal action against you to compel you to do so.

Fortunately, there is an easy way for you to confirm the citizenship of registered voters and thus fulfill your responsibility. Congress has given you two critical tools to verify the citizenship status of individuals registered to vote in your county: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—requests under sections 1373 and 1644 *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher.

Furthermore, Arizona law imposes on you a mandatory duty to consult "relevant ... federal databases to which the county recorder has access to confirm information

obtained that requires cancellation of registrations.”³³³ Because federal law secures to you the right of access to DHS’s information, you have a mandatory duty under Arizona law to take advantage of that access to verify the citizenship of voters. If you act now, there is still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your county’s voter rolls before the fall elections.

I. State and federal law prohibit foreign nationals from voting or registering to vote.

As you know, only U.S. citizens can legally vote in State and federal elections.³³⁴ Further, it is a State and federal crime for any foreign national to register to vote or to vote in State or federal elections.³³⁵ No foreign national is authorized to register to vote in or to vote in State or federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.³³⁶

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls. As you know, Arizona law requires that persons registering to vote provide documentary proof of citizenship.³³⁷ However, the U.S. Supreme Court has held that the State may not impose these voter registration requirements for federal races because such information is not required on the federal voter registration form.³³⁸

The Help America Vote Act (HAVA) established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does

³³³ A.R.S. § 16-165(K).

³³⁴ See, e.g., Ariz. Const. art. VII, § 2(A) (requiring that all voters be U.S. citizens); A.R.S. § 16-101(A)(1) (same); National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

³³⁵ E.g. A.R.S. § 16-182(A) (making false registration to vote a class 6 felony); A.R.S. § 16-184(A) (making it a class 5 felony to “knowingly swear[] falsely to an affidavit” required by Arizona’s election statutes); A.R.S. § 16-1016(1) (making it a class 5 felony to for a person “[n]ot being entitled to vote, [who] knowingly votes”); 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine); 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

³³⁶ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

³³⁷ A.R.S. § 16-166(F).

³³⁸ *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013).

not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”³³⁹

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.³⁴⁰

Because the National Voter Registration Act (NVRA) requires States to “accept and use”³⁴¹ the EAC’s form,³⁴² and because that form does not require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*³⁴³ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”³⁴⁴ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”³⁴⁵ Further, the Court noted that the NVRA only requires states to register eligible persons.³⁴⁶ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,³⁴⁷ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that

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States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.³⁴⁸

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³⁵² 52 U.S.C. § 21083(a)(2)(A).

³⁵³ 52 U.S.C. § 21083(a)(2)(B)(ii).

³⁵⁴ 52 U.S.C. § 21083(a)(4)(A).

³⁵⁵ A.R.S. § 16-143(A).

³⁵⁶ A.R.S. § 16-143(B).

³⁵⁷ A.R.S. §§ 16-161(B), -168(G)(1).

SAVE³⁵⁸, the Social Security Administration (SSA) database³⁵⁹, and the National Association for Public Health Statistics and Information Systems.³⁶⁰ Unfortunately, the Secretary of State has failed to negotiate access to these databases for list maintenance, so county recorders are currently unable to use them for list maintenance.³⁶¹ Furthermore, SAVE and SSA have design flaws that hinder their effectiveness for performing voter list maintenance.³⁶²

Notwithstanding the unavailability of the SAVE, SSA, and NAPHSIS databases because of the Secretary of State’s negligence in obtaining access, Arizona law still imposes broad duties on counties to perform list maintenance using other databases, requiring that “[t]o the extent practicable, the county recorder shall review relevant city, town, county, state and federal databases to which the county recorder has access to confirm information obtained that requires cancellation of registrations.”³⁶³

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As explained above, State and federal law unambiguously require that voters in federal elections be United States citizens and prohibits all foreign nationals, even

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³⁶³ A.R.S. § 16-165(K).

³⁶⁴ 8 U.S.C. § 1373(c) (emphasis added).

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those who are lawfully present in the United States, from registering to vote or voting. State and federal law also impose on counties the duty of ensuring that ineligible voters are removed from voter rolls.³⁶⁶ Also, Arizona's Constitution and statutes impose citizenship requirements, and 8 U.S.C. § 1644 confers on counties unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a "purpose authorized by law" under 8 U.S.C. § 1373(c) for a county to ask DHS about the citizenship status of presently registered voters.

Notably, DHS already can verify an individual's citizenship. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.³⁶⁷ This means that, *right now*, DHS can answer all of your inquiries about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost. You already have the authority to submit citizenship inquiries about registered voters to DHS, and you can demand immediate responses from DHS.

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Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability

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to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.³⁶⁸

IV. Conclusion

You have a mandatory obligation under Arizona law to remove foreign nationals from your voter rolls and to “review relevant ... federal databases” to accomplish this.³⁶⁹ Congress has provided you with access to a critical database to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Because this database is one that you are entitled to access under federal law, you have a mandatory obligation to submit a request to DHS. Doing so is easy—all you need to do is send a letter to DHS invoking your authority under 8 U.S.C. §§ 1373 and 1644 and listing all your county’s federal-only voters.

We ask that you respond to this letter by the close of business on Tuesday, July 23, confirming that you have:

- (1) Submitted a request to DHS for citizenship confirmation of all federal-only voters registered in your county;
- (2) Submitted the list of your county’s federal-only voters to the Attorney General; and
- (3) Posted the number of federal-only voters registered as of January 2, February 20, April 1, and July 1, 2024, on the county recorder website.

If you fail to confirm the above information in writing, then our clients may take legal action against you to compel you to fulfill your mandatory duties under Arizona law.

Best regards,

/s/ James Rogers
James Rogers
Arizona State Bar No. 027287
Senior Counsel
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³⁶⁹ A.R.S. § 16-165(K).



July 16, 2024

VIA EMAIL

Gabriella Cázares-Kelly
Pima County Recorder
240 N Stone Ave, Tucson, Arizona 85701
Tucson, Arizona 85702
recorder@recorder.pima.gov

Dear Recorder Cázares-Kelly:

I write to you on behalf of our clients, Arizona Free Enterprise Club and Strong Communities Foundation of Arizona, to remind you of your obligation to remove foreign citizens from your voter rolls. If you continue to fail to fulfill this important duty, our clients may take legal action against you to compel you to do so.

Fortunately, there is an easy way for you to confirm the citizenship of registered voters and thus fulfill your responsibility. Congress has given you two critical tools to verify the citizenship status of individuals registered to vote in your county: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—requests under sections 1373 and 1644 *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher.

Furthermore, Arizona law imposes on you a mandatory duty to consult "relevant ... federal databases to which the county recorder has access to confirm information

obtained that requires cancellation of registrations.”³⁷⁰ Because federal law secures to you the right of access to DHS’s information, you have a mandatory duty under Arizona law to take advantage of that access to verify the citizenship of voters. If you act now, there is still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your county’s voter rolls before the fall elections.

I. State and federal law prohibit foreign nationals from voting or registering to vote.

As you know, only U.S. citizens can legally vote in State and federal elections.³⁷¹ Further, it is a State and federal crime for any foreign national to register to vote or to vote in State or federal elections.³⁷² No foreign national is authorized to register to vote in or to vote in State or federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.³⁷³

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls. As you know, Arizona law requires that persons registering to vote provide documentary proof of citizenship.³⁷⁴ However, the U.S. Supreme Court has held that the State may not impose these voter registration requirements for federal races because such information is not required on the federal voter registration form.³⁷⁵

The Help America Vote Act (HAVA) established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does

³⁷⁰ A.R.S. § 16-165(K).

³⁷¹ See, e.g., Ariz. Const. art. VII, § 2(A) (requiring that all voters be U.S. citizens); A.R.S. § 16-101(A)(1) (same); National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

³⁷² E.g. A.R.S. § 16-182(A) (making false registration to vote a class 6 felony); A.R.S. § 16-184(A) (making it a class 5 felony to “knowingly swear[] falsely to an affidavit” required by Arizona’s election statutes); A.R.S. § 16-1016(1) (making it a class 5 felony to for a person “[n]ot being entitled to vote, [who] knowingly votes”); 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine); 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

³⁷³ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

³⁷⁴ A.R.S. § 16-166(F).

³⁷⁵ *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013).

not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”³⁷⁶

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.³⁷⁷

Because the National Voter Registration Act (NVRA) requires States to “accept and use”³⁷⁸ the EAC’s form,³⁷⁹ and because that form does not require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*³⁸⁰ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”³⁸¹ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”³⁸² Further, the Court noted that the NVRA only requires states to register eligible persons.³⁸³ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,³⁸⁴ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that

³⁷⁶ *Register to Vote in your State by Using this Postcard Form and Guide*, U.S. ELECTION ASSISTANCE COMMISSION, <https://tinyurl.com/4wj6vm6r> (located in Box 9 on the fourth page of the document; the page is titled “Voter Registration Application”).

³⁷⁷ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

³⁷⁸ 52 U.S.C. § 20505(a)(1).

³⁷⁹ The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

³⁸⁰ 570 U.S. 1 (2013).

³⁸¹ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

³⁸² *Id.* (cleaned up) (emphasis added).

³⁸³ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

³⁸⁴ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.³⁸⁵

According to the Arizona Secretary of State’s Office, as of April 2024, 35,273 registered voters in Arizona had failed to provide proof of citizenship and were, therefore, registered only to vote in federal races.³⁸⁶

II. State and federal law require counties to conduct voter list maintenance and remove foreign nationals from voter rolls.

Both State and federal law require you to remove ineligible voters from your voter rolls. Arizona law requires you to perform monthly list maintenance to confirm the citizenship of federal-only registered voters.³⁸⁷ Additionally, HAVA³⁸⁸ requires you to “perform list maintenance” of your voter rolls,³⁸⁹ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed.”³⁹⁰ You must “ensure that voter registration records in the State are accurate and are updated regularly, including [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”³⁹¹

You are also required to send “to the attorney general a list of all individuals who are registered to vote and who have not provided satisfactory evidence of citizenship”³⁹² so that the Attorney General may fulfill her obligation “to use all available resources to verify the citizenship status of the applicant[s].”³⁹³ Surprisingly, even though this statutory provision is currently in force and not enjoined by any court, we understand that none of the county recorders have fulfilled their obligations under this statute.

Additionally, county recorders must “prominently post on the recorder’s website the number of persons who are registered to vote... who have not provided proof of citizenship” as of January 2, February 20, April 1, and July 1 of this year.³⁹⁴ After a diligent review, we could not locate those totals on your website.

Additionally, Arizona’s list maintenance statute requires counties to consult monthly several specific databases to determine the citizenship of federal-only voters:

³⁸⁵ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

³⁸⁶ ARIZONA SECRETARY OF STATE’S OFFICE, *Federal Only Registrants as of April 1st, 2024*, (Apr. 1, 2024), <https://tinyurl.com/3apvrxub>.

³⁸⁷ A.R.S. § 16-165.

³⁸⁸ P.L. 107-252, 116 Stat. 1666 (2002).

³⁸⁹ 52 U.S.C. § 21083(a)(2)(A).

³⁹⁰ 52 U.S.C. § 21083(a)(2)(B)(ii).

³⁹¹ 52 U.S.C. § 21083(a)(4)(A).

³⁹² A.R.S. § 16-143(A).

³⁹³ A.R.S. § 16-143(B).

³⁹⁴ A.R.S. §§ 16-161(B), -168(G)(1).

SAVE³⁹⁵, the Social Security Administration (SSA) database³⁹⁶, and the National Association for Public Health Statistics and Information Systems.³⁹⁷ Unfortunately, the Secretary of State has failed to negotiate access to these databases for list maintenance, so county recorders are currently unable to use them for list maintenance.³⁹⁸ Furthermore, SAVE and SSA have design flaws that hinder their effectiveness for performing voter list maintenance.³⁹⁹

Notwithstanding the unavailability of the SAVE, SSA, and NAPHSIS databases because of the Secretary of State’s negligence in obtaining access, Arizona law still imposes broad duties on counties to perform list maintenance using other databases, requiring that “[t]o the extent practicable, the county recorder shall review relevant city, town, county, state and federal databases to which the county recorder has access to confirm information obtained that requires cancellation of registrations.”⁴⁰⁰

III. County recorders have access to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, counties have an alternative solution for obtaining information about individuals on their voter rolls. And they can do so without the need to access the SAVE, SSA, or NAPHSIS databases.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires DHS to “respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of *any* individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.”⁴⁰¹ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”⁴⁰²

As explained above, State and federal law unambiguously require that voters in federal elections be United States citizens and prohibits all foreign nationals, even

³⁹⁵ A.R.S. § 16-165(I).

³⁹⁶ A.R.S. § 16-165(H).

³⁹⁷ A.R.S. § 16-165(J).

³⁹⁸ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *5, *6, *7 (D. Ariz. Feb. 29, 2024).

³⁹⁹ AMERICA FIRST LEGAL FOUNDATION, *America First Legal Sends All 50 States a Plan for How to Use Existing Federal Law to Prevent Foreign Nationals from Illegally Voting in American Elections*, (June 24, 2024), <https://tinyurl.com/ys48bs5n>.

⁴⁰⁰ A.R.S. § 16-165(K).

⁴⁰¹ 8 U.S.C. § 1373(c) (emphasis added).

⁴⁰² 8 U.S.C. § 1644.

those who are lawfully present in the United States, from registering to vote or voting. State and federal law also impose on counties the duty of ensuring that ineligible voters are removed from voter rolls.⁴⁰³ Also, Arizona's Constitution and statutes impose citizenship requirements, and 8 U.S.C. § 1644 confers on counties unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a "purpose authorized by law" under 8 U.S.C. § 1373(c) for a county to ask DHS about the citizenship status of presently registered voters.

Notably, DHS already can verify an individual's citizenship. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.⁴⁰⁴ This means that, *right now*, DHS can answer all of your inquiries about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost. You already have the authority to submit citizenship inquiries about registered voters to DHS, and you can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* foreign nationals, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS's databases is insufficient evidence in and of itself to remove an individual from a State's voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State's voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to follow the procedures outlined in A.R.S. § 16-165((A)(10) for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability

⁴⁰³ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

⁴⁰⁴ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP'T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. ("Status verifiers may conduct queries based on an individual's name and date of birth."); DEP'T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that "[y]ou can review the applicant's information by ... entering the name and date of birth of the individual").

to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.⁴⁰⁵

IV. Conclusion

You have a mandatory obligation under Arizona law to remove foreign nationals from your voter rolls and to “review relevant ... federal databases” to accomplish this.⁴⁰⁶ Congress has provided you with access to a critical database to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Because this database is one that you are entitled to access under federal law, you have a mandatory obligation to submit a request to DHS. Doing so is easy—all you need to do is send a letter to DHS invoking your authority under 8 U.S.C. §§ 1373 and 1644 and listing all your county’s federal-only voters.

We ask that you respond to this letter by the close of business on Tuesday, July 23, confirming that you have:

- (1) Submitted a request to DHS for citizenship confirmation of all federal-only voters registered in your county;
- (2) Submitted the list of your county’s federal-only voters to the Attorney General; and
- (3) Posted the number of federal-only voters registered as of January 2, February 20, April 1, and July 1, 2024, on the county recorder website.

If you fail to confirm the above information in writing, then our clients may take legal action against you to compel you to fulfill your mandatory duties under Arizona law.

Best regards,

/s/ James Rogers
James Rogers
Arizona State Bar No. 027287
Senior Counsel
America First Legal Foundation

⁴⁰⁵ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS’s failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).

⁴⁰⁶ A.R.S. § 16-165(K).



July 16, 2024

VIA EMAIL

Dana Lewis
Pinal County Recorder
320 W Adamsville Rd
Florence, AZ 85132
Recorder@pinal.gov

Dear Recorder Lewis:

I write to you on behalf of our clients, Arizona Free Enterprise Club and Strong Communities Foundation of Arizona, to remind you of your obligation to remove foreign citizens from your voter rolls. If you continue to fail to fulfill this important duty, our clients may take legal action against you to compel you to do so.

Fortunately, there is an easy way for you to confirm the citizenship of registered voters and thus fulfill your responsibility. Congress has given you two critical tools to verify the citizenship status of individuals registered to vote in your county: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—requests under sections 1373 and 1644 *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

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Furthermore, Arizona law imposes on you a mandatory duty to consult "relevant ... federal databases to which the county recorder has access to confirm information

obtained that requires cancellation of registrations.”⁴⁰⁷ Because federal law secures to you the right of access to DHS’s information, you have a mandatory duty under Arizona law to take advantage of that access to verify the citizenship of voters. If you act now, there is still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your county’s voter rolls before the fall elections.

I. State and federal law prohibit foreign nationals from voting or registering to vote.

As you know, only U.S. citizens can legally vote in State and federal elections.⁴⁰⁸ Further, it is a State and federal crime for any foreign national to register to vote or to vote in State or federal elections.⁴⁰⁹ No foreign national is authorized to register to vote in or to vote in State or federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴¹⁰

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls. As you know, Arizona law requires that persons registering to vote provide documentary proof of citizenship.⁴¹¹ However, the U.S. Supreme Court has held that the State may not impose these voter registration requirements for federal races because such information is not required on the federal voter registration form.⁴¹²

The Help America Vote Act (HAVA) established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does

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⁴¹² *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013).

not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁴¹³

I have reviewed my state's instructions and I swear/affirm that:

- I am a United States citizen
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Please sign full name (or put mark) ▲

Date: / /
Month Day Year

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.⁴¹⁴

Because the National Voter Registration Act (NVRA) requires States to “accept and use”⁴¹⁵ the EAC’s form,⁴¹⁶ and because that form does not require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*⁴¹⁷ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”⁴¹⁸ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”⁴¹⁹ Further, the Court noted that the NVRA only requires states to register eligible persons.⁴²⁰ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,⁴²¹ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

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⁴²⁶ 52 U.S.C. § 21083(a)(2)(A).

⁴²⁷ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁴²⁸ 52 U.S.C. § 21083(a)(4)(A).

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III. County recorders have access to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, counties have an alternative solution for obtaining information about individuals on their voter rolls. And they can do so without the need to access the SAVE, SSA, or NAPHSIS databases.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires DHS to “respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of *any* individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.”⁴³⁸ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”⁴³⁹

As explained above, State and federal law unambiguously require that voters in federal elections be United States citizens and prohibits all foreign nationals, even

⁴³² A.R.S. § 16-165(I).

⁴³³ A.R.S. § 16-165(H).

⁴³⁴ A.R.S. § 16-165(J).

⁴³⁵ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *5, *6, *7 (D. Ariz. Feb. 29, 2024).

⁴³⁶ AMERICA FIRST LEGAL FOUNDATION, *America First Legal Sends All 50 States a Plan for How to Use Existing Federal Law to Prevent Foreign Nationals from Illegally Voting in American Elections*, (June 24, 2024), <https://tinyurl.com/ys48bs5n>.

⁴³⁷ A.R.S. § 16-165(K).

⁴³⁸ 8 U.S.C. § 1373(c) (emphasis added).

⁴³⁹ 8 U.S.C. § 1644.

those who are lawfully present in the United States, from registering to vote or voting. State and federal law also impose on counties the duty of ensuring that ineligible voters are removed from voter rolls.⁴⁴⁰ Also, Arizona's Constitution and statutes impose citizenship requirements, and 8 U.S.C. § 1644 confers on counties unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a "purpose authorized by law" under 8 U.S.C. § 1373(c) for a county to ask DHS about the citizenship status of presently registered voters.

Notably, DHS already can verify an individual's citizenship. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.⁴⁴¹ This means that, *right now*, DHS can answer all of your inquiries about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost. You already have the authority to submit citizenship inquiries about registered voters to DHS, and you can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* foreign nationals, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS's databases is insufficient evidence in and of itself to remove an individual from a State's voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State's voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to follow the procedures outlined in A.R.S. § 16-165((A)(10) for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability

⁴⁴⁰ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

⁴⁴¹ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP'T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. ("Status verifiers may conduct queries based on an individual's name and date of birth."); DEP'T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that "[y]ou can review the applicant's information by ... entering the name and date of birth of the individual").

to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.⁴⁴²

IV. Conclusion

You have a mandatory obligation under Arizona law to remove foreign nationals from your voter rolls and to “review relevant ... federal databases” to accomplish this.⁴⁴³ Congress has provided you with access to a critical database to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Because this database is one that you are entitled to access under federal law, you have a mandatory obligation to submit a request to DHS. Doing so is easy—all you need to do is send a letter to DHS invoking your authority under 8 U.S.C. §§ 1373 and 1644 and listing all your county’s federal-only voters.

We ask that you respond to this letter by the close of business on Tuesday, July 23, confirming that you have:

- (1) Submitted a request to DHS for citizenship confirmation of all federal-only voters registered in your county;
- (2) Submitted the list of your county’s federal-only voters to the Attorney General; and
- (3) Posted the number of federal-only voters registered as of January 2, February 20, April 1, and July 1, 2024, on the county recorder website.

If you fail to confirm the above information in writing, then our clients may take legal action against you to compel you to fulfill your mandatory duties under Arizona law.

Best regards,

/s/ James Rogers
James Rogers
Arizona State Bar No. 027287
Senior Counsel
America First Legal Foundation

⁴⁴² 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS’s failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).

⁴⁴³ A.R.S. § 16-165(K).



July 16, 2024

VIA EMAIL

Anita Moreno
Santa Cruz County Recorder
2150 North Congress Drive, Suite 101
Nogales, Arizona 85621
recorder@santacruzcountyaz.gov

Dear Recorder Moreno:

I write to you on behalf of our clients, Arizona Free Enterprise Club and Strong Communities Foundation of Arizona, to remind you of your obligation to remove foreign citizens from your voter rolls. If you continue to fail to fulfill this important duty, our clients may take legal action against you to compel you to do so.

Fortunately, there is an easy way for you to confirm the citizenship of registered voters and thus fulfill your responsibility. Congress has given you two critical tools to verify the citizenship status of individuals registered to vote in your county: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—requests under sections 1373 and 1644 *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher.

Furthermore, Arizona law imposes on you a mandatory duty to consult "relevant ... federal databases to which the county recorder has access to confirm information

obtained that requires cancellation of registrations.”⁴⁴⁴ Because federal law secures to you the right of access to DHS’s information, you have a mandatory duty under Arizona law to take advantage of that access to verify the citizenship of voters. If you act now, there is still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your county’s voter rolls before the fall elections.

I. State and federal law prohibit foreign nationals from voting or registering to vote.

As you know, only U.S. citizens can legally vote in State and federal elections.⁴⁴⁵ Further, it is a State and federal crime for any foreign national to register to vote or to vote in State or federal elections.⁴⁴⁶ No foreign national is authorized to register to vote in or to vote in State or federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴⁴⁷

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls. As you know, Arizona law requires that persons registering to vote provide documentary proof of citizenship.⁴⁴⁸ However, the U.S. Supreme Court has held that the State may not impose these voter registration requirements for federal races because such information is not required on the federal voter registration form.⁴⁴⁹

The Help America Vote Act (HAVA) established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does

⁴⁴⁴ A.R.S. § 16-165(K).

⁴⁴⁵ See, e.g., Ariz. Const. art. VII, § 2(A) (requiring that all voters be U.S. citizens); A.R.S. § 16-101(A)(1) (same); National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

⁴⁴⁶ E.g. A.R.S. § 16-182(A) (making false registration to vote a class 6 felony); A.R.S. § 16-184(A) (making it a class 5 felony to “knowingly swear[] falsely to an affidavit” required by Arizona’s election statutes); A.R.S. § 16-1016(1) (making it a class 5 felony to for a person “[n]ot being entitled to vote, [who] knowingly votes”); 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine); 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

⁴⁴⁷ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

⁴⁴⁸ A.R.S. § 16-166(F).

⁴⁴⁹ *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013).

not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁴⁵⁰

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.⁴⁵¹

Because the National Voter Registration Act (NVRA) requires States to “accept and use”⁴⁵² the EAC’s form,⁴⁵³ and because that form does not require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*⁴⁵⁴ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”⁴⁵⁵ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”⁴⁵⁶ Further, the Court noted that the NVRA only requires states to register eligible persons.⁴⁵⁷ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,⁴⁵⁸ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that

⁴⁵⁰ *Register to Vote in your State by Using this Postcard Form and Guide*, U.S. ELECTION ASSISTANCE COMMISSION, <https://tinyurl.com/4wj6vm6r> (located in Box 9 on the fourth page of the document; the page is titled “Voter Registration Application”).

⁴⁵¹ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

⁴⁵² 52 U.S.C. § 20505(a)(1).

⁴⁵³ The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

⁴⁵⁴ 570 U.S. 1 (2013).

⁴⁵⁵ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

⁴⁵⁶ *Id.* (cleaned up) (emphasis added).

⁴⁵⁷ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

⁴⁵⁸ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.⁴⁵⁹

According to the Arizona Secretary of State’s Office, as of April 2024, 35,273 registered voters in Arizona had failed to provide proof of citizenship and were, therefore, registered only to vote in federal races.⁴⁶⁰

II. State and federal law require counties to conduct voter list maintenance and remove foreign nationals from voter rolls.

Both State and federal law require you to remove ineligible voters from your voter rolls. Arizona law requires you to perform monthly list maintenance to confirm the citizenship of federal-only registered voters.⁴⁶¹ Additionally, HAVA⁴⁶² requires you to “perform list maintenance” of your voter rolls,⁴⁶³ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed.”⁴⁶⁴ You must “ensure that voter registration records in the State are accurate and are updated regularly, including [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁴⁶⁵

You are also required to send “to the attorney general a list of all individuals who are registered to vote and who have not provided satisfactory evidence of citizenship”⁴⁶⁶ so that the Attorney General may fulfill her obligation “to use all available resources to verify the citizenship status of the applicant[s].”⁴⁶⁷ Surprisingly, even though this statutory provision is currently in force and not enjoined by any court, we understand that none of the county recorders have fulfilled their obligations under this statute.

Additionally, county recorders must “prominently post on the recorder’s website the number of persons who are registered to vote... who have not provided proof of citizenship” as of January 2, February 20, April 1, and July 1 of this year.⁴⁶⁸ After a diligent review, we could not locate those totals on your website.

Additionally, Arizona’s list maintenance statute requires counties to consult monthly several specific databases to determine the citizenship of federal-only voters:

⁴⁵⁹ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

⁴⁶⁰ ARIZONA SECRETARY OF STATE’S OFFICE, *Federal Only Registrants as of April 1st, 2024*, (Apr. 1, 2024), <https://tinyurl.com/3apvrxub>.

⁴⁶¹ A.R.S. § 16-165.

⁴⁶² P.L. 107-252, 116 Stat. 1666 (2002).

⁴⁶³ 52 U.S.C. § 21083(a)(2)(A).

⁴⁶⁴ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁴⁶⁵ 52 U.S.C. § 21083(a)(4)(A).

⁴⁶⁶ A.R.S. § 16-143(A).

⁴⁶⁷ A.R.S. § 16-143(B).

⁴⁶⁸ A.R.S. §§ 16-161(B), -168(G)(1).

SAVE⁴⁶⁹, the Social Security Administration (SSA) database⁴⁷⁰, and the National Association for Public Health Statistics and Information Systems.⁴⁷¹ Unfortunately, the Secretary of State has failed to negotiate access to these databases for list maintenance, so county recorders are currently unable to use them for list maintenance.⁴⁷² Furthermore, SAVE and SSA have design flaws that hinder their effectiveness for performing voter list maintenance.⁴⁷³

Notwithstanding the unavailability of the SAVE, SSA, and NAPHSIS databases because of the Secretary of State’s negligence in obtaining access, Arizona law still imposes broad duties on counties to perform list maintenance using other databases, requiring that “[t]o the extent practicable, the county recorder shall review relevant city, town, county, state and federal databases to which the county recorder has access to confirm information obtained that requires cancellation of registrations.”⁴⁷⁴

III. County recorders have access to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, counties have an alternative solution for obtaining information about individuals on their voter rolls. And they can do so without the need to access the SAVE, SSA, or NAPHSIS databases.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires DHS to “respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of *any* individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.”⁴⁷⁵ The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”⁴⁷⁶

As explained above, State and federal law unambiguously require that voters in federal elections be United States citizens and prohibits all foreign nationals, even

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⁴⁷² *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *5, *6, *7 (D. Ariz. Feb. 29, 2024).

⁴⁷³ AMERICA FIRST LEGAL FOUNDATION, *America First Legal Sends All 50 States a Plan for How to Use Existing Federal Law to Prevent Foreign Nationals from Illegally Voting in American Elections*, (June 24, 2024), <https://tinyurl.com/ys48bs5n>.

⁴⁷⁴ A.R.S. § 16-165(K).

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⁴⁷⁶ 8 U.S.C. § 1644.

those who are lawfully present in the United States, from registering to vote or voting. State and federal law also impose on counties the duty of ensuring that ineligible voters are removed from voter rolls.⁴⁷⁷ Also, Arizona's Constitution and statutes impose citizenship requirements, and 8 U.S.C. § 1644 confers on counties unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a "purpose authorized by law" under 8 U.S.C. § 1373(c) for a county to ask DHS about the citizenship status of presently registered voters.

Notably, DHS already can verify an individual's citizenship. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.⁴⁷⁸ This means that, *right now*, DHS can answer all of your inquiries about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost. You already have the authority to submit citizenship inquiries about registered voters to DHS, and you can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* foreign nationals, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS's databases is insufficient evidence in and of itself to remove an individual from a State's voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State's voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to follow the procedures outlined in A.R.S. § 16-165((A)(10) for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability

⁴⁷⁷ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

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to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.⁴⁷⁹

IV. Conclusion

You have a mandatory obligation under Arizona law to remove foreign nationals from your voter rolls and to “review relevant ... federal databases” to accomplish this.⁴⁸⁰ Congress has provided you with access to a critical database to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Because this database is one that you are entitled to access under federal law, you have a mandatory obligation to submit a request to DHS. Doing so is easy—all you need to do is send a letter to DHS invoking your authority under 8 U.S.C. §§ 1373 and 1644 and listing all your county’s federal-only voters.

We ask that you respond to this letter by the close of business on Tuesday, July 23, confirming that you have:

- (1) Submitted a request to DHS for citizenship confirmation of all federal-only voters registered in your county;
- (2) Submitted the list of your county’s federal-only voters to the Attorney General; and
- (3) Posted the number of federal-only voters registered as of January 2, February 20, April 1, and July 1, 2024, on the county recorder website.

If you fail to confirm the above information in writing, then our clients may take legal action against you to compel you to fulfill your mandatory duties under Arizona law.

Best regards,

/s/ James Rogers
James Rogers
Arizona State Bar No. 027287
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⁴⁷⁹ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS’s failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).

⁴⁸⁰ A.R.S. § 16-165(K).



July 16, 2024

VIA EMAIL

Michelle Burchill
Yavapai County Recorder
1015 Fair Street, Room # 228
Prescott, Arizona 86305
voter.registration@yavapaiaz.gov

Dear Recorder Burchill:

I write to you on behalf of our clients, Arizona Free Enterprise Club and Strong Communities Foundation of Arizona, to remind you of your obligation to remove foreign citizens from your voter rolls. If you continue to fail to fulfill this important duty, our clients may take legal action against you to compel you to do so.

Fortunately, there is an easy way for you to confirm the citizenship of registered voters and thus fulfill your responsibility. Congress has given you two critical tools to verify the citizenship status of individuals registered to vote in your county: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—requests under sections 1373 and 1644 *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher.

Furthermore, Arizona law imposes on you a mandatory duty to consult "relevant ... federal databases to which the county recorder has access to confirm information

obtained that requires cancellation of registrations.”⁴⁸¹ Because federal law secures to you the right of access to DHS’s information, you have a mandatory duty under Arizona law to take advantage of that access to verify the citizenship of voters. If you act now, there is still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your county’s voter rolls before the fall elections.

I. State and federal law prohibit foreign nationals from voting or registering to vote.

As you know, only U.S. citizens can legally vote in State and federal elections.⁴⁸² Further, it is a State and federal crime for any foreign national to register to vote or to vote in State or federal elections.⁴⁸³ No foreign national is authorized to register to vote in or to vote in State or federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁴⁸⁴

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls. As you know, Arizona law requires that persons registering to vote provide documentary proof of citizenship.⁴⁸⁵ However, the U.S. Supreme Court has held that the State may not impose these voter registration requirements for federal races because such information is not required on the federal voter registration form.⁴⁸⁶

The Help America Vote Act (HAVA) established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does

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not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁴⁸⁷

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.⁴⁸⁸

Because the National Voter Registration Act (NVRA) requires States to “accept and use”⁴⁸⁹ the EAC’s form,⁴⁹⁰ and because that form does not require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*⁴⁹¹ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”⁴⁹² However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”⁴⁹³ Further, the Court noted that the NVRA only requires states to register eligible persons.⁴⁹⁴ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,⁴⁹⁵ such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that

⁴⁸⁷ *Register to Vote in your State by Using this Postcard Form and Guide*, U.S. ELECTION ASSISTANCE COMMISSION, <https://tinyurl.com/4wj6vm6r> (located in Box 9 on the fourth page of the document; the page is titled “Voter Registration Application”).

⁴⁸⁸ *Id.* The form’s actual language states that an individual who provides false information on the form can be “fined [sic], imprisoned, or,” for aliens, “deported from or refused entry to the United States.”

⁴⁸⁹ 52 U.S.C. § 20505(a)(1).

⁴⁹⁰ The NVRA originally delegated this authority to the Federal Election Commission. NATIONAL VOTER REGISTRATION ACT OF 1993, PL 103–31, May 20, 1993, 107 Stat 77 § 6(a)(1). HAVA transferred this authority to the EAC.

⁴⁹¹ 570 U.S. 1 (2013).

⁴⁹² *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

⁴⁹³ *Id.* (cleaned up) (emphasis added).

⁴⁹⁴ *Id.* “... §1973gg–6(a)(1)(B) only requires a State to register an “eligible applicant” who submits a timely Federal Form. (Emphasis added.)”

⁴⁹⁵ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.⁴⁹⁶

According to the Arizona Secretary of State’s Office, as of April 2024, 35,273 registered voters in Arizona had failed to provide proof of citizenship and were, therefore, registered only to vote in federal races.⁴⁹⁷

II. State and federal law require counties to conduct voter list maintenance and remove foreign nationals from voter rolls.

Both State and federal law require you to remove ineligible voters from your voter rolls. Arizona law requires you to perform monthly list maintenance to confirm the citizenship of federal-only registered voters.⁴⁹⁸ Additionally, HAVA⁴⁹⁹ requires you to “perform list maintenance” of your voter rolls,⁵⁰⁰ and to ensure that “voters ... who are not eligible to vote [in federal elections] are removed.”⁵⁰¹ You must “ensure that voter registration records in the State are accurate and are updated regularly, including [a] system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁵⁰²

You are also required to send “to the attorney general a list of all individuals who are registered to vote and who have not provided satisfactory evidence of citizenship”⁵⁰³ so that the Attorney General may fulfill her obligation “to use all available resources to verify the citizenship status of the applicant[s].”⁵⁰⁴ Surprisingly, even though this statutory provision is currently in force and not enjoined by any court, we understand that none of the county recorders have fulfilled their obligations under this statute.

Additionally, county recorders must “prominently post on the recorder’s website the number of persons who are registered to vote... who have not provided proof of citizenship” as of January 2, February 20, April 1, and July 1 of this year.⁵⁰⁵ After a diligent review, we could not locate those totals on your website.

Additionally, Arizona’s list maintenance statute requires counties to consult monthly several specific databases to determine the citizenship of federal-only voters:

⁴⁹⁶ *Arizona* does not speak to the verification requirements established in either HAVA or the REAL ID Act. Indeed, *Arizona* neither cites nor mentions either of these two Acts of Congress in its decision.

⁴⁹⁷ ARIZONA SECRETARY OF STATE’S OFFICE, *Federal Only Registrants as of April 1st, 2024*, (Apr. 1, 2024), <https://tinyurl.com/3apvrxub>.

⁴⁹⁸ A.R.S. § 16-165.

⁴⁹⁹ P.L. 107-252, 116 Stat. 1666 (2002).

⁵⁰⁰ 52 U.S.C. § 21083(a)(2)(A).

⁵⁰¹ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁵⁰² 52 U.S.C. § 21083(a)(4)(A).

⁵⁰³ A.R.S. § 16-143(A).

⁵⁰⁴ A.R.S. § 16-143(B).

⁵⁰⁵ A.R.S. §§ 16-161(B), -168(G)(1).

SAVE⁵⁰⁶, the Social Security Administration (SSA) database⁵⁰⁷, and the National Association for Public Health Statistics and Information Systems.⁵⁰⁸ Unfortunately, the Secretary of State has failed to negotiate access to these databases for list maintenance, so county recorders are currently unable to use them for list maintenance.⁵⁰⁹ Furthermore, SAVE and SSA have design flaws that hinder their effectiveness for performing voter list maintenance.⁵¹⁰

Notwithstanding the unavailability of the SAVE, SSA, and NAPHSIS databases because of the Secretary of State’s negligence in obtaining access, Arizona law still imposes broad duties on counties to perform list maintenance using other databases, requiring that “[t]o the extent practicable, the county recorder shall review relevant city, town, county, state and federal databases to which the county recorder has access to confirm information obtained that requires cancellation of registrations.”⁵¹¹

III. County recorders have access to DHS to verify the citizenship or immigration status of registered voters on voter rolls—and DHS has a legal obligation to provide such information.

Fortunately, counties have an alternative solution for obtaining information about individuals on their voter rolls. And they can do so without the need to access the SAVE, SSA, or NAPHSIS databases.

The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires DHS to “respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of *any* individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.”⁵¹² The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”⁵¹³

As explained above, State and federal law unambiguously require that voters in federal elections be United States citizens and prohibits all foreign nationals, even

⁵⁰⁶ A.R.S. § 16-165(I).

⁵⁰⁷ A.R.S. § 16-165(H).

⁵⁰⁸ A.R.S. § 16-165(J).

⁵⁰⁹ *Mi Familia Vota v. Fontes*, --- F.Supp.3d ---, 2024 WL 862406, at *5, *6, *7 (D. Ariz. Feb. 29, 2024).

⁵¹⁰ AMERICA FIRST LEGAL FOUNDATION, *America First Legal Sends All 50 States a Plan for How to Use Existing Federal Law to Prevent Foreign Nationals from Illegally Voting in American Elections*, (June 24, 2024), <https://tinyurl.com/ys48bs5n>.

⁵¹¹ A.R.S. § 16-165(K).

⁵¹² 8 U.S.C. § 1373(c) (emphasis added).

⁵¹³ 8 U.S.C. § 1644.

those who are lawfully present in the United States, from registering to vote or voting. State and federal law also impose on counties the duty of ensuring that ineligible voters are removed from voter rolls.⁵¹⁴ Also, Arizona's Constitution and statutes impose citizenship requirements, and 8 U.S.C. § 1644 confers on counties unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a "purpose authorized by law" under 8 U.S.C. § 1373(c) for a county to ask DHS about the citizenship status of presently registered voters.

Notably, DHS already can verify an individual's citizenship. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.⁵¹⁵ This means that, *right now*, DHS can answer all of your inquiries about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost. You already have the authority to submit citizenship inquiries about registered voters to DHS, and you can demand immediate responses from DHS.

Of course, DHS does not maintain a list of *all* foreign nationals, just those individuals it has encountered through one of its immigration agencies. Accordingly, the absence of information in DHS's databases is insufficient evidence in and of itself to remove an individual from a State's voter rolls. However, an affirmative match with an individual who has not become a naturalized citizen would likely provide sufficient grounds for further inquiry and, in most cases, eventual removal from voter rolls. It may be that some individuals subject to such a query could have subsequently naturalized and would, therefore, not be subject to removal from a State's voter rolls, but PCQS should also contain that naturalization information.

Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to follow the procedures outlined in A.R.S. § 16-165((A)(10) for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability

⁵¹⁴ 52 U.S.C. § 21083(a)(2)(A), (a)(2)(B)(ii), (a)(4)(A).

⁵¹⁵ *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP'T OF HOMELAND SEC. (June 8, 2011), <https://tinyurl.com/8c34jpad>. ("Status verifiers may conduct queries based on an individual's name and date of birth."); DEP'T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c) (instruction to consular officers about using PCQS stating that "[y]ou can review the applicant's information by ... entering the name and date of birth of the individual").

to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.⁵¹⁶

IV. Conclusion

You have a mandatory obligation under Arizona law to remove foreign nationals from your voter rolls and to “review relevant ... federal databases” to accomplish this.⁵¹⁷ Congress has provided you with access to a critical database to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

Because this database is one that you are entitled to access under federal law, you have a mandatory obligation to submit a request to DHS. Doing so is easy—all you need to do is send a letter to DHS invoking your authority under 8 U.S.C. §§ 1373 and 1644 and listing all your county’s federal-only voters.

We ask that you respond to this letter by the close of business on Tuesday, July 23, confirming that you have:

- (1) Submitted a request to DHS for citizenship confirmation of all federal-only voters registered in your county;
- (2) Submitted the list of your county’s federal-only voters to the Attorney General; and
- (3) Posted the number of federal-only voters registered as of January 2, February 20, April 1, and July 1, 2024, on the county recorder website.

If you fail to confirm the above information in writing, then our clients may take legal action against you to compel you to fulfill your mandatory duties under Arizona law.

Best regards,

/s/ James Rogers
James Rogers
Arizona State Bar No. 027287
Senior Counsel
America First Legal Foundation

⁵¹⁶ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS’s failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).

⁵¹⁷ A.R.S. § 16-165(K).



July 16, 2024

VIA EMAIL

Richard Colwell
Yuma County Recorder
102 S. Main Street
Yuma, Arizona 85364
Richard.Colwell@yumacountyaz.gov

Dear Recorder Colwell:

I write to you on behalf of our clients, Arizona Free Enterprise Club and Strong Communities Foundation of Arizona, to remind you of your obligation to remove foreign citizens from your voter rolls. If you continue to fail to fulfill this important duty, our clients may take legal action against you to compel you to do so.

Fortunately, there is an easy way for you to confirm the citizenship of registered voters and thus fulfill your responsibility. Congress has given you two critical tools to verify the citizenship status of individuals registered to vote in your county: 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These tools, codified in federal law for decades, allow you to submit requests for information to the Department of Homeland Security (DHS) about an individual's citizenship or immigration status for *any lawful purpose*. This includes an inquiry where you have reason to believe that a given individual who is registered to vote might not be a United States citizen.

Unlike the Systematic Alien Verification for Entitlements (SAVE) Program, which requires the use of some DHS identifier to perform a search—like an Alien Registration Number or other DHS receipt number—requests under sections 1373 and 1644 *require* DHS to search for specific individuals using any available information such as a name and date of birth. Based on the information you receive in response, you can take further steps consistent with applicable law to ensure that only U.S. citizens remain on your voter rolls.

Congress has imposed upon DHS a mandatory obligation to respond to lawful inquiries about an individual's citizenship or immigration status. Should DHS refuse or fail to provide this information, you can initiate legal action to obtain it. Given the unprecedented levels of illegal immigration since January 20, 2021, the need for action could not be greater, and the stakes could not be higher.

Furthermore, Arizona law imposes on you a mandatory duty to consult "relevant ... federal databases to which the county recorder has access to confirm information

obtained that requires cancellation of registrations.”⁵¹⁸ Because federal law secures to you the right of access to DHS’s information, you have a mandatory duty under Arizona law to take advantage of that access to verify the citizenship of voters. If you act now, there is still time to conduct legally sound voter list maintenance and remove ineligible foreign nationals from your county’s voter rolls before the fall elections.

I. State and federal law prohibit foreign nationals from voting or registering to vote.

As you know, only U.S. citizens can legally vote in State and federal elections.⁵¹⁹ Further, it is a State and federal crime for any foreign national to register to vote or to vote in State or federal elections.⁵²⁰ No foreign national is authorized to register to vote in or to vote in State or federal elections, regardless of immigration status. And there are severe immigration-related consequences for any foreign national who attempts to vote in federal elections—namely, the foreign national becomes forever barred from any future immigration benefit in the United States.⁵²¹

Because it is illegal for any foreign national to register to vote or to vote, there is no reason for a foreign national to be on your voter rolls. As you know, Arizona law requires that persons registering to vote provide documentary proof of citizenship.⁵²² However, the U.S. Supreme Court has held that the State may not impose these voter registration requirements for federal races because such information is not required on the federal voter registration form.⁵²³

The Help America Vote Act (HAVA) established the U.S. Election Assistance Commission (EAC), which is responsible for setting the requirements for registering to vote using the federal form. Unfortunately, the form promulgated by the EAC does

⁵¹⁸ A.R.S. § 16-165(K).

⁵¹⁹ See, e.g., Ariz. Const. art. VII, § 2(A) (requiring that all voters be U.S. citizens); A.R.S. § 16-101(A)(1) (same); National Voter Registration Act, P.L. 103-31, 107 Stat. 77 (1993) (requiring the federal voter registration form to contain the question “Are you a citizen of the United States of America?”).

⁵²⁰ E.g. A.R.S. § 16-182(A) (making false registration to vote a class 6 felony); A.R.S. § 16-184(A) (making it a class 5 felony to “knowingly swear[] falsely to an affidavit” required by Arizona’s election statutes); A.R.S. § 16-1016(1) (making it a class 5 felony to for a person “[n]ot being entitled to vote, [who] knowingly votes”); 18 U.S.C. § 611 (criminal statute subjecting aliens who vote in federal elections to up to one year in prison or a criminal fine); 18 U.S.C. § 911 (“Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.”); 18 U.S.C. § 1015(f) (knowingly making “any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” subjects an alien to five years’ imprisonment or fine); 52 U.S.C. § 21144(b) (making it a crime to “knowingly commit[] fraud or knowingly make[] a false statement with respect to the naturalization, citizenry, or alien registry” in connection with voter registration and voting).

⁵²¹ See 8 U.S.C. § 1182(a)(6)(C)(ii)(I) (making ineligible for a visa and inadmissible into the United States “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit ... any ... Federal or State law”).

⁵²² A.R.S. § 16-166(F).

⁵²³ *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013).

not expressly require applicants to submit documentary proof of citizenship. Instead, it merely requires voter registrants to sign a form “under penalty of perjury,” swearing or affirming that “I am a United States citizen.”⁵²⁴

The form also warns that providing false information may lead to legal consequences, including fines, imprisonment, and, in circumstances involving foreign nationals who register to vote, removal from the United States and other potential immigration enforcement consequences.⁵²⁵

Because the National Voter Registration Act (NVRA) requires States to “accept and use”⁵²⁶ the EAC’s form,⁵²⁷ and because that form does not require documentary proof of citizenship, the Supreme Court held in *Arizona v. Inter Tribal Council of Arizona, Inc.*⁵²⁸ that “the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form.”⁵²⁹ However, the Court also held that the NVRA “does not preclude States from denying registration based on information in their possession establishing the applicant’s ineligibility.”⁵³⁰ Further, the Court noted that the NVRA only requires states to register eligible persons.⁵³¹ Nor does the Court’s decision prohibit States from engaging in the voter list maintenance procedures required by HAVA,⁵³² such as inquiring about the citizenship or immigration status of potentially ineligible voters on voter rolls.

Further, despite its prohibition on requiring evidence of citizenship status beyond the four corners of EAC’s federal voter registration form, the Court acknowledged that

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⁵²⁶ 52 U.S.C. § 20505(a)(1).

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⁵²⁹ *Id.* at 15. While this was the Court’s core holding, this remains a highly questionable position in light of the fact that the form is silent on the issue of requiring documentation in support of citizenship.

⁵³⁰ *Id.* (cleaned up) (emphasis added).

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States nevertheless could access information via other means to help them resolve questions about a voter registration applicant’s citizenship status.⁵³³

According to the Arizona Secretary of State’s Office, as of April 2024, 35,273 registered voters in Arizona had failed to provide proof of citizenship and were, therefore, registered only to vote in federal races.⁵³⁴

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You are also required to send “to the attorney general a list of all individuals who are registered to vote and who have not provided satisfactory evidence of citizenship”⁵⁴⁰ so that the Attorney General may fulfill her obligation “to use all available resources to verify the citizenship status of the applicant[s].”⁵⁴¹ Surprisingly, even though this statutory provision is currently in force and not enjoined by any court, we understand that none of the county recorders have fulfilled their obligations under this statute.

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⁵³⁵ A.R.S. § 16-165.

⁵³⁶ P.L. 107-252, 116 Stat. 1666 (2002).

⁵³⁷ 52 U.S.C. § 21083(a)(2)(A).

⁵³⁸ 52 U.S.C. § 21083(a)(2)(B)(ii).

⁵³⁹ 52 U.S.C. § 21083(a)(4)(A).

⁵⁴⁰ A.R.S. § 16-143(A).

⁵⁴¹ A.R.S. § 16-143(B).

⁵⁴² A.R.S. §§ 16-161(B), -168(G)(1).

SAVE⁵⁴³, the Social Security Administration (SSA) database⁵⁴⁴, and the National Association for Public Health Statistics and Information Systems.⁵⁴⁵ Unfortunately, the Secretary of State has failed to negotiate access to these databases for list maintenance, so county recorders are currently unable to use them for list maintenance.⁵⁴⁶ Furthermore, SAVE and SSA have design flaws that hinder their effectiveness for performing voter list maintenance.⁵⁴⁷

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As explained above, State and federal law unambiguously require that voters in federal elections be United States citizens and prohibits all foreign nationals, even

⁵⁴³ A.R.S. § 16-165(I).

⁵⁴⁴ A.R.S. § 16-165(H).

⁵⁴⁵ A.R.S. § 16-165(J).

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⁵⁴⁷ AMERICA FIRST LEGAL FOUNDATION, *America First Legal Sends All 50 States a Plan for How to Use Existing Federal Law to Prevent Foreign Nationals from Illegally Voting in American Elections*, (June 24, 2024), <https://tinyurl.com/ys48bs5n>.

⁵⁴⁸ A.R.S. § 16-165(K).

⁵⁴⁹ 8 U.S.C. § 1373(c) (emphasis added).

⁵⁵⁰ 8 U.S.C. § 1644.

those who are lawfully present in the United States, from registering to vote or voting. State and federal law also impose on counties the duty of ensuring that ineligible voters are removed from voter rolls.⁵⁵¹ Also, Arizona's Constitution and statutes impose citizenship requirements, and 8 U.S.C. § 1644 confers on counties unrestricted authority to obtain information about the immigration status of aliens in the United States. Therefore, it is a "purpose authorized by law" under 8 U.S.C. § 1373(c) for a county to ask DHS about the citizenship status of presently registered voters.

Notably, DHS already can verify an individual's citizenship. For example, DHS maintains the Person Centric Query System (PCQS) database. It allows agency employees to look up individuals and quickly and easily verify their citizenship status using only a name and date of birth.⁵⁵² This means that, *right now*, DHS can answer all of your inquiries about the citizenship status of all presently registered voters and all persons attempting to register to vote and do so at no cost. You already have the authority to submit citizenship inquiries about registered voters to DHS, and you can demand immediate responses from DHS.

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Thus, whenever a foreign national is listed in PCQS without any accompanying naturalization information, there would be reasonable grounds to follow the procedures outlined in A.R.S. § 16-165((A)(10) for notifying and giving a person the opportunity to submit necessary documentation to avoid removal from the registration rolls.

Because this system of verification relies on information in DHS's databases, it necessarily would not be able to provide information about aliens in the United States who have evaded detection. However, using these tools provides you with the ability

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to remove countless ineligible voters from your voter rolls if they were, in fact, encountered by DHS and have not naturalized.

If DHS fails to respond to an inquiry, you can sue in federal court to obtain the necessary information that Congress has required DHS to provide.⁵⁵³

IV. Conclusion

You have a mandatory obligation under Arizona law to remove foreign nationals from your voter rolls and to “review relevant ... federal databases” to accomplish this.⁵⁵⁴ Congress has provided you with access to a critical database to do so. Given widespread public concern over the presence of foreign nationals on voter rolls in jurisdictions across the United States and unprecedented levels of illegal immigration across our southern border since January 20, 2021, the time to act is now.

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We ask that you respond to this letter by the close of business on Tuesday, July 23, confirming that you have:

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Best regards,

/s/ James Rogers
James Rogers
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⁵⁵³ 5 U.S.C. §§ 706(1), (2)(A) & (C) (concerning DHS’s failure to provide information as required under statute); 28 U.S.C. § 1361 (the Mandamus Act can compel Secretary Alejandro Mayorkas and USCS Director Ur Jaddou to perform their statutory duties).

⁵⁵⁴ A.R.S. § 16-165(K).